REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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GST PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6489

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
AUG 0 7 2007; 3:30PM

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DECISION

ACOSTA, *J.*:

Before Us is a Petition for Review seeking refund or issuance of tax credit certificate in the amount of SIXTEEN MILLION NINE HUNDRED FORTY TWO THOUSAND ONE HUNDRED THIRTY PESOS AND 48/100 (P16,942,130.48), representing unutilized input value added taxes (VAT) paid on petitioner's domestic purchases and importations of goods attributable to zero-rated sales for the period covering April 1, 2000 to March 31, 2002.

GST Philippines, Inc. (petitioner) is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office situated at the 2nd Floor, ALPAP I Building, 140 L.P. Leviste Street, Salcedo Village, Makati City. It is engaged principally in the business of manufacturing, processing, selling and dealing in all kinds of iron, steel or other metals, and all or any products or articles consisting or partly consisting or iron steel or other metals, such as but not limited to grinding balls, rods, structural steel,

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any and all kinds of industrial machineries and equipment and any and all processes and products and any and all other analogous or related objects. It is a VAT-registered taxpayer as shown by its Bureau of Internal Revenue Certificate of Registration bearing RDO Control No. 94-500-000023-V and Taxpayer Identification No. (TIN) 500-000-155-645.[1]

The Commissioner of Internal Revenue (respondent) is the duly appointed officer of the Bureau of Internal Revenue (BIR), vested with the power to perform the duties of his office, including, among others, the duty to act on and approve claims for refund or tax credit of overpaid internal revenue taxes as provided by law, with office address at the BIR National Office Building, Diliman, Quezon City.

For the second, third and fourth quarters of taxable year 2000, four quarters of taxable year 2001, and first quarter of taxable year 2002, petitioner allegedly entered into sale transactions with customers, such as VAT-registered and Board of Investment (BOI)-registered exporters Philex Mining Corporation (Philex Mining), Philex Gold Philippines, Inc. (Philex Gold) and Lepanto Consolidated Mining Company (Lepanto Mining). Consequently, for the same period, petitioner filed Quarterly VAT Returns on the following dates:

EXHIBIT	QUARTER INVOLVED	DATE FILED
C-8	2ND QTR 2000	July 25, 2000
D-8	3RD QTR 2000	October 25, 2000
E-8	4TH QTR 2000	January 25, 2001
F-8	1ST QTR 2001	April 25, 2001
G-8	2ND QTR 2001	July 25, 2001
H-8	3RD QTR 2001	October 25, 2001
I-10	4TH QTR 2001	January 25, 2002
J-10	1ST QTR 2002	April 25, 2002[2]

On October 4, 2001 and May 10, 2002, petitioner filed with the BIR Large Taxpayers Assistance Division, separate claims for refund of unutilized input VAT of P9,750,104.19 for

[1] Records, pages 177-178
[2] Records, page 178

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the period of April 1, 2000 to June 30, 2001, and P7,192,026.29 covering July 1, 2001 to March 31, 2002, respectively.[3]

The BIR's inaction on its claim for refund prompted petitioner to appeal to the Court of Tax Appeals on June 24, 2002.

In his Answer, respondent raised the following Special and Affirmative Defenses[4]:

"4. Petitioner's alleged claim for refund is subject to administrative routinary investigation by the BIR;

5. Petitioner miserably failed to demonstrate that the taxes subject of the case at bar were erroneously or illegally collected;

6. The amount of P16,942,130.48 representing alleged unutilized input taxes paid on its domestic purchases and importations of goods attributable to zero-rated sales for the period covering April 1, 2000 to March 31, 2002 was not properly documented;

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

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

9. It is incumbent upon petitioner to show that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;

10. Well-settled is the rule that claims for tax refund/credit are construed in strictissimi juris against the taxpayer as they partake the nature of exemption from tax and it is incumbent upon the petitioner to show that it is entitled thereto under the law."

During trial, petitioner presented its Finance Supervisor Lina P. Grecia and Certified Public Accountant Roque S. Fado as witnesses.[5]

In a Resolution dated March 9, 2005, the Court granted petitioner's "Motion for Leave of Court to Amend Petition for Review" and admitted the "Amended Petition for Review" incorporating additional allegations of zero-rated sale transactions with Philippine Associated Smelting and Refining Corporation (PASAR), a Philippine Economic Zone

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[3] Records, page 178; Exhibits "K" and "L"
[4] Records, page 127-128
[5] Records, pages 186 and 243

Authority (PEZA)-registered entity and export sales to Toyo Grinding Balls, Padaeng Industry Public Co. Ltd., Malex Industrial Products, Aichelin Company Ltd., Butterworth Motorworks, CSR Building Materials Sdn Bhd, UAC Berhad, GSI Luchinni, Tak Mining Co. Ltd. and Hume Cemboard Berhad.[6]

Respondent proffered the testimony of Revenue Officer III Jefferson B. Tabogga and Revenue Officer Ferrari R. Llamzon.[7] Thereafter, both parties tendered their documentary evidence.

The case was submitted for decision on August 17, 2006, with both parties submitting their respective Memorandum.

The parties interposed the following issues[8] for the Court's consideration:

> "1. Whether or not the sales made by petitioner to its BOI-registered manufacturer-producers with 100% export sales are subject to zero percent (0%) VAT pursuant to Section 106(A)(2)(5) of the Tax Code of 1997;
>
> 2. Whether or not petitioner has unapplied or unutilized creditable input VAT for the 2nd, 3rd, and 4th quarters of taxable year 2000, 1st, 2nd , 3rd and 4th quarters of 2001 and the 1st quarter of 2002, arising from its domestic purchases and importation of goods during the period April 1, 2000 to March 31, 2002 in the total amount of P16,942,130.48 that can be the proper object of a claim for refund pursuant to Section 110 (B) and Section 112 (A) of the National Internal Revenue Code, as amended;
>
> 3. Whether or not the unutilized creditable input taxes for the 2nd, 3rd and 4th quarters of taxable year 2000, the four (4) quarters of 2001 and the 1st quarter of 2002, are substantiated by proper invoices and/or official receipts; and
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> 4. Whether or not the said unutilized creditable input VAT for the 2nd, 3rd and 4th quarters of taxable year 2000, the four (4) quarters of 2001 and the 1st quarter of 2002, were carried over to the succeeding taxable quarter(s) and applied against any of the output VAT liability of the petitioner for the said period."

In its VAT returns for the quarters covered by the subject claim, petitioner declared aggregate sales in the amount of P402,388,368.45 consisting of taxable sales of

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[6] Records, pages 295 and 310
[7] Records, page 350
[8] Records, page 179

P122,232,142.49, zero-rated sales of P278,287,917.46 and exempt sales of P1,868,308.50, broken down as follows:

Exh	Period Covered	Taxable Sales	Zero-rated Sales	Exempt Sales	Total Sales
C	2nd qtr-2000	P 30,600,841.84	P 24,580,123.82	P 434,031.00	P 55,614,996.66
D	3rd qtr-2000	24,807,186.45	28,308,507.23	411,090.00	53,526,783.68
E	4th qtr-2000	22,917,040.85	32,499,911.22		55,416,952.07
F	1st qtr-2001	19,593,489.97	24,058,784.51	320,805.00	43,973,079.48
G	2nd qtr-2001	17,161,385.78	30,218,554.61	386,370.00	47,766,310.39
H	3rd qtr-2001	3,648,296.20	76,345,287.49	242,662.50	80,236,246.19
I	4th qtr-2001	900,879.40	40,569,108.49	-	41,469,987.89
J	1st qtr-2002	2,603,022.00	21,707,640.09	73,350.00	24,384,012.09
	Total	**P122,232,142.49**	**P278,287,917.46**	**P1,868,308.50**	**P402,388,368.45**

The Summary of Taxable Sales with the related invoices and official receipts[9] discloses that the reported taxable sales of P122,232,142.49 is overstated by P10,461,813.35, which pertains to the 10% output VAT erroneously included by petitioner as part of its declared taxable sales from the second quarter of 2000 to the second quarter of 2001. Thus, as aptly mentioned in the commissioned independent CPA's Report dated October 10, 2003,[10] petitioner's sales for the subject period of claim amounted only to P391,926,555.10, instead of P402,388,368.45, detailed as follows:

