REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EG & G OMNI, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5587

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 26 2000

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DECISION

This case involves a claim for refund and/or tax credit in the amount of P3,365,157.83 representing unutilized input taxes paid by Petitioner on its domestic purchases of goods and services for the period January to September 30, 1996.

Petitioner is a domestic corporation principally engaged in the business of manufacturing, assembling, processing and exporting semi-conductor, electronic and optoelectronic products (Exh. A). It is duly registered with the Bureau of Internal Revenue as a value-added (VAT) taxpayer (Exh. B) and with the Export Processing Zone Authority as an exporter (Exh. M).

On December 18, 1996, Petitioner filed amended quarterly VAT returns for the first, second and third quarters of 1996 declaring total zero-rated sales of P335,061,586.75 and input taxes paid on domestic purchases of goods and services in the amount of P3,365,157.83, broken down as follows:

			Input Taxes		
Exh.	1996	Zero-rated Sales	Carried-over from previous quarter	On purchases this quarter	Carried-over to subsequent quarter
C	1st qtr.	₱ 53,702,663.57	₱2,887,490.63	₱1,448,186.49	₱4,335,677.12
D	2nd qtr.	138,456,548.82	4,335,677.12	1,282,745.72	5,618,422.84
E	3rd qtr.	142,902,374.36	5,618,422.84	634,225.62	6,252,648.46
	Total	₱ 335,061,586.75		₱3,365,157.83	

Pursuant to BIR Revenue Audit Memorandum Order No. 2-93, Petitioner filed on January 6, 1998 with the One Stop Shop Inter-Agency Credit and Duty Drawback Center of the Department of Finance applications for tax credit of input taxes paid for the first (Exhs. F & G), second (Exhs. H & I) and third (Exhs. J & K) quarters of 1996.

The said claims not having been acted upon within the sixty-day period prescribed under Section 106(d) of the Tax Code, as amended, the instant petition was accordingly filed by herein Petitioner on March 30, 1998.

Respondent, by way of Special and Affirmative Defenses, states that:

1) The alleged tax refund for the first quarter, second quarter and third quarter of calendar year 1996 in the aggregate amount of P3,365,157.83 representing unutilized input taxes paid on its purchases of goods and services, have still to undergo administrative investigation;

2) Claims for refund are construed strictly against claimant for the same partake the nature of exemption from taxation;

3) The amount of tax sought by the Petitioner to be refunded or credited was collected and paid pursuant to law and BIR implementing rules and regulations, hence, the sum is not refundable. Petitioner must prove that the said input tax was actually paid, remitted and received by the respondent's Bureau; and

4) Moreover, Petitioner must prove that it has complied with the provision of Section 230 of the Tax Code, as amended.

To support its case, Petitioner presented documentary and testimonial evidence. Respondent, on the other hand, did not present any evidence. He submitted his case for decision "based on the pleadings"(CTA rec., p. 167).

The only issue to be resolved in this case is whether or not Petitioner is entitled to the refund and/or tax credit of input VAT paid on its purchases of goods and services in the amount of P3,365,157.83 covering the period January to September 30, 1996.

We rule in the affirmative.

Section 100(a)(2)(A)(i) of the Tax Code, as amended, implemented by BIR Revenue Regulations No. 7-95, provides:

> "(2) The following sales by VAT-registered persons shall be subject to 0%:
>
> A) Export sales. - The term "export sales" means:
>
> (i) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP)."

In relation thereto, Section 4.100-2 of said revenue regulations is quoted hereunder:

> **SEC. 4.100-2. Zero-rated sales.** A zero-rated sale by a VAT-registered person, which is taxable transaction for VAT purposes, shall not result in any output tax. However, the input tax on his purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these regulations.

Thus, as a VAT registered exporter of goods, Petitioner's export sales are subject to zero (0%) percent VAT. Based on the VAT returns filed, Petitioner generated zero-rated export sales in the amount of P335,061,586.75 for the period January to September 1996. Petitioner's direct export sales were paid for in acceptable foreign currency inwardly remitted to the Philippines and accounted for in accordance with regulations of the Bangko Sentral ng Pilipinas. Furthermore, per the aforecited regulations, Petitioner's export taxes paid on the local purchases of goods and services are available as tax credit or refund.

However, the law and regulations require that the claim for refund and/or tax credit of input taxes should be timely filed and properly substantiated. Sections 110(a) and 106(a) and(d) of the Tax Code, as amended, mandate, *viz*:

> **SEC. 110.** ***Return and payment of value-added tax.*** - (a) *In general.* - Every person liable to pay the value-added tax imposed under this title shall file a quarterly return of the amount of his gross sales or receipts within twenty (20) days following the close of each taxable quarter prescribed for each taxpayer.

> **SEC. 106.** ***Refunds or tax credits of creditable input tax.*** - (a) Any VAT-registered person, whose sales are zero-rated or effectively zero-rated, may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax.

> (d) *Period within which refund or tax credit of input taxes shall be made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit for creditable input taxes within sixty (60) days from the date of submission of complete documents in support of the application filed in accordance with sub-paragraphs (a) and (b) hereof. In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period

> prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the sixty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis supplied.)

Counting from April 20, 1996, the date of filing for the first quarter of 1996, both the administrative (January 6, 1998) and judicial (March 30, 1998) claims were filed within the prescriptive period allowed by law.

The substantiation requirements are laid down by Section 4.104-5 of Revenue Regulations No. 7-95, to wit:

> SEC. 4.105-4. ***Substantiation of claims for input tax credit.*** - (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Section 108(a) and 238 of the Code. xxx
>
> A cash-register machine tape issued to a VAT registered buyer by a VAT-registered seller from a machine duly registered with the BIR in lieu of the regular sales invoice, shall constitute valid proof of substantiation of tax credit only if the name and TIN of the purchaser is indicated in the receipt and authenticated by a duly authorized representative of the seller.

Respondent, in his memorandum, asserts that Petitioner failed to submit photocopies of export documents, invoices or receipts. Contrary to this allegation, an independent Certified Public Accountant commissioned by this Court duly certified (Exh. 0) that Petitioner's export sales were evidenced by sales invoices and airway bills (Exhs. Q-1a to Q-305). He noted however, that export sales amounting to P335,986.18 do not have corresponding airway bills. The foreign proceeds of Petitioner's export sales were inwardly remitted in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (Exhs. Q-306 and L).

The same accountant also certified that the input taxes of P3,365,157.83 paid by Petitioner on its local purchases of goods and services were properly supported by suppliers' invoices/official receipts (Exhs. P-1 to P-442, inclusive) except for the amount of P308,830.50, as computed hereunder:

1996	Amount Disallowed
1st quarter	P 64,021.14
2nd quarter	124,302.94
3rd quarter	120,506.42
	P308,830.50

In addition to the aforesaid exceptions noted by the said commissioned accountant, the amounts of P31,645.26 for the first quarter and P127,361.62 for the third quarter should be disallowed pursuant to Section 5 of Revenue Memorandum Circular No. 6-91, Sections 17 & 29 of Revenue Regulations No. 10-94 and Sections 4.104-5 and 4.108-1 of Revenue Regulations No. 7-95, to wit:

Reason for the Disallowance	Exh.	Invoice Amount	Input Tax Claimed - 1996 1st qtr.	3rd qtr.	Total
1.) Not in the name of the Company					
SBPI Realty and Const. Corp.	P-142	P 87,200.08	P 7,927.28	P	P 7,927.28
Philand Industries, Inc.	P-437	8,510.00		773.64	773.64
Philand Industries, Inc.	P-438	30,525.00		2,775.00	2,775.00
		Subtotal	P 7,927.28	P 3,548.64	P 11,475.92
2.) Not within the period of claim					
GAST Industrial Sales	P-67	P 14,500.09	P 1,318.19		P 1,318.19
		Subtotal	P 1,318.19		P 1,318.19
3.) Invoices/OR without TIN or "V"/"VAT" after TIN					
Leonard Prints	P-83	P 7,437.43	P 676.13	P	P 676.13
Leonard Prints	P-84	7,800.00	709.09		709.09
North Star Electrical Sales	P-103	23,060.00	2,096.37		2,096.37
A.M. Habijan Garden	P-376	75,000.00	-	6,818.18	6,818.18
		Subtotal	P 3,481.59	P 6,818.18	P 10,299.78
4.) Reported invoice amount is overstated					
MIESCOR Builders	P-401	P208,100.18	P18,918.20		P 18,918.20
		Subtotal	P18,918.20		P 18,918.20

5.) Invoice/OR with handwritten/typewritten "V" instead of preprinted VAT after TIN

Nilcon Trans. & Services	P-403	P210,111.00		P 19,101.00	P 19,101.00
Nilcon Trans. & Services	P-404	203,018.75		18,456.25	18,456.25
Nilcon Trans. & Services	P-405	231,201.30		21,018.30	21,018.30
Nilcon Trans. & Services	P-406	212,863.75		19,351.25	19,351.25
Nilcon Trans. & Services	P-407	226,946.50		20,631.50	20,631.50
Nilcon Trans. & Services	P-408	202,801.50		18,436.50	18,436.50
		Subtotal		P116,994.80	P 116,994.80
		Total	P31,645.26	P127,361.62	P 159,006.88

Respondent likewise avers that Petitioner failed to show proof that it has not applied its VAT input taxes to any tax liabilities in the succeeding (fourth) quarter of 1996.

We find Respondent's contention to be devoid of merit. Records disclose that Petitioner is engaged solely in export sales and has not incurred any output tax liability. Therefore, it follows that the input taxes of P3,365,157.83 for the period from January to September 30, 1996 were not applied to any output tax liability. Although the amount of P6,252,648.46, [comprising Petitioner's input taxes in the amounts of P2,887,490.63 for 1995 and P3,365,157.83 for the first three quarters of 1996] was carried over to the fourth quarter of 1996 (Exh. N), the same was not offset against any output tax liability for the said quarter. Moreover, Petitioner deducted the said amount of P6,252,648.46 from the total VAT tax credits of P9,199,702.51 leaving the amount of P2,947,054.05 as the only amount of input taxes for the fourth quarter of 1996 which is to be carried over to the subsequent quarter (Exh. N-2).

WHEREFORE, in the light of all the foregoing, Petitioner's claim is **PARTIALLY GRANTED. Respondent Commissioner of Internal Revenue is hereby ORDERED** to **REFUND** and/or **ISSUE TAX CREDIT CERTIFICATE** in favor of the Petitioner in the amount of P2,897,320.45 representing unutilized input taxes for the period January to September 30, 1996, computed as follows:

	1996			
	1st Qtr. (Exhs. F & G)	2nd Qtr. (Exhs. H & I)	3rd Qtr. (Exhs. J & K)	Total Claim
Amount of Claim	P1,448,186.49	P1,282,745.72	P634,225.62	P3,365,157.83
Less: Disallowances				
1.) Per SGV Report (Exh. O)	P 64,021.14	P 124,302.94	P120,506.42	P 308,830.50
2.) Per Court's further verification	31,645.26		127,361.62	159,006.88
Subtotal	P 95,666.40	P 124,302.94	P247,868.04	P 467,837.38
Amount Refundable	P1,352,520.09	P1,158,442.78	P386,357.58	P2,897,320.45

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this 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