REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WRIGLEY PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5939

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 12 2002

x - x

DECISION

This case involves a claim for the issuance of a tax credit certificate (TCC) for the amount of P66,363,208.86, representing unutilized input VAT on importation and local purchases of capital goods and services for the period covering July 1, 1997 to December 31, 1998.

Petitioner, Wrigley Philippines, Inc., is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at Marcos Highway, Sitio Puting Bato, Barangay Inarawan, Antipolo City. (*par. 1, Joint Stipulation of Facts*).

It is registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) enterprise under VAT Registration No. 35-9-000001. For the period July 1, 1997 to December 31, 1998, petitioner filed with the BIR its quarterly VAT returns as follows:

Period Covered	Date Filed with the BIR
July 1997 – Sept 1997	October 20, 1997
Oct 1997 – Dec. 1997	Jan. 20, 1998
Jan. 1998- Mar 1998	April 20, 1998
April 1998 – Jun 1998	July 20, 1998
July 1998 – Sept. 1998	October 26, 1998
Oct. 1998 – Dec. 1998	January 25, 1999

According to petitioner, during the said period, it incurred and paid input VAT on its importations and local purchases of construction materials and services utilized in the construction of its new factory in the total amount of P66,363,208.86, broken down as follows:

Period Covered	Input VAT on Importation and Local Purchases of Capital Goods
July-Sept 1997	P5,118,646.71
October-Dec 1997	8,805,776.46
Jan-March 1998	12,305,659.79
April-June 1998	8,384,483.38
July-Sept 1998	16,952,028.80
Oct-Dec 1998	14,796,613.72 ---------------------------
TOTAL	P66,363,208.86 =================

Claiming that the foregoing amounts of input VAT paid for petitioner's domestic purchases and importation of capital goods and services have not been utilized and/or applied against petitioner's output VAT liability for the succeeding quarters, petitioner filed with the BIR several written applications for the issuance of a TCC in the aggregate amount of P66,363,208.86, thus:

Period Covered	Date of filing of application for refund
July 1997 - Sept 1997	December 23,1997
Oct. 1997 - Dec. 1997	Feb. 23,1998
Jan. 1998 - Mar. 1998	April 7,1998
April 1998 - Jun 1998	July 24,1998
July 1998 - Sept. 1998	November 5,1998
Oct. 1998 - Dec. 1998	April 12, 1999

Petitioner anchored its claim on Section 112 (B) of the National Internal Revenue Code of 1997, in relation to Section 4.106-1(b) of Revenue Regulations No.7-95.

On September 30, 1999, petitioner filed this petition for review in order to toll the running of the two-year prescriptive period.

In his Answer filed on December 1, 1999, respondent raised the following Special and Affirmative Defenses:

> "7. That respondent is still in the process of investigating and verifying petitioner (sic) claim for refund;
>
> "8. That such being the case, the Petition for Review is premature as petitioner has not exhausted the administrative remedies required by law and jurisprudence on the action as in the case of the instant petition for review;
>
> "9. That this Honorable Court therefore, has no jurisdiction over the Petition for Review."

On February 22, 2000, petitioner amended its quarterly VAT returns covering the period July 1997 to December 1998 to reflect the correct amount of input VAT payments. (*Exhibits M, N, O, P, Q and R*)

The following issues were raised by the parties for resolution by this Court:

1. Whether or not the Petitioner incurred input VAT on importations and local purchases of construction materials and services which were utilized in the construction of Petitioner's new factory.
2. Whether or not the accumulated input VAT of P66,363,208.86 arising from Petitioner's importations and local purchases of construction materials and services utilized in the construction of Petitioner's new factory would qualify as input taxes paid on capital goods and if so, whether it is duly substantiated by VAT invoices and receipts.
3. Whether or not Petitioner's accumulated input VAT of 66,363,208.86 for the period July 1, 1997 to December 31, 1998 was applied or utilized against its output VAT in the succeeding taxable years.

(Joint Stipulation of Facts and Issues, p. 218, CTA Records)

Petitioner's claim for the issuance of a tax credit certificate of its unapplied input VAT was anchored on Section 112(B) of the 1997 Tax Code, in relation to Section 4.106-1(b) of Revenue Regulations No. 7-95, to wit:

> "SEC. 112. Refunds or Tax Credits of Input Tax. –
>
> "(A) xxx xxx xxx
>
> "(B) Capital goods. – A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made."

