REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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LEPANTO CONSOLIDATED MINING CO.,
Petitioner,

\- versus -

C.T.A. CASE NOS. 6368 & 6480

Members:

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 15 2004

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DECISION

ACOSTA, E., *P.J.*:

These cases involve claims for tax credit in the amounts of **TWO MILLION SEVEN HUNDRED SIXTY NINE THOUSAND EIGHTY ONE PESOS AND 78/100 (P2,769,081.78)** and **FOUR MILLION AND THIRTY SEVEN THOUSAND PESOS (P4,037,000.00)** allegedly representing payments of unutilized input value-added taxes on the domestic purchases of goods and services for the first and second quarters of the taxable year 2001, respectively.

The facts, as culled from the records of the case, are as follows:

Petitioner is a domestic corporation duly organized and existing under Philippine law with business address at 21/F BA-Lepanto Bldg., 8747 Paseo de Roxas, Makati City. It is a VAT-registered corporate taxpayer engaged in the exploration, development and extraction of gold

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and copper ore in Mankayan, Benguet Province *(Exhibit "N"; par 2a, Joint Stipulation of Facts)*. Likewise, petitioner is duly registered with the Department of Trade and Industry-Board of Investments as an exporter of gold, silver and copper *(Exhibit "O")*.

On April 25 2001, petitioner filed its Quarterly Value-Added Tax Returns for the first quarter of the taxable year 2001, wherein it declared payment of input value-added taxes on domestic purchases and importation of goods and services in the amounts of Ten Million Four Hundred Ninety One Thousand One Hundred Sixty Seven Pesos and 91/100 (P10,491,167.91) and Seven Million Four Hundred Ninety Six Thousand Sixty Six Pesos and 36/100 (P7,496,066.36), respectively *(Exhibit "A" with attachment Exhibit "B")*. On April 26, 2001, petitioner applied for a tax credit with the Department of Finance's One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center for all its input value-added tax payments on its domestic purchases and importation of goods and services for the first quarter of the taxable year 2001 amounting to Seventeen Million Five Hundred Eighty Three Thousand Two Hundred Fifty Six Pesos and 72/100 (P17,583,256.72) *(Exhibit "A", with attachment Exhibit "F")*.

For the second quarter of the same taxable year, petitioner filed its 2nd Quarterly Value-Added Tax Return with the BIR on July 25, 2001 declaring therein input value-added tax payments for its local purchases amounting to Twelve Million One Hundred Forty Five Thousand Nine Hundred Ninety Six Pesos and 31/100 (P12,145,996.31) and on its importation of goods and services in the amount of Seven Million Five Hundred Thirty Eight Thousand Seven Hundred Forty Seven Pesos (P7,538,747.00) *(Exhibit "A" with attachment Exhibit "C")*. On July 26, 2001, petitioner likewise applied for a tax credit with the Department of Finance's One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center for all its input tax payments on domestic or local purchases and importation of goods and services made for the second quarter of the taxable year 2001 in the total amount of Nineteen Million Six Hundred Sixty Thousand One

Hundred Seventy Eight and 41/100 (P19,660,178.410) *(Exhibit "A" with attachment Exhibit "G")*.

On November 15, 2001, Tax Credit Certificate No. 003848 was issued by the respondent to petitioner partially granting the amount of Seven Million One Hundred Sixteen Thousand Seven Hundred Fourteen Pesos and 81/100 (P7,116,714.81) from the total input value-added tax on domestic purchases applied for, leaving a disallowed amount of P2,970,475.55. Out of the said disallowed amount, respondent excluded the sum of P2,769,081.78 on the ground that the such amount was filed "out of the period" of the claim *(Annex "A", Petition for Review, CTA Case No. 6368)*.

Consequently, petitioner filed a Petition for Review with this Court on December 20, 2001, docketed as CTA Case No. 6368, questioning the disallowance made by the respondent relying on Sections 106, 108 and 112 of the 1997 Tax Code, as amended, and Section 23 of the Omnibus Investments Code of 1987.

Respondent filed his Answer on March 14, 2002, averring the following as his Special and Affirmative Defenses, to wit:

> (4) Petitioner's alleged claim for tax refund/credit is subject to administrative investigation/examination by the respondent's Bureau;
>
> (5) Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;
>
> (6) Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;
>
> (7) In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to adduce sufficient proof is fatal to the action for tax refund/credit;
>
> (8) Moreover, petitioner must show compliance with the provisions of Sections 204 (C) and 229 of the Tax Code, as amended;
>
> (9) Finally, there is no way to dispute the cardinal rule in taxation that tax exemptions are highly disfavored in law and he who claims tax exemptions

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> must be able to justify his claim or right. The exemption cannot be established by mere implication but must be clearly expressed. (Wonder Mechanical Engineering Corporation vs. Court of Tax Appeals, et. al., 64 SCRA 555)

Subsequently, on April 11, 2002, Tax Credit Certificate No. 004182 was issued by the respondent also partially granting petitioner's claim in the amount of Seven Million Nine Hundred Forty Eight Thousand Six Hundred Forty Nine Pesos and 95/100 (P7,948,649.95) from the total amount applied for, thereby disallowing the sum of Four Million Thirty Seven Thousand Pesos (P4,037,000.00) from petitioner's total claimed input value-added taxes on domestic purchases for the second quarter of the taxable year 2001 *(Annex "A", Petition for Review, CTA Case No. 6480)*.

Thus, another Petitioner for Review docketed as CTA Case No. 6480 for the above-mentioned amount was filed by the petitioner on May 15, 2002.

It appears from the records that the disallowance of the portions of petitioner's claims for the 1st and 2nd quarters of 2001 was due to the ground that the supporting VAT invoices bore dates earlier than the period of claims. It is the contention of petitioner though that the claims for VAT refund of the said disallowed portions were not made on the supposed period of claim because of the late issuances and deliveries of the VAT invoices by the concerned suppliers. Accordingly, the transactions were then recorded in its books only upon delivery of the original invoices/receipts and actual payment thereof which were made only on the first and second quarters of 2001.

In his Answer filed on June 18, 2002, respondent stated the following as his Special and Affirmative Defenses, *viz*:

> (4) Petitioner's alleged claim for refund is still subject to administrative investigation/examination;
>
> (5) Nonetheless, despite the documents attached to the petition in support of its claim, petitioner failed to establish the fact that the tax subject of the

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case at bar is refundable;

(6) Petitioner must show proof that it has complied with the provisions of Section 112 of the Tax Code, as amended;

(7) Lastly, time and again the Honorable Supreme Court has consistently held that in tax refund, the claimant has the burden of proof to establish the factual basis of his or her claim for tax refund or credit. After all, tax refunds, like exemptions, are construed strictly against the taxpayer. Failure to prove the same is fatal to its claim for tax refund.

On December 10, 2002, petitioner filed a Motion for Consolidation/Joint Hearing which this Court granted in a Resolution promulgated on April 21, 2003 *(page 134, CTA Records).*

After due hearing, this case was submitted for decision sans memorandum of the respondent.

Petitioner raises the issue of whether or not its claim for tax credit on purchases pertaining to the 3rd and 4th quarters of 2000, but actually paid and entered in its books only in the 1st quarter of 2001, were filed out of period.

For his part, respondent stipulates the following issues, to wit:

(1) Whether or not petitioner's transactions for the 1st and 2nd quarters are zero-rated for VAT purposes;

(2) Whether or not petitioner has unutilized input VAT for the taxable periods in question;

(3) Whether or not the unutilized input VAT are substantiated by documentary evidence;

(4) Whether or not the said unutilized input VAT were carried over to the succeeding quarter and applied against any of the petitioner's output VAT for the said period;

(5) Whether or not the alleged zero-rated transactions were exclusively for exportation of goods;

(6) Whether or not petitioner is entitled to a refund of the said unutilized input VAT amounting to P2,769,081.78 and P4,037,000.00 for the 1st and 2nd quarters of the taxable year 2001, respectively;

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(7) Whether or not petitioner's claims for tax credit were filed within the prescriptive period under Section 112 of the Tax Code, as amended.

The main issue this Court has to resolve despite the many issues raised above is whether or not the petitioner is entitled to the issuance of tax credit certificates in the amounts of P2,769,081.78 and P4,037,000.00 representing input VAT payments for the 1st and 2nd quarters of the taxable year 2001, respectively, which the respondent denied for being filed "out of period".

Considering that the issues raised by herein parties are interrelated, this Court deems it proper to discuss them jointly.

As a VAT-registered taxpayer and exporter, petitioner claims that its export sales are subject to VAT at zero percent (0%). Accordingly, its entire gold bullion and copper concentrate product is exported and sold directly to a foreign commodities trader abroad. For this purpose, petitioner was certified by the Board of Investments as an entity engaged in export sales. Petitioner anchors its argument on Section 106(A)(2)(a)(1) of the 1997 Tax Code, as amended, which provides that:

> Section 106. *Value-Added Tax on Sale of Goods and Properties*:
>
> (A) x x x
>
> (1) x x x
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export sales*. – The term *"export sales"* means:
>
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangements 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).

As such, petitioner maintains that being an exporter and a zero-rated entity, no output

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value-added tax is thus due or may be collected from the export sales it made to its foreign buyers. In turn, all input value-added taxes paid by it are refundable pursuant to Section 112 of the 1997 Tax Code, as amended.

A circumspect study of the records of the case reveals that both the administrative and judicial claims were filed by petitioner within the two-year prescriptive period allowed by law. Petitioner filed its 1st Quarterly Value-Added Tax Return for the taxable year 2001 on April 25, 2001 and on April 26, 2001, it filed an administrative claim for tax credit with the Bureau of Internal Revenue. Subsequently, its Petition for Review docketed as CTA Case No. 6368 for the disallowed portion of its claim or in the amount of P2,769,081.78, was filed with this Court on December 20, 2001. Likewise, petitioner's 2nd Quarterly Value-Added Tax Return for the same taxable year was filed on July 25, 2001 and was administratively claimed on July 26, 2001. The subsequent Petition for Review docketed as CTA Case No. 6480 for the disallowed sum of P4,037,000.00 was filed with this Court on May 15, 2002. Clearly then, both the administrative and judicial claims were filed within the two-year prescriptive period provided for under Section 112 of the 1997 Tax Code, as amended, to quote:

> Section 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) *Zero-rated or Effectively Zero-Rated Sales.* – Any VAT-registered person, **whose sales are 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 the output tax; *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sales and also on taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. *(Emphasis supplied)*

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In addition, it is not disputed that petitioner has unutilized input value-added taxes for the taxable year in question. In fact, respondent had already issued tax credit certificates relative to its claims as evidenced by Tax Credit Certificate No. 003848 in the amount of P7,116,714.81 for the 1st Quarter of the taxable year 2001 and Tax Credit Certificate No. 004182 in the amount of P7,948,649.95 for the 2nd Quarter of the same taxable year. However, as earlier discussed, portions of petitioner's claims were disallowed by the respondent for the reason that they were filed "out of period".

Based on a thorough review and validation of the records as well as the report of the commissioned Certified Public Accountant, out of the total claim for the first two quarters of the taxable year 2001 amounting to Six Million Eight Hundred Six Thousand Eighty One Pesos and 78/100 (P6,806,081.78) as detailed on respondent's Schedule of Disallowed Input Taxes – "Out of Period", only the amount of Four Hundred Twenty Four Thousand Eight Hundred Forty Four Pesos and 20/100 (P424,844.20) was ascertained to be properly substantiated by supporting documents *(Exhibit "A")*, with details as follows:

Ref. No.	Quarter	Year	Amount per CGM Verification
Annex E	1ST	2001	P 355,937.06
Annex E	2ND	2001	68,907.14
TOTAL INPUT VAT PROPERLY SUBSTANTIATED			P 424,844.20

Furthermore, We find that only the sum of Five Hundred Sixty Thousand Three Hundred Seventy Three Pesos and 71/100 (P560,373.71) was not properly substantiated by invoices and official receipts, with details as found below:

Item	Nature	Ref. No.	Amount
1	Input VAT on domestic purchases of services supported by documents other than official receipts (Ors) (i.e., invoice, statement of charges, statement of account, And import cargo charges receipts, etc.).	Annex C	P 71,568.42
2	Input VAT on domestic purchases of goods supported by		

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	documents other than invoice (i.e., official receipt).	Annex C	15,565.16
3	Input VAT on domestic purchases of goods/services without any supporting documents.	Annex C	11,742.01
4	Input VAT on domestic purchases of goods/services not within the quarter of claim and are not within the 2-year prescriptive period.	Annex C	514.55
5	Input VAT on domestic purchases of services supported by Ors after the quarter of claim.	Annex C	460,334.38
6	Input VAT on domestic purchases of goods/services supported by invoices/Ors with printed "TIN" without the word "VAT".	Annex C	507.37
7	Input VAT on domestic purchases of goods/services supported by invoices/Ors with printed "VAT" without The word "TIN".	Annex C	141.82
	Total	Annex C	P **560,373.71**

Respondent disallowed the amount of Five Million Eight Hundred Twenty Thousand Eight Hundred Sixty Three Pesos and 87/100 (P5,820,863.87) for tax credit on the ground that the dates within which these invoices and official receipts were issued did not pertain to the exact quarters of the claim for the taxable year 2001, more particularly, these documents evidencing the purchases were dated earlier than the respective quarters of petitioner's claim, detailed hereunder:

Nature	Ref. No.	Amount
Quarterly VAT return-1st Quarter 2001 (the Application for Tax Credit/Refund of VAT Paid was duly stamped received by the Dept. of Finance of **April 26, 2001**)		
April- June, 1999	Annex F-1	P 1,568.38
July- September, 1999	Annex F-1	636.32
October-December, 1999	Annex F-1	2,692.95
January- March, 2000	Annex F-1	15,541.85
April- June, 2000	Annex F-1	25,405.89
July- September, 2000	Annex F-1-a	105,222.03

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October- December, 2000	Annex F-1-g	2,114,755.84
	Annex F-1-g	2,265,823.26
Quarterly VAT return- 2nd Quarter 2001 (the Application for Tax Credit/Refund of VAT Paid was duly stamped received by the Dept. of Finance on **July 26, 2001**)		
January- March, 1999	Annex F-2	2,522.45
January- March, 2000	Annex F-2	20,131.93
July- September, 2000	Annex F-2	19,019.96
October- December, 2000	Annex F-2	14,948.08
January- March, 2001	Annex F-1-j	3,498,418.19
	Annex F-1-j	3,555,040.61
Total		**P5,820,863.87**

We agree with the respondent.

The alleged unutilized input VAT of P5,820,863.87 should be denied since the supporting invoices and official receipts thereof bore dates which were earlier than the period of petitioner's claim. Section 110(A)(2) of the 1997 Tax Code provides:

> "Sec. 110. *Tax Credits.* –
>
> A. *Creditable Input Tax.* –
>
> 2. The input tax on domestic purchases of goods or properties shall be creditable:
>
> (a) To the purchaser upon consummation of sale and on importation of goods or properties; and
>
> However, in the case of purchases of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee."

It is clear from the above-quoted provisions of law that for purchases of goods, the corresponding input value added taxes of which is creditable to the purchaser upon

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consummation of sale, that is, upon the issuance of the corresponding invoice. On the other hand, for purchases of services, the corresponding input value added taxes of which is creditable to the purchaser upon payment of compensation, rental, royalty or fee, that is, upon the date of official receipt. Section 110(A) is explicit. It states "upon consummation", in the case of domestic purchases of goods, and "upon payment", in the case of purchases of services. It does not provide any qualification, such as "upon delivery of invoice or official receipt" which is the main thesis of petitioner's contention.

In a resolution of the case entitled ***Telecommunications Technologies Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6168, promulgated on July 28, 2004,*** this Court elucidated that "the input VAT on domestic purchases of goods or properties shall be allowed as tax credit to the purchaser upon consummation of sale, which means upon issuance by the seller of the VAT sales invoice evidencing the sale of goods/properties. On the other hand, the input VAT on purchases of services shall be available as tax credit to the purchaser only upon payment of the compensation or fee *i.e.*, upon issuance by the seller of the VAT official receipt evidencing receipt of the payment for services performed or yet to be performed."

Thus, it is indubitable on the part of the petitioner to declare the input value added taxes on domestic purchases of goods and services at the end of the corresponding taxable quarter where purchases of goods were consummated, as evidenced by VAT invoice and for payment of services, as evidenced by VAT official receipt.

Therefore, the amount of input VAT of P5,820,863.87 which is supported by VAT invoices and official receipts dated earlier than the period of petitioner's claims can no longer be claimed for refund pursuant to Section 110 (A) in relation with Section 112 (A) of the 1997 National Internal Revenue Code.

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WHEREFORE, premises considered, petitioner's claims for tax credit are hereby **GRANTED** in the reduced amount of P424,844.20, computed as follows:

Amount Claimed		
First Quarter of 2001	P2,769,081.78	
Second Quarter of 2001	4,037,000.00	P 6,806,081.78
Less: Disallowances:		
Per Commissioned Independent CPA Report	P 560,373.71	
Per Court's Determination:		
Invoices/Ors dated 'outside the period of claims'	5,820,863.87	6,381,237.58
Amount Refundable		P 424,844.20

Accordingly, respondent is **ORDERED to ISSUE a TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P424,844.20 representing unutilized input VAT on domestic purchases of goods and services for the first and second quarters of taxable year 2001.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the First Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Chairman, First Division
Presiding Justice