REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

TECHNIRAIL S.A.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NOS. 6127 and 6174

Members:

Acosta, *Chairperson,*
Bautista, and
Casanova, *JJ.*

Promulgated:
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DECISION

ACOSTA, P.J.:

These consolidated cases seek the refund or issuance of a tax credit certificate of petitioner's alleged unutilized Creditable VAT Withheld for the Second, Third and Fourth Quarters of taxable year 1998 in the total amount of P4,013,388.72, broken down as follows:

CTA Case No.	**Period Covered**	**Claimed Creditable VAT Withheld**
6127	2nd quarter – 1998	P 290,819.34
6174	3rd and 4th quarters - 1998	3,722,569.38
	TOTAL	**P 4,013,388.72**

The following are the facts of the case as culled from the records:

Petitioner is a branch of Technirail S.A. (Belgium), duly authorized and licensed to do business in the Philippines, with its principal place of business located at the 3/F Raha

202

Sulayman Bldg., 108 Benavidez Street, Legaspi Village, Makati City. It is a duly registered Value-Added Tax (VAT) taxpayer as evidenced by its "Certificate of Registration" dated March 9, 1999 (*Exhibit "P"*). It is engaged in the business of supplying mass transport equipment and repair and rehabilitation of rail transit system. The Light Rail Transit Authority (LRTA), a Philippine government agency, was among the entities with whom petitioner rendered construction and rail rehabilitation services.

During the Second, Third and Fourth Quarters of 1998, petitioner provided various construction services to the LRTA. In consideration for said construction and rail rehabilitation services, the LRTA paid to petitioner the following amounts: P3,421,404.00 for the Second Quarter; P31,906,800.60 for the Third Quarter; and P11,888,133.20 for the Fourth Quarter of 1998.

Petitioner filed its Quarterly VAT Returns for the Second, Third and Fourth Quarters of 1998 on June 23, 2000, July 3, 2000 and July 4, 2000, in that order, which showed, among others, the following:

	2nd Quarter	**3rd Quarter**	**4th Quarter**
	(Exhibit "A")	*(Exhibit "KK")*	*(Exhibit "LL")*
Sales/Receipts	P 3,421,404.00	P 31,906,800.60	P 11,888,133.20
Output Tax	P 342,140.40	P 3,190,680.06	P 1,188,813.32
Less: Input Tax			
Carried-Over from previous qtr.	P 109,627.37	P 3,071,568.54	P 1,764,986.64
Domestic Purchases for the quarter	1,084,061.86	1,687,893.01	1,752,728.86
Importation of goods for the quarter	1,997,470.83	196,205.15	1,608,086.79
Total Available Input Tax	P 3,191,160.06	P 4,955,666.70	P 5,125,802.29
VAT Payable/(Excess Input Tax)	P(2,849,019.66)	(1,764,986.64)	P(3,936,988.97)
Less: Creditable VAT Withheld	290,819.34	P 2,712,078.05	1,010,491.33
Tax Payable/(Overpayment)	P(3,139,839.00)	P(4,477,064.69)	P(4,947,480.30)

Subsequently, petitioner filed amended Quarterly VAT Returns for the Second and Fourth Quarters of 1998 on June 26, 2000 and August 10, 2000, respectively, which are detailed hereunder, thus:

201

	Second Quarter (Exhibit "B")	Fourth Quarter (Exhibit "MM")
Sales/Receipts	P 3,421,404.00	P 11,888,133.20
Output Tax	P 342,140.40	P 1,188,813.32
Less: Input Tax		
Carried-Over from previous qtr.	P 109,327.37	P 1,764,886.67
Domestic Purchases for the quarter	1,087,082.12	1,881,513.13
Importation of goods for the quarter	2,216,999.46	1,608,086.79
Total Available Input Tax	P 3,413,708.94	5,254,586.59
VAT Payable/(Excess Input Tax)	(3,071,568.54)	(4,065,773.27)
Less: Creditable VAT Withheld	290,819.34	1,010,491.33
Tax Payable/(Overpayment)	P (3,362,387.88)	P (5,076,264.60)

In accordance with **Section 114 (C) of the National Internal Revenue Code of 1997**, the LRTA withheld Creditable VAT at the rate of 8.5% of said payments to petitioner. The LRTA withheld the following amounts for the Second, Third, and Fourth Quarters of 1998: P290,819.34; P2,712,078.05; and P1,010,491.33, respectively. The said Section 114 (C) of the 1997 Tax Code is hereunder quoted for ready reference, to wit:

"**Sec. 114.** ***Return and Payment of Value-Added Tax*** .-

xxx

(C) ***Withholding of Creditable Value-Added Tax.*** **- The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods from sellers and services rendered by contractors which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold the value-added tax due** at the rate of three percent (3%) of the gross payment for the purchase of goods and six (6%) on gross receipts for services rendered by contractors on every sale or installment payment **which shall be creditable against the value-added tax liability of the seller or contractor**: *Provided, however,* "**That in the case of government public works contractors, the withholding rate shall be eight and one-half percent (8.5%)**: *Provided, further,* That the payment for lease or use of properties or property rights to non-resident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For this purpose, the payor or person in control of the payment shall be considered as the withholding agent.

"The value-added tax withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made.

302

Aside from the requirement of withholding the Creditable VAT, the same Section 114 (C) of the 1997 Tax Code provides that the VAT withheld by LRTA from its payments to petitioner is creditable against its VAT liability. However, petitioner alleged that it did not incur VAT liability for the same periods against which the subject Creditable VAT withheld for the Second, Third, and Fourth Quarters of 1998 may be credited. Likewise, the subject Creditable VAT withheld by LRTA were supposedly not carried over to the succeeding taxable quarters. Hence, the same remain unutilized.

On June 29, 2000, petitioner, through counsel, filed with respondent Commissioner of Internal Revenue, through RDO No. 47 (East Makati), a claim for refund of the Creditable VAT Withheld for the Second Quarter of 1998, attributable to its transaction with the LRTA, amounting to P290,819.34 (*Paragraph 3, Joint Stipulation of Facts and Issues, CTA Case No. 6127, page 43, Records*). On the same date, petitioner elevated its claim to this Court, by way of a Petition for Review and the case was docketed as CTA Case No. 6127.

During the pendency of CTA Case No. 6127, petitioner, through counsel, filed on September 29, 2000 with respondent Commissioner of Internal Revenue, through RDO No. 47 (East Makati), a claim for refund of the Creditable VAT Withheld for the Third and Fourth Quarters of 1998, attributable to its transactions with the LRTA, in the respective amounts of P1,010,491.33 and P2,712,078.05 or a total of P3,722,569.38 (*Paragraph 3, Joint Stipulation of Facts and Issues, CTA Case No. 6174, page 41, Records*). The petitioner elevated its claim with this Court on even date, via Petition for Review, which was docketed as CTA Case No. 6174.

In his Answers to the two Petitions for Review for the two cases of Technirail S.A. vs. CIR, docketed as CTA Case Nos. 6127 and 6174, respondent asserted the following Special and Affirmative Defenses, to wit:

203

"4. The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;

5. 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*);

6. 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*);

7. In an 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;

8. It is incumbent upon petitioner to show compliance with the provisions of Section 229 of the National Internal Revenue Code;

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

On March 1, 2001, petitioner filed a Motion to Consolidate Court of Tax Appeals Case Nos. 6127 and 6174, on the ground that these cases involved the same parties, same facts, and issues. The said Motion was granted in open court on March 16, 2001 and confirmed in a Resolution dated March 23, 2001(*Pages 50-53, 55, and 58, Records*).

On September 15, 2005, after the trial, this Court issued a Resolution directing the parties to file their respective Memorandum within thirty (30) days from receipt of said Resolution.

In a Resolution dated December 1, 2005, the case was ordered submitted for decision, with only the petitioner filing its Memorandum.

Based on the Joint Stipulation of Facts and Issues dated February 2, 2001 and February 20, 2001, the following are the issues to be resolved by the Court:

1. Whether petitioner is entitled to a total refund of P4,013,388.72 representing the Creditable VAT Withheld from payments to petitioner from its sale of various construction services attributable to LRTA, a government agency;

2. Whether petitioner has unutilized or excess Creditable VAT Withheld for the 2nd, 3rd and 4th quarters of taxable year 1998; and

3. Whether petitioner has no VAT liability which can be credited against the VAT withheld for 2nd, 3rd and 4th quarters of taxable year 1998.

This Court will first resolve the second and third stipulated issues inasmuch as they both relate to the factual basis of the claim.

Anent the issue of whether or not petitioner has unutilized or excess Creditable VAT Withheld for the last three quarters of 1998, records indicate that out of the claimed Creditable VAT Withheld of P4,013,388.72, the amount of P3,237,663.84 is duly covered by certified true copies of the Certificates of Creditable Tax Withheld at Source issued by LRTA (*Exhibits "C", "NN", and "OO"*) and Monthly Returns of Internal Revenue Taxes Withheld on Government Money Payments with attached Schedule of Remittance filed by LRTA for the subject period of the claim (*Exhibits "D", "E", "G", "G-1" to "G-5", "H" and "H-1" to "H-5"*). While the remaining amount of P775,724.88 *(P4,013,388.72 less P3,237,663.84)* does not have corresponding Certificates of Creditable Tax Withheld at Source, the actual withholding and subsequent remittance thereof to the BIR can be traced to the Monthly Return of Internal Revenue Taxes Withheld on Government Money Payments for December 1998 filed by LRTA with the BIR (*Exhibit "I" and "I-6" to "I-8"*). Likewise, a scrutiny of petitioner's Quarterly VAT Returns for the Second, Third and Fourth Quarters of 1998 (*Exhibits "B", "KK", and "MM"*) reveals that petitioner declared the gross receipts related to the Creditable VAT Withheld of P4,013,388.72. In other words, petitioner was able to establish the fact of withholding of the claimed Creditable VAT of P4,013,388.72, which it can validly apply or utilize against its output VAT liability.

Regarding the question of whether or not petitioner has VAT liability against which its unutilized Creditable VAT Withheld can be credited, a closer look at petitioner's input and output VAT transactions for the subject period as verified by the commissioned independent CPA shows that it has total output VAT liability of P4,724,589.69. Meanwhile petitioner's accumulated input VAT, covering all other transactions, amounts to P5,260,740.18. The same are illustrated in detail below:

1998	2nd Quarter	3rd Quarter	4th Quarter	Total
Adjusted Output VAT[1]	P 345,096.31	P 3,190,680.06	P 1,188,813.32	P 4,724,589.69
VAT Carry-over		1,627,489.79		
Verified Input VAT[2]	1,972,586.10	1,198,523.72	2,089,630.36	5,260,740.18
VAT Payable/(Excess Input VAT)	P(1,627,489.79)	P 364,666.55	P (900,817.04)	P (536,150.49)

From the foregoing, petitioner's accumulated input VAT, covering all other transactions, in the amount of P5,260,740.18, was more than enough to cover its total output VAT liability of P4,724,589.69. After deducting the output VAT of P4,724,589.69 from the input VAT of P5,260,740.18, there still remains an excess input VAT in the amount of P536,150.49. Inasmuch as petitioner had no more output VAT liability for the subject period against which the Creditable VAT Withheld may be applied/credited, then such Creditable VAT Withheld amounting to P4,013,388.72, derived from its transactions with the LRTA, constitutes excessively paid tax.

We now resolve the issue of the legal basis of the grant of the claim for refund or issuance of tax credit certificate.

At this juncture, the pertinent portions of **Sections 110 (A)(1) and (B) and 112(A) of the 1997 Tax Code** are hereunder quoted inasmuch as they are the controlling provisions as regards the instances when VAT refund are allowed, to wit:

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[1] Page 6, Exhibit "Q"
[2] Annex "R-A", Exhibit "Q"

306

SEC. 110. Tax Credits. –

(A) Creditable Input Tax. -

(1) Any input tax evidence by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

xxx xxx xxx

(B) Excess Output or Input Tax. – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. **If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.** (*Emphasis supplied*)

xxx xxx xxx"

SEC. 112. Refunds or Tax Credits of Input Tax. –

(A) Zero-rated or effectively Zero-rated Sales. – 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 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) xxx.

(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. xxx

(C) Cancellation of VAT Registration. – A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, **apply for the issuance of a tax credit certificate for any unused input tax** which may be used in payment of his other internal revenue taxes.

xxx xxx xxx (*Emphasis supplied*)

307

The general rule in the case of excess tax, as provided in Section 110 of the 1997 Tax Code, is that the excess shall be carried over to the succeeding quarter or quarters. However, any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may, at his option, be refunded or credited against other internal revenue taxes its excess tax, subject to the provisions of Section 112 of the same Tax Code.

Section 112 of the 1997 Tax Code, in relation to **Sections 106(A)(2)(a) and (b), and 108 (B)**, specifies the instances when the options of refund or tax credit can be exercised or allowed, namely: (1) in cases of zero-rated or effectively zero-rated sales; (2) input taxes paid on capital goods; and (3) in cases of cancellation of VAT registration due to retirement from or cessation of business or due to changes in or cessation of VAT-registered status. The terms "zero-rated" or "effectively zero-rated," as defined in **Section 106(A)(2)(a)(1) and (2)** contemplate export sales, which can be either (a) sale and actual shipment of goods from the Philippines to a foreign country or (b) sale of raw materials or packaging materials to a non-resident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods.

Based on the foregoing, the specific cases when a refund or issuance of tax credit certificate can be granted or allowed are as follows:

1. Zero-rated or effectively Zero-rated sales, such as
   a. Export sales
   b. Foreign currency denominated sale;

2. Input taxes paid on Capital Goods imported or locally purchased; and

3. Cancellation of VAT registration due to retirement from or cessation of business or due to changes in or cessation of VAT status.

In the absence of a special law wherein the petitioner would qualify, it means that in case the transaction from which the alleged unutilized input VAT arose is not among those enumerated or specifically mentioned in the significant provisions of the 1997 Tax Code as

328

entitled to refund or issuance of tax credit certificate, then the claim for refund or issuance of a tax credit certificate of the excess input VAT must fail. The law cannot be any clearer. Long-settled is the rule of statutory construction that the express mention of one person, thing, act, or consequence excludes all others. This rule is expressed in the familiar maxim *expressio unius est exclusio alterius*. Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned (**Commissioner of Customs vs. Court of Tax Appeals and Litonjua Shipping Company, represented by Granexport Corporation as sub-agent**, *G.R. Nos. L-48886-88. July 21, 1993*).

In the case before Us, records indicate that petitioner's transaction with LRTA is not zero-rated or effectively zero-rated sale nor involves capital goods. Likewise, there is no evidence indicating that petitioner has retired from or ceased doing business, or has qualified under any special law. Accordingly, it is not entitled to refund of or issuance of tax credit certificate for its excess input tax.

Pursuant to Section 110(b) afore-quoted, as implemented by **Section 4.104-4 of Revenue Regulations No. 7-95 (Consolidated Value-Added Tax Regulations)**, the remedy of petitioner is to carry-over the excess input VAT to the succeeding taxable months or quarters.

Although the petitioner has sufficiently established the existence of its excess unutilized input VAT in the amount of P4,013,388.72, however, since the transaction from which the said unutilized amount arose is not among the specified instances when the remedy of refund or issuance of tax credit certificate is permitted, then the petitioner will only be allowed to carry-over the claimed amount to the succeeding taxable months or quarters.

309

WHEREFORE, petitioner's claim for refund or issuance of a tax credit certificate in the amount of P4,013,388.72 is hereby **DENIED**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

ERNESTO D. ACOSTA
Presiding Justice

310