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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AMI PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NOS. 5187 & 5199

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 02 1997

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DECISION

Before Us for consideration are two consolidated cases of claims for refund of input value-added taxes (VAT, for brevity) paid on petitioner's domestic purchases of taxable goods and services in the respective amount of P1,338,138.22 for the period October 1, 1992 to December 31, 1992 (CTA Case No. 5187) and P5,198,057.78 for the period January 1, 1993 to December 31, 1993 (CTA Case No. 5199), altogether in the aggregate amount of P6,536,196.00.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. It is primarily engaged in the business of exporting semi-conductor devices as a preferred pioneer enterprise under Certificate of Registration No. 85-1032 issued by the Board of Investments. It has also registered itself as a VAT entity with respondent's Bureau in accordance with Section 107 of the National Internal Revenue Code (Tax Code, for short), as shown by its VAT Registration No. 34-8-000-333.

The facts are simple.

During the abovestated periods stretching five consecutive taxable quarters, petitioner generated and recorded zero-rated export sales of goods amounting to P360,692,241.57, with the proceeds thereof paid for in acceptable foreign currency inwardly remitted to the Philippines and accounted for in accordance with the regulations of the Central Bank of the Philippines, now called, Bangko Sentral ng Pilipinas.

For the same period, petitioner allegedly paid input VAT in the amount of P6,536,196.00 on its domestic purchases of taxable goods and services which were directly attributable to the goods exported.

Its sales being zero-rated and claiming that said input taxes have not been applied against any output VAT liability, petitioner filed with respondent's Bureau two separate applications for refund of such input taxes on December 28, 1994, in CTA Case No. 5187 and on February 9, 1995, in CTA Case No. 5199.

On December 29, 1994 and on February 14, 1995, however, petitioner commenced the instant petitions for review for CTA Case No. 5187 and CTA Case No. 5199, respectively, without awaiting any positive action taken by the respondent in view of the two-year limitation provided in Section 230 of the Tax Code.

At bar, petitioner repleads its stance *a quo*. On the other hand, respondent states, *inter alia*, in her answers the following special and affirmative defenses, to wit:

> xxx xxx xxx
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> 6. Petitioner's claim for refund has already prescribed because for zero-rated export sales, the two-year prescriptive period for filing a claim for refund or tax credit is counted from the date of exportation. (Sec. 16(a), R.R. No. 5-87)
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> xxx xxx xxx
>
> 8. Petitioner has failed to show compliance with the provision of Section 16(c)(1) of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88, x x x
>
> 9. Petitioner has not shown that the alleged VAT input taxes attributable to its export sales have not yet been applied to the output tax and that the alleged total foreign exchange proceeds have been accounted for by the Central Bank;
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> xxx xxx xxx

During the trial of herein cases, petitioner submitted in evidence various documents and testimonies in support of its consolidated claims pursuant to the requirements of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88, which respondent insists have not been complied with by the former.

In her memorandum, respondent asseverates, among others, that petitioner is not entitled to its claims for VAT refund because she was not given reasonable time to act on the same; that the administrative claims for refund and herein petitions were filed posthaste in order to meet the requirement of Section 230 of the Tax Code, and beat prescription; that the claims should be denied for the periods covering October 1, 1992 to December 27, 1992 and January 4 to February 13, 1993 (should be February 8, 1993) because they occurred prior to the filing of the administrative claims for refund on December 28, 1992 and February 9, 1995, respectively; and that petitioner did not present evidence to show that the input taxes claimed have not been applied against its output taxes.

The issues to be resolved thus in these cases are:

a) whether or not the instant petitions were filed in posthaste as claimed by the respondent.

b) whether or not petitioner's claims have prescribed already; and

c) whether or not petitioner has complied with the requirements of a valid claim for refund pursuant to Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88.

For clarity, hereunder quoted are the pertinent provisions of the Tax Code and its implementing regulations involved in the cases at bar, to wit:

a) Section 106(a) of the Tax Code

> **SEC. 106.** ***Refunds or tax credits of input taxes.*** - *(a) Export Sales.* - An exporter who is a VAT-registered person may <u>within two years from the date of exportation</u>, apply for the issuance of a tax credit certificate or refund of the input tax attributable to the goods exported, <u>to the extent that such input tax has not been applied to output tax</u> and upon presentation of proof that the foreign exchange proceeds has been accounted for in accordance with the regulations of the Central Bank of the Philippines. (Underscoring supplied)
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> xxx xxx xxx

b) Section 106(e) of the Tax Code

> *(e) Period within which refund of input taxes may be made by the Commissioner.* - The Commissioner shall refund input taxes <u>within 60 days from the date the application for refund was filed</u> with him or his duly authorized representative. No refund of input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraphs (a), (b) and (c) as the case may be.(Underscoring supplied)

c) Section 230 of the Tax Code

> **SEC. 230.** ***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 excessive 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 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 payments was made, such payment appears clearly to have been erroneously paid. (Underscoring supplied)

d) Section 16(c)(1) of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88

"SEC. 16. ***Refunds or Tax Credits of input tax.*** - x x x.

xxx xxx xxx

(c) Claims for tax credit/refund. - Application for Tax Credit/Refund of Value-Added Tax Paid (BIR Form No. 2552) shall be filed with the Revenue District Office of the city of municipality where the principal place of business of the application is located or directly with the Commissioner, Attention: VAT Division.

A photocopy of the purchase invoice or receipt evidencing the value added tax paid shall be submitted together with the application. The original copy of the said invoice/receipt, however, shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or refund. In addition, the following documents shall be attached whenever applicable:

1. Export Sales

> i) Photocopy of export document showing the amount of export, and the date and destination of the goods exported. With respect to foreign currency denominated sale, the photocopy of the invoice or receipt evidencing the sale of the goods, as well as the name of the person to whom the goods were delivered.
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> ii) Statement from the Central Bank or any of its accredited agent banks that the proceeds of the sale in acceptable foreign currency has been inwardly remitted and accounted for in accordance with the applicable banking regulations."

Anent the first issue, We do not find the instant petitions to have been filed in posthaste by the petitioner so as to possibly warrant their dismissal on the ground of non-exhaustion of administrative remedies. While the law is clear on the matter that the Commissioner shall refund input taxes within a period of 60 days from the date of the application for refund was filed with him or his duly authorized representative (Section 106(e), Tax Code), respondent should bear in mind that the petitioner has no other recourse left but to file herein petitions due to the near expiry of the two-year prescriptive period embodied in Section 230 of the Tax Code. This is the rule established by the Supreme Court in the case of **Commissioner of Internal Revenue vs. Victorias Milling Co., Inc.**, 22 SCRA 12, which states, thus:

> "The claim for refund with the Bureau of Internal Revenue and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period. If, however, the Commissioner takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period ***without awaiting the decision of said Commissioner***."(Emphasis supplied)

Prescindingly, respondent contends in her memorandum that the *date of payment of the tax or penalty* under Section 230 is reckoned, in this case, from the *date of exportation of the goods* by the petitioner. (Memorandum, p. 664, CTA docket) We do not entirely subscribe to such a view arrived at by the respondent.

We would like to emphasize that the phrase "date of payment of the tax or penalty" in Section 230 is neither synonymous nor in any way related to the phrase "date of exportation" prescribed in Section 106(a), notably being a later amendment introduced by Executive Order(E.O.) No. 273. They obviously differ in subject and point in time.

The two-year prescriptive period set by Section 230 from the date of payment of the tax when applied strictly would be inconsistent to Section 106 of the Tax Code, which reckons the two-year prescriptive period from the date of exportation. It would result in absurdity. For example, the date of payment of the tax, which is ordinarily evidenced by the date of issuance of official receipt and/or invoice, would usually occur beforehand in weeks or months during the purchasing and inventory of raw materials. Added to this, is the time involved in the work in process of the raw materials into finished products for exports. Hence, it could well possibly happen that a timely application for refund filed with the respondent's Bureau based on the date of exportation would no longer be appealable to this Court due to prescribed date of payment under Section 230.

