REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BATAAN POLYETHYLENE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6147

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

FEB 22 2002

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DECISION

The instant petition seeks the refund or issuance of a tax credit certificate in the amount of P73,274,091.79, allegedly representing unutilized input value-added taxes (VAT) paid by Petitioner on its domestic purchases of capital goods for the period beginning the second quarter of 1998 up to the fourth quarter of 1999.

The facts of the case are as follows:

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission, and existing under and by virtue of Philippine laws, with principal office or place of business located at the 11th Floor, All Asia Capital Center Building, 105 Paseo de Roxas, Makati City (par. 1, Joint Stipulation of Facts and Issues). It is primarily engaged in the general business of the petrochemical industry in any and/or all of its phases and branches, such as but not limited to polyethylene resins, to produce, manufacture, process, convert, fabricate, store, market, distribute, buy, sell, barter, import, export, or otherwise deal in petrochemicals and their-by-products, to purchase, acquire, research, own, hold, lease, acquire engineering and sales know-how, construct, maintain, operate machinery, plants, factories, patent rights, equipment or appliances, necessary, suitable or incidental to the production, manufacture, processing or making of petrochemicals and their by-products (par. 3, Joint Stipulation of Facts and Issues).

Petitioner is a value-added tax (VAT) registered taxpayer with VAT Registration/Taxpayer Identification No. 047-004-657-377-V (par. 4, Joint Stipulation of Facts and Issues). From the second quarter of 1998 up to the fourth quarter of 1999, Petitioner filed its quarterly VAT returns (BIR Form No. 2550Q) within the period prescribed by the Tax Code (par. 5, Joint Stipulation of Facts and Issues). On July 24, 2000, however, these returns were amended, disclosing the following entries:

			Input VAT		
Exhibit	1998	Output VAT	Carried over from previous quarter	For the quarter	Excess
A	2nd qtr	nil	P 10,874,394.46	P 6,685,382.00	P 17,559,776.46
B	3rd qtr	nil	17,559,776.46	5,675,498.35	23,235,274.81
C	4th qtr	nil	23,235,274.81	32,049,828.40	55,285,103.21
	1999				
D	1st qtr	nil	55,285,103.21	32,077,233.15	87,362,336.36
E	2nd qtr	nil	87,362,336.36	23,203,352.98	110,565,689.34
F	3rd qtr	nil	110,565,689.34	24,862,815.63	135,428,504.97
G	4th qtr	nil	135,428,504.97	23,144,500.02	158,573,004.99
			Total:	P147,698,610.53	

In its petition, Petitioner alleged that the above total input VAT payments of P147,698,610.53 included input VAT payments on capital goods in the amount of P73,274,091.79, broken down as follows:

Exhibit	1998	Input VAT Paid on Capital Goods
K-a	2nd qtr	P 5,844,415.59
K-b	3rd qtr	161,308.22
K-c	4th qtr	429,460.32

	1999	
K-d	1st qtr	2,886,183.15
K-e	2nd qtr	19,324,315.31
K-f	3rd qtr	22,337,087.84
K-g	4th qtr	22,291,321.36
		P 73,274,091.79

On July 24, 2000, Petitioner filed with Revenue District Office No. 47 – East Makati, Revenue Region No. 8 – Makati City, of the Bureau of Internal Revenue, an administrative claim for the issuance of a tax credit certificate representing unutilized input VAT on capital goods for the period covering the second quarter of 1998 to the first quarter of 2000 in the total amount of P80,834,101.01(par. 6, Joint Stipulation of Facts). According to Petitioner, it had no sales and output VAT liability during the said period because its commercial operations started only in August, 2000 (TSN, February 12, 2001). Consequently, it was unable to utilize the reported input VAT payments during the second quarter of 1998 to the fourth quarter of 1999 including the amount of P73,274,091.79 paid on domestic purchases of capital goods.

The following day, July 25, 2000, Petitioner elevated the present case to this Court, citing as legal basis therefor, Section 112 (B) of the Tax Code, the pertinent provisions of which state:

> "**Section 112**. *Refunds or Tax Credits of Input Tax*. -
>
> x x x
>
> (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.

x x x"

In his Answer filed through registered mail on September 8, 2000, Respondent claimed by way of Special and Affirmative Defenses that:

"4. Assuming without admitting that Petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue.

5. Petitioner miserably failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.

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

7. 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.

8. 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, as well as the requirements provided for in Revenue Regulations No. 5-87 as amended by Revenue Regulations No. 3-88.

9. 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**)."

The issues for resolution have been stipulated by the parties to be as follows:

1. Whether or not the Petitioner has unutilized input VAT paid on capital goods for the period covering the 2nd quarter of 1998 to the 4th quarter of 1999 in the total amount of P73,274,091.79;

2. Whether or not the above P73,274,091.79 input VAT on capital goods has not been applied/credited against any output VAT;

3. Whether or not the purchases on which the above P73,274,091.79 input VAT was paid are considered capital goods;

4. Whether or not the purchases on which the above P73,274,091.79 input VAT was paid are used, directly or indirectly, by Petitioner in its VAT taxable business;

5. Whether or not the Petitioner is entitled to a refund or tax credit of its unutilized input VAT on capital goods for the period covering the 2nd quarter of 1998 to the 4th quarter of 1999 in the total amount of P73,274,091.79.

Since the issues are interrelated and may be simplified into whether or not, on the basis of the evidence presented, Petitioner is entitled to a refund or tax credit of its unutilized input VAT on capital goods for the period covering the second quarter of 1998 to the fourth quarter of 1999 in the total amount of P73,274,091.79, the same shall be discussed jointly.

Section 112(B) of the Tax Code, in relation to Section 4.104-5 of Revenue Regulations No. 7-95, provides for the requirements in order to be entitled to a refund/tax credit of unutilized input VAT on capital goods:

1.) it is a VAT registered entity;

2.) it paid input VAT on capital goods purchased;

3.) its input VAT payments on capital goods are duly supported by VAT invoices or official receipts;

4.) it did not apply the input VAT payments on capital goods against any output VAT liability during and in the succeeding period of claim; and

5.) both the administrative and judicial claims for refund were filed within the two-year prescriptive period.

That Petitioner is a VAT-registered entity is conceded (par. 4, Joint Stipulation of Facts). The various invoices and official receipts of Petitioner's suppliers (Exhibits K-1 to K-31-b, inclusive) reveal that for the second quarter of 1998 until the fourth quarter of

1999, Petitioner paid input taxes in the total amount of P73,274,091.79 (Exhibits K, K-a to K-h, inclusive). These documents as well as the testimonies of Petitioner's witnesses (TSN, February 12 and 21, 2001) clearly establish that the input taxes of P73,274,091.79 were incurred or paid in connection with the construction of its petrochemical plant, acquisition of computer units and accessories, acquisition of accounting systems software packages including charges for training, project management and consultation services for the implementation and operation of the said accounting systems and installation of office cubicles, partitions, dividers. Said purchases can be classified as capital goods as defined in Section 4.106-1(b) of Revenue Regulations No. 7-95, thus:

> "*Capital goods or properties* refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29 (f), used directly or indirectly in the production or sale of taxable goods or services."

Of the invoices and official receipts submitted by Petitioner, the Court noted that some of these supporting documents with input taxes totalling P388,432.87 were without BIR permit:

Exh.	Supplier	Invoice Number	Invoice Date	Invoice Amount	Claimed Input VAT
K-12	Baan Business Sys., Phils., Inc.	98-003	10/6/98	P 1,705,391.68	P 155,035.61
K-16	Questronix Corporation	3515	4/14/99	969,493.39	88,135.76
K-18	Questronix Corporation	3542	5/7/99	1,597,876.50	145,261.50
				Total:	P 388,432.87

We, therefore, disallow the amount of P388,432.87 from Petitioner's claim for failure to meet the invoicing requirements provided for under Section 4.104-5 of Revenue Regulations No. 7-95.

Records likewise show that the claimed input VAT payments of P73,274,091.79 were not applied against any output VAT liability during and in the succeeding period of the claim. Petitioner's amended quarterly VAT returns for the second quarter of 1998 to the fourth quarter of 1999 would show that Petitioner had no output VAT liability against which the claimed input VAT of P73,274,091.79 may be applied or credited (Exhibits A to G, inclusive of sub-markings). Although the input taxes of P73,274,091.79 were carried over until the third quarter of 2000 (Exhibits H to J, inclusive), the same were included in the input taxes of P80,834,101.01 which were deducted as "Any VAT Refund/TCC Claimed" (Exhibit J-2) from the total available input taxes of P326,319,080.75 as of the third quarter of 2000. The resulting excess input taxes of P231,977,230.74 (line item#28 of Exhibit J) to be carried-over to the succeeding fourth quarter of 2000 do not include the claimed input VAT of P73,274,091.79.

As to whether or not both the administrative and judicial claims for refund were filed within the two-year prescriptive period, records show that part of the claimed input VAT payments of P73,274,091.79 had already prescribed. As correctly cited by Petitioner, in this Court's **Resolution dated July 20, 1998** in the case **of Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5296**, the counting of the two-year prescriptive period starts from the date of filing of the quarterly VAT return. It is to be noted that the earliest quarter covered by the subject claim is the second quarter of 1998. Since Petitioner did not present its original quarterly VAT return for the second quarter of 1998, the Court cannot ascertain the actual date of filing of the said return. Thus, We count the two-year period from July 25, 1998, the last day prescribed under Section 114(A) of the Tax Code for the filing of the 1998 second quarterly VAT return. Considering that the year 2000 is a leap year, Petitioner had until July 24, 2000 within which to file its administrative and judicial claims for refund. Since the judicial claim for refund was filed only on July 25, 2000, which is beyond the two-year prescriptive period, We find Petitioner's claim for the second quarter of 1998 in the amount of P5,844,415.59 as filed out of time. Thus, only the claim pertaining to the third quarter of 1998 to the fourth quarter of 1999 was filed within the prescriptive period.

Finally, it bears stressing that Respondent submitted this case for decision without presenting any controverting evidence. He also failed to file his Memorandum within the period granted, prompting the Court to decide the case on the basis of the evidence adduced solely by the Petitioner.

In sum, Petitioner was able to prove that it is entitled to a refund or issuance of a tax credit certificate corresponding to its input VAT payments for the third quarter of 1998 to the fourth quarter of 1999 in the amount of P67,041,243.33 computed as follows:

Claimed Input VAT on Capital Goods

Year	Quarter	Exhibit		
1998	2rd qtr	K-a	P 5,844,415.59	
	3rd qtr	K-b	161,308.22	
	4th qtr	K-c	429,460.32	
1999	1st qtr	K-d	2,886,183.15	
	2nd qtr	K-e	19,324,315.31	
	3rd qtr	K-f	22,337,087.84	
	4th qtr	K-g	22,291,321.36	P 73,274,091.79
Less: Disallowances				
	1.) Prescribed claim – 2nd quarter of 1998		P 5,844,415.59	
	2.) Invoices without BIR permit		388,432.87	6,232,848.46
Refundable Input VAT on Capital Goods				P 67,041,243.33

WHEREFORE, in the light of all the foregoing, the Court finds the instant petition meritorious and in accordance with law. Accordingly, Respondent is hereby **ORDERED**

to **REFUND** or **ISSUE a TAX CREDIT CERTIFICATE** to Petitioner in the amount of P67,041,243.33 representing input value-added tax paid by Petitioner on its domestic purchases of capital goods from the third quarter of 1998 up to the fourth quarter of 1999.

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