REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CENTRAL AZUCARERA DON PEDRO,
Petitioner,

- versus -

C.T.A. CASE NO. 5821

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 05 2002

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DECISION

This case involves a claim for refund or issuance of a tax credit certificate in favor of petitioner in the amount of P9,369,175.00 representing its total overpayment of output value-added tax (VAT) for the four (4) quarters of 1997.

Petitioner Central Azucarera Don Pedro is a domestic corporation organized and existing under and by virtue of the laws of the Philippines, with office addresses at Bo. Lumbangan, Nasugbu, Batangas and at the 6th Floor CG Building, 101 Aguirre Street, Legaspi Village, Makati City. It is engaged in the business of refining, preparing, importing, exporting, selling and generally dealing in sugar, sugar cane, molasses, syrups and glucose and all products or by-products thereof (*pars. 1 & 3, Joint Stipulation of Facts, page 53, CTA Records*).

Petitioner is duly registered with the Bureau of Internal Revenue as a value-added tax (VAT) taxpayer and was issued BIR Certificate of Registration No. V-94-580-000671 (*Exhibit "B," par. 4, Joint Stipulation of Facts, page 54, CTA Records*). For the four quarters of 1997, petitioner duly filed its VAT returns within the legally prescribed period (*par. 5, Joint Stipulation of Facts, page 54, CTA Records*). However, these returns were subsequently amended as petitioner allegedly failed to recognize or claim its presumptive input tax for the taxable year 1997. After the application of the presumptive input tax, the amended quarterly VAT returns showed an overpayment of output VAT in the total amount of P9,369,175.00. A comparison of petitioner's original and amended 1997 quarterly VAT returns is shown hereunder:

		Original Quarterly VAT Return		Amended Quarterly VAT Return		Overpayment
1ST QUARTER		**Exhibit C**		**Exhibit D**		
VAT Output Tax	P	32,931,154.47	P	32,931,154.47		
Less: VAT Input Tax						
Presumptive Input Tax			P	1,330,235.00		
Carried over from previous quarter	P	636,554.49		636,554.49		
Domestic Purchase of goods & services		11,080,555.89		11,080,555.89		
Total VAT Input Tax	P	11,717,110.38	P	13,047,345.38		
VAT Payable	P	21,214,044.09	P	19,883,809.09		
Less:						
Monthly Payments	P	4,644,365.89	P	4,644,365.89		
Advance Payments		9,160,916.14		9,160,916.14		
Total Payments	P	13,805,282.03	P	13,805,282.03		
Total Amount Paid/(Refundable)	P	7,408,762.06	P	6,078,527.06	P	1,330,235.00
2ND QUARTER		**Exhibit E**		**Exhibit F**		
VAT Output Tax	P	18,584,920.83	P	18,584,920.83		
Less: VAT Input Tax						
Presumptive Input Tax			P	1,579,265.00		
Domestic Purchase of goods & services	P	3,865,172.65		3,865,172.65		
Total VAT Input Tax	P	3,865,172.65	P	5,444,437.65		
VAT Payable	P	14,719,748.18	P	13,140,483.18		
Less:						
Monthly Payments	P	6,471,365.25	P	6,471,365.25		

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Advance Payments		10,573,784.96		**10,573,784.96** *1[1]	
Withholding Tax		253,916.20		253,916.20	
Total Payments	P	17,299,066.41	P	17,299,066.41	
VAT Paid/(Refundable)	P	(2,579,318.23)	P	(4,158,583.23)	4,158,583.23

3RD QUARTER		Exhibit G		Exhibit H	
VAT Output Tax	P	37,308,308.08	P	37,308,308.08	
Less: VAT Input Tax					
Presumptive Input Tax			P	4,693,138.00	
Carried over from previous quarter	P	2,579,318.23			
Domestic Purchase of goods & services		3,905,886.09		3,905,886.09	
Total VAT Input Tax	P	6,485,204.32	P	8,599,024.09	
VAT Payable	P	30,823,103.76	P	28,709,283.99	
Less:					
Monthly Payments	P	13,166,061.33	P	13,166,061.33	
Advance Payments		17,713,934.90		17,713,934.90	
Total Payments	P	30,879,996.23	P	30,879,996.23	
VAT Paid/(Refundable)	P	(56,892.47)	P	(2,170,712.24)	2,170,712.24

