REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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TAKENAKA CORPORATION PHILIPPINE BRANCH,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE
Respondent.

C.T.A. CASE NO. 6414

Members:

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

Promulgated:

DEC 2 2 2004

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DECISION

BAUTISTA, L., J.:

This instant case seeks for the refund or issuance of a tax credit certificate in the total amount of **THREE MILLION ONE HUNDRED EIGHTY THOUSAND FOUR HUNDRED FORTY FOUR PESOS AND 66/100 (P3,180,444.66),** allegedly representing petitioner's unutilized and unapplied input value-added taxes it paid on its domestic purchases of goods and services directly attributable to its zero-rated sales for the 1st and 2nd quarters of the taxable year 2000.

Petitioner is a foreign corporation duly organized and existing under the laws of

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Japan, duly licensed to transact business in the Philippines through its branch office located at Andrews Avenue, Villamor Airbase, Pasay City *(par. 1, Petition for Review).* It is registered with the Bureau of Internal Revenue as a value-added tax (VAT) entity as evidenced by its Certificate of Registration bearing the number OCN 9RC0000045182 *(Exhibit A).*

For purposes of constructing the Ninoy Aquino International Airport Passenger Terminal III, petitioner, as a sub-contractor, entered into an On-shore Construction Contract with the Philippine International Air Terminals Co., Inc. (PIATCO) *(par. 5, Petition for Review).*

For the 1st and 2nd Quarters of the taxable year 2000, petitioner filed its quarterly Value-Added Tax Returns on April 19, 2000 and July 20, 2000, respectively, declaring the following amounts:

Quarter Involved	Exhibit	Date Filed	Zero-rated Sales	Input Tax Carried-over	Domestic Purchases	Input VAT	Total Available Input Tax
1st Qtr	D	04/19/00	P 0.00	P 987,428.04	P 3,396,636.13	P 339,663.58	P1,327,091.62
2nd Qtr	F	07/20/00	0.00	1,327,091.62	15,863,245.74	1,586,325.24	2,913,416.86
Total			P 0.00	P2,314,519.66	P19,259,881.87	P1,925,988.82	P4,240,508.48

Subsequently, on May 17, 2001, petitioner filed its Amended Quarterly Value-Added Tax Return for the 1st Quarter of the year 2000 disclosing a reduced amount of its total input tax. Likewise, on October 25, 2001, petitioner filed its Amended Quarterly Value-Added Returns for the 2nd Quarter of the taxable year 2000 claiming a reduced amount of input tax for the said period The amendments made are as follows:

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Quarter Involved	Exhibit	Zero-rated Sales	Domestic Purchases	Input VAT
1st Qtr	E	-	P 3,396,636.13	P 339,663.58
2nd Qtr	M	P 511,729,302.00	28,407,813.24	2,840,781.08
Total		P511,729,302.00	P31,804,449.37	P3,180,444.66

Based on the Amended Quarterly Value-Added Tax Returns filed by petitioner, its total input value-added tax paid for the 1st and 2nd quarters of the taxable year 2000 amounts to P3,180,444.66. On November 16, 2001, petitioner filed an Application for Tax Credits/Refunds for its total input tax paid for the 1st and 2nd quarters of the taxable year 2000 with the Revenue District Office No. 51 of the Bureau of Internal Revenue.

Without any favorable response from the Bureau of Internal Revenue as regards its claim, and to toll the running of the two (2)-year prescriptive period within which a claim for refund may be filed as allowed by law, petitioner filed the instant Petition for Review with this Court on March 25, 2002.

On April 19, 2002, respondent filed through registered mail, his Motion for Extension of Time to File Answer, which was granted by this Court in an Order dated May 15, 2002, giving respondent a period of thirty (30) days within which to file his Answer.

The period given by this Court, as stated in its Order of May 15, 2002, having expired on May 19, 2002, respondent, on June 21, 2002 filed for a Motion to Admit Answer attaching a copy of his Answer. However, in a Resolution dated August 23, 2002, this Court denied respondent's motion and effectively declared respondent in default, pursuant to Section 4, Rule 9 of the New Rules of Court. Respondent's Motion

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to Lift the Order of Default was likewise denied by this court in a November 11, 2002 Resolution.

