REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SMI-ED PHILIPPINES LANDHOLDINGS, INC.,
Petitioner,

C.T.A. E.B. No. 208
(C.T.A. CASE No.6740)

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Present:
Acosta, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ.*

Promulgated:
FEB 27 2008 [signature] 3:15 p.m.

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DECISION

CASTAÑEDA, Jr., *J.:*

Statement of the Case

This petition *en banc* filed on September 11, 2006 by petitioner-appellant SMI-ED PHILIPPINES LANDHOLDINGS, INC. ("SMI-ED", for brevity) appeals the decision dated April 20, 2006 rendered by the First Division of the Court of Tax Appeals (Court in Division) in the case entitled *"SMI-ED PHILIPPINES LANDHOLDINGS, INC. vs.*

COMMISSIONER OF INTERNAL REVENUE" docketed as C.T.A CASE No. 6740.

The dispositive portion of the assailed Decision provides, as follows:

> **IN VIEW OF ALL THE FOREGOING,** petitioner's claim for refund/tax credit of unutilized input VAT as of November 30, 2002 in the amount of P11,299,302.81 is hereby **DENIED.**
>
> **SO ORDERED.**

SMI-ED prays that judgment be rendered setting aside the April 20, 2006 Decision and August 4, 2006 Resolution and that the claim for refund in the adjusted amount of Ten Million Nine Hundred Sixty Six Thousand Seven Hundred Sixty and 32/100 Pesos (P10,966,760.32) representing its unutilized input VAT as of the date of the cessation of its operations be granted and correspondingly issue in its favor a TCC for the above amount.

Statement of the Facts

As found by the Court in Division, the following are the facts of this case:

> SMI-ED Philippines Landholdings, Inc. ("petitioner"), a corporation duly organized and existing under the laws of the Republic of the Philippines, is engaged in the real estate business. It is registered with the Bureau of Internal Revenue ("BIR") as a registered value-added tax ("VAT") entity under Certificate of Registration No. IRC0000020526 and Taxpayer Identification Number 005 650 401 000.
>
> The Commissioner of Internal Revenue ("respondent") is authorized to decide, approve and grant refunds or tax credits of overpaid internal revenue taxes, among others, in accordance with Section 4 of the 1997 National Internal Revenue Code ("NIRC").
>
> In a Lease Agreement dated July 9, 1998, First Philippine Industrial Park, Inc. agreed to lease to petitioner three (3) parcels of land with a total area of

approximately 106,000 square meters, all located at Sto. Tomas, Batangas, with a monthly rental of US$15,855.84 for a period of fifty (50) years commencing on July 9, 1998 and ending at midnight on July 8, 2048. The Lease Agreement further stipulated that the real properties shall be subleased by petitioner to SMI-ED Philippines Technology Incorporated ("SMI-ED Technology") from July 9, 1998 until July 8, 1999. SMI-ED Philippines Technology, Inc. paid a monthly rental of US$18,421.00 beginning July 9, 1998.

On July 9, 1999, both parties agreed to increase the monthly rental to US$50,211.00 but effective only for a period of one (1) year commencing on July 9, 1999 and to end on July 8, 2000.

On September 30, 1999, the Deed of Absolute Sale was executed between First Philippine Industrial Park, Inc. and petitioner for the sale of the three (3) parcels of land comprising of 106,388 square meters for US$9,323,229.92 or for P378,709,866.00. However, petitioner paid the total purchase price of US$10,255,552.91 as evidenced by Sales Invoice No. 0040 and paid on the following dates:

Date	Particulars	Amount	Exhibit
May 25, 1998	security deposit	US$ 951,350.00	LL
Aug. 31, 1999	initial payment	4,547,452.91	KK
Sept. 29, 1999	final payment	4,756,750.00	JJ
	Total	US$10,255,552.91	

The amount of US$10,255,552.91 included the 10% VAT in the amount of US$932,322.00.

On July 8, 2000, petitioner terminated its amended lease contract with SMI-ED Technology, Inc. and was no longer renewed because the latter corporation decided not to commence its business operations due to poor economic conditions in the Philippines.

On August 1, 2000 petitioner sold one of the parcels of land with a total area of 66,681 square meters to Ibiden Philippines Landholdings, Inc. ("Ibiden") in the amount of JY440,000,000.00, inclusive of 10% VAT.

On July 18, 2002, petitioner again sold the remaining parcels of land with a total area of 39,707 square meters, to Ibiden Philippines Landholdings, Inc. in the amount JY187,000,000.00, inclusive of VAT.

Considering that petitioner had no more properties left to lease or sell, majority of its Board of Directors, with the concurrence of the stockholders, resolved to dissolve petitioner's corporate existence effective November 30, 2002.

On January 16, 2003, petitioner requested for the issuance of a tax clearance with the BIR in connection with its formal closure which took effect on November 30, 2002.

On February 26, 2003, petitioner filed an administrative claim for refund or issuance of a tax credit certificate with the BIR, in the amount of P11,299,302.81 representing excess input VAT as of the time of its dissolution.

The BIR's inaction on petitioner's claim for refund prompted petitioner to appeal before this Court on July 28, 2003.

In his Answer to the Petition, respondent raised the following Special and Affirmative Defenses:

> *"4. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;*
>
> *5. Taxes paid and collected are presumed to have been made in accordance with the law and regulation, hence, not refundable;*
>
> *6. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for refund/credit;*
>
> *7. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended as well the requirements provided for in Revenue Regulations No. 5-87 as amended by Revenue Regulations No. 3-88 and Revenue Regulations No. 7-95, as amended; and*
>
> *8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)."*

The Court in Division denied SMI-ED's claim for refund/tax credit.

Consequently, SMI-ED filed a Motion for Reconsideration and a Supplemental Motion for Reconsideration on May 18, 2006 and on June 13, 2006, respectively.

In a Resolution dated August 4, 2006, the Court in Division denied the motion. SMI-ED received a copy of the said resolution on August 10, 2006.

On August 29, 2006, the Court *En Banc* granted SMI-ED's "Motion for Extension of Time to File Petition for Review" filed on August 24, 2006. SMI-ED filed its *Petition for Review En Banc* on September 11, 2006. Respondent Commissioner of Internal Revenue (CIR, for brevity) did not file his comment.

In a resolution dated March 12, 2007, the parties are required to file their respective Memoranda. Only SMI-ED complied and submitted its Memorandum on April 13, 2007.

Hence, this case for decision.

The following are **the errors assigned by SMI-ED**:

A. **The Honorable First Division erred in holding that the Petitioner-Appellant failed to substantiate through documentary evidence its**

entitlement to claim for refund of unutilized input VAT.

B. **The Honorable First Division erred in denying the Petitioner-Appellant's claim for refund for its failure to submit a tax clearance and audited financial statements to prove that it has been cleared of pending tax liabilities.**

C. **The Honorable First Division erred in finding that the Petitioner-Appellant's claim of tax refund could not proceed without the submission of a tax clearance and audited financial statements because of the possibility it has pending internal tax liabilities and has not been issued a tax clearance. In any case, the right to assess has prescribed.**

D. **The Honorable First Division erred in holding that submission of all VAT returns is required to prove the excess input VAT.**

Based on the foregoing, the issue is **"Whether or not SMI-ED is entitled to a refund/tax credit certificate in the adjusted amount of Ten Million Nine Hundred Sixty Six Thousand Seven Hundred Sixty and 32/100 Pesos (P10,966,760.32)."**

This Court's Ruling

We deny the petition.

We find that the issue and arguments raised by SMI-ED have already been considered by the Court in Division in its assailed decision and resolution. Jr

There is no dispute that per computation the unutilized input VAT subject for refund/tax credit is P10,966,760.32 as held in the assailed decision, as follows:

> However, a scrutiny of above schedule reveals that petitioner has unutilized input VAT in the amount of P10,966,760.32, instead of the claimed P11,299,302.81, computed as follows:

OUTPUT VAT		
Year 2002		
3rd Quarter	P 7,357,048.39	
Year 2000		
3rd Quarter	16,392,396.09	
2nd Quarter	572,747.74	
1st Quarter, as amended	763,623.76	
Year 1999		
4th Quarter	553,859.27	
3rd Quarter, as amended	541,388.77	P26,181,064.02
Less: INPUT VAT		
Year 2002		
3rd Quarter	P 52,410.00	
Year 2001		
2nd Quarter	8,909.09	
Year 1999		
3rd Quarter	36,993,643.92	
Carry-over fr. Previous Qtr.	92,861.33	P37,147,824.34
Unutilized Input VAT		**P10,966,760.32**

Out of the computed P10,966,760.32 unutilized input VAT, only the amount of P10,812,579.90 was substantiated, as found by the Court in division, as follows:

> xxx A review of the documents presented before us shows that petitioner was **only able to substantiate by proper VAT invoice and official receipts (** ***Exhibits J, JJ, KK & LL*****) and Deed of Absolute Sale(*****Exhibit C*****), the input VAT payment of P36,993,643.92 on its purchase of land from the First Philippine Industrial Park.** With respect to the input VAT payments of P52,410.00 and P8,909.09 for the 3rd quarter of 2002 and 2nd quarter of 2001, respectively, as well as the input tax carry-over of P92,861.33, it did not submit the VAT invoices and official receipts to substantiate the same. **Hence, petitioner's substantiated unutilized input VAT amounts only to P10,812,579.90 (output VAT of P26,181,064.02 less substantiated input VAT of P36,993,643.92).** *(Emphasis Supplied).*

Based on the foregoing, SMI-ED, therefore, is mistaken in alleging that the Court in Division ruled that petitioner (SMI-ED) failed to substantiate through documentary evidence its entitlement to claim for refund of unutilized input VAT. What the Court in Division ruled in the negative was SMI-ED's entitlement to claim the unutilized input VAT for the subject period and We agree, as correctly discussed by the Court in Division, as follows:

> xxx Petitioner did not submit its VAT returns for taxable year 1998, 1st and 2nd quarters of 1999, 4th quarter of 2000, 3rd and 4th quarters of 2001 and 1st quarter of 2002. **Without these documents, this Court cannot ascertain petitioner's actual unutilized input VAT as of November 30, 2002.**
>
> In addition, since the subject claim represents unutilized input VAT due to retirement from or cessation of business, **it is vital that petitioner submit its audited financial statements in order for this Court to verify with certainty that it properly declared all of its sales/receipts for VAT purposes from the time of commencement of business until cessation of its operations.** In this connection, it is also incumbent upon petitioner to prove that it has satisfied all of its tax liabilities. Petitioner should have presented a Certificate of Tax Clearance showing that it has settled all its tax obligations with the BIR.
>
> Xxx xxx xxx
>
> Petitioner though offered in evidence its Letter Request for Tax Clearance[1] to prove that upon its closure, it formally requested for a tax clearance from the BIR. **As the document indicates, it was a mere request for a tax clearance. There is no showing that petitioner was indeed issued a Tax Clearance Certificate as required by law and regulations, to prove that it had been cleared of any or all internal revenue tax liabilities.**
>
> Thus, even assuming, for the sake of argument, that petitioner was able to substantiate is claimed unutilized input VAT for the subject period, it is still not entitled to a refund/tax credit thereof considering that it failed to prove that it has no pending internal revenue tax liabilities. *(Emphasis Supplied)*

[1] Exhibit H

Pertinent to this case are Section 112 and 236 of the National Internal Revenue Code of 1997 (NIRC) which reads, as follows:

SEC. 112. *Refunds or tax credits of input tax.* -

x x x

"(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

"SECTION 236. *Registration Requirements.* —

xxx

"(F)Cancellation of Registration. — The registration of any person who ceases to be liable to a tax type shall be cancelled upon filing with the Revenue District Office where he is registered an **application for registration information update** in a form prescribed therefor.

Xxx"

Likewise, pertinent are Sections 4.106-2 and 4.107-6 of Revenue Regulations 7-95, as follows:

SECTION 4.106-2. Procedures for claiming refunds or tax credits of input tax —

Xxx xxx xxx

(b)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 100(c) of the 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 he may use in payment of his other internal revenue taxes. However, he shall be entitled to a refund if he has no pending internal revenue tax liabilities.

Xxx xxx xxx

SECTION 4.107-6. Cancellation of Registration — Any subsequent major change in the original registration shall be effected **by filing a duly accomplished Application For Cancellation of Registration (BIR Form 1557)** with the Revenue District Officer concerned.

Some instances where a VAT-registered person may apply for cancellation of registration are:

Xxx xxx xxx

5. Dissolution of a partnership or corporation;

Xxx xxx xxx

Based on the foregoing provisions, it is necessary that the "registration" of a person be cancelled first before a taxpayer could apply for the issuance of a tax credit certificate. It is clear that the date of the cancellation is the reckoning point of the two-year period in which the taxpayer may apply for the issuance of the tax credit certificate. SMI-ED should have offered to the Court in Division its application for registration information update. Unfortunately, no proof of the cancellation of VAT registration was presented to the court.

It is also noteworthy to mention that since SMI-ED is a corporation organized and existing under the laws of the Republic of the Philippines, it must follow the process of dissolution as provided in the Corporation Code. As mentioned at the outset, the majority of SMI-ED's Board of Directors, with the concurrence of the stockholders, resolved to dissolve SMI-ED's corporate existence effective November 30, 2002. However, no other proof was given by SMI-ED to duly establish its cessation of business operations as required by law.

SMI-ED avers that nowhere in the law or the implementing rules and regulations that it is required that the taxpayer must show that it has no pending tax liabilities as a pre-condition to a claim for refund or grant of a tax credit certificate whether it be through the presentation of a tax clearance or audited financial statements.

The contention is bereft of merit.

Sections 52 (C) and 235 of the 1997 NIRC read, as follows:

> SEC. 52. Corporation Returns. — . . .
> xxx xxx xxx
>
> (C)Return of the Corporation Contemplating Dissolution or Reorganization. — Every corporation shall, within thirty (30) days after the adoption by the corporation of a resolution or plan for its dissolution; or for the liquidation of the whole or any part of its capital stock, including a corporation which has been notified of possible involuntary dissolution by the Securities and Exchange Commission; or for its reorganization, render a correct return to the Commissioner, verified under oath, setting forth the terms of such resolution or plan and such other information as the Secretary of Finance, upon recommendation of the Commissioner, shall, by rules and regulations, prescribe.
>
> **The dissolving or reorganizing corporation shall**, prior to the issuance by the Securities and Exchange Commission of the Certificate of Dissolution or Reorganization, xxx xxx xxx , **secure a certificate of tax clearance** from the Bureau of Internal Revenue which certificate shall be submitted to the Securities and Exchange Commission.
>
> SEC. 235. Preservation of Books of Accounts and Other Accounting Records. — . . .
> (a). . .
> (b). . .
> (c). . .
> (d). . .
> (e). . . All corporations, partnerships or persons that retire from business shall within ten (10) days from the date of retirement or within such period of time as may be allowed by the Commissioner in special cases, submit their book of accounts . . . to the Commissioner or any of his deputies for examination, after which they shall be returned. **Corporations and partnerships contemplating dissolution must notify the Commissioner and shall not be dissolved until cleared of any tax liability.** *(Emphasis supplied)*

The rationale behind these Sections is to insure that no corporation may escape payment of taxes and other liabilities to the government simply by opting to dissolve the corporation and retire from business or reorganize its business.[2]

In addition, SMI-ED failed to file all quarterly returns as found by the Court in Division and the audited financial statements. It should be noted that this Court could not verify the excess unutilized input VAT

2 *Lotus Software (Philippines), Inc. vs. Commissioner of Internal Revenue*, C.T.A CASE No. 6673, May 18, 2005.

without tracing it to the quarterly VAT returns. This is necessary considering that the excess input VAT may be carried over to the next quarter. On the other hand, the audited financial statements are necessary to ensure that the items declared in the VAT returns such as the output VAT and the input VAT match with the declared sales and purchases, respectively, in the income statement and vice-versa. Hence, non-submission of these documents are fatal to its claim for refund/ tax credit certificate.

We reiterate that a claim for refund is in the nature of a claim for exemption. As such, they are regarded as a derogation of sovereign authority and is therefore to be considered *strictissimi juris* against the taxpayer.[3]

WHEREFORE, premises considered, We deny the petition for lack of merit. Accordingly, We **AFFIRM** the April 20, 2006 Decision and the August 4, 2006 Resolution promulgated by the First Division of this Court.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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3 *Supra*, Note 2.

We concur:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice