REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE NATIONAL POLICE MULTI - PURPOSE COOPERATIVE, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4845

3/10/94

JOSE U. ONG, in his capacity as COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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DECISION

Before this Court is petitioner's claim for refund of value-added tax (VAT) in the amount of P75,110.88 for purchases it had during the last quarter of 1991.

The antecedent facts of this case are as follows:

The petitioner, Philippine National Police Multi-Purpose Cooperative, Inc. is a cooperative composed solely of government employees organized under the provisions of Republic Act (R.A.) No. 6938, otherwise known as The Cooperative Code of the Philippines.

During the period from October to December 1991, the petitioner purchased various merchandise from different suppliers. It alleged that the various suppliers included in their sales price the ten *per cent* (10%) VAT amounting to P75,110.88 computed as follows:

Suppliers	VAT Collected
Goldstar Phils. Sales Corp.	11,001.49
Paluwagan Marketing Inc.	8,318.45
Automatic Center	3,648.10
Masa Marketing Corp.	6,470.91
CFC Corporation	1,392.22
Century Canning Corp.	3,589.12
Nestle Phils., Inc.	4,699.55
Marina Sales, Inc.	2,986.11
Conrad and Company, Inc.	1,471.15
Purefoods Corporation	10,690.00
Johnson and Johnson	4,322.03
Zuellig Distributors, Inc.	1,079.05
Commonwealth Foods, Inc.	2,423.37
Victorias Milling Corporation	2,257.50
Mac-Van Sales Marketing, Inc.	3,724.34
California Mfg. Co., Inc.	1,607.44
Universal Robina Corporation	1,800.50
Philips Food Corporation	1,709.52
Lamoiyan Corporation	1,921.01
T o t a l	P75,111.86*

*With a difference of P0.98

On June 25, 1992, petitioner filed before the respondent, Commissioner of Internal Revenue, a written application for refund of the amount of P75,110.88 claiming that it is not subject to any government tax under the internal revenue laws and other tax laws (Annex"C", C.T.A. Records, p. 11).

Respondent, in his letter-decision dated July 28, 1992 denied the claim for refund. He explained his decision as follows:

> "Please be informed that under Section 99 of the National Internal Revenue Code (NIRC), as amended by Executive Order No. 273, the persons liable for the VAT are not the buyers/ purchasers but the sellers/importers of goods and those performing services for a fee. However, since the VAT is an indirect tax, it

> can be shifted to customers. Once shifted to the customer as addition to the cost of goods/services sold, it is no longer a tax but an additional cost which the customer has to pay in order to obtain the goods/services (Philippine Acetylene Co. vs. Commissioner of Internal Revenue, G.R. No. L-19707. August 17, 1967, as cited in BIR Ruling No. 297-88 dated July 6, 1988). Thus, the shifting of the VAT to you by your suppliers does not make you the person liable thereof." (Annex "A", C.T.A. Records, p. 9)

Petitioner filed before this Court on September 8, 1992 the instant Petition for Review of the respondent's decision claiming that the latter erred in holding that the petitioner is not entitled to a refund of the VAT paid on its purchases.

Respondent, in his Answer, prays that the petition be denied for lack of merit arguing by way of special and affirmative defenses that: 1) the petition has failed to state any cause of action; 2) tax refunds are in the nature of tax exemptions which are construed strictly against the taxpayer; 3) in an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally paid; and 4) the claim for refund is still under investigation.

Petitioner filed on January 29, 1993 its Reply and Motion praying for the admission of its factual allegations including the genuineness and due execution of Annexes "A" and "C" as they were not denied under oath by the respondent.

On June 29, 1993, petitioner filed its Manifestation and Motion that the copies of Request for Admission sent to the respondent be noted by this Court together with the Exhibits.

During the hearing of June 30, 1993, respondent manifested that since the issue involved in the case is purely legal, he "is waving the right to present evidence." (C.T.A. Records, p. 169). Both parties were given thirty (30) days to submit their respective memoranda after which this case shall be considered submitted for decision.

Petitioner filed its Memorandum on August 16, 1993. On the other hand, respondent did not file a memorandum to support his case.

There being no objection on the part of the respondent with regard to the petitioner's Request for Admission of factual issues, the only legal issue left for this Court's resolution is whether or not petitioner is entitled to the refund of VAT in the amount of P75,110.88 representing input taxes for purchases it had for the months of October, November and December of the taxable year 1991.

There is no question that petitioner is a cooperative under the category stated in Article 61 of the Cooperative Code which reads as follows:

"ART 61. *Tax Treatment of Cooperative* - Duly registered cooperatives under this Code which do not transact any business with nonmembers or the general public shall not be subject to any government taxes or fees imposed under the internal revenue laws and other tax laws. xxx"

Sections 100(a)(2) and 103(u) of the Tax Code provide:

"SEC. 100. *Value-added tax on sale of goods* - (a) *Rate and base of tax.* - There shall be levied, assessed and collected on every sale, barter, or exchange of goods, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods sold, bartered or exchanged, such tax to be paid by the seller or transferor: *Provided,* That the following sales by VAT-registered persons shall be subject to 0%.

xxx xxx xxx

(2) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate. xxx"

"SEC. 103. *Exempt Transactions* - the following shall be exempt from the value-added tax:

xxx xxx xxx

(u) Transactions which are exempt under special laws or international agreements to which the Philippines is a signatory; xxx"

The VAT Implementing Regulations provide for the distinctions between zero-rated and exempt transactions, thus:

"SEC. 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. xxx"

> "SEC. 9. *Exemptions.* - (a) *In general.* - An exemption means that the sale of goods or services is not subject to value-added tax (output tax). The seller is not allowed any tax credit on VAT (input tax) previously paid. The person making the exempt sale of goods or services shall not separately bill any output tax to his customers because the said transaction is not subject to VAT. xxx"

Although the zero-rated transaction is a taxable transaction, the seller of goods or services is entitled to a refund or tax credit of the input tax paid on his purchases of goods and services. On the other hand, the seller in an exempt transaction is not entitled to such refund or credit, the input VAT paid on his purchases of goods and services merely becomes an added cost of his operations.

Petitioner would like this Court to order a refund of the amount of P75,110.88 in its favor. In its Memorandum, petitioner alleged among others that:

> "Granting <u>arguendo</u> that the value-added taxes sought by the petitioner to be refunded to it are in the nature of indirect taxes, it is the respectful submission that the petitioner enjoys exemption from indirect taxes in accordance with Article 61 of Republic Act No. 6938.

> It is hornbook doctrine that where the law is clear that there is no need to resort to

> statutory construction. The tax exemption enjoyed by the petitioner is crystal clear it "shall not be subject to <u>any</u> government taxes or fees imposed under the internal revenue laws and other tax laws." (Article 61, Republic Act No. 6938)
>
> Familiar is the maxim, "UBI LEX NON DISTINGUIT NEC NOS DISTINGUERE DEBEMOS," where the law does not distinguish we should not also distinguish. Since Article 61, Republic Act No. 6938, used the word **"any"** then the tax exemption grant should include both direct and indirect taxes. Furthermore, granting that there is a need to resort the statutory construction whether Article 61, Republic Act No. 6938 in fact includes exemption from indirect taxes, like the VAT, then it should be interpreted to include among the exemptions the indirect taxes like VAT. This interpretation is in consonance with Article 126 of Republic Act No. 6938, which provides that,
>
> "<u>In case of doubt</u> as to the meaning of any provision of this Code or the regulations issued in pursuance thereof, <u>the same shall be resolved liberally in favor of the cooperatives and their members</u>." (underlining supplied)
>
> The petitioner is entitled to the refund prayed for." (Memorandum, pp. 6-7, C.T.A. Records, pp. 179-180)

Assuming however that the sale to the petitioner is zero-rated (Section 100), this Court cannot order the refund of input VAT in favor of the petitioner under the circumstances.

VAT is a tax on the value added to goods or services. It is a tax on "any person who, in the course of trade or business, <u>sells</u>, <u>barters</u>, or <u>exchanges</u> goods, <u>renders</u> services, or <u>engages</u> in similar transactions and any person who imports goods" (Section 99, Tax Code) (Underscoring supplied).

Assuming further that the petitioner is VAT-exempt (Sec. 103), its exemption is limited only to those for which it is directly liable. Hence, it will be exempt from income tax, documentary stamp tax, customs duties and even VAT output tax. In other words, petitioner is not liable for VAT output tax on sales made to its members but is liable for VAT input tax passed on to it by its suppliers.

The tax exemption from "any government taxes or fees imposed under the internal revenue laws and other laws" does not include indirect taxes such as VAT and sales tax passed on by the seller to the buyer. For a taxpayer to be exempt from indirect taxes, there should be a clear intention on the part of the Legislature to grant such exemption. The exempting law should categorically or specifically provide for exemption from indirect taxes. (**Maceda vs. Macaraig, Jr.** 197 SCRA 771; **Commissioner of Internal Revenue vs. John Gotamco and Sons, Inc.** 148 SCRA 36; **Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue** 20 SCRA 1056)

Respondent is correct in saying that the persons liable for the VAT are not the buyers or purchasers but the sellers or importers of goods and those performing services for a fee. Being the buyer or purchaser, petitioner has no legal standing to claim for the refund of the input taxes it paid on its purchases.

In the case of **Commissioner of Internal Revenue vs. John Gotamco and Sons, Inc.** (supra) cited by the petitioner, the Supreme Court cancelled the assessment of 3% contractor's tax issued by the B.I.R. against the contractor of World Health Organization (WHO), an international organization "exempt from all direct and indirect taxes". The case was brought not by WHO but by its contractor.

This Court is not unaware of the problems or disputes in implementing the VAT scheme. Former Commissioner Bienvenido A. Tan, Jr., predecessor of herein respondent, ruled in B.I.R. Ruling 289-88 that although the World Food Programme is tax-exempt, its broker can still be charged the 10% VAT since the exemption of the consignee is only limited to the taxes for which it is directly liable. "However, xxx it is entirely left to its discretion whether to accept or reject the billing of the 10% value-added tax."

In an article published in the February issue of Ateneo Law Journal, it was observed that:

> "The shifting of the 10% VAT is a continuing point of dispute between seller and buyer of goods and services. Typical of

> situation where this controversy arises is where the seller sells goods or services to a buyer which is exempt from VAT such as banks, insurance companies, educational institutions, hospitals and restaurants. Since the buyer has no output tax, the VAT being passed on by the seller is of no use as an input tax credit. Thus, the buyer refuses to pay the VAT being shifted to him.
>
> In a series of rulings, the BIR held that the persons directly liable for the payment of the VAT is the seller of goods and services. However, since the VAT is an indirect tax, it can be shifted to the buyer. Once shifted to the buyer as an addition to the cost of the goods or services sold, it is no longer a tax but an additional cost which the buyer has to pay in order to obtain the goods or services. The shifting of the VAT does not make the buyer the person directly liable therefore; hence, the tax-exempt status and privilege to avoid the passing on or shifting of the VAT. However, while the VAT can be shifted, it is entirely left to the discretion of the buyer whether to accept or reject the billing of the VAT. If the buyer rejects the additional billing, the recourse of the seller is not to proceed with the sale of the goods or services. Thus, it becomes largely a matter of agreement between seller and buyer whether or not to shift the VAT." (The Philippine Value Added Tax System by Cornelio C. Gison,. pp. 138-139).

Tax refund partakes of the nature of a tax exemption and therefore cannot be allowed unless granted in the most explicit and categorical language. The grant of refund privileges must be strictly construed against the taxpayer. (**Insular Lumber Co. vs. Court of Tax Appeals**, 104 SCRA 710; **Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation**, 207 SCRA 549)

WHEREFORE, in view of all the foregoing, the claim for refund in the amount of P75,110.88 is hereby **DENIED** for lack of merit. No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, March 10, 1994.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge