REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

AICHI FORGING COMPANY OF ASIA, INC.,
Respondent.

EB No. 384
(CTA Case No.7065)
Present:
ACOSTA, *PJ.*
CASTAÑEDA JR.,
BAUTISTA
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

JUL 3 0 2008 2:05 p.m.

x - x

DECISION

Casanova, J.

This is an appeal, by way of a Petition for Review,[1] filed by the petitioner-Commissioner of Internal Revenue (CIR) from the Decision[2] (*Assailed Decision*) of the Court of Tax Appeals Second Division (*CTA Second Division*) dated January 4, 2008 in CTA Case No. 7065 entitled, "*Aichi Forging Company of Asia, Inc., petitioner vs. Commissioner of Internal Revenue, respondent*" partially granting respondent-Aichi Forging Company of Asia (AICHI)'s Petition for Review thus, ordering the CIR to refund or issue a tax credit certificate in favor of AICHI the reduced amount of P3,239,119.25 representing the unutilized input VAT incurred for the months of July to September 2002, and from the Resolution[3]

[1] CTA En Banc Rollo, pp. 7-15.
[2] Annex "A", Petition for Review, CTA En Banc Rollo, pp. 20-37.
[3] Annex "B", Petition for Review, CTA En Banc Rollo, pp. 38-40.

(*Assailed Resolution*) dated March 13, 2008 denying CIR's Motion for Partial Reconsideration.

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

> *"Petitioner (AICHI) is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at Barrio Pulong Sta. Cruz, Sta. Rosa, Laguna.*
>
> *Respondent is the duly appointed Commissioner of Internal Revenue vested with authority to exercise the functions of said office, including inter alia, the power to refund any internal revenue tax 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 or of VAT input taxes attributed to zero-rated revenue, with office address at the BIR National Office Building, Diliman, Quezon City.*
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> *On May 19, 1995, petitioner was duly registered with the Bureau of Internal Revenue as a value-added tax entity, pursuant to Section 107 (now Section 236) of the Tax Code. Consequently, it was issued Certificates of Registration, with RDO Control No. 95-570-000481 (BIR Form No. 1556) and OCN IRC 0000148499 (BIR Form No. 2303).*
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> *Petitioner also registered its products, 'close impression due steel forgings' and 'tool and dies', with the Board of Investments (BOI) as a pioneer status, enjoying the privileges granted by the BOI. As such, it was issued Certificates of Registration Nos. 74-336, DP-92-057 & EP 95-132 by the Board of Investments.*
>
> *For the period covering July 1, 2002 to September 30, 2002, petitioner allegedly generated and recorded zero-rated sales in the amount of P131,791,399.00. Said amount was paid for to petitioner in acceptable foreign currency and was inwardly remitted, in accordance with existing regulations of the Central Bank of the Philippines, pursuant to Section 106 (A) (2) (a) (1), (2) and (3) of the Tax Code.*
>
> *Petitioner purportedly incurred and paid VAT input taxes amounting to P3,912,088.14 from domestic purchases of goods, services, capital goods and from importation of goods and capital goods which were all attributable to its zero rated sales. However, for purposes of the application for refund filed with the Department of Finance One Stop Shop Inter Agency Tax Credit and Duty Drawback Center, petitioner was able to substantiate only the amount of P3,891,123.82.*
>
> *On September 30, 2004, petitioner filed a claim for refund in the total amount of P3,891,123.82 with respondent, through the Department of Finance."*
>
> *(Assailed Decision, pp. 2-4.)*

After trial on the merits, the *CTA Second Division* promulgated the *Assailed Decision*[4] on January 4, 2008, the dispositive portion of which reads as follows:

> *"**WHEREFORE**, premises considered, the present Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the reduced amount of **THREE MILLION TWO HUNDRED THIRTY NINE THOUSAND ONE HUNDRED NINETEEN AND 25/100 PESOS** (P3,239,119.25), representing the unutilized input VAT incurred for the months of July to September 2002.*
>
> ***SO ORDERED."***

Not satisfied with the above decision, petitioner-herein CIR filed a "Motion for Partial Reconsideration[5]" on January 29, 2008. On February 28, 2008, counsel for AICHI filed an "Opposition (to the Motion for Reconsideration dated January 28, 2008)".[6]

In the *Assailed Resolution*[7] dated March 13, 2008, the *CTA Second Division* denied CIR's Motion for Partial Reconsideration for lack of merit.

On April 2, 2008, petitioner-CIR filed a "Motion for Extension of Time to File Petition for Review[8]" with the *CTA En Banc*. In a Resolution[9] dated April 8, 2008, the Court *En Banc* granted the said motion thereby giving petitioner a final and non-extendible period of fifteen (15) days from April 3, 2008 or until April 18, 2008, within which to file a Petition for Review. On April 18, 2008, petitioner-CIR filed the instant Petition for Review[10] with the *CTA En Banc*, praying that the Decision dated January 4, 2008 in CTA Case No. 7065 entitled, "*Aichi Forging Company of Asia, Inc., petitioner vs. Commissioner of Internal Revenue,*

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[4] Supra, note 2.
[5] CTA Second Division Rollo.
[6] CTA Second Division Rollo.
[7] Supra, note 3.
[8] CTA En Banc Rollo, p. 1.
[9] CTA En Banc Rollo, p. 5.
[10] Supra, note 1.

respondent" be reversed and set aside, and another decision be rendered denying petitioner's claim for refund for lack of jurisdiction.

Petitioner raised the sole issue[11] in the instant Petition for Review, to wit:

> WHETHER OR NOT THE DIVISION OF THE HONORABLE CTA ERRED IN RULING THAT THE RESPONDENT IS ENTITLED TO A REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE AMOUNT OF THREE MILLION TWO HUNDRED THIRTY NINE THOUSAND ONE HUNDRED NINETEEN AND 25/100 PESOS (P3,239,119.25) CONSIDERING THAT ITS PETITION FOR REVIEW WAS NOT FILED IN ACCORDANCE WITH THE PERIODS PRESCRIBED BY LAW.

The CTA *En Banc* promulgated a Resolution[12] on April 30, 2008, ordering the respondent-AICHI to file a Comment on the said Petition for Review, within ten (10) days from receipt of the said Resolution. In compliance with the said Resolution, AICHI filed a Comment[13] (To the Petition for Review dated April 16, 2008) on May 13, 2008.

After a careful and thorough evaluation and consideration of the records of the case, the Court *En Banc* finds no new matters which have not yet been considered and passed upon by the *CTA Second Division* in its assailed Decision and Resolution.

As aptly discussed by the *CTA Second Division*, and We quote, to wit:

> *"The petition is partly meritorious.*
>
> *Petitioner claims that as a registered value-added taxpayer it is qualified for zero-rating of its indirect export sales, pursuant to Sections 106 (A) (2) (a) (i), (ii) and (iii) and 108 (B)(1) of the NIRC of 1997, as amended. As such, it now claims the refund of unutilized input taxes incurred on its importation of goods and domestic purchases of goods and services for the period July 1, 2002 to September 30, 2002. The indirect export sales of the petitioner are not subject to 10% value-added tax but are zero-rated as these are sales to PEZA registered enterprise*

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[11] Ibid, p. 9.
[12] CTA En Banc Rollo, p. 45-46.
[13] Ibid, pp. 47-52.

and are direct exports. The input taxes were paid by petitioner on its domestic purchases of goods and services and capital goods and importation of goods, which are necessary in the ordinary course of its trade and business, as manufacturer of all kinds of steel and steel by products, particularly but not limited to closed impression die steel forging and automotive steel parts. The finished products manufactured were directly exported or sold to PEZA registered enterprises which is tantamount to indirect export sales and directly exported as expressly provided in the Tax Code for 1997. Petitioner further claims that having been registered in accordance with the provisions of the Omnibus Investments Code of 1981, it is entitled to the incentives provided thereon. Finally, petitioner avers that its claim for refund is supported by the testimonial and documentary evidence presented during the trial.

For a VAT registered entity whose sales are zero-rated, to validly claim a refund, Section 112 (A) of the NIRC of 1997, as amended, provides:

> '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: xxx'

Pursuant to the above provision, petitioner must comply with the following requisites: (1) the taxpayer is engaged in sales which are zero-rated or effectively zero-rated; (2) the taxpayer is VAT-registered; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

The Court finds that the first three requirements have been complied by petitioner.

With regard to the first requisite, the evidence presented by petitioner, such as the Sales Invoices (Exhibits "II" to "II-262", "JJ" to "JJ-431", "KK" to "KK-394" and "LL") shows that it is engaged in sales which are zero-rated.

57

The second requisite has likewise been complied with. The Certificate of Registration with OCN 1RC0000148499 (Exhibit "C") with the BIR proves that petitioner is a registered VAT taxpayer.

In compliance with the third requisite, petitioner filed its administrative claim for refund on September 30, 2004 (Exhibit "N") and the present Petition for Review on September 30, 2004, both within the two (2) year prescriptive period from the close of the taxable quarter when the sales were made, which is from September 30, 2002.

As regards, the fourth requirement, the Court finds that there are some documents and claims of petitioner that are baseless and have not been satisfactorily substantiated.

A careful scrutiny of petitioner's Quarterly VAT Return for the third quarter of 2002 readily reveals a discrepancy in the amount claimed by petitioner herein. We agree with the findings of the independent CPA that in computing the input VAT available for refund, petitioner did not deduct the output VAT for sales subject to VAT in the amount of P610,984.20 (Independent CPA's Report, Exhibit "MM").

It must be noted that as there is no output VAT imposed on zero-rated export sales, what the government reimburses or refunds to the claimant is the input VAT paid by such claimant on its purchases in the conduct of its business. Thus, there is a need for the input VAT paid to be substantiated by purchase invoices or official receipts. However, it is not only the export sales that should be proven, but also compliance with the requirements prescribed in Section 110, in relation to Section 113 of the NIRC of 1997, as amended, and as further implemented by Revenue Regulations No. 7-95.

Section 110 of the NIRC of 1997, as amended, provides:

> *' SEC.110. Tax Credits.-*
>
> *(A) Creditable Input Tax.-*
>
> *(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:*
>
> *xxx xxx*
>
> *(B) Excess Output or Input Tax.- If at the end of any taxable quarter the output tax exceeds the input*

tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: Provided, however, That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

xxx xxx.'

While, Section 113 of the same Code provides:

'SEC. 113.- Invoicing and Accounting Requirements for VAT-registered Persons.-

(A) Invoicing Requirements.- A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

xxx xxx.'

Corollary thereto, Section 4-108-1 of Revenue Regulations No. 7-95 (The Consolidated Value-Added Tax Regulations) prescribes the following informations which must appear on the face of receipts or invoices issued for the sale of goods by all VAT-registered entities:

'SEC. 4-108-1. Invoicing Requirements – All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN and address of the seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;

> *4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;*
> *5. the word 'zero-rated' imprinted on the invoice covering zero-rated sales; and*
> *6. the invoice value or consideration.*
>
> *In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.*
>
> *Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoices or receipts and this shall be considered as 'VAT Invoice'. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax.*
>
> *If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A 'VAT Invoice' shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the Code.*
>
> *The invoice or receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.'*

The law is very clear. Section 113 provides that 'a VAT registered person shall, for every sale, issue a duly registered VAT invoice receipt for every sale transaction'. Such VAT invoice or receipt must show the taxpayer's identification number, followed by the word 'VAT', the BIR Authority to imprint or BIR permit marker and the word 'zero-rated' imprinted on the invoice receipt covering a zero-rated sale.

Applying the applicable provisions of the law, We now proceed to the determination of the substantiation of petitioner's claim for refund.

After a careful review of the evidence on record, We adopt the findings of the Independent CPA in her Final Report, Annex G thereof, where she noted certain disallowable claims, for not being substantiated by sufficient documentary proofs which resulted to a discrepancy in the input VAT available for refund, to wit:

60

'Total exceptions noted during the examination of source documents:

Unsubstantiated amount of Input tax		
(Unlocated difference between the Schedules and Returns)	*20,105.01*	
Outside the period covered-local purchases and importation	*2,669.94*	
Name of payee is not indicated	*1,303.68*	
Official Receipts not available for examination	*16,941.74*	***41,020.37'***

In its Amended Quarterly VAT Return for the third quarter of 2002 (Exhibit "L"), petitioner declared that for the period covering July 1, 2002 to September 30, 2002, it generated and recorded zero rated export sales in the amount of P131,791,399.00.

To prove its alleged zero-rated export sales, petitioner presented in evidence the following documents:

1) Sales Invoices (Exhibits "II" to "II-262", "JJ" to "JJ-431", "KK" to "KK-394" and "LL"); and

2) Final Report of the Commissioned Independent CPA (Exhibit "MM").

A careful perusal of the above-mentioned documents, particularly the Final Report of the Commissioned Independent CPA reveals that the sales entered into by petitioner from July 1, 2002 to September 30, 2002 were all export sales to PEZA registered entities; hence, are considered indirect export sales. In his Final Report, the independent CPA made the following findings with regard to petitioner's zero-rated sales (Exhibit "MM"):

> *'It was noted that the amount of zero-rated sales and sales subject to 10% VAT were properly recorded in the books and reflected in the VAT declarations and returns filed with the BIR. Total sales of AICHI for the period covered by my examination is **P138,453,336.40** out of which **P6,109,763.40** is for the sales subject to VAT and **P132,160,058.44** for the zero-rated sales and **P183,514.50** is direct export sale. The total output VAT for the period covered by my examination is **P610,745.29** that is for the sales subject to 10% VAT.*
>
> *Zero-rated sales are sales to BOI and PEZA registered enterprises. AICHI's buyers for the zero-rated sales are the following companies:*

	JULY	AUGUST	SEPTEMBER	TOTAL
Aichi Steel Corporation	-	-	368,659.44	368,659.44
Asian Transmission	15,098,897.00	28,523,640.60	24,088,004.00	67,710,541.60

