REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANSCOR HAGEDORN SECURITIES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4948

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated :
JAN 30 1996

x - x

DECISION

This is a petition for refund of Anscor Hagedorn Securities, Inc. in the amount of P87,546.96 as erroneously paid value added tax for the first quarter of 1991.

Petitioner is a licensed broker/dealer of securities rendering services to resident and non-resident investors. Whenever it purchases shares of stocks in behalf of its non-resident clients, the latter make inward remittances of foreign currency in payment of the purchase price and commission due to petitioner. And when it sells shares of stocks, it remits to its foreign clients the proceeds net of commissions and taxes.

During the first quarter of 1991, that is from January 1, 1991 to March 31, 1991, petitioner earned commission income from its sale of services in the amount of P2,636,034.95. On April 23, 1991, it filed its VAT return and computed the VAT due as follows:

Commission Income	P2,636,034.97
Multiplied by	1/11
VAT Payable	P 239,639.55
Less: Input Tax	6,086.08
	P 233,563.47

For the same quarter reported, petitioner derived broker's commission from buying and selling of shares of stocks for and in behalf of non-resident clients in the amount of P936,016.45. This amount was included in the total commission income of P2,636,034.95 thereby erroneously subjecting said brokers commission to 10% VAT.

Petitioner believes that its broker's commission income is subject to zero per cent (0%) rate of VAT pursuant to Section 102 (a) (2) of the Tax Code which provides:

> "**Section 102.** *Value-added tax on sale of services* - (a) Rate and base of tax - There shall be levied, assessed and collected, a value added tax equipment to 10 percent of gross receipts derived by any person engaged in the sale of services. xxx Provided that the following sales by VAT- registered persons shall be subject to 0%:
>
> (1) x x x

(2) Services other than those mentioned in the preceding sub-paragraph, the consideration for which is paid for in acceptable foreign currency which is remitted inwardly to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines.

(3) x x x"

Upon realizing that it committed an erroneous overpayment of VAT, on September 26, 1991, petitioner filed a written claim for refund with the B.I.R. in the amount of P87,546.96, computed hereunder pursuant to Revenue Regulations No. 5-89. Thus:

Commission income from sale of services	P2,636,034.97
Less zero-rated sale of services	963,016.45
Amount of Commission subject to 10% VAT	P1,673,018.52
VAT payable (Multiplied by 1/11)	P 152,092.59

The alleged overpayment is arrived at as follows:

VAT actually paid to BIR	P239,639.55
VAT due under RR 5-87	152,092.59
Overpayment	P 87,546.96

Petitioner's claim remains unacted upon up to January 22, 1993, the date of filing the instant petition for review with this Court.

In his answer filed on February 11, 1993, respondent raised the following as his special and affirmative defenses:

> "1. Petitioner's claim for tax credit/refund is still pending administrative investigation.
>
> 2. The alleged zero-rated sale of services performed by the petitioner is not substantiated by proper documents.
>
> 3. Petitioner has not shown that the taxes allegedly to be refunded have been withheld by or remitted to respondent. Even granting *arguendo* that said taxes have been withheld by or remitted to respondent, the presumption is that they were collected in accordance with law and existing regulations.
>
> 4. Petitioner must show compliance with the provisions of Section 204 in relation to Section 230 of the National Internal Revenue Code, as amended.
>
> 5. Since a claim for tax credit/refund partakes of the nature of a tax exemption, said claim is construed strictly against the claimant (**Resins, Inc. vs. Auditor General, 25 SCRA 754**)."

The facts of the case at bar fall squarely with the facts of CTA Case Nos. 4657 and 4785 involving claims for refund/tax credit also of petitioner for erroneously paid value-added taxes for the taxable years 1989 and 1990, respectively. Naturally, it follows that the same issues resolved by this Court in said cases will also be tackled in the instant case. The issues are as mentioned below:

1. Whether or not petitioner's commission income qualify for the zero rate of VAT; and

2. Whether or not the requirements for claim for refund have been complied with by petitioner.

Pursuant to sub-paragraph 2 of Section 102 (a), there are three (3) requirements that must be complied with in order to qualify for the zero percent (0%) rate of VAT. These are:

1. The consideration for their services rendered is paid for in acceptable foreign currency;

2. The foreign currency is remitted inwardly to the Philippines; and

3. The remittance must be accounted for in accordance with the rules and regulations of the Central Bank of the Philippines.

