REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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HAZAMA PHILIPPINES, INC.,
Petitioner,

C.T.A. CASE NO. 6420

Members:

- versus -

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 21 2006

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DECISION

BAUTISTA, L., J.:

This case involves a claim for the refund or issuance of a tax credit certificate in the amount of P6,296,247.40 allegedly representing unutilized input taxes attributable to effectively zero-rated sales of services for the four quarters of taxable year 2000.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at Unit 304 SEDCCO I Building, 120 Rada corner Legaspi Village, Makati City. It is a value-added tax (VAT) registered entity engaged in business as a general contractor (*Exhibit A*).

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For the four quarters of taxable year 2000, petitioner allegedly derived revenues from construction services rendered to entities registered with the Philippine Economic Zone Authority (PEZA) in the total amount of P159,276,713.27, broken down as follows:

Year 2000	Amount of Sales to PEZA Registered Entities
1st quarter	P 8,097,975.00
2nd quarter	14,794,585.00
3rd quarter	54,980,571.61
4th quarter	81,403,581.66
TOTAL:	P 159,276,713.27

Petitioner believes that such revenues are subject to zero percent (0%) VAT under Section 108(B)(3) of the National Internal Revenue Code (NIRC) of 1997.

Relative to the construction services it rendered to PEZA entities, petitioner allegedly incurred input VAT in the amount of P6,296,247.40 for the four quarters of taxable year 2000, detailed as follows:

Year 2000	Input VAT
1st quarter	P 20,943.00
2nd quarter	994,359.82
3rd quarter	647,390.23
4th quarter	4,633,554.35
TOTAL:	P 6,296,247.40

Petitioner avers that the input VAT payments of P6,296,247.40 formed part of the total input VAT of P16,215,542.42 reflected in its amended quarterly VAT returns for taxable year 2000, as follows:

				INPUT VAT		
Exh.	Year 2000	Zero-rated Sales/Receipts	Output VAT	Carried-over from previous quarter	This quarter	Excess
C	1st qtr	P 8,097,975.00	P 4,143,220.24	P 15,068,490.26	P 2,576,924.26	P13,502,194.28
C-1	2nd qtr	14,794,585.00	5,925,072.05	13,502,194.28	3,335,982.89	10,913,105.12
C-2	3rd qtr	54,980,571.61	7,269,887.30	10,913,105.12	2,986,721.50	6,629,939.32
C-3	4th qtr	81,403,581.66	854,521.98	6,629,939.32	7,315,913.77	13,091,331.11
		P159,276,713.27	P18,192,701.57		P16,215,542.42	

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Alleging that the input VAT of P6,296,247.40 had not been utilized against any output VAT liability since the amount of input VAT carried over from the previous taxable years and incurred during the four quarters of taxable year 2000 attributable to petitioner's vatable sales of services was enough to offset petitioner's output VAT due for the same period, petitioner filed an administrative claim for the refund of the said amount on March 25, 2002 pursuant to Section 112(A) of the NIRC of 1997.

In order to toll the running of the two-year prescriptive period within which it may judicially claim as refund or tax credit the aforesaid input VAT of P6,296,247.40, petitioner filed the instant Petition for Review before this Court on the next day March 26, 2002.

Respondent, in his Answer to the Petition for Review, raised the following Special and Affirmative Defenses:

> 6. Petitioner's alleged claim for refund/issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;
>
> 7. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;
>
> 8. Petitioner's claim for refund/tax credit in the amount of **P6,296,247.40** as alleged unutilized input VAT paid for the four quarters of calendar year 2000 was not fully substantiated;
>
> 9. Petitioner's instant claim for refund/tax credit representing the alleged unutilized input VAT paid for the four quarters of calendar year 2000 is not subject to zero percent (0%) rate of VAT under Section 108(B)(3) of the 1997 Tax Code;
>
> 10. It is incumbent upon the latter to show that it has complied with the provisions under Section 204(c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund; and
>
> 11. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (***Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95***) and as such, they are looked upon with disfavor (***Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211***).

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

1. Whether or not the portion of the input VAT paid for the four quarters of calendar year 2000 subject matter of this claim for refund were attributable to its zero-rated sales of services;

2. Whether or not the petitioner had effectively zero-rated sales of services to which the input VAT sought to be refunded herein were attributable;

3. Whether or not the input VAT from the zero-rated sales of services claimed by petitioner was applied against its output VAT liability for taxable year 2000;

4. Whether or not the claim for refund of unutilized input VAT for the four quarters of taxable year 2000 filed by the petitioner with the Bureau of Internal Revenue was filed within the two-year prescriptive period provided by law;

5. Whether or not this Petition for Review filed by the petitioner with this Honorable Court was filed within the two-year period provided by law;

6. Whether or not the unutilized input VAT for the four quarters of taxable year 2000 from its effectively zero-rated sales of service sought to be refunded are fully substantiated; and

7. Whether or not the input VAT sought to be refunded herein was applied against any output VAT liability of the petitioner for the succeeding taxable quarters after the taxable year 2000.

