REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EG & G OMNI, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5987

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 2 6 2004

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DECISION

This is a claim for refund or issuance of a tax credit certificate in the amount of P2,357,514.86 allegedly representing unutilized input Value-Added Tax (VAT) of petitioner for the 4th quarter of 1996 pertaining to payment of royalties to Vactec, Inc., in accordance with their Royalty Agreement entered into on January 1, 1996.

The facts are undisputed.

Petitioner is a domestic corporation duly organized and existing by virtue of Philippines laws with principal office located at No. 3 Ampere St., Light Industry Science Park, Barangay Diezmo, Cabuyao, Laguna (*as admitted in Respondent's Answer*). It is an exporter of semiconductor, electronic and optoelectronic products and registered as a Value-Added Tax (VAT) Taxpayer with the Bureau of Internal Revenue (BIR) RDO 57 on May 10, 1995, as evidenced by BIR Certificate of Registration No. 95-570-000439 (*par. 1, Facts Admitted; Exhibit A*).

Petitioner filed its Value-Added Tax (VAT) Return for the 4th Quarter of 1996 on January 20, 1997 as appearing on the stamped marking of the said return (*Exhibit O*).

On December 29, 1997, petitioner availed of the Voluntary Assessment Program (*page 122, CTA records*) offered by the BIR under Revenue Memorandum Order (RMO) No. 63-97 and paid input taxes in the amount of P2,357,514.86 (*Exhibit L*) arising from a royalty agreement (*Exhibit C*) between petitioner and Vactec, Inc., as licensee and licensor respectively.

On January 19, 1999, petitioner filed an Application for Tax Credit/Refund of Value-Added Tax Paid with the One-Stop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance for its alleged unapplied input taxes on royalties paid under the BIR's Voluntary Assessment Program in the amount of P2,357,514.86 (*Exhibits D & E*).

Since there was no action from the respondent on petitioner's claim for tax refund or tax credit, the latter, on December 28, 1999, filed instant petition citing as legal basis therefor Section 106 [now 112] in relation to Section 100(a)(2)(A) [now 106(A)(2)(a)] of the Tax Code.

Respondent, in his Answer filed through registered mail on February 11, 2000, raised the following Special and Affirmative Defenses:

4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by respondent's Bureau;
5. The amount of P2,357,514.86 being claimed by petitioner as alleged input taxes on royalties was not properly documented;

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6. In an action for refund/credit, the burden of proof is on the taxpayer to establish to its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
7. Petitioner must show that it has complied with the provisions of Sections 204(C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;
8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

On May 31, 2000, the petitioner and respondent submitted the following issues for this court's resolution:

1. Whether or not petitioner has incurred input taxes in the amount of P2,357,514.86 on royalties paid in accordance with the Royalty Agreement between petitioner and Vactec, Inc., attributable to its export sales;
2. Whether or not petitioner has carried over the input taxes incurred on royalty payments made to Vactec, Inc. to the succeeding quarters;
3. Whether or not the abovementioned input taxes have been offset against any output taxes;
4. Whether or not the subject input taxes are properly substantiated;
5. Whether or not petitioner is entitled to a tax credit certificate/refund in the aggregate amount of P2,537,514.86 (should be P2,357,514.86) representing the amount of unapplied VAT input taxes paid under the Voluntary Assessment Program of the BIR.

Section 106 [now 112] of the Tax Code provides, thus:

> **Section 106. 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 100(a)(2)(A)(i), (ii) and (b) and Section 102(b)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the regulations of the Bangko Sentral ng Pilipinas (BSP): **Provided, further**, That where the taxpayer is engaged in 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 attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

From the foregoing provisions of law, in order to be entitled to the refund/tax credit of input VAT, the following requisites must be complied with:

1.) there must be zero-rated or effectively zero-rated sales;
2.) that input taxes were incurred or paid;
3.) that such input taxes are attributable to zero-rated or effectively zero-rated sales;
4.) that the input taxes were not applied against any output VAT liability; and
5.) the claim for refund/tax credit was filed within the two-year prescriptive period.

We deem it best to tackle first the issue of whether or not the claim for refund/tax credit was filed within the two-year prescriptive period as it predetermines whether or not petitioner's compliance with the other requisites still deserves our consideration.

The reckoning of the prescriptive period in the above provision of the NIRC should be counted from the date of filing of the corresponding VAT quarterly return which must be made within twenty (20) days from the close of the taxable quarter, as elucidated by this court in a Resolution promulgated on July 20, 1998, in ***Atlas***

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Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5296. This court ratiocinated that said reckoning of the prescriptive period will harmonize Section 108 with Section 230 of the Tax Code which was interpreted by the Supreme Court in the cases of Commissioner of Internal Revenue vs. TMX Sales Inc. and the Court of Appeals, GR No. 83736, dated January 15, 1992; and ACCRA Investments Corporation vs. Commissioner of Internal Revenue, 204 SCRA 957, that the two-year period should be counted from the filing of the final income tax return, because it is only during that date that the exact tax liability or refundability of tax can be determined. In the same manner, it is only after the filing of the quarterly VAT return that we can determine the VAT liability or refundability of VAT. It should be noted that the basic requirement is that VAT refund can only be granted to the extent that the input taxes have not been applied against output tax. All these things can only be determined if a return is filed. It is logical therefore, to conclude that the two-year period should not immediately be counted from the close of the quarter but from the date of filing of the VAT return.

Section 110(b) [now 114(A)] of the Tax Code, reads as follows:

> **Section 110. Return and payment of value-added tax**.-a) **In general**. Every person liable to pay the value-added tax imposed under this title <u>shall file a quarterly return of the amount of his gross sales or receipts within twenty (20) days following the close of each taxable quarter</u> prescribed for each taxpayer: xxx.(Underlining supplied)

Based on such provision, it is clear that the filing of the quarterly VAT return should be made within 20 (twenty) days after the close of the calendar quarter. It is from this point that the two-year prescriptive period shall begin to run.

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Petitioner's claim for refund covers input value-added taxes incurred during the fourth quarter of 1996 (October to December) for which petitioner originally filed its VAT return on January 20, 1997 (*Exhibit O*). Counting from this date, the two-year prescriptive period within which a claim for refund/tax credit may be filed under Section 230 of the Tax Code commenced on January 21, 1997, pursuant to Article 13 of the Civil Code which provides:

"In computing a period, the first day shall be excluded, and the last day included."

Perforce, the last day within which petitioner could have validly filed the judicial action was on January 20, 1999. Records clearly show that on January 19, 1999, petitioner filed its Application For Tax Credit/Refund of Value Added Tax Paid (*Exhibit E*), which was well-within the prescriptive period for filing a refund in the administrative level. However, petitioner miserably failed to meet the deadline to seasonably file its judicial action, considering that it only filed herein petition on December 28, 1999. For having been filed out of time, the instant petition must fail. Thus, the court finds it no longer necessary to pass upon the other issues raised.

WHEREFORE, petitioner's claim for refund or issuance of a tax credit certificate in the amount of P2,357,514.86 allegedly representing unutilized input Value-Added Tax (VAT) for the 4th quarter of 1996 is hereby ***DENIED*** on account of prescription.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Judge

WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Judge

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

C E R T I F I C A T I O N

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.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

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