REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SEAGATE TECHNOLOGY
(PHILIPPINES),
Petitioner,

- versus -

C.T.A. CASE NO. 5921

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:
AUG 02 2000

x -x

DECISION

This petition for review is seeking the refund of the amount of P11,705,945.00, representing unutilized input value-added tax (VAT, for brevity) on domestic purchases of capital goods for the period April 1, 1997 to December 31, 1997.

The facts as stipulated by the parties and borne out by the records of the case are as follows:

Petitioner is a resident foreign corporation duly registered with the Securities and Exchange Commission to do business in the Philippines, with principal office address at the new Cebu Township One, Special Economic Zone, Barangay Cantao-an, Naga, Cebu City. It is an ecozone export enterprise engaged in the manufacture of recording components primarily used in computers. It is registered with the Philippine Export Processing Zone Authority (PEZA) pursuant to the provisions of Republic Act 7916 with Certificate of Registration No. 97-044, dated June 6, 1997 (Exh. A). It is likewise registered with the Bureau of Internal Revenue as a VAT entity with Certificate of Registration RDO Control No. 97-083-00600-V, dated April 2, 1997 (Exh. B).

For the period April 1, 1997 to December 31, 1997, Petitioner seasonably filed its Monthly VAT Declarations and Quarterly Value-Added Tax Returns. These monthly VAT declarations and quarterly VAT returns were simultaneously amended on January 25, 1999. As of September 30, 1997, the accumulated input taxes of Petitioner amounted to P11,730,264.62 (Exh. F-1). Out of the aforesaid amount, Petitioner claims that the sum of P11,705,945.00 refers to payments of input VAT on domestic purchases of capital goods.

Petitioner further alleges that it has not started commercial operations in the Philippines. Its board of directors approved a complete shutdown and eventual disposal of its facility due to a worldwide decrease in the demand for computer disk drives. On July 15, 1999, it allegedly filed a notice of cessation of business with the PEZA.

On July 19, 1999, believing that it is entitled to the refund of input tax on capital goods, Petitioner filed with the Revenue District Office No. 83, Bureau of Internal Revenue, Cebu City, a letter and application for tax credits/refunds of unutilized input taxes in the amount of P11,705,945.00 paid pursuant to Section 112(b) and (c) of the 1997 Tax Code, in relation to Section 4.106-1(b) and (d) of Revenue Regulations No. 7-95 (Exhs. D and E).

Without waiting for an action from the Respondent, Petitioner, on the next day, July 20, 1999, posted the instant petition for review in order to toll the running of the two-year prescriptive period under the law.

In his Answer, Respondent raised the following Special and Affirmative defenses:

> 4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

5. The amount of P11,705,945.00 being claimed by Petitioner as alleged excess creditable VAT input taxes for the period 01 April 1997 to 30 September 1997 was not properly documented;

6. In an action for refund the burden of proof is on the taxpayer to establish its right to the refund, and failure to sustain the burden is fatal to the claim for refund/credit.

7. Petitioner must show that it has complied with the provisions of Sections 204(c)and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit; and

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

In support of its claim for refund, Petitioner presented various documentary exhibits which consist of:

1. PEZA Registration Certificate (Exh. A);

2. BIR and SEC Certificates of Registration (Exhs. B and C);

3. Letter and Application for Tax Credits/Refunds of VAT (Exhs. D and E);|

4. The original and amended monthly VAT declarations and quarterly VAT returns for the period April 1, 1996 to November 30, 1999 (Exhs. F-1 to F-7, inclusive of submarkings and H-1 to H-45);

5. Summary of input taxes claimed (Exh. G); and

6. Invoices and official receipts supporting Petitioner's claimed input taxes (Exhs. G-1 to G-14-a, inclusive of submarkings).

This case was submitted for decision on June 13, 2000, sans the evidence of the Respondent.

The issue to be resolved in the instant case is whether or not Petitioner is entitled to a refund in the amount of P11,705,945.00 allegedly representing input VAT on purchases of taxable goods and services.

During trial, Petitioner established that it had constructed an office building and a plant in Naga, Cebu City. This was testified to by Petitioner's witness, Ms. Annaliza Pueda, during the hearing held on January 20, 2000 (TSN, January 20, 2000, pp. 11–12 and 18–19). The Court finds the testimony of Ms. Pueda to be credible because it was corroborated by VAT invoices and official receipts showing evidently the payments for the construction of Petitioner's Naga I Project in New Cebu Township 1, Naga, Cebu and renovation works for Petitioner's office (Exhs. G-1 to G-14-a). In fact, Respondent in his memorandum never questioned the claim of Petitioner that it had constructed a plant and a building in Cebu. From the evidence thus presented, the Court is convinced that Petitioner actually made payments for engineering, project management, structural and architectural services which are all considered capital expenditures (**Hopewell Power (Philippines) Corp. vs. Commissioner of Internal Revenue, CTA Case No. 5321, dated January 4, 1999; and Hopewell Power (Philippines) Corp. vs. Commissioner of Internal Revenue, CTA Case No. 5321, dated October 7, 1998**).

Respondent did not dispute the aforesaid constructions, but he nevertheless finds Petitioner not entitled to the refund. Respondent is of the opinion that Petitioner failed to substantiate its claim for refund due to its failure to comply with the requirements of the Tax Code regarding VAT invoicing. Respondent observed that some invoices were not issued in Petitioner's name as seen in the documents presented as Exhs. G-1, G-2, G-5, G-7, and G-14-a. Moreover, Respondent takes issue with the failure of Petitioner to avail of the services of an independent Certified Public Accountant to check the veracity of the claim for refund which he believes to be a valid ground for denying the said claim.

Petitioner, on the other hand, strongly believes that it is entitled to the refund sought on the basis of Section 106(b) of the Tax Code which provides as follows:

> **SECTION 106.** ***Refunds or tax credits of creditable input tax.*** — (a) xxx
>
> (b) *Capital goods.* — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

After a careful scrutiny of the records, pleadings and evidence on hand, We agree with the Respondent that some invoices and official receipts were not issued in Petitioner's name, hence, they should be disallowed for purposes of computing the input 'VAT pursuant to the provisions of Section 113(A) of the Tax Code which provides:

> **Section 113. Invoicing and Accounting**
>
> "(A) **Invoicing Requirements.** – A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information required under Section 237, the following information shall be indicated in the invoice or receipt:
>
> "(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
>
> "(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

> "(B) **Accounting Requirements.** – Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance.

As regards the failure of Petitioner to engage the services of an independent CPA, the Court is not convinced that it is a valid ground in denying the claim for refund of Petitioner. The availment of the services of an independent CPA to verify the accuracy of the documents supporting a claim for refund pursuant to CTA Circular No. 1-95, as amended, is not mandatory and only applies if there are voluminous documents to be presented as evidence. In the instant case, the documents to be presented by the Petitioner are not voluminous in nature.

Since it appears that Respondent has no material objection regarding the instant claim for refund except for some invoices which were not issued in Petitioner's name, this Court is now ready to resolve the issue in the light of the provisions of the afore-quoted Section 106(b) of the Tax Code.

Based on the aforementioned proviso, it is imperative for the Petitioner to prove that: (1) it is a VAT registered person; (2) the input taxes claimed were paid on capital goods; (3) the input taxes have not been applied against its output tax liability; and (4) the administrative claim for refund was seasonably filed.

It was established by the evidence presented that Petitioner is a VAT-registered person as manifested in the Certificate of Registration issued by the Bureau of Internal Revenue, dated April 2, 1997 (Exh. A-2). The sales invoices, official receipts, and other documents supporting Petitioner's claimed input taxes prove that Petitioner paid input VAT on purchases of goods and services which are all attributable to capital goods. Furthermore, the input taxes sought to be refunded remain unapplied as shown by Petitioner's Monthly VAT Declaration for July 1999 wherein Petitioner deducted the sum of P11,705,945.00 from its total accumulated input taxes (Exhs. H-41). Lastly, Petitioner was able to prove that the administrative claim for refund was seasonably filed.

However, as correctly pointed out by Respondent, this Court deemed it proper to exclude input taxes which were earlier discussed to have been issued without the Petitioner's name, to wit:

Date	Supplier	Invoice/ O.R. No.	Exh.	Input Tax
04-21-97	Head Hunter	497	G-1	P 21,041.28
04-21-97	Head Hunter	498	G-2	42,644.25
04-05-97	John Clements Consultants	9460	G-5	15,280.56
05-30-97	Goldtelecomm Specialist, Inc.	000021	G-7	7,070.91
09-26-97	John Clements Consultants	66472	G-14-a	8,032.86
T o t a l				P 94,069.86

WHEREFORE, in view of the foregoing, Petitioner's claim for refund is hereby partially **GRANTED**. Respondent is **ORDERED** to **REFUND** in favor of Petitioner the amount of P11,611,875.14, representing input VAT on capital goods for the period April 1 to December 31, 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge