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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

MEDICAL SERVICES OF AMERICA,
INC., Philippine Branch,
Petitioner,

-versus-

C. T. A. Case No. 4502

COMMISSIONER OF INTERNAL
REVENUE,
Respondent,
x - - - - - - - - - - - - - - x

7/28/93

D E C I S I O N

This is a petition for review initiated by the Medical Services of America, Inc., Philippine Branch, against the Commissioner of Internal Revenue to recover value-added tax which the former alleged to have erroneously paid to the Bureau of Internal Revenue for the period January 1, 1988 to January 31, 1990, inclusive, amounting to Five Hundred Thirty Thousand Five Hundred Twenty-Nine (P530,529.00) Pesos.

Petitioner is a foreign corporation doing business in the Philippines, principally engaged in providing pulmonary services to different hospitals through qualified and experienced technicians, trained personnel with the use of pulmonary equipment.

Under Section 103(1) of the National Internal Revenue Code (NIRC), persons rendering medical, dental, hospital and veterinary services of which category petitioner falls, are exempt from the 10% value-added tax. This is admitted by respondent in his Answer.

Petitioner erroneously filed value-added tax returns for the quarters corresponding to January 1 to April 30, 1988; May 1 to July 31, 1988; August 1 to October 31, 1988; November 1, 1988 to January 31, 1989; February 1 to April 30, 1989; May 1 to July 31, 1989; August 1 to October 31, 1989; November 1, 1989 to January 31, 1990, and paid the corresponding tax due thereon in the total amount of P530,529.00, as value-added tax based on its gross receipts from rendering medical services.

On February 5, 1990, Petitioner, thru its external auditor, Joaquin Cunanan & Co., communicated with Respondent, requesting for confirmation that it is exempt from value-added tax. Respondent in his VAT Ruling No. 103(1)-000-000-132-90, dated May 14, 1990, categorically stated that Petitioner is "exempt from value-added tax," pursuant to Section 103(1) of the NIRC, as amended by Executive Order No. 273.

On October 3, 1990, Petitioner filed a claim for refund with the Respondent in the amount of P530,529.00 corresponding to the value-added tax the former erroneously filed and paid for the quarters January to April 30, 1988; May to July 31, 1988; August to October 31, 1988; November 1, 1988 to January 31, 1989; February to April 30, 1989; May to July 31, 1989; August to October 31, 1989 and November 1989 to January 31, 1990.

Respondent did not act on the claim for refund. Hence, the present Petition for Review filed on October 11, 1990.

During the pendency of this case, Petitioner, through counsel, manifested in open court that it intended to pursue its case in the administrative level, even alleging that a BIR examiner to whom the case was assigned had recommended its claim for refund with the approval of his section chief which manifestation was not disputed by Respondent. Later, Petitioner's counsel manifested that although Respondent had granted the refund in favor of the Petitioner, the same was not acceptable because of an imposition of 35% tax on the refund. The Court ordered the respondent to submit the report of the refund granted with the 35% tax with the end in view of limiting the issue to the 35%

tax imposed. Until the case was submitted for decision, Respondent failed to submit the report as suggested by the Court. Neither did Respondent present any evidence in support of its case. Instead, Respondent submitted his case based on the pleadings (T.S.N., August 3, 1992).

The only issue to be resolved by this Court is whether or not Petitioner timely filed this judicial proceeding for erroneously paid value-added tax for the quarters corresponding to January 1, 1988 to January 31, 1990, inclusive, as provided under Section 230 of the NIRC.

We find for the Petitioner, with modification.

Based on the law and evidence on record, Petitioner is exempt from value-added tax (Exh. M). It erroneously paid value-added tax for the following periods with the corresponding amounts.

Quarter	Confirmation Receipt No. & Date	Amount
Jan.'88-Apr.'88 (Exh. D-1)	14888883;5/19/88	P 22,651.30
May '88-July'88 (Exh. E-1)	15579885;8/22/88	P 51,207.50
Aug.'88-Oct.'88 (Exh. F-1)	15584054;11/21/88	P 50,155.30
Nov.'88-Jan.'89 (Exh. G-1)	15584684;2/20/89	P 55,314.00
Feb.'89-Apr.'89 (Exh. H-1)	17309325;5/22/89	P 80,450.00
May '89-July'89 (Exh. I-1)	18011286;8/21/89	P 98,158.15

Aug.'89-Oct.'89 (Exh. J-1)	18574024;11/20/89	P109,557.75
Nov.'89-Jan.'90 (Exh. K-1)	18809236;2/20/90	P 63,035.00
Total Value-Added Taxes Paid		P530,529.00

The evidence further showed that on October 3, 1990, Petitioner filed a formal claim for refund with Respondent in the total amount of P530,529.00, as provided for under Section 230 of the NIRC. However, Respondent failed to act/respond to this claim. As stated earlier, the suit before this Court was commenced by Petitioner in order to beat the two-year prescriptive period as provided for in Section 230 of the NIRC.

Section 230 of the NIRC provides thus:

> "*Sec. 230. Recovery of tax erroneously or illegally collected.* -No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, that the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (underscoring supplied)

"The reasons for requiring the filing of a claim for refund of tax before recourse to court is had are the following:

> (1) To afford the Commissioner of Internal Revenue an opportunity to correct the action of subordinate officers; and
>
> (2) 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 two-year period in Section 243 (now 230) of the NIRC, is <u>mandatory</u>. If the Commissioner of Internal Revenue denies the claim for refund, there is no question that the taxpayer can appeal to the Court of Tax Appeals. But if the Commissioner fails to act on the refund and the two-year period is about to lapse, the taxpayer should institute the appeal to the Court of Tax Appeals, without waiting for the decision of the Commissioner. This is so because of the positive requirement of Section 243 (now 230) and the doctrine that delay of the Commissioner in rendering the decision does not extend the peremptory period fixed by the statute." *(Gibbs vs Collector, L-13453, February 29, 1960; also Commissioner of Internal Revenue vs Victorias Milling Inc., 22 SCRA 12; underscoring supplied).*

Section 110 of the NIRC provides:

"*Section 110. Return and payment of value-added tax.* - (a) Where to file the return and pay the tax. - Every person subject to value-added tax shall file a quarterly return of his gross sales or receipts and pay the tax due thereon to a bank duly accredited by the Commissioner located in the revenue district where such person is registered or required to be registered. However, in cases where there are no duly accredited agent banks within the city or municipality, the return shall be filed and any amount due shall be paid to any duly accredited bank within the district, or to the Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality where such taxpayer has his principal place of business. Only one consolidated return shall be filed by the taxpayer for all the branches and lines of business subject to value-added tax. If no tax is payable because the amount of input tax and any amount authorized to be offset against the output tax is equal to or is in excess of the output tax due on the return, the taxpayer shall file the return with the Revenue District Officer, Collection Agent or authorized municipal treasurer where the taxpayer's principal place of business is located.

(b) Time for filing of return and payment of tax. - The return shall be filed and the tax paid within 20 days following the end of each quarter specifically prescribed for a VAT-registered person under regulations to be promulgated by the Secretary of Finance: Provided, however, That any person whose registration is cancelled in accordance with paragraph (e) of Section 107 shall file a return within 20 days from the cancellation of such registration. (underscoring supplied)

x x x x x

The formal claim for refund of Petitioner for erroneously paid value-added tax commencing from January 1988 up to January 1990, was filed and received by the Bureau of Internal Revenue on

October 3, 1990 (Exh. N) and the Petition for Review before this Court was initiated on October 11, 1990.

For erroneously paid Value-Added Tax filed for the quarters pertaining to January 1 to April 1988 in the amount of P22,651.30 under Confirmation Receipt No. 14888883, dated May 19, 1988; and May 1 to July, 1988, in the amount of P51,207.50 under Confirmation Receipt No. 15579885, dated August 22, 1988, the prescriptive period had already set in, the claim for refund in the administrative level and the judicial suit having been maintained beyond the two-year period from the payment thereof.

Petitioner is therefore entitled to the refund of the erroneously paid VAT for the following periods with their corresponding amounts:

QUARTER	CONFIRMATION RECEIPT NO.	AMOUNT
Aug.'88-Oct.'88,	CR No. 15584654	P 50,155.30
Nov.'88-Jan.'89,	CR No. 15584684	55,314.00
Feb.'89-Apr.'89,	CR No. 17309325	80,450.00
May '89-July'89,	CR No. 18011286	98,158.15
Aug.'89-Oct.'89,	CR No. 18574024	109,557.75
Nov.'89-Jan.'90,	CR No. 18809236	63,035.00
Total Amount Refundable		P 456,670.20

WHEREFORE, in view of all the foregoing, Respondent is hereby ordered to refund to the Petitioner the amount of P456,670.20 representing erroneously paid value-added taxes for the quarters corresponding to August 1, 1988 to January 31, 1990, inclusive. No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, July 28, 1993.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

This is to 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