REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SUCDEN PHILIPPINES, INC., Petitioner,	CTA Case No. 9754
	Members:
-versus-	DEL ROSARIO, *P.J., Chairperson* FABON-VICTORINO, *and* MANAHAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 15 2020 10:43 am

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DECISION

***Fabon-Victorino, J.*:**

In this *Petition for Review*[1] filed on January 22, 2018, petitioner Sucden Philippines, Inc. seeks to refund the amount of ₱13,424,208.00, allegedly representing erroneously, excessively, illegally collected advanced output value-added tax (VAT) on refined sugar subsequently sold to Del Monte Philippines, Inc.

The facts as established during the trial of the case are as follows.

Petitioner is a domestic corporation, with business address at Unit 2506, 25th Floor, Orient Square Buiding, Don F. Ortigas Jr. Road, Ortigas Center, Pasig City.[2]

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR) with the power to act

[1] Docket, pp. 10 to 39.
[2] Exhibit "P-1", docket, pp. 918 to 931.

on claims for refund or credit, with office address at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

In 2016, petitioner sold 80,102 bags of refined sugar to Del Monte Philippines, Inc. (Del Monte), a Philippine Economic Zone Authority (PEZA) registered enterprise with Registration Certificate No. 07-68.

Of the sold 80,102 bags of refined sugar, 79,906 bags were allegedly sourced from Victorias Milling Company, Inc. (Victorias) where petitioner paid ₱13,424,208.00 as Advance Output VAT to the BIR as a precondition for the release of the said number of bags of refined sugar. Details of the said amount are as follows:

Date Paid	eFPS Filing Ref. No.	Payment Confirmation No.	Date of Certificate of Advance Payment of VAT	lkg-bags of Refined Sugar	Amount of Advance Output VAT
22-Jan-16	291600013790992	1222016142004219	29-Jan-16	20,000	₱ 3,360,000.00
23-Feb-16	291600014403020	223201615465303	26-Feb-16	40,019	6,723,192.00
03-Aug-16	291600016276979	8032016145834797	05-Aug-16	19,887	3,341,016.00
TOTAL				79,906	₱13,424,208.00

On January 19, 2018, petitioner filed an administrative claim[4] for refund with respondent, claiming that the Advance Output VAT of ₱13,424,208.00 on the refined sugar subsequently sold to Del Monte was erroneously paid/collected.

On January 22, 2018, petitioner elevated its claim for refund to the Court *via* the instant *Petition for Review* alleging inaction on the part of respondent.

In his Answer,[5] respondent counters that there was no erroneous, illegal, or excessive collection of tax from petitioner as the Advance Output Taxes were paid pursuant to valid regulations. Assuming that petitioner is entitled to a refund, petitioner's cause of action is improper. According to respondent, petitioner's claim for refund should be for unutilized input taxes and not for erroneous payment.

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[3] Par. 1.01, *Joint Stipulation of Facts and Issues* (JSFI), docket, p. 791.
[4] Exhibit "P-4", docket, pp. 935-960.
[5] Docket, pp. 381 to 385.

Further, petitioner allegedly failed to show that it has fully complied with the requirements for a claim for refund as it failed to attach copies of its Certificate of Advance Payment of VAT/Percentage Tax and payment form to the Monthly/Quarterly return to substantiate its claim for credit of advance VAT/Percentage Tax payment.

Finally, respondent puts premium on the tenet that the burden of proof rests upon the taxpayer-claimant such as petitioner, to establish by sufficient and competent evidence its entitlement to a claim for refund/credit. Failure to do so is fatal to its cause.

On June 21, 2018, the parties filed their *Joint Stipulation of Facts and Issues*[6] on the basis of which a *Pre-Trial Order*[7] was issued thereby terminating the pre-trial proceeding.

Trial ensued during which petitioner presented its lone witness, Cheryl M. Gaanan, to prove its allegations in its Petition for Review.

By way of a Judicial Affidavit,[8] **Cheryl M. Gaanan** testified that she a Director and Controller of petitioner. As Controller, she is in charge with the preparation and maintenance of the books of accounts, and tax and financial records of petitioner.

She is familiar with the instant case since she prepared the documents filed with the Petition for Review. According to her, petitioner is engaged in the business of general brokerage, commission agency, forwarding and export as shown in its Amended Articles of Incorporation. It also imports, exports, buys, sells at wholesale, acquires, and disposes of and generally deals in, at wholesale, goods, wares, and merchandise of every class and description, including raw and refined sugar.

[6] Docket, pp. 791 to 804.
[7] Docket, pp. 815 to 829.
[8] Exhibit "P-28", docket, pp. 838-870.

From February 10, 2016 to September 24, 2016, petitioner sold a total of 80,102 bags of refined sugar to Del Monte for an aggregate amount of ₱188,113,879.50, as evidenced by the Sales Invoices and Collection Receipts that petitioner issued in favor of Del Monte. Such sale of refined sugar to Del Monte was subject to zero-rated VAT since Del Monte was a PEZA-registered enterprise. Out of the sold 80,102 bags of refined sugar, 79,906 bags were sourced from Victorias, while the remaining bags were purchased from other sources.

From the 79,906 bags of refined sugar purchased from Victorias, respondent collected the amount of ₱13,424,208.00 as Advance Output VAT pursuant to Section 6 of Revenue Regulations (RR) No. 08-2015, which requires the presentation of proof of payment of the Advance Output VAT to Victorias before the vendor could release the purchased bags of refined sugar to petitioner. To prove payment of the said Advance Output VAT to respondent, the witness presented several BIR Payment Forms (BIR Form No. 0605) filed through Electronic Filing and Payment System (eFPS), Certifications from the BIR confirming petitioner's payment of the VAT amounting to ₱13,424,208.00 which were required for securing the Certificate of Advance Payment on Refined Sugar.

The witness further testified that the Advance Output VAT in the aggregate amount of ₱13,424,208.00 was reported as part of the overpayment of ₱19,724,419.21 in petitioner's Quarterly VAT Return for the fourth quarter of taxable year (TY) 2016. The said overpayment of ₱19,724,419.21 for TY 2016 was then carried over to the Monthly VAT Declaration for January 2017, and was added to the excess input tax attributable to sales subject to VAT in the subsequent VAT Declarations and Returns of petitioner for the first eleven (11) months of TY 2017, in the accumulated amount of ₱25,273,333.94.

Thereafter, the Advance Output VAT from the refined sugar sold to Del Monte in the aggregate amount of ₱13,424,208.00 was reported as a reduction from the allowable input tax in line 23D of petitioner's Amended Quarterly VAT Return for the fourth quarter of TY 2017. The witness claimed that the said amount was deducted from the allowable input tax in petitioner's Amended Quarterly VAT Return for the fourth quarter of 2017 as it was the subject of an administrative claim for refund of Advance Output VAT erroneously or excessively collected by the BIR. Petitioner believes that the Advance Output VAT paid on the refined sugar sold to Del Monte was erroneously collected since Del Monte, a PEZA-registered enterprise, thus, qualified for VAT zero-rating on its purchases from local suppliers of goods, properties and services in conjunction with its PEZA-registered activities.

Petitioner rested its case with the filing of its formal offer[9] of exhibits, per Resolution[10] dated November 20, 2018.

Respondent waived presentation of evidence and prayed for thirty (30) days to file his Memorandum[11] which the Court granted in the Resolution[12] dated February 22, 2019.

THE ISSUE

As stipulated by the parties, the lone issue for the resolution of the Court is as follows:

> Whether Petitioner is entitled to a refund of the aggregate amount of **Thirteen Million Four Hundred Twenty-Four Thousand Two Hundred Eight Pesos (₱13,424,208.00)** subject of the instant Petition.[13]

THE COURT'S RULING

Paramount in refund cases is the timeliness of the filing of the case. Sections 204(C) and 229 of the 1997 National Internal Revenue Code (NIRC), as amended, relevantly

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[9] Docket, pp. 899 to 915.
[10] Docket, pp. 1291 to 1293.
[11] Docket, pp. 1298 to 1300.
[12] Resolution dated February 22, 2019, docket, p. 1302.
[13] Statement of the Issues, JSFI, docket, pp. 791 to 792.

provide the periods for filing the administrative and judicial claims for refund with the BIR and with the Court of Tax Appeals (CTA), respectively, to wit:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: Provided, however, that a return filed showing an overpayment shall be considered as a written claim for credit or refund. (*Emphasis supplied*)
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> SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the**

> **expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (*Emphasis supplied*)

Sections 204 (C) and 229 of the 1997 NIRC, as amended, govern the refund or credit of internal revenue taxes collected erroneously or illegally, pursuant to the Tax Code.[14] Section 204(C) applies to administrative claims filed with the BIR, while Section 229 refers to judicial actions for the recovery of the tax or penalty. Both, however, must be filed within the two-year period from the date of payment of the tax.[15]

Applying the said provisions, the Supreme Court in the case of *Commissioner of Internal Revenue vs. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative* (*UCSFA-MPC* case),[16] declared, thus:

> "UCSFA-MPC's claim for refund – grounded as it is on payments of **advance VAT** alleged to have been **illegally and erroneously** collected from November 15, 2007 to February 13, 2009 – is governed by Sections 204(C) and 229 of the NIRC. These provisions are clear: **within two years from the date of payment of tax, the claimant must first file an administrative claim with the CIR before filing its judicial claim with the courts of law. Both claims must be filed within a two-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional.**

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[14] *Commissioner of Internal Revenue vs. Central Azucarera Don Pedro*, G.R. No. L-28467, February 28, 1973, citing *Commissioner of Internal Revenue vs. Insular Lumber Co.*, G.R. No. L-24221, December 11, 1967.

[15] *CBK Power Company Limited vs. Commissioner of Internal Revenue*, G.R. Nos. 193383-84, January 14, 2015 and *Commissioner of Internal Revenue vs. CBK Power Company Limited*, G.R. Nos. 193407-08, January 14, 2015.

[16] G.R. No. 209776, December 7, 2016.

> The court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time.
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> In the present case, the court *a quo* found that while the judicial claim was filed merely five days after filing the administrative claim, both claims were filed within the two-year reglementary period. Thus, the CTA correctly exercised jurisdiction over the judicial claim filed by UCSFA-MPC."

To repeat, both the administrative and judicial claims for refund of VAT paid in advance must be filed within two (2) years from such payment.

In this case, petitioner paid the advance VAT sought to be refunded on the following dates:

Date of payment	Amount of advance VAT paid
January 22, 2016	₱3,360,000.00[17]
February 23, 2016	₱6,723,192.00[18]
August 3, 2016	₱3,341,016.00[19]
Total	**₱13,424,208.00**

Correspondingly, the end of the two-year prescriptive period for each payment are as follows:

Date of payment	End of the two-year prescriptive period
January 22, 2016	January 22, 2018
February 23, 2016	February 23, 2018
August 3, 2016	August 3, 2018

It was established that petitioner filed its administrative claim for refund on January 19, 2018,[20] while its judicial claim was filed before the Court on January 22, 2018.[21] Evidently, petitioner's administrative and judicial claims were filed within the two-year prescriptive period giving the

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[17] Exhibits "P-5" and "P-9", docket, pp. 961 and 965.
[18] Exhibits "P-10" and "P-14", docket, pp. 966 and 970.
[19] Exhibits "P-15" and "P-19", docket, pp. 971 and 976.
[20] Exhibits "P-3" and "P-4", docket, pp. 934, and 935 to 960, respectively.
[21] Docket, p. 10.

Court the requisite jurisdiction to take cognizance of the case.

The Court shall now determine whether petitioner is entitled to the refund or issuance of TCC in the amount of ₱13,424,208.00, allegedly representing erroneously and/or illegally paid advance output VAT on refined sugar subsequently sold to Del Monte.

Rules governing the advance payment of VAT on the sale of refined sugar.

The imposition of advance VAT on the transfer/withdrawal of sugar from any sugar refinery/mill is found in Sections 3, 6 and 7 of RR No. 8-2015,[22] which read:

> SECTION 3. *Requirements to Pay in Advance Business Taxes, such as VAT or Percentage Tax on Sale of Sugar.* – In general, the business tax (VAT or Percentage Tax) on the sale of sugar, shall be paid in advance by the owner/seller before any warehouse receipt or *quedans* are issued or before the sugar is withdrawn from any sugar refinery/mill.
>
> xxx xxx xxx
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> SECTION 6. *Withdrawal or Transfer of Ownership of Sugar.* – The proprietor of a Sugar Refinery/Mill shall not allow the issuance of *quedan*/warehouse receipts or other evidence of ownership or allow any withdrawal of sugar from its premises without proof of payment of advance VAT/Percentage Taxes required in these Regulations. Any person making the withdrawal or transfer shall submit proof of such payment or exemption from payment thereof.

[22] SUBJECT: Amending Revenue Regulations No. 6-2015 on the Definition of Raw Cane Sugar for Purposes of the Imposition of Advance Business Tax (Value-Added Tax or Percentage Tax) and for Other Related Purposes.

> SECTION 7. *Credit for Advance Tax Payments.* – In addition to the input tax credits allowed under Section 110 of the Code, the amount of advance payment of VAT due made by sellers of Sugar under these regulations shall be allowed as credit against the output tax based on the actual gross selling price of Sugar. The *Certificate of Advance Payment of the VAT/Percentage Tax* and a copy of the payment form shall be attached to the Monthly/Quarterly return to support the claim for credit of advance VAT/Percentage Tax payment.

In the *UCSFA-MPC* case, the High Court elaborated on the principles regarding the advance payment of VAT on refined sugar, as follows:

> Persons liable for VAT on the sale of goods shall pay the VAT due, in general, on a monthly basis. VAT accruing from the sale of goods in the current month shall be payable the following month. However, there are instances where VAT is required to be paid in advance, such as in the sale of refined sugar.
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> To specifically address the policies and procedures governing the advance payment of VAT on the sale of refined sugar, RR Nos. 6-2007 and 13-2008 were issued.
>
> Under these regulations,[23] VAT on the sale of refined sugar that, under regular circumstances, is payable within the month following the actual sale of refined sugar, shall nonetheless be paid in advance before the refined sugar can even be withdrawn from the sugar refinery/mill by the sugar owner. Any advance VAT paid by sellers of refined sugar shall be *allowed as credit* against their output tax on the actual gross selling price of refined sugar.
>
> Recall in this regard that VAT is a transaction tax imposed at every stage of

[23] Now Revenue Regulations No. 8-2015 dated May 22, 2015.

> the distribution process: on the sale, barter, exchange, or lease of goods or services. Simply stated, VAT generally arises because an actual sale, barter, or exchange has been consummated.
>
> In the sugar industry, raw sugar is processed in a refinery/mill which thereafter transforms the raw sugar into refined sugar. The refined sugar is then withdrawn or taken out of the refinery/mill and sold to customers. Under this flow, the withdrawal of refined sugar evidently takes place prior to its sale.
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> The VAT implications of the **withdrawal** of refined sugar from the sugar refinery/mill and the actual **sale** of refined sugar **are different**. While the sale is the actual transaction upon which VAT is imposed, the withdrawal gives rise to the obligation to pay the VAT due, albeit in advance. Therefore, the requirement for the advance payment of VAT for refined sugar creates a special situation: While the transaction giving rise to the imposition of VAT – the actual sale of refined sugar – has not yet taken place, the VAT that would be due from the subsequent sale is, nonetheless, already required to be paid earlier, which is therefore the withdrawal of the goods from the sugar refinery/mill.
>
> To be clear, the transaction subject to VAT is still the sale of refined sugar. The withdrawal of sugar is not a separate transaction subject to VAT. It is only the payment thereof that is required to be made in advance.