4TH QUARTER		Exhibit I		Exhibit J	
VAT Output Tax	P	28,249,705.09	P	28,249,705.09	
Less: VAT Input Tax					
Presumptive Input Tax			P	1,766,535.00	
Carried over from previous quarter	P	56,892.47			
Domestic Purchase of goods & services		4,761,832.56		4,761,832.56	
Total VAT Input Tax	P	4,818,725.03	P	6,528,367.56	
VAT Payable	P	23,430,980.06	P	21,721,337.53	
Less:					
Monthly Payments	P	6,814,357.83	P	**10,358,765.84** [2]2	
Advance Payments		13,072,214.22		13,072,214.22	
Total Payments		19,886,572.05		23,430,980.06	
VAT Paid/(Refundable)	P	3,544,408.01	P	(1,709,642.53)	1,709,642.53

[1] The amount in the petition for review is P10,573,786.96. The two peso difference accounts for the disparity between the amount sought to be refunded and the amount arrived above.

[2] Should be P6,814,357.83 because the amount of P10,358,765.84 represents the sum of quarterly payment of P3,544,408.01 and input tax of P6,814,357.83.

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Total Amount Refundable	P	9,369,173.00

On April 15, 1999, petitioner filed with the Bureau of Internal Revenue an administrative claim for refund of its overpaid value-added tax for the taxable year 1997 in the amount of P9,369,175.00 (*Exhibit "K"),* resulting from the application of the presumptive input tax in their amended VAT returns.

There being no action on the part of the respondent, the present case was filed on April 20, 1999 to toll the running of the two-year prescriptive period.

In his Answer filed on May 24, 1999, respondent raised the following Special and Affirmative Defenses:

> "6. Petitioner's claim for refund is under verification/investigation by respondent's Bureau.
>
> 7. The amount of P9,639,175.00 being claimed by petitioner as alleged overpayment of output value-added tax for the four quarters were not properly documented.
>
> 8. Taxes paid and collected are deemed to have been made in accordance with law and pertinent existing BIR regulations.
>
> 9. Claims for refund/credit are construed strictly against the claimants thereof as they are in the nature of exemption from payment of tax. Hence, it is incumbent upon petitioner to prove that it is entitled thereto.
>
> In an action for tax credit/refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit."

The issues we are tasked to resolve have been stipulated by the parties to be as follows:

1. Whether or not petitioner is entitled to claim presumptive input tax in accordance with Section 105(B) of the Tax Code, as amended.

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2. Whether or not such presumptive input tax being claimed by petitioner was duly substantiated.

3. Whether or not petitioner made overpayments of its output tax liability for the period January 1 to December 31, 1997.

4. Whether or not there were advance payments of input taxes made by petitioner for the period January 1 to December 31, 1997.

5. Whether or not petitioner made adjustments in the computation of input taxes for the period January 1 to December 31, 1997.

6. Whether or not output taxes paid by petitioner for the period January 1 to December 31, 1997 were not carried over to the succeeding quarters.

7. Whether or not petitioner is entitled to a tax credit certificate/refund of its overpaid output taxes in the amount of P9,369,175.00.

The first issue is answered in the affirmative.

Section 3 of Republic Act No. 8241, which took effect on January 1, 1997, amended Section 105 of the old Tax Code to include a new paragraph, to wit:

> "(B) *Presumptive input tax credits*. – (1) Persons or firms engaged in the processing of sardines, mackerel and milk, and in manufacturing refined sugar and cooking oil, shall be allowed a presumptive input tax, creditable against the output tax equivalent to one and one-half percent (1 ½%) of the gross value in money of their purchases of primary agricultural products which are used as inputs to their production."

This provision was subsequently incorporated in the 1997 Tax Code under Section 111 (B) thereof.

Clearly from the foregoing, firms engaged in the manufacturing of refined sugar, as in the case of petitioner, are entitled to credit against their output tax, presumptive input

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tax equivalent to one and one-half percent (1 ½%) of the gross value in money of their purchases of primary agricultural products which are used as inputs to their production.

We, therefore, proceed to determine whether or not the presumptive input tax being claimed by petitioner was duly substantiated.

Records show that out of the total amount of P9,369,173.00 presumptive input tax representing 1.5% of the gross value in money of petitioner's alleged purchases of primary agricultural products (*Exhibits Na-1 to Na-9, Nb-1 to Nb-9 & Nc-1 to Nc-12*), only the sum of P9,152,482.62 was duly substantiated by documents. Based on the independent CPA's certification, the difference of P216,690.38 was disallowed due to the failure of petitioner to present the necessary documents, to wit:

PERIOD COVERED	AMOUNT
January to March 1997	P1,330,235.00
April to June 1997	1,579,265.00
July to September 1997	4,693,138.00
October to December 1997	1,766,535.00
Total	P9,369,173.00
Less: Disallowances	216,690.38
Net Amount	**P9,152,482.62**

The third, fourth and fifth issues will be discussed jointly as these are interrelated.

Petitioner's quarterly VAT payments for the taxable year 1997 are shown below:

	1st Quarter (Exhibit D)	2nd Quarter (Exhibit F)	3rd Quarter (Exhibit H)	4th Quarter (Exhibit I)	Total
VAT Payments					
Monthly Payment	P 4,644,365.89	P 6,471,365.25	P 13,166,061.33	P 6,814,357.83	P 31,096,150.30
Advance Payment	9,160,916.14	10,573,784.96	17,713,934.90	13,072,214.22	50,520,850.22
Withholding	-	253,916.20	-	-	253,916.20
Quarterly Payment	7,408,762.06	-	-	3,544,408.01	10,953,170.07
Total Payments	P 21,214,044.09	P 17,299,066.41	P 30,879,996.23	P 23,430,980.06	P 92,824,086.79

After a careful scrutiny of the documents presented, we found out that the alleged output VAT payment totalling P92,824,086.79 was not fully substantiated. Only the 1st and 4th quarterly payments in the amounts of P7,408,762.06 and P3,544,408.01 were duly supported by documents (*Exhibits C and I*). Although petitioner alleged in its memorandum that its advance payments in the amount of P50,520,850.22 were supported by Certificates of Advance Payments and official receipts issued by the BIR or machine validated Authority to Accept Payment (ATAP) which were examined by the independent CPA, the same were not presented in evidence.

To support its VAT input taxes from purchases of goods and services, petitioner submitted various invoices and official receipts from its suppliers (*Exhibits Ne-1-A to Ne-1-F, Ne-2-A to Ne-2-I, Ne-3-A to Ne-3-I, Ne-4-A to Ne-4-J, Ne-5-A to Ne-5-J, Ne-6-A to Ne-6-K, Ne-7-A to Ne-7-G, Ne-8-A to Ne-8-F, Ne-9-A to Ne-9-D, Ne-10-A to Ne-10-D, Ne-11-A to Ne-11-F & Ne-12-A to Ne-12-F*). And based on the independent CPA's report, his total exceptions amounted to P3,022,879.07, consisting of the following:

Findings	Input Taxes Claimed
I. Input Taxes on Local Purchases of Services	
1. Supported by Handwritten TIN, TIN-V, Stamped TIN-V, Stamped VAT ORs	P 20,435.73
2. Supported by TIN VAT ORs not in the name of the Company	4,931.21
3. Supported by TAN/TAN-VAT ORs	170,620.15
4. Supported by TIN NON-VAT/TIN NV ORs	31,953.93
5. Supported by TIN ORs	34,107.99
6. Supported by Billing Statements, Provisional Receipts, Statement of Accounts, Deposit Slips, Debit Memos	146,150.76

