REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TOSHIBA INFORMATION EQUIPMENT (PHILS.), INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5672

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 08 2000

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DECISION

This petition for review is seeking for the refund or issuance of a tax credit certificate in the amount of P10,276,545.04, representing unutilized input value-added tax (VAT, for brevity) on capital goods and services and input VAT on domestic goods and services attributable to zero-rated export sales for the period July 1, 1996 to December 31, 1996.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office located at 103 East Main Ave., SEPZ, Phase III, Laguna Technopark, Biñan, Laguna. It is licensed by the Securities and Exchange Commission to engage primarily in the business, among others, of manufacturing, assembling, importing, and exporting electrical and mechanical machinery, equipment, systems, accessories, parts, components, materials and goods of all kinds, including without limitation to those relating to office automation and information technology and including all types of computer based equipment and systems, computer hardware and software of all kinds (Exh. A). It is an ecozone export enterprise registered with the Philippine Economic Zone Authority pursuant to the provisions of Republic Act No. 7916 with Certificate of Registration No. 95-99 (Exh. B). It is likewise registered with the Bureau of Internal Revenue as a VAT entity with VAT Registration Certificate No. 004-739-137, dated December 29, 1995 (Exh. C).

For the period July 1, 1996 to December 31, 1996, petitioner alleges that it generated a total export sales in the amount of P665,510.00 which are subject to zero percent rate of output VAT pursuant to Section 100(a)(2)(A) of the Tax Code.

On October 21, 1996 and January 20, 1997, petitioner seasonably filed its 1996 third and fourth quarters' VAT returns showing, among others, a total input VAT in the amount of P10,770,842.48. Out of the aforesaid amount, petitioner asserted that the sum of P10,276,545.04 pertains to payments of input VAT on capital goods and services as well as payments on domestic purchases of goods and services directly attributable to its zero-rated export sales and which is the subject of the present petition, to wit:

Quarter Involved	Exh.	Input VAT Per Return	Input VAT Per Petition
July to September 1996	D, D-1 & D-2	P 5,394,064.82	P 5,111,697.52
October to December 1996	E, E-1 & E-2	5,376,777.66	5,164,847.52
Total		P10,770,842.48	P10,276,545.04

Believing that it is entitled to the refund of input VAT, petitioner, on September 22, 1998, filed with the Central Records Management Division of the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance two separate applications for tax credit/refund of value-added tax paid pursuant to BIR Revenue Audit Memorandum Order No. 2-93. The first application was for the period July 1, 1996 to September 30, 1996, in the amount of P5,111,697.52; and the second application was for the period October 1, 1996 to December 31, 1996, in the amount of P5,164,847.52 (Exhs. M, N, N-1,N-2, P, Q, Q-1 and Q-2).

Without waiting for an action from the respondent, petitioner on September 29, 1998, filed the instant petition for review in order to toll the running of the two-year prescriptive period under Section 230 of the Tax Code.

In his Answer, respondent raises the following Special and Affirmative defenses:

> 3. Assuming without admitting that petitioner filed claims for refund, the same are subject to investigation;
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> 4. Tax refunds are in the nature of tax exemptions. Exemptions from taxation are highly disfavored in law and he who claims an exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implication. (Asiatic Petroleum Co. vs. Danes, 49 Phil. 466);
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> 5. In an action for tax credit/refund, the taxpayer has the burden of showing that taxes paid were erroneously collected and failure to sustain said burden is fatal to its cause as claims for refund are strictly construed against the claimant (Citibank N.A. Phil Branch vs. the CIR, CTA Case 4250, April 1, 1994).
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> 6. It is incumbent upon the petitioner to show that the claim for tax credit has been filed within the prescriptive period under the Tax Code.

In support of its claim for refund, petitioner presented various documentary exhibits which consist of:

1. SEC Registration Certificate (Exh. A);
2. PEZA Certificate of Registration No. 95-99 (Exh. B);
3. VAT Registration Certificate (Exh. C);
4. Quarterly VAT returns for the period July 1, 1996 to December 31, 1998 (Exhs. F to L, and X, inclusive of submarkings);
5. DOF Claimants Information Sheets together with the applications for credit/refund of VAT paid (Exhs. M, N, N-1, N-2, P, Q, and Q-1);
6. Report of the commissioned independent CPA (Exhs. S and S-1-a);
7. Photocopies of petitioner's VAT official receipts and invoices supporting the claim for refund on input taxes (Exhs. R-1 to R-296 and S-1 to S-276);
8. Photocopies of commercial invoices, documents evidencing inward remittances, and passbook of petitioner (Exhs. T-1 to T-113); and
9. Schedules of input taxes, sales and collection summary and summary of zero-rated sales of petitioner (Exhs. U, V, and W, inclusive of submarkings).

On the other hand, counsel for the respondent was constrained to submit her case for decision in the absence of the BIR records.

The issues to be resolved in the instant case are as follows:

1. Whether or not petitioner was able to comply with the provisions of Section 204 in relation with Sections 106(a) and (b) and 230 of the Tax Code in filing the present petition; and

2. Whether or not petitioner was able to support with substantial evidence its entitlement to the claim for refund.

Anent the first issue, this Court is convinced that petitioner was able to file on time the applications for refund/credit of input VAT with the respondent and the petition for review with this Court. Petitioner filed its applications for refund of input VAT on capital goods and services and on domestic purchases of goods and services attributable to its alleged zero-rated export sales with the respondent on September 22, 1998, while the petition for review was filed on September 29, 1998. The filing of the applications is within the two-year period considering that the administrative claim for refund is reckoned, in case of input VAT attributable to export sales [Sec. 106(a)], after the close of the taxable quarter when such sales were made; and in case of capital goods [Sec. 106(b)], within two years after the close of taxable quarter when the importation or purchase was made. The prescriptive period in claiming for the refund of input VAT in the judicial level is reckoned from the date of filing of the quarterly VAT return **(Nichimen Corporation Philippine Branch vs. Commissioner of Itnernal Revenue, CTA Case No. 5384, August 18, 1998; Hopewell Power (Philippines) Corp. vs. Commissioner of Internal Revenue, CTA Case No. 5389, January 4, 1999)**. From the foregoing, it is clear that the claims for refund both in the administrative and judicial levels were filed within the prescriptive period prescribed by law.

We now proceed to the substantiation requirements laid down by the law and regulations.

Section 106(a) and (b) of the Tax Code provide:

> **SECTION 106.** ***Refunds or tax credits of creditable 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 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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> (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. (Emphasis supplied)

In relation thereto, Section 16(c)(1) and (4) of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88, requires that:

> **SECTION 16. Refunds or tax credits of input tax. –**
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> (c) Claims for tax credits/refunds. – Application For Tax Credit/Refund of Value-Added Tax Paid (BIR Form No. 2552) shall be filed with the Revenue District Office of the city or municipality where the principal place of business of the applicant is located or directly with the Commissioner, Attention: VAT Division.
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> A photocopy of the purchase invoice or receipt evidencing the value-added tax paid shall be submitted together with the application. The original copy of the said invoice/receipt, however, shall be presented

for cancellation prior to the issuance of the Tax Credit Certificate or refund, in addition, the following documents shall be attached whenever applicable:

1. Export Sales

i) Photocopy of export document showing the amount of export, and the date and destination of the goods exported. With respect to foreign currency denominated sale, the copy of the invoice or receipt evidencing the sale of the goods, as well as the name of the person to whom the goods were delivered.

ii) Statement from the Central Bank or any of its accredited agent banks that the proceeds of the sale in acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations.

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4. Purchase of capital goods.

i) original copy of invoice or receipt showing the date of purchase, purchase price, amount of value-added tax 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 the value-added tax.

Based on the records and evidence presented, petitioner was able to prove the following:

1. It is a VAT registered entity (Exh. A);

2. The applications for refund/credit both in the administrative and judicial level were filed within the two-year reglementary period (Exhs. M, N, P and Q, inclusive of submarkings);

3. That there were foreign currency inward remittances;

4. The alleged input VAT covered by the claim in the amount of P10,276,545.04 have not been applied against any output tax (Exh. X-1); and

5. There are various purchase invoices evidencing payments of input VAT.

However, We are denying the portion of petitioner's claim pertaining to input VAT attributable to petitioner's alleged zero-rated export sales because Petitioner failed to present export documents required under the aforequoted regulations. It was also noted by the Court that the commercial invoices supporting the export sales appear to be invalid. There is no BIR permit indicated in the invoice which was required under Section 239 of the Tax Code. Furthermore, this Court observes inconsistencies regarding petitioner's alleged export sales.

In its petition for review, petitioner stated that it generated total export sales in the amount of P665,510 for the period July 1, 1996 to December 31, 1996. However, based on the certification issued by Ms. Teresita Sepulveda, Finance Manager of Toshiba, it had no sales during the first three quarters of 1996 and the total amount of export sales for the period October to December 1996 was P666,509,978.00 (Exhs. W and W-1).

Granting that the latter amount is correct, the Court further noted that these export sales were not declared by petitioner in its 1996 fourth quarter VAT return (Exh. E). Thus, this Court cannot grant an input VAT allegedly attributable to export sales where in fact the said sales were not declared in the VAT return.

At this point, We would like to stress that the argument raised by the respondent's counsel that petitioner needs to secure an application for zero-rating under Section 8(d) of Revenue Regulations No. 5-87 is bereft of merit. Under Section 106(a) of the Tax Code, petitioner's export sale is automatically qualified as zero rated. In fact, there are a number of VAT rulings subjecting export sales to VAT at 0% where an application for zero-rating is no longer necessary (VAT Ruling Nos. 107-88, 138-88, 527-88 and 090-91).

With respect to input VAT pertaining to capital goods claimed by petitioner, this Court is convinced that it paid input VAT on various purchases of capital goods and services as evidenced by the photocopies of purchase invoices examined by the commissioned independent auditor. After a careful scrutiny of the evidence presented, We find Petitioner entitled to a refund/credit pursuant to Sec. 106(b) of the Tax Code, detailed as follows:

Date	Supplier	TIN	Invoice/ O.R. No.	Exh.	Gross Amount	Input Tax
08-14-96	Citimex, Inc.	000-393-117V	7598	R-28	P 159,757.20	P 14,523.38
08-12-96	Labelmen Enterprises	041-133-718-472V	4852	R-108	458,999.92	41,727.26
08-12-96	Labelmen Enterprises	041-133-718-472V	4853	R-110	1,446,299.80	131,481.80
08-09-96	Mantrade	048-000-129-871V	353236	R-120	465,000.00	42,272.73
08-16-96	Mantrade	048-000-129-871V	350394	R-122	465,000.00	42,272.73
08-09-96	Mantrade	048-000-129-871V	353237	R-124	465,000.00	42,272.73
07-26-96	Mantrade	048-000-129-871V	352549	R-126	960,000.00	87,272.73
08-23-96	Otex Incorporated	051-003-925-164V	1169	R-146	51,000.00	4,636.36
07-02-96	Philippine Systems Products	000-136-994V	1421	R-170	162,684.50	14,789.50
07-29-96	Riofil Corporation	430-000-286-420V	790	R-182	17,828,012.75	1,620,728.43
07-31-96	SNK Philippines, Inc.	049-004-636-930V	000043	R-191	12,826,847.50	1,176,775.00
07-30-96	Sta Ana Import Export Inc.	048-000-142-327V	1208	R-194	60,000.00	5,454.54
07-29-96	Tosplant Philippines Corp.	470-004-655-966V	0004	R-212	12,821,070.50	1,176,245.00
08-20-96	Toyota	048-003-821-973V	015328	R-224	507,050.00	45,731.82
08-09-96	Toyota	048-003-821-973V	7137/7138	R-228	1,014,100.00	91,463.64
08-24-96	Toyota	048-003-821-973V	015393	R-240	654,000.00	60,618.20
08-08-96	Toyota	048-003-821-973V	015161	R-246	654,000.00	58,800.00
08-08-96	Toyota	048-003-821-973V	014907	R-252	654,000.00	58,182.00
11-29-96	Riofil Corporation	430-000-286-420V	832	S-209	11,038,430.00	1,012,700.00
11-12-96	SNK Philippines, Inc.	049-004-636-930V	000058	S-218	1,436,520.91	31,790.91
12-17-96	SNK Philippines, Inc.	049-004-636-930V	000070	S-232	2,565,369.50	235,355.00
12-17-96	SNK Philippines, Inc.	049-004-636-930V	000071	S-238	292,160.33	26,803.70
12-17-96	Tosplant Philippines Corp.	470-004-655-966V	0013	S-246	2,564,279.50	235,255.00
11-18-96	Tosplant Philippines Corp.	470-004-655-966V	0011	S-249	16,623,500.27	1,525,091.77
12-17-96	Tosplant Philippines Corp.	470-004-655-966V	0014	S-253	7,305,716.28	670,249.20
	T O T A L				P93,478,798.96	P8,452,493.43

WHEREFORE, in view of the foregoing, petitioner's claim for refund is hereby partially **GRANTED**. Respondent is hereby **ORDERED** to **REFUND** in favor of petitioner the amount of P8,452,493.43, representing input VAT on capital goods for the period July 1 to December 31, 1996.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
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