Period Covered	Taxable Sales	Zero-rated Sales	Exempt Sales	Total Sales
2nd qtr-2000	P 27,818,946.95	P 24,580,123.82	P 434,031.00	P 52,833,101.77
3rd qtr-2000	22,551,987.68	28,308,507.23	411,090.00	51,271,584.91
4th qtr-2000	20,833,673.50	32,499,911.22		53,333,584.72
1st qtr-2001	17,812,263.61	24,058,784.51	320,805.00	42,191,853.12
2nd qtr-2001	15,601,259.80	30,218,554.61	386,370.00	46,206,184.41
3rd qtr-2001	3,648,296.20	76,345,287.49	242,662.50	80,236,246.19
4th qtr-2001	900,879.40	40,569,108.49	-	41,469,987.89
1st qtr-2002	2,603,022.00	21,707,640.09	73,350.00	24,384,012.09
Total	**P111,770,329.14**	**P278,287,917.46**	**P 1,868,308.50**	**P391,926,555.10**

[9] Exhibits "MM", "NN", "OO", "PP", "QQ", "RR", "SS" and "TT"
[10] Exhibit "LL"

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However, the commissioned independent CPA's findings dated August 26, 2004,[11] reveal that the above exempt sales amount of P1,868,308.50 should have been reported as zero-rated sales as it pertains to petitioner's sales to PASAR, a PEZA-registered company afforded the privilege of "zero-rated" VAT rating. As a result of the reclassification of the amount of P1,868,308.50, petitioner's zero-rated sales increased to P280,156,225.96, which as indicated in the Summary of Taxable and Zero-Rated Sales,[12] consisted of domestic sales in the amount of P231,940,573.93 and export sales in the amount of P48,215,652.03, broken down as follows:

	Zero-Rated Sales		
Period Covered	**Domestic Sales**	**Export Sales**	**Total**
2nd qtr-2000	P24,058,853.13	P955,301.69	P25,014,154.82
3rd qtr-2000	28,552,037.27	167,559.96	28,719,597.23
4th qtr-2000	32,372,309.46	127,601.76	32,499,911.22
1st qtr-2001	22,736,613.53	1,642,975.98	24,379,589.51
2nd qtr-2001	27,534,677.36	3,070,247.25	30,604,924.61
3rd qtr-2001	36,729,546.57	39,858,403.42	76,587,949.99
4th qtr-2001	39,323,020.51	1,246,087.98	40,569,108.49
1st qtr-2002	20,633,516.10	1,147,473.99	21,780,990.09
TOTAL	**P231,940,573.93**	**P48,215,652.03**	**P280,156,225.96**

In order to substantiate its export sales of P48,215,652.03, petitioner presented various bills of lading, packing lists, export declarations, purchase orders, sales invoices, bank advices and credit memos.[13] These documents establish that from the second quarter of 2000 to the first quarter of 2002, petitioner shipped and sold its products to various foreign buyers abroad. In consideration of the sale, petitioner received foreign currency payments in the amount of US$933,672.38 with peso equivalent of P48,215,652.03,[14] which was inwardly remitted in accordance with the rules and regulations of the Bangko Sentral ng

[11] Exhibit "VV"
[12] Annex "A"; Exhibit "VV"
[13] Exhibits "WW", "WW-1", "XX", "XX-1", "XX-2", "YY", "YY-1", "ZZ", "ZZ-1", "AAA", "AAA-1", "BBB", "BBB-1", "BBB-2", "CCC", "CCC-1", "DDD", "DDD-1" to "DDD-4", "EEE", "EEE-1", "EEE-2", "FFF", "FFF-1" to "FFF-3", "GGG", "GGG-1" to "GGG-4", "HHH", "HHH-1" to "HHH-3", "III", "III-1" to "III-4", "JJJ", "JJJ-1" to "JJJ-4", "KKK", "KKK-1" to "KKK-4", "LLL", "LLL-1" to "LLL-3", "MMM", "MMM-1" to "MMM-4", "NNN", "NNN-1" to "NNN-3", "OOO", "OOO-1" to "OOO-4", "PPP", "PPP-1" to "PPP-4", "QQQ", "QQQ-1" to "QQQ-3", "RRR", "RRR-1" to "RRR-3", "SSS", "SSS-1" to "SSS-4", "TTT", "TTT-1" to "TTT-3", "UUU", "UUU-1" to "UUU-3", "VVV", "VVV-1" to "VVV-4", "WWW", "WWW-1" to "WWW-3"
[14] Exhibit "UU-2"

Pilipinas (BSP). These export sales qualify as transaction subject to zero percent (0%) VAT referred to under Section 106(A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended, stating:

"**SEC. 106. Value-added Tax on Sale of Goods or Properties. —**

(A) Rate and Base of Tax. - xxx

(1) xxx

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* — The term ***'export sales'*** means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);"

As to petitioner's reported zero-rated domestic sales of P231,940,573.93, the same allegedly comprised of sales to PEZA-registered PASAR, in the amount of P1,868,308.50 and sales to BOI-registered entities whose products are 100% exported, namely: (a) Philex Mining; (b) Philex Gold, and (c) Lepanto Mining, in the amount of P230,072,265.43. Below is the detailed breakdown of the zero-rated domestic sales of P231,940,573.93:

ZERO-RATED DOMESTIC SALES

Period Covered	Sales to PASAR	Sales to BOI Entities	Total
2nd qtr-2000	P 434,031.00	P 23,624,822.13	P 24,058,853.13
3rd qtr-2000	411,090.00	28,140,947.27	28,552,037.27
4th qtr-2000	-	32,372,309.46	32,372,309.46
subtotal	P 845,121.00	P 84,138,078.86	P 84,983,199.86
1st qtr-2001	P 320,805.00	P 22,415,808.53	P 22,736,613.53
2nd qtr-2001	386,370.00	27,148,307.36	27,534,677.36
3rd qtr-2001	242,662.50	36,486,884.07	36,729,546.57
4th qtr-2001	-	39,323,020.51	39,323,020.51
subtotal	P 949,837.50	P125,374,020.47	P126,323,857.97
1st qtr-2002	P 73,350.00	P 20,560,166.10	P 20,633,516.10
TOTAL	**P1,868,308.50**	**P230,072,265.43**	**P231,940,573.93**

According to petitioner, its sales to PASAR are zero-rated for VAT purposes, pursuant to Revenue Memorandum Circular No. 74-99, which provides:

> "**SECTION 3. Tax Treatment Of Sales Made By A VAT Registered Supplier From The Customs Territory, To A PEZA Registered Enterprise**. —
>
> xxx xxx xxx
>
> 3. In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus, legally entitled to the zero percent (0%) VAT. **Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to ART. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the "Cross Border Doctrine" of the VAT System**." (*Emphasis supplied*)

The Court agrees.

Revenue Memorandum Circular No. 74-99 is in conformity with the provisions of Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended which treat export sales governed by Executive Order (E.O.) No. 226, also known as "the Omnibus Investments Code of 1987", and other special laws subject to zero percent VAT.

A VAT taxpayer's sales from the Customs Territory to a PEZA entity are classified as export sales under Articles 23 and 77 of E.O No. 226 which provides:

> "ARTICLE 23. "Export Sales" shall mean the Philippine port F.O.B. value, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer or the net selling price of export product sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: Provided, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates of similar commercial documents:

Provided, further, That without actual exportation the following shall be considered "constructively exported" for purposes of this provision:

(1) sales to bonded manufacturing warehouses of export-oriented manufacturers;

(2) sales to export processing zones; xxx" (*Emphasis supplied*)

"ARTICLE 77. Tax Treatment of Merchandise in the Zone. —

(1) Except as otherwise provided in this Code, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise whether directly or indirectly related in such activity, shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding.

(2) **Merchandise purchased by a registered zone enterprise from the customs territory and subsequently brought into the zone, shall be considered as export sales and the exporter thereof shall be entitled to the benefits allowed by law for such transaction.** xxx" (*Emphasis supplied*)

Otherwise stated, sales made by a VAT-registered entity to a PEZA-registered entity operating within a special economic zone (ecozone) qualify as zero-rated transactions. The Supreme Court in the case of ***Commissioner of Internal Revenue vs. Sekisui Jushi Philippines, Inc.***[15] explained the same in this wise:

"Notably, while an ecozone is geographically within the Philippines, it is deemed a separate customs territory and is regarded in law as foreign soil. Sales by suppliers from outside the borders of the ecozone to his separate customs territory are deemed as exports and treated as export sales. These sales are zero-rated or subject to a tax rate of zero percent."

While petitioner was able to prove that PASAR is a PEZA-registered entity enjoying 5% gross income tax incentive,[16] petitioner failed to present the sales invoices supporting its sales to PASAR in the amount of P1,868,308.50. Hence, the same is disallowed.

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[15] G.R. No. 149671, July 21, 2006
[16] Exhibit "P"

Proceeding to the purported zero-rated transactions representing domestic sales of P230,072,265.43 to BOI-registered entities, petitioner cites as legal basis Section 2 of Revenue Memorandum Order (RMO) No. 9-00, which reads:

> "SECTION 2. *Rationale.* — In Revenue Memorandum Circular No. 74-99, promulgated on October 15, 1999, it has been clarified that sales of goods, property and services made by VAT-registered suppliers to PEZA-registered enterprises shall qualify for zero-rating pursuant to the provisions of Section 106(A)(2)(a)(5) of the National Internal Revenue Code of 1997, in relation to Section 23 of R A. No. 7916 (the PEZA Law) and Article 77(2) of Executive Order No. 226 (the Omnibus Investments Code of 1987). This treatment is anchored on the "Cross Border Doctrine" of the VAT System, which in essence means that no value-added tax shall form part of the cost component of products which are destined for consumption outside of the territorial border of the Philippines. This principle is achieved through the application of VAT zero-rating products exported from the Philippines to foreign countries. Furthermore, Article 25 of the Omnibus Investments Code provides. among others, that products sold **"to bonded manufacturing warehouses of export-oriented manufacturers shall be considered "constructively exported" while Section 106(A)(2)(a)(5) NIRC of 1997, provides for the application of zero rating to "those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws.**" (*Emphasis supplied*)

Clearly, sales to BOI-registered enterprises whose products are 100% exported qualify for VAT zero-rating, pursuant to Section 106(A)(2)(a)(5) of the 1997 NIRC, as amended. The law, however, should be read in conjunction with Section 3 of RMO 9-2000, prescribing compliance with the following requirements:

> **SECTION 3.** ***Sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered exporter shall be accorded automatic zero-rating, i.e., without necessity of applying for and securing approval of the application for zero-rating as provided in Revenue Regulations No. 7-95, subject to the following conditions:***
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> (1) The supplier must be VAT-registered;
>
> (2) The BOI-registered buyer must likewise be VAT-registered;
>
> (3) The buyer must be a BOI-registered manufacturer/producer whose products are 100% exported. For this purpose, a Certification to this effect must be issued by the Board of

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Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI;

(4) The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers; and

(5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly registered VAT invoice with the words "zero-rated" stamped thereon in compliance with Sec. 4.108-1(5) of Revenue Regulations No. 7-95. The supplier must likewise indicate in the VAT-invoice the name and BOI-registry number of the buyer.

Anent the first and second requirements, the parties do not dispute the fact that petitioner is a VAT-registered entity[17] and petitioner's purchasers, namely: Philex Mining, Philex Gold, and Lepanto Mining are VAT-registered entities evidenced by their BIR Certificates of Registration.[18]

In compliance with the third and fourth requirements, petitioner submitted Certifications issued by the BOI for Philex Mining, Philex Gold, and Lepanto Mining attesting that these companies are registered with the Board of Investments.[19] In the same manner, it can be gleaned from the Certifications that the BOI companies exported 100% of their products for taxable years 2001 and 2002. However, the same cannot hold true for taxable year 2000. Since the BOI Certifications for taxable year 2001 marked as Exhibits "U", "R", and "W" were merely provisional, the Court cannot ascertain whether or not the BOI-registered companies exported 100% of their products for taxable year 2000. Hence, petitioner complied with the third and fourth requirements but only to the extent of its 2001 and 2002 sales to Philex Mining, Philex Gold, and Lepanto Mining.

Petitioner satisfied the fourth requirement. Petitioner's sales to BOI entities covering the second quarter of 2000 to the first quarter of 2002 are duly covered by sales invoices stamped

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[17] Records, page 178
[18] Exhibits "XXX", "YYY" and "ZZZ"
[19] Exhibits "N", "O", "Q", "S", "R", "T", "U", "V", "W" and "X"

with the word "ZERO-RATED", the name of the BOI company/buyer and the corresponding BOI registry number and registration date.[20]

Evidently, petitioner satisfied all of the above requisites, but confined only to its sales to BOI-registered entities for taxable years 2001 and 2002 in the amount of P145,934,186.57.[21]

To recapitulate, out of the claimed zero-rated sales of P280,156,225.96, only the amount of P194,149,838.60 representing the sum of petitioner's direct export sales of P48,215,652.03 for the second quarter of 2000 to the first quarter of 2002 and sales to BOI entities for taxable years 2001 and 2002 of P145,934,186.57, qualifies for VAT zero-rating, detailed as follows:

Period Covered	Export Sales	Sales to BOI Entities	Total Qualified Zero-rated Sales
2nd qtr-2000	P 955,301.69		P 955,301.69
3rd qtr-2000	167,559.96		167,559.96
4th qtr-2000	127,601.76		127,601.76
1st qtr-2001	1,642,975.98	P 22,415,808.53	24,058,784.51
2nd qtr-2001	3,070,247.25	27,148,307.36	30,218,554.61
3rd qtr-2001	39,858,403.42	36,486,884.07	76,345,287.49
4th qtr-2001	1,246,087.98	39,323,020.51	40,569,108.49
1st qtr-2002	1,147,473.99	20,560,166.10	21,707,640.09
TOTAL	**P48,215,652.03**	**P145,934,186.57**	**P194,149,838.60**

Having resolved that only the reported sales of P194,149,838.60 qualify for VAT zero-rating, the Court now determines the amount of unutilized input VAT attributable thereto.

Petitioner's declared input VAT payments from domestic purchases of goods and services for the second quarter of 2000 to the first quarter of 2002 amount to P26,231,089.64, broken down as follows:

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[20] Exhibits "AA-3" to "AA-17", "AA-19" to "AA-36", "AA-39" to "AA-63", "AA-65" to "AA-91", "AA-93" to "AA-111", "AA-113" to "AA-133", "AA-135" to "AA-158", "AA-160" to "AA-182", "AA-185" to "AA-217", "BB-3" to "BB-16", "BB-19" to "BB-45", "BB-48" to "BB-72", "BB-76" to "BB-102", "BB-105" to "BB-125", "BB-128" to "BB-151", "BB-157" to "BB-191", "BB-196" to "BB-231", "BB-234" to "BB-269", "BB-273" to "BB-296", "BB-299" to "BB-328", "BB-330" to "BB-365", "CC-2" to "CC-5", "CC-7" to "CC-15", "CC-17" to "CC-29", "CC-32" to "CC-54"

[21] P230,072,265.43 – P84,138,078.86

Exhibit	Period Covered	Domestic Purchases	INPUT VAT Importation of Goods	Total
C	2nd qtr-2000	P 4,037,728.82	P 148,247.43	P 4,185,976.25
D	3rd qtr-2000		463,061.42	463,061.42
E	4th qtr-2000	3,482,615.22		3,482,615.22
F	1st qtr-2001	7,238,119.76	278,808.70	7,516,928.46
G	2nd qtr-2001	2,675,262.24		2,675,262.24
H	3rd qtr-2001	2,379,998.22		2,379,998.22
I	4th qtr-2001	1,930,286.40		1,930,286.40
J	1st qtr-2002	3,596,961.43	-	3,596,961.43
		P25,340,972.09	P 890,117.55	P26,231,089.64

Based on the validation and review of the commissioned independent CPA, input VAT in the amount of P175,064.62 is disallowed for the following reasons[22]:

2. *Input taxes claimed on purchases of goods/services supported by invoices/official receipts not in the name of the company:*

Quarter	*Input Tax Claimed*
2nd QTR 2000 (see Schedule 1)	*P 22,218.39*
3rd QTR 2000 (see Schedule 2)	*18,834.45*
4th QTR 2000 (see Schedule 3)	*14,012.30*
1st QTR 2001 (see Schedule 4)	*17,913.09*
2nd QTR 2001 (see Schedule 5)	*8,596.27*
3rd QTR 2001 (see Schedule 6)	*20,597.23*
4th QTR 2001 (see Schedule 7)	*13,577.37*
1st QTR 2001 (see Schedule 8)	*12,588.96*
Total	*P128,338.06*

3. *Input taxes claimed **erroneously computed.***
   *As shown in Schedule 9, the amount of input tax claimed was overstated by **P1,670.50***

4. *Input taxes claimed with **no supporting documents**.*
   *These are presented in Schedule 10 in the total amount of **P18,163.72.***