On September 2, 2004, this case was submitted to Decision, after the submission of petitioner's Memorandum dated August 27, 2004.

The two (2) issues this Court is tasked to resolve are as follows:

1. Whether or not petitioner is entitled to claim a refund or the issuance of a tax credit certificate in the amount of **THREE MILLION ONE HUNDRED EIGHTY THOUSAND FOUR HUNDRED FORTY FOUR PESOS AND 66/100 (P3,180,444,66),** allegedly representing its unutilized input value-added tax paid on its domestic purchases or goods and services directly attributable to its zero-rated sales to PIATCO, pursuant to Section 112 of the 1997 Tax Code; and

2. Whether or not petitioner's creditable input tax claimed for the 1st and 2nd quarters of the taxable year 2000 in the amount of **P3,180,444.66** are substantiated by documentary evidence.

Petitioner maintains that its sales of services to PIATCO are subject to VAT at zero percent (0%). It alleges that it is entitled to a refund of its input value-added payments which are directly attributable to its zero-rated sales. Petitioner relies on Section 108 (B)(3), in relation to Sections 110 (B) and 112 (A) of the 1997 Tax Code as well as Section 3 of Revenue Memorandum Circular No. 74-99 and VAT Review Committee Ruling No. 011-2003 dated January 13, 2003 issued in its favor, the provisions of which are quoted below for easy reference:

> SEC. 108. ***Value-Added Tax on Sale of services and Use or Lease of Properties. -***
>
> (A) xxx
> *(B) Transactions Subject to Zero Percent (0%) Rate.-*
> (1) xxx
> (2) xxx
> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is

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a signatory effectively subjects the supply of such services to zero percent (0%) rate.

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 sales 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.

REVENUE MEMORANDUM CIRCULAR NO. 74-99

Section 3. ***Tax Treatment of Sales Made by a VAT Registered Supplier from the Customs Territory, to a PEZA Registered Enterprise.*** -

xxx xxx xxx

(3) In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to ART. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the "Cross Border Doctrine" of the VAT System.

VAT COMMITTEE RULING NO. 11-2003, January 13, 2003

"Therefore, sale of goods and services rendered by Takenaka to

PIATCO are subject to the zero percent (0%) VAT and requires no prior approval for zero rating based on RMC 74-99. Accordingly, Takenaka is entitled to refund or issuance of a Tax Credit Certificate (TCC) covering all its accumulated VAT input taxes in relation to its services rendered to PIATCO and from its purchase of goods and services from duly registered VAT taxpayers, duly supported by a VAT invoice or official receipt conforming with the requirements of Section 113 and 237 of the Tax Code of 1997; provided that the application for refund or issuance of a Tax Credit Certificate (TCC) is made within two years after the close of the taxable quarter when the sales were made."

After a thorough scrutiny of the records of the case, this Court rules to grant petitioner's claim.

In the most recent case of **EG & Omni, Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 5987, March 26, 2004**, this Court had enumerated the requisites essential for the entitlement of a claim for refund or issuance of a Tax Credit Certificate of unutilized or unapplied input VAT, to wit:

1. There must be zero-rated or effectively zero-rated sales;
2. That input taxes were incurred or paid;
3. That the input taxes are attributable to such zero-rated or effectively zero-rated sales;
4. That the input taxes were not applied against any output VAT liability; and
5. The claim for refund was filed within the two-year prescriptive period.

Petitioner's contention that its sales to PIATCO, a PEZA-registered enterprise, is subject to VAT at zero percent (0%) is correct. The provision of Section 108(B)(3) is clear and unambiguous. Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subject the supply of such services to zero percent (0%) rate. PIATCO, being a PEZA registered entity, as evidenced by the Philippine Economic Zone Authority (PEZA) Certificate of Registration No. EZ-98-01 issued in favor of Philippine International Air

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Terminals Co. (PIATCO) on February 3, 1998 *(Exhibit B)*, is evidently covered under Section 108 (B)(3) of the 1997 Tax Code.

Moreover, petitioner's claim is further bolstered by the provisions of Revenue Memorandum Circular No. 74-99, and insofar as applicable, states that "x x x shall serve as sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations 7-95 effective as of the date of issuance of this Circular". Thus, this very same Revenue Memorandum Circular effectively dispensed with the requirement of a prior application for zero-rating.

