REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INTEL TECHNOLOGY PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NOS. 5901 & 5942

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 0 1 2002

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DECISION

This consolidated case seeks the issuance of a tax credit certificate in the aggregate amount of P71,779,336.88 representing unutilized input value-added tax (VAT, for brevity) on domestic purchases of goods and services, detailed as follows:

CTA Case No.	Period Involved	Amount
5901	Second Quarter of 1997	P24,196,523.16
5942	Third Quarter of 1997	29,402,679.60
	Fourth Quarter of 1997	18,180,134.12
Total		P71,779,336.88

These two (2) cases were resolved to be consolidated pursuant to the order given in open court on November 17, 1999, upon written motion of Petitioner's counsel (see Minutes of the Session, CTA records, p. 63).

The facts of this consolidated case are stated as follows:

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Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal office address at Gateway Business Park, Javalera, Gen. Trias, Cavite. It is licensed by the Securities and Exchange Commission to primarily engage in the business of designing, developing, manufacturing and exporting advance and large-scale integrated circuit components or IC's. It is registered with the Bureau of Internal Revenue as a value-added tax taxpayer with Certificate of Registration bearing RDO Control No. 96-540-000713 (Annex "B"). Petitioner is likewise registered with the Philippine Economic Zone Authority (PEZA) as an ecozone export enterprise pursuant to the provisions of Republic Act No. 7916 (Annex "A"). As a pioneer enterprise, Petitioner was given a six (6) year income tax holiday (see paragraph number 2, Joint Stipulation of Facts and Simplification of Issues, CTA records, p. 80).

For the period April 1, 1997 to December 31, 1997, Petitioner seasonably filed its quarterly Value-Added Tax Returns (Exhibits "B" to "E", inclusive of sub-markings) reflecting, among others, an aggregate zero-rated sales in the amount of P3,416,762,141.67 and input taxes in the sum of P65,405,663.62, broken down as follows:

Quarter Involved	Exhibit	Zero-Rated Sales	Input Tax
2nd Qtr 1997	B to B-5	P 117,688,348.74	P27,716,589.00
3rd Qtr. 1997	D to D-5	1,216,367,917.73	29,402,679.60
4th Qtr. 1997	E to E-5	2,082,705,875.20	8,286,395.02
Total		P3,416,762,141.67	P65,405,663.62

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Petitioner avers that the aforementioned zero-rated sales in the amount of P3,416,762,141.67 arose from its exportation of goods and were paid for in acceptable foreign currency inwardly remitted in accordance with the regulations of the Bangko Sentral ng Pilipinas (BSP). It further asseverates that the input taxes in the sum of P65,405,663.62 are directly attributable to its zero-rated export sales.

Petitioner believes that it is entitled to the refund of input taxes attributable to its zero-rated export sales pursuant to Section 106(a) of the Tax Code as amended. Petitioner therefore filed on different occasions, Applications for Tax Credit of Value-Added Tax Paid with the One-Stop-Shop Inter Agency Tax Credit and Duty Drawback Center of the Department of Finance in the gross amount of P71,779,336.88, itemized as follows:

Period of Claim	Date Filed	Claimant Info. Sheet No.	Exhibit	Local VAT Claimed	
04-01-97 to 06-30-97	08-25-97	22299	T	P19,221,831.59	
04-01-97 to 06-30-97	06-23-99	30489	U	4,974,691.57	(Additional)
07-01-97 to 09-30-97	03-29-99	34403	V	29,402,679.60	
10-01-97 to 12-31-97	03-29-99	34404	W	18,180,134.12	
Total				P71,779,336.88	

The inaction of Respondent on its claims for refund propelled Petitioner to file the instant petitions for review in order to toll the running of the two-year prescriptive period under Section 230 of the Tax Code, as amended. The petition for review for the second quarter of 1997 was filed on June 30, 1999 and was docketed as CTA Case No. 5901 while the petition for review for the third and fourth quarters of 1997 was filed on September 30, 1999 and was docketed as CTA Case No. 5942.

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The issues jointly stipulated by the parties are as follows:

1. Whether or not Petitioner's export sales are zero-rated for VAT purposes;

2. Whether or not the VAT input taxes have been applied to the output tax for the period covered in its claim or any succeeding period;

3. Whether or not the VAT input taxes on domestic purchases of goods and services are attributable to Petitioner's zero-rated sales; and

4. Whether or not Petitioner is entitled to a refund of VAT input taxes arising from domestic purchases of taxable goods and services from April 1, 1997 to December 31, 1997 in the amount of P71,779,336.88.

Anent the first issue, Petitioner asserts that its sales are subject to VAT at 0% pursuant to Section 100(a)(2)(A)(i) [now, Section 106(a)(2)(A)(i)] of the Tax Code, as amended, to wit:

> **Section 100.** ***Value-added tax on sale of goods or properties.*** - (a) *Rate and base of tax.* - There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.
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> xxx xxx xxx
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> (2) The following sales by VAT-registered persons shall be subject to 0%:
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> (A) **Export sales.** - The term 'export sales' means:
>
> (i) 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).
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> x x x x x x x x x

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Based on the foregoing proviso, Petitioner now seeks the refund of input VAT it paid during the period April 1, 1997 to December 31, 1997 in accordance with Section 106(a) of the same code which provides:

> **Sec. 106. Refunds or tax credits of input tax.** – (a) 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 100(a)(2)(A)(i), (ii) and (b) and Section 102(b)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in 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.

