REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HOPEWELL POWER (PHILIPPINES) CORP.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5321

Promulgated:

OCT 07 1998

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DECISION

This petition for review is seeking for the refund or issuance of a tax credit certificate in the amount of ₱969,818.51, representing input value-added tax (VAT, for brevity) on capital goods for the period December 1, 1992 to March 31, 1994.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines. It is engaged in the business of power generation and subsequent sale thereof (Exh. G). It is registered with the Bureau of Internal Revenue as a VAT registered person with VAT Registration Certificate No. 330-001-726-870-V, dated July 16, 1992. (Exh. H).

For the period December 1, 1992 to March 31, 1994, petitioner alleges that it paid input VAT on capital goods in the total amount of ₱969,818.51. The details of which are covered by the following quarterly VAT returns:

Period Covered	Amount	Date Filed	Exh.
12-01-92 to 02-28-93	₱231,488.21	03-22-93	A
03-01-93 to 03-31-93	-	04-20-93	B
04-01-93 to 06-30-93	46,187.60	07-20-93	C
07-01-93 to 09-30-93	194,631.73	10-20-93	D
10-01-93 to 12-31-93	128,675.44	01-20-94	E
01-01-94 to 03-31-94	368,835.53	04-20-94	F
T o t a l	₱969,818.51		

On January 12, 1996, pursuant to Section 106(b) of the Tax Code, as amended by Republic Act No. 7716, petitioner filed an application for tax credit/refund of value-added tax paid on capital goods with Revenue District Office No. 51 of the Bureau of Internal Revenue (Exhs. J and J-1).

On January 19, 1996, petitioner lodged the instant petition for review in order to toll the running of the two-year prescriptive period for claiming a refund under the law.

In her Answer, respondent raises the following special and affirmative defenses:

> 7. Petitioner's alleged payments of creditable input tax made prior to January 19, 1994 have already prescribed and/or barred pursuant to Section 230 of the Tax Code;
>
> 8. Tax refunds are in the nature of tax exemptions. Exemptions from taxation are highly disfavored in law; and he who claims an exemption must be able to justify his claim by the clearest grant of organic or statute law.

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> An exemption from the common burden cannot be permitted to exist upon vague implication (**Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466**); and
>
> 9. That in an action for tax refund/credit the taxpayer has the burden of showing that the taxes paid are erroneously collected and that failure to meet such is fatal to its cause, as such claims for refund are strictly construed against the claimant (**Citibank N.A. Phil Branch vs. The CIR, CTA Case No. 4258, April 1, 994**).

The Court is now confronted with the following issues:

1. Whether or not the claim for refund of petitioner prior to January 19, 1994 has prescribed; and

2. Whether or not the petitioner was able to support with substantial evidence its entitlement to the claim for refund of input taxes on capital goods pursuant to Section 106(b) of the Tax Code, as amended by R.A. 7716.

Anent the first issue, We agree with the respondent that some of the input taxes claimed by the petitioner are already barred by prescription. This is because the two-year prescriptive period in claiming a refund of input VAT is now reckoned from the filing of the quarterly VAT return as ruled by this Court in the recent Resolution, dated July 20, 1998, entitled **Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, C.T.A. Case No. 5296** and We quote:

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> xxx (t)his Court, after a careful study of the arguments adduced by petitioner, reconsiders the decision with regard to the issue of prescription and consequently agrees with the interpretation of petitioner that the two-year period should be counted from the date of filing of the corresponding VAT quarterly return which is within twenty (20) days after the close of each taxable quarter. This will harmonize Section 106 with Section 230 of the Tax Code which was interpreted by the Supreme Court in the cases of **Commissioner of Internal Revenue vs. TMX Sales Inc. and the Court of Appeals, G.R. No. 83736, dated January 15, 1992; and ACCRA Investments Corporation vs. Commissioner of Internal Revenue, 204 SCRA 957**, that the two (2) year period should be counted from the filing of the final income tax return, because it is only during that date that the exact tax liability or refundability of tax can be determined. In the same manner, it is only after the filing of the quarterly VAT return that we can determine the VAT liability or refundability of VAT. It should be noted that the basic requirement is that VAT refund can only be granted to the extent that the input taxes have not been applied against output tax. All these things can only be determined if a return is filed. It is logical therefore, to conclude that **the two-year period should** not immediately ***be counted*** from the close of the quarter but **from the date of filing of the VAT return**. (Underlining Ours).

Therefore, considering that the petition for review was filed on January 19, 1996, the claim for refund of petitioner covering the period December 1, 1992 to September 30, 1993 in the amount of P379,932.34 has prescribed, because these payments all fall outside the two (2) year prescriptive period, to wit:

Period Covered	Amount	Date of Filing of VAT Return	Exh.
12-01-92 to 02-28-93	P231,488.21	03-22-93	A

2H

03-01-93 to 03-31-93	-	04-20-93	B
04-01-93 to 06-30-93	46,187.60	07-20-93	C
07-01-93 to 09-30-93	194,631.73	10-20-93	D
T o t a l	P379,932.34		

As to the remaining two quarters, they are well within the two-year period allowed under Section 230 of the Tax Code.

We now delve on the legal and factual aspect of the case which is the second issue at bar.

