REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NICHIMEN CORPORATION -
PHILIPPINE BRANCH,
Petitioner,

- versus -

C.T.A. CASE NO. 5221

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 08 1998

x - x

DECISION

This is a petition for review instituted by Nichimen Corporation - Philippine Branch against the Commissioner of Internal Revenue, praying for either a refund or tax credit of its alleged excess input value-added tax payments on purchases of taxable goods and services for taxable year 1993 in the amount of P268,184.98.

Petitioner is a resident foreign corporation organized under the laws of Japan, with license to do business in the Philippines through its Manila Branch. It is primarily "engaged in the business of indenting, wholesaling, buying and selling of lumber, abaca, sugar, mineral ores, machinery, steel products, cement and sundry goods in the Philippines; in the business of buying and selling of industrial materials, textiles, foodstuffs to include oilseed, feeds, canned goods, etc., chemicals, steel products of ferrous and non-ferrous

N3

metal products and products allied to those mentioned above" (Exhibit "B").

Petitioner is registered as a value-added tax entity and was issued VAT Registration Certificate No. 32-6-000293 effective January 1, 1988 (Exhibit "A").

According to petitioner, its sales of services are subject to value-added tax at zero-rate (0%) provided for under Section 102(a)(2) [now (b)(2)] of the Tax Code, considering that its sales are paid for in acceptable foreign currency which are inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank.

In compliance with the VAT provisions of the Tax Code and its implementing rules and regulations, petitioner filed its value added tax returns for the quarters ending March 31, 1993 (Exhibit "E"), June 30, 1993 (Exhibit "F"), September 30, 1993 (Exhibit "G"), and December 30, 1993 (Exhibit "H") on April 20, 1993, July 20, 1993, September 30, 1993 and January 10, 1994, respectively, showing a refundable amount totalling P268,184.98, broken down as follows:

1993		Refundable Input Tax
First Quarter		₱ 25,935.64
Second Quarter		17,323.71
Third Quarter		211,796.26
Fourth Quarter		13,129.37
	Total	P268,184.98

154

On February 24, 1995, petitioner filed an application for tax credit/refund of value added tax it had paid. (Exhibit "D").

Respondent failed to act immediately upon said claim. In order that the two-year prescriptive period provided by law would not lapse, petitioner filed the instant petition.

Respondent, in her answer, claimed by way of special and affirmative defenses that:

> "5. Petitioner's claim for refund of alleged VAT input taxes paid is still under investigation/examination by the BIR;
>
> 6. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes. (**CIR v. Ledesma, 31 SCRA 95 [1970]; Manila Electric Co. v. CIR, 67 SCRA 35 [1975]**);
>
> 7. One who claims to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute (**Asiatic Petroleum v. Llones, 49 Phil. 466-477; Philippine Acetylene Co., Inc. v. CIR, 20 SCRA 1056 [1967]**). x x x"

The sole issue to be resolved is whether or not petitioner is entitled to the refund of input taxes on its purchases covering the period from January 1, 1993 to December 31, 1993.

The governing provisions on zero-rated sales and refunds of input taxes which are pertinent to the case at bar are quoted hereunder:

NT

"Sec. 102. ***Value-added tax on sale of services and use or lease of properties.*** *(a) Rate and base of tax.-xxx (b) Transactions subject to zero-rate.*-The following services performed in the Philippines by VAT-registered persons shall be subject to 0%:

(1) Processing, manufacturing or repacking 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).

(2) <u>Services other than those mentioned in the preceding sub-paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas</u> (BSP)." (Underscoring supplied)

xxx xxx xxx

"Sec. 106. ***Refunds or tax credits of input tax.***-(a) Any VAT-registered person, whose sales are zero-rated or effectively zero-rated, may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: xxx"

It is undisputed that petitioner is VAT-registered subject to value-added tax at 0% rate following the above-quoted Section 102(b)(2) of the Tax Code. In support of its claim, petitioner submitted photocopies of the receipts evidencing the value-added tax paid, as well as the statements from the Rizal Commercial Bank Corporation [an accredited agent bank of the Central Bank] to the effect that the acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations.

Respondent, on her part, alleged that it did not give due course to petitioner's claim for refund for its failure to submit substantial proof that the sales reported were really zero-rated.

We believe otherwise. Respondent's demand for additional requirements is unnecessary considering that the documentary and testimonial evidence adduced by the petitioner are uncontroverted. The same evidence has clearly substantiated petitioner's claim to the satisfaction of the Court.

Furthermore, petitioner's position is strengthened by existing law and jurisprudence. In **CTA Case No. 4431 entitled Nichimen Corporation-Philippine Branch vs. Commissioner of Internal Revenue, dated February 13, 1995,** involving the same party, this Court held:

> "The records show that petitioner is a VAT registered person subject to value-added tax at 0% rate pursuant to Sec. 102(a)(2) of the Tax Code, as amended, as the services rendered by it are paid for in foreign currency which are inwardly remitted to the Philippines in accordance with the rules and regulations of

N7

> the Central Bank of the Philippines (Exh. "A"). Therefore, Petitioner has the privilege to claim refund of input taxes pursuant to Sec. 106(b) of the Tax Code as amplified by Revenue Regulations No. 5-87."

The Court, however, noted that some purchases allegedly made by petitioner were not supported by receipts evidencing the input taxes paid, thus, petitioner's claim should be equitably reduced as follows:

Total amount of Input Taxes claimed P268,184.98
Less: Input Taxes not supported by receipts

Supplier	Invoice Amount	VAT	
Hilarion Levy	P 6,224.73	P 622.47	
Republic Courier	5,590.00	559.00	
Workmate	14,622.90	1,462.29	2,643.76
Amount Refundable			P265,541.22

WHEREFORE, in view of the foregoing, judgment is hereby rendered ordering the respondent to refund or issue the corresponding tax credit certificate to petitioner the reduced amount of P265,541.22 representing input taxes covering the period from January 1, 1993 to December 31, 1993.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

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

159