Corporation				
Isuzu Autoparts Mfg Corp.	8,412,728.62	10,200,579.86	7,334,430.14	25,947,738.62
Juntech Corporation	19,000.00	-	-	19,000.00
Laguna Autoparts Mfg Corp	243,390.00	340,746.00	299,022.00	883,158.00
Nidec Copal-HT	-	111,366.50	11,699.00	123,065.50
Toyota Autoparts Phils., Corp	7,164,480.75	10,734,206.62	19,204,782.92	37,107,895.29
Total	30,938,496.37	49,910,539.58	51,311,022.50	132,160,058.45"

Based on the factual circumstances of the case, the applicable law is Section 106 (A)(2)(a)(5) of the NIRC of 1997, as amended, which provides:

'SEC. 106. Value-added Tax on Sale of Goods or Properties.-

(A) Rate and Base of Tax.-
xxx xxx

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) Export Sales. – The term 'export sales' means:

xxx xxx

(5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws;

xxx xxx.'

Corollary thereto, Article 23 in relation to Article 77 (2) of Executive Order No. 226 (hereafter "E.O. 226"), otherwise known as the Omnibus Investments Code of 1987, provides that sales to registered zone enterprise shall be considered as export sales and the exporter shall be entitled to the benefits allowed by law for such transaction.

The evidence on record shows that petitioner made exportations to PEZA registered entities, which are considered a constructive exportations under E.O. 226. Therefore, applying the foregoing provisions to the case at bar, petitioner as a VAT-registered entity under Section 106 (A)(2)(a)(5) of the Tax Code, its sales or transactions are subject to VAT at 0% rate. Subject to the requirements prescribed in Section 112 (A) of the same Code, petitioner is therefore entitled to claim

62

refund or issuance of a tax credit certificate for input VAT taxes attributable to its export sales.

In sum, petitioner has sufficiently proved that it is entitled to a refund or issuance of a tax credit certificate representing unutilized excess input VAT payments for the period July 1, 2002 to September 30, 2002, which are attributable to its zero-rated sales for the same period, but in the reduced amount of P3,239,119.25, computed as follows:

Amount of Claimed Input VAT	*P*	*3,891,123.82*
Less:		
Exceptions as found by the ICPA		*41,020.37*
Net Creditable Input VAT	*P*	*3,850,103.45*
Less:		
Output VAT Due		*610,984.20*
Excess Creditable Input VAT	***P***	***3,239,119.25"***

(Assailed Decision, pp. 7-16.)

Petitioner argues that the administrative and judicial claims were filed beyond the period allowed by law and hence, the honorable Court has no jurisdiction over the same. In addition, petitioner further contends that respondent's filing of the administrative and judicial effectively eliminates the authority of the honorable Court to exercise jurisdiction over the judicial claim.

We are not persuaded.

Section 114 of the 1997 NIRC, and We quote to wit:

SECTION 114. Return and Payment of Value-added Tax. —

"(A) In General. — Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.

Xxx xxx xxx"

Based on the above-stated provision, a taxpayer has twenty five (25) days from the close of each taxable quarter within which to file a quarterly return of the amount of his gross sales or receipts. In the case at bar, the taxable quarter involved was for the period of July 1, 2002 to September 30, 2002. Applying Section 114 of the 1997 NIRC, respondent has until October 25, 2002 within which to file its quarterly return for its gross sales or receipts which it complied when it filed its VAT Quarterly Return on October 20, 2002.

In relation to this, the reckoning of the two-year period provided under Section 229 of the 1997 NIRC should start from the payment of tax subject claim for refund. As stated above, respondent filed its VAT Return for the taxable third quarter of 2002 on October 20, 2002. Thus, respondent's administrative and judicial claims for refund filed on September 30, 2004 were filed on time because AICHI has until October 20, 2004 within which to file its claim for refund.

In addition, We do not agree with the petitioner's contention that the 1997 NIRC requires the previous filing of an administrative claim for refund prior to the judicial claim. This should not be the case as the law does not prohibit the simultaneous filing of the administrative and judicial claims for refund. What is controlling is that both claims for refund must be filed within the two-year prescriptive period.

In sum, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed January 4, 2008 Decision and March 13, 2008 Resolution of the *CTA Second Division*. What the instant petition seeks is for the Court *En Banc* to view and appreciate the evidence in their own perspective of things, which unfortunately had already been considered and passed upon.

WHEREFORE, the instant Petition for Review is hereby **DENIED DUE COURSE** and **DISMISSED** for lack of merit. Accordingly, the January 4, 2008 Decision and March 13, 2008 Resolution of the *CTA Second Division* in CTA Case

No. 7065 entitled, *"AICHI Forging Company of Asia, Inc. petitioner vs. Commissioner of Internal Revenue, respondent"* are hereby **AFFIRMED *in toto***.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice