REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

BONIFACIO VIVENDI WATER CORPORATION [Formerly: BONIFACIO WATER CORPORATION],
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6380

Members:

CASTAÑEDA, JR., *Chairman*
UY, and
PALANCA-ENRIQUEZ, *JJ.*

Promulgated :
MAR 29 2005

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DECISION

CASTAÑEDA, JR., *J.*:

This is a claim for refund or issuance of a tax credit certificate in the amount of P65,642,814.65 allegedly representing unutilized input value-added tax on capital goods covering the 4th quarter of 1999 up to the 4th quarter of 2000.

The facts as culled from the records are as follows:

Petitioner is a domestic corporation existing under and by virtue of Philippine law, with principal office or place of business located at Bonifacio Centre, NDCP

Compound, Fort Bonifacio, Taguig, Metro Manila. It is primarily engaged in the collection, purification and distribution of water.

Petitioner is a value-added tax (VAT) taxpayer registered with the Bureau of Internal Revenue (BIR) with VAT registration/Taxpayer Identification No. 201-403-657-000.

The quarterly VAT returns of petitioner for the 4th quarter of 1999, 1st quarter of 2000, 2nd quarter of 2000, 3rd quarter of 2000 and 4th quarter of 2000 were duly filed with the BIR, declaring the following information:

QUARTER INVOLVED	EXHIBIT	TAXABLE SALES	OUTPUT VAT	INPUT TAX CARRIED OVER FROM PREVIOUS QUARTER	DOMESTIC PURCHASES	INPUT VAT	TOTAL AVAILABLE INPUT VAT	EXCESS INPUT VAT
		(A)	(B)	(C)	(D)	(E)	(F) = (C) + (E)	(G) = ((B)-(F)
1999								
4th Qtr.	A	-		P25,291,053.62	P196,306,597.30	P19,630,659.73	P44,921,713.35	P44,921,713.35
2000								
1st Qtr.	B	-		44,921,713.35	188,000,881.70	18,600,088.17	63,521,801.52	63,521,801.52
2nd Qtr.	C	P2,182,615.75	P218,261.57	63,521,801.52	151,074,719.10	15,107,471.91	78,629,273.43	78,411,011.86
3rd Qtr.	D	1,505,786.70	150,578.67	78,411,011.86	121,599,043.00	12,159,904.30	90,570,916.16	90,420,337.49
4th Qtr.	E	2,924,127.10	292,412.71	90,420,337.49	96,717,388.90	9,671,738.89	100,092,076.38	99,799,663.67

For the said period, petitioner alleges that its input VAT include, among others, input VAT paid on purchases of capital goods amounting to P65,642,814.65. These purchases supposedly pertain to payment to contractors in connection with the construction of petitioner's Sewage Treatment Plant, Water and Waste System and Water Treatment Plant, broken down as follows:

Quarter	Input VAT Paid on Purchase of Capital Goods	Total Amount
1999		
4th Quarter	P11,607,748.20	P11,607,748.20

2000		
1st Quarter	P18,281,682.96	
2nd Quarter	14,884,531.96	
3rd Quarter	21,705,122.19	
4th Quarter	(836,270.66)	54,035,066.45
Grand Total		**P65,642,814.65**

On January 22, 2002, petitioner filed with the Revenue District Office No. 44-Pateros and Taguig, Revenue Region No. 8 of the BIR, an administrative claim for refund or issuance of a tax credit certificate in the amount of P65,642,814.65 representing unutilized input VAT on capital goods purchased for the period beginning the 4th quarter of 1999 up to the 4th quarter of 2000.

To toll the running of two-year prescriptive period, the instant Petition for Review was filed on January 23, 2002.

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

(a) Petitioner failed to show compliance with the substantiation requirements under the provision of Section 16 (c)(3) of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88 and Revenue Regulations 7-95;

(b) Petitioner has not shown proof that the alleged VAT input taxes paid by petitioner on purchases of capital goods have not been applied to the output tax for the period covered in its claim or any succeeding period;

(c) The petition states no cause of action as it does not allege the date/s when the tax/es sought to be refunded was/were actually paid;

(d) In action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund;

(e) Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;

(f) Well-settled is the rule that claims for refund are construed against the claimants since it partakes of the nature of an exemption from taxation.

The issues sought to be resolved by this Court are as follows:

1. Whether or not the input taxes claimed by petitioner were paid on capital goods.
2. Whether or not the input taxes have not been applied against output tax liability.
3. Whether or not the claim for refund or issuance of tax credit certificate was seasonably filed.
4. Whether or not the claim for refund or issuance of tax credit certificate is properly substantiated by documentary evidence.