Based on the foregoing doctrinal pronouncements, it is clear that the VAT required to be paid in advance (upon withdrawal) is the very same VAT to be imposed on the subsequent sale of refined sugar; and that any advance VAT paid upon withdrawal shall be allowed as credit against its output tax arising from the sales of refined sugar.

However, it must be recalled that generally, sale of goods and supply of services performed in the Philippines are subject to VAT at 12% rate; while export sales, or sales outside the Philippines are subject to 0% VAT rate if made by a VAT-registered person. Under the VAT system, a zero-rated sale by a VAT-registered person, which is a taxable transaction for VAT purposes, shall not result in any output tax.[24]

For example: sale of goods, properties and services by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be treated as export sales.[25] If such sales are made by a VAT-registered supplier, they shall be subject to VAT at zero percent (0%). In zero-rated transactions, the VAT-registered supplier shall not pass on any output VAT to the ECOZONE enterprise.

Thus, while any advance VAT paid by sellers of refined sugar is allowed as credit against their output tax on the actual gross selling price thereof, such advance VAT payment would not be utilized if the concerned seller is a VAT-registered supplier and the corresponding sale is to an ECOZONE enterprise, since the output tax therefor is at 0% VAT rate. As such, the unutilized advance VAT payment may be the subject of a refund claim.

It is on this premise that petitioner anchors the instant claim for refund in the amount of ₱13,424,208.00.

However, petitioner failed to establish that the claimed advance VAT in the total amount of ₱13,424,208.00 was erroneously or illegally paid.

To establish that Del Monte is an ECOZONE enterprise, petitioner presented the following documents: (1) Philippine Economic Zone Authority (PEZA) Amended Certificate of

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[24] *Commissioner of Internal Revenue vs. Cebu Toyo Corporation*, G.R. No. 149073, February 16, 2005.
[25] *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.*, G.R. No. 150154, August 9, 2005.

Registration No. 07-68,[26] showing that Del Monte is duly registered with PEZA; and (2) PEZA VAT Zero-Rating Certificate (PEZA-ERD Form No. 97-01) No. 2016-1753,[27] certifying that Del Monte is entitled to VAT zero-rating of its transactions with local suppliers for TY 2016.

Thus, petitioner's sales of refined sugar to Del Monte for TY 2016 qualify for VAT zero-rating pursuant to Section 106(A)(2)(a)(5) [28] of the NIRC of 1997, as amended, in relation to Section 8[29] of Republic Act (RA) No. 7916, as amended by RA No. 8748, provided that the same are properly supported by VAT zero-rated sales invoices issued in accordance with Sections 113(A)(1), (B)(1), (2)(c) and (3),[30] 237[31] and 238[32] of the NIRC of 1997, as amended.

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[26] Exhibit "P-20", docket, p. 977.
[27] Exhibit "P-21", docket, p. 978.
[28] Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, states:

SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –

(A) *Rate and Base of Tax.* – x x x

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* –The term '**export sales'** means:

xxx xxx xxx

(5) Those considered export sales under Executive Order No. 226, otherwise known as the 'Omnibus Investment Code of 1987', **and other special laws**." *(Emphasis ours)*

[29] Section of RA No. 7916, as amended by RA 8748, reads:

SECTION 8. *ECOZONE to be Operated and Managed as Separate Customs Territory.* – **The ECOZONE shall be managed and operated by the PEZA as separate customs territory**.

The PEZA is hereby vested with the authority to issue certificates of origin for products manufactured or processed in each ECOZONE in accordance with the prevailing rules of origin, and the pertinent regulations of the Department of Trade and Industry and/or the Department of Finance." *(Emphasis ours)*

[30] Sections 113(A)(1), (B)(1), (2)(c), and (3), 237 and 238, of the NIRC of 1997, as amended, state:

Sec. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.-*
(A) *Invoicing Requirements.* - A VAT-registered person shall issue:
(1) A VAT invoice for every sale, barter or exchange of goods or properties; and
(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* - The following information shall be indicated in the VAT invoice or VAT official receipt:
(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided,* That:

xxx xxx xxx

A scrutiny of petitioner's "SUMMARY OF ZERO-RATED SALES – REFINED SUGAR" to Del Monte during TY 2016,[33] *i.e.*, from February 10, 2016 to September 24, 2016, shows that petitioner sold 80,102[34] bags (at 50 kilograms per bag) of refined sugar to Del Monte in the aggregate amount of ₱188,113,879.50[35] for the said period. The said sales which the Court found to be properly supported by VAT zero-rated sales invoices[36] are thus subject to zero percent (0%) VAT pursuant to Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended.

However, while it was established that petitioner's sale of the said 80,102 bags of refined sugar to Del Monte for TY 2016 were VAT zero-rated, petitioner failed to sufficiently prove that the ₱13,424,208.00 advance VAT payment subject of its claim for refund actually pertains to its zero-rated sales to Del Monte, and that it was not credited/applied against its output VAT at 12%.

It appears that there is a discrepancy in the number of bags (at 50 kilograms per bag) of refined sugar per claim

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(c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt; xxx

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and xxx

[31] SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: xxx."

[32] SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

[33] Exhibit "P-22", docket, pp. 979 to 980.
[34] Exhibit "P-22-A", docket, p. 980.
[35] Exhibits "P-22-B" and "P-22-C", docket, p. 980.
[36] Exhibits "P-23-1" to "P-23-8", "P-23-10" to "P-23-16", "P-23-18" to "P-23-27", "P-23-29" to "P-23-37", "P-23-39" to "P-23-48", "P-23-50" to "P-23-51", "P-23-53" to "P-23-67", "P-23-69" to "P-23-82", "P-23-84" to "P-23-88", "P-23-90" to "P-23-93", "P-23-95" to "P-23-110", "P-23-112" to "P-23-114", "P-23-116", "P-23-118" to "P-23-133", "P-23-135" to "P-23-139", "P-23-141" to "P-23-151", and "P-23-153", docket, pp. 982 to 989, 991 to 997, 999 to 1008, 1010 to 1018, 1020 to 1029, 1031 to 1032, 1034 to 1048, 1050 to 1063, 1065 to 1069, 1071 to 1074, 1076 to 1091, 1093 to 1095, 1097, 1099 to 1114, 1116 to 1120, 1122 to 1132, and 1134, respectively.

vis-a-vis petitioner's zero-rated sales to Del Monte. Hence, it was incumbent upon petitioner to convince the Court that the 79,906 bags of refined sugar for which it allegedly paid advance VAT of ₱13,424,208.00, were part of the 80,102 bags of refined sugar sold to Del Monte on various dates during the TY 2016, in the said aggregate amount of ₱188,113,879.50.

In her Amended Judicial Affidavit, petitioner's Controller, Cheryl M. Gaanan, testified on this observed discrepancy as follows:[37]

> 45. Q: You said that Sucden sold a total of 80,102 bags of refined sugar to Del Monte. Where did Sucden sourced the refined sugar that it sold to Del Monte?
>
> A: Sucden purchased 79,906 bags of refined sugar from Victorias Milling Company, Inc. ("Victorias"), while the remaining bags were purchased from other sources.
>
> 46. Q: How are these bags related to the 79,906 bags of refined sugar that you mentioned earlier had been subjected to Advance Output VAT collected by respondent and is the subject of the instant Petition?
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> A: Those are the same 79,906 bags of refined sugar I referred to earlier.

The declaration of the witness was however unsupported by any documentary proof to establish petitioner's claim. Under the obtaining circumstances, petitioner should have presented documents evidencing its inventories of refined sugar covered by *quedans* which were imposed with advance VAT, and should have reconciled/matched the same with its total sales (including its sales to Del Monte) for TY 2016.