Additionally, petitioner satisfactorily proved that it had no other service contract except PIATCO during the period involved in the claim. Therefore, the total amount of P3,180,444.66 as its unutilized input value-added tax claimed, was derived from its purchase of goods and services directly attributable to its zero-rated sales to PIATCO.

With regard to the second requirement, the report of the Court's Commissioned Independent Certified Public Accountant submitted its CPA Report *(Exhibit S)*, and had observed that, to quote:

B. Documentation of Zero-Rated Sales/Receipts

Findings and Observation:

1. We noted that the Zero-Rated Sales/Receipts indicated in the Schedule of Zero-Rated Sales/Receipts for the 2nd quarter of CY 2000 amounting to P511,729,302.00 (Exhibit X-2) is equivalent to the peso amount of the invoice, gross of withholding tax, issued by the Company to PIATCO in the same period.

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2. We noted that the VAT OR and invoice issued by the Company to PIATCO, which support the amount of Zero-Rated Sales/Receipts indicated in the said Schedule of Sales/Receipts, is stamped with the following notation:

   "ZERO-RATED SALES FOR DELIVERY TO PIATCO
   TO SPECIAL ECONOMIC ZONE
   VILLAMOR AIRBASE, PASAY CITY"

After an exhaustive examination and verification of the records and report submitted, this Court concurs with the above findings. The CPA Report very well showed the correct figure/amount of P511,729,302.00 on petitioner's Amended Quarterly VAT Returns *(Exhibit M)* as the peso equivalent of the value as reflected on the official receipts *(Exhibit W-1-1)* submitted by the petitioner.

However, with regard to the substantiation requirements, upon proper observation, this Court is in agreement with the CPA Report that, out of the total amount of refund claim P3,180,444.66, only the amount of P2.830,234.15 was fully supported by valid value-added tax invoices and official receipts. Below is the quoted portion of the CPA Report covering the difference, to wit:

A. Substantiation of Input Taxes Claimed

Findings and Observation

Based on our review and validation procedures, the amount of input VAT/taxes that we ascertained to be substantiated by supporting documents (i.e. VAT invoices for purchases of goods and VAT ORs for purchases of services) and correctly computed is P2,830,234.15 (Exhibit T-2), summarized as follows:

Quarter	Amount Per Claim	Exh. Ref	Amount per SGV Verification				Difference
			Goods	Services	Adjustments	Total	
First	P 339,663.58	*T-2*	P47,136.80	P 243,283.36	-	P 290,420.16	P 49,243.42
Second	2,840,781.08	*T-2*	1,395,691.10	1,178,916.63	(34,793.74)	2,539,813.99	300,967.09

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	P3,180,444.66	P1,442,827.90	P 1,422,199.99	P(34,793.74)	P2,830,234.15	P 350,210.51

Part of the P350,210.51 differences above represents input taxes amounting to **P56,097.88** shown in the VAT Listings (Exhibits U-1 to U-13) that are supported by invoices/Ors as follows:

Item	Nature	Exhibit Reference	Amount
1	Input VAT on purchases of goods not claimed in the same quarter when the supporting VAT invoices are dated	***Exhibit T-3*** *Item 2*	P 1,629.82
2	Input VAT on purchases of goods supported by invoices printed *after* January 1, 1996 marked with the suppliers' "TIN V" but not "TIN VAT"	***Exhibit T-3*** *Item 3*	4,445.82
3	Input VAT on purchases of services not claimed in the same quarter when the supporting VAT Ors are dated	***Exhibit T-3*** *Item 11*	50,022.24
	TOTAL		**P56,097.88**

The rest of the foregoing difference represents input taxes amounting to P294,112.63 indicated in said VAT Listings that are supported by the following:

Item	Nature	Exhibit Reference	Amount
1	Input VAT on purchases of goods supported by invoices without "BIR permit to print"	*Exhibit T-3* *Item 1*	P 45,525.40
2	Input VAT on purchases of goods supported by VAT invoices without the Company's name as payor	*Exhibit T-3* *Item 5*	391.73
3	Input VAT on purchase of goods supported by photocopied documents	*Exhibit T-3* Item 7	2,068.18
4	Input VAT on purchases of goods supported by documents	*Exhibit T-3*	16,519.92

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	other than invoices (i.e. ORs, cash register tapes, cash receipts, provisional receipt, supermarket receipt, guest check, etc.	Item 8	
5	Over claimed Input VAT on purchase of goods due to erroneous computation	*Exhibit T-3* Item 9	40.91
6	Input VAT on purchases of services supported by ORs pre-printed with the suppliers' "TIN V" and without "BIR permit to print"	*Exhibit T-3* Item 10	24,681.83
7	Input VAT on purchases of goods supported by invoices preprinted with the suppliers' "TIN-NON-VAT" or "TIN NV" and not "TIN VAT"	*Exhibit T-3* Item 4	509.09
8	Input VAT on purchases of services supported by Ors preprinted with the suppliers' "TIN-NON-VAT" or "TIN NV" and not "TIN VAT"	*Exhibit T-3* Item 12	4,125.24
9	Input VAT on purchase of services supported by VAT Ors without the Company's name as payor	*Exhibit T-3* Item 13	119.96
10	Input VAT on purchases of goods supported by invoices without "TIN VAT"	*Exhibit T-3* Item 6	47,745.45
11	Input VAT on purchases of services supported by documents other than Ors (i.e., invoices, cash register tapes, statement of account, express bill payment receipt, guest check, Republic of the Phil. (ROP) OR etc.)	*Exhibit T-3* Item 14	137,027.71
12	Input VAT claimed on application of advance payments or deposit but supporting documents were not presented for our review	*Exhibit T-3* Item 15	786.08
13	Input VAT on purchases of services or importation without Valid support	*Exhibit T-3* Item 16	11,614.63
14	Input VAT on purchases of services supported by photocopied documents (Original voucher and Ors were missing)	*Exhibit T-3* Item 17	2,956.12
	TOTAL		**P 294,112.25**
	Unaccounted Difference		0.38
	TOTAL		**P 294,112.63**

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Clearly then, the amounts of P56,097.88 and P294,112.63, or the aggregate total of P350,210.51, should be disallowed for the reason that, although there were available invoices supporting the said amounts, there were certain discrepancies on the face of invoices which would nonetheless render these invoices invalid for the purpose of claiming this instant refund.

As regards the fourth requisite, based on the records, the input taxes were not applied against any output tax liability, petitioner having no other output value-added tax liability to which the said input taxes may be applied as deductions. In fact, petitioner did not in any way carry-over the input value-added tax as of June 20, 2000, as shown in its Amended Quarterly Value-Added Tax Return for the 3rd Quarter of the taxable year 2000 (Exhibits "N" & "N-1").

Lastly, petitioner's administrative claim for refund was filed on November 16, 2001 while its judicial claim for refund was filed with this Court on March 25, 2002. The reckoning of the two-year prescriptive period would start from April 19, 2000, the period when petitioner filed its 1st quarter Quarterly Value-Added Tax Return was filed, and July 20, 2000, the date when its 2nd quarter Quarterly Value-Added Tax Return was filed. Thus, based on the period required by law, petitioner had until April 19, 2002 and July 22, 2002 within which to file its claims for the 1st and 2nd quarters of the taxable year 2000, respectively. Apparently, petitioner's claim for refund fell well within the two-year prescriptive period.

IN VIEW OF THE FOREGOING, the instant Petition for Review is hereby **PARTIALLY GRANTED** in a reduced amount of **TWO MILLION EIGHT HUNDRED THIRTY THOUSAND TWO HUNDRED THIRTY FOUR PESOS AND 15/100 (P2,830,234.15)** computed as follows:

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Amount claimed	P 3,180,444.66
Less: Disallowances	350,210.51
(Per report of commissioned Independent CPA)	---------------
TOTAL	P 2,830,234.15
	==========.

Accordingly, respondent is hereby **ORDERED** to **REFUND** or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner, in the amount of P2,830,234.15 representing unapplied or unutilized input value-added taxes for the 1st and 2nd quarters of the taxable year 2000.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
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

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