In a worst case scenario, what should the taxpayer do if the date of purchase/payment of the tax happened more than two years ago from the date of exportation? Section 230 is explicit that refund or credit can be made by this Court as long as an application for refund or credit has been filed with the Commissioner and that the suit or proceeding has been started within two years from date of payment of the tax regardless of any supervening event. The taxpayer has no problem with the first requisite but as to the second requisite, We believe that he is legally proscribed from complying with the same for the reason that the taxpayer is barred from instituting an appeal before this court, unless an application for refund or credit has been duly filed first with the Commissioner.

On this score, the taxpayer cannot file the necessary application for refund or credit because as abovestated Section 106(a) reckons the period for filing refund or credit on export sales only within two years from *date of exportation* of goods. What we have here thus is not a mere instance of supervening event that is disregarded by law but a legal provision that is expressive of the legislative will.

The foregoing case would also be contrary to the Charter of this Court under Republic Act No. 1125, as amended which affords aggrieved taxpayers the opportunity to elevate their cases before this Court in matters arising under the Tax Code. To apply the prescriptive period in Section 230 to claims falling under Section 106(a) would, in most cases, provide no recourse to the taxpayers on such claims. Verily, this is not the intendment of the law. There is the imperative need to harmonize and reconcile Section 230 with Section 106(a) of the Tax Code.

At this juncture, We believe that E.O. No. 273 has, in effect, amended or modified Section 230 of the Tax Code in so far as the inconsistency with Section 106(a) of the same Code is concerned. This conclusion is readily apparent from the wordings of Section 29 of said E.O. Thus:

> Sec. 29. *The provisions of any law, whether general or special*, rules and regulations and other issuances or parts

> thereof *which are inconsistent with this Order* are hereby repealed, *amended, or modified* accordingly.(Emphasis supplied)

Section 230 should therefor be read to reckon additionally the two-year prescriptive period from the date of exportation in cases falling under Section 106(a) on export sales.

The rule that a statute must be construed and given effect as a whole requires that apparently conflicting provisions should be reconciled and harmonized, if at all possible. The various problems should be read together so that all may, if possible, have their due and conjoin effect, without repugnancy or inconsistency. (Lichauco & Co. vs. Apostol, 44 Phil. 138, cited in Statutory Construction by Agpalo, 2nd ed., p. 182)

Going thus on the second issue on prescription, the matter is deemed to involve a mere computation of the period of two years from the date of exportation of petitioner's products to the time the cases at bar were filed. If the application falls within the two-year period, then the same has still not prescribed. A thorough scrutiny of petitioner's various dates of exportation of its products to the time the instant petitions were filed reveals that its exportations for the period October 1, 1992 to December 28, 1992 and January 1, 1993 to December 31, 1993 in CTA Cases No.

5187 and 5199, respectively, have already prescribed considering that the said cases were filed before this Court on December 29, 1994 and February 14, 1995, respectively. Consequently, these exportations are not entitled to any refund of input taxes anymore.

As regards the last issue, this Court finds that petitioner failed to convincingly show that its input taxes have not been applied to its output tax liabilities. //We note that petitioner's excess VAT credits (input taxes) beginning from the last quarter of 1992 up to the last quarter of 1993 have been cumulatively added and forwarded to succeeding quarters as shown under box no, 16 of the respective VAT return for each quarter involved (Exhibits "B" to "B-4"). Thus, the input taxes being claimed by the petitioner have been forwarded to the succeeding first quarter of 1994. At this point, We cannot ascertain whether or not said input taxes have been applied to petitioner's output tax liability for the first quarter of 1994 and other succeeding quarters thenceforth. Petitioner has not introduced any evidence to prove this point. It could have submitted one of its succeeding VAT returns right after it decided to file an application for refund and reflecting under box 15 thereof that it had deducted the amount being claimed for refund. Unless shown, there is really nothing to refund because the input taxes being claimed have actually been elected by the petitioner to be forwarded as excess VAT credits to the succeeding first quarter of 1994. To grant petitioner's claims for refund, without proof of deduction of the corresponding amount, would be dangerous and tantamount to granting twice the refund herein sought to be refunded, to the prejudice of the Government.

In sum, herein consolidated claims for refund should be disallowed on the ground of prescription and the failure of the petitioner to substantiate the fact that its input taxes have not been applied to any output tax liability.

WHEREFORE, in view of the foregoing, the instant Petitions for Review are hereby DENIED for lack of merit.

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
Court of Tax Appeals