REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

KAWASAKI HEAVY INDUSTRIES
LTD. (Manila Office),
Petitioner,

- versus - C.T.A. CASE NO. 4507

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

7/21/93

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DECISION

This case involves petitioner's claim for refund of erroneously paid 10% Value Added Tax (VAT) in the amount of P112,167.34 for the third quarter ending September 30, 1988.

Petitioner, Kawasaki Heavy Industries Ltd. (Manila Office), is the representative office in the Philippines of Kawasaki Heavy Industries Ltd. (KHI), a foreign corporation organized and existing under the laws of Japan.

With the prior approval of the Board of Investments [Exhs. D and D-1, pp. 40-41, CTA record] KHI was able to acquire a license from the Securities and Exchange Commission [Exh. C, p. 40, CTA record] to establish a representative office, having the following functions:

a. To oversee the implementation of the Joint Venture Agreement between the Philippine Government (through NIDC) and Kawasaki Heavy Industries Ltd.;

b. To conduct and make surveys and studies of market, economic and financial conditions in the Philippines; and

c. To advise and render assistance to local distributors/indentors and customers in the Philippines.

On October 20, 1988, petitioner paid the 10% VAT for the third quarter ending September 30, 1988, amounting to P112,167.34, covered by BIR Payment Order No. C 4036610 [Exh. F, p. 44, CTA record] and CB Confirmation Receipt No. B15565546 [Exh. G, p. 44, CTa record].

On July 4, 1989, respondent issued BIR Revenue Ruling No. 25-000-00-136-89, the pertinent portion of which reads as follows: [Exh. H, pp. 45-47, CTA record.]

"In reply, please be informed as follows:

1. Questions 1, 2 and 3 being interrelated are hereby answered jointly. KHI Manila Representative is <u>not</u> a resident foreign corporation since it is not engaged in any income generating business in the Philippines. A resident foreign corporation is a foreign corporation engaged in trade or business in the Philippines [Section 20(h), Tax Code]. Accordingly, KHI Manila is not subject to income tax; hence, it is exempt from filing of the corporate income tax return. (BIR Ruling No. 370-87)

> **KHI is a non-resident foreign corporation** since it is a foreign corporation **not engaged in trade or business in the Philippines** [Sec. 20(i), Tax Code]. The technical service fees which you remit to KHI are considered royalties since they are in consideration for the "technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme". [Sec. 36(a)(3)(F), Ibid.] Said technical service fees being Philippine source income of KHI are subject to Philippine corporate income tax at the rate of 35% [Sec. 25(b)(1), Ibid.] which shall be withheld by you as the payor-corporation and paid in the same manner and subject to the same conditions as provided in Sec. 51 of the Tax Code. [Sec. 50(a), Ibid.]
>
> 2. KHI does not maintain a branch in the Philippines. Hence, by paying directly the technical service fees to KHI in Japan, it cannot be said that there is remittance of profits, directly or indirectly, from the branch to its head office. Your Question No. 4 is, therefore, answered in the negative since, the 15% branch profit tax imposed under Section 25(a)(5) of the Tax Code is a tax on any profit remitted by a branch to its head office.
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> 3. **KHI Manila Office is not subject to VAT since it is not engaged in any income-generating business activity in the Philippines. A person is subject to VAT if it renders service "in the course of trade or business"**. (Sec. 99, Tax Code)
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> x x x x x x x x x."

In line with this ruling, petitioner filed on April 19, 1990 a claim for refund in the total amount of P757,160.37, as erroneously paid 4% contractor's tax for the first quarter of

1988 and the 10% value-added tax for the second, third and fourth quarters of 1988 and the first quarter of 1989. Up to the filing of the instant petition on October 19, 1990, respondent has not acted on such claim for refund.

In answer, respondent contends that the petition states no cause of action since the claim for refund is still pending investigation in the Bureau of Internal Revenue. The petition failed to mention petitioner's legal capacity to sue. In claims for refund the burden is on the taxpayer to prove entitlement thereto.

During the trial, petitioner presented the following documentary evidence to support its claim for refund:

1. Letter claim for refund with the BIR dated April 19, 1990 [Exhs. A, A-1 to A-5-a, inclusive];

2. Letter of petitioner's General Manager authorizing Atty. Douglas G. Baarde to file a claim for refund on behalf of petitioner [Exhs. B and B-1];

3. SEC Registration Certificate and BOI Certificate of Authority [Exhs. C, D and D-1];

4. Contractor's Quarterly Percentage Tax Return for the third quarter ending September 30, 1988 [Exhs. E, E-1 to E-3, inclusive];

5. BIR Payment Order No. C 4036610 and CB Confirmation Receipt No. B 15565546 [Exhs. F, F-1, F-1, G, G-1 and G-2]; and

6. BIR Legislative and Research Division Ruling No. 25-000-00-136-89 dated July 4, 1989 [Exhs. H, H-1 to H-2b, inclusive].

Respondent did not object to their admission. When it was time for respondent to present his evidence, after a series of postponements, he opted instead to submit the case based on the records and pleadings.

The sole issue for determination is whether or not petitioner is subject to the Value-Added Tax.

This same question has been resolved in an earlier case involving the same parties where this Court ruled:

> "The applicable provision of law is Section 99 of the National Internal Revenue Code, quoted hereunder:
>
> > 'Sec. 99. ***Persons Liable.*** - Any person who, in the course of trade or business, sells, barters or exchanges goods, renders services, or engages in similar transactions and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 100 to 102 of this Code.'
>
> In view of the findings of the BIR as embodied in its aforementioned ruling that Petitioner is not engaged in any income generating business activity in the Philippines, this Court likewise believes that it will not be subjected to value-added tax pursuant to the aforequoted Section 99 of the Tax Code. Value-added tax is imposable only against person, individual or juridical entity, in the course of their trade or business activities selling, bartering or exchanging of goods, or rendering services for a fee or other similar transaction. Respondent failed to present any evidence that will show that Petitioner has been engaged in any of these economic activities, at least to dispute its own findings contained in the said BIR Ruling." **[Kawasaki Heavy Industries Ltd. (Manila Office) v. Commr. of**

Internal Revenue, CTA Case No. 4473, June 11, 1993.]

In view of Our opinion that petitioner is not engaged in any trade or business, considering that it is only a representative office, and pursuant to BIR Ruling No. 25-000-00-136-89 in relation with Section 99 of the Tax Code, We find it unnecessary to pass upon the same issue raised. To reiterate petitioner is not subject to the Value-Added Tax.

WHEREFORE, finding the petition meritorious, respondent is hereby ordered to **refund** to petitioner the amount of P112,167.34 which was erroneously paid by the latter as value-added tax for the third quarter ending September 30, 1988. No costs.

SO ORDERED.

Quezon City, Metro Manila, July 21, 1993.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

Ernesto D. Acosta

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals