REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HITACHI GLOBAL STORAGE TECHNOLOGIES PHILIPPINES, CORP. [formerly Hitachi Computer Products (Asia) Corp.],
Petitioner,

- versus - C.T.A. CASE NO. 6312

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 09 2004
[signature]

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D E C I S I O N

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P25,023,471.84 allegedly representing excess input value-added tax (VAT) payments that are attributable to zero-rated export sales for the four taxable quarters of 1999.

Petitioner is a domestic corporation organized and existing under the laws of the Republic of the Philippines, with principal office at Special Export Processing Zone, Laguna Technopark, Binan, Laguna (*par. 1, Stipulated Facts*). It is primarily engaged in the business of manufacturing, exporting, buying, selling or otherwise dealing in at wholesale electric, electronic and software products and industrial properties, including but not limited to hard disk drive and component parts and supplies used or employed in or related to the manufacture of such products (*Exhibit A-1*).

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Petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with Certificate of Registration bearing RDO Control No. 94-570-000298 dated June 28, 1994 (*Annex A, Petition for Review, page 6, CTA records*). It is likewise registered as an Export Enterprise with the Export Processing Zone Authority pursuant to the provisions of Presidential Decree No. 66, as amended, with Certificate of Registration No. 94-28 dated May 11, 1994 (*Annex B, Petition for Review, page 7, CTA records*).

On October 7, 1994, the Export Processing Zone Authority, through its Special Board, issued Resolution No. 94-212 approving petitioner's application for pioneer status of its small-sized, high density hard disk drive and thin film magnetic head manufacturing facility. It was further resolved that petitioner's facility/project shall be entitled to six (6) years income tax holiday (*Exhibit B*).

Petitioner alleges that for the taxable year 1999, it generated export sales in the amount of P21,608,333,731.27 and paid input VAT amounting to P25,023,471.84 (net of output tax) on its domestic purchases of goods and services which are directly attributable to its export sales for the same year.

Petitioner believes that since its export sales were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas, the same are subject to zero percent (0%) VAT pursuant to Section 106(A)(2)(a)(1) of the Tax Code and that it can claim a refund or tax credit of the unutilized input VAT attributable thereto in accordance with Section 112 of the Tax Code.

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On August 4, 2000, petitioner filed an administrative claim for refund corresponding to its alleged excess/unutilized input VAT payments of P25,023,471.84 (*Annex K, Petition for Review, page 66, CTA records*).

Due to respondent's inaction on its claim, petitioner instituted the present appeal on July 2, 2001.

Respondent, in his Answer filed on August 7, 2001, interposed the following Special and Affirmative Defenses:

> "4. Petitioner being allegedly registered with the Philippine Economic Zone Authority, is exempt from all taxes, including value-added tax, pursuant to Section 24 of Republic Act No. 7916 in relation to Section 103 of the Tax Code, as amended by RA 7716. Since its sales are not zero-rated but are exempt from VAT, petitioner is not entitled to refund of input tax pursuant to Section 4.103-1 of Revenue Regulations No. 7-95. Its registration as a VAT taxpayer was, therefore, erroneous;
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> 5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by respondent's Bureau;
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> 6. The amount of P2,388,126.68 being claimed by petitioner as alleged excess creditable VAT input taxes paid for the period May to December was not properly documented;
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> 7. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
>
> 8. Petitioner must show that it has complied with the provisions of Sections 204(C) and 229 of the 1997 Tax Code on the prescriptive period for claiming tax refund/credit; and
>
> 9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation."

As jointly stipulated by the parties, the issues to be resolved in this case are:

1. Whether petitioner's sales are exempt from VAT or are zero-rated;

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2. Assuming arguendo that the petitioner's sales are zero-rated, whether or not the VAT input taxes are attributable to zero-rated sales for the 1st, 2nd, 3rd and 4th quarters of 1999;

3. Whether or not the creditable VAT input taxes of petitioner for the 1st, 2nd, 3rd and 4th quarters of 1999 are substantiated by documentary evidence; and

4. Whether or not the said unapplied or unutilized creditable input for the 1st, 2nd, 3rd and 4th quarters of 1999 were carried over to the succeeding taxable quarter(s) and applied against any output tax liability of the petitioner for the said period.

We shall first tackle the issue of whether or not petitioner's export sales are exempt from VAT.

Respondent, in his Answer, argued that petitioner, being allegedly registered with the Philippine Economic Zone Authority (formerly EPZA), is exempt from all taxes, including VAT, pursuant to Section 24 of Republic Act No. 7916, which reads in pertinent part, thus:

> **SECTION 24.** ***Exemption from Taxes Under the National Internal Revenue Code.*** — Any provision of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu of paying taxes, five percent (5%) of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government. x x x

Respondent also invoked Section 103 (*now 109*) of the Tax Code, which states that:

> **SECTION 103.** ***Exempt Transactions.*** — The following shall be exempt from the value-added tax:
>
> xxx xxx xxx
>
> (q) Transactions which are exempt under special laws, except those granted under Presidential Decree Nos. 66, 529, 972, 1491, and

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1590, and non-electric cooperatives under Republic Act No. 6938, or international agreements to which the Philippines is a signatory;

Based on these two provisions of law, respondent contended that petitioner is exempt from VAT and that petitioner's VAT registration was erroneous.

The issue presented is not novel. In the earlier case of ***Hitachi Computer Products (Asia) Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5651, promulgated on February 2, 2001***, involving the same parties and issues, this court had the occasion to rule on the matter, thus:

> "On this point, we agree with the Respondent (petitioner herein) that if an entity is registered with PEZA as an ecozone enterprise and is remitting 5% of its gross income to the national government, it is exempt from the payment of VAT. However, We do not agree that the aforequoted provisos are applicable in the case at bar. First, Petitioner is under income tax holiday and is not remitting 5% of its gross income to the national government. Second, Section 103 (q) of the Tax Code, as amended, specifically excepted, among others, transactions under Presidential Decree No. 66, from transactions which are exempt from VAT under special laws, hence Petitioner, being registered with the EPZA under the provisions of Presidential Decree No. 66 is not exempt from the payment of the value-added tax.
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> It bears stressing that under Section 23 of Republic Act No. 7916, two different fiscal incentives are granted to an ecozone enterprise, to wit:
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> > "SEC. 23. Fiscal Incentives. — Business establishments operating within the ECOZONE shall be entitled to the fiscal incentives as provided for under the Presidential Decree No. 66, the law creating the Export Processing Zone Authority; or those provided for under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987."
>
> Based on the aforequoted Section 23 of RA 7916, a PEZA registered enterprise has the option to choose between two sets of fiscal incentives. One, is that provided for under Presidential Decree No. 66, as amended, and Section 24 of RA 7916 which includes the 5% preferential tax on gross income earned which is in lieu of national and local taxes; and second, as those provided for under Book VI of Executive Order No.

> 226, including but not limited to an income tax holiday (ITH) of 4 to 6 years depending on whether or not an entity is registered as a pioneer or non-pioneer enterprise. If an ecozone enterprise chooses the 5% preferential tax, it is exempt from payment of all national and local taxes. However, if an ecozone enterprise chooses the income tax holiday, it is only exempt from payment of the income tax but still subject to other national internal revenue taxes including the value-added tax.
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> It must be pointed out that an ecozone enterprise cannot avail of these two sets of fiscal incentives at the same time. This was explained by the Bureau of Internal Revenue in VAT Ruling Nos. 037-98; 043-98; 027-99; and 063-99 (Read-Rite Philippines Inc. (Formerly Sunward Technologies Phils., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5659, September 29, 2000). Since petitioner availed of the fiscal incentives under Executive Order No. 226, that is, an income tax holiday for six years starting from October 7, 1994 as evidenced by Certificate of Board Resolution No. 94-212 (Exh. L-1) it became subject to value-added tax."

The aforesaid decision was affirmed in toto by the Court of Appeals in the case entitled ***Commissioner of Internal Revenue vs. Hitachi Computer Products (Asia) Corporation, CA-G.R. SP No. 63340 dated February 7, 2002***. In its decision, the Court of Appeals explicitly ruled that "while the Tax Code specifically excepted from the coverage of VAT transactions which are exempted under special laws, *those transactions made under Presidential Decree No. 66, among others, are deemed excluded and fall outside the umbrage of the said exemption*. Proceeding from the indisputable fact that HITACHI is registered with EPZA under the provisions of Presidential Decree No. 66, it behooves Us to surmise that the latter could not be deemed covered by the exemption enumerated under Sec. 103."

It is worth stressing that the respondent failed to introduce any evidence to support his allegation that petitioner is exempt from the value-added tax. Petitioner, however, was able to establish that it enjoyed an income tax holiday during the subject period of the claim, as evidenced by the EPZA Certificate of Board Resolution (*Exhibit B*). Hence, petitioner was only exempt from income tax but was still subject to other national internal revenue taxes such as the VAT.

We proceed to the determination of whether or not petitioner's export sales for the four taxable quarters of 1999 qualify for zero-rating.

Petitioner maintained that its export sales are not subject to the 10% value-added tax but are zero-rated pursuant to Section 106(A)(2)(a)(1) of the Tax Code, to wit.

> **"SEC 106.** ***Value-Added Tax on Sale of Goods or Properties.*** **-**
>
> "(A) xxx
>
> "(1) xxx
>
> "(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
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> "(a) *Export Sales.* - The term "**export sales**" means:
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> "(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

To prove its export sales for taxable year 1999 and the foreign currency proceeds thereof, petitioner presented in evidence various export invoices, airway bills, export declarations, summary of collections, netting schedule, bank passbooks and certifications, Deed of Assignment of Trade Receivables and Letter of Citibank, N.A. Tokyo to petitioner regarding the purchase of trade receivables of petitioner.

However, a thorough scrutiny of the preceding documents revealed that petitioner's export sales invoices failed to comply with the invoicing requirements under

Section 113(A) in relation to Section 237 of the Tax Code and as implemented by Section 4.108-1 of Revenue Regulations No. 7-95, which are all quoted herein below:

> **"SEC. 113.** ***Invoicing and Accounting Requirements for VAT-Registered Persons-***
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> **"(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." *(Emphasis supplied)*

> **"SEC. 237.** ***Issuance of Receipts or Sales or Commercial Invoices.*** – All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, **issue duly registered receipts or sales or commercial invoices**, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service xxx." (*Emphasis supplied*)

> 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:
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> 1. the name, TIN and address of 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.
>
> xxx xxx xxx

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> 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 a "VAT Invoice". All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax."(*Emphasis supplied*)

Petitioner's export sales invoices do not have pre-printed taxpayer's identification number (TIN) followed by the word VAT nor do the sales invoices bear the imprinted word "zero rated" which is in contravention with Section 113(A) of the Tax Code and Section 4.108-1 of Revenue Regulations No. 7-95. Also, the invoices were not duly registered with the Bureau of Internal Revenue as required under Section 237 of the Tax Code. There was no BIR authority to print or BIR permit number indicated in the said invoices.

On account of petitioner's violation of the VAT law and regulations, this court cannot consider the export sales invoices as valid evidence of zero-rated sales of goods for VAT purposes. Although petitioner submitted other documents such as airway bills, export declarations and proofs of foreign currency remittances, the same cannot be considered sufficient. It should be noted that all of the aforementioned documents, together with the duly registered VAT invoices or receipts, *taken collectively,* are the best means to prove the exportation of goods ***(The Commissioner of Internal Revenue vs. Philippine Bobbin Corporation, CA-G.R. SP No. 59452, February 19, 2001)***.

For petitioner's failure to properly substantiate its alleged zero-rated sales, the input VAT refund being sought for cannot be granted. It is significant to reiterate once again that tax refunds are in the nature of tax exemptions and as such they are regarded as in derogation of sovereign authority and to be construed strictissimi juris against the

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person or entity claiming the exemption (***Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc., 309 SCRA 87***).

IN VIEW OF THE FOREGOING, petitioner's claim for refund or issuance of a tax credit certificate in the amount of P25,023,471.84 representing excess input value-added tax (VAT) payments that are attributable to zero-rated export sales for the four taxable quarters of 1999 is hereby **DENIED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Judge

WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Judge

JUANITO C. CASTAÑEDA, JR.
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.

JUANITO C. CASTAÑEDA, JR.
Associate Judge

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