REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AT & T COMMUNICATIONS SERVICES PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5764

THE COMMISSIONER OF INTERNAL REVENUE
Respondent.

Promulgated:
MAY 29 2001

x -x

DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P5,248,384.04, representing unutilized input value-added tax (VAT, for brevity) on domestic purchases and importation of goods and services for the period January 1, 1997 to December 31, 1997 allegedly attributable to Petitioner's zero-rated sales of services.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office located at the 18th Floor, BA-Lepanto Building, 8747 Paseo de Roxas, Makati City (Exh. A). It is registered with the Bureau of Internal Revenue as a VAT taxpayer with RDO Control No. 96-500-005004 dated November 29, 1996 (Exhibit "C").

On April 28, 1997, Petitioner entered into a Service Agreement with AT & T Communications Services International Inc. (AT & T–SI, for brevity), a corporation duly organized and existing under the laws of the State of Delaware, USA (Exh. B). Under the

Agreement, Petitioner obligates itself to provide various information, promotional and liaison services to AT & T – SI and in consideration of the services provided, the latter shall pay Petitioner in US dollars (TSN, October 7, 1999, pp. 9 to 10). The effective date of this Agreement was on February 15, 1996.

For the calendar year 1997, Petitioner seasonably filed its Quarterly Value-Added Tax Returns with the Bureau of Internal Revenue's collecting agent banks reflecting a total of zero-rated sales of services and unutilized input VAT on domestic purchases of goods/services in the amounts of P147,032,274.61 and P5,248,384.04, respectively, to wit:

Period	Exh.	Date Filed	Zero-rated Sales	Input VAT for the Quarter
1st Qtr. 1997	D, D-1	04-18-97	P 41,859,372.17	P2,057,240.70
2nd Qtr. 1997	E, E-1	07-17-97	26,036,967.27	997,164.67
3rd Qtr. 1997	F, F-1	10-20-97	42,758,755.78[1]	1,080,375.23
4th Qtr. 1997	G, G-1	01-20-98	36,377,179.39	1,113,603.44
T O T A L			P147,032,274.61	P5,248,384.04

On September 3, 1998, Petitioner filed with the Revenue Region No. 8, Bureau of Internal Revenue, a written application for the refund of input taxes paid for the period January 1, 1997 to December 31, 1997, in the gross amount of P5,248,384.04 anchored on the provisions of Section 112 of the 1997 Tax Code (Exhibit "H").

On March 31, 1999, Petitioner lodged its appeal with this Court in order to toll the running of the two-year prescriptive period under Section 229 of the Tax Code, as amended.

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

[1]Based on the amended 1997 third Quarterly Value-Added Tax Return.

5. Petitioner has not shown proof that its revenues qualify as zero-rated transactions under Section 108(B)(2) of the Tax Code;

6. Petitioner failed to show compliance with the substantiation requirement under the provisions of Section 16(c)(3) of Revenue Regulations No. 5-87, as amended by Revenue Regulations No.3-88;

7. Petitioner has not shown proof that the alleged VAT input taxes allegedly attributable to its export sales have not yet been applied to the output tax for the period covered in its claim or any succeeding period and that the alleged total foreign exchange proceeds have been accounted for by the Central Bank;

8. The petition states no cause of action as it does not allege the date/s when the tax/es sought to be refunded was/were actually paid;

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

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

11. Well-settled is the rule that claims for refund is construed against the claimants since it partakes of the nature of an exemption for (*sic*) taxation.

In support of its claim for refund, Petitioner presented the following documentary exhibits:

1. Certificates of Registration with the Securities and Exchange Commission and Bureau of Internal Revenue (Exhs. A and C);

2. Service Agreement between AT & T Communications Services International Inc. and AT & T Communications Services Philippines, Inc. (Exh. B);

3. The Quarterly Value-added Tax Returns for each of the four calendar quarters of the years 1997 and 1998 (Exhs. D, E, F, G, GG, HH, II, and JJ, inclusive of submarkings);

4. The administrative claim for refund (Exh. H);

5. Certified true copy of Citibank's Credit Memos issued to Petitioner acknowledging foreign currency remittances during the year 1997 (Exhs. I, J, K, L, M, N, O, P, Q, R, S, T, and U);

6. Acknowledgment Receipt issued by Petitioner to JP Morgan (Exh. W);

7. Summary lists of input taxes for the four calendar quarters of 1997 (Exhs. X-1 to X-13, Y-1 to Y-11, Z-1 to Z-11, and AA-1 to AA-13);

8. Photocopies of the VAT invoices and official receipts supporting Petitioner's claimed input taxes for the year 1997 (Exhs. BB-1 to BB-1043, CC-1 to CC-971, DD-1 to DD-984, and EE-1 to EE-669); and

9. The reports of the commissioned independent CPA (Exhs. FF, KK, and KK-1).

The Court admitted all of the aforementioned documents in the absence of a Comment from the Respondent. The case was submitted for decision on January 11, 2001, without the evidence and memorandum of the Respondent.

The issues jointly stipulated by the parties are as follows:[2]

1. Whether or not Petitioner generated and recorded zero-rated sales in the amount of P115,932,154.50 for 1997;

2. Whether or not Petitioner paid VAT input taxes in the amount of P5,248,384.04 on its domestic purchases of taxable goods and services for the same year;

3. Whether or not the above-mentioned input taxes paid were directly attributable to Petitioner's zero-rated sales and were paid by the said Petitioner in the course of its trade or business; and

4. Whether or not Petitioner is entitled to a refund and/or issuance of a tax credit certificate in the amount of P5,248,384.04 representing unutilized input VAT for 1997.

Petitioner anchors its claim for the refund of input taxes on Sections 108(B)(2) and 112(A) of the 1997 Tax Code. However, We would like to point out that the law applicable in the present case is the previous Tax Code, as amended by RA 7716 and not the Tax Reform Act of 1997 because the period involved in the present case is the year 1997 and that the latter law became effective only on January 1, 1998.

Section 106(a) in relation with Section 102(b)(2) of the Tax Code, as amended, [now Section 112(A) and 108(B)(2) of the Tax Reform Act of 1997] provide:

> **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 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 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.
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> xxx xxx xxx
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> **SEC. 102.** *Value-added tax on sale of services and use or lease of properties. - (a) Rate and base of tax.* –xxx
>
> *(b) Transaction subject to zero-rate.* - The following services performed in the Philippines by VAT-registered persons shall be subject to 0%:
>
> (1) xxx
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> (2) Services other than those mentioned in the preceding subparagraph, 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).

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[2]Joint Stipulation of Facts and Issues, CTA records, pp. 89 to 92.

Based on the above provisions, Petitioner must prove that (1) it is a VAT registered person; (2) its sales are zero-rated; (3) the administrative claim for refund was seasonably filed; (4) the input taxes claimed were attributable to zero-rated sales and were not applied against the output tax liability; and (5) foreign currency exchange proceeds had been duly accounted for in accordance with the regulations of Bangko Sentral ng Pilipinas.

A circumspect study of the records of the case together with the pleadings and evidence at hand, reveals that Petitioner complied with the above requisites.

Petitioner is a VAT-registered person as evidenced by the Certificate of Registration RDO Control No. 96-500-005004 issued by RDO No. 50 of the Bureau of Internal Revenue. The Quarterly Value-Added Tax Returns show that Petitioner generated a total zero-rated sales of services in the amount of P147,032,274.61 as previously tabulated[3]. The administrative claim for refund which was filed on September 3, 1998, was seasonably filed within two years from the close of each calendar quarter of 1997. The input taxes claimed were attributable to zero-rated sales of services and were not applied against any output tax liability nor were carried over to the first quarter of the succeeding taxable year (Exhs. GG, GG-1, and GG-2, TSN, February 14, 2000, pp. 5 to 15). Lastly, Petitioner was able to prove that the foreign currency exchange proceeds in US dollars, representing inward remittances, were credited to its Account No. 0/601563/029 with Citibank as evidenced by various Citibank Client Advice computer generated forms (Exhs. I to U).

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[3]The authenticity and due execution of the Quarterly VAT Returns for the four (4) quarters of 1997 were jointly stipulated by the parties.

However not all the input taxes sought to be refunded were supported by valid VAT invoices and official receipts. In the revised report, dated March 9, 2000, submitted by the commissioned independent CPA, Mr. Ruben R. Rubio, the latter declared that input taxes in the amount of P260,675.06[4] were not properly substantiated for VAT purposes (Exhs. KK and KK-1).

After evaluating the aforesaid revised report submitted by the independent auditor, the Court finds the same to be in order and hereby adopts said findings.

In sum, Petitioner is entitled to the refund of unutilized input VAT in a reduced amount of P4,987,708.98, computed as follows:

Total input VAT claimed per Petition for Review	P5,248,384.04
Less: Exceptions made by the independent CPA	260,675.06
Amount of input VAT supported and verified	P4,987,708.98

WHEREFORE, in view of the foregoing, the Petition for Review is hereby *PARTIALLY GRANTED.* Respondent is **ORDERED to REFUND or ISSUE a TAX CREDIT CERTIFICATE** in the amount of P4,987,708.98 in favor of Petitioner representing unutilized input VAT for the period January 1, 1997 to December 31, 1997.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

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[4]Originally in the total amount of P519,056.69 (Exh. FF) but was reduced to P260,675.06 because the balance of P258,381.63 was already deducted from the amount claimed for refund for the 3rd and 4th quarters of 1997 as reflected in the corresponding summary lists(Exhs. Z and AA).

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