REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SUMISOLA CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6132

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JUN 30 2003

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DECISION

This case involves a claim for refund or issuance of a tax credit certificate amounting to P11,506,291.37 representing allegedly unutilized input Value - Added Tax for the second quarter of 1998.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, registered with the Securities and Exchange Commission and with the Philippine Economic Zone Authority (PEZA) as an Export Enterprise, and with address at the First Philippine Industrial Park, Sta. Anastacia, Santo Tomas, Batangas. It is likewise registered with the Bureau of Internal Revenue as a value-added tax (VAT) exporter of goods with VAT Registration No. 005-196-648-VAT *(pars. 1 and 2, Joint Stipulation of Facts).*

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As a PEZA-registered Export Enterprise, petitioner is engaged in the manufacturing and exporting of base materials for multi-layer printed circuit board and brominated resin *(par. 3, Joint Stipulation of Facts).*

On August 28, 1998, petitioner filed its quarterly VAT return covering the second quarter of 1998 *(par. 4, Joint Stipulation of Facts),* declaring no output tax but reported input taxes in the total amount of P11,506,291.37 thereby resulting in excess input taxes for the same amount. Of the said P11,506,291.37, P11,135,096.86 pertains to the purchases and importation of capital goods, while P371,194.51 pertains to the purchases of goods and services attributable to petitioner's zero-rated sales *(par. 5, Petition for Review).*

On June 29, 2000, petitioner filed with the Tax Revenue Group of the Department of Finance-One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center its application for tax credit/refund of unapplied and unutilized input VAT for the second quarter of 1998 *(par. 5, Joint Stipulation of Facts).*

Since respondent has not acted upon petitioner's application and in order to toll the running of the two-year prescriptive period, petitioner filed its judicial claim with this court on June 30, 2000.

Respondent filed his Answer on August 10, 2000, and averred the following Special and Affirmative Defenses:

1. Petitioner's alleged claim for tax refund/credit is subject to administrative routinary investigation/examination by respondent's Bureau;

2. Since "taxes are presumed to have been collected in accordance with laws and regulations" *(Caltex Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2871, January 29, 1986)*, the

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petitioner has the burden of proof that the taxes sought to be refunded were erroneously or illegally collected lies on the petitioner;

3. *In Citibank, NA vs. Court of Appeals, 280 SCRA 459 (1997)*, the Supreme Court ruled that:

> "A claimant has the burden of proof to establish the factual basis of his or her claim for tax credit/refund."

Mere allegations of entitlement to refund by petitioner are not enough;

4. Claims for tax refund/tax credit are construed in "strictissimi juris" against the taxpayer *(Commisioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, 30 January 1979, 31 SCRA 95 [1979])*. This is due to the fact the claims for refund/credit partake the nature of an exemption from tax. Thus, it is incumbent upon the petitioner to prove that it is indeed entitled to the refund/credit sought. Failure on the part of the petitioner to prove the same is fatal to its claim for tax credit. He who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications *(Asiatic Petroleum Co. vs. Llamas, 49 Phil. 466);*

5. Granting, without admitting, that petitioner is a Phil. Economic Zone Authority *(PEZA)* registered Ecozone Export Enterprise, then its business is not subject to VAT pursuant to Section 24 of Republic Act No. 7916 in relation to Section 103 of the Tax Code, as amended. As petitioner's business is not subject to VAT, the capital goods and services it alleged to have purchased are considered not used in VAT taxable business. As such, petitioner is not entitled to refund of input taxes on such capital goods pursuant to Section 4.106-1 of Revenue Regulations No. 7-95, and of input taxes on services pursuant to Section 4.103-1 of said regulations;

6. Petitioner must show compliance with the provisions of Section 204(c) and 229 of the 1997 Tax Code on the filing of a written claim for refund within two (2) years from the date of payment of tax.

The following issues have been jointly stipulated by the parties:

1. Whether or not Petitioner has complied with the requirements necessary for the refund of input VAT in the amount of P11,506,291.00 representing the alleged unutilized and unapplied input VAT for the second quarter of 1998;

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2. Whether or not Petitioner has an unutilized and unapplied input VAT for the second quarter of 1998 in the amount of P11,506,291.00;

3. Whether or not Petitioner's claim for refund of alleged unutilized and unapplied input VAT for the second quarter of 1998 is substantiated by documentary evidence; and

4. Whether or not Petitioner is entitled to the refund of amount of P11,506,291.00 as alleged unutilized and unapplied input VAT for the second quarter of 1998 pursuant to Sections 4.103-1 and 4.106-1 of Revenue Regulations No. 7-95.

We resolve to partially grant the claim.

As the issues are interrelated, we shall discuss them jointly.

Petitioner anchored its claim for refund on Section 112(A) and (B) of the 1997 Tax Code, as amended, in relation to Section 4.106-1(b) of Revenue Regulations No. 7-95, quoted hereunder, viz:

"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 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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(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."

"(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 ratable portion corresponding to the taxable operations."

In addition, Section 106(A)(2)(a) of the Tax Code is hereby quoted as follows:

SEC. 106. *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, value-added tax equivalent to ten percent (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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(2) [Zero-rated Sales.] – The following sales by VAT-registered person 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 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).

In order to be entitled to its claim for refund, petitioner must comply with the following basic requirements:

1. That there be a sale of goods;
2. That the sale was made by a VAT-registered person;
3. That the sale qualifies as export sale as defined by law;
4. That the application of a tax credit or refund be made within two (2) years from the filing of the VAT quarterly return;
5. That the foreign exchange proceeds of said export sales are properly accounted for in accordance with the regulations of the BSP; and
6. That the input taxes have not been applied against output taxes. ***(Benguet Corporation vs. CIR, CTA Case No. 5532, Oct. 12, 1999).***

Records show that petitioner filed the quarterly VAT return for the second quarter of 1998 on August 28, 1998. The administrative claim for refund was filed on June 29, 2000 (*Joint Stipulation of Facts, par. 5*) and the judicial claim for refund on June 30, 2000. The two-year prescriptive period should be reckoned from July 25, 1998, the due date of filing for the second quarterly VAT return ***(Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, Resolution, CTA Case No. 5296, July 20, 1998; Air Liquide Philippines, Inc. vs. Commissioner Internal Revenue and Commissioner of Customs, CTA Case No. 5748, promulgated January 23, 2002).***

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Anent the issue of whether or not the input taxes subject of the claim for refund were paid on purchases of its goods and services attributable to export sales, we rule in the negative.

The report of the independent CPA disclosed that petitioner had no export sales as it was still in the pre-operating stage during the period of the instant claim *(Exhibit D)*. Thus, petitioner cannot claim the input VAT on its purchases of goods and services in the amount of P371,194.51 as this amount is not attributable to any zero-rated sale. Section 112(A) in relation to Section 106(2)(a) both of the Tax Code, as amended, presupposes the existence of an export sale which was not proven in the instant case.

Considering that petitioner did not have any export sale during the second quarter of 1998 as it was still at the pre-operating stage, it cannot claim the refund of input taxes paid on goods and services allegedly attributable to export sales for that period. As tax refunds are in the nature of tax exemptions and regarded as in derogation of sovereign authority, it should be construed strictly against the taxpayer. ***(Commissioner of Internal Revenue vs. Tokyo Shipping Co. Ltd, 244 SCRA 332).*** Failure to meet any requirement provided by law is fatal to a claimant's cause of action insofar as tax refunds are concerned.

Regarding the input VAT on capital goods in the amount of P11,135,096.86 *(Exhibit H)*, this court finds the same to be refundable pursuant to Section 112(B) of the Tax Code, as amended.

Petitioner submitted various VAT invoices and official receipts in order to support its claim for input VAT on purchases of capital goods, to wit:

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SUPPLIER	EXHIBIT	REFERENCE NO.	AMOUNT (In Dollars)	INPUT VAT (In Dollars)	INPUT VAT (In Pesos)
Sumicon Philippines Corporation	F-17, F-18	OR0269/I0102	2,635,073.26	241,749.84	9,536,064.18
Sumicon Philippines Corporation	F-19, F-20	OR0280/I0111	439,178.88	40,291.64	1,569,037.04
Canon Marketing (Phils.) Inc.	F-7	SI			29,995.64
Total			**3,074,252.14**	**282,041.48**	**11,135,096.86**

The foregoing invoices and official receipts issued by Sumicon Philippines sufficiently substantiated petitioner's claim for input VAT on capital goods. *(Exhibits "F-17", "F-18", "F-19", and "F-20").* However, the sales invoice issued by Canon Marketing (Phils) Inc. amounting to P29,995.64 had no BIR Permit No. printed thereon which is a violation of the invoicing requirements prescribed under Section 113 of the Tax Code, as amended, in relation to Section 237 of the same code. Hence, for failure to comply with the invoicing requirements, the input VAT on capital goods corresponding to the sales invoice issued by Canon Marketing (Phils.) Inc. cannot be given due course.

As to whether or not the input taxes claimed by petitioner were applied to its output tax, we rule in the negative. While the unutilized input VAT for the second quarter of 1998 was carried-over by petitioner to the 3rd quarter of 1998 up to the 2nd quarter of 2001 *(Exhibits J to W)*, there was no showing that the said unutilized input VAT was applied against its output tax. Further, the same was no longer declared in the 3rd quarter of 2001 as evidenced by the amended Quarterly Value-Added Tax Return for the 3rd quarter of 2001 *(Exhibit PP).*

Respondent, in his Answer, raised the issue that as a Phil. Economic Zone Authority *(PEZA)* registered Ecozone Export Enterprise, its business is not subject to

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VAT pursuant to Section 24 of Republic Act No. 7916 in relation to Section 103 of the Tax Code, as amended. As petitioner's business is not subject to VAT, the capital goods and services it alleged to have purchased are considered not used in VAT taxable business. As such, petitioner is not entitled to claim for the refund of input taxes on such capital goods pursuant to Section 4.106-1 of Revenue Regulations No. 7-95, and of input taxes on services pursuant to Section 4.103-1 of said regulations.

The issue raised by respondent is not one of first impression. The court has ruled on the issue in the case of ***Read Rite Philippines, Inc. (formerly Sunward Technologies Phils., Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 5659, dated September 29, 2000***, pertinent portions of which are hereunder quoted:

> "This Court would like to stress that under Section 23 of Republic Act No. 7916, two different fiscal incentives are granted to an ecozone enterprise, to wit:
>
> > Sec. 23. Fiscal Incentives.- Business establishments operating within the ECOZONE shall be entitled to the fiscal incentives as provided for under the Presidential Decree No. 66, the law creating the Export Processing Zone Authority, <u>**or**</u> those provided for under Book IV of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987.
>
> 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 the 5% preferential tax on gross income earned which is in lieu of national and local taxes; and second, as those provided for under Book IV 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 national and local taxes. <u>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</u>. The

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difference between these 2 sets of fiscal incentives was explained by the Bureau of Internal Revenue in VAT Ruling Nos. 037-98; 043-98; 027-99 and 063-99" (Underlining ours). ***(See also Resolutions in the cases of Seagate Technology (Philippines) vs. Commissioner of Internal Revenue, CTA Case No. 5921, dated September 20, 2000 and Toshiba Information Equipment (Phils) Inc. vs. Commissioner of Internal Revenue CTA Case No. 5762, dated January 17, 2001).***

In fine, petitioner was able to prove the amount of P11,105,101.22 as its unutilized input VAT on capital goods, computed as follows;

Total Amount of Claim		P11,506,291.37
Less: Disallowances per court's verification		
(1) Input VAT attributable to export sales	P371,194.51	
(2) Input VAT on capital goods	29,995.64	401,190.15
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Net Amount Refundable		P11,105,101.22
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WHEREFORE, premises considered, the court finds the instant Petition for Review partly meritorious. Accordingly, respondent is hereby **ORDERED** to **REFUND** or in the alternative, **ISSUE a TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of P11,105,101.22 representing unutilized input VAT on capital goods for the second quarter of 1998.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Judge

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WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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
Associate Judge