REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TELECOMMUNICATIONS TECHNOLOGIES PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6018

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 24 2003

x - x

D E C I S I O N

This is a judicial claim for the refund or issuance of a tax credit certificate in the amount of P3,673,266.02 allegedly representing unutilized input value-added taxes (VAT) paid on domestic purchases of capital goods for the period covering December 1997 to June 1998.

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with office address located at Telecom Plaza Building, 316 Sen. Gil Puyat Avenue, Salcedo Village, Makati City, Metro Manila (*par. 1.1, Joint Stipulation of Facts*). It is a wholly-owned subsidiary of Eastern Telecommunications Philippines, Inc. and was incorporated on October 31, 1991 primarily to own, design, manufacture, install, purchase, rent, manage, regulate, and to generally deal in and with telecommunications facilities, and other services related thereto. It was granted a legislative franchise under

499

Republic Act (RA) No. 7617, as amended by RA No. 7674, to install, operate and maintain telecommunication systems throughout the Philippines with international services and for other purposes (*Notes to 1997 Financial Statements under item number 1 captioned as "General", page 261, CTA records*).

Pursuant to Executive Order No. 109 dated July 12, 1993, otherwise known as the "Policy To Improve the Provision of Local Exchange Carrier Service", petitioner was required to construct and operate a three hundred thousand (300,000) line local exchange carrier network within NCR-A Manila and Region II in Luzon. In compliance thereof, petitioner had to build and construct its telecommunications infrastructure for the local exchange carrier network (*pages 5 - 9, TSN, March 28, 2001*).

Accordingly, on April 28, 1997, petitioner entered into a contract with Alcatel Philippines, Inc. (Alcatel) for the supply and construction of said telecommunications infrastructure, denominated as "Contract No. 250-009 for Local Supply and Installation Related to 300,000 Lines Project in NCR.A Part of Manila, and Region II Part of Luzon" (*Exhibit G*).

For the period starting December 1997 to June 1998, petitioner allegedly purchased capital goods relative to its contract with Alcatel for which it incurred input taxes amounting to P3,673,266.02.

In its VAT returns filed for the fourth quarter of 1997 to the second quarter of 1998, petitioner declared no output VAT liability as it was not yet allegedly engaged in commercial operations/sales of its services for the same period, thus, it was unable to utilize its reported input taxes of P3,673,266.02 as shown below:

700

Annexed to the Petition as	Period Covered	Date filed w/ the BIR	INPUT TAX: Carried over from previous Quarter	This quarter: Domestic Purchases	This quarter: Importation	Excess Input Tax
B	4th qtr - '97	1/30/98		P 1,389,953.68		P 1,389,953.68
C	1st qtr - '98	4/30/98	P1,389,953.68	24,213,693.92	-	25,603,647.60
D	2nd qtr - '98	6/30/98	25,603,647.60	(21,930,867.82)	P 486.24	3,673,266.02

On December 22, 1999, petitioner filed with Revenue District Office No. 49 — Revenue Region No. 8, Atrium Makati, Makati City, of the Bureau of Internal Revenue, a letter requesting for the refund/tax credit of its alleged unutilized input VAT payments of P3,673,266.02 (*Annex E to the Petition for Review, page 6, CTA records*).

Due to the inaction of the respondent and in order to suspend the running of the two-year prescriptive period for availing the judicial remedy for claiming refund/tax credit, petitioner elevated its claim before this court via a Petition for Review filed on February 21, 2000.

Respondent, in his Answer filed through registered mail on March 9, 2000, interposed the following Special and Affirmative Defenses:

> "5. The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;
>
> 6. It is incumbent upon herein petitioner to show that it has complied with the provision of Section 229 of the Tax Code;
>
> 7. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35);
>
> 8. One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute (Asiatic Petroleum vs. Llanes, 49 Phil 466; Union Garment Co. vs. Court of Tax Appeals, 4 SCRA 304);

501

9. In action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;

10. Taxes paid and collected are presumed to have been made in accordance with the law and regulations, hence not refundable."

To support its claim, petitioner presented testimonial and documentary evidence. Respondent, on the other hand, submitted his case for decision based on the pleadings and records of the case (*page 441, CTA records*).

On October 20, 2003, the case was submitted for decision after the parties have filed their respective memorandum.

The sole issue presented for our determination is: Whether or not petitioner has unutilized input taxes for the fourth quarter of 1997 and the first and second quarters of 1998 in the amount of Three Million Six Hundred Seventy Three Thousand Two Hundred Sixty Six and 02/100 Pesos (P3,673,266.02) and is therefore entitled to a refund or issuance of a tax credit certificate in said amount.

Petitioner anchors its claim for refund/tax credit on Section 112(B) of the Tax Code, which we quote as follows:

> "**Sec. 112. *Refunds or Tax Credits of Input Tax.*** — . . .
>
> "**(B)** ***Capital goods***. - A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

Relative thereto, Sections 4.106-1 and 4.104-5 of Revenue Regulations No. 7-95 state thus:

> "**SEC. 4.106-1. Refunds or tax credits of input tax. — (a)** . . .

502

> (b) **Capital Goods**. — . . .
>
> *"Capital goods or properties" refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29 (f), used directly or indirectly in the production or sale of taxable goods or services.*
>
> "**SEC. 4.104-5. Substantiation of claims for input tax credit**. — (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Section 108 (a) and 238 of the Code. . ."

Plainly, from the above provisions, in order to be entitled to a refund/tax credit of input VAT paid on capital goods purchased, petitioner must prove that:

1) it is a VAT registered entity;
2) it paid input VAT on capital goods purchased;
3) its input VAT payments on capital goods are duly supported by VAT invoices and/or official receipts;
4) it did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and
5) the claim for refund was filed within the two-year prescriptive period both in the administrative and judicial levels (***Telecommunications Technologies Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6168, July 17, 2003***).

The fact that petitioner is duly registered as a VAT taxpayer is not disputed (*par. 1.3, Joint Stipulation of Facts*).

Anent the second, third, and fifth requisites, the same shall be discussed jointly. The commissioned independent certified public accountant (CPA), Mr. Nicanor N. Bacsal, in his amended report dated October 25, 2001 (*Exhibit K*), stated that only the input taxes of P15,465,310.63 *(as summarized in Exhibit K-8)* were properly substantiated and that all relate to petitioner's purchases of capital goods in US dollars from Alcatel Philippines, Inc. in pursuance of Contract No. 250-009 for the local supply and installation of petitioner's 300,000 Lines Local Exchange Carrier Network. In

JB

computing for the input taxes of P15,465,310.63, Mr. Nicanor N. Bacsal, used the applicable monthly average peso-dollar rates provided by the Bangko Sentral ng Pilipinas (*Exhibit Q-5*). However, the CPA should have used the exchange rates indicated in the Certification issued by Alcatel (*Exhibit O*) because these were used in determining the VAT that will finally be remitted to the Bureau of Internal Revenue. Therefore, the total input taxes charged by Alcatel to petitioner of P15,465,310.63 as found by the CPA should have only been P15,249,904.26 after applying the exchange rates indicated in Alcatel's Certification, as shown below:

Exhibit	Invoice Number	Invoice Date	Total Invoice Amount (in US dollars)	Input VAT (in US dollars)	Peso Rate	Input VAT (in Phil Peso)
L-2	33510	11/3/97	651,454.03	59,223.09	42.89	2,540,078.50
L-3	33511	11/3/97	147,309.55	13,391.78	42.89	574,373.32
L-4	33513	11/18/97	651,454.03	59,223.09	34.46	2,040,827.82
L-5	33514	11/18/97	858,908.56	78,082.60	34.46	2,690,726.26
M	33516	12/3/97	651,454.03	59,223.09	34.52	2,044,381.20
M-1	33517	12/3/97	600,116.45	54,556.04	34.52	1,883,274.54
M-2	33518	1/19/98	651,454.03	59,223.09	37.17	2,201,322.40
M-3	33519	1/19/98	377,296.76	34,299.71	37.17	1,274,920.22
			4,589,447.44	417,222.49		15,249,904.26

A scrutiny of the invoices issued by Alcatel and Contract No. 250-009 reveals that all of the purchases corresponding to the above input taxes of P15,249,904.26 conform with the definition of capital goods under Section 4.106-1 of Revenue Regulations No. 7-95. These purchases relate to the installation of petitioner's 300,000 Lines Local Exchange Carrier Network and consisted of the construction cost of the outside plant and building, telecommunication equipment as well as installation and project management costs. Contrary to respondent's allegation in his memorandum, these purchases were capitalized in petitioner's accounting records and formed part of the latter's "Property

174

and Equipment" account as appearing in its audited balance sheets as of the years ended December 31, 1997 and 1998 (*Notes to 1997 and 1998 Financial Statements under item number 3, pages 262 & 285, CTA records*).

Nevertheless, the input taxes of P11,773,661.64 corresponding to purchases made by petitioner from November 3, 1997 to December 3, 1997 (*Exhibits L-2 to L-5, M & M-1*) should be denied on account of prescription. This court has consistently held that the reckoning of the two-year prescriptive period for filing a claim for refund of input VAT starts from the date of filing of the quarterly VAT return (***Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5296, Resolution, July 20, 1998***). The input taxes of P11,773,661.64 belong to the fourth quarter of 1997 for which petitioner filed its VAT return on January 30, 1998 (*Annex B to the Petition for Review, page 14, CTA records*). Counting from this date, petitioner had until January 29, 2000 within which to file its claim for refund both in the administrative and judicial levels (*considering that the year 2000 is a leap year*). Therefore, while petitioner's administrative claim for refund was timely filed on December 22, 1999, the Petition for Review filed on February 21, 2000 falls outside of the two-year prescriptive period and petitioner can no longer claim refund of its input taxes for the fourth quarter of 1997.

Likewise, this court disallows the input VAT of P2,201,322.40 (*Exhibit M-2*) pertaining to services rendered by Alcatel to petitioner for not being supported by an official receipt. The output or input VAT on sales/purchases of services is determined based on the amount shown in the official receipt as provided under Section 108(C) of the Tax Code, to wit:

> "**(C)** ***Determination of the Tax***. — The tax shall be computed by multiplying the total amount indicated in the **official receipt** by one-eleventh (1/11)." (Emphasis supplied)

As to the remaining input VAT of P1,274,920.22 (*Exhibit M-3*) relative to the goods supplied by Alcatel, the same was properly supported by an invoice dated January 19, 1998 in accordance with Section 106(D) of the Tax Code which reads as follows:

> "**(D)** ***Determination of the Tax***. — The tax shall be computed by multiplying the total amount indicated in the **invoice** by one-eleventh (1/11)." (Emphasis supplied)

However, this court can only grant the lower amount of P864,452.17 that was prayed for by petitioner for the first quarter of 1998 out of the total claim of P3,673,266.02, thus:

Exhibit	Amount of Claim
B	P 1,389,953.68
C	864,452.17
D	1,418,860.17
	P 3,673,266.02

Finally, petitioner proved that the claimed input VAT was not applied nor credited against any output VAT liability during the subject period of claim and in the subsequent quarters. Petitioner was not yet engaged in commercial operations during the fourth quarter of 1997 to the second quarter of 1998 as can be seen in its audited financial statements and income tax returns for 1997 and 1998 (*Exhibits H, I & J-1*). Hence, petitioner had no output VAT liability against which the claimed input VAT may be applied or credited. Moreover, no amount of the claimed input VAT was carried-over by petitioner in its subsequent amended 1998 third and fourth quarterly VAT returns (*Exhibits E & F*).

JD6

In fine, this court finds petitioner to have sufficiently proven its claim but only to the extent of P864,452.17 representing unutilized input VAT paid on capital goods locally purchased for the first quarter of 1998.

WHEREFORE, the petition is ***PARTIALLY GRANTED***. Accordingly, respondent is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P864,452.17 representing unutilized input VAT paid on capital goods locally purchased for the first quarter of 1998.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

JUANITO C. CASTAÑEDA, JR.
Associate Judge

C E R T I F I C A T I O N

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

107