REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INTEL PHILIPPINES MANUFACTURING, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6040

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 24 2003

x - x

DECISION

This case involves a claim for refund of the input taxes paid by the petitioner (Intel) on its domestic purchases of taxable goods and services in the amount of **Twenty Five Million Forty Five Thousand Four Hundred Ninety Four and 18/100 (P25,045,494.18)** covering the period from January 01, 1998 to March 31, 1998.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines (*par. 1, Joint Stipulation of Facts, CTA records, p. 48)* primarily engaged in the business of designing, developing, manufacturing and exporting advance and large-scale integrated circuit components (*par. 4, Joint Stipulation of Facts, CTA records, p. 49*). It is registered with the Bureau of Internal Revenue as a value-added tax (VAT) entity, as evidenced by the Certificate of Registration No. 32A-3-002649. Petitioner likewise is registered with the Board of Investments as an export enterprise, and was issued Certificate of Registration No. 85-1010 *(pars. 3 and 4, Joint Stipulation of Facts, CTA records, p. 49).*

As a VAT registered entity, petitioner filed its monthly VAT Declarations and Quarterly VAT Returns for the first quarter of 1998 declaring zero-rated sales of P1,758,664,751.79 and input taxes from domestic purchases of goods and services in the amount of P25,045,494.18 (*Exhibits "D", "E", & "F"; pars. 5, 9 & 10, Joint Stipulation of Facts, pp. 49-51*). Petitioner alleged that its zero-rated sales were paid for in acceptable foreign currency and were inwardly remitted in accordance with existing applicable banking regulations of the Bangko Sentral ng Pilipinas, pursuant to Section 106(A)(2)(a)(1) (*Exhibits "M" & "N").*

On April 29, 1999, petitioner filed with Respondent, through the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance, applications for refund/credit of VAT input taxes, in the amount of P25,045,494.18, it paid on its domestic purchases of goods and/or services directly used in its export transactions (*Exhibits "K" & "L").*

Without any response from the Respondent on the claim for refund, and before it would be barred by prescription, Petitioner deemed it proper to file this Petition for Review before Us on March 27, 2000.

Respondent, in his answer specifically averred the following as his Special and Affirmative Defenses:

1. Petitioner failed to show compliance with the substantiation requirements under the provisions of Section 16(c)(3) of Revenue Regulation No. 5-87, as amended Revenue Regulations No. 3-88;

2. Petitioner has not shown proof that the alleged VAT input taxes were attributable to its export sales and that the same have not yet been applied to the output tax for the period covered in its claim or any succeeding period and that the alleged total foreign exchange proceeds have been accounted for by the Central Bank;

3. The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;

4. 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, Manila Electric Co. vs. Commissioner of Internal Revenue 67 SCRA 35);

5. One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute (Asiatic Petroleum vs. Llanes 49 PHIL 466, Union Garment Co. vs. Court of Tax Appeals 4 SCRA 304);

6. In action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;

7. It is incumbent upon petitioner to show compliance with the provisions of Section 229 of the National Internal Revenue Code;

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

Petitioner and respondent stipulated that the sole issue to be resolved in this case is:

1. Whether or not Petitioner is entitled to the credit/refund of the tax arising from domestic purchases of taxable goods and services from January 1, 1998 to March 31, 1998 in the amount of P25,045,494.18 (Joint Stipulation of Facts, CTA records, p. 52).

Based on records and stipulations by the parties, petitioner is engaged in the business of designing, developing, manufacturing advance and large-scale integrated circuit components. These manufactured integrated circuits are then subsequently exported 100% to its mother company in the United States, that is, Intel Corporation, California, U.S.A. Records would also show that petitioner is paid in acceptable foreign currency for the exported products *(pars. 4 & 7, Joint Stipulation of Facts, pp. 49 -50).*

Petitioner argues that its export sales are not subject to the 10% value-added tax but are zero-rated. In other words, its export sales are subject to zero-rate, pursuant to Sections 106(A)(2)(a)(i) and 108(B)(1) of the 1997 Tax Code. We quote the subject sections of the Tax Code, as follows:

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

(A) xxx

(1) xxx

(2) The following sales by VAT-registered persons 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;

xxx xxx xxx
(Emphasis supplied)

SEC. 108. ***Value-Added Tax Sale of Services and Use or Lease of Properties. –***

A. *Rate and Base of Tax.* - There shall be levied xxx

B. *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

(1) Processing, manufacturing, or repacking of goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

Furthermore, petitioner presented VAT Ruling No. 102(a)(1) 402-88 issued by herein respondent to petitioner confirming its export sales as being zero-rated. Pertinent provisions of which are quoted hereunder for easy reference:

