LIB

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ROYAL UNDERGARMENT CORPORATION
OF THE PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5013

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:
JUL 24 1997

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DECISION

In the case at bar the issue which is presented for our consideration is whether or not petitioner is entitled to a tax refund/credit of its input taxes for the period May 1, 1991 to July 31, 1991 amounting to P980,881.96.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines; is registered with the Board of Investments (BOI) as a preferred non-pioneer enterprise under P.D. 1789, as amended, for production, manufacture and export of undergarments (i.e., brassieres, panties and girdles); is duly registered as a manufacturer of apparel under the rules and regulations of the Garments and Textiles Export Board (GETB); and is registered with the Bureau of

Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer, with VAT registration No. 30-1-000546.

For the period covering May 1 to July 31, 1991, petitioner alleged that it processed, manufactured and repackaged goods for entities and companies doing business outside the Philippines, and subsequently exported the same, the consideration of which were allegedly paid for in acceptable foreign currencies, inwardly remitted to the Philippines and accounted for in accordance with the Rules and Regulations of the Central Bank of the Philippines. During the same period, petitioner alleged that it purchased domestic goods and services and imported capital goods necessary for its products and operations in the total amount of P9,808,819.60 and paid an input tax of P980,881.96.

On October 29, 1992, petitioner filed with the respondent an application for tax credit/refund of the aforementioned input taxes in the total amount of P980,881.96.

The aforesaid application was not acted upon by the respondent, hence, on July 30, 1993, petitioner filed with this Court the instant petition for review.

Petitioner presents the propositions as reasons of the petition for review that it is entitled to a refund of the aforementioned VAT input taxes since it falls squarely within the ambit of Section 102 (a) (1) of the Tax Code, which provides:

> "SEC. 102. ***Value-added tax on sale of services.*** - (a) *Rate and base of tax.* - There shall be levied, assessed and collected, a value-added tax equivalent to 10% of gross receipts derived by any person engaged in the sale of services. The phrase "Sale of services" means the performance of all kinds of services for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of personal property; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties: Provided that the following services performed in the Philippines by VAT-registered persons shall be subject to 0%.
>
> (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, inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines.
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> x x x x x x x x x".

Further, petitioner states that it has complied with all the statutory and procedural requirements, thus, respondent should have granted its claim for refund as mandated by Sec. 16 of Revenue Regulations No. 3-88.

Respondent on the other hand, in her answer stressed that the petitioner's application for tax credit is pending administrative investigation and the amount of P980,881.96 claimed by the petitioner as input tax for the period May 1 to July 31, 1991 were not properly documented. Further respondent raises, in the usual token of a defense, that (1) it is incumbent upon the petitioner to show that the alleged purchase of domestic goods and services and imported capital goods are covered by Section 106 of the Tax Code, (2) in an action for tax credit/refund, the burden of proof is on the petitioner to establish its entitlement thereto, (3) taxes paid and collected are presumed to have been made in accordance with law and regulations, and (4) it is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 230 of the Tax Code, relative to the recovery of erroneously or illegally collected taxes.

As earlier adverted to at the outset, the issue to be resolved by the Court is whether or not petitioner is entitled to a tax refund/credit of its input taxes for the period May 1 to July 31, 1991 amounting to P980,881.96.

Aside from Sec. 102 earlier mentioned, the other provisions of law applicable in the case at bar are

Sections 104 (b) and 106 of the National Internal Revenue Code, which we quote for ready reference, to wit:

> SEC. 104. *Tax Credits.* - (a) *Creditable input tax.* - x x x
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> (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. Any input tax attributable to the purchase of capital goods or 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 106.
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> SEC. 106. *Refunds or tax credits of input tax.* - (a) *Export Sales.* - An exporter who is a VAT-registered person may within two years from the date of exportation, apply for the issuance of a tax credit certificate or refund of the input tax attributable to the goods exported, to the extent that such input tax has not been applied to output tax and upon presentation of proof that the foreign exchange proceeds has been accounted for in accordance with the regulations of the Central Bank of the Philippines.
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> (b) *Zero-rated or effectively zero-rated sales.* - Any person, except those covered by paragraph (a) above, whose sales are zero-rated or are effectively zero-rated may, within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the input taxes attributable to such sales to the extent that such input tax has not been applied against output tax.
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> (c) *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 for refund may be made only after the expiration of 2 succeeding quarters following the quarter in which the importation or local purchase was made: *Provided*, That a VAT-registered person who is just commencing business may apply for refund of input taxes under this paragraph not earlier than 180 days from the date of registration or actual start of business operations, whichever comes later: *Provided*, *however*, That the application is filed not later than 2 years from the dates herein prescribed.
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> x x x x x x x x x.

Compliance with the aforementioned provisions of law will lead this Court to grant the reliefs prayed for by the petitioner.

The records vividly show that petitioner has complied with the statutory requirements under Sections 106(b) of the Tax Code by having filed a written claim for refund with the respondent and a suit on appeal to this Court within two (2) years after the close of the quarter when such sales were made and that the respondent has recognized the legal merit of the claim when she favorably recommended for approval the same but only in the reduced amount of P649,780.21, due to disallowances, (Exh. 1) and that the same is being presently administratively processed or settled.

The administrative machinery of the respondent employed in the processing of the claim for refund seems to move barely at idling speed. To be relatively quiescent for some four (4) years on a claim of such a simple nature which no longer incites controversy nor excites a queasy sense of expectation, creates an unwarranted bureaucratic inertia of inaction.

Apparently the precise question to be determined by the Court is how much should be refunded to the petitioner as its allowable input tax for the period May 1 to July 31, 1991.

A minutiose scrutiny of the evidence adduced by both parties, led this Court to agree with respondent that the petitioner's claimed input taxes in the amount of P980,881.96 for the period May 1 to July 31, 1991 should be reduced to P649,780.21 (Exh. 1 & 2) due to the following disallowances:

1. Input taxes corresponding to purchases for the account of its affiliated company amounting to P31,697.47 (p. 9, April 22, 1996, TSN)

2. Input taxes on management fees amounting to P275,456.50 for the reasons that the official receipts issued by AGP Industrial Corp. did not bare the necessary VAT registration number, therefore not a valid VAT invoice. (p. 10, April 22, 1996, TSN)

3. Input taxes on purchase invoices which did not conform with the invoicing requirements set by

Sec. 108 of the NIRC, the total of which is ₱23,947.78 (p. 11, April 22, 1996, TSN).

The above conclusion is borne by the facts and circumstances of the case. Respondent has competently and sufficiently supported by evidence its findings, which petitioner failed to controvert. It may not be an oversimplification to state that the said findings furnish the best means of its own exposition in terms of tractable data laid open and fully disclosed and as such deserves the credence that should normally be accorded. Therefore, we affirm the results of the investigation conducted by the respondent.

IN THE LIGHT OF ALL THE FOREGOING, the petition is partially granted. Respondent is hereby ORDERED to **REFUND** or **ISSUE** tax credit certificate in the sum of ₱649,780.21 in the name of the herein petitioner. No costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q SAGA
Associate Judge

CERTIFICATION

I hereby certify that this 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
Court of Tax Appeals