REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AMERICAN EXPRESS INTERNATIONAL, INC., - PHILIPPINE BRANCH,
Petitioner,

- versus -

C.T.A. CASE NO. 5813

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 02 2001

x - x

DECISION

The instant petition seeks to refund the amount of P3,751,067.04 allegedly representing VAT input taxes attributable to its zero-rated export receipts from January 1, 1997 to December 31, 1997.

The antecedent facts follow.

Petitioner is a Philippine branch of American Express International, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, U.S.A., with office in the Philippines at the Ground Floor, ACE Building, corner Rada and de la Rosa Streets, Legaspi Village, Makati City. It is a servicing unit of American Express International, Inc. – Hongkong Branch (Amex – HK) and is engaged primarily to facilitate the collections of Amex – HK receivables from card members situated in the Philippines and payment to service establishments in the Philippines.

Amex Philippines registered itself with the Bureau of Internal Revenue (BIR), Revenue District Office No. 47 (East Makati) as a value-added tax (VAT) taxpayer effective March 1988 and was issued VAT Registration Certificate No. 088445 bearing VAT Registration No. 32A-3-004868 (Exh. A). For the period January 1, 1997 to December 31, 1997, Petitioner filed with the BIR its quarterly VAT returns as follows:

Exhibit	Period Covered	Date Filed
D	1997 1st Qtr.	April 18, 1997
F	2nd Qtr.	July 21, 1997
G	3rd Qtr.	October 2, 1997
H	4th Qtr.	January 20, 1998

On March 23, 1999, however, Petitioner amended the aforesaid returns and declared the following:

Exh	1997	Taxable Sales	Output VAT	Zero-rated Sales	Domestic Purchases	Input VAT
I	1st qtr	P 59,597.20	P 5,959.72	P 17,513,801.11	P 6,778,182.30	P 677,818.23
J	2nd qtr	67,517.20	6,751.72	17,937,361.51	9,333,242.90	933,324.29
K	3rd qtr	51,936.60	5,193.66	19,627,245.36	8,438,357.00	843,835.70
L	4th qtr	67,994.30	6,799.43	25,231,225.22	13,080,822.10	1,308,082.21
	Total:	P 247,045.30	P 24,704.53	P 80,309,633.20	P 37,630,604.30	P 3,763,060.43

On April 13, 1999, Petitioner filed with the BIR a letter-request for the refund of its 1997 excess input taxes in the amount of P3,751,067.04, which amount was arrived at after deducting from its total input VAT paid of P3,763,060.43 its applied output VAT liabilities only for the third and fourth quarters of 1997 amounting to P5,193.66 and

P6,799.43, respectively. Petitioner cites as basis therefor, Section 110(B) of the 1997 Tax Code, to state:

> **Section 110. Tax Credits.** –
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> x x x x x x x x x
>
> (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.

There being no immediate action on the part of the Respondent, the instant petition was filed on April 15, 1999.

In support of its Petition for Review, the following arguments were raised by Petitioner:

A. Export sales by a VAT-registered person, the consideration for which is paid for in acceptable foreign currency inwardly remitted to the Philippines and accounted for in accordance with existing regulations of the Bangko S :ntral ng Pilipinas, are subject to value-added tax at zero percent (0%). According to Petitioner, being a VAT-registered entity, it is subject to the VAT imposed under Title IV of the Tax Code, to wit:

> **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 equivalent to 10% percent of gross receipts derived by any person engaged in the sale of services. The phrase "sale of services" means the performance of all kinds of services for others for a fee, remuneration or consideration, including those performed or rendered by construction and service

contractors; stock, real estate, commercial, customs and immigration brokers; lessors of personal property; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties: *Provided* That the following services performed in the Philippines 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 of 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 BSP. x x x" (Underscoring supplied)

In addition, Petitioner relied on VAT Ruling No. 080-89, dated April 3, 1989, the pertinent portion of which reads as follows:

"In reply, please be informed that, as a VAT registered entity whose service 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, your service income is automatically zero rated effective January 1, 1988. [Section 102(a)(2) of the Tax Code as amended]. For this, there is no need to file an application for zero-rate."

B. Input taxes on domestic purchases of taxable goods and services related to zero-rated revenues are available as tax refund in accordance with Section 106 (now Section 112) of the National Internal Revenue Code and Section 8(a) of Revenue Regulations No. 5-87, to state:

Section 106. ***Refunds or tax credits of input tax.*** -

(A) Zero-rated or Effectively Zero-rated Sales. - Any VAT-registered person, except those covered by paragraph (a) above, whose sales are zero-rated or are effectively zero-rated, may, within two (2) years after the close of the taxable quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the input taxes due or attributable to such sales, to the extent that such input tax has not been applied against output tax. x x x" Section 106(a) of the Tax Code]

Section 8. ***Zero-rating.*** - (a) In general. - A zero-rated sale is a taxable transaction for value-added tax purposes. A sale by a VAT-registered person of goods and/or services taxed at zero rate shall not result in any output tax. The input tax on his purchases of goods or services related to such zero-rated sale shall be available as tax credit or refundable in accordance with Section 16 of these Regulations. x x x" [Section 8(a), Revenue Regulations No. 5-87].

Respondent, in his Answer filed on May 6, 1999, claimed by way of Special and Affirmative Defenses that:

"7. The claim for refund is subject to investigation by the Bureau of Internal Revenue;

8. Taxes paid and collected are presumed to have been made in accordance with laws and regulations, hence, not refundable. Claims for tax refund are construed strictly against the claimant as they partake of the nature of an exemption from tax (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1979, 31 SCRA 95) and it is incumbent upon the Petitioner to prove that it is entitled thereto under the law (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121) and he who claims exemption must be able to justify his claim by the clearest grant of organic or statue law. An exemption from the common burden can not be permitted to exist upon vague implications (Asiatic Petroleum Co. vs. Llamas, 49 Phil. 466 cited in Collector vs. Manila Jockey Club Inc. L-8755, March 23, 1956);

9. Moreover, Petitioner must prove that it has complied with the governing rules with reference to tax recovery or refund, which are found in Sections 204(C) and 229 of the Tax Code, as amended, which are quoted as follows:

> "**Sec. 204**. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. - The Commissioner may – x x x
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit of refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered a written claim for credit or refund."
>
> "**Section 229.** ***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 excessively 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 (2) 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 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."

In the "Stipulation of Facts and Issues for Trial" submitted by the parties on July 22, 1999, Respondent admitted that Petitioner is registered as a VAT entity pursuant to Section 107 of the NIRC since March 1988 and that Petitioner duly filed its VAT returns covering the period from January 1, 1997 to December 31, 1997 which were amended on March 23, 1999. Respondent likewise admitted that Petitioner filed a claim for refund of the VAT input taxes subject of this case in the amount of P3,751,067.04, which to date remains unresolved. The fact of issuance of VAT Ruling No. 080-89 by the BIR to Petitioner was also not disputed. Thus, the following issues have been agreed upon and limited by the parties to be as follows:

(a) Whether or not VAT Ruling No. 080-89 (April 13, 1989) is applicable to the transactions involved in this petition so as to entitle Petitioner to a refund of its excess input VAT payments as a zero-rated taxpayer.

(b) Assuming that VAT Ruling No. 080-89 is not applicable, whether or not Petitioner, based on the services it renders and the manner by which it is compensated for such services, qualifies as a zero-rated VAT entity pursuant to Section 108(b)(2) of the National Internal Revenue Code.

(c) Whether or not Petitioner is an entity whose service 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.

(d) Whether or not the Petitioner has excess input taxes attributable to the transactions involved in this petition in the amount of P3,763,060.43 for the period covering January 1, 1997 to December 31, 1997.

With reference to the first issue, it appears that the circumstances obtaining as well as the services rendered by Petitioner at the time it requested for a ruling from Respondent as to the zero-rating of its sale of services have not changed. Petitioner remained to be a servicing unit of AMEX whose function is primarily to facilitate collection of receivables from cardmembers by receiving the bills of service establishments in the Philippines and forwarding the same to its Regional Operating Centers which in turn will collect from the cardmembers. Such service is paid to Petitioner in US dollars and inwardly remitted to the Philippines and accounted for in accordance with the BSP rules and regulations. Hence, this Court finds no reason why VAT Ruling No.080-89 cannot be made applicable to the instant case.

We find no merit to Respondent's argument that Petitioner can no longer rely on the aforesaid ruling, citing as basis therefor Section 4.102-2(b)(2) of Revenue Regulations No. 5-96 dated February 20, 1996, to state:

> "**Section 4.102-2(b)(2)** - Services other than processing, manufacturing or repacking for other persons doing business outside the Philippines for goods which are subsequently exported, as well as <u>services by a resident to a non-resident foreign client such as project studies, information services, engineering and architectural designs and other similar services</u>, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP." (Underscoring ours)

According to Respondent, since Petitioner's services are not of the same class or of the same nature as "project studies, information services, engineering and architectural designs and other similar services," they cannot legally qualify for zero-rated VAT but rather are subject to the regular VAT rate of 10%.

We do not agree. The provisions of Section 108 (B) (2) of the Tax Reform Act of 1997 and Section 4.102-2(b)(2) are too clear to admit of the interpretation advanced by Respondent. The former merely provides that services other than those enumerated in the preceding paragraph shall be subject to zero percent (0%) rate for as long as the consideration is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas. Petitioner's case still falls under the first category of services under the aforesaid Section 4.102-2(b)(2) and not on the second class of services which Respondent insists.

But even assuming that VAT Ruling No. 080-89 is no longer applicable to the transactions involved in this petition, records nonetheless show that Petitioner still qualifies as a zero-rated VAT entity pursuant to Section 108 (b)(2) of the Tax Code.

We shall discuss the second and third issues jointly as they are interrelated.

To prove that it is qualified as a zero-rated VAT entity, Petitioner presented its VAT Registration Certificate showing its registration as a VAT entity. It was also able to convince this Court that it renders services to AMEX-HK by facilitating the collection of AMEX receivables from card members situated in the Philippines and payment to service establishments in the Philippines (TSN, October 5, 1999), which services fall under the category of those referred to in Section 108 (B)(2) of the 1997 Tax Code, to state:

> "(B) Transactions Subject to Zero Percent (0%) Rate. – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> > (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
> >
> > (2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas." (Underlining supplied)

Petitioner also submitted various telex advices and demand deposit statements to prove that its service fees totalling P80,122,668.95 (per verification by the commissioned auditing firm, Punongbayan & Araullo) were paid for in acceptable foreign currency (US dollars) inwardly remitted to the Philippines and accounted for in accordance with BSP rules and regulations (Exhs. P-2399 to P-2505, inclusive).

Clearly, since Petitioner's revenues from sales of services amounting to P80,122,668.95 qualify as zero-rated under Section 108(B)(2) of the Tax Code and pursuant to VAT Ruling No. 080-89, Petitioner is not liable to pay output tax on such sales and can claim tax credit/refund of the input VAT it paid on purchases of goods, properties or services which are directly attributable to such zero-rated sales as provided under Section 4.102-2 of Revenue Regulations No. 7-95 in relation with Sections 110(B) and 112(A) of the 1997 Tax Code, to wit:

"**Section 4.102-2.** ***Zero-Rating.*** – (a) *In general.* – A zero-rated sale by a VAT registered person, which is a taxable transaction for VAT purposes, shall not result in any output tax. However, the input tax on his purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these regulations."

x x x x x x x x x

"**Section 110.** ***Tax Credits.*** –

(B) *Excess Ouput 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.

x x x x x x x x x

"**Section 112.** ***Refunds or Tax Credits of 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 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): 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 attributable to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

It bears stressing that we have already ruled in several cases involving the same issues and parties that Petitioner's sales of services is subject to VAT at 0% pursuant to Section 102(a)(2) of the Tax Code, to wit:

1. American Express International, Inc., Philippine Branch vs. CIR, CTA Case No. 5031, August 16, 1996;
2. American Express International, Inc., Philippine Branch vs. CIR, CTA Case No. 5139, February 3, 1997;
3. American Express International, Inc., Philippine Branch vs. CIR, CTA Case No. 5209, December 22, 1997;
4. American Express International, Inc., Philippine Branch vs. CIR, CTA Case No. 5475, June 16, 2000; and
5. American Express International, Inc., Philippine Branch vs. CIR, CTA Case No. 5635, July 3, 2000.

We proceed to the last issue. To determine whether or not the excess input taxes of P3,763,060.43 as declared by Petitioner in its 1997 amended quarterly VAT returns are all directly attributable to its zero-rated sales, it is first necessary to determine whether or not the same were actually incurred by Petitioner and are duly substantiated by VAT invoices/official receipts.

The commissioned auditing firm, Punongbayan and Araullo, in its report (Exh. N) recommended that the amount of P3,658,720.27 as shown in the Schedule of Input Taxes Paid (Exhs. O to O-29, inclusive) was properly supported by VAT invoices and official receipts. Thus, Petitioner, in order to be consistent with the report of Punongbayan and

Araullo, prayed for the refund of the recommended amount of P3,658,720.27 in its memorandum instead of the amount of P3,751,067.04 originally prayed for in the petition for review.

Nonetheless, further verification by the Court of the Punongbayan and Araullo Report together with the Schedule of Input Taxes Paid, suppliers' invoices and official receipts disclosed that the amount of P282,393.47 detailed per Annex A failed to meet the substantiation requirements under Section 4.104-5 of Revenue Regulations No. 7-95 in relation to Sections 113 and 237 of the 1997 Tax Code and should be disallowed from the recommended amount of P3,658,720.27. Only the amount of P3,376,326.80 was properly supported by VAT invoices/official receipts.

It is to be noted that the substantiated amount of P3,376,326.80 is not entirely directly attributable to Petitioner's zero-rated sales of P80,122,668.95 since Petitioner had taxable sales of P247,045.30 for the year 1997 as indicated in its 1997 amended quarterly VAT returns. Allocating, therefore, the substantiated input taxes of P3,376,326.80 between the amounts of zero-rated sales of P80,122,668.95 and taxable sales of P247,045.30 would result to an input tax attributable to taxable sales of P10,378.36 and input tax attributable to zero-rated sales of P3,365,948.44 as shown below:

Taxable Sales	P	247,045.30
Add: Zero-Rated Sales		80,122,668.95
Total Sales	P	80,369,714.25

Taxable Sales	P	247,045.30
Divided by Total Sales	P	80,369,714.25
% of Taxable Sales to Total Sales		0.30738606%
Multiplied by Total Substantiated Input Tax	P	3,376,326.80
Input Tax Attributable to Taxable Sales	P	10,378.36
Zero-Rated Sales	P	80,122,668.95
Divided by Total Sales	P	80,369,714.25
% of Zero-Rated Sales to Total Sales		99.69261394%
Multiplied by Total Substantiated Input Tax	P	3,376,326.80
Input Tax Attributable to Zero-Rated Sales	P	3,365,948.44

After deducting the input tax of P10,378.36 attributable to taxable sales and the payment of P784.32 made by Petitioner when it filed its original 1997 1st quarter VAT return from its output VAT liability of P24,704.53, Petitioner still has a net amount of output VAT payable of P13,541.85 for 1997 computed as follows:

Output Tax	P	24,704.53
Less: Input Tax Attributable to Taxable Sales		10,378.36
Excess of Ouput Tax over Input Tax	P	14,326.17
Less: Payment made on April 18, 1997 (Exh. E)		784.32
Net Output VAT Payable	P	13,541.85

It also bears emphasis that while Petitioner's original 1997 1st and 2nd quarter VAT returns indicated total monthly VAT payments of P3,784.49 and P4,142.42, respectively (Exhs. E & F), this Court failed to determine whether the same have been actually paid since Petitioner failed to submit the corresponding machine validated 1997 monthly VAT declarations. The 1997 original 2nd quarter VAT return likewise showed a final VAT payment of P2,609.30 but there was no trace of machine validation for the said payment at the lower part of the return. Thus, these amounts were not considered in the above computation of Petitioner's net output VAT payable.

Thus, by deducting the net amount of P13,541.85 output VAT payable from Petitioner's total input tax of P3,365,948.44 attributable to zero-rated sales a refundable amount of P3,352,406.59 is in order:

Input Tax Attributable to Zero-Rated Sales	P 3,365,948.44
Less: Net Ouput VAT Payable	13,541.85
Net Amount Refundable	P 3,352,406.59

WHEREFORE, in view of all the foregoing, this Court finds the instant petition meritorious and in accordance with law. Accordingly, Respondent is hereby **ORDERED** to **REFUND** to Petitioner the amount of P3,352,406.59 representing the latter's excess input VAT paid for the year 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
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