REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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TAKENAKA CORPORATION PHILIPPINES BRANCH,
Petitioner,

C.T.A. CASE NO. 6762

Members:

- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAR 2 0 2006

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DECISION

BAUTISTA, L., J.:

The instant Petition for Review involves a claim for refund or issuance of a tax credit certificate in the amount of P57,732,973.35 allegedly representing unutilized input value-added tax for the fourth quarter of taxable year 2001.

Petitioner is a foreign corporation organized and existing under the laws of Japan, duly licensed to transact business in the Philippines through its branch office located at Andrews Avenue, Villamor Airbase, Pasay City [*par.1, Petition for Review*].

Petitioner is registered with the Bureau of Internal Revenue ("BIR") as a Value-Added Tax ("VAT") taxpayer as evidenced by its Certificate of Registration bearing Taxpayer Identification No. 005-301-571-000 [*par. 3, Facts Admitted*].

Petitioner is engaged in the business of general construction. For the purpose of constructing the Ninoy Aquino International Airport Passenger Terminal III ("NAIA-IPT3 Project"), petitioner as a sub-contractor, entered into an On-shore Construction Contract ("Construction Contract") with the Philippine International Air Terminals Co., Inc. ("PIATCO") [*pars. 4 & 5, Facts Admitted*].

PIATCO is a corporation duly organized and existing under the laws of the Republic of the Philippines and duly-registered with the Philippine Economic Zone Authority ("PEZA") as an Ecozone Developer/Operator as evidenced by its Certificate of Registration No. EZ-98-01 issued pursuant to Republic Act No. 7916 (An Act Providing for the Legal Framework and Mechanisms for the Creation, Operation, Administration and Coordination of Special Economic Zone in the Philippines Creating for this Purpose the Philippine Economic Zone Authority and for Other Purposes) [*par. 6, Facts Admitted*].

For the fourth quarter of 2001, petitioner filed its VAT return with the BIR on January 24, 2002 (*Exhibit C*) reflecting zero-rated sales/receipts in the amount of P566,469,998.32 and unutilized input VAT from the previous quarter in the amount of P157,359,389.95 and from the current quarter in the amount of P57,000,585.29 or a total of input VAT of P214,359,975.24 to be carried-over to the next quarter, as shown below:

	INPUT VAT		
Zero Rated Sales/Receipts	Carried-over from the previous quarter	This quarter	To be carried-over to the next quarter
P 566,469,998.32	P157,359,389.95	P57,000,585.29	P214,359,975.24

However, on January 14, 2003, petitioner filed an amended VAT return for the fourth quarter of 2001 (*Exhibit D*) in order to reduce its reported unutilized input tax carried-over from the previous quarter from P157,359,389.95 to P44,713,185.20, thereby reducing the input tax to be carried-over to the succeeding quarter to P101,713,770.49, shown as follows:

	INPUT VAT		
Zero Rated Sales/Receipts	Carried-over from the previous quarter	This quarter	To be carried-over to the next quarter
P 566,469,998.32	P44,713,185.20	P57,000,585.29	P101,713,770.49

On February 5, 2003, petitioner filed its second amended VAT return for the fourth quarter of 2001 (*Exhibit E*) this time declaring no amount of input tax carried-over from the previous quarter and reducing its current input VAT to P56,816,633.39, as follows:

	INPUT VAT		
Zero Rated Sales/Receipts	Carried-over from the previous quarter	This quarter	To be carried-over to the next quarter
P 566,469,998.32		P56,816,633.39	

On February 13, 2003, petitioner filed with the BIR an administrative claim for refund or issuance of a tax credit certificate in the amount of P56,816,633.39 representing the unutilized input VAT paid on its domestic purchases of goods and services attributable to its zero-rated sales for the fourth quarter of 2001 (*Exhibits F & G*).

On July 14, 2003, petitioner filed its third amended VAT return for the fourth quarter of 2001 (*Exhibit H*) increasing its reported unutilized input VAT for the quarter from P56,8616,633.39 to P57,732,973.35, to wit:

	INPUT VAT		
Zero Rated Sales/Receipts	Carried-over from the previous quarter	This quarter	To be carried-over to the next quarter
P 566,469,998.32		P57,732,973.35	

On August 12, 2003, petitioner filed an amended/supplemental letter request with the BIR for the refund or issuance of a tax credit certificate corresponding to the increased amount of P57,732,973.35 unutilized input VAT reported in its third amended VAT return for the fourth quarter of 2001 (*Exhibits I & J*).

The instant Petition for Review was filed on August 29, 2003 before this Court.

Respondent, in his Answer filed on October 28, 2003, interposed the following Special and Affirmative Defenses:

4. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;

5. Sales of goods, properties or services to PEZA registered enterprises do not qualify as zero-rated (0%) sale;

6. Well-settled is the rule that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances and rulings that override, instead of remaining consistent and in harmony with the law which they seek to apply and implement (**Philippine Bank of Communications vs. Commissioner of Internal Revenue, G.R. No. 112024, 302 SCRA 241, January 28, 1999**);

7. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;

8. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit;

9. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended as well as the requirements provided for in Revenue Regulations No. 5-87 as amended by Revenue Regulations No. 3-88 and Revenue Regulations No. 7-95, as amended;

10. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (**Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 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 submitted the following issues for this Court's resolution:

1. Whether or not petitioner has unutilized input VAT in the amount of P57,732,973.35 for the fourth quarter of taxable year 2001;

2. Whether or not the petitioner's sale of services to a PEZA-registered enterprise qualify as zero-rated sales;

3. Whether or not the petitioner's claim for refund/tax credit allegedly representing unutilized input VAT for the fourth quarter of taxable year 2001 in the amount of P57,732,973.35 is substantiated by documentary evidence; and

4. Whether or not the petitioner is entitled to its claim for refund or the issuance of a Tax Credit Certificate (TCC) on its unutilized input tax for the fourth quarter of taxable year 2001 amounting to P57,732,973.35.

We find it best to discuss first the issue of whether or not petitioner's sales of services to a PEZA-registered enterprise qualify as zero-rated sale.

Petitioner posits that its sales of services to PIATCO, a PEZA-registered entity, are zero-rated for VAT purposes pursuant to Section 108(B)(3) of the National Internal Revenue Code (NIRC) of 1997, which reads as follows:

> "**SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties*. -**
>
> xxx xxx xxx
>
> "(B) *Transactions Subject to Zero Percent (0%) Rate*. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> "(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate." *(Underlining supplied)*

Petitioner likewise relies on VAT Committee Ruling No. 011-2003 issued in its favor by the BIR on January 13, 2003, which categorically states:

> Therefore, sale of goods and services rendered by Takenaka to PIATCO are subject to the zero percent (0%) VAT and requires no prior approval for zero rating based on RMC 74-99. Accordingly, Takenaka is entitled to refund or the issuance of a tax credit certificate (TCC) covering all

its accumulated VAT input taxes in relation to its services rendered to PIATCO and from its purchases of goods and services from duly registered VAT taxpayers, duly supported by a VAT invoice or official receipt conforming with the requirements of Sections 113 and 237 of the Tax Code of 1997; provided that the application for refund or issuance of a Tax Credit Certificate (TCC) is made within two years after the close of the taxable quarter when the sales were made.

To further strengthen its claim, petitioner cites the following pertinent provision of Revenue Memorandum Circular (RMC) No. 74-99:

SECTION 3. Tax Treatment Of Sales Made By A VAT Registered Supplier From The Customs Territory, To A PEZA Registered Enterprise. –

xxx xxx xxx

3. In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus, legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to ART. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the "Cross Border Doctrine" of the VAT System.

The issue at hand is not one of first impression as We have already ruled that petitioner's sale of services to a PEZA-registered enterprise qualify as zero-rated sales.[1] Thus, PIATCO is a PEZA registered entity exempt from VAT pursuant to Section 1(A) of Rule XIV and Rule XX of the Rules and Regulations to implement Republic Act No. 7916 (*Exhibit CC*). By virtue of such exemption, petitioner's sales of services to PIATCO are effectively zero-rated as provided for under Section 108(B)(3) of the NIRC of 1997, as earlier quoted. Moreover, this Court could not understand the reason why the parties have brought as an issue the legal question of whether or not petitioner's sales of services to PIATCO are zero-

[1] TAKENAKA CORPORATION PHILIPPINE BRANCH vs. COMMISSIONER OF INTERNAL REVENUE, C.T.A. CASE NO. 6414, December 22, 2004

rated for VAT purposes considering both parties have explicitly admitted the following in paragraph 17 of their Joint Stipulation of Facts:

> 17. The existence of VAT Committee Ruling No. 011-2003 which provides that the sale of goods and services by the Petitioner to PIATCO are zero rated for VAT purposes and that the Petitioner is entitled to a refund of the issuance of a Tax Credit Certificate (TCC) covering all accumulated VAT input taxes in relation to its services rendered to PIATCO and from its purchases of goods and/or services from duly registered VAT taxpayers.

As the remaining issues are interrelated, the same shall be discussed jointly.

Section 112(A) of the NIRC of 1997, provides as follows:

> "**SEC. 112.** ***Refunds or Tax Credits of Input Tax***. —
>
> **"(A)** ***Zero-rated or Effectively Zero-rated Sales***. — 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 where 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: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

From the foregoing, in order to be entitled to a refund or tax credit of input VAT payments directly attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1) there must be zero-rated or effectively zero-rated sales;
2) that input taxes were incurred or paid;
3) that such input VAT payments are directly attributable to zero-rated sales or effectively zero-rated sales;
4) that the input VAT payments were not applied against any output VAT liability; and
5) that the claim for refund was filed within the two-year prescriptive period.

The various invoices and official receipts issued by petitioner to PIATCO (*Exhibits Z-1-a to Z-1-i3)* proved that for the fourth quarter of 2001, petitioner actually generated zero-rated receipts in the amount of P566,469,998.32 relative to the construction services it rendered to PIATCO.

As to the second requisite, petitioner submitted various suppliers' invoices and official receipts and payment certificates (*Exhibits Z-2 to Z-2-567*) which were verified by the Court's commissioned independent CPA, Ms. Nila N. Mendiola. In her report dated August 23, 2004 (*Exhibit W*), Ms. Nila N. Mendiola noted that out of the total claimed input VAT of P57,732,973.35, only the amount of P54,022,435.27 represents petitioner's valid claim and the remaining amount of P3,710,538.08 shall be disallowed for not being properly supported by VAT invoices and/or receipts, thus:

> *Based on our review and validation procedures, the amount of input VAT/taxes that we ascertained to be substantiated by supporting documents and correctly computed is summarized as follows:*
>
> | | |
> |---|---|
> | *Amount per claim* | *P57,732,973.35* |
> | *Amount per auditor's verification* | *54,022,435.27* |
> | *Balance of disallowed claims* | *P 3,710,538.08* |
>
> *The difference represents input taxes as indicated in said VAT listings broken down as follows:*
>
> | *Item* | *Nature* | *Amount* | *Reference* |
> |---|---|---|---|
> | *1.* | *Input VAT on purchases of goods and services with no expanded/creditable withholding tax being deducted.* | *P 1,502,428.54* | *Exhibit X-1* |
> | *2.* | *Input VAT on purchases of goods and services without supporting documents.* | *1,410,440.15* | *Exhibit X-2* |
> | *3.* | *Input VAT on purchases of goods supported by certified true copy.* | *428,744.91* | *Exhibit X-3* |
> | *4.* | *Input VAT on purchases of services supported by stamp VAT only.* | *224,137.53* | *Exhibit X-4* |
> | *5.* | *Input VAT on purchases of goos with photocopied invoices.* | *114,952.95* | *Exhibit X-5* |
> | *6.* | *Input VAT on purchases of goods and services without BIR authority to print.* | *20,831.82* | *Exhibit X-6* |
> | *7.* | *Input VAT on purchases of goods with non-VAT receipts and invoices.* | *4,594.18* | *Exhibit X-7* |

8.	*Input VAT on purchases of services where the amount of VAT claim in the supporting document is not indicated/found.*	*4,408.00*	*Exhibit X-8*
	Total disallowed VAT claims	*P 3,710,538.08*	

Upon verification, this Court found the said report in order.

With reference to the third requisite, petitioner's third amended VAT return for the fourth quarter of 2001 (*Exhibit H*) shows that it had no exempt nor taxable sales (at 10% VAT) but only zero-rated sales to PIATCO. Consequently, the substantiated input VAT of P54,022,435.27 can only be attributed to petitioner's zero-rated sales for the fourth quarter of 2001 in the amount of P566,469,998.32.

Regarding the fourth requisite, petitioner had no output VAT liability against which the input VAT of P54,022,435.27 may be applied because as stated earlier, petitioner's sales are 100% zero-rated. Moreover, petitioner proved that it did not carry-over the subject claim to the succeeding first quarter of 2002 (*Exhibit L-3*).

As to the fifth requisite, the reckoning of the two-year prescriptive period for the filing of claims for VAT refund/tax credit certificate starts from the date of filing of the corresponding quarterly VAT returns.[2] The subject claim covers the fourth quarter of 2001 for which petitioner originally filed its VAT return on January 24, 2002 *(Exhibit C).* Counting from this date, petitioner had until January 24, 2004 within which to file its claim administratively and judicially. Hence, the original and amended/supplemental administrative claims for refund filed on February 13, 2003 (*Exhibits F & G*) and August 12, 2003 (*Exhibits I & J*) as well as the Petition for Review filed on August 29, 2003 fall within the two-year prescriptive period.

In fine, this Court finds petitioner to have sufficiently proven its entitlement to the refund or issuance of a tax credit certificate representing unutilized input VAT directly attributable to effectively zero-rated sales of services for the fourth quarter of 2001 but in the reduced amount of P54,022,435.27, computed as follows:

Total Claim	P57,732,973.35
Less: Input VAT without valid VAT invoices or official receipts	3,710,538.08
Refundable Claim	P54,022,435.27

WHEREFORE, the Petition for Review is hereby ***PARTIALLY GRANTED***. Accordingly, respondent is **ORDERED to REFUND or ISSUE a TAX CREDIT CERTIFICATE** in favor of the petitioner, in the reduced amount of P54,022,435.27 representing unutilized input VAT for the fourth quarter of 2001.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

[2] JIDECO MANUFACTURING PHILIPPINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE, CTA Case No. 6552, September 16, 2004

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division