REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EASTERN TELECOMMUNICATIONS – PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5656

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 12 2000

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DECISION

The case at bar seeks the refund/tax credit of the amount of P24,283,171.24 allegedly representing Petitioner's excess VAT input taxes attributable or allocable to its zero-rated activities for the period April, 1996 up to December, 1997.

As represented, Petitioner is a domestic corporation, and is a grantee of a telecommunications franchise by virtue of Republic Act No. 7617, with office address at Telecoms Plaza, 316 Gil Puyat Avenue, Makati City. It is a VAT-registered enterprise whose sales are partly zero-rated, with respect to services it rendered to non-residents (foreign telecommunications corporations) to service the incoming calls of its clients where such portion of service is performed by Petitioner in the Philippines, and partly VAT-taxable as regards to its domestic sales of services to its clients.

For the period April, 1996 to December, 1997, Petitioner allegedly paid VAT input taxes amounting to P50,649,558.35 on its purchases of taxable goods and services, the amount of P24,283,171.24 is alleged to be attributable or allocable to its zero-rated sales, broken down as follows:

Taxable Quarter	Ratio	Allocated Input Taxes
1996		
2nd Quarter	37.908%	P 2,282,945.69
3rd Quarter	37.908%	2,403,547.59
4th Quarter	37.908%	2,357,791.34
1997		
1st Quarter	53.759%	3,537,077.13
2nd Quarter	53.759%	3,991,102.80
3rd Quarter	53.759%	6,330,821.31
4th Quarter	53.759%	3,379,885.38
TOTAL		P 24,283,171.24

On July 1, 1998, Petitioner simultaneously filed its administrative claim for refund/tax credit of the aforesaid amount of P24,283,171.24 with the Bureau of Internal Revenue (BIR) and the instant Petition for Review with this Court, in order to toll the running of the two-year period provided for by law.

Petitioner presents the proposition, as reason of the Petition for Review, that its sale of services to non-resident foreign companies is subject to 0% VAT under Section 108(B)(2) [formerly 102 (a)(2)] of the Tax Code, stated hereunder, and therefore not subject to any output tax, hence, it is entitled to the refund of the input taxes it paid during the period April, 1996 to December, 1997, in accordance with Section 112(A) of the Tax Code, also quoted below:

> **Section 108.** ***Value-added tax on sale of services and use or lease of Properties.*** - x x x

(B) *Transactions Subject to Zero Percent (0%) Rate.* - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate;

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

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

(A) *Zero-rated or Effectively Zero-rated Sales.* - Any VAT-registered person, whose sales are 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 106(A)(2)(a)(1), (2) and (B) and Section 108(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 or effectively 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.

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On the other hand, Respondent, in the usual token of a defense, argued that (1) the petition states no cause of action, (2) Petitioner's claim for refund of alleged excess VAT input taxes is subject to and yet under administrative investigation, (3) Petitioner did not comply with Revenue Regulations No. 5-87, particularly Section 16(c)(3) thereof, (4) the input taxes allegedly paid on its local purchases are not supported by invoices, and (5) claims for tax refunds are strictly construed against the claimants. Thus, he prayed that judgment be rendered against herein Petitioner.

In accordance with CTA Circular No. 1-95 as amended by CTA Circular No. 10-97, Petitioner engaged the services of Mr. Ruben Rubio of SGV & Co. to verify the accuracy of Petitioner's claim for refund. In his report dated February 14, 2000, received by the Court on February 15, 2000 (Exh. EE), Mr. Rubio recommended the refund of the amount of P21,295,126.14, out of the P24,283,171.24 claimed by Petitioner as its refundable amount, and the disallowance of the remaining amount due to non-compliance with invoicing requirements and for failure of Petitioner to submit the necessary documents that will support its "Summary of Input Taxes".

Hence, the issue We are tasked to resolve is whether or not Petitioner is entitled to the refund of P21,295,126.14 allegedly representing Petitioner's unutilized VAT input taxes for the second to fourth quarters of 1996 and the four quarters of 1997.

While Petitioner was able to prove that it has an accumulated input tax for the period April 1996 to December 1997 as evidenced by the various official receipts and sales invoices supporting its purchases of vatable goods and services (Exhs. K, L, M, N, O, P, Q, R, S, T, U, V, W, X, AA, BB, CC, DD, FF, & GG), it failed to prove that its sales were zero-rated.

The wordings of Section 108(B)(2) [formerly Section 102(a)(2)] of the Tax Code is clear and unambiguous when it says that services performed in the Philippines by a VAT registered person, other than those mentioned in paragraph (B)(1) of said Section 108, *supra*, shall be considered zero-rated services, provided it is paid for in acceptable foreign currency inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). Thus, in order for a sale to qualify as zero-rated sales, the following requirements should be complied with:

(a) the payment of service fees must be in acceptable foreign currency;

(b) there must be inward remittance of the foreign currency into the Philippines; and

(c) the inward remittance is accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas **(Burmeister & Wain Scandinavian Contractors, Mindanao, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5376, August 04, 1999).**

Understood to mean what it plainly expressed, there must be documentary evidence such as, sales invoices and bank credit memoranda, among others, to show that indeed the taxpayer had actually made export sales. However, in the case at bar, no such documents were presented or offered in evidence. The Court therefore has no evidence to consider in support of Petitioner's claim that it made export sales for the years 1996 and 1997 which were actually paid for in foreign currency and inwardly remitted to the Philippines in accordance with BSP regulations. Although a report was submitted by an independent CPA pursuant to CTA Circular No. 1-95, as amended, only 'The Summary of Input

Taxes" on purchases of goods and services was verified. The export sales were not verified as stated in the footnote of the report wherein the independent CPA simply relied on the amounts of export sales furnished by petitioner (Exh.EE). Mr. Rubio clearly stated in his report that the revenue figures were merely provided by the Petitioner. Absence of the export documents have been ruled in the numerous cases as tantamount to a denial of petitioner's claim for refund **(see Towa Industry vs. Commissioner of Internal Revenue, CTA Case No. 5552, July 09, 1999; Atlas Consolidated Mining & Development Corp. vs. Commissioner of Internal Revenue, CTA Case No. 5322, August 24, 1998; and Philippine Bobbin Corp. vs. Commissioner of Internal Revenue, CTA Case No. 5050, March 06, 1998).**

As indicated above, Petitioner failed to submit and offer as evidence the sales invoices, bank credit memos, among others, in support of its case. Petitioner cannot expect the Court to go beyond evaluating evidence which are not on hand. Furthermore, We agree with the Respondent that Petitioner failed to submit the documents required by Revenue Regulations No. 3-88 with respect to sale of services, such as: (1) authenticated Copy of the Contract showing the person for whom the services were rendered, the amount of the consideration and description of the services and the document evidencing actual payments; (2) Statement from the Central Bank or any of its accredited agent bank that the consideration in acceptable foreign currency has been inwardly remitted and accounted for in accordance with banking regulations; (3) Statement showing the amount of foreign currency, the date of inward remittance, conversion rate into Philippine currency and the total peso value thereof. The failure of Petitioner to submit in evidence the documents required under Section 2 of Revenue Regulations No. 3-88 prevented Us from confirming the veracity of the amount claimed by the Petitioner as excess input VAT payments **(Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case Nos. 4601, 4632, 4655 and 4701, November 18, 1997).** Hereunder are some of the cases where the claims for refund of input VAT were denied for failure of Petitioner to comply with the requirements under Revenue Regulations No. 3-88, to wit:

1. **Dow Elanco B.V. Philippine Branch vs. The Commissioner of Internal Revenue, CTA Case No. 5255, January 14, 1998;**

2. **AMI Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5304, January 20, 1998;**

3. **Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case Nos. 5130, 5161 and 5190, February 5, 1998; and**

4. **Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5306, April 15, 1998).**

Moreover, Petitioner failed to file in evidence its quarterly VAT returns for taxable year 1998. The same is indispensable in proving that its 1997 VAT input taxes sought to be refunded have not been carried over nor applied to the output taxes of the year 1998.

In view thereof, there is absence of evidence on record that would warrant the relief sought for by Petitioner. It may not be amiss to point out that in a claim for refund, it is incumbent upon the Petitioner to show that it is entitled thereto, otherwise, failure on its part to prove the same is fatal to its claim for refund. This is true since claims for refund are construed strictly against the claimant for it partakes of the nature of exemption from taxation **(see Citibank vs. Court of Appeals, et. al., G.R. No. 107434, October 10, 1997 and Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95).**

WHEREFORE, in the light of all the foregoing, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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