On the other hand, Respondent in his memorandum argues that under Section 24 of Republic Act No. 7916, otherwise known as "The Special Economic Zone Act", Petitioner, being an ecozone export enterprise and registered with the PEZA, is exempt from the value-added tax. Section 24 of RA 7916 is hereinbelow quoted, thus:

> **SEC. 24.** *Exemption from Taxes Under the National Internal Revenue Code*. – Any provision of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu of paying taxes, five percent (5%) of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government. x x x.

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Respondent contends that since Petitioner is an ecozone enterprise, its business is not subject to VAT. Therefore, its registration as a VAT taxpayer is erroneous.

We do not agree with the Respondent.

In several cases already decided by this Court and affirmed by the Court of Appeals, the issue raised by Respondent has already been settled in this manner, thus:

> This Court would like to stress that under Section 23 of Republic Act No. 7916, two different fiscal incentives are granted to ecozone enterprise, to wit:
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> > **SEC. 23. *Fiscal Incentives.*** - Business establishments operating within the ECOZONE shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided for under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987.
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> Based on the aforequoted Section 23 of RA 7916, a PEZA registered enterprise has the option to choose between two sets of fiscal incentives. One is that which is provided for under Presidential Decree No. 66, as amended, and Section 24 of RA 7916 which includes 5% preferential tax on gross income earned which is in lieu of national and local taxes; and second, as those provided for under Book VI of Executive Order No. 226, including but not limited to an income tax holiday (ITH) of 4 to 6 years depending on whether or not an entity is registered as a pioneer or non-pioneer enterprise. If an ecozone enterprise chooses the 5% preferential tax, it is exempt from payment of all national and local taxes. However, if an ecozone enterprise chooses the income tax holiday, it is only exempt from payment of the income tax but still subject to other national internal revenue taxes including the value-added tax. The difference between these 2 sets of fiscal incentives were explained by the Bureau of Internal Revenue in VAT Ruling Nos. 037-98; 043-98; 027-99; and 063-99. **(Read-Rite Philippines, Inc. (formerly Sunward Technologies Phils., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5659, September 29, 2000; see also Commissioner of Internal Revenue vs. Seagate Technology Philippines, CA-G.R. SP No. 61189, June 18, 2001; Commissioner of Internal Revenue vs. Cebu Toyo Corporation, CA-G.R. SP No. 60304, July 6, 2001; and Commissioner of Internal Revenue vs. Hitachi Computer Products (Asia) Corporation, CA-G.R.**

SP No. 65482, October 16, 2001, all affirming the corresponding CTA decisions/resolutions).

The records of this case lead us to conclude that Petitioner availed of the fiscal incentives under Executive Order No. 226 in view of Respondent's admission that Petitioner is a VAT registered person and is enjoying a six year income tax holiday (see paragraphs 2 and 3, Joint Stipulation of Facts and Simplification of Issues, CTA records, p. 80, *supra*).

We shall now proceed to the second issue at bar. Petitioner asserts that the subject input taxes were not applied against the output tax in the period covered by the claim nor in any of the succeeding periods. However, such statement of Petitioner cannot be verified from the records. Although Petitioner has no output VAT liability, it should however prove that the present claim was deducted from the accumulated input VAT. The present claim in the total amount of P71,779,336.88 was never deducted from among the accumulated input taxes reflected in the 1997 and 1998 quarterly VAT returns. (Exhibits "B" to "M", inclusive of sub-markings). The amounts reflected as "LESS: REFUND/TCM CLAIMED" in the aforementioned VAT returns do not tally (per application) with the amounts of the present claim, to wit:

VAT Return	Exhibit	Refund/TCM Claimed
2nd Quarter 1997	B to B-5	P44,402,081.24
3rd Quarter 1997.	C to D-5	45,567,483.93
4th Quarter 1997	E to E-5, M to M-2	
1st Quarter 1998	F to F-2	
2nd Quarter 1998	H & H-1, I to I-2	
3rd Quarter 1998	J & J-1, K to K-2	
4th Quarter 1998	L & L-1	1,440,073.36
Total		P91,409,638.53

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Petitioner did not properly explain the deductions reflected in the aforementioned returns except for the amount of P318,880.41 which was included in the gross amount of P1,440,073.36 (4th qtr deduction for 1998) pertaining to the *September 1997 adjustment*. It cannot therefore be concluded that the said adjustment refers to a portion of the claim for refund for the third quarter of 1997 because the same may apply to an adjustment of the over-claimed input taxes during the month of September 1997. Without convincing evidence that the input taxes sought to be refunded were not utilized nor carried over as credit to the subsequent quarters, the Court cannot grant Petitioner's prayer. For to grant Petitioner's claim for refund, without proof of deduction of the corresponding amount, would be dangerous and tantamount to granting twice the refund herein sought to be refunded, to the prejudice of the Government (**AMI Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case Nos. 5187 and 5199, October 2, 1997)**

In recently decided cases involving the same parties and issues, this Court denied the claims for refund due to Petitioner's failure to show that the claimed input taxes were not carried over and applied against any output VAT in the succeeding periods (Read **Intel Philippines Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case Nos. 5760 and 5902 promulgated on February 5, 2002 and Intel Philippines Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5941 promulgated also on February 5, 2002)**. Sadly, the same kind of evidence or the lack of it also proved fatal to the present claim for refund.

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Settled is the rule in this jurisdiction that a claim for refund is in the nature of a claim for exemption, hence should be construed in *strictissimi juris* against the taxpayer **(Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332).**

The second issue having been resolved against Petitioner, the Court finds it unnecessary to delve into the other issues raised.

WHEREFORE, in view of the foregoing, the instant petitions for review are hereby **DENIED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

AMANCIO Q. SAGA
Associate Judge

JUANITO C. CASTAÑEDA, JR.
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

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