5. *Input taxes claimed supported by **Non-VAT invoices/official receipts.***
   *As presented in Schedule 11, the total amount is **P8,279.38**.*

6. *Input taxes claimed on purchases of goods/services supported by invoices/officialReceipts **without TIN** totaled **P922.38 as shown in Schedule 12**.*

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[22] Exhibit "Z", inclusive of submarkings

7. *Input taxes claimed on insurance paid but subsequently collected from Customers Amounted to **P3,322.20** as detailed in **Schedule 13**.*

8. *Input tax claimed **taken up twice***

Payee	***TIN***	***Reference***	***Date***	***Input Tax Claimed***
Outback Steakhouse	*005025039002*	*112472*	*01/24/01*	*P 305.09*
Sharp Travel Services	*047000342349*	*08962*	*04/15/00*	*14,053.09*
			Total:	*P 14,358.18*

9. *Input tax claimed on purchase of goods made before the period covered by the application for refund.*

Payee	***TIN***	***Reference***	***Date***	***Input Tax Claimed***
Fotofinish Sales Corp.	*043004705329*	*122676*	*11/05/99*	*P 10.20*

Upon verification, the Court is convinced that petitioner's claimed input VAT should be further reduced by P1,996,868.04 due to the reasons stated below:

		Amount
(a)	Input VAT on purchase of service supported only by account summary, Statement of account, provisional receipt, invoice or monthly billing	P 559,358.95
(b)	Input VAT paid on purchase of goods and service not in the name of the company	15,786.39
(c)	Input VAT paid on purchase of goods and services with NONVAT or no VAT after TIN or no BIR permit invoices/official receipts	172,649.81
(d)	Input VAT paid on purchase of goods and services without supporting document	802,048.38
(e)	Input VAT on purchase of service already included in another receipt	2,074.80
(f)	Input VAT on purchase of automobile pursuant to Section 4.104-1 of RR No. 7-95	134,454.55
(g)	Input VAT representing technical fees paid to GSI Technologies, USA	310,495.16
	Total	**P1,996,868.04**

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Considering all of the aforesaid disallowances, only the input VAT of P24,059,156.76 is duly supported by VAT invoices and/or official receipts:

		DISALLOWANCES		
Period Covered	Input VAT Per Return	Per CPA Report	Per Court's Verification	Valid Input VAT
2nd qtr-2000	P4,185,976.25	P37,644.68	P92,967.68	P4,055,363.89
3rd qtr-2000	463,061.42	23,564.59	164,459.85	275,036.98
4th qtr-2000	3,482,615.22	18,604.78	70,070.53	3,393,939.91
1st qtr-2001	7,516,928.24	21,236.69	130,345.12	7,365,346.43
2nd qtr-2001	2,675,262.24	9,681.03	164,768.23	2,500,812.98
3rd qtr-2001	2,379,998.22	32,450.92	892,899.64	1,454,647.66
4th qtr-2001	1,930,286.40	16,866.18	416,660.36	1,496,759.86
1st qtr-2002	3,596,961.43	15,015.75	64,696.63	3,517,249.05
TOTAL	P26,231,089.42	P175,064.62	P1,996,868.04	P24,059,156.76

Regarding the issue of whether or not the said input VAT was applied against any output VAT and/or carried over to the succeeding taxable quarters, petitioner's Quarterly VAT returns for the subject period of claim prove that petitioner had taxable sales in the amount of P111,770,329.14 with the related output tax liability of P11,177,032.93, broken down as follows:

Exhibit	Period Covered	Taxable Sales	Output VAT
C	2nd qtr-2000	P 27,818,946.95	P 2,781,894.70
D	3rd qtr-2000	22,551,987.68	2,255,198.77
E	4th qtr-2000	20,833,673.50	2,083,367.36
F	1st qtr-2001	17,812,263.61	1,781,226.36
G	2nd qtr-2001	15,601,259.80	1,560,125.98
H	3rd qtr-2001	3,648,296.20	364,829.62
I	4th qtr-2001	900,879.40	90,087.94
J	1st qtr-2002	2,603,022.00	260,302.20
		P 111,770,329.14	P11,177,032.93

