REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

SILICON PHILIPPINES, INC. (formerly INTEL PHILIPPINES MANUFACTURING, INC.),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x ------------------------------------- x

C.T.A. CASE NO. 6741

SILICON PHILIPPINES, INC. (formerly INTEL PHILIPPINES MANUFACTURING, INC.),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x ------------------------------------- x

C.T.A. CASE NO. 6800

SILICON PHILIPPINES, INC. (formerly INTEL PHILIPPINES MANUFACTURING, INC.),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6841

Members:

CASTAÑEDA, JR., Chairperson
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

FEB 0 5 2007

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D E C I S I O N

PALANCA-ENRIQUEZ, J.:

Pursuant to *Section 112 (A) and (B) of the National Internal Revenue Code of 1997* (hereafter "NIRC of 1997"), *as amended*, petitioner filed claims for refund of its creditable input VAT attributable to its zero-rated sales. To do so, however, petitioner must be able to show that its input VAT paid and output VAT transactions are properly substantiated. Failure to show proof of proper documentations is fatal to one's claim for refund or credit. Harsh as it is, but tax refunds are in the nature of tax exemptions, hence, it should be construed *strictissimi juris* against the taxpayer.

THE CASES

Before the Court are consolidated Petitions For Review separately filed by Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.), docketed as C.T.A. Case No. 6741 filed on July 24, 2003, C.T.A. Case No. 6800 filed on October 20, 2003, and C.T.A. Case No. 6841 filed on December 30, 2003 praying for tax refunds or issuance of tax credit certificates corresponding to its alleged excess/unutilized

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input VAT for the 2nd, 3rd and 4th quarters of taxable year 2001 in the aggregate sum of P25,041,116.22, broken down as follows:

C.T.A. CASE No.	Period Covered	Claimed Input VAT
6741	April 1, 2001 to June 30, 2001	P 9,038,279.56
6800	July 1, 2001 to September 30, 2001	1,420,813.04
6841	October 1, 2001 to December 31, 2001	14,582,023.62
	TOTAL	P25,041,116.22

THE FACTS

C.T.A. Case Nos.
6741, 6800 and 6841

In their "Joint Stipulation of Facts and Simplification of Issues", the parties agreed on the following facts:

"I.
STIPULATION OF FACTS

1.1 Petitioner is engaged primarily in the business of designing, developing, manufacturing and the export of integrated circuits components or IC's as stated in its Articles of Incorporation.

1.2 Petitioner is registered with the Board of Investments (BOI) under Executive Order No. 226, otherwise known as the Omnibus Investments Code (EO 226 for brevity) as a preferred pioneer enterprise for the production/manufacture and export of large scale integrated circuits and microprocessor under Certificate of Registration No. EP 97-319 dated February 27, 1998.

1.3 Petitioner is registered with Respondent's Bureau as a VAT Taxpayer on its sale of goods and services as shown by its Certificate of Registration No. 94-048-02621 dated 06 July 1994.

1.4 Petitioner has secured a permit to print accounting documents such as sales invoices and official receipts, and has been authorized to do so by Respondent's Bureau under Permit No. LTS-1-AR-0801-00037 dated 04 September 2001.

1.5 For the second (2nd) quarter of 2001, Petitioner reported in its quarterly VAT return zero-rated sales in the amount of **PHP765,696,325.68**.

1.6 For the second (2nd) quarter of 2001, Petitioner filed its Quarterly VAT Return on **24 July 2001**.

1.7 For the third (3rd) quarter of 2001, Petitioner reported in its amended quarterly VAT return its zero-rated export sales in the amount of **PHP680,418,432.83**.

1.8 For the third (3rd) quarter of 2001, Petitioner filed its Quarterly VAT Return on **23 October 2001**.

1.9 For the fourth (4th) quarter of 2001, Petitioner reported zero-rated export sales in the amount of **PHP1,000,052,659.89** which was reflected in its amended quarterly VAT return.

1.10 For the fourth (4th) quarter of 2001, Petitioner filed its Quarterly VAT Return on **15 January 2002**.

1.11 On **29 October 2001**, Petitioner filed its Amended Quarterly VAT Return for the period covering 01 July 2001 to 31 September 2001.

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1.12 On **22 May 2002**, Petitioner filed its Amended Quarterly VAT Return for the period covering 01 October 2001 to 31 December 2001.

1.13 The Petitions for Review, insofar as Case nos. 6800 and 6841 are concerned, were filed within the two (2) year prescriptive period."

C.T.A. Case Nos. 6741 and 6800

In his answers filed in C.T.A. Case Nos. 6741 and 6800, the Commissioner of Internal Revenue (hereafter "respondent") averred common special and affirmative defenses, to wit:

"4. Assuming without admitting that petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue;

5. The petitioner has no legal capacity to file the instant claim for refund of its alleged unutilized input taxes for the second quarter of 2001. Under Revenue Memorandum Order 9-2000, sale of goods, properties and services made by VAT registered suppliers to BOI registered exporters shall be accorded automatic zero-rating and that is, without the necessity of applying for and securing approval of the application for zero-rating as provided for under Revenue Regulations No. 7-95.

6. The petitioner being a BOI registered exporter of advance and large-scale integrated circuit components, and considering the sale of goods, properties or services made by VAT registered supplier to the petitioner is automatic zero-rated, there is no value-added tax (VAT) that has to be passed on to the petitioner. Consequently, the

petitioner would not gain input taxes on their purchases of goods, properties or services and importation of capital goods.

7. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.

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

9. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.

10. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to section 229 of the 1997 Tax Code, as amended, as well as the requirements provided for in Revenue Regulations No. 5-87 as amended by Revenue Regulations No. 3-88.

11. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (**Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95**) and as such, they are looked upon with disfavor (**Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121**)." (Emphasis supplied)

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C.T.A Case No. 6841

In his answer filed in C.T.A. Case no. 6841, respondent Commissioner of Internal Revenue alleged by way of special and affirmative defenses:

> "4. 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;
>
> 5. Petitioner failed to show that the alleged creditable VAT was not carried over and utilized against the value-added tax liability of the petitioner in the succeeding quarters or year;
>
> 6. Amendment of the return is allowed only when no notice for audit or investigation of such return been actually served upon the taxpayer;
>
> 7. Petitioner has not shown proof that portion of the input tax is attributable to zero-rated sales;
>
> 8. Input VAT from zero-rated sales cannot be refunded in the absence of zero-rated sales in VAT returns;
>
> 10. Claims for refund are construed strictly against the claimants, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35);
>
> 11. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to the refund

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and failure to sustain the burden is fatal to the action for tax refund;

12. It is presumed that taxes paid and collected are made in accordance with law and regulations, hence, no longer refundable."

Since C.T.A. Case Nos. 6741, 6800 and 6841 involved the same parties, facts and issues, petitioner prayed for the consolidation of said cases. In a Resolution dated February 20, 2004, this Court granted the "Omnibus Motion For Consolidation".

Petitioner presented Atty. Marc Paul Tan and Wilfredo Palad, the duly Commissioned Independent CPA, as witnesses, and submitted documentary evidence, which evidence, except *Exhibits "AA", "AA-1" and "Z"*, was then admitted by the Court.

Upon motion of petitioner, and without objection from the respondent, the captions of the cases were amended to "Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue".

At the hearing on June 7, 2006, counsel for respondent manifested that he is submitting the cases for decision based on the pleadings.

Both parties were then directed to file their simultaneous memoranda, within thirty (30) days from notice. Thereafter, the petitions shall be deemed submitted for decision.

On August 23, 2006, both parties having failed to file their respective memorandum within the given period, the cases were considered submitted for decision.

However, on August 29, 2006, petitioner filed its "Memorandum For the Petitioner". In the interest of justice, said memorandum is hereby admitted.

ISSUES

The parties stipulated on the following issues for this Court's consideration:

I

WHETHER OR NOT PETITIONER HAS UNUTILIZED CREDITABLE INPUT VALUE-ADDED TAXES FOR THE SECOND, THIRD AND FOURTH QUARTERS OF 2001 IN THE AMOUNTS OF **PHP9,038,279.56** (2ND QUARTER), **PHP1,420,813.04** (3RD QUARTER) AND PHP**14,582,023.62** (4TH QUARTER), RESPECTIVELY ARISING FROM ITS IMPORTATION OF GOODS WHICH IS A PROPER SUBJECT OF A CLAIM FOR REFUND.

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II

WHETHER OR NOT THE EXPORT SALES OF TESTED AND UNTESTED INTEGRATED CIRCUITS SUCH AS LARGE SCALE INTEGRATED CIRCUITS AND MICROPROCESSOR ARE ZERO-RATED FOR VAT PURPOSES.