Moreover, petitioner was unable to prove that the advance VAT payments of ₱13,424,208.00 were not applied against its output tax liability.

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[37] Exhibit "P-28", docket, p. 850.

Based on the original/amended Quarterly[38] VAT Returns filed by petitioner for TY 2016, petitioner reported a net VAT overpayment in the aggregate amount of ₱19,724,419.21, the details of which are as follows:

Exhibit	"P-24-2"	"P-24-5"	"P-24-8"	"P-24-11"	
	1st Quarter	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**Total**
Output Tax	**₱ 5,501,228.57**	**₱ 678,857.14**	**₱ 5,607,857.14**	**₱ 4,270,196.79**	**₱ 16,058,139.64**
Less: Allowable Input Tax					
Input Tax Carried Over from Previous Period	₱ 8,593,118.14	₱ 18,506,521.91	₱ 24,760,403.00	₱ 23,532,534.57[39]	₱ 8,593,118.14
Input Tax on Domestic Purchases of Goods Other than Capital Goods	8,546.62	14,520.54	19,633.80	22,380.86	65,081.82
Input Tax on Importation of Goods other than Capital Goods	-	2,184,620.65	-	-	2,184,620.65
Input tax on Domestic Purchase of Services	3,298,829.72	1,101,605.04	1,021,097.66	439,700.57	5,861,232.99
Total Available Input Tax	**₱ 11,900,494.48**	**₱ 21,807,268.14**	**₱ 25,801,134.46**	**₱ 23,994,616.00**	**₱ 16,704,053.60**
Net VAT Payable	**₱ (6,399,265.91)**	**₱(21,128,411.00)**	**₱(20,193,277.32)**	**₱(19,724,419.21)**	**₱ (645,913.96)**
Less: Advance Payment for Sugar	12,107,256.00	3,631,992.00	3,341,016.00	-	19,080,264.00
Tax Payable (Overpayment)	**₱(18,506,521.91)**	**₱(24,760,403.00)**	**₱(23,534,293.32)**	**₱(19,724,419.21)**	

From the above table, it appears that before deducting the advance payment for sugar, petitioner already has a VAT overpayment amounting to ₱645,913.96. However, petitioner failed to present VAT invoices or receipts to prove the existence of its input taxes. Hence, the total input tax of ₱16,704,053.60 cannot be validly applied against petitioner's output tax liability, pursuant to Section 110(A) in relation to Section 110(B) of the NIRC of 1997, as amended, which states:

SEC. 110. *Tax Credits.* —

(A) *Creditable Input Tax* —

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[38] Exhibits "P-24-2", "P-24-5", "P-24-8", and "P-24-11", docket, pp. 1142 to 1144, 1151 to 1153, 1166 to 1168, and 1178 to 1180, respectively.

[39] There is a discrepancy of ₱1,758.75 (₱23,534,293.32 less ₱23,532,534.57) in the amount of carried over from previous quarter. Based on the amended 3rd Quarterly VAT Return for TY 2016, amount should be ₱23,534,293.32.

> (1) **Any input tax evidenced by a VAT invoice or official receipt** issued in accordance with Section 113 hereof on the following transactions **shall be creditable against the output tax**:
>
> xxx xxx xxx
>
> (B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. (*Boldfacing supplied*)

In fine, petitioner failed to prove that the substantiated advance VAT payments of ₱13,424,208.00 were not used as credits against its output tax liability. Besides, the advance VAT subject of the present claim is not even sufficient to cover its output tax liability of ₱16,058,139.64 for TY 2016.

All said, petitioner failed to show that the advance VAT of ₱13,424,208.00 represents erroneously or illegally paid tax.

Let it again be said that tax refunds are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and should be construed *strictissimi juris* against the person or entity claiming the refund.[40] Petitioner has the burden of proof to establish the factual basis of its claim for tax refund, but failed.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* filed by Sucden Philippines, Inc. is **DENIED,** for lack of merit.

SO ORDERED.

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[40] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc.*, G.R. No. 127105, June 25, 1999.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice