REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HOPEWELL POWER
(PHILIPPINES) CORP.,
Petitioner,

- versus -

C.T.A. CASE NO. 5389

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 04 1999

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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 ₱202,536,046.26, representing input value-added tax (VAT, for brevity) on capital goods for the period April 1, 1994 to September 30, 1995.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines. It is engaged in the business of power generation and subsequent sale thereof (Exh. A). It is registered with the Bureau of Internal Revenue as a VAT registered person with VAT Registration Certificate No. 330-001-726-870-V, dated July 16, 1992. (Exh. B).

For the period April 1, 1994 to September 30, 1995, petitioner alleges that it paid input VAT on capital goods in the total amount of ₱202,536,046.26, the details of which are covered by the following amended quarterly VAT returns:

| Period Covered | Amount | Exh. |
|---|---|---|
| 04-01-94 to 06-30-94 | ₱103,580,276.96 | E |
| 07-01-94 to 09-30-94 | 1,089,286.81 | G |
| 10-01-94 to 12-31-94 | 41,881,463.28 | I |
| 01-01-95 to 03-31-95 | 46,575,122.87 | K |
| 04-01-95 to 06-30-95 | 9,291,832.01 | M |
| 07-01-95 to 09-30-95 | 118,064.38 | N |
| T o t a l | ₱202,536,046.26 | |

On January 12, 1996, pursuant to Section 106(b) of the Tax Code, as amended by Republic Act No. 7716, petitioner filed an application for tax credit/refund of value-added tax paid on capital goods with Revenue District Office No. 51 of the Bureau of Internal Revenue (Exhs. V and V-1).

On June 26, 1996, petitioner lodged the instant petition for review in order to toll the running of the two-year prescriptive period for claiming a refund under the law.

In her Answer, respondent raises the following special and affirmative defenses:

> 5. Petitioner's claim for the issuance of a VAT Tax Credit Certificate is premature as the same is still undergoing administrative routinary examination by respondent's Bureau;
>
> 6. The alleged creditable input taxes were collected and paid pursuant to law and pertinent BIR implementing rules and regulations, hence the same are neither refundable nor may they be claimed as tax

credit. Petitioner must prove that the said input taxes were actually paid, remitted and received by respondent's Bureau and that the same were paid on capital goods purchased and have not been applied against output taxes;

7. Petitioner failed to substantiate by proper documents that it is entitled to refund or the issuance of a tax credit certificate for the amount of ₱202,536,046.26;

8. Claims for tax refund or tax credit are construed strictly against the claimant as they partake of the nature of a tax exemption. It is therefore incumbent upon the petitioner to prove that it is entitled to such exemption under the law, and failure to do the same is fatal to its claim for tax refund or tax credit;

9. Petitioner likewise failed to show that it had strictly complied with the provisions of Section 204 of the Tax Code in relation to Section 230 thereof with respect to the herein amount being claimed as tax credit.

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

1. Whether or not petitioner's claim for refund has prescribed pursuant to the provisions of Section 204 of the Tax Code in relation with Section 230 of the same code; and

2. Whether or not petitioner was able to support with substantial evidence its entitlement to the claim for refund pursuant to Section 106(b) of the Tax Code.

Anent the first issue, We are convinced that petitioner was able to comply with the provisions of Section 204 of the Tax Code in relation with Section 230 of the same code in filing its claim for refund.

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The two-year judicial prescriptive period in claiming a refund of input VAT is now reckoned from the filing of the quarterly VAT return as held in Our recent Resolution, dated July 20, 1998, in the case of **Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, C.T.A. Case No. 5296** wherein We ruled:

> "xxx (t)his Court, after a careful study of the arguments adduced by petitioner, reconsiders the decision with regard to the issue of prescription and consequently agrees with the interpretation of petitioner that the two-year period should be counted from the date of filing of the corresponding VAT quarterly return which is within twenty (20) days after the close of each taxable quarter. This will harmonize Section 106 with Section 230 of the Tax Code which was interpreted by the Supreme Court in the cases of **Commissioner of Internal Revenue vs. TMX Sales Inc. and the Court of Appeals, G.R. No. 83736, dated January 15, 1992; and ACCRA Investments Corporation vs. Commissioner of Internal Revenue, 204 SCRA 957**, that the two (2) year period should be counted from the filing of the final income tax return, because it is only during that date that the exact tax liability or refundability of tax can be determined. In the same manner, it is only after the filing of the quarterly VAT return that we can determine the VAT liability or refundability of VAT. It should be noted that the basic requirement is that VAT refund can only be granted to the extent that the input taxes have not been applied against output tax. All these things can only be determined if a return is filed. It is logical therefore, to conclude that **the two-year period should** not immediately ***be counted*** from the close of the quarter but **from the date of filing of the VAT return**. (Underlining Ours)."

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Therefore, the judicial claim for refund of petitioner for the period April 1, 1994 to September 30, 1995 was timely filed within two years from the filing of petitioner's respective quarterly VAT returns, considering that the petition for review was filed on June 26, 1996, thus:

| Period Covered | Exh. | Original Date of Filing of Quarterly VAT Return |
|---|---|---|
| 04-01-94 to 06-30-94 | D | 07-20-94 |
| 07-01-94 to 09-30-94 | F | 10-20-94 |
| 10-01-94 to 12-31-94 | H | 01-20-95 |
| 01-01-95 to 03-31-95 | J | 04-20-95 |
| 04-01-95 to 06-30-95 | L | 07-20-95 |
| 07-01-95 to 09-30-95 | N | 10-20-95 |

We now delve on the legal and factual aspect of the case which is the second issue at bar.

Petitioner anchored its entitlement to the claim for refund of input VAT on Section 106(b) of the 1995 Tax Code, as amended by R.A. 7716.

For easy reference, Section 106(b) of the Tax Code is hereby quoted as follows:

> **Sec. 106. Refunds or tax credits of input tax.** - (a) Export sales. - 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 for refund may be made only

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> within two (2) years after the close of the taxable quarter when the importation or purchase was made.

Based on the above proviso, petitioner should prove that: (1) it is a VAT registered person; (2) the input taxes claimed by petitioner were paid on capital goods; (3) the input taxes have not been applied against output tax liability; and (4) the administrative claim for refund was seasonably filed.

After a circumspect study of the evidence presented by petitioner, it was established that petitioner is a VAT-registered person with VAT Registration Certificate No. 300-001-726-870 V issued by the Bureau of Internal Revenue (Exh. B). The input taxes allegedly paid on capital goods remain unapplied as shown by the second quarter VAT return for the year 1996 (Exhs. O and O-1). Furthermore, the administrative claim for refund was seasonably filed within the time required under Section 106(b) of the Tax Code (Exhs. V and V-1). However, it appears that most of the purchases made by petitioner, as evidenced by the sales invoices and official receipts are for engineering and structural services which according to respondent's revenue examiner do not constitute capital goods (Exhs. 2 and 2-a).

Hence, We should resolve such corollary issue.

Section 2(o) of Revenue Regulations No. 5-87 of the Value Added Tax Regulations defines capital goods as -

> (o) "*Capital goods*" refer to goods 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 or services.

Generally, a capital expenditure involves a payment which creates or enhances what is essentially a separate and distinct asset. Statutorily, capital expenditures are specified as amounts paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate or amounts expended in restoring property or in making good exhaustion thereof for which an allowance is or has been made (6 MERTENS Law of Federal Income Taxation, §25.37, pp. 114 to 115).

In determining what constitutes capital goods, courts will look to the origin and character of the expenditure to determine whether it is a capital asset (6 MERTENS Law of Federal Income Taxation, §25.37, p. 115, ***supra***). For example, it was held that "the cost of a topographical survey made for the purpose of establishing boundary lines of the property, of ascertaining the topography of the land, and of recording the location on the property of valuable shrubs and shade trees is a capital expenditure" (Johnson vs. Comm., TC Memo 1955-247, cited in 6 MERTENS Law of Federal Income Taxation

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§25.63, p. 179). The same treatment is accorded to amounts expended for maps, abstracts, legal title opinions, recording fees and _surveys_ (6 MERTENS Law of Federal Income Taxation, § 25.63, p. 179, ***supra***).