After having removed such output tax of P11,177,032.93 from the substantiated input VAT of P24,059,156.76, there remained an excess amount of P12,882,123.83 representing input VAT attributable to petitioner's reported zero-rated sales (domestic and exports) of P280,156,225.96. Consequently, only the input VAT of P12,220,694.03 can be attributed to petitioner's substantiated zero-rated sales of P194,149,838.60, as shown below:

Exhibit	Period Covered	Zero-Rated per Return	Qualified Zero-Rated	% of Qualified Zero-Rated
C	2nd qtr-2000	P 25,014,154.82	P 955,301.69	3.819044%
D	3rd qtr-2000	28,719,597.23	167,559.96	0.583434%
E	4th qtr-2000	32,499,911.22	127,601.76	0.392622%
F	1st qtr-2001	24,379,589.51	24,058,784.51	98.684125%
G	2nd qtr-2001	30,604,924.61	30,218,554.61	98.737556%
H	3rd qtr-2001	76,587,949.99	76,345,287.49	99.683158%
I	4th qtr-2001	40,569,108.49	40,569,108.49	100.000000%
J	1st qtr-2002	21,780,990.09	21,707,640.09	99.663238%
		P280,156,225.96	P194,149,838.60	

Period Covered	Valid Input VAT	Output VAT	Input VAT attributable to declared zero-rated sales	Input VAT attributable to qualified zero-rated sales
2nd qtr-2000	P 4,055,363.89	P 2,781,894.70	P 1,273,469.19	P 48,634.35
3rd qtr-2000	275,036.98	2,255,198.77	(1,980,161.79)	(11,552.94)
4th qtr-2000	3,393,939.91	2,083,367.36	1,310,572.55	5,145.59
1st qtr-2001	7,365,346.43	1,781,226.36	5,584,120.07	5,510,640.03
2nd qtr-2001	2,500,812.98	1,560,125.98	940,687.00	928,811.35
3rd qtr-2001	1,454,647.66	364,829.62	1,089,818.04	1,086,365.04
4th qtr-2001	1,496,759.86	90,087.94	1,406,671.92	1,406,671.92
1st qtr-2002	3,517,249.05	260,302.20	3,256,946.85	3,245,978.69
TOTAL	P24,059,156.76	P11,177,032.93	P 12,882,123.83	P12,220,694.03

Petitioner's Amended VAT returns for the third quarter of 2001 and second quarter of 2002 prove that the input VAT of P12,220,694.03 was not applied against any output VAT, nor carried-over to the succeeding quarters.[23]

Finally, records show that petitioner's two separate administrative claims for refund filed on October 4, 2001 and May 10, 2002, as well as the Petition for Review filed on June 24, 2002, were undertaken within the two-year prescriptive period reckoned from the

[23] Line 22B, Exhibit "H"; Exhibit "Y-4"

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respective dates of filing of the Quarterly VAT Returns covering the second quarter of 2000 to the first quarter of 2002.[24]

Indubitably, the Court finds that the unutilized input VAT of P12,220,694.03 attributable to petitioner's zero-rated sales for the period of second quarter of 2000 to the first quarter of 2002 is refundable pursuant to Section 112(A) of the NIRC of 1997, as amended, which provides:

> "**SEC. 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 or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales where 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 rules and 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."

However, in a Manifestation dated April 12, 2005, petitioner informed the Court that respondent issued in its favor a Tax Credit Certificate numbered SN 024312 dated March 8, 2005 in the amount of P2,981,547.21 representing unutilized input taxes for the period of January 1, 2002 to March 31, 2002.[25] Thus, petitioner is entitled to refund or issuance of tax credit certificate in the amount of P9,239,146.82, computed as follows:

	Refundable Input VAT (2nd quarter of 2000 to the first quarter of 2002)	P12,220,694.03
Less:	Tax Credit Certificate issued by respondent	2,981,547.21
Input VAT still refundable		**P 9,239,146.82**

[24] JIDECO Manufacturing Philippines Inc., v. Commissioner of Internal Revenue, CTA E.B. No. 53, June 7, 2005.
[25] BIR Records, pages 340-342

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WHEREFORE, this instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED to REFUND or ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **NINE MILLION TWO HUNDRED THIRTY NINE THOUSAND ONE HUNDRED FORTY SIX PESOS and 82/100 (P9,239,146.82)**, representing unutilized input VAT paid on domestic purchases and importation of goods attributable to zero-rated sales for the period of April 1, 2000 to March 31, 2002.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division