REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

AICHI FORGING COMPANY OF ASIA, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7120

Members:

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

Promulgated:

AUG 0 7 2007

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DECISION

PALANCA-ENRIQUEZ, J.:

Pursuant to *Section 112 (A) of the National Internal Revenue Code of 1997* (hereafter "NIRC of 1997"), *as amended*, petitioner filed a claim for refund of its creditable input VAT attributable to its zero-rated sales. To do so, however, petitioner must be able to show that its input VAT paid and output VAT transactions are properly substantiated. Failure to show proof of proper documentations is fatal to one's claim for refund or credit.

THE CASE

This is a Petition for Review filed by Aichi Forging Company of Asia, Inc. (hereafter "petitioner") praying for a refund in the aggregate amount of P4,856,452.84, representing the VAT input taxes paid or incurred on its importation of goods and domestic purchases of goods and services attributable to its zero rated sales for the period October 1, 2002 to December 31, 2002.

THE FACTS

In their "Joint Stipulation of Facts", the parties stipulated as follows:

> "1. Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal office at Barrio Pulong Sta. Cruz, Sta. Rosa, Laguna;
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> 2. Petitioner is duly registered with the Bureau of Internal Revenue as value-added tax entity pursuant to Section 107 (now Section 236) of the Tax Code on May 19, 1995. Consequently, it was issued a Certifficate of registration, with RDO Control No. 95-570-000481 (BIR Form No. 1556) and OCN IRC 0000148499 (BIR Form No. 2303);
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> 3. Petitioner also registered its products, "close impression due steel forgings" and "tool and dies", with the Board of Investment (BOI) as a pioneer status, enjoying the privileges granted by the BOI. As such, it was issued three (3) Certificates of Registration Nos. 74-336, DP-92-057 & EP 95-132 by the Board of Investment;

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4. Respondent is the duly appointed Commissioner of Internal Revenue vested with authority to exercise the functions of said office, including *inter alia*, the power to refund any internal revenue tax erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected or of VAT input taxes attributed to zero-rated revenue, with office address at the BIR National Office Building, Diliman, Quezon City;

5. No final action has been taken by the Respondent on Petitioner's claim for refund."

In his Answer, respondent alleged by way of special and affirmative defenses that petitioner has the burden to prove that its alleged export sales in the amount of P134,578,958.22 for the period October 1, 2002 to December 31, 2002 were paid for in acceptable foreign currency and inwardly remitted to the Philippines in accordance with the rules and regulations issued by the Bangko Sentral ng Pilipinas; petitioner has the burden to prove that its input taxes in the amount of P4,856,452.84 for the period October 1, 2002 to December 31, 2002 are directly and entirely attributable to its alleged zero-rated sales; petitioner has the burden to prove that the input taxes were not used against output tax liabilities for the succeeding quarters of the succeeding taxable years; and petitioner has the burden to prove that it is entitled to the amount claimed for refund.

Petitioner presented Jesus B. Oliveros, Jr. and Ma. Wencita Salvador, as witnesses, and documentary evidence, marked as Exhibits *"A"* to *"FF"*, inclusive of submarkings, which were all admitted by the Court.

On the other hand, respondent submitted the case for decision, without presenting any evidence.

Thereafter, both parties were ordered to file their simultaneous memoranda within thirty (30) days from notice. Considering that only petitioner filed its memorandum, the case was deemed submitted for decision on April 17, 2007.

Hence, this decision.

ISSUES

As stipulated upon by the parties, the following are the issues for the consideration of this Court:

I

WHETHER OR NOT PETITIONER'S ALLEGED EXPORT SALES IN THE AMOUNT OF P134,578,958.22 FOR THE PERIOD OCTOBER 1, 2002 TO DECEMBER 31, 2002 WERE PAID IN ACCEPTABLE FOREIGN CURRENCY AND INWARDLY REMITTED TO THE PHILIPPINES IN ACCORDANCE WITH THE RULES AND REGULATIONS ISSUED BY THE BANGKO SENTRAL NG PILIPINAS.