> *"This refers to your letter dated May 19, 1988 stating that your company is a BOI-registered company on a pioneer status as export producer (per BOI Registration Certificate No. 851010); that your production of manufactured integrated circuits is exported 100% to your parent company, Intel Corporation, California, U.S.A. and that the services are paid for in acceptable foreign currency.*
>
> *xxx xxx xxx*
>
> *In reply, please be informed that services rendered by VAT-registered persons in connection with the processing, manufacturing or repacking of goods for persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency inwardly remitted to the Philippines and duly accounted for under the regulations of the Central Bank of the Philippines, shall be subject to zero rate (0%) pursuant to Section 102 (a)(1) of the Tax Code, as amended by E.O. No. 273."*

Material to the solution of the claim is petitioner's compliance with Sections 2(c)(1)(i) and (ii) of Revenue Regulations No. 3-88, which provide:

> **Section 2.** Section 16 of Revenue Regulations No. 5-87 is hereby amended to read as follows:
>
> ***Section 16. Refunds or tax credits of input tax.*** –
>
> x x x x x x x x x
>
> (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 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:
>
> 1. Export Sales
>
> i) Photo copy of export document showing the amount of export and the date and destination of the goods exported. With respect to the foreign currency denominate sale, the photo copy 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 regulations.

It is clear from the above revenue regulations that petitioner's claim for refund should be substantiated with photocopies of the export documents to attest that there were really export sales subject to zero percent (0%) rate.

It bears to emphasize that the export documents needed to substantiate the claim for refund must comply with the requirements as stated in Sections 113(A) and 238 of the Tax Code. Petitioner must show proof and convince this court that it has complied with the substantiation requirements imposed before the documents presented may be considered as valid evidence to prove its zero-rated sales of goods for VAT purposes under the provisions of Section 113 of the Tax Code in relation to Sections 238 of the same code as well as Section 4.108-1 of Revenue Regulations No. 7-95. Pertinent provisions as follows:

SEC. 113. ***Invoicing and Accounting Requirements for VAT-Registered Persons.*** -

(A) *Invoicing Requirements.* - A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required in Section 237, the following information shall be indicated in the invoice or the receipt:

(1) A Statement that the seller is a VAT-registered person followed by his taxpayer's identification number (TIN); and

(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.

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 the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

x x x

SEC. 4.108-1. ***Invoicing Requirements.*** - All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN, and address or seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;

4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word "zero-rated" imprinted on the invoice covering zero-rated sales, and;
6. the invoice value or consideration.

xxx xxx xxx
(Emphasis supplied.)

Here, petitioner failed. Close scrutiny of the documents presented showed that all of petitioner's export sales invoices (included as part of export sales documents marked as Exhibits RR-1 to RR-712) did not have any Bureau of Internal Revenue Permit to Print, which contravened Sections 113 and 238 of the 1997 Tax Code, nor did most of its sales invoices bear the imprinted word "zero-rated", as required under Section 4.108-1 of Revenue Regulations 7-95. Violation of these mandatory and specific requirements is tantamount to denying such evidence to prove the zero-rated sales of goods for VAT purposes of the petitioner, pursuant to Section 3 of Rule 128 of the 1997 Rules of Court. Evidently, petitioner failed to substantiate its demand for refund or issuance of a tax credit certificate.

Petitioner's failure to comply with the requirements to consider its invoices as valid VAT invoices is fatal to its claim.

Well settled is the rule that tax refund partakes of the nature of a tax exemption. Therefore, as such, they are regarded as in derogation of sovereign authority and must be construed *strictissimmi juris* against the person or entity claiming the exemption **[Commissioner of Internal Revenue vs S.C. Johnson and Son, Inc., 309 SCRA 87 (1999)]**. In other words, the claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund.

In the cases of **Toshiba Information Equipment (Phils.) Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5672, dated May 8, 2000; Placer Dome Technical Services (Phils.), Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6106, dated May 14, 2002; Intel Technology Phils., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6128, dated April 21, 2003**, this court had occasions to deny petitioner's claim for refund on the ground that it had failed to comply with the requirements of a valid VAT invoice pursuant Sections 113 and 238 of the 1997 Tax Code and Sec. 4.108-1 of Revenue Regulations 7-95.

IN VIEW OF ALL THE FOREGOING, petitioner's claim of input taxes paid on its domestic purchases of goods and services amounting to P25,045,494.18 covering the period from January 1, 1998 to March 31, 1998 is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

LOVELL R. BAUTISTA
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