Petitioner anchors its claim on Section 112 (B) of the Tax Code in relation to Section 4.106-1 of Revenue Regulations No. 7-95. To quote:

> "**SEC. 112.** ***Refunds or Tax Credits of Input Tax.-***
>
> xxx xxx xxx
>
> (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."
>
> "**SEC. 4.106-1. Refunds or tax credits of input tax.-** (a) Zero-rated sales of goods or properties or services – xxx
>
> (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.

> Refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT taxable business. If it is also used in exempt operations, the input tax refundable shall only be the ratable portion corresponding to the taxable operations.

This Court in *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, (CTA Case No. 5296, Resolution, July 20, 1998 cited in JIDECO Manufacturing Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6552, September 16, 2004 and Taganito Mining Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6597, November 12, 2004)* held that the two-year prescriptive period in claiming for a refund or tax credit of input VAT on capital goods shall be counted from the date of filing of the corresponding VAT return (within twenty days after the close of each taxable quarter under Section 110 of the then 1977 Tax Code). In the case at bar, Section 114 (A) of the 1997 NIRC applies. It reads:

> "SEC. 114. *Return and Payment of Value-Added Tax.* -
>
> (A) *In General.* - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts <u>within twenty-five (25) days following the close of each taxable quarter prescribed</u> for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis." *(Underlining supplied)*

Pursuant to the above law and jurisprudence, petitioner must show compliance with the following requisites before its claim may be granted:

1) That it is a VAT registered entity;

2) That input taxes claimed were paid on capital goods duly supported by VAT invoices and official receipts;

3) That it did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and

4) That the claim for refund was filed within the two-year prescriptive period both in the administrative and judicial levels

> *(Telecommunications Technologies Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6018, November 24, 2003; JIDECO Manufacturing Philippines, Inc. vs. Commissioner of Internal Revenue, supra; San Roque Power Corporation vs. Commissioner of Internal Revenue, CTA 6213, December 23, 2004*).

It is undisputed that petitioner is a VAT-registered entity *(Joint Stipulation of Facts and Issues, par. 2)*. Thus, the first requirement has been complied with.

As regards the second requirement, petitioner presented various official receipts *(Exhibits N and O inclusive of submarkings)* to support its purchases of capital goods. However, an examination of the said receipts shows that some of petitioner's purchases such as rental, management fees and direct overhead can not be considered as capital goods. By their descriptions alone, these purchases do not come within the purview of capital goods under Section 1.406-1 Revenue Regulations No. 7-95, to wit:

> "**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) [now 34(f)], used directly or indirectly in the production or sale of taxable goods and services."

Likewise, the input VAT derived from OTV P Philippines dated March 8, 2000 was twice recorded. In addition, the official receipts under the name of "Bonifacio GDE Water Corporation" which were objected to by respondent *(CTA Records, p. 128)* should also be disallowed. Although petitioner's witness, Ma. Catherine C. Bachoco, testified that Bonifacio GDE Water Corporation and Bonifacio Water Corporation are one and the same, the use of the former name was not approved by the Securities and Exchange Commission, to wit:

> Ms. Bachoco:
> A. Bonifacio Vivendi Water Corporation formerly Bonifacio Water Corporation and Bonifacio GDE Water Corporation is one and the same company, Sir.

Atty. Exclamador:
Q. Could you explain further, Ms. Witness?

Ms. Bachoco:
A. Bonifacio Water Corporation is the name registered by Fort Bonifacio Development Corporation one of its parent company as it water company in the Global City, however, when it choose already its joint venture partner in this case Generalle de Zu Philippines, Inc. the Board of Directors decided to change or to include the name in the corporate name so thereby changing it Bonifacio GDE Water Corporation, Sir.

Atty. Exclamador:
Q. Was the changed of name from Bonifacio Water Corporation to Bonifacio GDE Water Corporation approved by the Securities and Exchange Commission, Ms. Witness?

Ms. Bachoco:
A. No, it was not approved and has not been official because just when the company applied for a change of name in the Securities and Exchange Commission the Generalli de Zu Philippines, Inc. changed it name to Vivendi Water Philippines, Inc. So the company applied for the new name which is Bonifacio Vivendi Water Corporation, Sir.

Atty. Exclamador:
Q. If the change of name from Bonifacio Water Corporation to Bonifacio GDE Water Corporation did not become official then why is it that the company used the name Bonifacio GDE Water Corporation in those documents consisting of various official receipts, invoices, check vouchers and contracts, Ms. Witness?

Ms. Bachoco:
A. It is because there is a resolution before approved by the Board of Directors changing the name from Bonifacio Water to Bonifacio GDE Water Corporation and that company has already started using the name in its transactions xxx.

