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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIL - CARTOONS, INC.,
Petitioner,

- versus - **C.T.A. CASE NO. 5727**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 09 2001

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DECISION

This Petition for Review is seeking for the issuance of a tax credit certificate in the amount of P2,288,729.46, allegedly representing unutilized input value-added tax (VAT, for brevity) on domestic purchases of goods and services for the four calendar quarters of the year 1997.

The following facts are undisputed:

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at Pioneer corner Reliance Streets, Mandaluyong City. It is registered with the Board of Investments as a preferred non-pioneer enterprise in accordance with the provisions of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987. It is likewise registered with the Bureau of Internal Revenue as a VAT taxpayer with Value-Added Tax Registration Certificate No. 31-5-005582, dated February 11, 1991.

Petitioner alleges that it renders services to non-resident foreign companies by way of producing and exporting animated film cartoon strips. For the period January 1, 1997 to December 31, 1997, Petitioner filed its Monthly VAT Declarations and Value-Added Tax (VAT) Returns reflecting, among others, total zero-rated sales in the amount of P102,250,502.66, and a net creditable input tax of P2,288,729.46, detailed as follows:

CY1997 Quarter	Exhs.	Zero-Rated Sales	Gross Taxable Goods and Services	VAT Output Tax
First	C	P	P 928,226.49	P 84,384.23
Second	D	33,599,479.08	1,643,713.30	149,428.49
Third	E	4,615,267.53	971,572.11	88,324.74
Fourth	G	64,035,756.05	1,003,907.53	91,264.32
Total		P102,250,502.66	P4,547,419.43	P 413,401.78
Less: VAT Input Tax				
First		P 670,104.07		
Second		586,430.55		
Third		682,354.59		
Fourth		763,242.03		2,702,131.24
Net Input VAT				P2,288,729.46

Petitioner further alleges that the aforesaid zero-rated sales were paid for in acceptable foreign currency and inwardly remitted to the Philippines in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas hence subject to VAT at zero percent pursuant to Section 100(a)(2(A)(i) of the Tax Code, as amended, and that the net accumulated input VAT in the sum of P2,288,729.46 were all attributable to its zero-rated sales.

Believing that it is entitled to the refund of input taxes attributable to its zero-rated sales, Petitioner, on October 30, 1998, filed an Application for Tax Credit/Refund of Value-Added Tax Paid with the Revenue Region No. 7 of the Bureau of Internal Revenue. Obtaining no response from the said office, Petitioner on February 1, 1999, lodged its appeal with this Court in order to toll the running of the two-year prescriptive period under Section 230 of the Tax Code, as amended.

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

1. That in an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action.

2. Claims for tax refund are strictly construed against the taxpayer. Petitioner has no cause of action.

In order to support its claim for tax credit, Petitioner presented the following evidence:

1. Photocopy of Petitioner's Certificate of Registration No. EP-87-108 issued by the Board of Investments (Exhibit A);

2. Photocopy of Petitioner's BIR Certificate of Registration with RDO Control No. 94-410-0001978 issued on June 29, 1994 by Revenue District Office No. 41 (Exhibit B);

3. Photocopies of Petitioner's Monthly VAT Declarations and Quarterly VAT Returns for the year 1997 including the amended return for the fourth quarter of 1997 (Exhibits C to O, inclusive of submarkings);

4. FEBTC Certification with respect to Petitioner's export proceeds of US$2,804,342.93 for the year 1997 (Exhibits P and P-1);

5. Photocopy of the application for Tax Credit/Refund of Value-Added Tax Paid (Exhibits Q and Q-1);

6. Photocopies of the Quarterly VAT Returns for the year 1998 together with the 1998 amended third and fourth quarters' VAT returns (Exhibits R to W, inclusive of submarkings);

7. The report of the independent CPA (Exhibits X, X-1 and X-2);

8. Summaries of purchases and export sales and schedule of input VAT for the year 1997 (Exhibits Y, Z, Z-1 and AA);

9. Photocopies of suppliers' invoices and/or official receipts to support the input VAT in the sum of P2,288,729.46 (Exhibits DD-1 to DD-119, EE-1 to EE-91, FF-1 to FF-59, GG-1 to GG-60, HH-1 to HH-72, II-1 to II-81, J-1 to JJ-85, KK-1 to KK-84, LL-1 to LL-104, MM-1 to MM-126, NN-1 to NN-79 and OO-1 to OO-91); and

10. Photocopies of Petitioner's export sales invoices for the year 1997 (Exhibits PP-1 to PP-105).

The sole issue to be resolved in this case is whether or not Petitioner is entitled to the amount of P2,288,729.46 allegedly representing unutilized net input VAT from domestic purchases of goods and services for the year 1997.

Petitioner anchored its entitlement to the tax credit sought on Sections 100(a)(2)(A)(i) and 102(b)(1) of the Tax Code, as amended, which provide, thus:

> SEC. 100. *Value-added tax on sale of goods or properties. – (a) Rate and base of tax.* – xxx
>
> (1) xxx
>
> (2) The following sales by VAT-registered persons shall be subject to 0%:
> (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);
>
> xxx xxx xxx
>
> SEC. 102. *Value-added tax on sale of services and use or lease of properties.* – (a) *Rate and base of tax.* – xxx.

> (b) *Transactions subject to zero-rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to 0%:
>
> (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 contends that as a BOI-registered enterprise with 100% export sales it is subject to VAT at 0% hence entitled to tax credit of unutilized input VAT attributable to such sales pursuant to Section 106 of the Tax Code, as amended.

> SEC. 106. *Refunds or tax credits of creditable 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 Section100(a)2(A)(i), (ii) and (b) 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 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.

We find against Petitioner.

In line with the above-quoted proviso, Section 16 of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88 was formulated to lay down certain requirements that must be complied with by a claimant in order to prove a claim for refund or credit of input tax, to wit:

> SECTION 16. Refunds or tax credits of input tax. –

(a) Zero-rated sales of goods and services. – xxx.

1. Export Sales

i) Photo copy of export document showing the amount of export, and the date and destination of the goods exported. With respect to foreign currency denominated sales, the photo copy of the invoice or receipt evidencing the sale of the goods, as well as the name of the person to whom the goods were delivered.

ii) Statement from the Central Bank or any of its accredited agent banks that the proceeds of the sale in acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations.

2. Zero-rated sale of services.

i) Authenticated copy of the contract showing the person from whom the services were rendered, the amount of the consideration and description of the services and document evidencing actual payments.

ii) Statement from the Central Bank or any of its accredited agent banks that the consideration in acceptable foreign currency has been inwardly remitted and accounted for in accordance with the applicable banking regulations.

Readily apparent in the preceding requirements is the State's desire to make sure that the goods subject of the zero-rated sales were indeed exported and that the foreign currency given in payment for the said goods were in fact inwardly remitted to the Philippines, before any claim for tax refund/credit is granted **(The Commissioner of Internal Revenue vs. Philippine Bobbin Corporation, CA-G.R. SP No. 59452, dated February 19, 2001)**.

Records show that Petitioner failed to submit photocopies of the export documents that will prove the actual exportation of goods. Petitioner also failed to present the contracts that will establish its agreement with its foreign clients. The records of the case do not also reveal that Petitioner submitted any documents that will prove that its products were indeed 100% exported. No authenticated copies of contracts showing its agreement with the foreign clients from whom its services were rendered were submitted by Petitioner as evidence. We have already denied several claims for refund of input VAT due to the failure of Petitioner to comply with the requirements set forth under Revenue Regulations No. 3-88 in the following cases:

1. *Dow Elanco B.V. Philippine Branch vs. The Commissioner of Internal Revenue, CTA Case No. 5255, January 14, 1998;*

2. *AMI Philippines, Inc. vs. Commissioner of internal Revenue, CTA Case No. 5304, January 20, 1998;*

3. *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case Nos. 5130, 5161, and 5190, February 5, 1998;*

4. *Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5306, April 15, 1998;*

5. *Towa Industry, Inc. vs. Commissioner of internal Revenue, CTA Case No. 5552, July 9, 1999; and*

6. *Eastern Telecommunications-Philippines vs. Commissioner of Internal Revenue, CTA Case No. 5656, October 12, 2000.*

Petitioner may argue that the sales invoices and certification from the Far East Bank and Trust Company (FEBTC) are sufficient proof of exportation and remittance of foreign currency. Such argument was already struck down in the recent case of **The Commissioner of Internal Revenue vs. Philippine Bobbin Corporation, CA-G.R. SP No. 59452, dated February 19, 2001,** ***supra*** where the Court of Appeals ruled in this manner, thus:

> By and large, export sales invoices alone are inadequate proofs that the subject goods were actually exported. Such invoices are merely written accounts of the particular of merchandise shipped or sent to a purchaser or consignee with the value or prices and charges annexed (Philippine Law Dictionary, 3rd Ed., p. 495). By no means are they accurate confirmations that goods were actually shipped out of the country. Yet, that is what the law requires. Section 100(a)(2) of the National Internal Revenue Code (then in effect at the time of the alleged exportation) defines "Export Sales" as the sale and 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 or ownership of the goods so exported. In that case, it is imperative for any claimant of a tax refund or credit in relation to the Input VAT paid to prove not only the existence of the sale but also the actual shipment of the goods from the Philippines to a foreign country.
>
> Rather than limiting the documentary requirements to just export invoices, the law specifically enjoined the production of "export documents" to affirm the authenticity of the export sales. In commercial practice, export documents include commercial invoices or receipts, bills of lading, airway bills, and export declarations or permits. These documents, taken **collectively**, are the best means to prove the exportation of goods. (Underlining supplied).

Thus, for failure of the Petitioner to present export documents that will prove its actual exportation of goods, the relief sought for cannot be granted. It is unfortunate that Petitioner did not learn a lesson from its previous case, CTA Case No. 5588 promulgated on May 31, 2000, where this Court denied the claim for refund for the same reasons as in the instant case.

Well entrenched is the rule that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of the sovereign authority and to be construed in *strictissimi juris* against the person or entity claiming the exemption **(Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., 309 SCRA 87 [1997])**. Accordingly, the claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund **(Citibank, N.A. vs. Court of Appeals, 280 SCRA [1997])**.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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