Section 4.106-1(b) of Revenue Regulations No. 7-95 defined capital goods as follows:

> "Capital goods or properties" refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29(f) used directly or indirectly in the production or sale of taxable goods or services."

Based on the aforequoted provisions of law, it is imperative for the petitioner to prove the following:

(1) That it is a VAT registered person;

(2) That the input taxes claimed were paid on capital goods;

(3) That the input taxes have not been applied against its output tax liability; and

(4) That the administrative claim for refund was seasonably filed.

(Seagate Technology (Philippines) vs. Commissioner of Internal Revenue, CTA Case No. 5921 promulgated August 2, 2000)

A careful perusal of the records reveals that petitioner has satisfactorily met the above-mentioned requirements.

That petitioner is a VAT-registered taxpayer is not disputed *(par. 2, Joint Stipulation of Facts).*

Thus, We proceed to the issue on whether or not petitioner paid input taxes on capital goods.

Petitioner's accumulated input VAT was paid on its domestic and foreign purchases of supplies and services used in the construction of its new factory building in Antipolo. These purchases qualify as capital goods. To support its claim, petitioner offered in evidence various VAT invoices, official receipts, and import declarations

(*Exhibits V-1-1 to V-1-86, V-2-1 to V-2-201, V-3-1 to V-3-156, V-4-1 to V-4-122, V-5-1 to V-5-359, V-6-1 to V-6-161, V-7-1 to V-7-99 and V-7-101 to V-7-521*)

During the hearing of this case on August 8, 2000, Mr. Juanito Francisco, the Treasury Specialist of petitioner, testified on the following:

> Q: Mr. Francisco, you previously testified that the Input Taxes subject of this claim for refund pertains to Importations and Purchases from Local Suppliers, what were these goods that the company reported?
>
> A: The company reported such goods as Fabricated Steels, Insulation Board, Machinery, Machinery Port, Tiles Adhesives and so many other things, Ma'am.
>
> Q: Mr. Francisco, what was the company's purpose for importing the goods that you just mentioned?
>
> A: Those goods were imported for use in the construction of our new factory building in Antipolo City, Ma'am.
>
> Q: Mr. Francisco, were these imported goods actually utilized in the construction of our company's new bulding?
>
> A: Yes, Ma'am.
>
> xxx xxx xxx
>
> Q: Mr. Francisco, what did the purchases from the local suppliers issue?

A: From the local suppliers, we bought other construction materials such as cement, gravel and sand and then we also hired the EEI Corporation for the Labor Services in the construction of the new factory. We also hired the TCCB Engineering for the Construction Management Services and other Engineering companies. And then we also bought some supplies and then other utilities in the construction of the company, Ma'am.

Q: Mr. Francisco, what was the company's purpose for purchasing the items you just mentioned?

A: They were purchased for the construction of our new factory building in Antipolo, Ma'am.

Q: Were these goods and services actually utilized in the construction of the new building, Mr. Witness?

A: Yes, Ma'am.

(*pages 5-8, TSN, August 8, 2000*)

With reference to the third issue, records show that petitioner's accumulated input VAT was not applied or utilized against any VAT liability as reflected in the amended Quarterly VAT Returns of petitioner for the third and fourth quarters of taxable year 1997 and the first to the fourth quarters of taxable year 1998 *(Exhibits M, N, O, P, Q and R)*. The said returns disclosed that petitioner deducted the claimed input VAT from the total available input VAT for the respective quarters (*Exhibits M-3, N-3, O-3, P-3, Q-3, and R-3)*.

Mr. Ruben R. Rubio, partner of SGV & Company, the independent CPA commissioned by the Court, verified the invoices, official receipts and import declarations supporting petitioner's claimed input VAT. A report dated November 23, 2000 was presented detailing the audit procedures performed and his findings (*Exhibit T*). Out of the total input taxes of P66,363,208.86, the independent CPA found that the input VAT arising from the domestic purchases of goods and services in the amount of P3,974,667.89 failed to comply with the VAT invoicing requirements. He also noted that there are input taxes from importation supported only by photocopied Import Entry Declarations and Bureau of Custom's Official Receipts in the amount of P948,770.00. Hence, the total exceptions amounted to P4,923,437.89.

However, after further verification by the Court of the documents presented in evidence, the following disallowances were also found to be significant:

SUPPLIER	QUARTER INVOLVED	EXHIBIT	REFERENCE NO	AMOUNT	INPUT VAT
(a) Purchase of services not supported by an offical receipt					
DCCD ENGINEERING	JUL-SEP 1998			239,400.00	21,763.64
ANMAR	OCT-DEC 1998			44,500.00	4,045.45
ANMAR	OCT-DEC 1998			56,152.94	5,104.81
ANMAR	OCT-DEC 1998			68,040.40	6,185.49
ANMAR	OCT-DEC 1998			76,046.13	6,913.28
ANMAR	OCT-DEC 1998			158,520.00	14,410.91
ANMAR	OCT-DEC 1998			100,473.08	9,133.92
ANMAR	OCT-DEC 1998			31,382.00	2,852.91
GEOTENICA	OCT-DEC 1998			321,527.03	29,229.73
GEOTENICA	OCT-DEC 1998			643,054.06	58,459.46
JEMPAR DIST. & SERV.	OCT-DEC 1998			19,800.00	1,800.00
JEMPAR DIST. & SERV.	OCT-DEC 1998			212,458.40	19,314.40
JEMPAR DIST. & SERV.	OCT-DEC 1998			9,350.00	850.00
JEMPAR DIST. & SERV.	OCT-DEC 1998			75,585.95	6,871.45
JEMPAR DIST. & SERV.	OCT-DEC 1998			106,229.20	9,657.20
JEMPAR DIST. & SERV.	OCT-DEC 1998			16,115.00	1,465.00

JEMPAR DIST. & SERV.	OCT-DEC 1998				63,737.52		5,794.32
JEMPAR DIST. & SERV.	OCT-DEC 1998				17,320.00		1,575.00
JEMPAR DIST. & SERV.	OCT-DEC 1998				85,250.00		7,750.00
JEMPAR DIST. & SERV.	OCT-DEC 1998				24,100.00		3,100.00
JEMPAR DIST. & SERV.	OCT-DEC 1998				1,535,475.40		139,588.67
		Subtotal		**P**	**3,904,517.11**	**P**	**355,865.64**
(b) Invoice which was not pre-marked							
HIMMEL IND	OCT-DEC 1998		73913	**P**	**73,530.00**	**P**	**6,684.55**
(c) Non-VAT Invoices							
ACOJE HYDROMETRIX	JUL-SEP 1997	V-1-75	97-008	P	3,000.00	P	272.73
ACOJE HYDROMETRIX	JUL-SEP 1997	V-1-76	97-010		240,240.00		21,840.00
		Subtotal		**P**	**243,240.00**	**P**	**22,112.73**
		Total		**P**	**4,221,287.11**	**P**	**384,662.92**

Finally, the dates of filing of the corresponding claims for refund disclose that petitioner has complied with the fourth requirement as shown below:

Period Covered	**Date filed with the BIR**	**Date of application for refund**
July 1997 – Sept 1997	Oct. 20, 1997 *(Exh. A)*	Dec. 23, 1997 *(Exh. G)*
Oct 1997 – Dec. 1997	Jan. 20, 1998 *(Exh. B)*	Feb. 23, 1998 *(Exh. H)*
Jan. 1998- Mar 1998	April 20, 1998 *(Exh. C)*	April 7, 1998 *(Exh. I)*
April 1998 – Jun 1998	July 20, 1998 *(Exh. D)*	July 24, 1998 *(Exh. J)*
July 1998 – Sept. 1998	October 26, 1998 *(Exh. E)*	Nov. 5, 1998 *(Exh. K)*
Oct. 1998 – Dec. 1998	January 25, 1999 *(Exh. F)*	April 12, 1999 *(Exh. L)*

The instant petition was filed on September 30, 1999. Clearly, petitioner's judicial claim was likewise filed within the two-year period, counting from October 20, 1997, the earliest date of payment made by petitioner.

WHEREFORE, in view of all the foregoing, this Court hereby **PARTIALLY GRANTS** the instant petition. Accordingly, respondent is hereby **ORDERED** to **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P61,055,108.05, computed as follows:

Amount Claimed		P66,363,208.86
Less: Disallowances		
(a) Per independent CPA's verification	P4,923,437.89	
(b) Per Court's further verification	384,662.92	5,308,100.81
Amount Refundable		P61,055,108.05

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge