

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

GST PHILIPPINES, INC.,
Petitioner,

C.T.A. CASE NO. 7718

Members:

- versus -

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, JJ.

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:

JUN 23 2010

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AMENDED DECISION

CASTAÑEDA, JR., J.:

This resolves respondent's *Motion for Reconsideration* filed on February 3, 2010, with petitioner's *Comment and/or Opposition (to Respondent's Motion for Reconsideration)* filed on February 18, 2010 and petitioner's *Partial Motion for Reconsideration* filed on February 5, 2010; both seeking reconsideration of this Court's *Decision* dated January 8, 2010. The dispositive portion of the assailed *Decision* states as follows:

"WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **NINE MILLION FOUR HUNDRED SEVENTY ONE THOUSAND FOUR HUNDRED SIXTY FIVE PESOS AND 25/100 (P9,471,465.25)** in favor of petitioner, representing unutilized excess input taxes *J*

attributable to zero-rated sales covering the first and second quarters of 2006 and the third quarter of 2007.

SO ORDERED.”

Inasmuch as both parties rely on different grounds for their respective *Motions for Reconsideration*, each *Motion* will be discussed separately.

On February 3, 2010, respondent filed through registered mail his *Motion for Reconsideration*, praying for the reconsideration of the assailed *Decision* on the sole ground that petitioner failed to prove with certainty that it did not apply its 2006-2007¹ excess tax credits against its quarterly income tax liabilities for the taxable quarters of the succeeding taxable years as provided for under Section 76 of the Tax Code, as amended.

Meanwhile, on February 18, 2010, petitioner filed a *Comment and/or Opposition (to Respondent's Motion for Reconsideration)*, arguing that Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, is inapplicable to the instant case.

The Court agrees with petitioner's contention.

Section 76 of the NIRC of 1997, as amended, pertains to the total taxable income of corporations and the options granted to corporations in the event that the sum of the quarterly income tax payments made during the taxable year is not equal to the total tax due on the entire taxable income of that year. It must be pointed out that the present case involves a claim for refund or tax credit of unutilized input VAT attributable to zero-rated sales under Section 112(A) of the same Code. *je*

¹ This was mistakenly stated as 2007-2007 per respondent's Motion for Reconsideration.

The Court now proceeds to address petitioner's *Motion*.

On February 5, 2010, petitioner filed its *Partial Motion for Reconsideration* insofar as the disallowed input VAT claim for the fourth quarter of 2006, and the first and second quarters of 2007, in the amounts of P7,931,433.14, P608,710.11, and P149,021.50, respectively, totalling P8,689,164.75. This Court denied the input VAT claim of P8,689,164.75 on the ground that no amount of zero-rated sales/receipts was reported in petitioner's VAT returns for the said quarters.

According to petitioner, there is no requirement that the zero-rated or effectively zero-rated sales must be made during the same quarter as when the input taxes sought to be refunded were incurred or paid. In disallowing petitioner's refund claim solely on the ground that there were no zero-rated sales during the said quarters, the Court imposed an additional requirement not prescribed under Section 112(A) of the NIRC of 1997, as amended.

Input taxes are incurred in the course of production and sales of goods. Petitioner's products (grinding balls) need not be sold immediately after they have been manufactured. As long as the zero-rated sales occur, although at a later date, the input taxes incurred relating to the goods sold should be refunded.

Petitioner further asserts that the input taxes incurred during the fourth quarter of 2006, and the first and second quarters of 2007, relate to its zero-rated and/or effectively zero-rated sales made during the subsequent quarters, and are therefore subject to refund or tax credit under Section 112(A) of the NIRC of 1997, as amended. 

The Court finds petitioner's explanation meritorious.

Long settled is the requirement under Section 112(A) of the NIRC of 1997, as amended, that the input VAT sought to be refunded must be attributable to and dependent on the presence of zero-rated or effectively zero-rated sales.

In its *Motion*, petitioner sufficiently explained that while it had no zero-rated or effectively zero-rated sales during the fourth quarter of 2006 and the first and second quarters of 2007, it was able to sell subsequently its inventory of forged steel grinding balls during the third quarter of 2007. The delay was caused when its principal customer shifted from the use of forged steel grinding balls to imported hi-chrome balls; thus, it had to explore other markets where it could sell the forged steel grinding balls it had already produced, and for which it already incurred input taxes. Petitioner's zero-rated sales transactions for the third quarter of 2007 are supported by the requisite evidence as stated in the assailed Decision.² Consequently, petitioner is entitled to a refund of unutilized input VAT incurred during the fourth quarter of 2006 and the first and second quarters of 2007; which are attributable to its zero-rated sales for the third quarter of 2007.

Petitioner's input VAT claim for the fourth quarter of 2006 to the second quarter of 2007 in the amount of P8,689,164.75 should be reduced however by P73,980.43, for failure to meet the substantiation requirements under Sections 110(A), 113(A) and (B) of the NIRC of 1997, as amended, in relation 

² Decision dated January 8, 2010, page 10

to Sections 4.110-1 and 4.113-1 of Revenue Regulations No. 16-05. The amount of P73,980.43 is detailed as follows:

	Supplier	Exhibit	Disallowed Input VAT
1.)	Input taxes on purchases of services without official receipts		
	4th Qtr – 2006		
	Purebold Price Club, Inc.	TT-9	P 7,439.18
	R.S. Fado fee-VAT Claim	TT-1	1,800.00
2.)	Input taxes not separately indicated on invoices and/or official receipts		
	4th Qtr – 2006		
	ABC Oxygen Marketing	TT-13	618.21
	Veterans Security Agency, Inc.	TT-44/50	4,501.28
	Veterans Security Agency, Inc.	TT-51/74	4,651.32
	Veterans Security Agency, Inc.	TT-31	2,250.64
	Veterans Security Agency, Inc.	TT-84	2,250.64
	E-Hub Computer & Accessories	TT-2	13,146.43
	Dan Daryll Phil. Int'l	TT-18	691.07
	1st Qtr – 2007		
	Veterans Security Agency, Inc.	UU-71	2,400.69
	Veterans Security Agency, Inc.	UU-90/96	4,651.33
	Veterans Security Agency, Inc.	UU-111/115	4,201.19
	Veterans Security Agency, Inc.	UU-127	2,250.64
	ABC Oxygen Marketing	UU-56	618.21
	FB' Machine Shop & Services	UU-134	4,018.86
	2nd Qtr – 2007		
	Veterans Security Agency, Inc.	VV-4	2,400.69
	Veterans Security Agency, Inc.	VV-17/43	4,501.28
	Veterans Security Agency, Inc.	VV-51/63	4,651.33
	Veterans Security Agency, Inc.	VV-79	2,250.64
	Prowheels, Inc.	VV-8	48.21
	Super Technology & Electrical Power Corp.	VV-19	64.29
	Citipest, Inc.	VV-31	482.14
	Island Cove	VV-33/34	2,553.43
3.)	Input taxes on purchases of services supported by official receipt not dated within the period of claim		
	2nd Qtr – 2007		
	Sycip Salazar Hernandez & Gatmaitan	VV-54	720.00
	Sycip Salazar Hernandez & Gatmaitan	VV-76	720.00
4.)	Input taxes on purchase of service supported by official receipt not in petitioners name		

	2nd Qtr – 2007		
	Infocom Technologies	VV-56	98.73
		Total	P 73,980.43

After applying the substantiated input VAT of P8,615,184.32 (P8,689,164.75 less P73,980.43) against petitioner's output VAT liability for the fourth quarter of 2006 to the second quarter of 2007 in the amount of P317,767.72³, there still remains an input VAT in the amount of P8,297,416.60; which is attributable to its zero-rated sales for the third quarter of 2007.

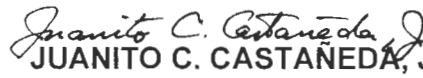
WHEREFORE, respondent's *Motion for Reconsideration* is hereby **DENIED**. However, petitioner's *Partial Motion for Reconsideration* is hereby **PARTIALLY GRANTED** and this Court's *Decision* promulgated on January 8, 2010 is hereby **MODIFIED**, partially granting the amount of **EIGHT MILLION TWO HUNDRED NINETY SEVEN THOUSAND FOUR HUNDRED SIXTEEN and 60/100 PESOS (P8,297,416.60)**, in addition to the amount of **NINE MILLION FOUR HUNDRED SEVENTY ONE THOUSAND FOUR HUNDRED SIXTY FIVE and 25/100 PESOS (P9,471,465.25)** granted in the original *Decision*.

Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the aggregate amount of **SEVENTEEN MILLION SEVEN HUNDRED SIXTY EIGHT THOUSAND EIGHT HUNDRED EIGHTY ONE and 85/100 PESOS (P17,768,881.85)**, representing unutilized excess input taxes attributable to zero-rated sales, 

³ Fourth Quarter 2006 (Exhibit "R") – P6,600.00; First Quarter 2007 (Exhibit "T") – P75,612.00; Second Quarter 2007 (Exhibit "V") – P235,555.72

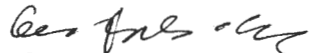
covering the periods of October 1, 2005 to June 30, 2006 and October 1, 2006 to September 30, 2007.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:


ERLINDA P. UY
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

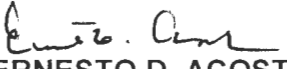
ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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


ERNESTO D. ACOSTA
Presiding Justice