(TSN, March 27, 2003, pp. 8-11)

The change of name to Bonifacio GDE Corporation being unauthorized and without approval from the Securities and Exchange Commission, petitioner cannot now seek for a refund of input taxes which are supported by receipts under that name. This is pursuant to Sections 4.104-5 and 4.108-1 of Revenue Regulations No. 7-95 in relation to Sections 113 and 237 of the 1997 Tax Code, reproduced below for easy reference:

> "SEC. 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 trade or 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 *[now Sections 113 and 237 of the NIRC]*. Input tax on purchases of real property should be supported by a copy of the public instrument i.e. deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with the VAT receipt issued by the seller.
>
> xxx xxx xxx"
>
> "SEC. 4.108-1. **Invoicing Requirements.** - All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales pr commercial invoices which must show:
>
> 1. the name, TIN and address of seller;
> 2. date of transaction;
> 3. quantity, unit cost and description of merchandise or nature of service;
> 4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
> 5. the word "zero-rated" imprinted on the invoice covering zero-rated sales; and
> 6. the invoice value or consideration."
>
> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* —
>
> "(A) *Invoicing Requirements.* — A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
>
> xxx xxx xxx"
>
> "SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature

of service: *Provided, however,* That in the case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided, further,* That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.

xxx xxx xxx"

(*Underlining supplied*)

The requisite that the receipt be issued showing the name, business style, if any, and address of the purchaser, customer or client is precise so that when the books of accounts are subjected to a tax audit examination, all entries therein could be shown as adequately supported and proven as legitimate business transactions. The absence of official receipts issued in the taxpayer's name is tantamount to non-compliance with the substantiation requirements provided by law.

Based on the foregoing findings, this Court disallows petitioner's input VAT in the total amount of P24,767,606.01, detailed as follows:

SUPPLIER	EXHIBIT	TAXABLE BASE	INPUT VAT
(a) Not capital goods as defined under Section 4.106-1 of Revenue Regulations No. 7-95			
Symonds Travers Morgan	O-27	P 21,812,571.52	P 2,181,257.15
Fort Bonifacio Dev't Corp.	O-29	5,490,749.34	549,074.93
Symonds Travers Morgan	O-33	3,853,524.00	385,352.40
Fort Bonifacio Dev't Corp.	O-35	1,079,562.70	107,956.27
Fort Bonifacio Dev't Corp.	O-36	246,442.40	24,644.24
Symonds Travers Morgan	O-37	13,236,377.70	1,323,637.77
Fort Bonifacio Dev't Corp.	O-39	130,500.50	13,050.05
Sade Compagnie Generale De Travalix	O-41	307,544.90	30,754.49
Sade Compagnie Generale De Travalix	O-42	121,432.00	12,143.20
Subtotal		P 46,278,705.06	P 4,627,870.50

(b)	Input VAT twice recorded			
	OTV P Philippines		P 31,314,421.90	P 3,131,442.19
(c)	Name of Company as stated in the OR's not officially registered			
	OTV P Philippines	N-2	P 18,426,694.58	P 1,842,669.46
	OTV P Philippines	N-4	16,685,382.41	1,668,538.24
	OTV P Philippines	O-2	27,959,957.90	2,795,995.79
	OTV P Philippines	O-8	42,422,823.12	4,242,282.31
	OTV P Philippines	O-9	45,573,669.60	4,557,366.96
	OTV P Philippines	O-12	19,014,405.50	1,901,440.55
	Subtotal		P170,082,933.11	P17,008,293.31
	Total		P247,676,060.07	P24,767,606.01

With respect to the third requirement, records reveal that petitioner also complied with the same. Petitioner deducted the amount of P65,642,814.65 from the total available input VAT as shown in its quarterly VAT return for the 4th quarter of 2001 (*Exhibit I*). This is sufficient to prove that the amount sought to be refunded has not been applied against any output tax liability.

Lastly, petitioner has complied with the fourth requirement. It filed a written-claim for refund/tax credit with the BIR on January 22, 2002 *(Exhibit M)* and the instant petition was filed on January 23, 2002, both are well within the two-year reglementary period reckoned at the earliest on January 25, 2000, the date when the quarterly VAT return for the 4th quarter of 1999 was filed.

WHEREFORE, in the light of the foregoing, the Petition for Review is **PARTIALLY GRANTED.** The respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the reduced amount of P40,875,208.64, representing unutilized input VAT on capital goods for the period from the 4th quarter of 1999 to the 4th quarter of 2000, computed as follows:

Amount Claimed	P65,642,814.65
Less: Disallowance per Court's Evaluation	24,767,606.01
Refundable Amount	**P40,875,208.64**

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

We Concur:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation among the members of this Division in accordance with Section 13, Article VIII of the Constitution.

JUANITO C. CASTAÑEDA, JR.
Chairman