REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE ASSOCIATED SMELTING AND REFINING CORPORATION,
Petitioner,

- versus -

C.T.A. Case No. 5198

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 04 1998

x - x

DECISION

This is a petition for review instituted by Philippine Associated Smelting and Refining Corporation (PASAR, for brevity), against the Commissioner of Internal Revenue praying for either refund or tax credit of its alleged input value-added tax payments for the period January to October 1993 amounting to ₱13,525,737.98.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines. It is engaged in the business of smelting and refining copper and its by-products, which are mainly exported to Asian countries, and is registered with the Export Processing Zone Authority (EPZA) [Exhibit "B"] and with the Board of Investments (BOI) [Exhibit "C"]. It is likewise a VAT-registered entity with VAT Registration No. 66-1-000074.

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On December 20, 1994, petitioner filed an "Application for Tax Credit/Refund of Value-Added Tax Paid" with respondent on the basis of Section 106 of the Tax Code which provides:

> "SEC. 106. **Refunds or tax credits of input tax.**-(a) Export Sales.-An exporter who is a VAT-registered person may within two years from the date of exportation, apply for the issuance of a tax credit certificate or refund of the input tax attributable to the goods exported, to the extent that such input tax has not been applied to output tax and upon presentation of proof that the foreign exchange proceeds has been accounted for in accordance with the regulations of the Central Bank of the Philippines.
>
> (b) Zero-rated or effectively zero-rated sales.-Any person, except those covered by paragraph (a) above, whose sales are zero-rated may, within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the input taxes attributable to such sales to the extent that such input tax has not been applied against output tax."

No action having been taken by respondent, the instant petition was filed on February 10, 1995.

The right of petitioner to claim for the refund sought is not put at issue. Being an export-seller registered with the Export Processing Zone Authority (EPZA) and the Board of Investments (Exhibits B and C), petitioner is allowed by law to apply for the issuance of

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a tax credit certificate or refund of input tax not applied to output tax.

Thus, the sole issue left for determination is whether or not petitioner is entitled to claim for a refund or tax credit of value added tax (VAT) paid for the period January to October, 1993, on the basis of the evidence presented.

Petitioner, in support of its claim, presented the following:

"D"	Application for Tax Credit/Refund of Value Added Tax Paid for the period of January to October 1993.
"E"	Request for Refund, dated 20 December 1994, sent by Mr. Romeo T. Donato to the Commissioner of Internal Revenue.
"L" to "O"	Plant site VAT transaction summary for the period of January to October 1992.
"P"	Certification executed by Emerita P. Garcia, a Certified Public Accountant stating that for the period of January to October 1993, she allowed the amount of ₱12,159,354.45 and she disallowed the amount of P1,366,383.53

Likewise, petitioner also submitted copies of the receipts issued to petitioner on which the findings of the independent CPA were based.

It bears emphasis, however, that under CTA Circular No. 1-95, it is required that **"the receipts, invoices and**

other documents covering the said accounts or payment must be pre-marked by the party concerned and submitted to the Court in order to be made accessible to the adverse party whenever she/he desires to check and verify the correctness of the summary and CPA Certification." Petitioner, in this case, failed to pre-mark the receipts submitted, hence, these receipts were denied admission by this Court in its Resolution, dated March 17, 1997, to quote:

> Acting on petitioner's "Formal Offer of Evidence" filed on February 20, 1997, without any comment thereto filed by respondent, the Court RESOLVES to ADMIT Exhibits "A" to "P", inclusive of their sub-markings, except the copies of receipts issued to both petitioner's plantsite and Makati offices in view of the absence of pre-marking on said receipts as required by CTA Circular No. 1-95, without prejudice however, to the Court's final appreciation and/or evaluation of their purposes, relevancy and probative value to the issue involved in this case.

and from which resolution petitioner did not even bother to move for a reconsideration or take exception thereto. Consequently, this Court cannot rely solely on the Certification issued by the independent CPA as there is no way by which its correctness can be checked and verified.

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WHEREFORE, in view of petitioner's failure to establish its claim, this petition for review is hereby **DISMISSED**.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

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

I hereby certify that this 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
Court of Tax Appeals

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