REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SILICON PHILIPPINES, INC. (formerly INTEL PHILIPPINES MANUFACTURING, INC.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 298
(C.T.A. Case Nos. 6741, 6800 and 6841)

Present:

ACOSTA, ***P.J.,***
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, ***JJ.:***

Promulgated:

JAN 18 2008

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DECISION

ACOSTA, ***P.J.:***

This is a Petition for Review seeking the reversal and setting aside of the Decision of this Court's Second Division (Court in Division) dated February 5, 2007, denying petitioner's claim for refund or issuance of tax credit certificate corresponding to its alleged excess/unutilized input VAT for the Second, Third, and Fourth Quarters of taxable year 2001 and the subsequent Resolution dated June 29, 2007, denying the Motion for Reconsideration.

The antecedent facts as found by the Court in Division are as follows:

Petitioner is engaged primarily in the business of designing, developing, manufacturing, and in the export of integrated circuit components (ICs) as stated in its Articles of Incorporation. It is registered with the Board of Investments (BOI) under Executive Order No. 226, otherwise known as the Omnibus Investments Code (EO 226) as a preferred pioneer enterprise for the production/manufacture and export of large scale integrated circuits and microprocessor under Certificate of Registration No. EP 97-319 dated February 27, 1998.

Petitioner is likewise registered with the Bureau of Internal Revenue (BIR) as a VAT Taxpayer on its sale of goods and services, as shown by its Certificate of Registration No. 94-048-02621 dated July 6, 1994. It has a BIR permit to print accounting documents such as sales invoices and official receipts, as evidenced by Permit No. LTS-1-AR-0801-00037 dated September 4, 2001.

For the last three quarters of the year 2001, petitioner filed its Quarterly VAT Returns on July 24, 2001, October 23, 2001, and January 15, 2002, reporting the amounts of P765,696,325.68, P680,418,432.83, and P1,000,052,659.89, respectively, as its zero-rated sales. On October 29, 2001 and May 22, 2002, however, petitioner filed its Amended Quarterly VAT Returns for the period covering July 1, 2001 to September 31, 2001 and October 1, 2001 to December 31, 2001, respectively.

Claiming that it has excess/unutilized input VAT for the Second, Third, and Fourth Quarters of taxable year 2001 in the aggregate amount of P25,041,116.22 attributable to its zero-rated sales, petitioner filed three separate Petitions for Review[1], docketed as C.T.A. Case Nos. 6741, 6800, and 6841, to wit:

[1] July 24, 2003, October 20, 2003, and December 30, 2003, respectively.

CTA Case No.	Period Covered	Claimed Input VAT
6741	April 1 to June 30, 2001	P 9,038,279.56
6800	July 1 to Sept 30, 2001	1,420,813.04
6841	Oct 1 to Dec 31, 2001	P 14,582,023.62
		P25,041,116.22

Since C.T.A. Case Nos. 6741, 6800, and 6841 involved the same parties, facts, and issues, upon motion by petitioner, the Court in Division allowed their consolidation on February 20, 2004.

The case was submitted for decision based on the pleadings, with both parties ordered by this Court to submit their respective Memorandum within thirty (30) days from notice. Thereafter, this case was submitted for decision, sans respondent's Memorandum on August 23, 2007.

On February 5, 2004, the Court in Division rendered a Decision denying petitioner's claim for refund or issuance of a tax credit certificate in the amount of P25,041,116.22, representing its alleged excess/unutilized input VAT for the last three quarters of the taxable year 2001, for the following reasons:

a. petitioner failed to substantiate its claim; its reported export sales in the amount of P2,444,167,418.80 not qualifying as VAT zero-rates sales under Section 106(A)(2)(a)(1) of the National Internal Revenue Code of 1997, as amended; and

b. petitioner failed to comply with the second, third and fourth requisites before an entitlement to a refund/tax credit of input VAT paid on capital goods purchased may be granted.

Although the Court in Division found that petitioner paid input VAT on its importations for the Second Quarter of taxable year 2001; however, petitioner failed to prove that the said importations are in the nature of capital purchases. A careful perusal of the Summary List of Importations on Capital Goods submitted by petitioner would show that some of the subject importations cannot be considered as depreciable assets. No other supporting documents were presented to prove that the other items were capitalized in its books of accounts and subjected to depreciation. In a nutshell, petitioner failed to establish that the subject importations related to the input VAT payments fall within the definition of capital goods.

Not satisfied with the Decision, petitioner, on February 28, 2007 filed its "Motion for Reconsideration". Subsequently, the Court in Division denied the said motion for lack of merit in its Resolution dated June 29, 2007.

Hence, this recourse before the Court *En Banc* assailing the Decision and Resolution of the Court in Division promulgated on February 5, 2007 and June 29, 2007, respectively, raising the following ground in support thereof:

> "The assailed Decision and Resolution of the Second Division of the Honorable Court of Tax Appeals, which denied in whole petitioner's claim for refund or issuance of tax credit certificate of its excess and unutilized input VAT derived from its importations of capital goods are erroneous and reversible for being not supported by the facts of the case as presented by the parties and contrary to law and applicable jurisprudence."

Petitioner prays that the assailed Decision and Resolution be reconsidered and set aside, and in lieu thereof, a new decision be issued granting petitioner's claim for refund/issuance of tax credit certificate of its alleged excess and unutilized input VAT derived solely from its importation of capital goods in the amount of P25,041,116.22 for the Second, Third, and Fourth Quarters of taxable year 2001.

Without giving due course to the Petition, respondent was ordered to file his Comment within ten (10) days from notice. Respondent's "Motion for Extension of Time to File Comment" filed on September 17, 2007 was granted, giving respondent a non-extendible period of fifteen (15) days or until October 2, 2007, within which to file said Comment.

For failure of respondent to submit his Comment to the Petition for Review within the period granted by the Court *En Banc*, this case was considered submitted for decision.

After a review of the case records, the Court *En Banc* finds that indeed there was failure on the part of petitioner to prove that the subject importations were capitalized in its books of accounts and/or that same were subjected to depreciation in order that they may be considered as capital goods pursuant to Section 4.106-1(b) of Revenue Regulations No. 7-95.

As correctly found by the Court in Division, some of the subject importations, such as the Beanie dolls, Beanie key chains, watch, and printed materials cannot be considered as depreciable assets. Likewise, even though there were other items included in petitioner's Summary List of Importations on Capital Goods for the Second Quarter of the taxable year 2002 which were used directly/indirectly in petitioner's business which may thus be classified as depreciable assets with an estimated life of more than one year; however, petitioner failed to present documents, particularly its detailed general ledger or audited financial statement, to prove that the said items were capitalized in its books of accounts and subjected to depreciation. Accordingly, petitioner failed to establish that the subject importations related to the input VAT of

P8,101,114.56 fall within the prescribed definition of capital goods.

The Court in the previous case of **Marubeni Philippines Corporation vs. Commissioner of Internal Revenue**[2] emphasized the necessity of presenting the claimant's general ledger and audited financial statements to prove that the goods are capitalized in its books of accounts and subjected to depreciation, in this wise:

> "Evidence forwarded to this Court, such as VAT sales invoices/official receipts from petitioner's supplier SNBC Trading (Exhibits "F-1, G-1, J, K, L and UUU"), prove that the claimed input VAT of P35,227.91 relates to petitioner's purchases of computers. **While these computers have estimated useful life of more than one year and used directly or indirectly by petitioner in its business, petitioner failed to submit documents such as detailed general ledger and audited financial statements to prove that these were capitalized in its books of accounts and subjected to depreciation. Therefore, for petitioner's failure to prove that the subject computer purchases were treated as depreciable assets in its books of accounts, the related input VAT of P35,227.91 cannot be granted.**" (*Emphasis supplied*)

The Court also made a similar pronouncement in the case of **San Roque Power Corporation vs. The Commissioner of Internal Revenue**[3] and explained the rationale for such evidentiary requirement, thus:

> "We agree with petitioner that its power plant and related facilities such as the dam and spillway can be classified as capital assets under Property, Plant and Equipment account. Therefore, all costs directly related to the building and construction thereof such as engineering and design services can be capitalized.
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> Nevertheless, petitioner did not submit documents such as schedule of capital goods purchased, detailed general ledger and audited financial statements to show which of the subject

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[2] C.T.A. CASE No. 6297, July 11, 2006.
[3] C.T.A. CASE No. 6647, March 8, 2006.

purchases actually formed part of its Property, Plant and Equipment account.

It must be emphasized that petitioner's instant claim relates to both capital and ordinary goods/services purchased by petitioner for the year 2001. Petitioner should have submitted documents specifically identifying the purchased goods/services related to the claimed input VAT which were included in its Property, Plant and Equipment account.

Pursuant to Section 4.106-1(b) of Revenue Regulations No. 7-95, in order that the items purchased can be classified as capital goods or properties, petitioner must show that: 1) the goods or properties have economic useful life of more than one year; 2) such goods or properties are treated as depreciable assets under Section 29(f) [now 34F of the NIRC of 1997]; and 3) they are used directly or indirectly in the production or sale of taxable goods or services.

While petitioner's power plant and related facilities such as the dam and spillway have economic useful life of more than one year and will be used directly or indirectly by petitioner in its power generation and sale of electricity to NPC, petitioner failed to prove that the related construction costs were capitalized in its books of accounts and subjected to depreciation."

In the present case, while petitioner presented in evidence the Summary List of Importations on Capital Goods for the Second Quarter of the taxable year 2001[4], various documents, official receipts, invoices, and import entry declarations to prove the subject importations[5], these documents are not enough considering that there is still the need to determine whether these subject importations were treated as depreciable assets pursuant to the aforementioned Revenue Regulations. The only way to ascertain that those importations were treated as depreciable assets is through the examination of the detailed general ledgers and audited financial statements, including

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[4] Annex "A" of Exhibit "EEE".
[5] Exhibits "ZZ" to "ZZ-20"; "AAA" to "AAA-8"; "BBB" to "BBB-898"; "CCC" to "CCC-8"; and "DDD" to "DDD-1".

petitioner's income tax return. Absence of such pertinent documents is fatal to petitioner's claim since the Court cannot determine how the importation were actually treated in petitioner's books of accounts, specifically, general ledger, and finally reflected in its audited financial statements and income tax return. Dearth of these documents, petitioner's claim for refund or issuance of a tax credit certificate cannot be granted.

Tax refunds, like exemptions, are construed strictly against the taxpayer. Petitioner as claimant, has the burden of proof to establish the factual basis of its claim for tax credit or refund[6]. Failure in this regard, petitioner's claim must fail.

WHEREFORE, finding no reversible error in the assailed Decision promulgated on February 5, 2007 and Resolution dated June 29, 2007, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

[6] Citibank, N.A. vs. Court of Appeals and the Commissioner of Internal Revenue, 280 SCRA 459.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice