LW

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

KSS PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5888

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 20 2001

x - x

DECISION

Petitioner, by way of this petition for review, is seeking for the refund of the amount of P18,551,282.04, representing unutilized input value-added tax (VAT, for brevity) on domestic purchases of goods and services for the period February 1, 1997 to December 31, 1997.

The following facts and issues were jointly stipulated by the parties and approved by the Court[1]:

1. **Stipulated Facts**

(a) Petitioner is a domestic corporation organized and existing under Philippine laws, with principal office at the New Cebu Township One, Special Economic zone, Barangay Cantao-an, Naga, Cebu. It may be served with notices, pleadings, and other processes of the court at the address of undersigned counsel at Suite 406 Keppel Center, Cebu Business Park, Cardinal Rosales corner Samar Loop, Cebu City;

(b) Respondent Commissioner of Internal Revenue is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund or tax credit as provided by law. He may be

[1]See Resolution, dated September 29, 1999, CTA Records, p. 54.

served with summons, notices and other court processes at his office at the BIR National Office Building, Diliman, Quezon City;

(c) Petitioner is registered with the Philippine Export Processing Zone Authority (PEZA), as evidenced by PEZA Certificate of Registration No. 97-016, issued on February 20, 1999, to engage in the manufacture and sale of surface mounted device (SMD) quartz crystals used for computers, videotape recorders, television sets and telecommunications equipment.

(d) Petitioner was issued on June 2, 1997, VAT Registration Certificate bearing registration or control number 97-083-000614-V;

(e) Petitioner filed its claim for refund of VAT input taxes in the amount of P18,552,093.33 for the period between February 1, 1997 to December 31, 1997, along with all supporting documents on April 6, 1999 with the Revenue District Office No. 83;

(f) Petitioner, however, began filing its VAT returns for the taxable quarters covered by the aforecited period on April 25, 1997 or nearly two (2) years prior to the instant petition;

(g) No action on the claim for refund has been taken by the Commissioner of Internal Revenue on the claim for refund, even as the two (2) year period from the time of filing of the quarterly VAT returns was about to expire at the time the instant petition was filed;

2. **Proposed Factual Issues for Trial**

(a) Whether or not petitioner generated and recorded zero-rated sales arising from the export of its products in the amount of ONE MILLION SIX HUNDRED TWENTY-FOUR THOUSAND TWO HUNDRED SEVENTEEN PESOS AND EIGHT CENTAVOS (P1,624,217.08) for the period between February 1, 1997 to December 31, 1997;

(b) Whether or not the proceeds of petitioner's recorded zero-rated export sales were inwardly remitted in acceptable foreign currency in accordance with existing regulations of the Bangko Sentral ng Pilipinas;

(c) Whether or not petitioner's export sales in the amount of P1,624,217.08 for the period between February 1, 1997 to December 31, 1997 qualify as automatically zero-rated transactions under applicable tax laws and regulations;

(d) Whether or not the VAT-input taxes of P18,552,093.33[2] are directly attributable to the petitioner's zero-rated sales;

(e) Whether or not petitioner has excess input taxes attributable to the transactions involved in this petition in the amount of P18,552,093.33[3] for the period between February 1, 1997 to December 31, 1997;

(f) Whether or not the VAT-input taxes of P18,552,093.33[4] were paid by the petitioner in the course of its trade and business; and

(g) Whether or not the VAT-input taxes of P18,552,093.33[5] paid by the petitioner have not been applied against any VAT output tax.

Before We answer all the aforementioned interrelated issues, We believe that the arguments raised by the Respondent in his Memorandum are paramount and should be addressed first.

Respondent contends that Petitioner, being registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone Export Enterprise, should not be subject to VAT pursuant to Section 24 of Republic Act No. 7916. Respondent further avers that since Petitioner's business is not subject to VAT, the capital goods and services it purchased are considered not used in VAT taxable business hence, it is not entitled to the refund of input taxes on such capital goods pursuant to Section 4.106-1 and Section 4.103-1 of said regulations.

We are not convinced.

---

[2] Reduced to P18,551,282.04 in the Memorandum of the Petitioner.

[3] *Ibid.*

[4] *Ibid.*

[5] *Ibid.*

In the case of **Read-Rite Philippines, Inc. (Formerly Sunward Technologies Phils., Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 5659, dated September 29, 2000** which involves similar issues, the Court ruled in this manner:

> "We agree with the Respondent that if an entity is registered with PEZA as an ecozone enterprise and is remitting 5% of its gross income to the national government, it is exempt from the payment of VAT. However, no evidence was introduced by the Respondent to prove that Petitioner is remitting 5% final tax to the government. What is evident from the records is that Petitioner is a VAT registered entity liable to pay the value-added tax as shown by the registration certificate xxx.
>
> This Court would like to stress that under Section 23 of Republic Act 7916, two different fiscal incentives are granted to an ecozone enterprise, to wit:
>
> > SEC. 23. Fiscal Incentives. – Business establishments operating within the ECOZONE shall be entitled to the fiscal incentives as provided for under the Presidential Decree No. 66, the law creating the Export Processing zone Authority, **<u>or</u>** those provided for under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987.
>
> Based on the aforequoted Section 23 of RA 7916, a PEZA registered enterprise has the option to choose between two sets of fiscal incentives. One is that which is provided for under Presidential Decree No. 66, as amended and Section 24 of RA 7916 which includes the 5% preferential tax on gross income earned which is in lieu of national and local taxes; and second, as those provided for under Book VI of Executive Order No. 226, including but not limited to an income tax holiday (ITH) of 4 to 6 years depending on whether or not an entity is registered as a pioneer or non-pioneer enterprise. If an ecozone enterprise chooses the 5% preferential tax, it is exempt from payment of all national and local taxes. However, if an ecozone enterprise chooses the income tax holiday, it is only exempt from payment of the income tax but still subject to other national internal revenue taxes including the value-added tax. The difference between these 2 sets of fiscal incentives were explained by the Bureau of Internal Revenue in VAT Ruling Nos. 037-98; 043-98; 027-99; and 063-99. **(see also Resolutions in the cases of Seagate Techology (Philippines) vs.**

Commissioner of Internal Revenue, CTA Case No. 5921, September 20, 2000 and Cebu Toyo Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5650, August 2, 2000).

The aforequoted ruling of this Court was recently affirmed by the Court of Appeals in the case entitled **Commissioner of Internal Revenue vs. Seagate Technology, CA – GR S.P. No. 61189 promulgated on June 18, 2001.**

It is worth stressing that Respondent herein failed to introduce any evidence to support his allegation that Petitioner is exempt from the value-added tax, on the contrary, in the Joint Stipulation of Facts and Issues for Trial, Respondent admitted that Petitioner is a VAT registered person with Certificate of Registration RDO Control No. 97-083-000614-V issued by RDO No. 83 of Talisay, Cebu[6].

Upon the other hand, Petitioner firmly established that it enjoyed an income tax holiday in 1997, the year subject of the claim, by formally offering in evidence the Registration Agreement it entered into with the PEZA (Exhibit "T") and the Certification from PEZA (Exhibit "U") both proving that it was granted a Corporate Income Tax Holiday for the year in question.

Going now to the issues jointly stipulated by the parties, this Court after a thorough examination of all the evidence on record favors the granting of the claim for refund.

A verification of the report submitted by the independent Certified Public Accountant and the VAT official receipts, invoices, and other supporting documents,

---

[6] Letter (d) of Stipulated Facts, Joint Stipulation of Facts and Issues for Trial, CTA records, p. 49; and Exh. A).

shows us that the input taxes paid by Petitioner on local purchases of goods and services were properly substantiated for VAT purposes and were attributable to Petitioner's export sales (Exhibits P-1 to P-164). Likewise, the 1997 input taxes sought to be refunded were no longer carried over to the 1998 first quarterly VAT return (Exhibits M, M-1, and M-2). The evidence further reveals that Petitioner's sales invoices, import declarations, and airway bills support its export sales in the amount of US$47,092.29 (Exhibits Q-1 to Q-8). It is also evident that the payments of the export sales were inwardly remitted through The Fuji Bank, Limited, Manila Branch, as certified to by Ms. Mila R. Madayag, VP-Operations of the said bank (Exhibit S), therefore, proving that Petitioner's sales are subject to VAT at 0% pursuant to Section 106(A)(2)(a)(1) of the 1997 Tax Code and therefore entitled to the refund of input taxes pursuant to Section 112 of the same code.

WHEREFORE, in view of the foregoing, Petitioner's claim for refund is hereby **GRANTED**. Respondent is **ORDERED to REFUND** in favor of Petitioner the sum of P18,551,282.40, representing unutilized input VAT for the period February 1, 1997 to December 31, 1997.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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