III

WHETHER OR NOT PETITIONER'S IMPORTATION OF GOODS AND CAPITAL EQUIPMENT QUALIFY AS ZERO-RATED SALES.

IV

WHETHER OR NOT THE SAID CREDITABLE INPUT TAX FOR THE SECOND, THIRD AND FOURTH QUARTERS OF 2001 ARE SUBSTANTIATED BY DOCUMENTARY EVIDENCE IN THE FORM OF INVOICES AND/OR OFFICIAL RECEIPTS.

V

WHETHER OR NOT SAID UNUTILIZED CREDITABLE INPUT TAX FOR THE SECOND, THIRD AND FOURTH QUARTERS RESPECTIVELY OF 2001 WERE NOT UTILIZED IN THE SUCCEEDING TAXABLE QUARTER AND APPLIED AGAINST ANY OF THE OUTPUT TAX LIABILITY OF THE PETITIONER FOR THE SAME AND SUCCEEDING TAXABLE PERIODS.

VI

WHETHER OR NOT ZERO-RATED SALES ARE DECLARED IN THE VAT RETURNS OF PETITIONER.

Principal Issue

The foregoing issues raised by both parties boil down to the principal issue of whether or not petitioner is entitled to a tax refund or issuance of a tax credit certificate in the total amount of P25,041,116.22, representing its alleged excess/unutilized input VAT for the 2nd, 3rd, and 4th quarters of taxable year 2001.

Petitioner's Arguments

Petitioner contends that its export sales of tested and untested integrated circuits (ICs) and microprocessors are subject to zero percent (0%) VAT pursuant to *Sections 106(A)(2)(a)(1) and 108(B)(1) of the NIRC of 1997*, which are all quoted herein below for easy reference:

> "SEC. 106. *Value Added Tax on Sale of Goods or Properties.* —
>
> (A) *Rate and Base of Tax.* — . . .
>
> xxx 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

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> 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)."
>
> "SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —
>
> xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)."

Petitioner further avers that even the respondent confirmed the zero-rating of its export sales in *VAT Ruling No. 102(a)(1)-402-88 (p. 22, C.T.A. Case No. 6741 docket)*, pertinent portion of which reads as follows:

> "This refers to your letter dated May 19, 1988 stating that your company is a BOI-registered company on a pioneer status as export producer (per BOI Registration Certificate No. 851010); that your production of manufactured

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> integrated circuits is exported 100% to your parent company, Intel Corporation, California, U.S.A. and that the services are paid for in acceptable foreign currency.
>
> xxx xxx
>
> In reply, please be informed that services rendered by VAT-registered persons in connection with the processing, manufacturing or repacking of goods for persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency inwardly remitted to the Philippines and duly accounted for under the regulations of the Central Bank of the Philippines, shall be subject to zero-rate (0%) pursuant to Section 102(a)(1) of the Tax Code as amended by E.O. No. 273."

Respondent's Arguments

On the other hand, respondent counter argues that the petitioner has no legal capacity to file the instant claim for refund of its alleged unutilized input taxes for the 2nd and 3rd quarters of 2001; under Revenue Memorandum Order No. 9-2000, sale of goods, properties and services made by VAT registered suppliers to BOI registered exporters shall be accorded automatic zero rating and that is, without necessity of applying for and securing approval of the application for zero-rating, as provided for under Revenue Regulations No. 7-95, the petitioner, being a BOI

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registered exporter of advance and large scale integrated circuit components; and considering that the sale of goods, properties or services made by VAT registered supplier to the petitioner is automatic zero-rated, there is no VAT that has to be passed on to the petitioner; and consequently, the petitioner would not gain input taxes on their purchases of goods, properties or services and importation of capital goods.

THE COURT'S RULING

We find no merit in the petitions.

Petitioner anchors its claim for refund/tax credit of unutilized input VAT on *Section 112 (A) and (B) of the NIRC of 1997, as amended*, which reads as follows:

> "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 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 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

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> 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.
>
> (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."

The above provisions allow the refund/tax credit of unutilized input VAT in two (2) instances, namely: (1) when the excess input VAT is attributable to zero-rated or effectively zero-rated sales; and (2) when the excess input VAT is attributable to capital goods purchased by a VAT registered person.

We shall now determine whether the claimed amount of P25,041,116.22 falls under either of the above instances.

Based on its registration with the Board of Investment (*Exhibit "B"*), petitioner is an expanding export producer of semiconductors on a non-pioneer status under the *Omnibus Investments Code of 1989 (EO*

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226). Furthermore, per its VAT Registration Certificate (*Exhibit "A"*), petitioner's registered business activity is sale of goods, not sale of services. As such, its export sales fall within the exported sales transactions subject to zero percent (0%) VAT, under *Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended,* instead of *Section 108(B)(1) of the same Code* which pertains to the sale of services.

Pursuant to *Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, and Revenue Regulations No. 3-88*, any VAT registered person claiming zero-rated export sales must present at least three documents, namely: (a) the sales invoice as proof of sale of goods; (b) the export declaration or the bill of lading/airway bill as proof of actual shipment of the goods from the Philippines to a foreign country; and (c) bank credit advice or certificate of remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

In the case at bench, petitioner only presented a certificate of inward remittances for the entire year, 2001, which was issued by Citibank, N.A., dated January 3, 2002 (*Exhibit "M"*). We find this

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document insufficient, as this Court has consistently held that commercial invoices or receipts, bills of lading, airway bills, export declarations or permits, bank credit advices/certificates of remittances, ***taken collectively*** are the best means to prove exportation of goods and proof of receipt of the corresponding foreign currency payments. Thus, for failure to substantiate its claim, petitioner's reported export sales in the amount of P2,444,167,418.40 cannot qualify as VAT zero-rated sales, under *Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.* Accordingly, the claimed input VAT of P P25,041,116.22 allegedly attributable thereto cannot be granted. *Section 112(A) of the NIRC of 1997, as amended*, explicitly provides that there must be zero-rated or effectively zero-rated sales in order that a refund of input VAT could prosper.

We now proceed to the determination of whether the subject claim of P P25,041,116.22 can be refunded under the aforequoted *Section 112(B) of the NIRC of 1997, as amended.*

Corollary to the above provision, *Sections 4.106-1(b) and 4.104-5 of Revenue Regulations No. 7-95 provide:*

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"SEC. 4.106-1. **Refunds or tax credits of input tax.** – (a) xxx

xxx xxx

(b) Capital Goods – Only a VAT registered person may apply for 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.

'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), used directly or indirectly in the production or sale of taxable goods or sevices.'

"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. xxx

xxx xxx

(b) Input tax on importations shall be supported with the import entry or other equivalent document showing actual payment of VAT on the imported goods."

Pursuant to the above provisions, in order to be entitled to a refund/tax credit of input VAT paid on capital goods purchased, petitioner must prove:

1) that it is a VAT registered entity;
2) that it paid input VAT on capital goods purchased;
3) that its input VAT payments on capital goods are duly supported by VAT invoices or official receipts;
4) that it did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability;
5) that the administrative and judicial claims for refund were filed within the two-year prescriptive period. (*BASF Philippines, Inc. vs. Commissioner of Internal Revenue, C.T.A. Case No. 6283, February 10, 2004, affirmed on January 5, 2006 in C.T.A. E.B. No. 47)*

As regards the first requisite, the fact that petitioner is a VAT registered entity is not disputed (*par. 1.3 Joint Stipulation of Facts and Simplification of Issues*).

The fifth requisite was also met. It was established that the subject claims were filed within the two (2) year prescriptive period, both in the administrative and judicial levels, reckoned from the dates when petitioner originally filed its VAT returns for the 2nd, 3rd and 4th quarters

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of 2001 on July 24, 2001, October 23, 2001 and January 15, 2002, respectively.

However, petitioner failed to comply with the second, third and fourth requisites.

As regards the fourth requisite, a perusal of petitioner's VAT returns for the 2nd, 3rd and 4th quarters of 2001 (*Exhibits "E", "I" and "L"*) shows that the claimed input VAT of P25,041,116.22 was not applied against any output VAT liability during the said quarters. Petitioner, however, must also prove that the amount of P25,041,116.22 was not carried over/applied against any output VAT in the succeeding quarters. In its amended 3rd Quarterly VAT Return for 2001 (*Exhibit "I"*), petitioner carried-over the amount of P9,038,279.56 representing input taxes claimed for the 2nd quarter of 2001, and also deducted the said amount as "Any VAT Refund/TCC Claimed" from the total available input tax credits. Thus, petitioner could not have possibly utilized the input VAT amount of P9,038,279.56 in the 4th quarter of 2001 or any succeeding quarter/s.

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As to the remaining claimed input VAT of P16,002,836.66 pertaining to the 3rd and 4th quarters of 2001, petitioner presented its amended VAT return for the 2nd quarter of 2004 (*Exhibits "AA" & "AA-1"*) purportedly to show that the amount of P16,002,836.66 was deducted as "Any VAT Refund/TCC Claimed" from the total available input tax credits as of the end of the 2nd quarter of 2004. However, this Court denied the admission of said *Exhibits "A" and "AA-1"* for being mere photocopies of the alleged print-outs of petitioner's 2nd Quarterly VAT Return for 2004 (*p. 216, C.T.A. Case No. 6741 docket*). For petitioner's failure to prove that it did not carry over/apply the claimed input VAT for the 3rd and 4th quarters of 2001 in the amount of P16,002,836.66 to the succeeding quarters, the same shall be denied outright.

What is now left to be determined is whether petitioner has complied with the 2nd and 3rd requisites, insofar as the claimed input VAT of P9,038,279.56 for the 2nd quarter of 2001 is concerned.

The duly commissioned Independent CPA, Mr. Wilfredo Z. Palad, examined petitioner's documents (*Exhibits "ZZ" to "ZZ-20", "AAA" to "AAA-8", "BBB" to "BBB-898", "CCC" to "CCC-8" and "DDD" to "DDD-1"*)

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supporting the claimed input VAT of P9,038,279.56, and summarized his findings, as follows:

Input Tax applied for refund for 2nd quarter of 2001	P9,038,279.56
Breakdown:	
1). No available supporting documents	937,165.00
2). Supported by original BOC official receipts and original IEDs.	5,853,876.00
3). Supported by original BOC official receipts, no IEDs available.	31,766.00
4). Supported by original BOC official receipts and photocopied IEDs.	2,197,488.56
5). Supported by original bank official receipts and photocopied IEDs.	17,984.00
	P9,038,279.56 (*Exhibit "EEE"*)

Based on the above findings, the Court finds that petitioner actually paid input VAT in the amount of P8,101,114.56 (P9,038,279.56 – P937,165.00) on its importations for the 2nd quarter of 2001. However, petitioner failed to prove that the said importations are in the nature of capital purchases.

Section 4.106-1(b) of Revenue Regulations No. 7-95 defines capital goods or properties, as follows:

> "SEC. 4.106-1. Refunds or tax credits of input tax. – xxx
>
> xxx xxx
>
> (c) Capital Goods – xxx

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"'Capital goods or properties' refer to goods or properties with an estimated useful life of 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."

Pursuant to the aforequoted provision, for the subject purchases to fall under the definition of "capital goods or properties", the following conditions must be present:

1) that the goods or properties must have estimated useful life of more than one year;

2) they are treated as depreciable assets under Section 29(f); and

3) they are used directly or indirectly in the production or sale of taxable goods or services.

A careful perusal of the Summary List of Importations on Capital Goods for the 2nd quarter of 2001 (*Annex "A" of Exhibit "EEE"*) shows that some of the subject importations, such as Beanie dolls, Beanie key chains, watch, printed materials, cannot be considered as depreciable assets. Although other items included in the summary list, such as computers, electronic equipment, networking device used directly/indirectly in petitioner's business maybe

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classified as depreciable assets with estimated useful life of more than one year, petitioner, however, failed to present documents such as detailed general ledgers and audited financial statements, to prove that the said items were capitalized in the books of accounts and subjected to depreciation. In other words, petitioner failed to establish that the subject importations related to the input VAT payments of P8,101,114.56 fall within the prescribed definition of capital goods. Accordingly, for petitioner's failure to present documents showing that its importation falls within the definition of capital goods under *Section 4.106-1(b) of Revenue Regulations No. 7-95,* the substantiated input VAT payments of P8,101,114.56 for the 2nd quarter of 2001 cannot be refunded, pursuant to *Section 112 (B) of the NIRC of 1997, as amended.*

Laws granting tax exemption are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority

Settled is the rule that a claim for tax refund is in the nature of tax exemption. Laws granting exemption from tax are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and that he who would seek to be thus

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privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted (*Sea-Land Service, Inc. vs. Court of Appeals, 357 SCRA 444*).

WHEREFORE, premises considered, the three (3) above captioned petitions are hereby **DENIED DUE COURSE**, and, accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ATTESTATION

I attest 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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice

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