REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INTEL PHILIPPINES MANUFACTURING, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 6129

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 26 2003

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DECISION

This Petition for Review involves a claim for issuance of tax credit certificate in the aggregate amount of P29,559,050.44 allegedly representing petitioner's unapplied input value-added tax (VAT) on domestic purchases of goods and services attributable to zero-rated sales and input VAT on the importation of capital goods for the period covering April 1, 1998 to June 30, 1998.

Based on the records, the antecedent facts of the case are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at 1321 Apolinario Street, Bangkal, Makati City, Metro Manila.

Petitioner is engaged primarily in the business of designing, developing, manufacturing and exporting advanced and large-scale integrated circuits components or IC's, as stated in the Articles of Incorporation *(paragraph 1, Stipulation of Facts)*.

On October 25, 1985, petitioner registered with the Board of Investments as a preferred pioneer enterprise for the production/manufacture and export of tested and untested integrated circuits such as large scale integrated circuits and microprocessor and was issued Certificate of Registration No. 85-1010 *(Exhibit C)*. On July 6, 1994, it also registered with the Bureau of Internal Revenue as a VAT-taxpayer and was issued Certificate of Registration bearing RDO Control No. 94-048-02621 *(Exhibit B)*.

On May 6, 1999, petitioner filed its amended Quarterly VAT Return for the period covering April 1, 1998 to June 30, 1998, reflecting zero-rated sales in the amount of P1,880,660,227.21 and VAT input tax from domestic purchases of goods and services in the amount of 21,763,903.11 and VAT input tax for the importation of goods in the amount of P8;220,140.00, or an aggregate amount of P29,984,043.11 *(Exhibits D and E)*. Since petitioner had an output tax of P424,992.67, it alleged that it had an unutilized input tax for the second quarter of 1998 in the amount of P29,559,050.44.

On May 6, 1999, petitioner filed with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (DOF) an Application for Tax Credit/Refund of Value-Added Tax Paid for the second quarter of 1998.

No final action having been taken by the respondent on petitioner's claim for refund and the two(2)-year prescriptive period being about to lapse, petitioner elevated the case to this court through a Petition for Review on June 30, 2000.

Respondent filed his Answer through registered mail on August 2, 2000 and raised the following Special and Affirmative Defenses:

6. Petitioner failed to show compliance with the substantiation requirement under the provision of Section 16(c)(3) of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88;

7. Petitioner has not shown proof that the alleged VAT input taxes attributable to its export sales have not yet been applied to the output tax for the period covered in its claim or any succeeding period and that the alleged total foreign exchange proceeds have been accounted for by the Central Bank;

8. The petition states no cause of action as it does not allege the date/s when the taxes sought to be refunded were actually paid;

9. In an action for tax refund/credit, 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 action for tax refund;

10. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence not refundable;

11. Well-settled is the rule that claims for refund is construed against the claimants since it partakes of the nature of an exemption from taxation.

The parties submitted the following issues for this court's resolution:

(a) Whether or not petitioner has an unutilized input VAT for the second quarter of 1998;

(b) Whether or not the petitioner's claim for VAT refund of an alleged unutilized input VAT for the second quarter of 1998 is duly substantiated/supported by documentary evidence.

(c) Whether or not the VAT input taxes have not been applied to any output tax for the period covered in its claim or any succeeding period.

(d) Whether or not the VAT input taxes on domestic purchases of goods and services and importation of capital goods are attributable to petitioner's zero rated sales.

(e) Whether or not the petitioner's export sales were paid for in acceptable foreign currency exchange and the proceeds thereof had been duly accounted in accordance with the regulation of the Bangko Sentral ng Pilipinas.

(f) Whether or not petitioner is entitled to a refund of the VAT input taxes arising from domestic purchases of taxable goods and services and importation of capital goods from April 01, 1998 to June 30, 1998 in the amount of P29,559,050.44 subject of the Petition.

The core issue to be resolved in this Petition for Review is whether or not, on the basis of the evidence presented, petitioner is entitled to a refund of the VAT input taxes arising from domestic purchases of taxable goods and services and importation of capital goods from April 01, 1998 to June 30, 1998 in the amount of P29,559,050.44.

We shall rule first on petitioner's claim for refund of input VAT on domestic purchases of goods and services attributable to zero-rated sales. Material to the solution of the claim is petitioner's compliance with Section 2(c)(1)(i) and (ii) of Revenue Regulations No. 3-88, which provides:

Section 2. Section 16 of Revenue Regulations No. 5-87 is hereby amended to read as follows:

Section 16. Refunds or tax credits of input tax. –

(a) *Claims for tax credits refunds.* - Application for Tax Credit/Refund of Value-Added Tax Paid (BIR Form

> No. 2552) shall be filed with the Revenue District Office of the city or municipality where the principal place of business of the applicant is located or directly with the Commissioner, Attention: VAT Division.
>
> A photocopy of the purchase invoice or receipt evidencing the value added tax paid shall be submitted together with the application. The original copy of the said invoice/receipt, however, shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or refund. In addition, the following documents shall be attached whenever applicable:
>
> **1. Export Sales**
>
> i) photocopy of export document showing the amount of export and the date and destination of the goods exported. With respect to the foreign currency denominated sale, the photo copy of the invoice or receipt evidencing the sale of the goods, as well as the name of person to whom the goods were delivered.
>
> ii) statement from the Central Bank or any of its accredited agent banks that the proceeds of the sale in acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations.

It is clear from the above revenue regulations that petitioner's claim for refund should be substantiated with photocopies of the export documents to attest that there were really export sales subject to zero percent (0%) rate. It should, however, be emphasized that the export documents needed to substantiate the claim must comply with the requirements stated in Section 113(A) and Section 238 of the Tax Code, which are hereunder quoted for easy reference, thus:

SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons-*

(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 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 (emphasis supplied).

Section 238. *Printing of Receipts or Sales or Commercial Invoices.-* All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same. (*Emphasis supplied*)

After a careful scrutiny of the documents presented in evidence, the court found that all the export sales invoices (included as part of export sales documents marked as *Exhibits JJ-1 to JJ-934)* have no BIR permit to print which is in contravention of the above provisions.

The court also took notice that the sales invoices presented by petitioner do not show that the sale is "zero-rated". This also violates Section 4.108-1 of Revenue Regulations No. 7-95, which requires that zero-rated sales invoice should bear imprinted word "zero-rated". Considering the violations of the aforementioned requirements, we therefore decline to consider the export sales invoices as admissible evidence to prove zero-rated sales of goods for VAT purposes.

In the case of ***Toshiba Information Equipment (Phils), Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 5672, dated May 8, 2000,*** this court partially denied petitioner's claim for refund on the ground that the export sales invoices presented failed to comply with the requirements of a valid VAT invoice pursuant to the abovementioned provisions of the 1997 Tax Code. Consequently, petitioner is not entitled to zero percent rate of VAT and refund of input VAT credits attributable thereto. This pronouncement holds true in the case at bar.

As regards the claim for refund of input VAT credits on capital goods the court, in the case of ***Air Liquide Philippines vs. Commissioner of Internal Revenue and Commissioner of Customs****, CTA Case No. 5652, promulgated on July 26, 2000,* had already laid down the requirements to be complied with by the petitioner. They are as follows:

1. it is a VAT registered person;
2. the input taxes claimed by petitioner were paid on capital goods;
3. the input taxes have not been applied against output tax liability; and
4. The administrative claim for refund was seasonably filed.

Moreover, in order to prove actual payment of VAT on the imported goods, petitioner must comply with Section 4.104-5 (b) of Revenue Regulations No. 7-95, which provides:

> **"Input tax on importations shall be supported with the import entry or other equivalent document showing actual payment of VAT on the imported goods."**

We now proceed to discuss petitioner's compliance with the above requisites.

On the first requirement, we find petitioner to be a VAT registered person as evidenced by its VAT Registration Certificate issued by the Bureau of Internal Revenue *(Exhibits A and B)*.

With reference to the second requirement, it was established that out of the total claim of P29,559,050.44, the amount of P8,220,140.00 represents input VAT on importation of capital goods, detailed as follows:

	OR		INVOICE				
SUPPLIER	NUMBER	DATE	NUMBER	DATE	AIRWAYBILL	EXHIBIT	INPUT VAT
-	4441460	06/26/98	-	-	-	HH-53	P 41,091.00
Daiichi Jitsugyo Co.	4441527	06/26/98	No Ref. No.	06/22/98	KWE-ACR-13480692	HH-54 to 59	3,519,213.00
ESEC SA	4441283	06/24/98	872560&DEM000001	06/17/98	2RH 0004 2240	HH-60 to 67	3,925,440.00
Wentwort Laboratories	4292697	06/08/98	51166 & 51157	05/30/98	GLN 3951193	HH-68 to 73	734,396.00
TOTAL							P 8,220,140.00

However, the court found out that only the amount of P8,179,049.00 have been validly supported by VAT documents such as suppliers' invoices, official receipts, import declarations, import remittances and airway bills *(Exhibits HH-54 to HH-73)*, which showed the actual payment of VAT on the importation of capital goods as required by Sec. 4.104-5 (b) of Revenue Regulations No. 7-95. We disallowed the amount of P41,091.00 because it was supported only by an official receipt issued by the Land Bank of the Philippines and this court cannot determine solely from the said receipt if the same pertains to VAT paid on imported goods.

On the third requirement, the court is convinced that the amount claimed was not applied against the output VAT. Petitioner presented to the court the Quarterly VAT Return for the second quarter of 1999 *(Exhibit K, inclusive of sub-markings)*, which revealed that the amount claimed remained unutilized.

Lastly, the records show that both the administrative *(Exhibits L and M)* and judicial claims were filed on May 6, 1999 and June 30, 2000, respectively, which are within the two-year prescriptive period required by the Tax Code, as amended, reckoned from the date of filing the original 1998 second quarterly VAT Return on July 27, 1998 *(Exhibit D)*.

WHEREFORE, the instant petition is ***PARTIALLY GRANTED***. Respondent is hereby **ORDERED** to **ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the amount of P8,179,049.00 representing input VAT on importation of capital goods. However, petitioner's claim for refund of input VAT in the sum of P21,338,910.44 attributable to zero-rated sales is hereby **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
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