REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

AICHI FORGING COMPANY OF ASIA, INC.,
Respondent.

C.T.A. EB NO. 324
(C.T.A. CASE NO. 7187)

Present:

ACOSTA, Presiding Justice
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

APR 30 2008 Apolinario 1:25 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by the Commissioner of Internal Revenue (hereafter "petitioner") under *Section 11 of RA No. 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals)*, in relation to *Rule 43* of the *1997 Rules of Civil Procedure, as amended*, which seeks the reversal of the Decision dated August 13, 2007 and Resolution dated October 18, 2007 rendered by the First Division of this Court in C.T.A. Case No. 7187, the respective dispositive portions of which read as follows:

> "**IN VIEW OF THE FOREGOING,** the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED to REFUND in the reduced amount of FOUR MILLION ONE HUNDRED THIRTY EIGHT THOUSAND THREE HUNDRED NINETY SEVEN AND 57/100 PESOS (P4,138,397.57), representing petitioner's input value-added taxes paid on its domestic purchases of goods and services, and on its importation of goods other than capital goods for the First Quarter of the taxable year 2003, computed as follows:

Amount claimed	P5,057,120.95
Less: Disallowances	(34,172.45)
	(884,55093)
TOTAL	**P4,138,397.57**

> **SO ORDERED.**"

> "**WHEREFORE,** finding no compelling reasons to justifiably amend or overturn this Court's Decision of August 13, 2007, respondent's Motion for Partial Reconsideration is hereby **DENIED** for lack of merit.

> **SO ORDERED.**"

THE FACTS

The antecedent facts, as culled from the records, are as follows:

Petitioner is the duly appointed Commissioner of Internal Revenue vested with authority to exercise the functions of said office, including *inter alia*, the power to refund any internal revenue tax erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected or of VAT input taxes attributed to zero-rated revenue, with office address at the BIR National Office Building, Diliman, Quezon City.

Aichi Forging Company of Asia, Inc. (hereafter "respondent"), on the other hand, is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at Barrio Pulong, Sta. Cruz, Sta. Rosa, Laguna. It is engaged primarily in the business of manufacturing, producing and processing all kinds of steel and steel-by-products, more particularly but not limited to closed impression die steel forging and all automotive steel parts. On May 19, 1995, it was duly registered with the Bureau of Internal Revenue, as a value-added tax entity, pursuant to *Section 107 (now Section 236) of the Tax Code*. Consequently, it was issued a Certificate of Registration, with RDO Control No. 95-570-000481 (BIR Form No. 1556) and OCN IRC

0000148499 (BIR Form No. 2303). Respondent was likewise issued Certificates of Registration Nos. 74-336, DP-92-057 & EP 95-132 by the Board of Investment.

On April 25, 2003, respondent duly filed its Quarterly VAT Return and Monthly Declaration for the first quarter of the year 2003, as well as for the period covering April 1, 2003 to March 31, 2005.

On March 29, 2005, respondent filed with the BIR, Revenue District Office No. 057 its Application for Tax Credit/Refund for the first quarter of 2003 in the amount of P5,057,120.95 allegedly representing input value added taxes it paid on its purchases of goods, services and capital goods, and on its importation of goods and capital goods, all attributable to its zero rated sales in the total amount of P149,174,477.94.

Petitioner failed to act on petitioner's administrative refund, hence, on March 31, 2005 respondent filed a Petition for Review before this Court, docketed as C.T.A. Case No. 7187.

In her answer filed on May 9, 2005, herein petitioner alleged by way of 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 P5,057,120.95 being claimed by petitioner as alleged overpaid VAT input taxes for the period January 1, 2003 to March 31, 2003 was not properly documented;

6. In an action for refund, the burden of proof is on the taxpayer to establish its right to 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;

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)."

After trial on the merits, on August 13, 2007 the First Division rendered a decision partially granting respondent's petition and ordering herein petitioner to refund the amount of P4,138,397.57 representing respondent's input value added taxes paid on its domestic purchases of goods and services and on its importation of goods other than capital goods for the first quarter of the taxable year 2003.

Not satisfied, on September 4, 2007, petitioner filed a Motion for Partial Reconsideration, which the First Division denied in a Resolution dated October 18, 2007.

On November 9, 2007, petitioner filed the instant Petition for Review.

On December 18, 2007, We required respondent to file its comment on the petition, within ten (10) days from notice.

On January 18, 2008, respondent filed its Comment.

Hence, the petition is now deemed submitted for decision.

ISSUE

Petitioner raised this sole issue for the Court En Banc's consideration:

> WHETHER OR NOT RESPONDENT IS ENTITLED TO A REFUND IN THE REDUCED AMOUNT OF P4,138,397.57 REPRESENTING ALLEGED INPUT TAXES PAID BY IT DURING THE PERIOD 1 JANUARY 2003 TO 31 MARCH 2003.

Petitioner's Arguments

Petitioner contends that the generated and recorded zero-rated sales of Aichi Forging Company of Asia, Inc. in the amount of P149,174,477.94 for the period covering January 1, 2003 to March 31,

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2003 or for the first quarter of taxable calendar year 2003 were not proven by clear and convincing evidence that it was paid for in acceptable foreign currency and was inwardly remitted in accordance with the existing regulations of the Central Bank of the Philippines. Respondent has the burden to prove that it has complied with the registration requirements of a value-added taxpayer, in compliance with *Section 6 (a)* and (b) of *Revenue Regulations No. 6-97*, in relation to *Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the NIRC of 1997, as amended.* Further, respondent failed to comply with the 120-day period under *Section 112 (D) of the same Code* and that the filling of the petition for review before this Court was premature.

Respondent's counter-arguments

Respondent, on its part, argues that the instant petition shows that the allegations and matters raised therein were mere repetitions, if not reiterations of the previously laid down arguments; that the issue regarding the failure to comply with the requirements as a value-added taxpayer has already been rendered moot and academic, as the parties already stipulated this fact in their Joint Stipulation of Facts and Simplification of Issues dated June 21, 2005; that being a VAT registered entity, its direct and indirect sales of goods and services, as well as its importation of goods and capital goods, are subject to VAT at zero-percent rate and respondent's sale of goods, properties and services from the customs territory to an ecozone enterprise shall also be subject to VAT at zero-percent rate; that since most of the export sales are indirect export sales to PEZA registered entities, the requirement of statement from the Central Bank or any of its agent banks that the proceeds of sale in acceptable foreign currency have been inwardly remitted and accounted for in accordance with applicable banking regulations is inapplicable; that having filed the application for refund before the BIR on March 29, 2005 and the Petition for Review before this Court on March 31, 2005, the requirement of the 120-day period to act on the claim for refund does not apply.

THE COURT *EN BANC'S* RULING

The petition has no merit.

The rule is that for a VAT registered entity whose sales are zero-rated, to validly claim a refund, it must comply with *Section 112 (A)* of the *NIRC of 1997*, as amended, which provides:

"SEC. 112. Refunds or Tax Credits of Input Tax.-

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(A) Zero-rated or Effectively Zero-rated Sales.- 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: xxx"

Pursuant to the above provision, petitioner must comply with the following requisites: (1) the taxpayer is engaged in sales which are zero-rated or effectively zero-rated; (2) the taxpayer is VAT-registered; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

Upon a careful review of the evidence on record and the applicable laws and jurisprudence, the Court *En Banc* concurs with the findings of the First Division that the first three requirements have been complied with by respondent.

In compliance with the first requisite, respondent presented documentary evidence, such as Sales Invoices, marked as *Exhibits "JJ" to*

"JJ-370", "KK" to "KK-329", and "LL" to "LL-432", which clearly shows that it is engaged in sales that are zero-rated.

The second requisite has likewise been complied with. The Certificate of Registration with OCN 1RC0000148499 (*Joint Stipulations of Facts & Issues, pars. 1 and 2, Original Docket, p. 107*) with the BIR shows that respondent is a registered VAT taxpayer.

With regard to the third requisite, the First Division correctly ruled that respondent's claim clearly fall within the two-year prescriptive period. Petitioner's contention that the claim of respondent before this Court is premature is misplaced. The observance of the 120-day period under *Section 112 (D) of the NIRC of 1997, as amended,* must be interrelated with the two-year prescriptive period for filling a written claim for refund or credit under *Section 112 (A).*

The law is explicit that when the two-year prescriptive period for filling a written claim for refund or credit is about to expire, and no action on the claim has been taken by the BIR, the inaction may be treated as a denial of the claim and the taxpayer adversely affected by such inaction may already appeal the case to this Court. The taxpayer need not wait for the expiration of the 120-day period, if the two-year period to appeal the case to this Court is about to lapse; otherwise, if the decision of the Commissioner is adverse to the taxpayer and it was made after the two-year period, he can no longer appeal the same to the Court of Tax Appeals. The claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must therefore be filed within the two-year period. If however, the Commissioner takes time in deciding the claim, and the two-year period is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the expiration of the said period, without awaiting the decision of the Commissioner *(Insular Lumber Co. vs. CTA, 104 SCRA 710; Commissioner of Internal Revenue vs. Victorias Milling Co., Inc., 22 SCRA 12).*

As regards the fourth requisite, We sustain the findings of the First Division that the creditable input tax paid was attributable to zero-rated sales and the same was not applied against any output tax. As found by the First Division, respondent's sales to PEZA registered entities, in the amount of P149,075,458.37, which are duly covered by sales invoices, qualify for zero rating. It must be noted that respondent made exportations to PEZA registered entities which are considered constructive exportations. Therefore, pursuant to settled jurisprudence,

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respondent as a VAT-registered entity under *Section 106 (A)(2)(a)(5)* of the Tax Code, its sales or transactions are subject to VAT at 0% rate. Consequently, respondent is not liable to pay any output VAT thereon, and the claimed unutilized input VAT attributable thereto may be a proper subject of a claim for refund/credit, subject to the requirements prescribed in *Section 112 (A) of the NIRC of 1997, as amended*, and the invoicing requirements prescribed by *Section 113* of the same Code.

Finally, on the determination of the substantiation of respondent's claim for refund, We agree with the following ratiocination of the First Division:

> "Inasmuch as this Court had discussed petitioner's export sales as qualified for VAT at zero-rating, at this point, it is essential to discuss the substantiation issue on the claimed input VAT payment of P5,057,120.95. In the report of the Court-commissioned Independent CPA dated February 24, 2006, and as verified by this Court, found that out of the total claimed input VAT of P5,057,120.95, only the amount of P5,022,948.50 was duly substantiated and that the amount of P34,172.45 should be disallowed from petitioner's claim due to the following reasons:

Findings	Amount
Amount not in agreement with the documents	P4,945.46
Name of the payee not indicated-local purchases	1,821.78
Outside the period covered	22,550.56
Unreconciled discrepancy between the schedules and returns	4,854.65
Total exceptions noted during the examination of source documents	**P34,172.45**

> Further, upon this Court's examination of the documents presented, the input VAT used in computing the input VAT available for refund was not reduced by the amount of output VAT for sales

subject to VAT in the amount of P884,550.93. The said amount was declared in petitioner's First Quarterly VAT Return for the year 2003 as output tax due, but was never deducted from petitioner's claim. Thus, the amount of P884,550.93 should likewise be deducted from its substantiated input VAT of P5,022,948.50 (P5,057,120.95 - P34,172.45), thereby leaving a refundable excess input VAT of P4,138,397.57, all attributable to petitioner's zero-rated sales.

This Court notes that petitioner carried over the claimed unutilized input VAT for the first quarter of 2003 to the succeeding taxable quarters until the first quarter of the taxable year 2005. However, upon closer scrutiny, this Court finds that the same amount was deducted as "Any VAT Refund/TCC" from the total available input tax in the amount of P27,438,972.69 for first quarter of the taxable year 2005. In other words, although the amount was initially carried over to the succeeding quarters, the subject claim no longer formed part of the excess input VAT for the year 2005."

Finding no reversible error, We affirm the assailed Decision dated August 13, 2007 and Resolution dated October 18, 2007 rendered by the First Division of this Court in C.T.A. Case No. 7187.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED,** and accordingly **DISMISSED,** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

Ernesto D. Acosta
ERNESTO D. ACOSTA
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

(On Official Business)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

Ernesto D. Acosta
ERNESTO D. ACOSTA
Presiding Justice