To comply with the above requirements, petitioner formally offered as its evidence the following documents, to wit:

Exhibits	Nature	Description
"A" to "A-52"	Petitioner's Sales Invoices for the 1st Quarter 1991 effecting the sale of shares of stock owned by its foreign clients through the Makati Stock Exchange	To prove that for the 1st quarter 1991, petitioner sold, through the Makati Stock Exchange, the shares of stocks owned by its foreign clients
"B" to "B-43"	Petitioner's Purchase Invoices for 1st quarter 1991 effecting purchases of stocks in the Makati Stock Exchange for its foreign clients	To prove that for the 1st quarter 1991 petitioner bought shares of stocks at the Makati Stocks Exchange for the account of its foreign clients

Exhibits	Nature	Description
"C" to "C-36"	Bank Credit Advices on foreign exchange remittance to petitioner for the 1st quarter 1991	To prove that for services rendered petitioner received as compensation US dollars remitted through the banking system and accounted for in accordance with CB Rules and Regulations
"D" to "D-23"	CB - FEOU Forms No. 1 (May 19, 1986) accomplished and filed by petitioner with the CB for its purchases of stocks for its foreign clients for the 1st semester, 1991	To prove that petitioner filed with the Central Bank the sale of Philippine stocks to non-residents and was granted authority to transfer outward corresponding stock certificates to its foreign clients
"E" to "E-38"	CB's Authority allowing certain banks to remit foreign currency	To prove that the CB allowed certain banks to remit foreign currency to non-resident clients of petitioner
"F"	Petitioner's VAT Registration Certifi - cate No. 32-9-000381	To prove that petitioner is a VAT - registered enterprise
"G" to "G-2"	Petitioner's 1st sem., 1991 VAT return	To prove that petitioner filed on April 22, 1991 its VAT 1st sem. 1991 return To prove that petitioner declared as net payable as VAT output tax the sum of P233,553.49 which included commissions it earned on the sale and purchases of stocks for

Exhibits	Nature	Description
		its foreign clients which were paid in foreign currency remitted in the banking system and accounted for in accordance with CB Rules and Regulations
"G-3"	CB Confirmation Receipt No. B22471156 in the sum of P233,553.47 dated 4-22-91 in the petitioner's name	To prove that petitioner paid the sum of P233,553.47 as its VAT output tax for 1st sem,. 1991
"H" to "H- 3"	Petitioner's claim for refund dated 25 September 1991 signed by R.F. Yap and E.B. Palmaria (2) pages	To prove that on September 26, 1991 petitioner filed its claim for refund of overpaid VAT for 1st quarter 1991 with the BIR Appellate Division

(pp. 56-5 7 CTa records)

A careful perusal of the abovementioned documents submitted as evidence, revealed that petitioner received inward remittances of foreign currency only in cases where petitioner bought shares of stocks for its non-resident clients. It did not receive inward remittance of foreign currency, whenever it sold shares of stocks owned by its non-resident clients. In cases of sales, it was petitioner who remitted abroad to its non-resident clients the proceeds of its sales paid for in local currency, net of its commission income. Pursuant to

Section 8 (c) (3) of Revenue Regulations No. 5-87, commission income from said sales which are paid for in local currency shall not be subject to zero rate but to 10% rate of VAT: Thus, the law provides:

> "**Section 8** *Zero-rating* -
>
> (a) In general. - x x x
>
> (b) Zero-rated sale of goods. - x x x
>
> (c) Zero-rated sale of services. - The following services rendered by VAT - registered persons are zero-rated :
>
> (1) x x x
>
> (2) x x x
>
> (3) Services performed in the Philippines other than those mentioned in subparagraph (1) above which are paid for by the person or entity to whom the service is rendered in acceptable foreign currency inwardly remitted and duly accounted for in accordance with Central Bank regulations. Where the contract involves payments in both foreign and local currency, only the service corespondent to that paid in foreign currency shall enjoy zero-rating. The portion paid for in local currency shall be subject to VAT at the rate of 10%.
>
> (d) xxx" (Underscoring supplied)

As hereinbefore stated, sales of securities by petitioner do not qualify for zero rate of VAT for two (2) reasons. First, their proceeds were not paid for in foreign currency, but in local currency. Second, such proceeds were not inwardly remitted, but were remitted abroad to its non-resident clients net of petitioner's commission income. Such sales of securities were covered by various invoices, details of which are as tabulated hereunder:

SALES OF SECURITIES

Invoice No.	Invoice Date	Client	Security Sold	Commission Income	Exh.	Amount* Authorized for Outward Remittance	Exh.
0022089A	01-02-91	James Capel (FE)	San Miguel-B	8,888.66	A	3,537,687.68	E
0022151A	01-08-91	Bermuda Phil.					
		Long-Term Equity	Lepanto Cons Mng-B	7,875.00	A-1	515,812.50	-
0022160A	01-09-91	Baring Securities	Phil. Rlty & Hldgs B	37.50	A-2	7,443.75	E-1
0022201A	01-17-91	Tyndall Pacific	Phil. Nat'l Bank	84,645.00	A-3	5,544,247.50	E-2
0022216A	01-17-91	Tyndall Pacific	San Miguel - B	9,660.00	A-4	632,730.00	E-2
0022211A	01-18-91	Tyndall Pacific	San Miguel - B	57,750.00	A-5	3,782,625.00	E-3
0022228A	01-21-91	Tyndall Pacific	San Miguel - B	51,264.00	A-6	3,357,792.00	E-3
0022207A	01-18-91	James Capel (FE)	Phil. Nat'l Bank	90.00	A-7	17,865.00	E-4
0022246A	01-24-91	Tyndall Pacific	Phil. Rlty & Hldgs B	1,505.40	A-8	98,603.70	E-5
0022254A	01-25-91	Tyndall Pacific	San Miguel - B	19,448.25	A-9	1,273,860.37	E-5
0022251A	01-25-91	James Capel (FE)	Metro Drug - B	2,545.00	A-10	505,182.50	E-6
0022262A	01-28-91	James Capel (FE)	Metro Drug - B	5,928.75	A-11	1,176,856.87	E-6
0022286A	01-30-91	James Capel (FE)	Metro Drug - B	12,325.00	A-12	2,446,512.50	E-7
0022273A	01-29-91	James Capel (FE)	Metro Drug - B	233.75	A-13	46,399.37	E-7
0022171A	01-10-91	Baring Securities	San Miguel - B	4,950.00	A-14	982,575.00	E-8
0022301A	01-31-91	Tyndall First					
		Phil. Inv. Trust	SM Fund - B	53,700.00	A-15	3,517,350.00	E-9
0022317A	02-01-91	Tyndall First					
		Phil. Inv. Trust	SM Fund - B	49,425.00	A-16	3,237,337.50	E-9
0022287A	01-30-91	James Capel (FE)	Robinson Land - B	13,717.50	A-17	2,722,923.75	E-10
0022299A	01-31-91	James Capel (FE)	Robinson Land - B	2,153.50	A-18	427,469.75	E-11
0022315A	02-01-91	James Capel (FE)	Robinson Land - B	7,594.00	A-19	1,507,409.00	E-11
0022229A	01-22-91	Tyndall Pacific	San Miguel - B	15,606.00	A-20	1,022,193.00	E-12
0022290A	01-30-91	Smith New Court	Keppel Phils. - B	2,007.50	A-21	798,985.00	
0022326A	02-04-91	James Capel (FE)	Robinson Land - B	6,098.00	A-22	1,210,453.00	E-13
0022339A	02-05-91	Tyndall First					
		Phil. Inv. Trust	SM Fund - B	39,600.00	A-23	2,593,800.00	E-14
0022379A	02-07-91	Tyndall First					
		Phil. Inv. Trust	SM Fund - B	109,687.50	A-24	7,184,531.25	E-15
0022382A	02-07-91	Smith New Court	San Miguel - B	8,337.50	A-25	1,654,993.75	E-16
0022400A	02-08-91	James Capel (FE)	Lepanto Cons Mng -B	2,850.00	A-26	565,725.00	E-17
0022485A	02-20-91	James Capel (FE)	Robinson Land "B"	10,800.00	A-27	2,143,800.00	E-18
0022503A	02-21-91	James Capel (FE)	Robinson Land "B"	11,962.50	A-28	2,374,556.25	E-19

Invoice No.	Invoice Date	Client	Security Sold	Commission Income	Exh.	Amount* Authorized For Outward Remittance	Exh.
0022532A	02-22-91	James Capel (FE)	Robinson Land "B"	8,289.00	A-29	1,645,366.50	E-19
0022562A	02-26-91	James Capel (FE)	Phil. Nat'l Bank	1,750.00	A-30	347,375.00	E-20
0022575A	02-27-91	James Capel (FE)	Phil. Nat'l Bank	16,812.50	A-31	3,337,281.25	E-20
0022576A	02-27-91	James Capel (FE)	Robinson Land "B"	5,129.50	A-32	1,018,205.75	E-20
0022517A	02-21-91	Baring Securities	Phil. Rlty & Hldgs B	2,577.44	A-33	511,613.90	E-21
0022536A	02-22-91	Baring Securities	Phil. Rlty & Hldgs B	274.70	A-34	54,527.95	E-21
0022516A	02-21-91	Baring Securities	Anglo-Phil. Oil	82.50	A-35	16,376.25	E-22
0022585A	02-28-91	James Capel (FE)	San Miguel - B	60,898.00	A-36	14,756,565.50	E-23
0022610A	03-04-91	Hoare Govett	Belle Mng & Oil-B	1,800.00	A-37	357,300.00	E-24
0022594A	03-01-91	James Capel (FE)	San Miguel - B	6,396.25	A-38	1,269,655.62	E-25
0022601A	03-01-91	Credit Lyonnais	San Miguel - B	54,125.00	A-39	10,743,812.50	E-26
0022617A	03-04-91	Credit Lyonnais	San Miguel - B	12,651.60	A-40	2,511,342.60	E-26
0022657A	03-07-91	James Capel (FE)	Saniwares Mfg Corp.	6,000.00	A-41	1,191,000.00	E-27
0022678A	03-11-91	James Capel (FE)	Jardine Davies	7,043.76	A-42	1,398,186.36	E-28
0022668A	03-08-91	Baring Securities	San Miguel - B	8,250.00	A-43	1,637,625.00	E-29
0022724A	03-14-91	James Capel (FE)	Saniwares Mfg Corp.	9,750.00	A-44	1,935,375.00	E-30
0022681A	03-11-91	Baring Securities	San Miguel - B	2,750.00	A-45	545,875.00	E-31
0022693A	03-12-91	James Capel (FE)	PLDT - C	717.50	A-46	142,423.75	E-32
0022691A	03-12-91	James Capel (FE)	Jardine Davies	5,040.00	A-47	1,000,440.00	E-32
0022692A	03-12-91	James Capel (FE)	Petrofield Expl.-B	1,625.00	A-48	322,562.50	E-33
0022803A	03-26-91	Credit Lyonnais	Ayala Corp.-B	12,500.00	A-49	2,481,250.00	E-34
0022626A	03-05-91	Hoare Govett	Belle Mng & Oil-B	90.00	A-50	17,865.00	E-35
0022797A	03-26-91	James Capel (FE)	Phil. Nat'l Bank	28.20	A-51	5,597.70	E-36
0022747A	03-18-91	Hoare Govett	Belle Mng & Oil-B	3,450.00	A-52	684,825.00	E-37
				828,716.26		82,820,169.12	

*Net of commission income and taxes.

On the other hand, only the commission income, derived from petitioner's purchase of securities, which qualifies for zero rate of VAT. The reason is obvious. The commissions are paid for in foreign currency inwardly remitted to petitioner. Said purchase of securities transactions were also covered by various invoices whose details are listed hereinbelow:

PURCHASE OF SECURITIES

Invoice No.	Invoice Date	Client	Security Purchased	Commission Income	Exh.	Amount Inwardly Remitted	Exh.
00194500A	01-02-91	James Capel (FE)	San Miguel-B	8,888.66	B	3,564,353.66	C
00194666A	01-04-91	James Capel (FE)	Sime Darby Intl Tire	2,480.40	B-1	498,560.40	C-1
00194670A	01-04-91	James Capel (FE)	San Miguel-B	2,956.98	B-2	594,351.98	C-1
00194650A	01-04-91	James Capel (FE)	Ayala Prop. Ven.-B	89.60	B-3	18,009.60	C-1
00194820A	01-07-91	James Capel (FE)	Ayala Prop. Ven.-B	652.80	B-4	131,212.80	C-2
00194930A	01-08-91	James Capel (FE)	Sime Darby Intl Tire	16.40	B-7	3,296.40	C-5
00195150A	01-14-91	James Capel (FE)	Sime Darby Intl Tire	30.00	B-8	6,030.00	C-5
00195050A	01-10-91	James Capel (FE)	Ayala Prop. Ven.-B	610.00	B-9	122,610.00	C-6
00195060A	01-10-91	James Capel (FE)	Philex Mining Corp-B	96.00	B-10	19,296.00	C-7
00194910A	01-08-91	James Capel (FE)	Ayala Prop. Ven.-B	1,557.60	B-11	313,077.60	C-8
00194990A	01-09-91	James Capel (FE)	Ayala Prop. Ven.-B	1,197.00	B-12	240,597.00	C-8
00194920A	01-08-91	James Capel (FE)	Philex Mining Corp-B	637.50	B-13	128,137.50	C-9
00195000A	01-09-91	James Capel (FE)	Philex Mining Corp-B	930.75	B-14	187,080.75	C-9
00195290A	01-17-91	Baring Securities	Phil. Nat'l. Bank	29,284.85	B-15	5,886,254.85	C-10
00195460A	01-21-91	Baring Securities	Phil. Nat'l. Bank	2,246.90	B-16	451,626.90	C-11
00196660A	02-07-91	James Capel (FE)	Cebu Shipyard-"B"	7,200.00	B-20	1,447,200.00	C-14
00197290A	02-11-91	James Capel (FE)	PLDT - C	1,286.25	B-21	258,536.25	C-15
00198010A	02-20-91	Baring Securities	PLDT - C	10,177.75	B-23	2,045,727.75	C-17
00198000A	02-20-91	Baring Securities	Robinson Land "B"	3,225.00	B-24	648,225.00	C-17
00199100A	02-08-91	James Capel (FE)	San Miguel - B	13,375.00	B-25	5,363,375.00	C-18
00199150A	02-28-91	Smith New Court	San Miguel - B	40,125.00	B-29	8,065,125.00	C-22
00199270A	03-01-91	Baring Securities	San Miguel - B	16,385.13	B-30	3,293,410.13	C-23
00199490A	03-04-91	Baring Securities	San Miguel - B	10,192.00	B-31	2,048,592.00	C-24
00199590A	03-05-91	Tyndall First Phil. Inv. Trust	San Miguel - B	68,913.00	B-32	4,663,113.00	C-25
00199630A	03-06-91	James Capel (FE)	Phil. Nat'l. Bank	3,624.13	B-33	728,449.13	C-26
00199910A	03-11-91	Smith New Court	Jardine Davies	7,056.00	B-34	1,418,256.00	C-27
00200120A	03-12-91	Smith New Court	Jardine Davies	5,040.00	B-35	1,013,040.00	C-28
00200250A	03-12-91	Baring Securities	San Miguel - B	1,068.75	B-36	214,818.75	C-29
00200510A	03-13-91	Baring Securities	San Miguel - B	3,990.00	B-37	801,990.00	C-30
00200990A	03-15-91	Baring Securities	San Miguel - B	1,974.00	B-39	396,774.00	C-32
00201120A	03-18-91	Baring Securities	San Miguel - B	58.00	B-40	11,658.00	C-33
00201720A	03-25-91	Baring Securities	San Miguel - B	250.75	B-41	50,400.75	C-34
00201340A	03-20-91	Baring Securities	San Miguel - B	857.73	B-42	205,582.73	C-35
00202100A	03-27-91	James Capel (FE)	Robinson Land "B"	7,238.50	B-43	1,454,938.50	C-36
				253,712.43		46,293,707.43	

Based on the foregoing segregation of commission income, derived from sales of securities and those earned from purchases of the same, the Court recomputes the refundable output tax in the following manner:

Commission income from sale of services	P2,636,034.97
Less : sale of services subject to zero-rating	253,712.43
Amount of commission income subject to 10% VAT	P2,382,322.54
Multiply by	1/11
VAT payable	P 216,574.78
Less payment (Exh. "G-3")	233,553.47
Refundable out tax	(P 16,978.69)

VAT was not billed separately in the invoices.

The Court did not include in the above computation, the documents which were denied in its Resolution dated January 6, 1995 (p. 65, CTA records). These were described in petitioner's formal offer as Bank Credit Advices on foreign exchange (p. 56, CTA records), and were marked as Exhibits "C-3", "C-4", "C-16", "C-19", "C-20", "C-21" and "C-31". Thus, commission income pertaining to these inward remittances and covered by petitioner's purchase invoices marked as Exhibits "B-5", "B-6", "B-22", "B-27", "B-28" and "B-38" cannot be allowed for zero-rating of VAT. Also excluded from the computation were the commission income from Exhibits "B-17" and "B-26" which are not legible. Likewise excluded was Exhibit "B-18", which has no proof of inward remittance.

To recapitulate, therefore, on the first issue, only the sale of securities transactions in the total amount of P253,712.43 qualified for the zero percent rate of

VAT. And after applying the formula or computation earlier presented, only the amount of P16,978.69 maybe allowed as refundable output tax.

We now consider the second issue which deals on whether or not the requirements for claim for refund have been complied with by petitioner.

It is beyond question, that petitioner is this case has substantiated its claim although only to the limited amount found by this Court as refundable.

Related to the second issue is the special and affirmative defense of respondent, stating that "petitioner must show compliance with the provisions of Section 204 in relation to Section 230 of the National Internal Revenue Code, as amended". Section 204 of the Tax code speaks of the filing of a written claim for refund with the BIR within two years from the date of payments of the tax. While Section 230 talks of the filing of judicial claim also within two years from the date of payment of tax. As We have repeatedly emphasized, in Our decisions on similar cases/claims for refund of petitioner, involving facts and issues identical to the case at bar, the Court begs to disagree with respondent everytime the latter asserts that the two-year prescriptive period should be counted from the dates of payment, as mandated by Section 230. We remain consistent with Our stand that it should be Section 106 (b) which should apply as this case involves refund of VAT on zero-rated sales. Said law provides:

> "**Section 106.** *Refunds or tax credits of input tax.* - (a) Export Sales. - xxx
>
> (b) Zero-rated or effectively zero-rated sales. - Any person, except those covered by paragraph (a) above, whose sales are zero-rated or are effectively zero-rated, may within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the input taxes attributable to such input tax has not been applied against output tax." (Underscoring supplied)

Going back to the list of invoices covering purchase of securities, it will be noted that all the payments were made during the first quarter of 1991, that is from January 2, 1991 to March 27, 1991. For this quarter of payments, the two-year period commenced from April 1, 1991 and expired on March 31, 1993. The administrative claim in this case was filed on September 26, 1991, while the judicial claim was filed on January 23, 1993. Obviously, the two dates of filing the claim were well within the two year prescriptive period of April 1, 1991 to March 31, 1993. The payments therefore, that were found qualified for zero rate of VAT, did not prescribe.

WHEREFORE, in view of all the foregoing, claim for refund is **GRANTED** but only in the amount of P16,978.69. Respondent is hereby ordered to **REFUND** to petitioner the said amount of P16,978.69 as the latter's erroneous payment of ten percent value added tax for the first quarter of 1991.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 18, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals