REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TOKUMI ELECTRONICS PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5639

COMMISSIONER OF INTERNAL REVENUE,

Promulgated:
JAN 06 2000

x - x

DECISION

This Petition for Review is seeking for the refund or the issuance of a tax credit certificate in favor of the Petitioner in the original amount of P3,419,766.80 representing the Value-Added Taxes (VAT, for brevity) for the purchase of Domestic Goods and Services for the period January 1, 1996 To December 31, 1996. This amount was reduced to P2,169,829.71 in petitioner's memorandum.

The facts based on the records and pleadings of this case are as follows:

Petitioner is a domestic corporation organized and existing under the laws of the Philippines. It is engaged in the business of manufacturing, exporting, buying and selling-at-wholesale of speakers, assemblies, microphones, headphones and other electronic goods of a similar nature (Petitioner's memo., CTA records p. 107). It is registered with the Bureau of Internal Revenue as VAT registered enterprise with VAT Registration Certificate No. 001-504-637-V effective April 28, 1992 (Exhibit C). Subsequently, petitioner was issued a new Value-Added Tax Registration Certificate with RDO Control No. 96-540-001516 effective February 13, 1996 (Exhibit B). Petitioner is likewise registered with the Export Processing Zone Authority (EPZA), having been issued EPZA Certificate of Registration No. 92-024 on April 8, 1992 (Exhibit A.)

For the period January 1, 1996 to December 31, 1996, petitioner made numerous domestic purchases of goods and services in the total amount of P34,197,668.00 which purchases it claimed is directly related to its export-sales operation. Petitioner alleges that out of the P34,197,668 it incurred, it paid an INPUT VAT thereon in the sum of P3,419,766.80 (Exhibit E to G). And for the same period covered, petitioner generated zero-rated sales in the total amount of P809,925,363.65 (Exhibit E to G), the details of which are broken down as follows:

PERIOD COVERED	ZERO RATED EXPORT SALES	DOMESTIC PURCHASES OF TAXABLE GOODS/SERVICES	VAT INPUT TAXES
Jan. 1 to Mar. 31, 1996	P165,991,178.35	P10,927,729.60	P1,092,772.96
Apr. 1, to June 30, 1996	184,123,778.42	8,637,064.20	863,706.42
Jul. 1 to Sept. 30, 1996	225,758,472.28	6,443,861.80	644,386.18
Oct.1 to Dec. 31, 1996	234,051,934.60	8,189,012.40	818,901.24
TOTAL	**P809,925,363.65**	**P34,197,668.00**	**P3,419,766.80**

Petitioner alleges that the zero-rated export sales of P809,925,363.65 were paid in acceptable foreign currency inwardly remitted to the Philippines and accounted for in accordance with existing regulations of the Bangko Sentral ng Pilipinas pursuant to Section 100 (a) (2) (A) of the Tax Code.

Since petitioner did not enter into any transactions subject to value-added tax during the same period in question it was not able to credit its input taxes against output taxes. Furthermore, petitioner claims that the 1996 input taxes were also not credited against output taxes for the period prior to or after the calendar year 1997 (Exhibits V to X).

In effect, petitioner incurred an unapplied or excess input VAT in the amount of P2,169,829.71.

Thus, on April 17, 1998, petitioner filed an application for tax refund/credit of the excess input VAT with Revenue District No. 54 (Trece Martirez City, Cavite) of the Bureau of Internal Revenue (Exhibit L).

The aforesaid application for refund was not acted upon by the respondent, hence, on April 20, 1998 petitioner filed with this court the instant petition for review.

In her Answer, respondent merely admitted or denied petitioner's allegations for lack of knowledge or information sufficient to form a belief as to the truth thereof. She then raised the following Special and Affirmative Defenses to wit.:

> "(4) Petitioner's claim for refund had already been barred by prescription;
>
> (5) Petitioner's claim for refund is still undergoing administrative routinary investigation/examination by Respondent's Bureau;
>
> (6) Petitioner miserably failed to demonstrate that the total amount of P3,419,766.80 claimed as refundable VAT input taxes, were erroneously or legally collected or that the same are properly documented;
>
> (7) Taxes paid and collected are presumed to have been made in accordance with law, hence not refundable;
>
> (8) In an action for tax refund, the burden is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund;
>
> (9) It is incumbent upon the petitioner to show that it has complied with the provisions of Sections 204 in relation to Section 230 (now Section 229) of the Tax Code;
>
> (10) Well-settled is the rule that claims for refund/tax credit are construed in strictissimi juris against the taxpayer as it partakes the nature of exemption from tax and it is incumbent upon the petitioner to show that it is entitled thereto under the law.

