REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIL CARTOONS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5588

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 31 2000

x - x

DECISION

This is a Petition for Review filed by Petitioner FIL CARTOONS, INC., against Respondent COMMISSIONER OF INTERNAL REVENUE, for failure of the latter to act on the former's claim for refund of the value-added taxes (VAT) it paid on its domestic purchases of goods and services in the amount of P2,425,589.54 for the period covering January 1 to December 31, 1996.

As represented, Petitioner is a corporation organized and existing under the laws of the Philippines with principal office at Pioneer cor. Reliance Streets, Mandaluyong City. It is engaged in the business of production and processing of animated film cartoons exclusively for export and is duly registered with the Bureau of Internal Revenue (BIR) as a VAT enterprise under VAT Registration Certificate No. 410-000-054-302 (Exh. A).

For the period January 1 to December 31, 1996, Petitioner allegedly generated and recorded zero-rated foreign currency denominated sales with a peso equivalent of P127,476,286.81, the consideration for which was paid for in US dollars inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (TSN, September 24, 1998, p. 23-24; Exhs. B, C, D, E, J-1 and K).

For the same period alleged, Petitioner paid VAT input taxes on its domestic purchases of goods and services amounting to P2,700,521.67 and had an output VAT of P274,932.14, attributable to its local sales of its obsolete office furniture and fixtures, etc. and rent income (Exhs. B, C, D and E).

Pursuant to Section 106(a) [now Section 112(a)] of the Tax Code, Petitioner filed with the Respondent on June 30, 1997 a claim for refund in the amount of P2,425,589.54 (Exh. J-1) representing all the input taxes that it allegedly paid on its local purchases for the period January 1 to December 31, 1996, net of the output tax aforesaid.

The administrative claim for refund was not acted upon by Respondent, hence, on March 31, 1998, Petitioner filed with this Court the instant Petition for Review.

Petitioner presents the proposition, as reason of the Petition for Review, that its sales of services to non-resident foreign companies is subject to 0% VAT under Section 102(a)(2) [now Section 108(B)(2)] of the Tax Code, stated hereunder, and therefore not subject to any output tax, hence, it is entitled to the refund of the input taxes it paid during the period January 1 to December 31, 1996.

> **Section 102.** ***Value-added tax on sale of services.*** - (a) *Rate and base of tax.* - There shall be levied, assessed and collected, a value-added tax equivalent to 10% percent of gross receipts derived by any person engaged in the sale of services. The phrase "sale of services" means the performance of all kinds of services for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of personal property; lessors or distributors of cinematographic films;

> persons engaged in milling, processing, manufacturing or re-packing of goods for others; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties: *Provided* That the following services performed in the Philippines by VAT – registered persons shall be subject to 0%:
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> (1) Processing, manufacturing or re-packing goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency, inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines.
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> (2) Services other than those mentioned in the preceding sub-paragraph, the consideration for which is paid for in acceptable foreign currency which is remitted inwardly to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines.
>
> (3) x x x

On the other hand, Respondent, in the usual token of a defense, argued that (1) the petition states no cause of action, (2) in an action for refund, the taxpayer has the burden of proof to show that the taxes paid were erroneously or illegally collected and (3) claims for tax refunds are strictly construed against the taxpayer. Thus, he prayed that judgment be rendered against herein Petitioner.

Taking into account CTA Circular No. 1-95, Petitioner engaged the services of the accounting firm of R.S. Bernaldo and Associates, to verify the accuracy of Petitioner's claim for refund. Atty. Miguel Trinidad, representing the said accounting firm, recommended the disallowance of the amount of P33,520.10 due to non-compliance with invoicing requirements and thus recommended the refund of the amount of P2,392,069.43.

Hence, the issue We are tasked to resolve is whether or not Petitioner is entitled to the refund of P2,392,069.43 allegedly representing petitioner's unutilized input taxes for the year 1996.

Prefatorily, it must be stressed that Petitioner has complied with the prescriptive period provided under Section 106, in relation to Sections 110 and 230, of the Tax Code. The tax was paid on April 20, 1996, the date of filing of Petitioner's 1996 first quarter VAT return, while the instant claim for refund was filed with this Court on March 31, 1998, hence, it is concluded that the claim for refund has not yet prescribed.

The wordings of Section 102(a)(2) of the Tax Code furnishes Us the legal basis that services performed in the Philippines by a VAT registered person, other than those mentioned in paragraph (a)(1) of said Section 102, *supra*, shall be considered zero-rated services, provided it is paid for in acceptable foreign currency inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines (now Bangko Sentral ng Pilipinas [BSP]). Understood to mean what it plainly expressed, there must be evidence/documents that will show that indeed the taxpayer had actually made export sales, such as, sales invoices and bank credit memoranda, among others. However, in the case at bar, no such documents were presented or offered in evidence. The Court therefore has no evidence to consider in support of Petitioner's stance that it made export sales in the amount of P127,476,286.81 for the year 1996 and that the said sales were actually paid for in foreign currency and inwardly remitted to the Philippines in accordance with BSP regulations.

As indicated above, Petitioner failed to submit and offer as evidence the sales invoices, bank credit memos, among others, in support of his case. Petitioner cannot expect the Court to go beyond evaluating evidence which are not on hand. Furthermore, Petitioner failed to submit the documents required by Revenue Regulations No. 3-88 with respect to sale of services, thus, (1) authenticated Copy of the Contract showing the person for whom the services were rendered, the amount of the consideration and description of the services and the document evidencing actual payments; (2) Statement from the Central Bank or any of its accredited agent bank that the consideration in acceptable foreign currency has been inwardly remitted and accounted for in accordance with banking regulations; (3) Statement showing the amount of foreign currency of the consideration and the date of inward remittance, conversion rate into Philippine currency and the total peso value thereof.

In view thereof, there is absence of evidence on record that would warrant the relief sought for by Petitioner. It may not be amiss to point out that in a claim for refund, it is incumbent upon the Petitioner to show that it is entitled thereto, otherwise, failure on its part to prove the same is fatal to its claim for refund. This is true since claims for refund are construed strictly against the claimant for it partakes of the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95).**

Inasmuch as Petitioner failed to satisfactorily prove that its sales are zero-rated under Section 102(a)(2) of the Tax Code as well as evidence with respect to sale of its services, the Court will no longer dwell on the propriety of the purchase invoices presented by it as part of its evidence, as it has become moot and academic. As stated earlier, the evidence adduced by Petitioner are insufficient for the grant of the relief sought for.

IN THE LIGHT OF ALL THE FOREGOING, this Court hereby **DENIES** the claim for refund of Petitioner for lack of merit. No costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
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