REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INTEL PHILIPPINES MANUFACTURING, INC.,
Petitioner,

- versus -

C.T.A. CASE NOS. 5760 and 5902

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 05 2002

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DECISION

This is a petition seeking for the refund of value-added tax (VAT) paid by Petitioner on its domestic purchases of taxable goods and services in the amount of P38,275,177.41 for the period January 1, 1997 to June 30, 1997.

The antecedent facts follow.

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws with principal office address at 1321 Apolinario Street, Bangkal, Makati City. It is primarily engaged in the business of designing, developing, manufacturing and exporting advance and large-scale integrated circuit components or "ICs". As such, it registered itself with the Bureau of Internal Revenue (BIR) as a value-added tax entity pursuant to Section 107 of the Tax Code effective January 1, 1988, evidenced by VAT Registration Certificate No. 32A-3-002649 (Exhibit A) and Certificate of Registration

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bearing RDO Control No. 94-048-02621, effective July 6, 1994 (Exhibit B). Petitioner is also registered with the Board of Investments (BOI) as a preferred pioneer enterprise enjoying six (6) years income tax holiday and was issued BOI Certificate of Registration No. 85-1010 (par. 2, Joint Stipulation of Facts, Exhibit U).

From January to June, 1997, Petitioner allegedly generated and recorded zero-rated export sales totalling P2,947,072,963.69 (Exhibits C-4 & D-4), which were paid to Petitioner in acceptable foreign currency inwardly remitted in accordance with existing regulations of the Central Bank. For the said period, Petitioner likewise alleged that it paid input VAT amounting to P38,275,177.41 on its domestic purchase of taxable goods and services.

On July 28, 1998, November 19, 1998 and March 3, 1999, Petitioner filed with the One-Stop-Shop Inter Agency Tax Credit and Duty Drawback Center of the Department of Finance (DOF) applications for tax credit/refund of excess VAT input taxes paid on its domestic purchases of goods and services from January to June of 1997 in the amounts of P17,500,171.58, P19,246,787.63 and P528,218.20, respectively (Exhibits K, L, M, N, O and P). Due to Respondent's inaction, Petitioner elevated the aforesaid claims with this Court on March 31, 1999 docketed as CTA Case No. 5760.

On June 23, 1999, Petitioner again filed with the One-Stop-Inter-Agency Tax Credit and Duty Drawback Center of the DOF an application for tax credit/refund of excess VAT input taxes paid on its domestic purchases of goods and services for the period April to June 1997 in the amount of P823,737.86 (Exhibits X and Y). Still, Respondent failed to act on Petitioner's claim, prompting the latter to file another case before Us on June 30, 1999 docketed as CTA Case No. 5902.

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On August 31, 1999, Petitioner filed a Joint Motion to Consolidate on the ground that the two cases involve the same parties and issues. Petitioner's motion was granted by the Court on September 24, 1999.

In the meantime, on September 10, 1999, the Bureau of Internal Revenue issued Tax Credit Certificate SN 021780 amounting to P17,466,590.73 (page 81, CTA Records in CTA Case No. 5760), leaving a balance of P20,808,586.68 out of the total claim of P38,275,177.41. Thus, Petitioner, in its Memorandum prayed for only the amount of P20,808,586.68.

Respondent, in his Answer, raised the following Special and Affirmative Defenses:

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"6. Petitioner failed to show compliance with the substantiation requirement under the provision of Section 16(c)(3) of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88;

7. Petitioner has not shown proof that the alleged VAT input taxes attributable to its export sales have not yet been applied to the output tax for the period covered in its claim or any succeeding period and that the alleged total foreign exchange proceeds have been accounted for by the Central Bank;

8. The petition states no cause of action as it does not allege the date/s when the taxes sought to be refunded were actually paid;

9. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund;

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

11. Well-settled is the rule that claims for refund is (sic) construed against the claimants since it partakes of the nature of an exemption from taxation."

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"7. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

8. The amount of P823,737.86 being claimed by petitioner as alleged overpayment/erroneous payment of value added tax for the period April to June 1997 was not properly documented;

9. In an action for refund 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;

10. Petitioner must show that it has complied with the provisions of Sections 204(c) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;

11. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation."

In their Joint Stipulation of Facts and Simplification of Issues filed on August 20, 1999, the parties submitted the following issues for resolution:

(a) Whether or not Petitioner is engaged in transactions subject to zero percent (0%) rate.

(b) Whether or not the Petitioner's claim for VAT refund is fully substantiated/supported by documentary evidence.

(c) Whether or not the VAT input taxes has (sic) not been applied to the output tax for the period covered in its claim or any succeeding period.

(d) Whether or not the domestic purchases of goods and services where the input taxes were paid are attributable to Petitioner's zero rated sales of P2,947,072,963.69.

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(e) Whether or not Petitioner is entitled to a refund of the VAT input taxes paid arising from domestic purchases of taxable goods and services from January 1, 1997 to June 30, 1997 in the amount of P38,275,177.41.

We rule against Petitioner.

The present cases are anchored on Section 8(a) of Revenue Regulations No. 5-87, to state:

> "**SECTION 8.** ***Zero-rating.*** - (a) In general. - A zero-rated sale is a taxable transaction for value-added tax purposes. A sale by a VAT-registered person of goods and/or services taxed at zero rate shall not result in any output tax. The input tax on his purchases of goods or services related to such zero-rated sale shall be available as tax credit or refundable in accordance with Section 16 of these Regulations. x x x"

and Section 106(a) of the Tax Code which provides:

> "**SECTION 106.** ***Refunds or tax credits of input tax.*** - (a) *Export Sales.* - An exporter who is a VAT-registered person may within two years from the date of exportation, apply for the issuance of a tax credit certificate or refund of the input tax attributable to the goods exported, to the extent that such input tax has not been applied to output tax and upon presentation of proof that the foreign exchange proceeds has been accounted for in accordance with the regulations of the Central Bank of the Philippines."

Clearly from the aforequoted provisions, Petitioner is legally entitled to the refund sought, having sufficiently shown that its export sales for the period January 1 to June 30, 1997 qualify for zero-rating as provided for under Section 100(a)(2)(A)(i) [now 106(A)(2)(a)(1)] of the Tax Code, as amended. Moreover, the fact that Petitioner is a VAT registered entity was not disputed (par. 3, Joint Stipulation of Facts, CTA Case No. 5902; Exhibits A & B).

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For the period January 1 to June 30, 1997, Petitioner actually generated export sales in the amount of US$111,873,943.60 with the peso equivalent of P2,947,072,963.69 as shown in Petitioner's Monthly Export Sales Summary (January – June 1997) and various export documents such as export invoices, airway bills and export declarations (pre-marked as Exhibits FF-1 to FF-497 and GG-1 to GG-518, inclusive). Likewise, Petitioner's total foreign currency export sales proceeds of US$111,873,943.60 shown in Petitioner's Computation of Remittances on Export Sales (Exhibits FF-14 & GG-4) were accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas. The foreign currency export sales proceeds of U$97,264,991.50 were inwardly remitted and were included in the 1997 inward remittances certified by RCBC (Exhibits R, S & T) while the remaining foreign currency proceeds of US$14,608,952.10 were offset against Petitioner's inter-company payables.

Since Petitioner's export sales qualify as zero-rated sales, it is not liable to pay output VAT thereon. Accordingly, Petitioner may claim for a refund or tax credit of the unutilized input VAT paid on its domestic purchases of goods and services which are directly attributable to such zero-rated sales as set forth under Section 106(a) [now 112(A)] of the Tax Code, as amended.

We, therefore, proceed to the remaining issues relative to substantiation.

In order to be entitled to a refund or tax credit of the unutilized input VAT payments directly attributable to zero-rated sales, Petitioner must prove that:

1.) both the administrative and judicial claims for refund were filed within two years upon filing of the quarterly VAT return(s) covered by the claim as provided under Section 4-106.2(c) of Revenue Regulations No. 7-95 in relation to Section 112(D) of the Tax Code;

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2.) the claimed input VAT payments were not applied against any output tax during the period covered by the claim and in the succeeding periods;

3.) the claimed input VAT payments are directly attributable to zero-rated sales; and

4.) the claimed input VAT payments are duly supported by VAT invoices or official receipts in accordance with Section 4.104-5 of Revenue Regulations No. 7-95 in relation to Sections 113 and 237 of the Tax Code.

Records show that both Petitioner's administrative and judicial claims for refund in CTA Case Nos. 5760 and 5902 were filed within the two-year prescriptive period counting from April 21, 1997 and July 18, 1997, the dates when Petitioner filed its 1997 first and second quarterly VAT returns (Exhibits C & D), respectively.

With reference to the second requirement, Petitioner's quarterly VAT returns for the first and second quarters of 1997 prove that the claimed input VAT payments were already net of its output VAT liabilities for the same quarters. However, Petitioner must also show that the claimed input taxes were not carried over and applied against any output VAT in the succeeding periods. As shown in Petitioner's 1997 and 1998 quarterly VAT returns (Exhibits C, D, V, W, Z, BB, E & CC), Petitioner continuously carried-over the excess input VAT in a given quarter to the succeeding quarter(s). It was only in the third quarter of 1998 that the claimed input VAT of P17,500,171.58 for the first quarter of 1997 was deducted from Petitioner's reported total accumulated excess input VAT as of the third quarter of 1998 (line item#27 of Exhibit E). The amount of P17,500,171.58 pertains to Petitioner's claimed input taxes for which a tax credit certificate was already issued in its favor. As to its remaining claimed input taxes of P20,598,743.69 (the sum of

P19,246,787.63, P528,218.20 and P823,737.86), Petitioner failed to clearly show that it deducted the same from its total accumulated input VAT payments as of the fourth quarter of 1998. Although there were deductions from the accumulated input VAT payments indicated in Petitioner's 1997 (2nd, 3rd & 4th) and 1998 (1st & 2nd) quarterly VAT returns, the same failed to reconcile with the subject claims under CTA Case Nos. 5760 and 5902 or that the deducted figures pertain to Petitioner's prior period claims (Exhibits D, V, W, Z, AA & BB).

Petitioner's non-compliance with the second requirement is fatal to its claim. The Court finds it unnecessary, therefore, to delve into the rest of the issues raised.

WHEREFORE, in view of the foregoing, Petitioner's claim for issuance of a tax credit certificate in the amount of P20,808,586.68 representing the balance of the unutilized input VAT payments for the period January 1 to June 30, 1997 which are directly attributable to its zero-rated sales for the same period is hereby **DENIED.** Accordingly, the instant Petition for Review is hereby **DISMISSED** due to insufficiency of evidence.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

JUANITO C. CASTAÑEDA, JR.
Associate Judge

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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.

ERNESTO D. ACOSTA
Presiding Judge

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