REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SEKISUI JUSHI PHILS., INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5751

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 26 2001
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DECISION

This is a Petition for Review seeking for the refund or for the issuance of a Tax Credit Certificate in the amount of FOUR MILLION SIX HUNDRED THIRTY ONE THOUSAND THIRTY TWO & 74/100 PESOS (P4, 631,032.74) allegedly representing the unutilized input taxes paid on Petitioner's domestic purchase of capital goods and services for the period January 1 to June 30,1997.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at Lot 11 Carmelray Industrial Park, Canlubang, Laguna. *(Item No. 4, Joint Stipulation of Facts, CTA Docket p. 34)*

Petitioner is principally engaged in the business of manufacturing, importing, exporting, buying, selling, or otherwise dealing in, at wholesale such goods as strapping bands and other packaging materials and goods of similar nature, and any and all equipment, materials, supplies used or employed in or related to the manufacture of such finished products. *(Item no. 5, Joint Stipulation of Facts, CTA Docket p. 33)* It is a duly registered value added taxpayer in accordance with Section 107 of the Tax Code *(Item No. 1, Joint Stipulation of Facts, CTA Docket p. 33)*

For the period January 1 to June 30, 1997, Petitioner filed its quarterly VAT returns with the Bureau of Internal Revenue (BIR) which reflected input taxes in the amount of Four Million Six Hundred Thirty One Thousand Thirty Two and 74/100 Pesos (P4,631,132.70), broken down as follows:

Period	Amount of Input Taxes Paid
First Quarter	P 2,100,302.60 (Exh A)
Second Quarter	2,530,730.14 (Exh B)
T O T A L	4,631,032.74

The aforesaid amount represents input taxes incurred in connection with Petitioner's domestic purchase of capital goods and services. *(Item No. 2, Joint Stipulation of Facts, CTA Docket, p. 33)* The said input taxes have remained unutilized since Petitioner has not engaged in any business activity or transaction for which it may be liable for output taxes. Consequently, there is no output tax against which the subject input taxes may be credited. *(Item No.6, par.2, Petition for Review, CTA docket p.2)*

Pursuant to BIR Revenue Audit Memorandum Order No. 2-93, Petitioner on November 11, 1998 filed with the One Stop Shop Inter Agency Tax Credit and Duty Drawback Center of the Department of Finance (CENTER-DOF), two separate applications for tax credit/refund of input taxes incurred for the period January 1 to March 31,1997 and April 1 to June 30,1997, respectively. *(Item No. 3, Joint Stipulation of Facts, CTA Docket p. 33)*

Petitioner has duly filed the instant Petition for Review within the two-year prescriptive period prescribed by then Section 230 of the Tax Code, as amended. *(Item No. 6, Joint Stipulation of Facts, CTA Docket p.34)*

In answer to the instant Petition for Review, Respondent raised the following Special and Affirmative Defenses:

"5. Petitioner's alleged claim for refund/tax credit is subject to administrative routinary investigation/examination by Respondent's Bureau;

6. Petitioner failed miserably to show that the total amount of P4,631,032.74, claimed as VAT input taxes, were erroneously or illegally collected, or that the same are properly documented;

7. Taxes paid and collected are presumed to have been made in accordance with law; hence, not refundable;

8. In an action for tax refund, the burden is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;

9. It is incumbent upon the Petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code;

10. Well-established is the rule that claims for refund/ tax credit are construed in *strictissimi juris* against the taxpayer as it partakes the nature of exemption from tax."

