REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EASTERN TELECOMMUNICATIONS PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6019

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 19 2003

x -x

DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P9,265,913.42 representing unutilized input value-added tax (VAT, for brevity) allegedly attributable to petitioner's zero-rated sales of services to a non-resident foreign corporation for the taxable year 1998.

The facts of the case can be briefly stated as follows:

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws, with office address at the Telecoms Plaza Bldg., No. 316, Sen. Gil Puyat Avenue, Salcedo Village, Makati City.[1] Its primary purpose is "[t]o land, own, construct, maintain, operate, manage, install and establish commercial telecommunication, point-to-point domestic interisland and international communications xxx, television and broadcasting stations, telephony, facsimile, teleprinting teletype telephoto, data, voice/data, telex, message service and other telecommunications services, xxx".[2] As

---

[1] Exhibits I and I-1; par. 1.1, Joint Stipulation of Facts.
[2] Exhibits J and J-1.

such, it registered with the Bureau of Internal Revenue as a Value-Added Tax taxpayer with Certificate of Registration bearing RDO Control No. 49-490-000205 dated June 10, 1994.[3]

Petitioner a holder of a legislative franchise as the assignee of Eastern Extension Australasia and China Telegraph Company, Limited[4] by virtue of Republic Act No. 808[5], as amended by Republic Act No. 5002.

Through the years, petitioner entered into various international service agreements with international telecommunications carriers. It likewise handles incoming telecommunications services for non-resident foreign telecommunication companies and the relay of said international calls within and around other places in the Philippines.[6] Consequently, to broaden its distribution coverage of telecommunications services throughout the country, petitioner entered into various interconnection agreements with local carriers that can readily relay the said foreign calls to the intended local end-receiver.[7]

For the services rendered by petitioner to non-resident foreign corporations, the latter pays the former in US dollars inwardly remitted through the Philippine local banks, MetroBank, Hongkong and Shanghai Banking Corporation (HSBC) and Citibank. The manner and mode of payments to petitioner by the non-resident foreign telecommunications carriers follow an internationally established standard which is embodied in a Blue Book, or Manual, prepared by the Consultative Commission of

---

[3] Paragraph 1.3., Joint Stipulation of Facts, page 74, CTA records; and Exhibit B.
[4] Exhibit H.
[5] Exhibit G.
[6] Exhibits DD, FF and GG.
[7] Exhibits HH to BBB.

International Telegraph and Telephony[8] and implemented between the contracting parties in consonance with a set of procedural guidelines denominated as Traffic Settlement Procedure.[9]

For the year 1998, petitioner seasonably filed its Quarterly Value-Added Tax Returns reflecting, among others, the following information:

1998	Exh.	Date Filed	Taxable Sales	VAT Output Tax	VAT Input Domestic	Importation	Excess Input VAT
1st Qtr.	C	04-27-98	P 1,532,084.80	P 153,208.48	P 3,816,025.94	P 14,434.11	P 3,677,251.57
2nd Qtr.	D	07-27-98	2,263,815.10	226,381.51	2,236,428.96	10,185.16	5,697,484.19
3rd Qtr.	E	10-26-98	2,632,937.90	263,293.79	2,229,358.96	6,525.64	7,670,075.00
4th Qtr.	F	01-25-99	2,165,339.40	216,533.94	1,810,840.15	1,532.21	9,265,913.42
Totals			P 8,594,177.20	P 859,417.72	P10,092,654.01	P32,677.12	

The aforesaid returns were simultaneously amended on February 22, 2001 to correct its input VAT on domestic purchases of goods and services and on importation of goods and also to reflect its zero-rated and exempt sales for the year 1998, to wit:

1998	Exh.	VAT Output Tax	Zero-Rated Sales	Exempt Sales	VAT Input Domestic	Importation	Excess Input VAT
1st Qtr.	K	P153,208.48	P 355,644,049.93	P 219,123,100.77	P 7,166,967.00	P22,673.74	P 7,036,432.25
2nd Qtr.	L	226,381.51	319,973,025.76	197,145,107.48	4,763,452.06	23,639.06	11,597,141.87
3rd Qtr.	M	263,293.79	375,157,337.29	231,145,839.27	5,946,438.25	17,528.24	17,297,814.56
4th Qtr.	N	216,533.94	337,523,208.54	207,958,308.57	4,941,806.34	4,042.09	22,027,129.05
Totals		P859,417.72	P1,388,297,621.52	P 855,372,356.09	P22,818,663.65	P67,883.13	

Believing that it is entitled to the refund/tax credit of unutilized input VAT attributable to its alleged zero-rated sales, petitioner filed an administrative claim for refund with the Bureau of Internal Revenue on January 25, 2000 pursuant to Section 112

[8] Exhibit DDD.
[9] Exhibits U and U-1.

of the Tax Code as implemented by Revenue Regulations No. 5-87 and as amended by Revenue Regulations No. 7-95.[10]

Without waiting for an answer from the respondent, petitioner filed the instant Petition For Review on February 21, 2000 in order to toll the running of the two-year prescriptive period under the law.

In his Answer filed on March 29, 2000, respondent advanced the following Special and Affirmative Defenses:

> 4. The instant Petition for Review should be dismissed for lack of cause of action as petitioner failed to show proof that it complied with the condition sine qua non enunciated in the first paragraph of Section 229 of the Tax Code of 1997, before a petition for review may be filed before the Honorable Court of Tax Appeals, which provides:
>
> > "Sec. 229. Recovery of Tax Erroneously or Illegally Collected. - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress." (Underscoring supplied)
>
> Although the petition under paragraph 9 states that it filed an administrative claim for refund (allegedly Annex "E") with the Bureau of Internal Revenue on January 25, 2000, nowhere can it be found of said letter but instead the above-described document appears to be a quarterly VAT return for the 4th quarter of 1998.
>
> 5. The requirement that a written claim for refund must be filed by the taxpayer with the Commissioner is mandatory so that if the taxpayer fails to comply with the same, any action on his part in recovering the tax will necessarily fail. In the absence of this requirement, the Commissioner is without any authority to refund and if a judicial action is brought for

---

[10] Exhibits A, A-1 and A-2.

recovery the same will result in its dismissal **(Andrea Vda. De Aguinaldo v. Commissioner, 13 SCRA 269).**

6. The filing of a claim for refund with the Commissioner of Internal Revenue before recourse to court is necessary in order to afford the Commissioner an opportunity to correct the action of subordinate officers and to notify the Government that the taxes sought to be refunded are under question and that, therefore, such notice should then be borne in mind in estimating the revenue available for expenditure **(Bermejo v. Collector, L-3029, July 25, 1950)**.

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

8. 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.

9. 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 Tax Code, as amended.

10. 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)**.

To bolster its claim for refund, petitioner presented the following evidence:

1. Letter claim for refund with the Bureau of Internal Revenue;[11]

2. Certificate of Registration as a VAT entity;[12]

3. The original 1998 Quarterly Value-Added Tax Returns and amended 1998 and 1999 Quarterly Value-Added Tax Returns;[13]

---

[11] Exhibits A, A-1 and A-2.
[12] Exhibits B and B-1
[13] Exhibits C, D, E, F, K, L, M, N, O, P, Q and R, inclusive of submarkings.

4. Petitioner's legislative franchise to engage in telecommunications services;[14]

5. SEC Certificate of Filing of Amended Articles of Incorporation together with the amended Articles of Incorporation;[15]

6. Certified true copy of the decision of the National Telecommunications Commission authorizing petitioner to install, operate and maintain an International Digital Gateway Facility in Metro Manila;[16]

7. Final report of commissioned independent CPA on the evaluation of voluminous documents pertaining to petitioner's claim for refund;[17]

8. Petitioner's Traffic Settlement Procedure;[18]

9. Supplier's invoices and/or official receipts pertaining to input VAT of petitioner;[19]

10. Petitioner's own official receipts and various bank statements supporting foreign currency inward remittances;[20]

11. Compilation of various International Telecommunications Services Agreements between petitioner and international telecommunications companies and International Telecommunications Services Interconnection Agreements with local telecommunications companies;[21]

12. Petitioner's schedule of the 1998 operating revenues;[22] and

---

[14] Exhibits G and H.
[15] Exhibits I, I-1, J and J-1.
[16] Exhibit S.
[17] Exhibit T, inclusive of submarkings.
[18] Exhibits U and U-1.
[19] Exhibits V to V-303, W to W-1037, X to X-1088 and Y to Y-471.
[20] Exhibits Z to Z-51, AA to AA-48, BB to BB-20, and CC to CC-37.
[21] Exhibits DD to BBB.
[22] Exhibits CCC, CCC-1 and CCC-2.

13. Volume 2.1 of Blue Book or Manual of the Consultative Commission of International Telegraph and Telephony.[23]

Since petitioner was able to present its administrative claim for refund with the respondent, the controversies are now limited to the following jointly stipulated issues:

> 2.1. Whether or not petitioner's sale of services to non-resident telecommunications corporations qualify as zero-rated sale of services.
>
> 2.2. Whether or not the petitioner has an unutilized input VAT for the period January 1998 to December 1998 in the amount of Nine Million Two Hundred Sixty Five Thousand Nine Hundred Thirteen and 42/100 Pesos (P9,265,913.42).
>
> 2.3. Whether or not the petitioner's claim for refund of unutilized input VAT for the period January 1998 to December 1998 is substantiated by documentary evidence.

Petitioner claims that its sales of services to non-resident telecommunications carriers were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas; hence, subject to VAT at 0%. Petitioner's legal anchor is Section 108(B)(2) of Tax Code which provides:

> **Section 108.** ***Value-added tax on Sale of Services and Use or Lease of Properties.*** - x x x
>
> (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) xxx
>
> (2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).
>
> x x x x x x x x x

---

[23] Exhibit DDD.

Moreover, petitioner asserts that it is entitled to the refund of unutilized input VAT attributable to the said zero-rated sales pursuant to Section 112(A) of the same Code, to wit:

> **Section 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 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.

In view of the afore-quoted provisions of law, petitioner must foremost prove the existence of its zero-rated sales.

Records show that petitioner is engaged in various transactions. It has sales of services subject to VAT at 10% or 0% and exempt from VAT. Under Section 4.108-1 of Revenue Regulations No. 7-95, petitioner is required to issue separate invoices or receipts for the taxable and exempt transactions. For easy reference, Section 4.108-1 of Revenue Regulations No. 7-95 is hereby quoted as follows:

> **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 or 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. (Emphasis supplied)
>
> xxx xxx xxx
>
> Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoices or receipts and this shall be considered as a "VAT Invoice". All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax.
>
> **If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations**. A "VAT Invoice" shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the Code.
>
> xxx xxx xxx.
> (Emphasis supplied).

It should be stressed that for transactions subject to VAT at 0%, the word "zero-rated" must be imprinted on the VAT invoice or receipt. From among the transactions of petitioner, only the sales allegedly subject to VAT at 0% were supported by documents.[24] The other sales transactions subject to VAT at 10% and exempt sales were not supported.

After a meticulous scrutiny of the VAT official receipts presented to support the alleged zero-rated sales, the court noted that petitioner failed to imprint the word "zero-rated" on the face of the said documents. This act clearly violates Section 4.108-1 of Revenue Regulations No. 7-95 which implemented the VAT law. For such failure, this court believes that in the absence of other documents to show zero-rated sales, the

---

[24] Forming part of Exhibits AA to AA-48, BB to BB-20 and CC to CC-37.

transactions covered by the VAT invoices are subject to VAT at 10% pursuant to Section 108(C) of the Tax Code which provides:

> SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.*
>
> (A) xxx
>
> (B) xxx
>
> (C) *Determination of the Tax.* – The tax shall be computed by multiplying the total amount indicated in the official receipt by one-eleventh (1/11).

The bank certificates supporting foreign currency inward remittances and telecommunication agreements, together with the VAT official receipts, are the best means to prove foreign currency denominated sales and should be taken collectively.[25]

But even assuming that the VAT official receipts which failed to indicate the word "zero-rated" are accepted because of the corroborating evidence, still we cannot grant petitioner's claim for refund. This court noted that the amounts of sales appearing on the 1998 quarterly returns differ from those of the amounts used by the commissioned independent CPA as bases for the allocation of verified input taxes,[26] to wit:

Type of Income	Per Amended Quarterly VAT Returns (A)	Per Allocation Provided by the Company (B)	Discrepancy Over/(Under) (A)-(B)
Taxable Sales	P 8,594,177.20	P 59,584,311.25	P(50,990,134.05)
Zero-rated Sales	1,388,297,621.52	1,388,297,621.52	-
Exempt Sales	855,372,356.09	562,282,775.64	293,089,580.45
Total	P 2,252,264,154.81	P 2,010,164,708.41	P242,099,446.40

[25] The Commissioner of Internal Revenue vs. Philippine Bobbin Corporation, CA-G.R. SP No. 59452, February 19, 2001.
[26] Exhibit CCC and CCC-1.

The above table shows that petitioner adjusted its taxable sales by reducing the same to P8,594,177.20 or a reduction of P50,990,134.05 while the amount of exempt sales was overstated by P293,089,580.45. The adjustments, according to petitioner's Assistant Vice-President – Finance Controllership Regina E. De Leon, were due to write-off of accounts. Such being the case, the court believes that petitioner should have presented additional documents to prove the accuracy of the adjustments made. Earlier, we have noted that petitioner failed to present its VAT official receipts for taxable sales and non-VAT official receipts for its exempt sales. These documents are necessary to verify the amounts of taxable and exempt sales and for the court to properly allocate the verified input taxes among the taxable, zero-rated and exempt sales. It is pertinent to state that while a decrease in taxable sales will not affect petitioner's claim for refund, the increase in the exempt sales has the effect of a proportionate reduction on its claimed input VAT credits. Thus, in the absence of the aforementioned documents, the court has no basis in the computation of the allowable refund that may be granted to petitioner.

The disparity between the amounts declared as taxable or exempt sales by petitioner in its amended 1998 quarterly VAT returns and the revenue allocation provided by petitioner has further created a doubt as to the accuracy of petitioner's claim, considering further that the 1998 audited financial statements,[27] which were the bases of the revenue allocation, were already available as early as February 22, 1999 while petitioner filed its amended 1998 quarterly VAT returns on February 22, 2001.

---

[27] Exhibit CCC-2.

Well-entrenched in our jurisprudence is that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption.[28]

The power of taxation is a high prerogative of sovereignty, the relinquishment is never presumed and any reduction or diminution thereof with respect to its mode or its rate, must be strictly construed, and the same must be coached in clear and unmistakable terms in order that it may be applied. Specifically stated, the general rule is that any claim for tax exemption from the tax statute should be strictly construed against the taxpayer.[29]

WHEREFORE, in view of the foregoing, the petition for review is hereby **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
Associate Judge

---

[28] Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc. 309 SCRA 87 [1999].

[29] Acting Commissioner of Customs vs. Manila Electric Co., 77 SCRA 469; The Commissioner of Internal Revenue vs. P.J. Kiener Co., Ltd., 65 SCRA 142.

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