REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

ASIAN BOOKS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6527

Members:

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

DEC 28 2004

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DECISION

BAUTISTA, L., ***J.*:**

This is a judicial recourse of the petitioner on its claim for refund or issuance of a tax credit certificate in the amount of Five Hundred Seventeen Thousand Eight Hundred Sixty Three and 67/100 Pesos (P517,863.67), allegedly representing erroneously paid percentage taxes for the period 2000-2002.

The antecedent facts are as follows:

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Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at Optima Building, 221 Salcedo Street, Legaspi Village, Makati City. *(Par. 1, Compliance [Joint Stipulation of Facts and Issues])*

Petitioner is engaged in the importation and sale of books under its trade name "A Different Bookstore". *(Par. 2, Compliance [Joint Stipulation of Facts and Issues])*

Petitioner is registered with the Bureau of Internal Revenue (hereinafter, "BIR") as a NON-VAT Taxpayer with Tax Identification No. 047-003-978-656 Non-VAT, as evidenced by BIR Certificate of Registration bearing RDO Control No. 98-047-009173. *(Exhibit "A", TSN, March 17, 2003, pp. 10-12)*

For the taxable years 2000, 2001 and 2002, petitioner filed the corresponding quarterly and monthly percentage tax returns *(Exhibits "B-N")*.

Upon consultation with legal counsel, the petitioner was informed that it was not subject to the three percent (3%) percentage tax under Section 116 of the Tax Code and that it erroneously paid percentage taxes on its sale of books. Thus, the petitioner discontinued paying percentage taxes and it made its last payment on the month of May 2002. *(TSN, August 12, 2003, p. 11)*

On August 9, 2002, petitioner, through counsel, filed an administrative claim for refund/tax credit with the Bureau of Internal Revenue (BIR)

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requesting for a refund of its erroneously paid percentage taxes for the period from 1997 up to May 2002 in the aggregate amount of P1,235,443.24 (which is inclusive of the amount of P513,863.67 subject of this claim). *(Exhibit "P"; TSN, August 12, 2003, pp. 15-18)*

On August 21, 2002, petitioner filed with this Court the instant Petition for Review so as to preserve its right to claim, by judicial action, the refund of or issuance of a tax credit certificate for its erroneously paid percentage taxes for the period from the 1st quarter of 2000 to May 2002.

In his Answer filed on November 7, 2002, respondent by way of Special and Affirmative Defenses, pleaded the following:

> "4. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
>
> 5. Petitioner's alleged claim for refund/issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;
>
> 6. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;
>
> 7. Petitioner's claim for refund/tax credit in the amount of **P517,863.67** as alleged percentage tax erroneously paid for taxable years 2000-2002 were not duly substantiated;
>
> 8. Petitioner's instant claim for refund/tax credit representing the alleged percentage tax erroneously paid for the 1st and 2nd quarter of taxable year 2000 has already prescribed;

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9. Petitioner is not VAT exempt under Section 109 (y) of the 1997 Tax Code and consequently from the 3% percentage tax;

10. It is incumbent upon the latter to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund;

11. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and as such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).*

The parties in compliance with the order of the Court submitted their Joint Stipulation of Facts and Issues on April 23, 2003 and agreed on the following issues to be resolved by this Court:

1. Whether or not petitioner's sales of books are exempted from value-added tax and percentage tax;

2. Whether or not petitioner incurred erroneous payment of percentage tax in the amount of P517,863.67 pertaining to its sale of books for taxable years 2000-2002;

3. Whether or not the percentage tax erroneously paid by the petitioner in the amount of P517,863.67 for taxable years 2000-2002 are duly substantiated; and

4. Whether or not petitioner is entitled to the refund or the issuance of the tax credit for the erroneously paid percentage taxes in the amount of P517,863.67 under Section 116 of the Tax Code for the taxable years 2000-2002.

Anent the first issue of whether or not petitioner's sales of books are exempted from value-added tax and percentage tax, petitioner invokes Section 109(y) of the 1997 National Internal Revenue Code, which provides:

> **SEC. 109**. *Exempt Transactions.* — The following shall be exempt from the value-added tax:
>
> xxx xxx xxx
>
> (y) Sale, importation, printing or publication of books and any newspaper, magazine, review or bulletin which appears at regular intervals with fixed prices for subscription and sale and which is not devoted principally to the publication of paid advertisements.

According to petitioner, from the above-provision of Section 109(y), it is clear that its sale of books is exempt from VAT.

We agree with the petitioner.

Section 109(y) of the 1997 Tax Code categorically provided that "sale, importation, printing or publication of books and any newspaper, magazine, review or bulletin which appears at regular intervals with fixed prices for subscription and sale and which is not devoted principally to the publication of paid advertisements" is exempt from value-added tax. Further, the BIR ruled and We quote:

> "In reply, please be informed that pursuant to Section 109(y) of the 1997 Tax Code, "sale, importation, printing or publication of books and any newspaper, magazine, review or bulletin which appears at regular intervals with fixed prices for subscription and

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sale which is not devoted principally to the publication of paid advertisements" is exempt from value-added tax (VAT).

Such being the case, as book publisher/supplier, the proceeds derived from the sale and/or publication of books is exempt from VAT." *(BIR Ruling DA 521-03, December 16, 2003).*

Petitioner likewise maintains that its sale of books is not subject to three (3%) percent percentage tax imposed under Section 116 of the 1997 Tax Code because its VAT exemption is based on Section 109(y) and not 109(z) of the said Code. Petitioner insists that it indeed made a mistake in interpreting Section 116 and erroneously paid the three (3%) percent percentage tax.

For clarity, We quote Sections 116 and 109(z) of the Tax Code of 1997:

SEC. 116. *Tax on Persons Exempt from Value-Added Tax (VAT).* - Any person whose sales or receipts are exempt under Section 109 (z) of this Code from the payment of Value Added Tax and who is not a VAT registered person shall pay a tax equivalent to three percent (3%) of his gross quarterly sales or receipts: *Provided*, That cooperatives shall be exempt from the three percent (3%) gross receipts tax herein imposed.

SEC. 109. *Exempt Transactions.* – The following shall be exempt from value-added tax:

xxx xxx xxx

(z) Sale or lease of goods or properties or the performance of services other than the transactions mentioned in the preceding paragraphs, the gross annual sales and/or receipts do not exceed the amount of Five hundred fifty thousand pesos (P550,000): *Provided*, That not later than January 31st of the calendar year subsequent to the effectivity of Republic Act No. 8241 and each calendar year thereafter, the amount of Five hundred fifty thousand

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> pesos (P550,000) shall be adjusted to its present value using the Consumer Price Index, as published by the National Statistics Office (NSO).

From the above-cited provisions of law, only those who are exempt from VAT under 109(z) and who is not a VAT-registered person shall pay the 3% percentage tax. As discussed earlier, petitioner's transactions are VAT exempt based on the provision of Section 109(y) of the 1997 Tax Code.

The BIR, in a VAT RULING NO. 022-00[109(z) 109(y) 386-87 285-88], dated June 23, 2000, emphasized that:

> "Under Sec. 109, par. (y) of the Tax Code of 1997, sale, importation, printing or publication of books and any newspaper, magazine, review or bulletin, which appears at regular intervals with fixed prices for subscription and sale and which is not devoted principally to the publication of paid advertisements, is exempt from the imposition of the Value-Added Tax. As such, regardless of the amount of the said transaction, it will not be subjected to the Value-Added Tax, neither will it be required to pay the 3% percentage tax under Sec. 116, in relation to Sec. 109 (z) of the same Code.
>
> In view thereof, your business of publishing and selling of books is exempt from the payment of the Value-Added Tax and from the 3% percentage tax."

Likewise, the BIR explained in BIR Ruling DA-161-02 [Sec. 109(y); 116 001-02/1-7-02] dated September 16, 2002, the exemption under Section 109(y) in relation to Section 116 of the NIRC of 1997, to wit:

> This Office, in VAT Review Committee Ruling No. 1-2002 dated January 7, 2002, had the occasion to reiterate, among others,

the precept laid down in VAT Committee Ruling No. 022-2000 dated June 23, 2000 that the transaction enumerated in Section 109(y) of the 1997 Tax Code shall not be subjected to the three percent (3%) percentage tax under Section 116, in relation to Section 109(z) of the same Code."

In view of the foregoing, it appears that petitioner is not only exempt from VAT, it is also not liable to pay the 3% percentage tax on its sales of books.

We now proceed to the next issue of whether or not petitioner incurred erroneous payment of percentage tax in the amount of P517,863.67 pertaining to its sale of books for the taxable years 2000 to 2002.

To prove payment of the percentage taxes for the period subject of this case, petitioner submitted the following quarterly and monthly percentage tax returns with bank validations:

Period	Date of Filing of Return & Payment of Percentage Tax	Gross Sales	Tax Rate	Percentage	Exhibit
2000					
1st Qtr.	April 24, 2000	P 1,257,593.27	3%	P 37,727.80	"B"
2nd Qtr.	July 20, 2000	1,200,169.00	3%	36,005.07	"C"
3rd Qtr.	October 20, 2000	1,351,050.98	3%	40,531.52	"D"
4th Qtr.	January 25, 2001	1,394,360.33	3%	41,830.81	"E"
2001					
1st Qtr.	June 25, 2001	1,937,513.31	3%	58,125.40	"F"
2nd Qtr.	July 26, 2001	1,959,032.43	3%	58,770.97	"G"
3rd Qtr.	October 26, 2001	1,989,761.80	3%	59,692.85	"H"
4th Qtr.	January 25, 2002	2,738,532.67	3%	82,155.98	"I"

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2002						
January-02	February 26, 2002	P 461,418.71	3%	P 13,842.56	"J"
February-02	March 25, 2002	704,274.46	3%	21,128.23	"K"
March-02	April 22, 2002	686,189.67	3%	20,585.69	"L"
April-02	May 24, 2002	734,103.94	3%	22,023.12	"M"
May-02	June 25, 2002	848,122.11	3%	25,443.67	"N"
TOTAL		**P 17,262,122.69**		**P 517,863.69**	

From the above evidence, there is no doubt therefore that petitioner paid percentage taxes. However, this Court needs further evidence that the total gross sales of P17,262,122.69 declared for the period 2000-2002 consists purely of sales of books. It is worth reiterating that Section 109(y) in relation to Section 116 of the 1997 Tax Code only exempts from VAT sales of books. Petitioner did not present other evidence to prove that the declared gross sales really only comprised sales of books and this Court cannot determine with certainty by merely looking at the aforementioned returns. Granting that petitioner represented that it is engaged in the sale of books under the trade name "A Different Bookstore". Yet, "A Different Bookstore" is merely an umbrella of petitioner, Asian Books, Inc.. To quote the ruling of the BIR:

> November 25, 2003
> BIR RULING [DA-427-03]
> 109 (y) & (n); 106 VAT 069-02
>
> **Asian, Books, Inc.**
> 5-B Ayala Bridgeway
> Ayala Center Mall, Makati City
> Attention: Catherine Lopez-Uy
> Operation Manager

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Gentlemen :

This refers to your letter dated October 21, 2003 requesting for a VAT-Exempt status considering that you are selling VAT-Exempt goods, like books and magazines under Section 109(y) of the Tax Code of 1997.

As indicated in its Articles of Incorporation submitted to this Office, Asian Books, Inc.'s primary purpose is to buy, sell, import, export, trade, distribute, or otherwise deal in books, magazines, periodicals, stationaries, office supplies, school supplies and other goods or things which may be subject of lawful commerce.

In reply, please be informed of the following:

1. Pursuant to Section 109(y) of the Tax Code of 1997, "the sale, importation, printing or publication of books and any newspaper, magazine, review or bulletin which appears at regular intervals with fixed prices for subscription and sale and which is not devoted principally to the publication of paid advertisements" is exempt from value-added tax.
Furthermore, the term "book" shall be that as provided for under Section 3(a) and (b) of R.A. No. 8047 and as defined by the United Nations Educational Scientific and Cultural Organization (UNESCO), viz, "a printed non-periodical publication of at least forty-eight (48) pages, exclusive of cover pages, published in the country and made available to the public:"

In respect to the sale of magazines and newspapers, or newsletter, the law requires that in order that the same may be exempted from VAT, such newspaper, magazine, review or bulletin must appear at regular intervals with fixed price for subscription and sale and which is not devoted principally to the publication of paid advertisements. In the absence of the above criteria, your sale of magazines and newspapers or newsletter shall be subject to the 10% VAT. On the other hand, since pamphlets do not qualify in the definition of "books", the sale of the same is subject to the 10% VAT. Moreover, the sale of "literary works" is exempt from VAT if it is made by the artist himself pursuant to Section 109(n) of the Tax Code of 1997; otherwise, the sale or importation, shall be subject to the 10% VAT.

2. Likewise, since office and school supplies are basically items not exempt from the payment of VAT, your gross receipts therefrom shall be subject to the 10% VAT. On the other hand, if the gross receipts from the sale of educational materials and equipment other than those items which are VAT exempt under Section 109 of the Tax Code of 1997, do not exceed the amount of five hundred fifty thousand pesos (P550,000) during the taxable year the same shall, in lieu of the VAT, be subjected to the 3%

> percentage tax on the gross sales or receipts under Section 116 of the same Tax Code. (VAT Ruling No. 026-00 dated August 21, 2000)
>
> **Finally, considering that you are engaged both in VAT and VAT exempt transactions, your gross receipts/sales from VAT exempt transactions (i.e., books and newspaper, magazine, review and bulletin) must be segregated from VATable items, henceforth, you are required to keep a separate non-VAT invoice/receipt for the purpose. (VAT Ruling No. 026-00 dated August 21, 2000) xxx** *(Emphasis and underlining supplied)*

In view thereof and in the absence of proof that petitioner's gross sales on which the claimed percentage taxes were paid were wholly derived from the sales of books, petitioner's claim for refund must fail. It cannot be overemphasized that claims for refund are strictly construed against the claimant for the same partakes of the nature of tax exemptions *(Commissioner of Internal Revenue vs. Johnson & Son, Inc., 309 SCRA 87)*. The burden of proof is on the petitioner to establish its right to refund, and failure to sustain the burden is fatal to its claim *(Commissioner of Internal Revenue vs. Tokyo Shipping Co. Ltd., et al., G.R. No. 68252, May 26, 1995)*.

WHEREFORE, the Petition for Review is hereby **DENIED** for lack of substantiation.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(With Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Chairman, First Division
Presiding Justice

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- versus -

C.T.A. CASE NO. 6527

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 28 2004
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DISSENTING OPINION

CASANOVA, *J.*:

Section 109 (y) of the 1997 National Internal Revenue Code ("NIRC") enumerates twenty-six (26) transactions exempt from value-added tax. Invoking Section 116 of the same Code, petitioner is now seeking claim for refund or issuance of a tax credit certificate in the amount of FIVE HUNDRED SEVENTEEN THOUSAND, EIGHT HUNDRED SIXTY THREE PESOS and SIXTY SEVEN CENTAVOS (₱517,863.67) representing erroneously paid percentage taxes for the taxable period of 2000-2002.

It is the majority opinion of the Court that the Petition for Review must be denied for lack of substantiation. As claims for refund are strictly construed against taxpayers, petitioner must prove that its gross sales on which it paid the claimed percentage taxes were wholly derived from the sales of books.

With all due respect, I disagree with the disquisition of the issues and, concomitantly, the conclusion reached.

It is my humble opinion that petitioner may rightfully claim for refund or issuance of a tax credit certificate for two reasons.

First, in paragraph 2 of the *Compliance[Joint Stipulation of Facts and Issues]*, respondent's counsel admitted that petitioner is engaged in the importation and sale of books under its trade name "A Different Bookstore". So it is very clear that in the instant case and only in the period covered being questioned, petitioner was not engaged in the sale of any office and school supplies or anything except sales of books only. Therefore, there is no more need for this Court to require petitioner to show any proof nor to entertain any doubt that the declared gross sales really comprised sales of books only. As correctly invoked by petitioner, Section 109 (y) of the 1997 NIRC clearly states that "[s]ale, importation, printing or publication of books and any newspaper, magazine, review or bulletin which appears at regular intervals with fixed prices for subscription and sale and which is not devoted principally to the publication of paid advertisements" is exempt from value-added tax. As pointed out by the majority of the Court, petitioner is not liable to pay the 3% percentage tax on its sales of books pursuant to Section 116 of the same Code. It is not disputed that petitioner, being engaged in the sale of books, earned income and paid the corresponding tax as reflected in its monthly and quarterly percentage tax returns. Ergo, such payment of percentage

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taxes were erroneous and petitioner may claim for refund or issuance of tax credit certificate as its available remedy.

Second, the issue on substantiation for its claim is not one of the issues both parties jointly stipulated and, thereafter, submitted to the Court for resolution.

Joint stipulation of facts and issues is binding on both parties-litigants *(Music Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5670, January 6, 2000)*. The admissions made are conclusive upon the parties in the absence of proof showing that it was made through palpable mistake or that no such admission was made *(Sumitomo Corporation et al. vs. Commissioner of Internal Revenue, CTA Case No. 6364, October 17, 2002)* and the jointly stipulated issues submitted for the Court's resolution control the course of action taken during trial.

Proceeding from the foregoing, as respondent correctly noted in paragraph 8 of his Answer and petitioner admitted in paragraph 4 of *Compliance[Joint Stipulation of Facts and Issues]*, the latter's claim for refund or issuance of tax credit certificate representing the percentage tax erroneously paid for the first and second quarter of taxable year 2000 has already prescribed. Thus, petitioner may claim for refund of erroneously paid percentage taxes covering the third and fourth quarter of taxable year 2000 up to taxable year 2002, computed as follows:

Total amount claimed			₱517,863.67
Less: prescribed claims			
	1st quarter - 2000	₱37,737.80	
	2nd quarter - 2000	36,005.07	73,732.87
Grant of claim			**P444,130.80**

WHEREFORE, I vote to **PARTIALLY GRANT** the Petition for Review and order respondent to refund or issue tax credit certificate for the amount of P444,130.80 representing the erroneously paid percentage taxes from third quarter of taxable year 2000 up to May of 2002.

CAESAR A. CASANOVA
Associate Justice