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II

WHETHER OR NOT PURCHASES IN THE AMOUNT OF P4,856,452.84 FOR THE PERIOD OCTOBER 1, 2002 TO DECEMBER 31, 2002 ARE DIRECTLY AND ENTIRELY ATTRIBUTABLE TO ITS ALLEGED ZERO-RATED SALES.

III

WHETHER OR NOT INPUT TAXES WERE NOT USED AGAINST OUTPUT TAX LIABILITIES FOR THE SUCCEEDING QUARTERS OF THE SUCCEEDING TAXABLE YEARS.

Principal Issue

The foregoing issues raised by both parties boil down to the principal issue of whether or not petitioner is entitled to a refund or the issuance of a tax credit certificate in the amount of P4,856,452.84, attributable to its zero-rated sales.

Petitioner's Arguments

Petitioner claims that as a registered value-added taxpayer, it is qualified for zero-rating of its indirect export sales, pursuant to *Sections 106 (A) (2) (a) (i), (ii) and (iii) and 108 (B)(1)* of the *NIRC of 1997, as amended.* As such, it now claims the refund of unutilized input taxes incurred on its importation of goods and domestic purchases of goods and services for the period October 1, 2002 to December 31, 2002. The input taxes were paid by petitioner on its domestic purchases of goods

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and services and capital goods and importation of goods which are necessary in the ordinary course of its trade and business as manufacturer of all kinds of steel and steel by-products, particularly but not limited to closed impression die steel forging and automotive steel parts. Petitioner contends that its domestic purchases and importations for the fourth quarter of 2002 are all directly attributable to its zero-rated sales, as they consist of purchases of goods and services and importation of goods which are necessary to sustain the company's manufacturing operations. All the finished products manufactured were directly exported or sold to PEZA registered enterprises which is tantamount to indirect export sales, as expressly provided in the Tax Code. Further, petitioner claims that the claimed VAT input taxes had never been applied against any output tax for the same period or to any succeeding periods.

THE RULING OF THE COURT

The petition is partly meritorious.

For a VAT registered entity whose sales are zero-rated to validly claim a refund, it must comply with *Section 112 (A)* of the *NIRC of 1997*, as amended, which provides:

"SEC. 112. Refunds or Tax Credits of Input Tax.-

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> (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 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"

Pursuant to the above provision, petitioner must comply with the following requisites: (1) the taxpayer is engaged in sales which are zero-rated or effectively zero-rated; (2) the taxpayer is VAT-registered; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

The Court finds that the first three requirements were complied by petitioner.

As regards the first requisite, the evidence presented by petitioner such as the Sales Invoices (*Exhibits "X" to "X-366", "Y" to "Y-374" and "Z" to "Z-338"*) shows that it is engaged in sales which are zero-rated.

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The second requisite has likewise been complied with. The Certificate of Registration with OCN 1RC0000148499 (*Exhibit "B"*) with the BIR proves that petitioner is a registered VAT taxpayer.

In compliance with the third requisite, petitioner filed its administrative claim for refund on December 23, 2004 (*Exhibit "G"*) and the present Petition For review on December 29, 2004, both within the two (2) year prescriptive period from the close of the taxable quarter when the sales were made, which is from December 31, 2002.

However, with regard to the fourth requirement, the Court finds that there are some documents and claims of petitioner that are baseless and have not been satisfactorily substantiated.

At the outset, a careful scrutiny of petitioner's Quarterly VAT Returns readily reveals a discrepancy in the amount claimed by petitioner herein. We agree with the findings of the independent CPA that in computing the input VAT available for refund, petitioner did not deduct the output VAT for sales subject to VAT in the amount of P823,563.29 *(Independent CPA's Amended Final Report, p.5, Exhibit "DD")*.

We now proceed to the determination of the substantiation of petitioner's claim for refund. It bears stressing that as there is no output VAT imposed on zero-rated export sales, what the government

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reimburses or refunds to the claimant is the input VAT paid by such claimant on its purchases in the conduct of its business. Thus, there is a need for the input VAT paid to be substantiated by purchase invoices or official receipts. However, it is not only the export sales that should be proven, but also compliance with the requirements prescribed in *Section 110,* in relation to *Section 113* of the *NIRC of 1997*, as amended, and as further implemented by *Revenue Regulations No. 7-95.*

Section 110 of the *NIRC of 1997*, as amended, provides:

> " SEC.110. Tax Credits.-
>
> (A) Creditable Input Tax.-
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> xxx xxx
>
> (B) Excess Output or Input Tax.- If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: Provided, however, That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.
>
> xxx xxx."

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While, *Section 113* of the same Code provides:

> "SEC. 113.- Invoicing and Accounting Requirements for VAT-registered Persons.-
>
> (A) Invoicing Requirements.- A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.
>
> xxx xxx."

In correlation thereto, *Section 4-108-1 of Revenue Regulations No. 7-95 (The Consolidated Value-Added Tax Regulations)* prescribes the following information which must appear on the face of receipts or invoices issued for the sale of goods by all VAT-registered entities:

> "SEC. 4-108-1. Invoicing Requirements – All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:
>
> 1. the name, TIN and address of the seller;
> 2. date of transaction;

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> 3. quantity, unit cost and description of merchandise or nature of service;
> 4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
> 5. the word "zero-rated" imprinted on the invoice covering zero-rated sales; and
> 6. the invoice value or consideration.
>
> In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.
>
> Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoices or receipts and this shall be considered as "VAT Invoice". All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax.
>
> If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A "VAT Invoice" shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the Code.
>
> The invoice or receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records."

The law is very clear. *Section 113* provides that "a VAT registered person shall, for every sale, issue a duly registered VAT invoice receipt for every sale transaction". Such VAT invoice or receipt must show the

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taxpayer's identification number, followed by the word "VAT", the BIR Authority to imprint or BIR permit marker and the word "zero-rated" imprinted on the invoice receipt covering a zero-rated sale.

After a careful review of the evidence on record, We adopt the findings of the Independent CPA in her Amended Final Report, *Annex G* thereof, where she noted certain disallowable claims, as they were not supported by sufficient documentary proofs which resulted to a discrepancy in the input VAT available for refund, to wit:

"SUMMARY OF EXCEPTIONS NOTED DURING THE EXAMINATION
FOR THE PERIOD COVERING THE FOURTH QUARTER OF 2002

Outside the period covered-local purchases and importation	55,158.94
Invoices has no BIR Authority to Print/Invoices has no VAT Registration Number	121.02
Name of payee is not indicated	2,413.52
Missing official receipts and sales invoices	41,019.99
Other exceptions (mathematical error and supporting documents not clear)	1,518.36
Total exceptions noted during the examination of source documents	100,231.83"

Petitioner declared in its Quarterly VAT Return for the fourth quarter of 2002 *(Exhibit "F")* that for the period covering October 1, 2002 to December 31, 2002, it generated and recorded zero rated export sales in the amount of P134,578,958.22.

To prove its alleged zero-rated export sales, petitioner presented in evidence the following documents:

1) Sales Invoices (*Exhibits "X" to "X-366", "Y" to "Y-374" and "Z" to "Z-338"*); and

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2) Final Report of the Commissioned Independent CPA (*Exhibit "BB"*) and Amended Final Report (*Exhibit "DD"*).

A perusal of the above-mentioned documents, particularly the Final Report of the Commissioned Independent CPA and the Amended Final Report, reveals that most of the sales entered into by petitioner from October 1, 2002 to December 31, 2002 were all export sales to PEZA registered entities; hence, are considered indirect export sales. In her Amended Final Report (*Exhibit "DD"*), the independent CPA declared her findings with regard to petitioner's zero-rated sales, as follows:

> "It was noted that the amount of zero-rated sales and sales subject to 10% VAT were properly recorded in the books and reflected in the VAT declarations and returns filed with the BIR. Total sales of AICHI for the period covered by my examination is **P142,814,591.13**, out of which **P8,235,632.91** is for the sales subject to VAT and **P134,578,958.22** for the zero-rated sales. The total output VAT for the period covered by my examination is **P823,563.29** that is for the sales subject to 10% VAT.
>
> Zero-rated sales are sales to a PEZA registered enterprises. AICHI's buyers for the zero-rated sales are the following companies:

i. Asian Transmission Corporation	P	72,790.925.60
ii. Fujitsu Die Tech		14,105.00
iii. Isuzu Autoparts Manufacturing Corp.		14,425,313.00
iv. Kito Philippines, Inc.		101,112.85
v. Laguna Autoparts Manufacturing Corporation		1,461.408.00
vi. Toyota Autoparts Phils., Corporation		45,786,093.77
Total Zero-Rated Sales	P	134,578,958.22"

Based on the foregoing, the pertinent provision of the *NIRC of 1997*, as amended, on value–added tax on the sale of goods or properties,

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particularly with respect to such export sales, is *Section 106 (A)(2)(a)(5),* which provides:

> "SEC. 106. Value-added Tax on Sale of Goods or Properties.-
>
> (A) Rate and Base of Tax.-
> xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) Export Sales. – The term "export sales" means:
>
> xxx xxx
>
> (5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws;
>
> xxx xxx."

Corollary thereto, *Article 23* in conjunction with *Article 77 (2)* of *Executive Order No. 226* (hereafter *"E.O. 226"*), otherwise known as the Omnibus Investments Code of 1987, provides that sales to registered zone enterprise shall be considered as export sales and the exporter shall be entitled to the benefits allowed by law for such transaction.

It must be noted that petitioner made exportations to PEZA registered entities which are considered constructive exportations under *E.O. 226.* Therefore, as a VAT-registered entity under *Section 106*

(A)(2)(a)(5) of the Tax Code, petitioner's sales or transactions are subject to VAT at 0% rate. Subject to the requirements prescribed in *Section 112 (A)*, petitioner, is, therefore, entitled to claim refund or issuance of a tax credit certificate for input VAT taxes attributable to its export sales.

Furthermore, the Court finds that the amount claimed in Item 28B of petitioner's fourth quarter VAT Return for 2002 amounting to P93,207.00 has no basis. It appears that Item 28B is for the monthly VAT payments for the previous two months prior to the filing of the quarterly VAT returns, which petitioner claimed to have paid and included in the computation for its excess input VAT. However, upon a careful examination of the Monthly VAT Declaration for the months of October and November 2002 *(Exhibits "C" and "D"),* the Court finds that there is no proof that such amount was paid by petitioner. For failure to show any evidence for verification of such payment, the same should also be deducted from the available creditable input VAT.

In sum, petitioner has sufficiently proved that it is entitled to a refund or issuance of a tax credit certificate representing unutilized excess input VAT payments for the period October 1, 2002 to December 31, 2002, which are attributable to its zero-rated sales for the same period, but in the reduced amount of P3,839,428.04, computed as follows:

Amount of Claimed Input VAT	P	4,856,452.84
Less:		
Exceptions as found by the ICPA		100,231.83
Monthly VAT Payments (without supporting evidence)		93, 207.00
Net Creditable Input VAT	P	4,663,014.01
Less:		
Output VAT Due		823,585.97
Refundable Input VAT	**P**	**3,839,428.04**

WHEREFORE, premises considered, the present Petition for Review is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the reduced amount of **THREE MILLION EIGHT HUNDRED THIRTY NINE THOUSAND FOUR HUNDRED TWENTY-EIGHT and 04/100 PESOS** (P3,839,428.04), representing the unutilized input VAT incurred for the months of October to December 2002.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ATTESTATION

I attest 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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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 Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice