REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AMERICAN EXPRESS INTERNATIONAL, INC. - PHILIPPINE BRANCH,
Petitioner,

- versus -

C.T.A. CASE NO. 5635

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 03 2000

x - x

DECISION

This is a judicial claim for refund of value added taxes paid by the Petitioner on its domestic purchases of taxable goods and services in the amount of P2,900,585.71 covering the period January to December 1996.

Petitioner American Express International, Inc. - Philippine Branch (AMEX) is a servicing unit of American Express International, Inc. - Hongkong Branch. It is engaged primarily to facilitate the collection of AMEX receivables from cardmembers situated in the Philippines and payment to service establishments in the Philippines.

Petitioner is a VAT registered entity since March 1988 under VAT Registration Certificate No. 088445 (Exh. A).

For the period January to December 1996, Petitioner generated and recorded export sales of services in the total amount of P54,541,821.31 which were paid for in Hongkong in foreign currency inwardly remitted to the Philippines in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (TSN, Aug. 17, 1998, p. 24). Thus, zero-rated in accordance with Section 102(b)(2) of the then Tax Code.

Petitioner paid VAT input taxes for its local purchases of goods and services amounting to P2,900,585.71 alleged to be directly attributable to its zero-rated sales, broken down as follows:

QUARTER INVOLVED	EXHIBIT	INPUT TAX
1st	C	P 791,733.19
2nd	D	610,960.63
3rd	E	626,634.05
4th	F	871,257.84
	Total	P2,900,585.71

Petitioner claims that the above input taxes had not been applied against any VAT output tax as evidenced by Petitioner's Amended Monthly VAT Declarations and Quarterly VAT Returns for 1997 (Exhs. Q to Z).

Consequently, a letter-claim for refund was filed with the Bureau of Internal Revenue on April 1, 1998 (Exh. G) pursuant to Section 106(a) in relation to Section 102(b)(2) of the Tax Code, as amended. Petitioner outrightly alleges that the instant petition sprang from the denial by Respondent of its claim. But no proof of such denial was ever presented by Petitioner. In fact, it contrarily asserts that due to the inaction on the part of the Respondent and further considering the near expiry of the two-year prescriptive period, the filing of the instant petition on April 17, 1998 was apropos.

Respondent, by way of Special and Affirmative Defenses, had this to offer:

> a) Petitioner's claim for refund of alleged excess VAT input taxes is still under investigation/examination by the BIR;
>
> b) Petitioner has failed to show compliance with the provision of Section 16(c)(3) of Revenue Regulations No. 5-87, as amended by Revenue

Regulations No. 3-88 by failing to provide the necessary documents required under the said regulations;

c) Tax refunds are in the nature of tax exemptions. As such, they are regarded in derogation of sovereign authority and to be construed in *strictissimi juris* against the entity claiming the exemption. The burden of proof is upon him who claims the exemption in his favor and he must be able to justify his claim by clearest grant of organic or statute law. Failure on the part of petitioner to do so is fatal to its claim for refund; and

d) Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.

The pertinent provisions on refunds of input taxes are hereunder quoted:

SEC. 102. ***Value-added tax on sale of services and use or lease of properties.*** – x x x

(b) *Transactions subject to zero-rate.* – x x x

(2) Services other than those mentioned in the preceding subparagraph, 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* (BSP). (Tax Code)

SEC. 4.102.2. ***Zero rating.*** (a) In general. - A zero-rated sale by a VAT registered person, which is a taxable transaction for VAT purposes, shall not result in any output tax. However, the input tax on his purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with this regulation. (Revenue Regulations No. 7-95)

SEC. 106. ***Refunds or tax credits of creditable 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. (Tax Code)

There is no controversy that Petitioner's export sales were subject to zero percent VAT. As proven, it is a VAT registered entity. Its export sales of services were paid for in acceptable foreign currency inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*. In fact, this is confirmed by Respondent's ruling dated April 3, 1989 (Exh. B), partly quoted, *viz:*

> "In reply, please be informed that, as a VAT registered entity whose service is paid for in acceptable foreign currency which is remitted inwardly to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines, your service income is automatically zero rated effective January 1, 1988. [Section 102(a)(2) of the Tax Code as amended]. For this, there is no need to file an application for zero-rate."

Furthermore, We already settled the same legal issue in the previous cases filed by AMEX, namely: **CTA Case No. 5031 (August 16, 1996), CTA Case No. 5139 (February 3, 1997), CTA Case No. 5209 (December 22, 1997)** and **CTA Case No. 5308 (December 29, 1997).**

Hence, what remains to be resolved in the case at bar is the factual issue of whether or not Petitioner is entitled to the refund of P2,900,585.71 representing input VAT paid for its domestic purchases of goods and services allegedly attributable to its zero-rated sales for the period January to December of 1996.

To support its case and to comply with CTA Circular No. 1-95, as amended by CTA Circular No. 10-97, Petitioner engaged the services of an independent auditor to conduct special audit on its claim for refund and who was also commissioned by this Court. Said auditor ascertained that (a) Petitioner's invoices/official receipts were within the period of the claim; (b) Petitioner's invoices/official receipts on file were original copies; (c) the input taxes paid were correctly and properly computed; (d) the suppliers' VAT registration numbers and BIR permit numbers were indicated in the invoices/official receipts; and (e) Petitioner's zero-rated sales were paid for in acceptable foreign currency inwardly remitted in the Philippines in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (Exh. I). But it was found out that some transactions of herein Petitioner for the period involved were not properly documented. For instance, there were some purchases which did not have supporting invoices and official receipts. Also, there were some invoices and official receipts which did not indicate the VAT registration number of the suppliers or the BIR permit. And some invoices and official receipts submitted did not pertain to the period covered by the claim (TSN, Oct. 14, 1998, p. 11). As a consequence thereof, the amount of P132,831.70 was excluded by the Commissioner from the total claim of P2,900,585.71 (TSN, Sept. 16, 1998, p. 14). It is worth mentioning that the same amount of P132,831.70 was disallowed by the Revenue Examiner who investigated Petitioner's claim (TSN, Nov. 11, 1999, p. 9).

A circumspect examination of all the extant evidence resulted to an affirmative ruling in favor of the Petitioner but in a reduced amount.

Although Petitioner's purchases of goods and services were supported by invoices and official receipts (Exhs. L TO l-1125), We noted the following exceptions, to wit:

SUPPLIER	PERIOD	EXHIBIT	REFERENCE NUMBER	COMPUTATION	INPUT TAX
(a) Overstatement of input tax					
D'Robe Security Agency	January	L-20	8361	P 7,549.44	
				6,445.45	P 1,103.99
		L-22	8411	7,549.44	
				6,445.45	1,103.99
		L-24	8453	7,549.44	
				6,445.45	1,103.99
Mode Matrix	May	L-416	8851	4,144.23	
				2,053.10	2,091.13

Prosperous Management	June	L-520	50	4,767.15	
				4,331.09	436.06
AD ACE Advertising	July	L-545	159	545.45	
				270.22	436.06
				Subtotal	P 6,114.39

(b) Input VAT without supporting document

Robbie Stylographic & Dev't.	March	P 6,960.91

(c) Invoice/Official receipt without TIN and/or "V"/VAT after TIN

DM Plus	June	L-475	184	P 7,500.00
ACE Filling Syhstems Mfg.	July	L-541	727	106.82
ACE Filling Syhstems Mfg.	July	L-542	823	152.55
Integrated Systems Corp.	August	L-701	45789	3,590.91
Peerless Storage Boxes	October	L-979 to L-980	1483	32.27
			Subtotal	P 11,382.55

(d) Invoice/official receipt not in the name of American Express International, Inc.

Central CATV, Inc.	August	L-549	108265	P 165.00

(e) Not included in the list of transactions to be considered for input vat to be credited against output vat pursuant to Section 4.104-1 (a) of Revenue Regulations No. 7-95.

Commercial Motors Corporation	March	L-165	5977	P242,273.00
Commercial Motors Corporation	March	L-167	18486	7,727.27
			Subtotal	P250,000.27
			Grand total	P274,623.12

Petitioner offered in evidence Demand Deposit Account Statements, Telex Advices, Journal Entries and General Ledger (Exhs. M tp M-726) to prove that its receipt of payments for services rendered were paid for in acceptable foreign currency inwardly remitted to the Philippines in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*. Therefore, qualifying as zero-rated sales. Nevertheless, as testified to by Petitioner's witnesses, only the amount of P70,212,870.34 out of the total amount of

P76,155,373.52 declared in the VAT return had been verified as Petitioner's zero-rated revenues for the taxable year 1996 (Exhs. K-1 to K-3), detailed as follows:

QUARTER INVOLVED	PER PETITIONER'S RETURNS	PER P & A'S VERIFICATION	DISCREPANCY
1st	P 16,046,547.08	P 14,584,829.04	P 1,461,718.04
2nd	17,202,364.36	16,035,835.83	1,166,528.53
3rd	21,292,909.87	17,016,053.32	4,276,856.55
4th	21,613,552.21	22,576,152.15	1,962,599.94
	P 76,155,373.52	P 70,212,870.34	P 5,942,503.18

The difference of P5,942,503.18 comprised revenues actually generated within the Philippines or vatable revenues earned by Petitioner when it made advance payments to the service establishments within the Philippines and interests earned on employees' loans. (TSN, Sept. 16, 1998, pp. 18-19, Oct. 14, 1998, p. 14). In other words, not all of Petitioner's input taxes were directly attributable to its zero-rated sales. Moreover, for the fourth quarter of 1996, Petitioner declared only the amount of P21,613,552.21 in its amended quarterly VAT return while the independent auditor's verification amounted to P22,576,152.15. We are inclined to consider only the amount declared in the amended quarterly VAT return as Petitioner's zero-rated sales.

Accordingly, only the amount of P2,267,003.91, which represents the portion of allowable input tax attributable to zero-rated sales, can be refunded to Petitioner, computed as follows:

Zero-Rated Sales		P69,250,270.40
Divided by Total Sales		P76,155,373.52
Zero-Rated Sales Percentage		90.93%
Multiply by Allowable Input Tax Per Petitioner's Claim	P2,900,585.71	

Less: Disallowances			
(a) Per P&A's verification	P132,831.70		
(b) Per Court's verification	274,623.12	407,452.82	2,493,130.89
Amount Refundable			P 2,267,003.91

IN THE LIGHT OF ALL THE FOREGOING, Petitioner's claim for refund is hereby **PARTIALLY GRANTED**. Respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND** to Petitioner the sum of P2,267,003.91 representing VAT input taxes for the period January to December 1996.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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