Petitioner originally anchored its entitlement to the claim for refund of input VAT on Section 106(b) of the Tax Code, as amended by R.A. 7716. However, in its memorandum, petitioner changed its legal basis to Section 106(c) of the 1994 Tax Code for the reason that the period covered herein, still pertains to the old VAT law which contains essentially the same provisions as 106(b) of the later law.

For easy reference, Section 106(c) of the 1994 Tax Code is hereby quoted as follows:

> **Sec. 106. Refunds or tax credits of input tax.** - (a) Export sales. - xxx.
>
> (b) Zero-rated or effectively zero-rated sales. - xxx.
>
> (c) 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 for refund may be made only after the expiration of 2 succeeding quarters following the quarter in which the importation

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> or local purchase was made: **Provided**, That a VAT-registered person who is just commencing business may apply for refund of input taxes under this paragraph not earlier than 180 days from the date of registration or actual start of business operations, whichever comes later: **Provided, however,** That the application is filed not later than 2 years from the dates herein prescribed.

Based on the above proviso, petitioner should prove that: (1) it is a VAT registered person; (2) the input taxes claimed by petitioner was 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.

After a circumspect study of the evidence presented by petitioner, it was established that petitioner is a VAT-registered person with a VAT Registration Certificate No. 330-001-726-870-V issued by the Bureau of Internal Revenue (Exh. H). The input taxes allegedly paid on capital goods remain unapplied as shown by the second quarter VAT return for the year 1996 (Exhs. K and K-1). Furthermore, the administrative claim for refund was seasonably filed within the time required under Section 106(c) of the 1994 Tax Code. However, it appears that most of the purchases made by petitioner, as evidenced by the sales invoices and official receipts are for engineering and structural services which according to the respondent do not constitute capital goods (Exh. 2).

Hence, We should resolve such corollary issue.

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Section 2(o) of Revenue Regulations No. 5-87 of the Value-Added Tax Regulations defines capital goods as -

> (o) "*Capital goods*" refer to goods with estimated useful life greater than one year and which are treated as depreciable assets under Section 29(f), used directly or indirectly in the production or sale of taxable goods or services.

Generally, a capital expenditure involves a payment which creates or enhances what is essentially a separate and distinct asset. Statutorily, capital expenditures are specified as amounts paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate or amounts expended in restoring property or in making good exhaustion thereof for which an allowance is or has been made (6 MERTENS Law of Federal Income Taxation, S25.37, pp. 114 to 115).

In determining what constitutes capital goods, courts will look to the origin and character of the expenditure to determine whether it is a capital asset (6 MERTENS Law of Federal Income Taxation, S25.37, p. 115, ***supra***). For example, it was held that "the cost of a topographical survey made for the purpose of establishing boundary lines of the property, of ascertaining the topography of the land, and of recording the location on the property of valuable shrubs and shade trees is a capital expenditure" (Johnson vs. Comm., TC Memo 1955-247, cited in 6 MERTENS Law of Federal Income Taxation S25.63, p. 179). The same treatment is accorded to amounts expended for maps, abstracts, legal title opinions, recording fees and *surveys* (6 MERTENS Law of Federal Income Taxation, S 25.63, p. 179, ***supra***).

The records show that petitioner expended for engineering and structural services for the purpose of constructing power plant facilities needed in the production of electricity, which is petitioner's main product. We are therefore convinced that said expenses are necessary and should form part of the cost of the power plant facilities.

Below are the allowable input VAT on capital goods:

Name of Supplier	O.R./Invoice Number	Date	Exh.	Amount	Input Tax
BHP Engineering Phils., Inc.	1291	12-09-93	E-2	₱ 108,000.00	₱ 10,800.00
BHP Engineering Phils., Inc.	1291	12-09-93	E-3	249,800.00	24,980.00
BHP Engineering Phils., Inc.	1291	12-09-93	E-4	129,750.00	12,975.00
BHP Engineering Phils., Inc.	1291	12-09-93	E-5	372,015.00	37,201.50
BHP Engineering Phils., Inc.	1291	12-09-93	E-6	180,687.00	18,068.70
BHP Engineering Phils., Inc.	1290	12-09-93	E-7	198,000.00	19,800.00
Jade Philippines	23203	10-27-93	E-26	11,018.18	1,101.82
BHP Engineering Phils., Inc.	1347	01-28-94	F-1	129,750.00	12,975.00
BHP Engineering Phils., Inc.	1347	01-28-94	F-2	372,015.00	37,201.50
BHP Engineering Phils., Inc.	1367	02-11-94	F-3	249,800.00	24,980.00
BHP Engineering Phils., Inc.	1367	02-11-94	F-4	310,013.00	31,001.30
BHP Engineering Phils., Inc.	1403	03-18-94	F-5	71,000.00	7,100.00
Electrobus Consolidated, Inc.	5742	03-14-94		722,727.30	72,272.73
T O T A L				₱3,104,575.48	₱310,457.55

A careful scrutiny of the rest of the petitioner's invoices and official receipts reveals that these pertain

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to the purchase of supplies which are not material in putting up a power plant project; and that some of the official receipts and invoices are dated beyond the period covered by the claim for refund thus were not included in the final computation.

WHEREFORE, finding the petition for review partially meritorious, respondent is hereby ORDERED to REFUND or, in the alternative, to ISSUE a tax credit certificate in favor of petitioner the amount of ₱310,457.55, representing input tax payments on capital goods purchased for the period October 1, 1993 to March 31, 1994.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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

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