1B.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ROHM ELECTRONICS PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4838

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

MAY 20 1996

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DECISION

Case at hand refers to a claim for refund or tax credit in the amount of P10,709,750.29 as alleged excess input tax for the period from May 1990 to January 1991.

Petitioner is a domestic corporation, registered with the Board of Investments as an export-manufacturer/producer of electrical and electronic components, such as microchip resistors, semi-conductors, transistors. capacitors and similar products.

It first registered as Value Added Tax (VAT) enterprise with respondent's Revenue District Officer (RDO) No. 32 in East Makati. As such, it was issued VAT Registration Certificate No. 32-6-004097 effective January 3, 1989 (p. 152, BIR records). This VAT Registration Certificate was later on cancelled upon written request of petitioner due to transfer of its principal place of business (p. 151, Ibid.). Its new address at 5th Floor, Sterling Center Bldg., 131 Esteban

St., Legaspi Village, Makati, M.M. is within the coverage of respondent's RDO in West Makati. Upon application with this office, petitioner was issued VAT Registration Certificate No. 32A-6-008635 effective October 1, 1990 (p. 158, Supra).

As a VAT registered exporter, petitioner is exempt from payment of output VAT on its exported products. Hence, due to its purchase of capital equipment and other goods for use in its operations as well as the engagement of services of contractors for the construction and development of its manufacturing plant in Carmona, Cavite, petitioner has accumulated input taxes for the period from May 1990 to January 1991, in the alleged total amount of P28,670,671.67. As to how the component figures of this amount were periodically declared by petitioner in its quarterly VAT returns, and how they were claimed as refundable/tax creditable both in the administrative and judicial levels, the Court for convenience, has summarized their details in the following tabulated form.

Quarter Covered	Date VAT Return Filed	Date Refund Filed w/ BIR	Input Tax Claimed as Refundable/ Creditable	Date Refund Filed w/ CTA
May to July 1990	8-15-90	8-26-91	P 7,458,249.84	8-19-92

Aug. to Oct. 1990	11-19-90	8-26-91	14,045,117.20	
		10-28-91	493,180.66	8-19-92
Nov. 1990 to Jan. 1991	2-20-91	8-26-91	6,080,522.64	
		11-04-91	593,601.33	8-19-92
		TOTAL	P28,670,671.67	

It can be seen clearly from the tabulation above that the total amount of input taxes being claimed as refundable or creditable, was covered by only one petition filed with this Court on August 19, 1992.

Respondent's Answer (pp. 18-20, CTA records) to this petition was filed on October 5, 1992. She alleged, among others, that the petition was premature because the claim of petitioner was still pending investigation and consideration by her office.

True to her defense, during the pendency of the hearing of the case, respondent came out with the results of her investigation.

On account of some disallowances, respondent issued to petitioner Tax Credit Certificate No. 001936 (Exh. "15", Resp.; p. 280, BIR rec.) only in the reduced amount of P17,494,173.32, computed as follows:

Total input tax claimed		P28,670,671.67
Less:	Disallowed input tax due to violation of invoicing requirements	466,748.06
	Sub-total	P28,203,923.61

Deduct:
38.65% of input tax attributable to purchase of ordinary goods and services

Allowable input tax	P28,203,923.61
Less: Input tax from capital goods	494,349.75
Input tax attributable to purchase of goods-services	P27,709,573.86
	x 38.65%
	P10,709,750.29
Input Tax Allowable for Issuance of TCC	P17,494,173.32

Petitioner contested the disallowance made by respondent in the amount of P10,709,750.29. Consequently, on March 22, 1994 it filed with this Court a "Motion to Admit Amended Petition for Review." In its Amended Petition for Review, petitioner assailed the disallowance as without legal and factual bases.

Respondent filed her Amended Answer (pp. 82-84, CTA rec.) on June 8, 1994, alleging as her special and affirmative defenses the following:

> "5. Petitioner failed to substantiate by proper documents its claim for refund with respect to the amount of P10,709,750.29;
>
> 6. Petitioner has also failed to show that the taxes paid were erroneously and illegally collected;
>
> 7. The claim for refund of petitioner for the VAT quarter May to July 1990, which return was filed on August 31, 1990 had prescribed because it is beyond the two-year period within which to file such claim for refund;

8. Petitioner has also failed to show that it had strictly complied with the provisions of Section 204 of the Tax Code in relation to Section 230 thereof with respect to the disallowed amount. The burden is imposed on petitioner to show compliance with these requirements since a claim for refund is in the nature of an exemption which is construed against the claimant (Resin, Inc. vs. Auditor General, 25 SCRA 754)."

There are two issues requiring ventilation in this case. One is factual which relates to whether or not petitioner underpriced its microchip resistors. The other is legal, involving the issue as to whether or not claim for the quarter May to July 1990, in the amount of P7,458,249.84, has prescribed.

To prove her contention that there was underpricing of petitioner's microchip resistors, respondent presented Exhibit "I" (pp. 256-257, BIR rec.) which contained the data (taken from the Board of Investments) showing that the selling price per unit of petitioner is much lower than the rest in the industry. Such data also showed that the selling price per unit ($0.0025/P0.0701) of petitioner is much lower than the raw materials cost per unit ($0.00339/P0.095). Respondent mentioned in her Memorandum, pages 7 and 8 thereof (pp. 198-199, CTA rec.) that:

"The underpricing resulted in undeclared and unremitted export sales as follows:

Adjusted Sales	P12,902,188.00
Sales per income statement	7,916,033.00
Difference as additional adjustment to selling price due to underpricing	P 4,986,155.00

Export sales per books	P 7,916,033.00
Export sales not declared and remitted	4,986,155.00
Total Sales	P12,902,188.00

P 4,986,155.00 (undeclared sales) = 38.65% - percentage of input tax not allowable
12,902,188.00 (total sales)

Thus, the allowable input tax is computed as follows:

Total Input Tax Claimed		P28,670,671.67
Less:		
(a) Disallowed input taxes due to violation of invoicing requirements	P466,748.06	
(b) Input taxes from capital goods	494,349.75	961,097.81
Input Taxes Attributable to Purchases of Goods and Services		P27,709,573.86
		x 38.65%
Disallowed Input Taxes (for underpricing)		P10,709,750.29
Input Taxes Allowable		P17,494,173.32

The percentage of undeclared sales to total sales (38.65%) constitutes input tax not allowable. This is so because there was no inward remittance of foreign exchange with respect to the undeclared and unremitted export sales."

The Court believes in the controverting evidence of petitioner. There is indeed no bases to compare petitioner's unit price with that of the other semi-conductor companies on the simple ground that their products are not similar. Petitioner manufactures and exports microchip resistors/capacitors while Motorola, Intel and Team Pacific manufacture and sell integrated circuits or IC's, which are entirely different from each other as evidently shown by Exhibits "E-1", and "E-2" of petition (p. 98, CTA rec.). Moreover, petitioner's Exhibit "F" specifically paragraph 1, page 3 of its Annex "A" (p. 102, CTA rec.) explained that:

> "Integrated Circuits (I.C.'s) are more complex than microchip resistors or capacitors. Assembly of integrated circuits varies with the function/usage of the unit. The more complex the function, the longer the process it would take. Hence, the higher the cost of production which leads to higher processing fee or selling price (FOB)." (Underscoring supplied)

Petitioner also presented witnesses to give corroborating testimonies to the documentary evidence just mentioned. One was Mr. Ranulfo Aquino, the Assistant Manager of petitioner's Production Department. He testified that petitioner is the only electronics company which manufactures and sells the square-mounted resistor. The other witness was Director Rosario V. Estacio, Chief of the Engineering Industries Department of the Board of Investments. She made clear that a resistor is much cheaper than an I.C. for three (3) reasons, namely: (1) a resistor is merely a part of an I.C.; (2) the raw materials for resistors are much cheaper; and (3) the processing cost to manufacture a resistor is also cheaper.

After petitioner has offered and submitted its evidence, respondent merely adopted the testimony of petitioner's witness, Ms. Dalisay Umlas, the revenue examiner who investigated and processed petitioner's instant claim for refund/tax credit. Respondent offered as her documentary evidence the report made by the examiner together with the worksheets supporting her report. There was no evidence however, presented by respondent to rebut petitioner's testimonial claims that the price comparison made and submitted by the examiner was without factual basis.

Based on the substantial evidence presented by petitioner, this Court is convinced to grant as tax credit the amount of P10,709,750.29 which was previously disallowed by respondent. "Substantial evidence" has been construed to mean not necessarily preponderant proof as is required in ordinary civil action, but such kind of "relevant evidence as a reasonable man might accept as adequate in support of a conclusion." (Commissioner of

Internal Revenue vs. Manila Machinery and Supply Co., 135 SCRA 8, February 28, 1985; Commissioner of Internal Revenue vs. Arnoldus Carpentry Shop, Inc., 159 SCRA 199, March 25, 1988)

The second issue must also be resolved in favor of petitioner. Section 230 of the Tax Code does not apply if the subject of refund or tax credit is excess input tax. The law applicable is Section 106(c) of the Tax Code, which refers to refunds or tax credits of input tax paid on capital goods imported or locally purchased. The two-year prescriptive period is countered only after the expiration of 2 succeeding quarters following the quarter in which the importation or local purchase was made. By way of applying Section 106(c), two quarters or 6 months from May to July 1990 (the quarter in which the capital goods were purchased), would be August to October 1990, and November 1990 to January 1991. Therefore, the two-year prescriptive period would start only on February 1, 1991 and would end on February 1, 1993. Evidently, as the refund claim was filed with the B.I.R. on August 19, 1992, petitioner's claim for the refund/tax credit of the amount of P7,458,249.84 representing input taxes paid for the quarter May to July 1990, did not prescribe.

WHEREFORE, premises considered, the Court finds petitioner's claim meritorious the therefore **GRANTS** the same. Respondent is hereby **ORDERED** to **ISSUE** in favor of petitioner, a tax credit certificate in the amount of P10,709,750.29, representing disallowed input taxes being claimed by petitioner for the period May 1990 to January 1991.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

(On Leave)
MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals