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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CITICORP VICKERS PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4588

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 27 1996

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DECISION

Before Us for consideration is the herein prayer of petitioner, through a Petition for Review, for the judicial refund of alleged erroneously paid value-added taxes (VAT) in the aggregate amount of ₱347,300.94 covering the period December 19, 1988 up to September 12, 1990.

Petitioner is a domestic corporation organized and existing under Philippine laws with office located at the 5th Floor, Citibank Centre, 8741 Paseo de Roxas, Makati, Metro Manila. It is allegedly engaged in business activity in the Philippines as a dealer in securities.

The antecedent facts are simple.

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During the period above-stated, petitioner avers that it rendered brokerage services to non-resident clients for which it was paid in acceptable foreign currency inwardly remitted to the Philippines with a Philippine peso equivalent of ₱3,473,008.70, and correspondingly paid the 10% VAT due thereon to the Bureau of Internal Revenue (BIR) in the amount of ₱347,300.94.

Sometime later, petitioner realized that as a dealer in securities, it was exempt from VAT pursuant to Section 103(j) of the Tax Code, as amended, and instead, was supposed to be subject to the percentage tax under Section 116 of the same Code.

Consequently, petitioner filed a claim for refund with the respondent on March 20, 1991. Its claim was premised on erroneous payment of internal revenue tax, more particularly, the VAT it had paid. On even date, petitioner filed the instant petition in order to interrupt the running of the two-year prescriptive period for claiming a refund pursuant to Section 230 of the Tax Code.

Hence, this appeal.

In her answer, respondent contends, among others, that "[g]ranting but not admitting that petitioner is entitled to a tax refund, the right to claim said refund for the period prior to March 20, 1989 has prescribed as the petition for review was only filed on March 20, 1991 or after the lapse of the reglementary period of 2 years provided under Section 230 of the Tax Code." Moreover, respondent asseverates that petitioner has no cause of action because it failed to show that the collection of the aforesaid tax liability in the amount of ₱347,300.94 was illegal or erroneous.

Records, reveal, *inter alia*, that petitioner offered in evidence the following exhibits, namely: (1) its VAT returns for the period December, 1988 to September, 1990 (Exhibits "C", "D", "E", "F", "P", "Q", "R", and "S"); (2) CB Confirmation Receipts for its VAT payments (Exhibit "C-1", "D-1", "E-1", "F-1", "P-1", "Q-1" "R-1", and "S-1"; (3) schedule of transactions duly registered with the Central Bank covering sale of Philippine securities to non-residents (Exhibit "V"); (4) applications for registration of Sale of Philippine securities to non-residents, and authority to transfer outward corresponding stock certificates duly registered with the Central Bank (Exhibits "W-1" to "W-113"); (5) photocopy of its certificate of amended Articles of Incorporation issued by the Securities and Exchange Commissioner (Exhibit "A"); and (6) Amended Articles of Incorporation (Exhibit "B").

The sole issue to be resolved in the case at bar is: whether or not petitioner is entitled to the refund of the alleged erroneous payment of VAT in the said amount of P347,300.94.

Delving into the merits of the case, We resolve to peremptorily rule in favor of respondent.

Notwithstanding the fact that petitioner has sufficiently established that it is a dealer in securities and therefore exempt from VAT, with all the alleged business transactions to non-residents involving services on the sale of securities duly proven, it somehow failed to convince this Court that erroneous VAT payments on such services rendered were indeed included in the various VAT returns it filed with the BIR. If, as alleged, it is subject to percentage tax, it failed to prove that it paid the said tax due.

The above finding is anchored on the curiosity of this Court on why petitioner is merely seeking the refund of P347,300.94 covering the period December, 1988 up to September 12, 1990, when, as the records bear out, the actual total amount of VAT payments made for the same period is computed, as follows:

1.	Confirmation Receipt No. B19179676 dated 03-20-90 (Exhibit "C-1")	-	₱ 148,366.39
2.	Confirmation Receipt No. B21284465 dated 12-20-90 (Exhibit "D-1")	-	213,454.79

3.	Confirmation Receipt No. B20618517 dated 09-20-90 (Exhibit "E-1")	-	344,628.01
4.	Confirmation Receipt No. B20111920 dated 06-20-90 (Exhibit "F-1")	-	238,625.48
5.	Confirmation Receipt No. B18029212 dated 09-20-89 (Exhibit "P-1")	-	409,069.60
6.	Confirmation Receipt No. B17578310 dated 06-20-89 (Exhibit "Q-1")	-	116,983.29
7.	Confirmation Receipt No. B16483383 dated 03-20-89 (Exhibit "R-1")	-	79,063.26
8.	Confirmation Receipt No. B18513486 dated 12-20-89 (Exhibit "S-1")	-	917,211.31
		Total	₱2,467,402.13

The discrepancy in the above figures could only be interpreted to mean that petitioner is engaged in other rightfully "vatable" sale of services other than dealing in securities, otherwise, it could have surely sought the refund of the entire amount of actual payments made.

In this regard, there is a compelling need for the petitioner to point out to the Court that the amount being claimed in this petition forms part and parcel of the actual payments made. This could only be done by a painstaking verification of all the invoices/receipts evidencing the sale of services transacted during each quarter of the period covered and correspondingly relating them to the totality of the quarterly payments. In this way, the particular transactions on the dealing of securities can be properly identified and segregated and the fact of payment of VAT thereon truly established with certainty. Sad to say, petitioner was unable to present the required evidence on said specific transactions. There is no way thus far for this Court to ascertain whether the particular transactions from which the herein claim arose were some of those included in the list of transactions covering the VAT payments for the quarter concerned. In fine, the VAT payments made as evidenced by the various Confirmation Receipts are presumed to be valid VAT payments in the absence of clear evidence to the contrary.

It should be borne in mind by the petitioner that in cases like this which deals on a refund, it has the burden of proof to show that it is entitled to the refund of the amount claimed as refundable because taxes are presumed to have been collected in accordance with laws and regulations on the matter. For having failed to sustain the burden placed upon it by presenting proof that it is entitled to the refund of the amount involved herein, this Court could not look with approval to the grant of the refund. **(Caltex [Philippines] Inc. vs. Commissioner of Internal Revenue; CTA Case No. 2871)**

It has been the constant and uniform holding of the Supreme Court that claims for refund are construed strictly against claimant since a claim for refund is in the nature of an exemption from taxation. (**Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95**)

WHEREFORE, in view of insufficiency of evidence, the instant petition for review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that this 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
Court of Tax Appeals