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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NICHIMEN CORPORATION,
PHILIPPINE BRANCH,
Petitioner,

- versus - C.T.A. CASE NO. 4431

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 13 1995

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## DECISION

This is a claim for refund in the amount of P70,507.15 representing input taxes (VAT) on purchases of taxable goods and services for the period January 1, 1988 to December 31, 1988 pursuant to Sec. 106(b) of the Tax Code, as amended.

Petitioner is a resident foreign corporation organized and existing under the laws of Japan but duly licensed to do business in the Philippines through a Manila branch. It is "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 buy and sell of industrial materials, textiles, foodstuffs to include oilseed, feeds, canned goods, etc., chemicals, steel products of ferrous and non-ferrous metal products and products allied to those mentioned above" (Annex "A").

Pursuant to Sec. 107 of the National Internal Revenue Code, as amended, petitioner is a registered Value-Added Tax (VAT) taxpayer with VAT Registration No. 32-6-000293 (Exh. "F").

Petitioner alleged that its sales of services are subject to 0% rate, pursuant to Section 102(a)(2) of the Tax Code, as the services rendered by it 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 (Exh. "A").

For the period January 1, 1988 to December 31, 1988, petitioner filed on a quarterly basis its VAT returns showing a nil output tax but with a refundable input taxes, as follows:

| 1988 | Exh. | Refundable Input Tax |
|---|---|---|
| First quarter | B | P49,704.62 |
| Second quarter | C | 7,035.57 |
| Third quarter | D | 6,167.12 |
| Fourth quarter | E | 7,599.84 |
| TOTAL | | P70,507.15 |

Believing that it is entitled with the refund of input taxes pursuant to Sec. 106(b) of the Tax Code, petitioner filed its claim for refund with the VAT Division of the Bureau of Internal Revenue on March 15, 1990 (Exh. "G"). However, due to the inaction of the respondent on said claim, petitioner left with no recourse but to file the instant petition on March 30, 1990 in order to toll the running of the two-year prescriptive period under Sec. 230 of the Tax Code.

Respondent in her answer asserts the following by way of special and affirmative defenses:

> 6. The instant petition does not state a cause of action;
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> 7. Since the application of petitioner for the credit/refund of value-added tax it allegedly paid is still pending investigation by the Bureau of Internal Revenue, the instant petition is therefore premature;
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> 8. Petitioner, who has the burden of proof to show that it is entitled to tax refund, has failed to establish that the tax subject of its claim for refund was erroneously or illegally collected;
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> 9. Granting, without admitting, that the petitioner had paid the subject tax sought to be refunded, the same is presumed to have been collected in accordance with law;
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> 10. The claim for refund, being in the nature of an exemption from taxation, must be construed strictly against petitioner (**Insular Lumber Co. vs. CTA, 104 SCRA 710 [1981]**).
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> 11. It has not been shown that the instant petition was filed within the prescriptive period provided for in Section 230 of the Tax Code.

Meanwhile, a Request For Admissions And Interrogatories was served by the petitioner upon the respondent on November 20, 1992 which the latter failed to answer. As a consequence the Court ruled:

> Confirming the order in open court on January 19, 1993, all the matters contained in or subject of petitioner's "Request for Admission and Interrogatories" filed on November 20, 1992, and which are further supported by its "Notation of Admission" filed on December 15, 1992, are deemed ADMITTED, there being no opposition or objection interposed thereto by the respondent. (CTA records, p. 104)

Since there was no objection on the part of the respondent with regard to the factual issues, the only legal issue left for this Court's resolution is whether or not petitioner is entitled to the refund of input taxes (VAT) on the purchases it had for the period January 1, 1988 to December 31, 1988.

The laws controlling in the instant case are Secs. 102(a)(2) and 106(b) of the Tax Code which provide:

> Sec. 102. Value-added tax on sale of services. - (a) Rate and base of tax. - There shall be levied, assessed and collected a value-added tax equivalent to 10% percent of gross receipts derived by any person engaged in the sale of services. The phrase 'sale of services' means the performance of all kinds of services for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate commercial, customs and immigration brokers; lessors of personal property; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the

physical or mental faculties: Provided, That 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, inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines.

(2) Services other than those mentioned in the preceding subsection, the consideration for which 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.

xxx xxx xxx

Sec. 106. Refunds or tax credits of input tax. - (a) Export Sales. - x x x.

(b) Zero-rated or effectively zero-rated sales. - Any person, except those covered by paragraph (a) above, whose sales are zero-rated or are effectively zero-rated may, within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the input taxes attributable to such sales to the extent that such input tax has not been applied against output tax. (Underlining supplied)

Based on the above-quoted provisos, petitioner instituted the instant case. And to further support its claim, petitioner submitted documentary evidence while the respondent did not. Instead respondent submitted her case for decision based on the records and pleadings. "Respondent may thus be considered as not questioning seriously petitioner's entitlement to the refund claimed especially when petitioner was able to substantiate its claim" (**Nestle Philippines, Inc., [formerly FILIPRO Inc.] v. The Commissioner of Internal Revenue, CTA Case No. 4114, January 3, 1994**). 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 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.

However, We would like to correct the impression made upon us by both parties that Sec. 230 of Tax Code applies in computing for the two-year prescriptive period. This Court is convinced that Sec. 106 of the same code applies, on a case to case basis, in applying for the refund as well as in computing for the period within which to claim. With regard to the instant case, Sec. 106(b) applies. That is, "(w)ithin two years after the close of the quarter when such sales were made xxx". Thus, petitioner made it on time when it filed within two-year period its claim for refund, to wit:

| Period Claim | Close of the Qtr. | Date Filed BIR | CTA |
|---|---|---|---|
| 01-01-88 to 03-31-88 | 03-31-88 | 03-15-90 | 03-30-90 |
| 04-01-88 to 06-30-88 | 06-30-88 | 03-15-90 | 03-30-90 |
| 07-01-88 to 09-30-88 | 09-30-88 | 03-15-90 | 03-30-90 |
| 10-01-88 to 12-31-88 | 12-31-88 | 03-15-90 | 03-30-90 |

**WHEREFORE,** judgment is hereby rendered ordering the respondent to refund to the petitioner the amount of P70,507.15 representing input taxes for the period January 1, 1988 to December 31, 1988.

**SO ORDERED.**

**ERNESTO D. ACOSTA**
Presiding Judge

**WE CONCUR:**

**MANUEL K. GRUBA**
Associate Judge

**RAMON O. DE VEYRA**
Associate Judge

# CERTIFICATION

I hereby certify that this decision was reached after due consultation between 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