REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INTEL PHILIPPINES MANUFACTURING, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5318

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 16 1998

x - x

DECISION

This is a petition seeking for the refund of value added tax paid by petitioner on domestic purchases of taxable goods and services in the amount of ₱335,778.19 for the period January 1, 1994 to March 31, 1994.

The factual backdrop of the case are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws. It is primarily engaged in the business of designing, developing, manufacturing and exporting advance and large-scale integrated circuit components or "ICs". As such, it registered itself as a value-added tax entity pursuant to Section 107 of the Tax Code effective January 1, 1988, evidenced by VAT Registration Certificate No. 32A-3-002649 (Exh. B). Petitioner is likewise registered with the Board of Investments as a preferred pioneer

327

enterprise, evidenced by BOI Certificates of Registration Nos. 85-1010 and EP 89-498 (Exhs. A and A-1).

From January 1, 1994 to March 31, 1994, petitioner generated and recorded zero-rated export sales amounting to ₱441,573,859.18 (Exh. C-2), which were allegedly paid to petitioner in acceptable foreign currency and was inwardly remitted in accordance with existing regulations of the Central Bank. For the said quarter, petitioner paid VAT input taxes amounting to ₱8,423,656.48 on its domestic purchase of taxable goods and services and ₱334,622.00 on its importation of goods, or a total of ₱8,758,278.48 (Exh. C-2).

On November 2, 1994, petitioner filed with the One-Stop-Shop Inter Agency Tax Credit and Duty Drawback Center of the Department of Finance an application for tax credit/refund of VAT input taxes paid on domestic purchase of goods and services in the reduced amount of ₱8,025,995.34 and on importation of goods amounting to ₱334,622.00 (Exh. F) in accordance with Section 106(a) of the Tax Code, to state:

> **SECTION 106.** ***Refunds or tax credits of input tax.*** - (a) *Export Sales.* - An exporter who is a VAT-registered person may within two years from the date of exportation, apply for the issuance of a tax credit certificate or refund of the input tax attributable to the goods exported, to the extent that such input tax has not been applied to output tax and upon presentation of proof that the foreign exchange proceeds has been accounted for in accordance

with the regulations of the Central Bank of the Philippines.

On February 23, 1995, the Bureau of Internal Revenue issued Tax Credit Certificate SN 005673 amounting to ₱8,024,839.15, leaving a balance of ₱335,778.19 out of the total claim of ₱8,360,617.34 (Exhs. G and H). There being no action on the part of herein respondent as to the remaining balance and the two-year prescriptive period was about to lapse, petitioner filed the instant petition on January 3, 1996.

Respondent, in her Answer, raised the following Special and Affirmative Defenses:

> 8. Petitioner's claim for refund of alleged input taxes paid is still under investigation/examination by the BIR;
>
> 9. Petitioner failed to show compliance with the provision of Section 16(c)(3) of Revenue Regulations No. 5-87. as amended by Revenue Regulations No. 3-88 and the substantiation requirement under II, C of Revenue Memorandum Order No. 40-94;
>
> 10. Petitioner has not shown that the alleged VAT input taxes attributable to its export sales have not yet been applied to the output tax and that the alleged total foreign exchange proceeds have been accounted for by the Central Bank;
>
> 11. In an action for tax refund/credit the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund;
>
> 12. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;

> 13. Well-settled is the rule that claims for refund are construed against claimants since it partakes of the nature of an exemption from taxation;

The lone issue for determination is whether or not petitioner has fully substantiated with evidence its claim for refund or tax credit of the remaining amount of ₱335,778.19.

After an examination of the evidence submitted, We find for the petitioner.

Petitioner anchors its claim on Section 8(a) of Revenue Regulations No. 5-87 and Section 106(a) of the 1994 Tax Code, *supra*.

Section 8(a) of Revenue Regulations No. 5-87 provides as follows:

> **SEC. 8.** ***Zero-rating.*** - (a) *In general.* - "A zero-rated sale is a taxable transaction for value-added tax purposes. A sale by a VAT-registered person of goods and/or services taxed at zero rate shall not result in any output tax. The input tax on his purchases of goods and services related to such zero-rated sale shall be available as tax credit or refundable in accordance with Sec. 16 of these Regulations. x x x"

Clearly from the above-quoted provisions, petitioner, as a VAT-registered export seller, is legally entitled to the refund sought. Likewise, petitioner by its presentation of the following documents was able to substantiate its claim:

3206

Exhs.	Description
L-1 to L-290	Transaction documents on goods imported by the petitioner for the 1st quarter of 1994
M-1 to M-5093	Transaction documents on export sales by the petitioner for the 1st quarter of 1994.
N-1 to N-826	Transaction documents on local purchases for the 1st quarter of 1994.
O, P, Q	Certifications issued by Punongbayan & Araullo dated February 17, 1997 to prove that all the transaction documents involving importation of goods, export sales and local purchases by the petitioner were examined and compared with the summaries accompanying said documents.

And as correctly pointed out by petitioner, "respondent even confirmed the taxability of petitioner's sales at zero percent (0%) pursuant to VAT Ruling No. 102(a)(1) - 402-88 (Exhibit "D"), issued in favor of petitioner which in part declares:

> "This refers to your letter dated May 19, 1988 stating that your company is a BOI-registered company on a pioneer status as export producer (per BOI Registration Certificate No. 85-1010); that your production of manufactured integrated circuits is exported 100% to your parent company, Intel Corporation, California U.S.A. and that the services are paid for in acceptable foreign currency."
>
> x x x
>
> In reply, please be informed that **services rendered by VAT-registered persons in connection with the processing, manufacturing or repacking of goods for 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 duly accounted for under the regulations of the Central Bank of the Philippines, shall be subject to zero rate (0%)** pursuant to Section 102(a)(1) of the Tax Code as amended by E.O. No. 273." (underscoring and emphasis ours)"

However, after taking into account the findings of petitioner's auditor, Punongbayan & Araullo, to wit:

1. We have noted instances where the dates of the suppliers' invoices and/or official receipts are not within the period covered in the application. The input taxes related to this finding amount to ₱240,884 for the period January 1 to March 31, 1994 (see Exhibit A). We were informed by the Company's accountants that these instances arose because the input on purchases were grouped and were all paid on March 30, 1994.

2. We also noted a transaction wherein the amount of input tax that should have been paid based on our computation does not agree with the amount based on the summary of input tax payments. The input tax pertaining to this transaction amounts to ₱77,715 which should have been ₱7,715 (see Exhibit A).

3. For input tax being applied for in the amount of ₱240, the corresponding supplier's invoice and/or official receipt does not represent original copies and only photocopies of the invoice and/or official receipt are on file (see Exhibit A) (p. 94, CTA records),

We are constrained to reduce the refundable amount to ₱164,654.19, computed as follows:

332

Amount being claimed	P335,778.19
Less: Official receipts not within the period covered in the claim for refund	(240,884.00)
Original copy of invoice/ receipt not found	(240.00)
Balance	94,654.19
Add: Overpaid input tax	70,000.00
Refundable amount	P164,654.19

WHEREFORE, in view of all the foregoing, respondent is hereby **ORDERED** to **REFUND** or in the alternative, **ISSUE** a TAX CREDIT CERTIFICATE in favor of petitioner the amount of P164,654.19 representing the balance of unutilized input taxes paid during the first quarter of 1994.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate 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