Pit.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HITACHI COMPUTER PRODUCTS
(ASIA) CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5651

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 02 2001

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DECISION

This Petition for Review is seeking for the refund or issuance of a tax credit certificate in the amount of P2,589,328.32, representing unutilized input value-added tax (VAT, for brevity) for the period April 1, 1996 to June 30, 1996.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office located at Special Export Processing Zone, Laguna Technopark, Biñan, Laguna. It is licensed by the Securities and Exchange Commission to "operate, conduct and maintain 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" (Exh. K). It is an export enterprise registered with the Export Processing Zone Authority pursuant to the provisions of Presidential Decree No. 66, as amended, with Certificate of Registration No. 94-28 (Exh. B), dated May 11, 1994. Likewise, it is registered with the Bureau of Internal Revenue as a VAT taxpayer with

Certificate of Registration RDO Control No. 94-570-000298, dated June 28, 1994 (Exhs. A and A-1).

On October 7, 1994, the Export Processing Zone Authority through the 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. The board further resolved that Petitioner's facility/project is entitled to six (6) years income tax holiday (Exh. L-1).

On July 29, 1996, Petitioner filed its quarterly VAT return for the quarter ended June 30, 1996, reflecting a total input VAT in the amount of P8,039,567.86 arising from domestic purchases of goods and services (Exh. C). Out of the aforesaid sum, Petitioner is claiming the refund of P2,589,328.32 by way of the instant petition.

On June 25, 1998, Petitioner filed with the Department of Finance an application for tax credit/refund of value-added tax paid for the period April 1, 1996 to June 30, 1996, in the amount of P2,589,328.32.

On June 26, 1998, Petitioner lodged its appeal with this Court in order to toll the running of the two-year prescriptive period provided under Section 230 of the Tax Code, as amended.

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

> 4. Petitioner miserably failed to demonstrate that the [illegible]ject of the case at bar was erroneously or illegally collected;
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> 5. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;
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> 6. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit;

7. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended;

8. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121);

9. Petition for review should be dismissed on the following grounds:

(a) Lack of cause of action on the part of the petitioner for non-exhaustion of administrative remedies. Considering that the petition for review was field on the very same day (June 25, 1998) when the application for tax refund/credit was also filed, the petitioner has not given the Commissioner opportunity to decide on the claim. The taxpayer is given a period of two years before appealing to the Court of Tax Appeals; and to notify the government that such taxes have been questioned, and the notice should then be borne in mind in estimating the revenue available for expenditure. (Bermejo vs. Collector, L-3028, July 29, 1950). The petition is pro-forma and was done merely to comply with the letter of the law and yet it disregarded the spirit or the very substance of the law. The taxpayer should have filed his claim for refund at the earliest possible instance and should not have waited for the last day because by then it would be too late for the Commissioner to act on his claim thereby destroying the essence of the doctrine of exhaustion of administrative remedies. Consequently, the application for refund/credit is not impressed with merit.

(b) Lack of jurisdiction for there was no decision by the Commissioner that the Court of Tax Appeals could review simply because he was not even given an opportunity to reach that decision.

In support of its claim for refund, Petitioner presented various documentary exhibits which consist of:

1. The BIR, EPZA and SEC Certificates of Registration (Exhs. A, A-1, B, and K);

2. The original and amended Value-added Tax Returns for the second, third and fourth quarters of 1996 and first quarter of 1997 (Exhs. C, O, P, and Q);

3. The Application for Tax Credit/Refund of Value-added Tax Paid (Exhs. D and M);

4. The original report of the commissioned independent CPA with an addendum (Exhs. E, E-1 and X);

5. Summaries of input taxes, export sales, and inward remittances for the second quarter of 1996 (Exhs. F-1 to F-4, G-1 to G-4, H-1 to H-11);

6. Photocopies of VAT invoices and/or official receipts supporting the input VAT claimed by Petitioner (Exhs. I-1 to I-48);

7. Photocopies of Petitioner's sales invoices and other export sales documents (Exhs. J-1 to J-122 and W-1 to W-377);

8. Registration Agreement between EPZA and Petitioner together with Certificate of Board Resolution (Exhs. L and L-1);

9. Certification issued by Petitioner's Treasurer attesting that all of its sales for the second quarter of 1996 were 100% exported (Exh. N); and

10. Certifications of Remittance from Pilipinas Bank and RCBC with respect to foreign currency proceeds of the sales (Exhs. R, S, and Y-1 to Y-3);

On the other hand, counsel for the Respondent failed to present any controverting evidence, subsequently the case was submitted for decision on November 14, 2000, after both parties presented their respective memoranda.

The issues to be resolved by the Court are as follows:

1. Whether or not Petitioner was able to comply with the provisions of Section 204 in relation with Section 229 of the Tax Code, as amended, in filing the instant claim for refund; and

2. Whether or not Petitioner was able to support with substantial evidence its entitlement to the claim for refund pursuant to Section 106(a) of the Tax Code, as amended.

Respondent is of the opinion that the present appeal should be denied on the ground of non-exhaustion of administrative remedies because the claim for refund and the petition for review were simultaneously filed on the same day (the petition was actually filed the following day). Respondent further posits that he was not given a chance to decide the claim hence there was no decision that can be reviewed by this Court.

We disagree.

In the case of **Commissioner of Internal Revenue vs. Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation and The Court of Tax Appeals, CA-G.R. SP No. 34102, September 19, 1994**, the Court of Appeals affirmed Our decision in the case of **Bank of the Philippine Islands, as Liquidator of Paramount Acceptance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4257, December 20, 1993**, where it held:

> It is clear that a claim for refund should be filed with the Commissioner of Internal Revenue as a pre-requisite before court action on tax refund cases can be commenced and that the suit for refund must be filed within two years from the date of payment of the tax. It is also clear from Section 204 that the claim for refund must be filed with the Commission (sic) within two years from payment of the tax. When the two-year period is about to prescribe and the claim for refund with the Commissioner of

Internal Revenue has not been acted upon by him, for the protection of the interest of the taxpayer, he should file a petition for review with the Court of Tax Appeals within the said two-year period; otherwise, if the decision of the Commissioner is adverse to the taxpayer and it was made after the two-year period he can no longer appeal the same to the Court of Tax Appeals (Gonzales and Gonzales, National Internal Revenue Code, 1988 ed., p. 384, citing Gibbs vs. Collector of Internal Revenue and Court of Tax Appeals, 107 Phil. 232; Johnston Lumber Co. vs. CTA, 101 Phil. 151).

Accordingly, We do not agree with appellant that it is necessary for the Commissioner of Internal Revenue to act unfavorably on the claim for refund before the Court of Tax Appeals may acquire jurisdiction. This is so because of the positive requirement of Section 230 and the doctrine that delay of the Commissioner in rendering decision does not extend the peremptory period fixed by the statute.

Neither are We convinced that the law requires that the claim for refund should have been filed at the earliest instance in order to give the Commissioner an opportunity to rule on it and the court to review the ruling of the Commissioner of Internal Revenue on appeal. The law fixed the same period - two years - for filing a claim for refund with the Commissioner (Sec. 204, par. 3), and for filing of suit in court (Sec. 230), unlike in protests of assessment under Sec. 229 which fixed the period (thirty days from receipt of decision) for appealing to the court, thus clearly implying that the prior decision of the Commissioner is necessary for the court to take cognizance of the case. While it may be true that the Court of Tax Appeals is essentially an appellate court, and should act only upon claims for refund that are unfavorably decided by the Commissioner, the remedy is addressed to the legislature.

The taxpayer cannot be faulted for taking advantage of the full two-year period prescribed by law in filing his claim for refund. The Court of Tax Appeals itself acknowledges that the claim for refund with the Commissioner can be pending simultaneously with a suit for refund filed with said court:

xxx xxx xxx.

Accordingly, the Court is convinced that the filing of an application for refund/credit with the Respondent on June 25, 1998 and the petition for review with this Court on June 26, 1998, fall within the two-year period. The counting of the two-year period in claiming for refund of input VAT with the Respondent is reckoned from the close of the taxable quarter when the sales were made pursuant to Section106(a) of the Tax Code, as amended, while the prescriptive period in claiming for the refund of input VAT in this Court is counted from the date of filing of the quarterly VAT return **(Nichimen Corporation Philippine Branch vs. Commissioner of Internal Revenue, CTA case No. 5384, August 18, 1998; Hopewell Power (Philippines) Corp. vs. Commissioner of Internal Revenue, CTA Case No. 5389, January 4, 1999).**

Anent the second issue, Petitioner believes that it is entitled to the refund or tax credit of unutilized input VAT arising from purchases of domestic goods and services because its sales of goods are 100% exported. Petitioner cites as legal bases the provisions of Section 106(a) in relation with Section 100(a)(1) of the Tax Code, as amended, to wit:

> SEC. 106. *Refunds or tax credits of creditable input tax.* — (a) Any VAT-registered person, whose sales are zero-rated or effectively zero-rated, 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 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 100(a)(2)(A)(i), (ii) and (b) and Section 102(b)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the 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.
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> xxx xxx xxx

> SEC. 100. *Value-added tax on sale of goods or properties. - (a) Rate and base of tax.* – There shall be levied, assessed and collected on every sale, barter or exchange of goods, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor:
>
> (1) xxx
>
> (2) The following sales by VAT-registered persons shall be subject to 0%:
>
> A. Export sales. – The term 'export sales' means:
>
> > (i) 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).

Based on the above provisions of the Tax Code, Petitioner must prove that (1) it is a VAT registered person; (2) its sales are zero-rated; (3) the administrative claim for refund is seasonably filed; (4) the input taxes claimed were attributable to zero-rated sales and were not applied against the output tax liability; and (5) foreign currency exchange proceeds had been duly accounted for in accordance with the regulations of Bangko Sentral ng Pilipinas.

A circumspect study of the records of the case together with the pleadings and evidence at hand, reveals that Petitioner qualifiedly complied with the above requisites.

It was established that Petitioner is a VAT registered person as evidenced by the Certificate of Registration RDO Control No. 94-570-000298 issued by RDO No. 57 of the Bureau of Internal Revenue (Exh. A). Petitioner's sales of goods are 100% exported (Exhs. J-1 to J-122, N, and W-1 to W-377) and therefore subjected to VAT at zero percent pursuant to Section 100(a)(2)(A)(i) of the Tax Code, as amended. It is also clear that the administrative claim for refund which was filed on June 25, 1998, was seasonably filed within two years from the close of the second calendar quarter of 1996 (Exh. M). The input taxes claimed were attributable to the goods exported and were not applied against any output tax liability (Exhs.I-1 to I-48). However, as attested to by Mr. Ruben R. Rubio, the commissioned independent CPA, and as verified by the Court, input taxes in the sum of P165,785.41 were not supported by evidence (Exhs. E and E-1). Furthermore, the input taxes for the year 1996 were no longer carried over to the year 1997 as evidenced by the 1997 amended first quarterly VAT return of Petitioner (Exh. Q). Lastly, Petitioner was able to prove that foreign currency exchange proceeds in US dollars, representing export inward remittances, were credited to its US Dollar Accounts as certified by Pilipinas Bank and Rizal Commercial Banking Corporation (Exhs. H-1 to H-11, R, R, Y-1, Y-2, and Y-3).

Respondent maintains that Petitioner is not legally entitled to the claim for refund because of the fact that it is registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone Export Enterprise hence its business is not subject to VAT pursuant to Section 24 of Republic Act No. 7916 in relation to Section 103 of the Tax Code, as amended RA 7716 which provide:

> SEC. 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 xxx."

> SEC. 103. The following shall be exempt from the value-added tax:
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> xxx xxx xxx
>
> (q) Transactions which are exempt under special laws, **except those granted under Presidential Decree** Nos. 66, 529, 972, 1491 and 1590, and non-electric cooperatives under Republic Act No. 6938, or international agreements to which the Philippines is a signatory (Underlining supplied)

Respondent contends that since Petitioner is exempt from VAT, it is not allowed any tax credit on VAT input taxes paid on its purchases of goods and services alleged to be attributable to its zero-rated sales pursuant to Section 4.103-1 of Revenue Regulations No. 7-95.

On this point, we agree with the Respondent 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.

It bears stressing that under Section 23 of Republic Act No. 7916, two different fiscal incentives are granted to an ecozone enterprise, to wit:

> 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 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.

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.

In sum, Petitioner is entitled to the refund of unutilized input VAT in a reduced amount of P2,423,542.91, computed as follows:

Total input VAT claimed per Petition for Review	P2,589,328.32
Less: Unsupported input VAT	165,785.41
Amount of input VAT supported and verified	P2,423,542.91

WHEREFORE, in view of the foregoing, the Petition for Review is hereby *PARTIALLY GRANTED*. Respondent is **ORDERED to REFUND or ISSUE a TAX CREDIT CERTIFICATE** in the amount of P2,423,542.91 in favor of Petitioner.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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.

ERNESTO D. ACOSTA
Presiding Judge