REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

UNION CARBIDE PHILS. (FAR EAST), INC.,
Petitioner,

- versus - C.T.A. CASE NO. 5162

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 02 1998

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DECISION

This petition for review is seeking for the refund of the amount of P1,845,825.23 representing unapplied input value-added tax (VAT, for brevity) for the period February 1, 1992 to January 31, 1993.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines. It is registered with the Bureau of Internal Revenue as VAT registered person with VAT Registration Certificate No. 31-5-000831, effective January 1, 1988 (Exh. D).

For the period February 1, 1992 to January 31, 1993, petitioner purchased capital goods in the total amount of P20,304,077.48 (Exh. B). Petitioner alleged that included in the amount of P20,304,077.48 was its payment of input VAT in sum of P1,845,825.23.

On May 20, 1994, pursuant to Section 106(c) of the 1993 Tax Code, petitioner filed an application for tax credit/refund of value-added tax paid on aforesaid capital goods with District No. 47 (East Makati) of the Bureau of Internal Revenue (Exhs. N to N-2).

Since respondent has taken time in deciding the claim for refund, petitioner lodged the instant appeal on October 22, 1994 in view of the Supreme Court ruling in the case entitled **Commissioner of Internal Revenue vs. Victorias Milling Co., Inc., (22 SCRA 12),** which pronounced:

> "The claim for refund with the Bureau of Internal Revenue and the subsequent appeal to the Court of tax Appeals must be filed within the two-year period. <u>If, however, the Collector (now Commissioner) takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the said Collector</u>. (Underlining supplied).

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 pro-forma affirmative defenses, thus:

> (7) In an action for refund, the taxpayer has the burden to show that the taxes paid were

> erroneously or illegally collected and failure to do so is fatal to the action; and
>
> (8) Claims for tax refunds are construct (sic) strictly against the taxpayer. Taxpayer-petitioner has no cause of action.

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

1. Letter-Certification of SGV & Co., dated August 7, 1995, consisting of five (5) pages (Exhs. A and AA-1);

2. Summary of purchases and VAT input taxes paid by petitioner (Exh. B);

3. Sales invoices and official receipts issued to petitioner evidencing purchases and payments of input taxes on capital goods for the period February 1, 1992 to January 31 1993 (Exhs. C to C-567);

4. Petitioner's VAT Registration Certificate (Exh. D);

5. Quarterly VAT returns for period February 1, 1992 to September 30, 1994 (Exhs. E to L-2, inclusive, and Exhs. O, P, Q and Q-1);

6. Certification of petitioner's accountant as to the utilization of available input taxes showing that input taxes on capital goods were unapplied (Exhs. M to M-4, and Exh. R); and

7. Application for tax credit/refund with the BIR (Exhs. N to N-3);

These documents were all admitted by the Court in the absence of respondent's comment thereto. Respondent, on the other hand, failed to submit controverting evidence.

This case was submitted for decision sans the memoranda of both parties.

The issue presented before Us is whether or not petitioner is entitled to the refund of input taxes paid on capital goods in the total amount of ₱1,845,825.23 for the period February 1, 1992 to January 31, 1993.

We answer in the affirmative.

Section 106(c) of the 1993 Tax Code, mandates:

> **Sec. 106. Refunds or tax credits of input tax.** - (a) *Export sales.* - xxx.
>
> (b) *Zero-rated or effectively zero-rated sales.* - xxx.
>
> (c) *Capital goods.* - A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application for refund may be made only after the expiration of 2 succeeding quarters following the quarter in which the importation or local purchase was made: **Provided**, That a VAT-registered person who is just commencing business may apply for refund of input taxes under this paragraph not earlier than 180 days from the date of registration or actual start of business operations, whichever comes later: **Provided, however,** That the application is filed not later than 2 years from the dates herein prescribed.

Based on the records and evidence submitted, petitioner was able to meet all the requirements laid down by the above proviso.

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First, petitioner duly established that it is a VAT-registered person with a VAT Registration Certificate No. 31-5-000851 (Exh. D) issued by the respondent's bureau. Second, the input taxes paid on capital goods remained unapplied against succeeding output tax liabilities of petitioner as shown by the schedule prepared by petitioner's accountant detailing the utilization of input taxes available for credit and as corroborated by the quarterly VAT returns from the first quarter of 1993 up to the third quarter of 1994 (Exhs. E to L-2, inclusive, M to M-4, O, P, Q, Q-1 and R). Moreover, petitioner's VAT return for the third quarter of 1994 showed that the corresponding amount of ₱1,845,825.23 claimed herein as input taxes paid on capital goods was deducted from the total available input taxes (Exhs. Q and Q-1), leaving Us with the conclusion that the same can no longer be applied by petitioner to succeeding VAT taxable quarters. Third, the application for refund was made after the expiration of two succeeding quarters following the quarter in which the purchases were made, to wit:

Quarter involved		02-01-92 to 01-31-93
Expiration of 2 succeeding quarters:	(1st Qtr.)	02-01-93 to 04-30-93
	(2nd Qtr.)	05-01-93 to 07-31-93

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Filing of application for refund/tax credit:	
a. With the BIR	05-20-94
b. With the CTA	10-22-94

And lastly, as shown above, the filing of the application for tax credit/refund was made within two years after the expiration of two succeeding quarters following the quarter in which the subject purchases were made.

Now that We have settled the legal issue, We now delve on the factual aspect of the case.

A scrutiny of the sales invoices and official receipts, together with the certification issued by SGV and Company, reveal that petitioner is not entitled to the full amount sought.

In the report made by the independent auditing firm, represented by Mr. R. R. Rubio, the following findings were arrived at: (Exhs. A and AA-1)

1. For input taxes being applied for in the amount of P78,147, the corresponding suppliers' invoices or official receipts were not on the file made available to us. [Exhibit 1]

2. There are instances where the supporting invoices/official receipts printed after July 31, 1991 do not bear the suppliers pre-printed TIN "V"/VAT No. The TIN/"V"/VAT No. in these cases were either stamped or hand written. The input taxes related to this finding amount to P98,576.41 [Exhibit 2].

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This Court is convinced that the aforementioned qualifications made by the independent auditor are vital in determining the amount to be refunded to petitioner, thus the amounts of P78,147.00 and P98,576.41 or the total amount of P176,723.41 should be deducted from the amount of the claim, thus leaving the sum of P1,669,101.82 as the final refundable amount.

WHEREFORE, finding the petition for review partially meritorious, respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a tax credit certificate in favor of petitioner the amount of P1,669,101.82, representing input tax payments on capital goods purchased for the period February 1, 1992 to January 31, 1993.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

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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
Court of Tax Appeals

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