The records show that petitioner expended for engineering and structural services for the purpose of constructing power plant facilities needed in the production of electricity, which is petitioner's main product. We are therefore convinced that said expenses are necessary and should form part of the cost of the power plant facilities. Such fact was also admitted by respondent's Revenue Examiner, Ms. Delia Rios, in the cross examination conducted by petitioner's counsel on the August 26, 1997 session, to wit:

Q. What is the claim for refund of petitioner all about, Ms. Witness?

A. The claim for refund of the petitioner is for refund of input tax for their capital expenditures, Sir.

Q So, it has nothing to do with zero-rated sales or exempt sales is that right, Ms. Witness?

A. Yes, Sir.

xxx xxx xxx.

Q. Could you please tell us your understanding of what a capital expenditure is, Ms. Witness?

A. Capital expenditures are those expenditures of purchases of capital goods which can be depreciated for a period of more than one (1) year, Sir.

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Q. I would assume, Ms. Witness, that you have encountered cases involving capital expenditures?

A. Yes, Sir.

Q. In your opinion, Ms. Witness, in the construction of a plant, are services rendered, are cost of services in a construction of a plant considered a capital expenditure?

A. If the construction or the services render can be attributed to the building constructed, it can be classified as capital expenditure, Sir.

Q. So, it is your opinion that services rendered for the construction of building is considered capital expenditure, Ms. Witness?

A. Yes, Sir.

Q. How about services like, engineering and structural services also connected to the construction of that building, Ms. Witness?

A. If it is really attributed to that construction, that can be classified as capital expenditure, Sir.

Q. And so you have the opinion that those costs must form part of the amount of purchases of capital goods, Ms. Witness?

A. Yes, Sir. (pp. 21 to 29, TSN, August 26, 1997 Hearing)

The issue that is left for our determination is petitioner's substantiation of input taxes claimed on capital goods.

This Court, after a careful scrutiny of petitioner's invoices and official receipts, together with the certification issued by independent CPA, SGV & Co. (Exh. W), is inclined to disallow some input taxes paid on the purchase of things which are not material in the construction of power plant facilities, detailed as follows:

| Name of Supplier | Exh. | Input Tax | Remarks |
|---|---|---|---|
| AUTS International, Inc. | X-1 | ₱ 32.27 | Supplies |
| Datacom Systems Corp. | X-10 | 904.55 | Toner |
| NS Oscana | X-21 | 29.09 | Xerox |
| Printwheel Enterprises | X-23 | 263.64 | Letterhead |
| AUTS International, Inc. | Y-17 | 32.27 | Supplies |
| DHL Worldwide Express | Y-37 | 339.15 | Postage |
| DHL Worldwide Express | Y-38 | 229.95 | Postage |
| Georkimart | Y-44 | 27.29 | Biscuits |
| Kameraworld Photo Lab, Inc. | Y-51 | 16.00 | Film Developing |
| Tong's Enterprises | Y-115 | 172.73 | Film Developing |
| Vibal Social Prints | Y-127 | 198.18 | Call card |
| Abenson, Inc. | Z-1 | 2,966.91 | Coleman |
| Accurate Printing Inc. | Z-5 | 190.91 | Document envelopes |
| American Packing Industries | | 4,192.09 | No supporting document |
| Andrew Commercial | | 2.73 | No supporting document |
| Asian Alliance Enterprises | | 45.00 | No supporting document |
| Avesco Marketing Corporation | | 968.91 | No supporting document |
| Bearing Center & Machinery | | 88.00 | No supporting document |
| Dataman Systems Corporation | Z-36 | 63.82 | Supplies |
| DHL Worldwide Express | Z-40 | 292.60 | Postage |
| Floro Blue Printing | Z-43 | 488.17 | Xerox |
| National Book Store, Inc. | Z-97 | 5.39 | Supplies |
| O'neals by Edna | | 768.18 | No supporting document |
| Perco Enterprises | | 250.00 | No supporting document |
| Printwheel Enterprise | | 181.82 | No supporting document |
| Ressein Commercial | | 271.18 | No supporting document |
| Rey Lapiz | | 1,054.54 | No supporting document |
| Vineza Industrial Sales | | 283.91 | No supporting document |
| Zenith Wire & Conduit | | 29.09 | No supporting document |
| Abenson, Inc. | AA-1 | 1,513.64 | Colored TV & VHS |
| Consolidated Paper Products | AA-15 | 704.55 | Payslip w/ envelope |
| Dataman Systems Corporation | AA-17 | 388.64 | Plastic dividers legal |
| DHL Worldwide Express | AA-19 | 20.82 | Postage |
| DHL Worldwide Express | AA-20 | 125.40 | Postage |
| E-Plus Stationery, Inc. | AA-21 | 93.27 | Copy paper |
| E-Plus Stationery, Inc. | AA-22 | 25.45 | Disk cleaner |
| Executive Computer Systems | AA-28 | 127.27 | Floppy disk drive |
| Floro Blue Printing | AA-32 | 1,496.73 | Xerox |
| Kameraworld Photo Lab, Inc. | AA-61 | 55.57 | Film developing |
| Mega Photo | AA-86 | 18.82 | Film |
| Photoline Enterprises Corp. | AA-129 | 137.27 | Xerox |
| Print Wheel Enterprises | AA-130 | 118.18 | Calling card |
| P.P. Gocheco & Co., Inc. | AA-132 | 390.91 | Table tennis w/ racket |

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| | | | |
|---|---|---|---|
| The Landmark | AA-164 | 107.98 | Groceries |
| Asian Alliance Enterprises | AB-1 | 3.18 | Scissors |
| Contrade Enterprises, Inc. | AB-16 | 40.18 | Puncher, stapler & cutter |
| Delta Diesel Parts | | 136.36 | No supporting document |
| Executive Computer Systems | AB-22 | 106.82 | Computer supply |
| Kameraworld Photo Lab, Inc. | AB-38 | 13.51 | Film developing |
| Kameraworld Photo Lab, Inc. | AB-39 | 27.57 | Film developing |
| Print Wheel Enterprises | AB-67 | 363.64 | Check voucher |
| Severo Sy Ling, Inc. | AB-70 | 45.00 | Supplies |
| Sunlife Bookstore | | 66.18 | No supporting document |
| Up-Town Industrial Sales, Inc. | | 11.45 | No supporting document |
| Up-Town Industrial Sales, Inc. | | 29.32 | No supporting document |
| Abenson, Inc. | AC-1 | 104.18 | Rice cooker |
| Easycall Communication Phils. | AC-21 | 50.91 | Pager subscription |
| Executive Computer Systems | AC-23 | 454.55 | Computer supply |
| Gem Stationery Inc. | AC-30 | 71.36 | Puncher, stapler, etc. |
| Harson Electronic Parts | AC-32 | 25.45 | Adaptor |
| HJ Franklin, Inc. | AC-34 | 70.91 | Supplies |
| Perco Printing Press | AC-86 | 61.36 | Supplies |
| HJ Franklin, Inc. | AC-35 | 70.91 | Supplies |
| T O T A L | | ₱21,465.68 | |

Thus, the aforestated amount of ₱21,465.68 should be deducted from the amount recommended by the independent auditors in their examination. Below is the recomputation of the amount of petitioner's entitlement to the refund of input taxes on capital goods:

| | |
|---|---|
| Amount found by independent auditors as valid input taxes (Exh. W) | ₱202,452,859.57 |
| Less: input taxes which are not attributable to the construction of power plant facilities | 21,465.68 |
| Amount refundable | ₱202,431,393.89 |

**WHEREFORE**, finding the petition for review partially meritorious, respondent is hereby **ORDERED** to **REFUND** or, in the alternative, to **ISSUE** a tax credit certificate in favor of petitioner the amount of ₱202,431,393.89,

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representing input tax payments on capital goods purchased for the period April 1, 1994 to September 30, 1995.

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 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