REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE FAST FERRY CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6302

HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 1 5 2002

x - x

DECISION

This case involves a claim for refund or tax credit in the total amount of P5,827,934.00 allegedly representing overpaid paid 10% output value-added tax and 4.5% final withholding tax for the period April 1999 to December 1999.

The following facts are undisputed:

Petitioner is a corporation organized and existing under and by virtue of the laws of the Philippines with business address at 7577 Batungbakal Building, Pasong Tamo corner Dela Rosa Street, Makati City. Respondent is the duly appointed Commissioner of Internal Revenue, authorized under the law to perform the duties of the office including the power to grant refunds of overpaid or erroneously collected internal revenue taxes.

On September 10, 1998, petitioner entered into Bareboat Charter Agreements with Nenaco (BVI) Limited (Nenaco, for brevity), an offshore company, with postal

159

address at P.O. Box 957 Offshore Incorporation Center Road Town, Tortola, BVI, for the lease of three high speed Catamaran Passenger Vessels[1] for a charter hire fee of US$3,100.00 per vessel per day for the period from September 1998 up to February 1999 and US$3,450.00 per vessel per day from March 1999 until December 31, 1999 (*Exhibits "A", "B", and "C", inclusive of submarkings*).

For the period April 1999 to December 1999, petitioner, in behalf of Nenaco, filed the latter's Monthly Value-Added Tax Declarations and paid a total amount of P10,694,418.00 as output value-added tax. Petitioner also remitted the gross amount of P4,267,280.00 representing 4.5% final income tax due on the charter hire fees it paid to Nenaco as evidenced by its Monthly Remittance Returns of Income Taxes Withheld for the same period (*Paragraph 2.2, Stipulation of Facts, Joint Stipulation of Facts and Statement of Issues, CTA records, page 113 to 114*).

On July 19, 1999, the aforementioned Bareboat Charter Agreements were amended lowering the charter hire fee to US$2,000.00 per day per vessel and amending the charter period from "date of delivery until December 31, 1999" to "date of delivery until December 31, 2000" *(Exhibits "D", "E", and "F", inclusive of submarkings*).

Due to the reduction of the charter hire fee from $3,450.00 to $2,000.00, petitioner believed that its value-added tax and final tax payments were overpaid during the taxable year 1999. Thus, petitioner was authorized by Nenaco as its agent to pursue a claim for refund/issuance of the credit certificate of overpaid value-added tax and final tax (*Paragraph 2.4, Stipulation of Facts, Joint Stipulation of Facts and Statement of Issues, CTA records, page 114*).

---

[1] MS Angel of Hope, MS Saint Gabriel, and MS Angel of Freedom.

160

On August 7, 2000, petitioner filed a claim for refund with the Bureau of Internal Revenue seeking the amounts of P5,638,666.09 and P2,487,190.30 representing the overpaid 1999 value-added and final taxes, respectively, of Nenaco (*Annex "W", Petition for Review, admitted in paragraph 4 of respondent's Answer*).

On May 22, 2001, the instant petition for review was filed in order to toll the running of the two-year prescriptive period provided under Section 229 of the Tax Code, as amended. However, the amount of claim was reduced to P5,827,934.00 for the period April 1999 to December 1999, detailed as follows:

Value-added tax	P4,177,297.00
Final withholding tax	1,650,637.00
Total	P5,827,934.00

In order to support its entitlement to the claim for refund, petitioner presented the following evidence:

1. The original and amended Standard Bareboat Charter Agreements between petitioner and Nenaco (BVI), Limited covering the three hired Catamaran Passenger Vessels (*Exhibits "A", "B", "C", "D", "E", "F," inclusive of submarkings*);

2. Monthly VAT Declarations for the months of April 1999 to December 1999 (*Exhibits "H", "I", "J", "K", "L", "M", "N", "O" and "P," inclusive of submarkings*);

3. Monthly Remittance Returns of Income Taxes Withheld for the months of May 1999 to December 1999 (*Exhibits "Q", "R", "S", "T", "U", "V", "W", and "X," inclusive of submarkings);*

4. The schedule of the computation of overpaid value-added tax and final tax (*Exhibit "G," inclusive of submarkings*); and

10

5. Certifications from the Chief, Revenue Accounting Division, Ms. Carmelita SJ. Pascual, of the Bureau of Internal Revenue regarding the remittance of the subject taxes (*Exhibits "Y", "Z", "AA", and "BB", inclusive of submarkings*).

In a resolution dated November 26, 2001, the court admitted all of the above exhibits (*CTA records, page 137*). On the other hand, counsel for the respondent was constrained to submit his case for decision based on the pleadings in view of the absence of a report or investigation on the matter (*CTA records, page 139*).

On February 21, 2002, this case was submitted for decision after both parties filed their respective memorandum.

The sole stipulated issue to be resolved by the court is whether or not petitioner is entitled to the refund of the amount of P5,827,934.00 allegedly representing overpaid taxes for the taxable year 1999 (*CTA Records, page 114, Joint Stipulation of Facts and Statement of the Issues*).

Petitioner asserts that Nenaco has overpaid its value-added tax and final tax for the period April 1999 to December 1999 due to the reduction of charter hire fees from US$3,450.00 to US$2,000.00 per vessel per day. The overpayment of said taxes is computed below:

4.5% Final Tax:

PERIOD 1999		Original 4.5% Final Tax Paid	Exh.		4.5% Final Tax Based on Amended Rate		Overpayment of 4.5% Final Tax Paid
May	P	550,097.33	Q	P	318,897.00	P	231,200.33
June		530,675.55	R		307,638.00		223,037.55
July		552,262.71	S		320,155.50		232,107.21
August		572,765.38	T		332,037.90		240,727.48
September		571,405.39	U		331,249.50		240,155.89
October		580,562.03	V		336,557.70		244,004.33
November		569,616.91	W		330,212.70		239,404.21

162

December	339,897.33	X	339,897.33	-
Total	P 4,267,282.63		P 2,616,645.63	P 1,650,637.00

Output VAT:

PERIOD 1999	Output VAT Paid	Exh.	Output VAT Based on Amended Rate	Overpayment of Output VAT
April	P 1,211,571.00	H	P 702,360.00	P 509,211.00
May	1,222,438.50	I	708,660.00	513,778.50
June	1,179,279.00	J	683,640.00	495,639.00
July	1,227,247.60	K	711,450.00	515,797.60
August	1,272,811.95	L	737,862.00	534,949.95
September	1,269,789.75	M	736,110.00	533,679.75
October	1,290,137.85	N	747,906.00	542,231.85
November	1,265,815.35	O	733,806.00	532,009.35
December	755,327.40	P	755,327.40	-
Total	P 10,694,418.40		P 6,517,121.40	P 4,177,297.00

On the contrary, respondent avers that petitioner is not entitled to the amount sought because the taxes paid and remitted were based on the previously agreed rate of US$3,450.00 and the subsequent reduction of the charter hire fee to US$2,000.00 per vessel did not make the payment of said taxes erroneous.

To settle the controversy, this court finds it imperative to examine the provisions of law imposing the final tax and the value-added tax in order to ascertain the correct amount of taxes that should be paid by Nenaco as a result of the reduction. Nenaco is a nonresident corporation engaged in the leasing of vessels chartered by the Philippine nationals. Its income from Philippine source is subject to 4.5% final tax and 10% output value-added tax pursuant to Sections 28(B)(3) and 108(A) of the Tax Code, as amended.

Section 28(B)(3) of the Tax Code, as amended, provides:

SEC. 28. **Rates of Income Tax on Foreign Corporations.** –

(A) *Tax on Resident Foreign Corporations.* –

xxx xxx xxx

103

> (B) *Tax on Nonresident Foreign Corporation.* –
>
> xxx xxx xxx
>
> (3) *Nonresident Owner or Lessor of Vessels Chartered by Philippine Nationals.* – A nonresident owner or lessor of vessels shall be subject to a tax of four and one-half percent (4 ½%) of gross rentals, lease or charter fees from leases or charters to Filipino citizens or corporations, as approved by the Maritime Industry Authority.

Based on the above proviso, Nenaco is subject to final income tax of 4.5% of gross rental earned from petitioner.

Records show that Nenaco's income for the period April 1999 to December 1999 should be US$2,000.00 per vessel per day as evidenced by the amended standard bareboat agreements. Its final income tax liability of 4.5% should, therefore, be based on such reduced amount. Since petitioner based the 4.5% final tax on the higher rate of US$3,450.00, there appears to have an overpayment of final taxes in the amount of P1,650,637.00, as computed in the preceding table. However, as correctly pointed out by respondent, petitioner is not entitled to the said amount. The evidence presented by petitioner is wanting. Petitioner failed to show that the overpaid bareboat charter fees were ever refunded to the petitioner. Petitioner likewise failed to convince this court that it did not utilize or offset the said amount against Nenaco's future final income tax liabilities. The mere testimony of petitioner's witness that corresponding adjustments were made in petitioner's books without the corroborative/documentary evidence is self-serving. Petitioner should have presented its books to show how the said transaction was treated and recorded and to further prove that neither Nenaco nor petitioner benefited twice on the erroneous transaction.

164

Anent the alleged overpaid value-added tax, Section 108 of the Tax Code, states:

> SEC. 108. **Value-added Tax on Sale of Services and Use or Lease of Properties**. –
>
> (A) *Rate and Base of Tax*. – There shall be levied, assessed and collected, a value-added tax equivalent to **ten percent (10%) of gross receipts derived from** the sale or exchange of services, including the use or **lease of properties**.

In the case of **Philippine Long Distance Company, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5892, June 27, 2002,** the court had the occasion to rule that the value-added tax liability of a service taxpayer is based on the amount of ***income actually or constructively received***. Pertinent portions of said decision read as follows:

> It is clear from the above-quoted proviso that the 10% value-added tax should be levied, assessed and collected on the **gross receipts** derived from sale or exchange of services, including the use or lease of properties. 'Gross receipts' as defined in Section 102(a)(8) of the Tax Code means:
>
> (8) xxx xxx xxx
>
> The term 'gross receipts' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments **actually or constructively received** during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.
>
> It can be observed from the foregoing definition of gross receipts that the value-added tax accrues only upon actual or constructive receipt of the consideration, irrespective of whether the service is performed or yet to be performed. It is only upon actual or constructive receipt of payment that a service taxpayer becomes liable to output VAT. xxx.

In BIR Ruling No. 085-99 dated June 29, 1999, the then Commissioner Beethoven L. Rualo ruled that the taxpayer's output VAT treatment of immediately recording, recognizing and paying the same at the same time when the services are recognized and recorded in the book as income for income tax purposes is wrong and will cause confusion. Thus, according to the said Commissioner, the taxpayer can book the output VAT as deferred output VAT, apply the same upon payment of the output VAT on services actually collected from the customers, amend all VAT returns which incorrectly recognized the transaction on an accrual basis so as to reflect the deferred output VAT as advance payment and file the same in the RDO where the principal place of business of the taxpayer is situated.

Inasmuch as the amount that was actually paid to Nenaco was the higher rate of US$3,450.00 per vessel per day, the payment of the 10% value-added tax based on the said rate was proper. While it may be true that there was an overpayment because there was a decrease in the charter hire fee, the law, however, is explicit that the 10% VAT should not be based on the income that must have been received (contrary to final income tax) but on the income that was actually received. It must be emphasized that "although the taxable transaction is the past, present or future performance of service, the tax accrues only upon actual or constructive receipt of consideration" (*The Value Added Tax in the Philippines, by Victor A. Deoferio, Jr. and Victorino C. Mamalateo, First Ed., page 103*). To reiterate, in the instant case, it was not even shown that Nenaco ever refunded the alleged overpaid bareboat charter fees.

Finally, it bears stressing that the present petition involves a claim for refund. The burden of proof is upon the petitioner to show that it is entitled thereto **(Citibank N.A. vs. Court of Appeals, et al., G.R. No. 107434, October 10, 1997)**. The court's duty is to apply the law based on the facts established and the evidence presented.

166

WHEREFORE, in view of all the foregoing, petitioner's claim for refund or tax credit in the amount of P5,827,934.00 is hereby **DENIED** for lack of merit

SO ORDERED.

Ernesto D. Acosta

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
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

ERNESTO D. ACOSTA
Presiding Judge

162