REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

J.R.A. PHILIPPINES, INC.
Petitioner,

- versus -

C.T.A. CASE NO. 6249

THE COMMISSIONER OF INTERNAL REVENUE
Respondent.

Promulgated:
MAR 16 2004

x - x

DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the aggregate amount of P7,786,614.04 representing petitioner's excess or unutilized input value-added tax (VAT) for the first, second, third, and fourth quarters of 1999.

The antecedent facts are stated as follows:

Petitioner is a domestic corporation organized and existing under and by virtue of the Philippine laws with offices at Blk. 18, Lot 13, Road E, Phase IV, Cavite Export Processing Zone, Rosario, Cavite *(par. 1, Facts Admitted).*

It is duly licensed, among others, to engage in the business of manufacturing and selling, on wholesale basis, jackets, pants, trousers, over alls, shirts, polo shirts, ladies' wear, dresses and other wearing apparel of different fabrics and is registered with the Philippine Economic Zone Authority (PEZA) as an export enterprise enjoying income tax holiday *(pars. 2 & 3, Facts Admitted).*

As an exporter of manufactured goods, petitioner is likewise registered with the BIR as a VAT taxpayer in accordance with Section 236 of the National Internal Revenue Code [NIRC] *(par. 4, Facts Admitted).*

For the taxable quarters covering January 1, 1999 to December 31, 1999, petitioner filed its first, second, third and fourth quarterly VAT returns with the BIR within the period prescribed by law showing the following excess input VAT, to wit:

Exhibit	1999	Excess Input VAT
A-1	First Quarter	P 1,884,955.07
B-1	Second Quarter	2,587,525.30
C-1	Third Quarter	2,387,131.36
D-1	Fourth Quarter	927,002.31
	Total:	P 7,786,614.04

Petitioner claimed that the foregoing excess input taxes of P7,786,614.04 were paid on its domestic purchases of goods and services directly attributable to its zero-rated export sales. These input taxes allegedly remained unutilized since petitioner has not engaged in any business activity or transaction for which it may be liable for output value-added taxes.

Consequently, petitioner filed with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance, its various applications for refund/tax credit of the unapplied input VAT payments for the first, second, third and fourth quarters of 1999, to wit:

Exhibit	1999	Date of Filing
AA	First Quarter	December 12, 2000
BB	Second Quarter	February 27, 2001
CC	Third Quarter	March 9, 2001
DD	Fourth Quarter	March 9, 2001

Due to respondent's inaction on the foregoing administrative claims and in order to toll the running of the two-year prescriptive period under Section 229 of the Tax Code, petitioner filed a Petition for Review with this court on March 19, 2001.

Respondent, in his Answer, raised the following Special and Affirmative Defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary/investigation/examination by the Bureau;
>
> 5. Being allegedly registered with the Philippine Economic Zone Authority as an export enterprise, petitioner's business is not subject to VAT pursuant to Section 24 of R.A. No. 7916 in relation to Section 109 (q) of the 1997 Tax Code. Hence, it is not entitled to tax credit of input taxes pursuant to Section 4.103-1 of Revenue Regulations No. 7-95;
>
> 6. The amount of P7,786,614.04 being claimed by petitioner as alleged unutilized VAT input taxes for the year 1999 was not properly documented;
>
> 7. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
>
> 8. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation."

The parties have jointly stipulated on the following issues:

1. Whether or not petitioner is an exporter;
2. Whether or not the unapplied or unutilized input VAT of P7,786,614.04 is attributable to petitioner's export sales;
3. Whether or not petitioner's export sales qualify as zero-rated sales under Section 106(A)(2)(a) of the Tax Code, as amended;
4. Whether or not the unapplied or unutilized input VAT of P7,786,614.04 arising from petitioner's zero-rated sales, is duly substantiated by the latter's VAT invoices and/or receipts; and

5. Whether or not petitioner's unapplied/unutilized input VAT of P7,786,614.04 for the period January 1, 1999 to December 31, 1999 was carried over for the succeeding taxable quarter.

Before we discuss the stipulated issues, it is imperative to tackle the issue raised by the respondent in his memorandum. Respondent averred that petitioner, being registered with the Cavite Economic Zone as an export enterprise under Certificate of Accreditation No. PEZA-00-002 *(Annex B, Petition for Review, page 8, CTA records)* is exempt from VAT pursuant to Section 24 of Republic Act No. 7916, which provides in part, thus:

> "SEC. 24. *Exemption from Taxes Under the National Internal Revenue Code.*- Any provision of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu of paying taxes, five percent (5%) of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government x x x"

According to respondent, under the said law, business establishments operating within the ECOZONE, such as petitioner, are exempt from national and local taxes. In lieu of paying taxes, said enterprises shall remit to the national government 5% of the gross income earned by them, which includes exemption from VAT.

Respondent further asserted that transactions of ECOZONE or PEZA-registered enterprises being exempt from internal revenue taxes under Section 24 of R.A. No. 7916, fall under the phrase "transactions which are exempt under special laws," as provided under Section 103(q) [now 109(q)] of the Tax Code, to wit:

> "**SEC. 103.** ***Exempt Transactions.*** – The following shall be exempt from the value-added tax:
>
> xxx
>
> "(q) Transactions which are exempt under special laws, except those granted under Presidential Decree Nos. 66, 529,972, 1491, and 1590,

and non-electric cooperatives under Republic Act No. 6938, or international agreements to which the Philippines is a signatory;"

Respondent concluded that since petitioner's business is exempt from VAT, it is not allowed any tax credit on input VAT previously paid pursuant to Section 4.103-1 of Revenue Regulations No. 7-95, which provides:

> "**Section 4.103-1. Exemptions. – (A) In general.** – An exemption means that the sale or goods or properties and/or services and the use or lease or properties is not subject to VAT (output tax) and the seller is not allowed any tax credit on VAT (input tax) previously paid." (Underscoring supplied)

We do not agree with respondent's contentions.

This court has passed upon the issue in the case of ***Seagate Technology (Philippines) vs. Commissioner of Internal Revenue, CTA Case No. 5921, Resolution promulgated on September 20, 2000***, pertinent portions of which are quoted hereunder, thus:

> "However, We do not agree that the afore-quoted law is applicable to the case at bar. Section 23 of Republic Act No. 7916 provides:
>
> **Section 23.** ***Fiscal Incentives.*** – Business establishments operating within the ECOZONE shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided for under Book IV of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987."
>
> Under the aforementioned law, a PEZA-registered enterprise has the option to choose between two sets of fiscal incentives. One, that which is provided for under Presidential Decree No. 66, as amended, and Section 24 of R.A. 7916 which includes the 5% preferential tax on gross income earned, which is in lieu of national and local taxes; and second, as that provided for under Book VI of Executive Order No. 226, including but not limited to an income tax holiday (ITH) of 4 to 6 years depending on whether an entity is registered as a pioneer or non-pioneer enterprise. If an ecozone enterprise chooses the 5% preferential tax, it is exempt from payment of all national and local taxes. However, if an ecozone enterprise

opted for the income tax holiday, it only exempt from payment of the income tax but still subject to other national internal revenue taxes including the value-added tax. These were explicitly elucidated by the Bureau of Internal Revenue in VAT Ruling Nos. 037-98; 043-98; 027-99; and 063-99.

The records of the case convince Us that Petitioner availed of the fiscal incentives under Executive Order No. 226 because of the fact that Petitioner is a VAT registered entity with Certificate of Registration RDO Control No. 97-083-000600-V duly issued by Respondent's Assistant Revenue District Officer, Ms. Gloria D. Decierdo, for and in behalf of Mr. Nieto A. Racho, Revenue District Officer, RDO No. 83, Dalisay, Cebu (Exh. B)."

Moreover, in the case of ***Seagate Technology (Philippines) vs. Commissioner of Internal Revenue, CTA Case No. 6102, promulgated on July 4, 2001***, which was later on affirmed by the Court of Appeals in the case of ***Commissioner of Internal Revenue vs. Seagate Technology (Philippines), CA-G.R. SP No. 65797, promulgated on September 5, 2002***, the court ruled that:

"We agree with the contention of Respondent that if an entity is registered with PEZA as an ecozone enterprise and remitting 5% of its gross income to the national government, it is exempt from the payment of VAT. However, We do not agree that the aforequoted provisos are applicable to the case at bar. First, the records show that Petitioner is a VAT registered entity with Certificate of Registration RDO Control No. 97-083-0000-600-V issued by the Revenue district Office No. 83 of the Bureau of Internal Revenue. Therefore, contrary to Respondent's allegation, Petitioner is evidently subject to value-added tax. Second, section 103(q) of the Tax Code, as amended, specifically excepted, among others, transactions under Presidential Decree No. 66 (now R. A. 7916), from transactions which are exempt from the VAT under special laws. Hence, Petitioner, being registered with the PEZA under the provisions of Presidential Decree No. 7916, is not exempt from the payment of the value-added tax (see ***Resolution, Seagate Technology (Philippines) vs. Commissioner of Internal Revenue, CTA Case No. 5921, September 20, 2000)***. Third, petitioner never remitted 5% final tax to the government because it was not able to commence its commercial operations in the Philippines.' (Emphasis supplied)

The pronouncement of this court in the aforequoted cases was affirmed by the Court of Appeals in the cases of ***Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc. CA-G.R. No. 59872, October 13, 2003, Commissioner of Internal Revenue vs. EG & G OMNI, Inc., CA-G.R. SP No. 61402, September 24, 2002 and Commissioner of Internal Revenue vs. KSS Philippines, Inc. CA-G.R. SP No. 66720, March 19, 2002.***

The fact that petitioner is a PEZA registered export enterprise enjoying *income tax holiday* is not disputed (*par. 3, Facts Admitted*). Hence, petitioner is only exempt from income tax but still subject to other national internal revenue taxes such as the VAT.

We proceed to the determination of whether or not petitioner's export sales for taxable year 1999 qualify for zero-rating.

Petitioner claimed that its export sales are subject to zero percent (0%) rate for VAT purposes pursuant to the following provisions of Section 106(A)(2)(a)(1) of the Tax Code:

> "**SEC. 106.** ***Value-Added Tax on Sale of Goods or Properties. -***
>
> "(A) x x x
>
> " (1) x x x
>
> "(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> "(a) *Export Sales*. - The term '*export sales*' means:
>
> "(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or in equivalent in goods and services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

In order that its 1999 export sales shall be considered zero-rated for VAT purposes, petitioner must establish that it has complied with the substantiation requirements provided for under Section 113 (A) of the 1997 Tax Code in relation to Section 238 of the same code as well as Section 4.108-1 of Revenue Regulations No. 1-95, pertinent portions of which are hereunder quoted:

> "**SEC. 113.** ***Invoicing and Accounting Requirements for VAT-Registered Persons.*** –
>
> "(A) ***Invoicing Requirements.*** – <u>A VAT-registered person shall, for every sale, issue an invoice or receipt.</u> In addition to the information required under Section 237, <u>the following information shall be indicated in the invoice or receipt:</u>
>
> "(1) <u>A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN);</u> and
>
> "(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax." (Underscoring supplied)

> "**SEC. 238.** ***Printing of Receipts or Sales or Commercial Invoices.*** <u>All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.</u>
>
> "No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.
>
> "All persons who print receipts or sales or commercial invoices shall maintain a logbook/register of taxpayers who availed of their printing services. The logbook/register shall contain the following information:

"(1) Names, Taxpayer Identification Numbers of the persons or entities for whom the receipts or sales or commercial invoices were printed; and

"(2) Number of booklets, number of sets per booklet, number of copies per set and the serial numbers of the receipts or invoices in each booklet." (Underscoring supplied)

SEC. 4.108-1. ***Invoicing Requirements*** – All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, **"TIN"** and address of seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word "zero rated" imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration.

xxx xxx xxx

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoices or receipts and this shall be considered as a "VAT Invoice". All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax." (Underscoring supplied)

Moreover, petitioner should prove compliance with Section 2(c)(1)(2) of Revenue Regulations No. 3-88, which provides, viz:

"**Section 2.** Section 16 of Revenue Regulations No. 5-87 is hereby amended to read as follows:

"SECTION 16. Refunds or tax credits of input tax. –
(a) xxx
(b) xxx
(c) Claims for tax credits/refunds. - 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 or municipality

> where the principal place of the business of the applicant is located or directly with the Commissioner, Attention: VAT Division.
>
> A photo copy 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) Photo copy 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 photo copy of the invoice or receipt evidencing the sale of the goods, as well as the name of person to whom the goods were delivered.
>
> "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 applicable banking regulations."

A careful perusal of the documents presented in evidence disclosed that all the export sales invoices *(formed part of Exhs. N to N-3264)* have no BIR Permit to Print and do not contain the Taxpayer's Identification Number-VAT (TIN-V) and the word zero-rated imprinted on the invoice covering the zero-rated sales in contravention with the provisions of Section 113(A) of the 1997 Tax Code in relation to Section 238 of the same code, as well as Section 4.108-1 of Revenue Regulations No. 1-95. Thus, these documents cannot be considered as valid evidence to prove zero-rated sales of goods for VAT purposes.

In the case entitled ***Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6039, promulgated on December 17, 2003,*** this court denied the petition for review for failure of petitioner to comply with the requirements set forth under Sections 113 and 238 of the 1997 Tax Code, pertinent portion of which reads:

> *"After a painstaking scrutiny of the documents presented as evidence by herein petitioner, which included its export sales invoices (Exhibits "Z-1" to "Z-210"), this court found that* ***all of the said invoices presented do not have any BIR Permit to Print and some of these invoices do not even have the Taxpayer's Identification Number – VAT (TIN-V)*** *[Exhibits Z-9, Z-11, Z-14, Z-16, Z-26, Z-28, Z-33, Z-42, Z-44, Z-54, Z-56, Z-62, Z-64, Z-73, Z-75, Z-81, Z-90, Z-92, Z-94, Z-100, Z-102, Z-104, Z-113, Z-115, Z-117, Z-121, Z-123, Z-125, Z-203, Z-205 and Z-207],* ***in blatant violation of Sec. 113 of the 1997 Tax Code, in relation to Section 238 of the same Code****, xxx."* ***(Emphasis Supplied)***

Moreover, this court has emphasized the importance of a valid sales invoice as a requirement before a claim for refund may be granted in the case of ***Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6169, Resolution dated September 2, 2003***, pertinent portions of which are hereunder quoted:

> *"As regards the contention of petitioner that its export sales can still be proven by its presentation of other documents such as the certification of inward remittances, export declarations and airway bills, we do not agree. In the case of The Commissioner of Internal Revenue vs. Philippine Bobbin Corporation, CA-G.R. SP No. 59452, promulgated on February 19, 2001, it was ruled that the best means to prove the exportation of goods are the said export documents and the commercial invoices or receipts, taken collectively.*
>
> *xxx xxx xxx*
>
> *We do not subscribe to petitioner's view that the compliance requirement under the Tax Code finds relevance only with respect to domestic or local sales. The provisions of law regarding invoicing requirements, specifically Section 113 in relation to Section 237 of the 1997 Tax Code as well as Section 4.108.1 of Revenue Regulations No. 7-95 did not make any distinction as to whether the sale is export or domestic."*

Finally, in our Resolution dated September 1, 2003 in the case of ***Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6128, promulgated on September 1, 2003***, this court held:

> "The absence of BIR permit to print and the Taxpayer's Identification Number-VAT (TIN-V) in the export sales invoices is fatal to petitioner's claim for refund because it violates the provisions of Section 113 in relation to Section 237 of the 1997 Tax Code which provides, thus:
>
> xxx xxx xxx
>
> The requirements provided in the foregoing provisions are clear and absolute. It is incorrect for the petitioner to state that the compliance requirement under the Tax Code finds relevance only with respect to domestic or local sales, because the requirements in the above-mentioned provisions on the issuance of VAT invoices do not distinguish whether the sale is export or domestic. When the law does not provide a limitation, no limitation should be read into it (Cordero vs. CFI of Laguna, 67 Phil. 358)."

Based on all the foregoing, the documents submitted by petitioner in support of its claim cannot be considered as valid evidence to prove zero-rated sales of goods for VAT purposes. Thus, for failure of petitioner to comply with the requirements set forth under Sections 113(A) and 238 of the 1997 Tax Code and the applicable revenue regulations, the instant petition must necessarily fail.

WHEREFORE, petitioner's claim for issuance of a tax credit certificate in the amount of P7,786,614.04 is hereby **DENIED**.

SO ORDERED.

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

WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
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.

JUANITO C. CASTAÑEDA, JR.
Associate Judge