To prove its entitlement to the claim for refund, petitioner assiduously presented the following evidence:

1. EPZA Certificate of Registration (Exh. A)

2. Petitioner's VAT Registration Certificate (Exhs. B and C)

3. Quarterly VAT returns for the period January 1, 1996 to December 31, 1996 (Exhs. D, E, F, G)

4. Quarterly VAT returns for 1997 and amended returns for 1997 (Exhs. H, I, J, K, U, V, W and X)

5. Letter-claim for refund with the BIR (Exh. L)

6. Letter-certification of the auditing firm Punongbayan and Araullo dated October 12, 1998 (Exh. M)

7. Petitioner's summary of Input Taxes Paid for the period Jan. 1, 1996 to Dec. 31, 1996 (Exh. N)

8. Petitioner's Schedule of Local Purchases and Input VAT Paid and the Exceptions (Exhs. O and P)

9. Petitioner's summary and schedule of Export Sales (Exhs. Q and R)

10. Various Sales Services and Official Receipts for Domestic purchases and Export Sales (Exhs. S to S-3925 and T to T-3195).

This case was submitted for decision sans the memorandum of the Respondent.

The issue presented before Us is whether or not petitioner is entitled to the refund of the excess input taxes paid in the total amount of P2,169,829.71 for the period January 1, 1996 to December 31, 1996.

In order to determine whether the action filed by petitioner is meritorious or not, it is worthwhile to take note of the applicable provision in the Tax Code which pertains to claims for refund of input tax on export sales. Thus, Section 106 of the Tax Code provides as follows:

> "***Section 106. Refunds or Tax Credits of Input Tax.- (a) Export Sales.***- An exporter who is a VAT-registered person may within 2 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 <u>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.</u> (underscoring supplied).

Section 2 (c)(1) of Revenue Regulations No. 3-88, on the other hand, specifically enumerates the requirements for the issuance of tax credit certificate or tax refund of input taxes previously paid by a zero-rated taxpayer engaged in sale of goods for export, to quote:

> "(c) claims for tax credits/refunds. – 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 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:
>
> 1. Export Sales
>
> > i) photocopy of export document showing the amount of export and the date and destination of the goods exported. With respect to foreign currency denominated sale, the photocopy of the invoice or receipt evidencing the sale of the goods, as well as the name of 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 regulation."

Except for one substantial requirement, petitioner was able to meet all the requirements laid down by the above quoted provisions.

First, petitioner duly established that it is a VAT-registered person with a VAT Registration Certificate No. 96-540-001516 effective February 13, 1996 (Exh. B) issued by Respondent Bureau.

Secondly, petitioner has proven the fact that this action was filed within the two-year prescriptive period required by law. Records show that petitioner filed an application for refund with the BIR (Exh. L) of its unutilized input taxes for taxable year 1996 on April 17, 1998. The instant petition for Review was filed on April 20, 1998. Clearly, both dates of filing fall within the 2-year prescriptive period commencing on April 12, 1996, the date when the quarterly VAT return for the first quarter of 1996 was filed (Exh. D.)

Thirdly, petitioner was able to prove and substantiate the fact of payment of Value Added Tax for the purchase of Domestic Goods and Services through the original sales invoices and/or official receipts which is certified to by the commissioner appointed by this Court. These input taxes paid on capital goods for taxable year 1996 remained unapplied against the succeeding year output tax liabilities of petitioner as shown by the amended quarterly VAT returns (Exhs. U, V, W and X)

The problem lies with the substantiation of petitioner's alleged zero-rated export sales. Petitioner committed one substantial mistake which is very fatal to its claim for refund. A careful scrutiny of each of the evidence reveals that there are no bank credit memos included in the aforesaid exhibits.

These bank credit memos are necessary in order to prove that there are foreign currency inward remittances pertaining to the export sales. Without these documents, all invoices/receipts and other evidence presented by petitioner would prove futile since there would be no other means of verifying whether the foreign exchange proceeds has been accounted for in accordance with the regulations of the "Banko Sentral ng Pilipinas." Furthermore, mere submission of VAT invoices/receipts and export documents, without the accompanying bank credit memos, even if the auditing procedure is certified to by an Independent Certified Public Accountant, would not suffice to establish the truthfulness of the amount of export sales involved.

Thus, for failure of petitioner to present the bank credit memos as required by Section 106 of the Tax Code and Revenue Regulations No. 3-88, Section 2 (c) (1), this Court is inclined to deny the instant Petition for Review.

WHEREFORE, in view of the foregoing, petitioner's claim for issuance of tax credit certificate or refund is hereby **DENIED** due to insufficiency of evidence. No pronouncement as to cost.

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 this 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