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7. Supported by Stamped TIN-V Invoices	42,338.32
8. Supported by TIN-VAT/TAN-VAT Invoices without VAT ORs	225,688.19
9. Supported by TAN/TAN-VAT Invoices	13,033.75
10. Supported by TIN/TIN-NV Invoices	28,584.49
Total	P717,844.52
II. Input Taxes on Local Purchases of Goods	
1. Supported by TIN VAT Invoices not in the name of the Company	P 21,871.12
2. Supported by TIN Invoices	120,542.79
3. Supported by TAN-VAT/TAN-V/TAN Invoices	60,295.50
4. Supported by TIN NON-VAT/TIN-NV Invoices	53,346.96
5. Supported by Handwritten "VAT" Invoices, Stamped TIN-NV Invoices	20,796.15
6. Supported by Purchase Orders	621.24
7. Supported by TAN-VAT ORs	2,478.67
Total	P 277,473.76
II. Input Taxes on Local Purchases of Goods and services Without Supporting Documents	P2,027,560.79
Grand Total	P3,022,879.07

However, further verification disclosed that the amount of P5,268,597.58 should likewise be disallowed for even if they were supported by invoices or official receipts, the same bore no preprinted TIN-VAT/V thereon. According to petitioner, these invoices and official receipts constituted its suppliers' old invoices and receipts which had to be consumed first before they can issue the new receipts.

Pursuant to the provisions of Section 108(a) of the old Tax Code (now Sections 113(A) and 237 of the 1997 Tax Code) in relation to Section 4.108-1 of Revenue

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Regulations No. 7-95, the words TIN VAT must be printed on the invoices and receipts to be considered as a "VAT Invoice". In view thereof, all purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax. Where the suppliers still have unexpended/unissued invoices or receipts bearing the old TAN/VAT number, the new TIN shall be reflected/superimposed on all unexpended/unissued VAT/Non-VAT receipts /invoices to be valid as a VAT invoice. The supplier is allowed to use the same until they are all used up or expended as long as the TINS are reflected thereon **(*Resolution, Seagate Technology (Philippines) vs. Commissioner of Internal Revenue, CTA Case No. 5999, July 26, 2001*).**

On the sixth issue, petitioner has duly proven that the excess VAT credits for 1997 were not carried over to the succeeding quarter of 1998, as shown in its first quarterly VAT return for 1998 *(Exhibits "L" and "L-1").*

Finally, as to whether or not petitioner is entitled to a tax credit certificate or a refund of its overpaid output taxes in the amount of P9,369,175.00, this court answers in the negative.

While petitioner has submitted various documents to support its presumptive input tax, these documents are not sufficient to grant the claim for refund pursuant to Section 105 of the old Tax Code, as amended by R.A. No. 8241.

Petitioner's claim arose from the cash payments made in exchange for the unrecognized presumptive input tax. However, petitioner failed to fully substantiate the total payments appearing in its 1997 quarterly VAT returns, particularly the withholding (VAT input), monthly and advance payments of output VAT in the sums of P253,916.20, P31,096,150.30 and P50,520,850.22, respectively. In addition, petitioner failed to prove

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the amount of P635,554.49, representing input tax carried-over from the previous quarter of the taxable year 1996.

Petitioner's overpayments for the taxable year 1997 consisted of its monthly VAT payments, advance payments and quarterly payments for the said taxable year. It was, therefore, necessary for the petitioner to present proof of said payments. While petitioner submitted in evidence its quarterly payments, it, however, failed to present proof of the monthly VAT and advance payments for the year 1997. Thus, we are constrained to deny the refund sought.

Well settled is the rule that a claim for refund is construed in *strictissimi juris* against the taxpayer as it partakes of the nature of an exemption from taxation. ***(Citibank N.A. vs. Court of Appeals, et. al, G.R. No. 107434, promulgated October 10, 1997)***

WHEREFORE, in view of all the foregoing, the instant petition for review is hereby **DENIED** due to insufficiency of evidence.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

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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

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