In order to substantiate its claim for refund, Petitioner submitted the following documentary evidence, thus:

Exhibits	Description
A, B, Z, AA	1st, 2nd, 3rd, and 4th Quarter Vat returns for 1997
C	Summary of VAT on local purchases of Goods and Services for the period February to July 1997
D, E, E-1, F, F-1, G, G-1, H, H-1, I, I-1, J, J-1, K, K-1, L, L-1, M, M-1, N, N-1, O, O-1, P, Q, R, S, S-1, T, U, U-1, V, V-1, X, X-1	Various Official Receipts, Billing Invoices, and Sales Invoices issued to Petitioner to prove payment of VAT for purchase of goods and services
Y	PEZA Certificate of Registration No. 96-105
BB, CC, DD, EE	1st, 2nd, 3rd and 4th Quarter VAT Returns of Petitioner for taxable year 1998
FF, GG	1st and 2nd Quarter VAT Returns of Petitioner for taxable year 1999

After both parties submitted their respective memorandum, the Court is now tasked to resolve the following issues jointly stipulated by the Parties, thus:

1. Whether or not Petitioner incurred input taxes in the amount of P4,631,032.74 for the period January 1 to June 30, 1997 for purchase of capital goods and services in accordance with Section 112 (B) of the Tax Code;
2. Whether or not as of the date of filing of the instant Petition for Review, Petitioner has unutilized input taxes in the amount of P4,631,032.74 which have not been offset against any output tax liability;
3. Granting that Petitioner has unutilized input taxes in the amount of P4,631,032.74, whether or not Petitioner has carried over such input taxes to the succeeding quarters.

As all the aforesaid issues are interrelated, We deemed it best to streamline them into one main issue of "**Whether or not Petitioner is entitled to a refund or to the issuance of a Tax Credit Certificate in the amount of P4,631,032.74 allegedly representing the unutilized input taxes paid on its domestic purchase of capital goods and services.**"

After a careful scrutiny of all the records, pleadings and evidence on hand, we rule in favor of the Petitioner.

In its Petition for Review, Petitioner averred that for the period January 1 to June 30, 1997, it incurred input taxes in the amount of P4,631,032.74 for its purchase of capital goods and services. Petitioner then anchored its claim for refund on Section 112(B) of the 1997 Tax Code, and we quote:

> "(B) Capital Goods. A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made."

Based on the aforequoted provision of law, it is imperative for the Petitioner to prove the following:

(1) that it is a VAT registered person;

(2) that the input taxes claimed were paid on capital goods;

(3) that the input taxes have not been applied against its output tax liability; and

(4) that the administrative claim for refund was seasonably filed.
(*Seagate Technology (Philippines) vs. Commissioner of Internal Revenue, CTA Case No. 5921, September 2, 2000*)

A circumspect study of the records of this case reveals that Petitioner satisfactorily complied with the above requirements.

It was established by the Petitioner that it is a VAT-registered person as shown by the Certificate of Registration issued by the BIR, dated November 15,1996 with RDO Control No. 96-56-002536. (Annex "A" of Petition for Review). Furthermore, the fact that Petitioner is a VAT-registered entity is already admitted by the Parties in its Joint Stipulation of Facts *(See Item No. 1, Joint Stipulation of Facts, CTA Docket p.33)*

As to whether or not Petitioner paid input taxes on capital goods, this Court answers in the affirmative. Upon examination of the pertinent documents submitted by the Petitioner, it is clear that from January 1, 1997 to June 30, 1997, Petitioner purchased capital goods and services and paid input taxes thereon. This is supported by the various invoices and official receipts (Exhs. D, D-1, E, E-1, F, F-1, G, G-1, H, H-1, I, I-1, J, J-1, K, K-1, L, L-1, M, M-1, N, N-1, O, O-1, P, Q, R, R-1, S, S-1, T, U, U-1, V, V-1) submitted in evidence by Petitioner.

Records likewise reveal that as of the date of filing of the Petition for Review, Petitioner has unutilized input taxes in the amount of P4,631,032.74 which have not been offset against any output tax liability because Petitioner's sales are 100% exported. This was testified to by Petitioner's witness, Ms. Andrea V. Suelto, Treasurer and General Affairs Manager, during the hearing held on July 19, 1999, and we quote, thus:

ATTY. BISDA:

Q. Ms. witness, could you please tell the Court briefly the nature of the business of the company?

MS. SUELTO:

A. Our company is 100% export enterprise. We are registered with the PEZA Ecozone, Ma'am.

ATTY. BISDA:

Q. Now you mentioned that you are registered as an Ecozone Export Enterprise, what document, if any, will show that you are registered, Ms. Witness?

MS. SUELTO:

A. We were issued the PEZA Certificate of Registration No. 96-105, Ma'am.
(At this point, the counsel for the petitioner shows a document to the witness.)

Inferring from the above testimonies of Petitioner's witness, it is evident that the input taxes remained unutilized/unapplied because as a 100% export enterprise, Petitioner's sales are subject to VAT at 0% pursuant to Section 100 (a)(1) of the Tax Code, as amended. Consequently, there is no output tax liability to which the input taxes can be applied.

And lastly, it is also clear that the administrative claim for refund was seasonably filed within two (2) years from the close of each VAT taxable quarter. It could be recalled that Petitioner on November 11,1998 filed with the One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance(CENTER-DOF), two separate applications for tax credit/refund of input taxes for the period January 1 to March 31, 1997 and April 1 to June 30,1997 and this was duly admitted by the Parties in their Joint Stipulation of Facts. *(See Joint Stipulation of Facts, CTA Docket p.34)*.

Respondent, however, in his Memorandum, dated April 14, 2000, alleged that Petitioner's claim for refund must be denied on the ground that Petitioner failed to comply with the substantiation requirements provided under Section 4.106-1(b) in relation with Section 4.104-5 of Revenue Regulations No. 7-95 and in correlation with Section 16(c)(4) of Revenue Regulations No. 5-87. Section 4.106-1 (b) pertains to requirements for availment of refund or issuance of a tax credit certificate of input taxes on capital goods while Section 4.104-5 pertains to the substantiation of claims for input tax credit. Section 16(c)(4) of Revenue Regulations No. 5-87 provides that:

> "***Section 16(c)(4). Purchase of Capital goods.*** -
>
> (i) Original copy of invoice or receipt showing the date of purchase, purchase price, amount of VAT paid and description of the capital equipment locally purchased;
>
> (ii) With respect to capital equipment imported, the photocopy of import entry document for internal revenue tax purposes and the confirmation receipt issued by the Bureau of Customs for the payment of VAT."

Corollarily, Section 4.106-1 (b) in relation to Section 4.104-5 of Revenue Regulation No.7-95 provides:

> "***Section 4.106-1(b) Capital Goods.*** – Only a VAT registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased. The refund shall be allowed to the extent that such input taxes have not been applied against output taxes. The application should be made within two (2) years after the close of the taxable quarter when the importation or purchase was made.
>
> "*Capital goods or properties*" refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29 (f), used directly or indirectly in the production or sale of taxable goods and services.
>
> "***Section 4.104-5.- Substantiation of claims for input tax credit.***- (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course

> of business. The input tax should be supported by an invoice or receipt showing the information as required under Section 108(a) and 238 of the Code. x x x

Contrary to Respondent's observations, Petitioner satisfactorily complied with the above requisites. As earlier discussed, Petitioner presented in evidence and submitted with this Court various invoices and official receipts supporting the claim for refund of input VAT.

Respondent likewise contends in its Supplemental Memorandum dated December 7, 2000 that Petitioner is not a VAT taxable entity being an ecozone enterprise registered with the Philippine Economic Zone Authority (PEZA) thus it is exempted from national and local taxes including VAT, pursuant to Section 24 of Republic Act 7916 in relation to Section 103 of the Tax Code, as amended by R.A. 7716.

The above issue has already been settled by this Court in the case of READ-RITE PHILIPPINES, INC. (Formerly Sunward Technologies Phils., Inc.) vs. COMMISSIONER OF INTERNAL REVENUE, CTA Case No 5659, promulgated on September 29, 2000, to quote:

> "This Court would like to stress that under Section 23 of Republic Act No. 7916, two different fiscal incentives are granted to an ecozone enterprise to wit:
>
> > ***Sec. 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 VI of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987."
>
> Based on the aforequoted Section 23 of RA 7916, a PEZA registered enterprise has the option to choose between two sets of fiscal

> incentives. One is that which is provided for under Presidential Decree No. 66, as amended and Section 24 of RA 7916 which includes the 5% preferential tax on gross income earned which is in lieu of national and local taxes; and second as those 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 or not 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 national and local taxes. However, if an ecozone enterprise chooses the income tax holiday, it is only exempt from payment of the income tax but still subject to other national internal revenue taxes including the value-added tax. The difference between these 2 sets of fiscal incentives were explained by the Bureau of Internal Revenue in VAT Ruling Nos. 037-98; 043-98; 027-99 and 063-99." (See also Resolutions in the cases of **SEAGATE TECHNOLOGY (PHILIPPINES) vs. COMMISSSIONER OF INTERNAL REVENUE, CTA Case No. 5921, dated September 20, 2000 and TOSHIBA INFORMATION EQUIPMENT (PHILS) INC. vs. COMMISSIONER OF INTERNAL REVENUE, CTA Case No. 5762, dated January 17, 2001**.)

In the case at bar, it is evident that Petitioner opted to avail of the Fiscal Incentive (Income tax Holiday) provided under Executive Order No.226 considering the fact that they have been issued a VAT Registration Certificate by the BIR. Thus, although Petitioner is an ecozone enterprise registered with PEZA and exempt from income tax, Petitioner is still subject to other internal revenue taxes such as Value Added Tax pursuant to the fiscal incentives provided by law.

Having answered all the above issues and after carefully examining the invoices and official receipts, this Court finds that the following input taxes should be disallowed:

SUPPLIER	EXHIBIT	REFERENCE NO	INPUT VAT	REMARK
John Clements Consultant	D, D-1	15340	15,665.00	Not supported by an official receipt
John Clements Consultant	S, S-1	15626	222.39	Not capital goods as defined in Section (2)(c) of R.R. No. 10-94
FCR Business Machine Corp.	R	38581	863.64	No TIN
Riofil Corporation	V	235	235,025.40	Not supported by an official receipt

Federal Phoenix Ass. Co.	W	Policy#149234	2,537.00 Not within the period of claim
		Total	**254,313.43**

And only the following validly supported input value-added taxes should be refunded to Petitioner:

SUPPLIER	EXHIBIT	REFERENCE NO.		INVOICE AMOUNT		INPUT TAX
Riofil Corporation	E, E-1	883	P	16,840,500.00	P	1,545,000.00
Riofil Corporation	F, F-1	882		5,882,049.84		539,637.60
Riofil Corporation	G, G-1	893		5,252,215.14		481,854.60
Riofil Corporation	H, H-1	1051		10,559,330.31		968,745.90
Tricom Dynamics	I, I-1	50084		17,500.00		1,590.91
Design Crest	J, J-1	18949		91,400.00		8,309.09
Kreza Computer Center	K, K-1	1858		78,450.00		7,131.82
Riofil Corporation	L, L-1	1060		8,923,444.14		818,664.60
Columbia Enterprises	M, M-1	69521		20,300.00		1,772.73
Ureka Steel Industries Co.	N, N-1	27968		14,000.00		1,272.73
Scientific Industries, Inc.	O, O-1	39297		1,760.00		160.00
Avesco Marketing Corp.	Q	423597		5,000.00		454.55
Kreza Computer Center	U, U-1	2341		27,585.00		2,507.73
				TOTAL	P	**4,377,102.26**

Thus, out of the total amount claimed for refund of P P4,631,032.74, the Court concludes that only the amount of P4,377,102.26 should be granted to Petitioner.

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED.** Respondent is hereby ordered to refund or to issue a Tax Credit Certificate in favor of the Petitioner in the amount of P4,377,102.26 representing excess input taxes paid for the period covering January 1 to June 30,1997.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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