We shall first delve on second issue as the resolution thereof determines the necessity of resolving the other issues.

Petitioner maintains that for the taxable year 2000, it generated revenues amounting to P159,276,713.27 from its construction projects with PEZA entities, namely: 1) HPI Miscellaneous; 2) SDC – M & E; 3) SMP Electronics; 4) Philippine Shin-ei, Inc. ; 5) International Electric Wires Philippines Corp.; 6) SMK Electronics (Phils.) Corp.; 7) Adamay International Co., Inc.; 8) Sanyo Semiconductor Manufacturing Philippines; and 9) Honda Parts Manufacturing Corporation. Petitioner claims that such sales of services are subject to zero percent (0%) VAT pursuant to Section 108(B)(3) of the NIRC of 1997, which states:

> "**SEC. 108.** ***Value-Added Tax on Sale of Services and Use or Lease of Properties.-***

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"(B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate;

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"(3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate.**"

To further buttress its position, petitioner likewise cites relevant portions of Revenue Memorandum Circular (RMC) No. 74-99, thus:

SECTION 3. Tax Treatment of Sales Made By A VAT Registered Supplier from the Customs Territory, To A PEZA Registered Enterprise.-

(1) If the Buyer is a PEZA registered enterprise which is subject to the 5% special tax regime, in lieu of all taxes, except real property tax, pursuant to R.A. No. 7916, as amended:

xxx xxx xxx

(b) **Sale of service.** – This shall be treated subject to zero percent (0%) VAT under the "***cross border doctrine***" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.

(2) If Buyer is a PEZA registered enterprise which is not embraced by the 5% special tax regime, hence, subject to taxes under the NIRC, e.g., Service Establishments which are subject to taxes under the NIRC rather than the 5% special tax regime:

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(b) **Sale of Service.** – This shall be treated subject to zero percent (0%) VAT under the "***cross border doctrine***" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.

3. In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC , in relation to Art. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to 0% VAT, pursuant to

> Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the "Cross Border Doctrine" of the VAT system.
>
> This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of issuance of this Circular.

Indeed, based on the foregoing provisions of Section 108(B)(3) and as clarified by RMC No. 74-99, sales of services to a PEZA-registered company by a VAT-registered entity like herein petitioner, are subject to zero percent (0%) VAT.

In the case at bar, however, records reveal that petitioner failed to sufficiently substantiate its reported zero-rated sales of services to PEZA entities for taxable year 2000 in the amount P159,276,713.27 as it merely presented the following documents: 1) amended 2000 quarterly VAT returns (*Exhibits C, C-1 to C-3*); 2) Certificates of PEZA Registration/Certificates of Effective Zero-Rating of Adamay Int'l. Co., Inc., Sanyo Semiconductor Manufacturing Philippines Corporation, International Electric Wires Phils. Corp., and Honda Parts Manufacturing Corporation, (*Exhibits E, F, G, H, I, J, K, L*); and 3) Certificates of Registration and Tax Exemption of SMK Electronics (PHils.) Corp. and Philippine Shin-ei, as Clark Special Economic Zone Enterprises (*Exhibits M & N*). Petitioner failed to submit VAT official receipts issued in accordance with Section 113 of the NIRC of 1997 and as implemented by Section 4.108-1 of Revenue Regulations No. 7-95, which We all quote herein below:

> "**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:

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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."

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 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.

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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.

Without VAT official receipts proving the existence of petitioner's reported sales of services to PEZA entities for taxable year 2000 in the amount of P159,276,713.27, the claimed input VAT payments of P6,296,247.40 allegedly attributable thereto cannot be refunded. It is quite clear from the provisions of Section 112(A)] of the NIRC of 1997 that there must exist zero-rated or effectively zero-rated sales before a refund of input VAT could prosper. We quote:

"SEC. 112. *Refunds or Tax Credits of Input Tax. —*

"(A) *Zero-rated or Effectively Zero-rated Sales.* — <u>Any VAT-registered person, whose sales are zero-rated or effectively zero-rated</u> 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

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> input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. *(Underlining supplied)*

In view thereof, this Court finds it no longer necessary to discuss the other issues raised by the parties.

WHEREFORE, the Petition for Review is hereby ***DENIED*** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

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ATTESTATION

I attest 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's Division.

LOVELL R. BAUTISTA
Acting Division Chairman

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the attestation of the Acting Division Chairman 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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

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