REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

PARLANCE SYSTEMS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7459

Members:

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

Promulgated:

JUL 0 9 2009
2:00 p.m.

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DECISION

PALANCA-ENRIQUEZ, *J*.:

It is clear under *Section 112(A) of the National Internal Revenue Code of 1997, as amended*, that the granting of a claim for issuance of a tax credit certificate or refund of unutilized input VAT is premised on the existence of zero-rated or effectively zero-rated sales.

THE CASE

This is a Petition For Review filed by Parlance Systems, Inc. (hereafter "petitioner") which seeks the refund or issuance of a tax credit certificate in the amount of P47,690,215.83, allegedly representing unutilized input value-added tax (VAT) attributable to zero-rated sales for taxable years 2004 and 2005.

THE PARTIES

Petitioner Parlance Systems, Inc. is a corporation duly organized and existing under the Philippine Laws, with principle office at the G/F PLDT Jupiter Warehouse, Reposo, corner Jupiter Street *(Exhibit "A")*. It is registered with the Board of Investments (BOI) under the *Omnibus Investments Code of 1997 (Executive Order No. 226, as amended)*, with BOI Certificate of Registration No. 2002-074 and was granted a Pioneer Status under the category of New IT Export Service Firm *(Exhibit "B")*.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with authority to exercise the functions of said office including *inter alia*, the power to refund unutilized input VAT attributable to zero-rated sales. He holds office at the BIR National Office Building, Diliman, Quezon City.

THE FACTS

The facts of the case, as culled from the records, are as follows:

On the following dates, petitioner filed its Quarterly VAT Returns for taxable year 2004:

Quarter	Date Filed	Exhibit
1st Quarter	April 20, 2004	D
2nd Quarter	July 19, 2004	E
3rd Quarter	October 19, 2004	F
4th Quarter	January 24, 2005	G
4th Quarter (amended)	February 10, 2005	H

On the other hand, the Quarterly VAT Returns for taxable year 2005 was filed on the following dates:

Quarter	Date Filed	Exhibit
1st Quarter	April 21, 2005	I
1st Quarter (amended)	April 20, 2006	J
2nd Quarter	July 20, 2005	K
3rd Quarter	October 25, 2005	L
3rd Quarter (amended)	April 20, 2006	M
4th Quarter	January 26, 2006	N
4th Quarter (amended)	April 20, 2006	O

On March 30, 2006, petitioner filed its administrative claim with the BIR *(Exhibit "P")*. However, due to respondent's failure to act on such claim, petitioner filed the present Petition For Review on April 20, 2006.

In his answer, respondent alleged the following special and affirmative defenses:

> "4. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
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> 5. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;

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Court of Tax Appeals

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

7. Petitioner's claimed refund or tax credit in the amount of **P47,690,215.83**, as alleged unutilized input VAT paid on its domestic purchases of goods and services attributable to its zero-rated sales, for the taxable years 2004 and 2005 were not fully substantiated by proper documents.

8. Petitioner failed to comply with the substantiation requirements under Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.

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

10. Petitioner's sales of services to non-resident foreign corporation do not in full qualify as zero-rate VAT.

11. It is incumbent upon the latter to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

12. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and as such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)*."

Petitioner presented Ana Maria Ilao, Financial Accounting Manager of PLDT, Ma. Milagros Padernal, the Court-Commissioned Independent CPA, and Sylvia Altizer, Trainee Manager for Echo Star, as witnesses, and documentary evidence, marked as *Exhibits "A" to "FFF"*, inclusive of their submarkings, which were all admitted by the Court in a Resolution dated January 3, 2008.

On the other hand, respondent presented Revenue Officer Ryan Dagalangit, as witness, and documentary evidence, marked as *Exhibits "1" to "3"*, inclusive of their sub-markings, which were all admitted by the Court in a Resolution dated July 25, 2008, after respondent filed a Manifestation with Motion to Admit Formal Offer of Evidence.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice.

Petitioner having filed its memorandum on August 28, 2008, without respondent's Memorandum, the case was deemed submitted for decision on September 23, 2008.

ISSUES

As stipulated upon by the parties, the following are the issues for the Court's consideration:

I

WHETHER OR NOT PETITIONER'S SALES OF GOODS AND SERVICES ARE ZERO-RATED FOR VAT PURPOSES UNDER SECTION 108 (B) (2) OF THE 1997 TAX CODE.

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II

WHETHER OR NOT PETITIONER HAS CARRY-OVER TO THE SUCCEEDING TAXABLE QUARTER(S) OR YEAR(S) THE ALLEGED UNUTILIZED INPUT VAT PAID ON ITS PURCHASES OF GOODS AND SERVICES ATTRIBUTABLE TO ITS ZERO-RATED SALES, FOR TAXABLE YEARS 2004 AND 2005, AND APPLIED THE SAME AMOUNT IN FULL TO ITS OUTPUT VAT LIABILITY FOR THE SAID PERIOD.

III

WHETHER OR NOT THE AMOUNT OF P47,690,215.83, BEING CLAIMED BY PETITIONER AS UNUTILIZED INPUT VAT PAID ON ITS PURCHASES OF GOODS AND SERVICES, FOR TAXABLE YEARS 2004 AND 2005, PERTAINS IN FULL TO ITS ZERO-RATED SALES OF GOODS AND SERVICES.

IV

WHETHER OR NOT PETITIONER'S SALES OF SERVICES TO NON-RESIDENT FOREIGN CORPORATION QUALIFY IN FULL AS ZERO-RATED VAT.

V

WHETHER OR NOT PETITIONER COMPLIED WITH THE SUBSTANTIATION REQUIREMENTS PRESCRIBED UNDER REVENUE REGULATIONS NO. 7-95 IN RELATION TO SECTION 113 AND 237 OF THE TAX CODE.

VI

WHETHER OR NOT PETITIONER IS ENTITLED TO ITS CLAIMED REFUND OR TAX CREDIT IN THE AMOUNT OF P47,690,215.83, AS ALLEGED

UNUTILIZED INPUT VAT PAID ON ITS PURCHASES OF GOODS AND SERVICES ATTRIBUTABLE TO ITS ZERO-RATED SALES, FOR TAXABLE YEARS 2004 AND 2005.

THE COURT'S RULING

We deny the Petition.

Petitioner anchors its claim on *Section 112(A)*, in relation to *Section 108(B)(2) of the NIRC of 1997, as amended*, which 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 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: *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."

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Court of Tax Appeals

From the afore-quoted provision, in order to be entitled to a refund/tax credit of unutilized input VAT arising from zero-rated or effectively zero-rated transactions, 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 taxes are attributable to zero-rated or effectively zero-rated sales;
4) that the input taxes were not applied against any output tax during and in the succeeding period of claim; and
5) that the claim for refund was filed within the two-year prescriptive period.

Prescription

We deal first with the timeliness of the filing of the instant claim.

The two-year prescriptive period for the filing of a claim for input VAT refund under *Section 112(A) of the NIRC of 1997, as amended*, is reckoned from the close of the taxable quarter when the relevant sales were made, regardless of whether said tax was paid or not (*Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.], G.R. No. 172129, September 12, 2008, 565 SCRA 171*).

In the case at bench, petitioner is claiming for the input VAT accumulated for the four quarters of 2004 and the four quarters of 2005. Applying the Mirant Case and *Section 112(A) of the NIRC of 1997, as*

[initials]

amended, the following are the pertinent dates relevant to petitioner's claim for refund:

Period	Close of the Taxable Quarter	Last Day For Filing of the Claim
1st Qtr. (2004)	March 31, 2004	March 31, 2006
2nd Qtr. (2004)	June 30, 2004	June 30, 2006
3rd Qtr. (2004)	September 30, 2004	September 30, 2006
4th Qtr. (2004)	December 31, 2004	December 31, 2006
1st Qtr. (2005)	March 31, 2005	March 31, 2007
2nd Qtr. (2005)	June 30, 2005	June 30, 2007
3rd Qtr. (2005)	September 30, 2005	September 30, 2007
4th Qtr. (2005)	December 31, 2005	December 31, 2007

Record shows that petitioner filed the administrative claim on March 30, 2006 *(Exhibit "P")*, and the instant Petition for Review on April 20, 2006 *(Original Docket, p. 1)*. While the administrative claim for refund was timely filed within the two-year prescriptive period, the Petition for Review was filed out of time on April 20, 2006 insofar as the claim for the first quarter of 2004 is concerned. Consequently, petitioner is barred from claiming refund corresponding to the first quarter of 2004 in the amount of P2,396,273.35 *(Exhibits "D" and "D-2")* due to prescription.

Other Requisites

The Court now proceed to the determination of petitioner's compliance with the other requisites for input VAT refund with respect to the remaining claim covering the second, third, and fourth quarters of

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2004 and the four quarters of 2005 in the amount of P45,293,942.48, which was duly filed within the two-year prescriptive period.

Petitioner is a BOI-registered entity engaged in the operation of a customer interaction center, commonly known as call center (*Exhibit "B"*). Petitioner alleges that it renders call center service solely to Echostar Satellite LLC, a non-resident foreign company, not doing business in the Philippines. The consideration for such services were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP). In other words, petitioner claims that it qualifies for VAT zero-rating under *Section 108(B)(1) and (2) of the NIRC of 1997, as amended*, to wit:

> "**SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. —**
>
> 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:
>
> (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 and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

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> (2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
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> xxx xxx."

In the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 153205, January 22, 2007, 512 SCRA 125,* the Supreme Court held that in order for the supply of services to be VAT zero-rated under *Section 108(B)(2) of the NIRC of 1997, as amended,* the following requisites must be met: (1) the services must be other than processing, manufacturing or repacking of goods; (2) payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and (3) the recipient of such services is doing business outside the Philippines.

As regards the first requisite, petitioner complied thereto as the call center services it rendered cannot be categorized as "processing, manufacturing or repacking of goods".

Petitioner, however, failed to comply with the second and third requisites.

Petitioner presented the following documents:

1) Certification from the Securities and Exchange Commission (SEC) attesting to the fact that Echostar Global Services Corporation is a foreign corporation, not doing business in the Philippines and maintains only a representative office in the country *(Exhibit "C");*

2) Certificate of Corporate Filing/Information of the same corporation *(Exhibit "DDD");*

3) Certification of Non-registration of Echostar Communication Corporation *(Exhibit "BBB");* and

4) Certification of Non-registration of Echostar Satellite LLC issued by the SEC *(Exhibit "FFF").*

The foregoing documents tend to prove that petitioner's sole client, Echostar Satellite LLC, is a non-resident foreign corporation doing business outside the Philippines.

In addition, in her affidavit *(Exhibit "EEE"),* Ms. Sylvia Altizer, Echostar Global Services Corporation's Training Manager, stated that:

> "A2: Echostar Satellite LLC is a client of Parlance Systems, Inc., for call center services.
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> xxx xxx
>
> A3: Echostar Communications Corporation is a corporation duly existing and organized in Nevada, United States of America and has its principal place of business at

9601 S. Meridian Blvd., Englewood, Colorado 80112. Echostar Global Services Corporation is a wholly owned subsidiary of Echostar Communications Corporation and is a corporation duly existing and organized in Colorado, United States of America.

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A8: Considering that Echostar Global Services Corporation has a representative office here in the Philippines, it just acts as a liaison between Echostar Satellite LLC and Parlance.

xxx xxx."

On the other hand, in her Report dated April 3, 2007 *(Exhibit "AA")* Ms. Milagros F. Padernal of Uy, Singson, Abella & Co., the Court-Commissioned Independent Certified Public Accountant (CPA), stated that petitioner's sole client is Echostar Global Services Corporation. Later, in a Supplemental Affidavit *(Exhibit "CCC")*, Milagros Padernal explained that petitioner's client is actually Echostar Communications Corporation, the parent company of Echostar Global Services Corporation.

The Court finds the foregoing submitted evidence insufficient to prove that petitioner's client is a non-resident foreign corporation doing business outside the Philippines. The identity, corporate existence, and place of business had not been clearly established. Petitioner failed to present the duly executed contract between petitioner and Echostar

Satellite LLC and the latter's articles of incorporation or registration. With these documentary evidence, the Court could have determined whether Echostar Satellite LLC is doing business within or outside of the Philippines. The SEC "certificate of non-registration" only proves that the records of SEC do not show the registration of a particular corporation or partnership. It does not prove that a particular corporation or partnership is duly existing and is doing business outside the Philippines.

The Court Commissioned Independent CPA, likewise, stated in her Report that "(Petitioner) receives check payments from Echostar *via* international courier, which are then deposited either to the Company's (petitioner) dollar savings account at Philippine Bank of Communications (PBCom) or placed in a dollar time deposit in the same bank. Collections of zero-rated sales are supported by official receipts and the corresponding bank-validated deposit slips or certificates of time deposit (CTD). The official receipts issued to acknowledge collections are imprinted with the Petitioner's TIN-V and BIR's permit to print and the words 'zero-rated'." *(Exhibit "AAA").*

This Court cannot ascertain the accuracy of the Report of the Independent CPA because petitioner failed to submit and formally offer in evidence the aforesaid pertinent documents, such as its official receipts, passbooks or bank statements for dollar savings account with PBCom, bank-validated deposit slips, certificates of time deposit, and other relevant documents, which will prove petitioner's receipt of foreign currency remittances for call center services rendered for the subject period of claim.

Without zero-rated receipts for the second, third, and fourth quarters of 2004 and the four quarters of 2005, the claimed input taxes of P45,293,942.48 allegedly attributable thereto, cannot be refunded. It is clear under *Section 112(A) of the NIRC of 1997, as amended,* that the granting of a claim for issuance of a tax credit certificate or refund of unutilized input VAT is premised on the existence of zero-rated or effectively zero-rated sales.

In *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue (G.R. No. 145526, March 16, 2007, 518 SCRA 430-431)*, the Supreme Court emphasized the importance of presenting documentary and evidentiary requirements:

> "(F)irst, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an *appeal* by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any

reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit. Second, cases filed in the CTA are litigated *de novo*. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim."

In the case of *Commissioner of Internal Revenue vs. Manila Mining Corporation (G.R. No. 153204, August 31, 2005, 468 SCRA 587-594)*, the Supreme Court reiterated said ruling, as follows:

"For a judicial claim for refund to prosper, however, respondent must not only prove that it is a VAT registered entity and that it filed its claims within the prescriptive period. It must substantiate the input VAT paid by purchase invoices or official receipts.

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Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases. No evidentiary value can be given the purchase invoices and receipts submitted to the BIR as the rules on documentary evidence require that these documents must be formally offered before the CTA.

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There is nothing, however, in CTA Circular No. 1-95, as amended by CTA Circular No. 10-97, which either

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expressly or impliedly suggests that summaries and schedules of input VAT payments, even if certified by an independent CPA, suffice as evidence of input VAT payments.

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The circular, in the interest of speedy administration of justice, was promulgated to avoid the time-consuming procedure of presenting, identifying and marking of documents before the Court. It does not relieve respondent of its imperative task of pre-marking photocopies of sales receipts and invoices and submitting the same to the court after the independent CPA shall have examined and compared them with the originals. Without presenting these pre-marked documents as evidence — from which the summary and schedules were based, the court cannot verify the authenticity and veracity of the independent auditor's conclusions.

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While the CTA is not governed strictly by technical rules of evidence, as rules of procedure are not ends in themselves but are primarily intended as tools in the administration of justice, the presentation of the purchase receipts and/or invoices is not mere procedural technicality which may be disregarded considering that it is the only means by which the CTA may ascertain and verify the truth of respondent's claims."

Although, record shows that respondent issued a Post Reporting Notice dated March 17, 2008 *(Exhibit "1")* and a Memorandum Report of Revenue Officer Ryan L. Dagalangit *(Exhibit "2")*, favoring the grant of petitioner's claim for refund of input tax for taxable years 2004 and 2005, said favorable findings is not binding upon this Court. The said

Memorandum Report and the Post Reporting Notice were not even signed and approved by Manuel V. Mapoy, the Revenue District Officer of RDO No. 49, North Makati.

Well-settled is the legal principle that tax refunds are in the nature of tax exemptions *(BPI Leasing Corporation vs. Court of Appeals, G.R. No. 127624, November 18, 2003, 416 SCRA 4)*. Accordingly, the claimants of those refunds bear the burden of proving the legal and factual bases of their claims *(Paseo Realty and Development Corporation vs. Court of Appeals, G.R. No. 119286, October 13, 2004, 440 SCRA 247)*. Petitioner unfortunately failed to discharge this burden.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED DUE COURSE** and accordingly **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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Executive Clerk of Court III
Court of Tax Appeals

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.
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