REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
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AT & T COMMUNICATIONS SERVICES PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6281

Members:

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

Promulgated:

SEP 16 2005

x - x

DECISION

CASANOVA, C., J.:

Before Us is a Petition for Review under Section 11 of Republic Act No. 1125, as amended, seeking a refund or an issuance of a tax credit certificate in the aggregate amount of P3,924,761.37 allegedly representing unutilized input taxes attributable to zero-rated sales of services for the taxable year 1999.

AT & T Communications Services Philippines, Inc. ("petitioner") is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal place of business at the 18th Floor, BA-Lepanto Building, 8747 Paseo de Roxas, Makati City. It is registered with the Bureau of Internal Revenue ("BIR") with Taxpayer Identification No. 050-004-519-384.

Petitioner is primarily engaged in rendering information, promotional, supportive and liaison services to AT&T Communications Services International Inc. (AT&T-US) and AT&T Solutions, Inc. (AT&T-SI). The two latter corporations are organized and existing under the laws of the State of Delaware, United States of America.

On November 13, 2000 and March 19, 2001, petitioner filed its amended Quarterly VAT Returns with the BIR reflecting payment of excess input value-added tax (VAT) in the sum of P3,924,761.37 for the period of January 1, 1999 to December 31, 1999, detailed as follows:

1999 Taxable Period	Zero Rated Sales	Input VAT	Output VAT	Excess Input VAT
1st Quarter	20,225,517.16	1,764,864.06	7,919.22	1,756,944.84
2nd Quarter	23,236,910.25	927,961.97	118,915.22	809,046.75
3rd Quarter	29,005,064.78	615,400.57	77, 364.19	538,036.38
4th Quarter	14,761,963.95	836,445.89	15,712.49	820,733.40
	87,229,456.14	4,144,672.49	219,911.12	3,924,761. 37[1]

Thus, on March 21, 2001, petitioner filed an application for tax credit and/or refund with the BIR of excess/unutilized input VAT paid in the amount of P3,924,761.37 for the period January 1, 1999 to December 31, 1999.[2]

Due to the BIR's inaction and in order to toll the running of the prescriptive period, petitioner sought relief before this Court via a Petition for Review on April 18, 2001.

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[1] Rollo, pp. 10,14, 21 & 28
[2] Joint Stipulation of Facts and Issues, par. 6

In Answer to the Petition, the Commissioner of Internal Revenue ("respondent") raised Special and Affirmative Defenses, to wit:

> "*4. Petitioner's claim is partially barred by the statute of limitations;*
>
> *5. Petitioner failed to show compliance with the substantiation requirements under the provision of Section 16(c)(3) of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88;*
>
> *6. Petitioner failed to show that the alleged VAT input taxes are attributable to its export sales and that the same have not yet been applied to the output tax for the period covered in its claim or on any succeeding period and that the alleged total foreign exchange proceeds have been accounted for by the Bangko Sentral ng Pilipinas and it also failed to show that it is qualified as zero-rated VAT taxpayer;*
>
> *7. The petition states no cause of action as it does not allege that the amendment of the Quarterly Value Added Tax Returns were done in accordance with the Tax Code;*
>
> *8. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes;*
>
> *9. One who claim to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute;*
>
> *10. In an action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;*
>
> *11. It is incumbent upon petitioner to show compliance with the provisions of Section 229 of the National Internal Revenue Code;*
>
> *12. Taxes paid and collected are presumed to have been made in accordance with the law and regulations, hence, not refundable."*[3]

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[3] Rollo, pp. 44-45

During the proceedings, petitioner availed the services of an independent certified public accountant to audit, examine and verify its various voluminous documents with the approval of the Court.

Without any Memorandum filed by respondent, the case was submitted for decision on July 1, 2005.

The parties jointly interposed the following issues for the consideration of the Court:

> ***"1. Whether or not petitioner's sales of services to AT& T – US and AT & T-SI for the period January 1, 1999 to December 31, 1999 are zero-rated for VAT purposes from which it generated revenue in the amount of P87,229,456.14.***
>
> ***2. Whether or not petitioner's zero-rated sales for the period January 1, 1999 to December 31, 1999 were paid for in acceptable foreign currency inwardly remitted and duly accounted for in accordance with the regulations of the Bangko Sentral ng Pilipinas (BSP).***
>
> ***3. Whether or not the amount of P3,924,761.37 representing unutilized/excess input VAT paid by petitioner for the period January 1, 1999 to December 31, 1999 is attributable to its zero-rated sales.***
>
> ***4. Whether or not the amount of P3,924,761.37 representing unutilized/excess input VAT paid by petitioner for the period January 1, 1999 to December 31, 1999 is properly supported by sales invoices and/or official receipts issued by petitioner's supplier of goods and services.***
>
> ***5. Whether or not the amount of P3,924,761.37 representing unutilized/excess input VAT paid by petitioner for the period January 1, 1999 to December 31,1999 was not utilized nor applied against its output VAT liabilities for the subsequent taxable quarters.***
>
> ***6. Whether or not petitioner is entitled to the refund or issuance of a tax credit certificate in the amount of P3,924,761.37***

representing unutilized/excess input VAT for the period January 1, 1999 to December 31, 1999."[4]

According to petitioner, it is entitled to a refund of the excess input VAT paid in the amount of P3,924,761.37 for taxable year 1999 because the company's sales of services are classified as zero-rated transactions.

Pursuant to a Service Agreement, petitioner undertook various information and promotional services in the Philippines for AT&T-US. Remuneration for services was in US Dollars inwardly remitted to petitioner in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas ("BSP").

Petitioner likewise entered into an Assignment Agreement with AT&T-SI. The parties stipulated that petitioner should perform the duties, liabilities and obligations of AT&T-SI in favor of Mastercard International, Incorporated ("Mastercard"). This is in conformity with the Virtual Private Network Services Agreement between AT&T-SI and Mastercard. Compensation for such services should be in US Dollars to be inwardly remitted to the Philippines by AT&T-SI, a collecting agent of the petitioner.

For the period of January 1, 1999 to December 31, 1999, petitioner paid input VAT of P4,144,672.49 arising from domestic purchases of taxable goods and services of P 41,446,724.90. These input VAT were attributable to zero-rated sales. Moreover, zero-rated sales in the accumulated amount of P87,229,456.14 were paid to petitioner in US Dollars inwardly remitted in accordance with the rules and regulations of the BSP.

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[4] Joint Stipulation of Facts and Issues, p. 69

The input taxes of P4,144,672.49 had been applied against the VAT output tax in the amount of P219,911.12 resulting to unutilized VAT input tax of P3,924,761.37 which has not been applied nor carried over against its output tax liabilities for the succeeding quarter(s).

Petitioner further asserts that its taxable and zero-rated sales for the period of January 1, 1999 to December 31, 1999 are supported by appropriate invoices and/or official receipts. However, petitioner concurs with the findings of the independent CPA that the amount of P171,630.50 should be deducted from its total claim for failure of petitioner to comply with the substantiation requirement resulting to a reduced claimed amount of P3,753,130.87.[5]

We agree that petitioner is legally entitled to a claim for refund/tax credit inasmuch as its sale of services are classified as zero-rated transactions in accordance with the provisions of Sections 108 (B)(2) and 112 of the 1997 National Internal Revenue Code ("NIRC") which read:

> ***SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties.-***
>
> ***xxx xxx xxx***
>
> ***(B) Transactions Subject to Zero Percent (0%) Rate. – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:***
>
> ***(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);***

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[5] Rollo, p. 361

> ***(2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).***
>
> ***SEC. 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 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: 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 rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in 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.***

Nevertheless, petitioner must prove compliance with the following requisites in order that its claim for refund/tax credit may be granted:

(1) It is a VAT registered person;
(2) Its sales are zero-rated;
(3) The administrative and judicial claims for refund were seasonably filed.
(4) The input taxes claimed were attributable to zero-rated sales and were not applied against the output tax liability;
(5) The foreign currency exchange proceeds had been duly accounted for in accordance with the regulations of the Bangko Sentral ng Pilipinas; and
(6) The input taxes are supported with invoices and/or official receipts.[6]

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[6] AT & T Communications Services vs. Philippines Inc. vs. CIR, CTA Case No. 6034 (Dec. 22, 2004)

Based on the evidence on record, petitioner complied with the first requirement. It is registered with the BIR as a VAT registered entity substantiated by Certificate of Registration RDO Control No. 96-500-005004.[7]

With regard to the second requirement, petitioner was able to generate total zero-rated sales of services in the amount of P87,229,456.14 as shown in its Quarterly Value-Added Tax returns.

Concerning the third requirement, petitioner's administrative and judicial actions were filed within the reglementary period pursuant to Section 229 of the 1997 NIRC which states:

> ***SEC. 229. Recovery of Tax Erroneously or Illegally Collected. – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been 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, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.***
>
> ***In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.***

In the instant case, petitioner's claim for refund and Petition for Review filed before the BIR and this Court on March 21, 2001 and April 18, 2001, respectively, were

[7] Rollo, p. 9

timely undertaken within the two-year period reckoned from April 23, 1999[8] the date when petitioner filed its original first quarterly VAT return for taxable year 1999.[9]

As regards the fourth requirement, petitioner duly satisfied the same. In the amended Quarterly VAT return for the first quarter of year 2000, the input taxes claimed were attributable to zero-rated sales of services and were already deducted from the total available input taxes as of April 6, 2000.[10] Although petitioner carried over the claimed input tax of P3,924,761.37 to the succeeding first quarter of year 2000, said amount was unutilized since the output VAT liability of P98,305.67 was offset against the current input tax credit of P1,108,815.23. In addition, the claimed amount of P3,924,761.37 was deducted as "Any VAT refund/ TCC claimed" from the total available input tax of P5,033,576.60 and thus, the excess input tax of P1,010,509.56 to be carried over to the next quarter of year 2000 did not include the claimed amount of P 3,924,761.37.[11]

Anent the fifth requirement, petitioner was able to prove that the foreign currency exchange proceeds in US dollars, representing inward remittances for management services, were credited to its Citibank Account No. 0/601563/029 as evidenced by various Citibank official computer generated advices.[12]

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[8] Exhibit D
[9] Atlas Consolidated Mining and Development Corporation vs. CIR, CTA Case No. 5296, (Resolution) July 20, 1998
[10] Exhibits R, R-1, and R-2
[11] Exhibit R
[12] Exhibits S to OO

However, a comparison of the total amount of zero rated sales for the year 1999, as reflected in the Summary of Zero-Rated Sales[13], with the amount supported by the credit advices from Citibank disclosed the following difference:

Summary of Zero-Rated Sales	$2,256,019.94	P87,229,456.14
Citibank Credit Advices	2,200,583.73	86,018,617.42[14]
Difference	$ 55,436.21	P 1,210,838.72

Thus, out of the reported 1999 zero-rated sales of P87,229,456.14, petitioner was able to substantiate only the amount of P86,018,617.42.

As to the last requirement, petitioner failed to prove that the entire amount of P3,924,761.37 was supported by valid VAT invoices and official receipts.

The commissioned Independent CPA correctly disallowed the amount of P171,630.50 of the input taxes claimed due to the following reasons:[15]

EXCEPTION	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Input Taxes Claimed on Purchases of Services Supported by VAT Official Receipts (ORs) Printed with "TIN" only	P 1,072.72	P 256.36	P 148.63	P 342.72	P 1,820.43
Erroneous Computation of Input Taxes Claimed on Purchases of Services	775.83	2.72	-	721.75	1,500.30
Input Taxes Claimed on	-	1,209.09	3,848.23	-	5,057.32

[13] The zero-rated sales in Philippines Pesos in the Summary of Zero-Rates Sales tied up with the zero-rated sales figure in the 1999 Quarterly VAT Returns. See Exhibit WW
[14] Using the 1999 Average BSP Conversion Rate of $1.00 = P39.0890.
[15]Exhibit PP

EXCEPTION	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Purchases of Services Supported by Documents Other than VAT Ors					
Input Taxes Claimed on Purchases of Services Supported by VAT ORs dated Outside the Period of Claim	-	-	-	163,252.45	163,252.45
TOTAL	**P1,848.55**	**P1,468.17**	**P3,996.86**	**P164,316.92**	**P171,630.50**

As already discussed, petitioner agreed with the above disallowance.

However, a further examination of the records reveals that an additional P67,524.00 of the input taxes claimed should be disapproved, detailed as follows:

EXCEPTION	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Input Taxes on Purchases of Services Supported by Documents Other Than VAT ORs	P 25,836.50[16]	-	-	-	P 25,836.50
Input Taxes on Purchases of Services Supported by VAT OR with No Date	8,315.94[17]	-	-	-	8,315.94
Input Taxes on	90.91[18]	90.91[19]	-	-	181.82

[16] See RR-20 to RR-23.
[17] See RR-120 and RR-174.

EXCEPTION	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Purchases of Services Supported Provisional Receipts and with no BIR Permit					
Input Taxes on Purchases of Goods Supported by VAT invoices not in the Company's name	90.46[20]	-	-	-	90.46
Input Taxes with No Supporting Documents[21]	16,926.12	15,569.45	-	603.71	33,099.28
TOTAL	**P51,259.93**	**P15,660.36**	-	**P603.71**	**P67,524.00**

The aggregate substantiated input taxes based on the evidence offered by petitioner amounted to P3,685,606.87, broken down as follows:

Total Input VAT per 1999 Quarterly VAT Returns	P4,144,672.49
Less: a) Disallowance per Independent CPA	171,630.50
b) Disallowance per Court's Verification	67,524.00
c) Output VAT per 1999 Quarterly VAT Returns	219,911.12
Total Substantiated Input VAT	**P3,685,606.87**

Thus, an allocation of the above substantiated input VAT to the verified zero-rated sales that have been accounted for in accordance with the regulations of BSP would result to a refundable amount of P3,634,446.68 , computed as follows:

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[18] See RR-364.
[19] See SS-117
[20] See RR-138.
[21] Purchases from AT & T Credit

$$\frac{P\,86{,}018{,}617.42}{P87{,}229{,}456.14} \times P3{,}685{,}606.87 = \underline{P3{,}634{,}446.68}$$

WHEREFORE, premises considered, petition is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED TO REFUND** or in the alternative, **TO ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of ***Three Million Six Hundred Thirty Four Thousand Four Hundred Forty Six Pesos and 68/100 (P3,634,446.68)*** representing excess/unutilized input VAT paid for the period January 1, 1999 to December 31, 1999.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the 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