REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SAKAMOTO ORIENT CHEMICALS CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5192

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 04 1999

x - x

DECISION

This is a petition seeking for the refund of the amount of P385,340.55 allegedly representing unutilized input tax payments made during the year 1993.

The facts of the case are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws. It is registered with the Bureau of Internal Revenue as a VAT taxpayer under VAT Certificate of Registration No. 32-9-004698 (Exhs. A and S). Likewise, it is duly registered with the Board of Investments (BOI) as a non-pioneer export producer of refined glycerine under BOI Certificate of Registration No. EP 88-872 issued on December 27, 1988 (Exh. B).

For taxable year 1993, petitioner filed its quarterly VAT returns as follows:

Period Covered	Date Filed	Input Tax Payments	Exh.
Jan.-Mar. 1993	4-20-93	₱ 87,390.99	D
Apr.-June 1993	7-20-93	177,678.46	E
July-Sept. 1993	10-20-93	41,355.82	F
Oct.-Dec. 1993	1-20-94	46,947.62	G

On the basis of Sections 100 and 106(a) of the Tax Code, to wit:

> "**SECTION 100.** ***Value-added tax on sale of goods.*** - (a) *Rate and base of tax.* There shall be levied, assessed and collected on every sale, barter or exchange of goods, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods sold, bartered or exchanged, such tax to be paid by the seller or transferor: *Provided*, that the following sales by VAT-registered persons shall be subject to 0%:
>
> (1) Export sales. x x x."

> "**SECTION 106.** ***Refunds or tax credits of input tax.*** - (a) *Export Sales.* - An exporter who is a VAT-registered person may within two years from the date of exportation, apply for the issuance of a tax credit certificate or refund of the input tax attributable to the goods exported, to the extent that such input tax has not been applied to output tax and upon presentation of proof that the foreign exchange proceeds has been accounted for in accordance with the regulations of the Central Bank of the Philippines. x x x",

petitioner, on August 23, 1994, filed with the BIR a written application for the refund of the amount of ₱385,340.55, representing its unutilized input VAT for the year 1993 (Exh. Z). As there was no immediate action on the said claim, the instant petition was filed on

February 2, 1995 to toll the running of the two-year prescriptive period.

In her Answer, respondent raised the following Special and Affirmative Defenses:

> 5. The petition states no cause of action as it does not allege the date/s when the taxes sought to be refunded were actually paid. (Manufacturer's Bank and Trust Company as Trustee of Gen. Trust Plan vs. Commissioner of Internal Revenue, CTA Case No. 1953, November 29, 1965);
>
> 6. Petitioner's claim for refund of alleged excess VAT input taxes is still under investigation by Respondent's bureau;
>
> 7. Petitioner has failed to show compliance with the provisions of Section 16(c)(3) of Revenue Regulations No. 5-87 as amended by Revenue Regulations No. 3-88 which provide as follows:
>
> > "Section 16. <u>Refunds or Tax Credit on input tax. - x x x.</u>
> >
> > xxx xxx xxx
> >
> > "(c) <u>Claims for tax credit/refund.</u> - Application for tax credit/refund of value added tax paid (BIR Form No. 2552) shall be filed with the Revenue District Office of the City or Municipality where the principal place of business of the applicant is located or directly with the Commissioner, Attention: VAT Division.
> >
> > A photocopy of the purchase invoice or receipt evidencing the value added tax paid shall be submitted together with the application. The original copy of the said invoice/receipt however, shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or refund.

> In addition the following documents shall be attached whenever applicable."
>
> xxx xxx xxx
>
> (3) Effectively zero-rated sale of goods and services.
>
> (i) Photocopy of approved application for zero rate if filing for the first time.
>
> (ii) Sales invoice or receipt showing name of person or entity to whom the sale of goods or services were delivered, date of delivery amount of consideration and description of goods or services."

8. The input taxes allegedly paid on its local purchases are not supported by invoices pursuant to Section 108 of the Tax Code.

9. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes. (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95, 1970; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35, 1979);

10. A taxpayer who claims to be exempt from the payment of a particular tax must do so under clean and unmistakable terms found in the statute (Asiatic Petroleum vs. Llanes, 49 Phil. 466-477; Union Garment Co., Inc. vs. Court of Tax Appeals, 4 SCRA 304, 1962; Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue, 20 SCRA 1056, 1967) which is not so in this case;

11. All told, the petition does not state a cause of action.

That petitioner is a duly registered exporter subject to zero rate on taxable sales is not controverted (Exh. 2).

The lone issue, therefore, is whether or not petitioner was able to fully substantiate its claim so as to be entitled to the relief sought.

To support its case, petitioner presented the following:

Exhs.	Description	Purpose
A & S	VAT Registration Certificate bearing Reg. No. 32-9-004698 of Sakamoto Orient Chemicals ("Sakamoto" for brevity)	To prove that petitioner is registered as a VAT taxpayer and is, therefore, entitled to claim an input tax credit on purchase attributable to its zero-rated export sales
B	BOI Certificate of Registration of Sakamoto, bearing no. EP 88-872	To prove that petitioner is registered with the BOI as an export producer of refined glycerine
C to G	Quarterly VAT Returns of petitioner for 1993	To prove the amount of input tax refundable by petitioner for the quarter
G-1 to G-4	Quarterly VAT Returns of petitioner for 1994	To prove that petitioner did not apply the unutilized input VAT being claimed for 1993
H	Application for Tax Credit/Refund of VAT of Sakamoto signed by Simon Cezar F. Cabañas	To prove that petitio- duly filed said application within the two-year period required by law
I to R	Schedules of Input VAT Payments	To prove the input VAT payments made for each month
T	Certificate of Registration (BIR Form 1556) of Sakamoto, bearing	To prove that petitioner is a VAT-registered taxpayer

	RDO Control No. 94-500-000285	
U to Y	Certifications issued by various banks stating that Sakamoto has coursed through them the export proceeds	To prove that petitioner earned specified amounts as export proceeds which were inwardly remitted thru the Philippine banking system in accordance with CB rules & regulations
Z	Letter dated August 23, 1994 of Mr. Simon Cezar F. Cabañas to the Revenue District Officer, RDO No. 32, BIR East Makati	To prove that petitioner filed an administrative claim for refund with the BIR within the two-year period prescribed by law
G-5 to G-8	Quarterly VAT Returns of petitioner for 1995	To prove that petitioner did not apply the unutilized input VAT being claimed for 1993
Official receipts & invoices		To prove the fact of payment of input VAT

Respondent, on her part, offered the following evidence:

Exh. 1 - Letter of Authority dated October 12, 1994 (p. 640, BIR Records)

Exh. 2 - Memorandum Report dated January 9, 1995 (p. 659, BIR Records).

After an examination of the aforesaid evidence and the BIR Records of this case, We are convinced that petitioner is entitled to a refund. Petitioner has complied with the rules and regulations prescribed by the Central Bank in reference to the foreign currency payments inwardly remitted to the country (Exhs. U to Y). Petitioner's claim was likewise filed within the two-year prescriptive period and was duly supported by invoices and receipts. And significantly, respondent herself recommended a refund to petitioner although subject to certain adjustments. Thus, We are constrained to grant a reduced amount to petitioner, after taking into consideration the following disallowances made by herein respondent.

Reference		Input Tax Claimed	Remarks
93-7	₱	157.64	1992 transaction/purchase
93-47		836.36	1992 transaction/purchase
93-48		4,304.73	1992 (Sept.) Security services
93-79		51.82	Not valid VAT invoice/delivery receipt only
93-96		218.42	No date of invoice/undated transaction
93-119		81.82	No VAT no. indicated/no TIN
93-120		981.82	Prov. receipt/not valid VAT invoice
93-129		545.45	VAT No./TIN not stamped handwritten only
93-153		227.09	Sales returns - unaccounted
93-156		30,454.55	1989 purchase - 2 year period expired
93-157		30,909.00	- do -
93-158		39,090.91	- do - ; 1991 purchase
93-223		1,485.45	No BIR permit
93-291		3,409.09	Input tax claimed based on net payment (Deposit deducted)
93-303		4,304.73	Billing for 1994; OR dated 2-24-94
		₱117,058.88	(p. 639, BIR records)

We also agree with respondent's findings (p. 733, BIR records) that there was an overstatement of claim as follows:

Per VAT Returns	₱353,372.90
Per Application	385,340.55
Overstatement	₱ 31,967.65

WHEREFORE, in view of the foregoing, respondent is hereby **ORDERED** to **REFUND** to petitioner the amount of ₱236,314.02, computed as follows:

Amount of claim			₱385,340.55
Less:	Disallowances	₱117,058.88	
	Overstatement	31,967.65	149,026.53
Amount Refundable			₱236,314.02

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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