REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FUJITSU DEVELOPMENT CORPORATION OF THE PHILIPPINES,
Petitioner,

- versus -

C.T.A. CASE NO. 6131

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 17 2002

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DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P49,959,689.90 allegedly representing unutilized input value-added tax (VAT, for brevity) on purchases of parcels of land; and goods and services for the period June 1998 to December 1999.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office address at Rd 3A, SEPZ II, Carmelray Industrial Park, Canlubang, Calamba, Laguna. It is registered with the Bureau of Internal Revenue as a value-added tax taxpayer with Tax Identification Number No. 004-483-165 *(Paragraph 1, Stipulation of Facts, CTA records, page 354-A, Exhibits PP and PP-1)*.

On June 10, 1998, a Contract to Sell was executed by First Philippine Industrial Park, Inc. (FPIPI, for brevity) and petitioner whereby the former agreed to sell, transfer

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and convey to the latter which, in turn, agreed to purchase, a lot with an area of 18.28 hectares, more or less, situated in the municipalities of Sto. Tomas and Tanauan, both in the province of Batangas and part of an industrial estate known as the First Philippine Industrial Park, for and in consideration of the payment of US$80.00 per square meter or the aggregate amount of US$14,624,000.00 *(Paragraph 2, Stipulation of Facts, CTA records, page 354-A, Exhibit A, inclusive of submarkings)*. It was stipulated in the contract that the purchase price shall be paid by the petitioner in the following manner:

1. 50% of the total purchase price or the amount of US$7,312,000.00 within eleven (11) days from the issuance of an invoice by FPIPI to petitioner, thirty five percent (35%) of which shall be paid in United States currency and sixty five percent (65%) to be paid either in Philippine pesos or United States dollar, at the option of petitioner; and

2. The 50% balance of the total purchase price shall be paid within eleven days from issuance of an invoice by FPIPI which invoice be issued eleven days prior to the execution of the Deed of Absolute Sale.

On June 18, 1998, petitioner paid to FPIPI the amount of US$8,312,080.86 representing the 50% initial payment and 100% value-added tax corresponding to the total adjusted purchase price of the land, detailed as follows: *(Exhibits B, C, and D, inclusive of submarkings)*

Actual Amount Due	
35% in US$ ($7,312,000.00 x 35%)	$2,559,200.00
Peso liability in US$-65%	4,367,542.39
Total	$6,926,742.39
Add: VAT ($6,926,742.39/50% x 10%)	**1,385,348.47**
Total Amount Due	$8,312,090.86

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By virtue of the aforesaid Contract to Sell, petitioner leased the entire premises to Fujitsu Computer Products Corporation of the Philippines (FCPCP, for brevity), a corporation duly organized and existing under and by virtue of the laws of the Philippines, as evidenced by a Contract of Lease executed on June 26, 1998 *(Exhibits SS to SS-2)*. The term of the lease is for twenty-five years commencing on July 1, 1998 and expiring on June 30, 2023, at an aggregate rental of US$87,744.00 per month *(Paragraph 7, Stipulation of Facts, CTA records, page 354-B, Exhibit SS).*

For the period June 18, 1998 to November 18, 1998, petitioner derived rental income from the said lease agreement *(Exhibits XX to XX-6)*. However, in view of an approved application for zero-rating earlier secured from the Bureau of Internal Revenue, the said rental income were subjected to zero percent rate of VAT *(Paragraph 8, Stipulation of Facts, CTA records, page 354-B, Exhibit VV)*. Consequently, the corresponding Monthly VAT Declarations and Quarterly VAT returns reflected no record of output VAT liability *(Exhibits O, P, Q, R, FF, GG, and HH, inclusive of submarkings).*

On June 24, 1999, petitioner made another payment to FPIPI in the amount of US$6,968,557.56, broken down as follows: *(Exhibits E and F, inclusive of submarkings)*

65% stated in Phil. Peso with currency adjustment as agreed at current rate of Php38.013	P169,730,780.25
65% as stated in USDollars @ Php38.013	$ 4,465,071.96
35% of amount payable in USDollars	2,503,485.60
Amount due and payable in USDollars	$ 6,968,557.56

On November 5, 1999, another payment was tendered for the adverse area claimed in the amount of US$146,822.14 *(Exhibits H and J, inclusive of submarkings).*

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Thereafter, on June 15, 1999 and November 11, 1999, two Deeds of Absolute Sale were executed in favor of petitioner *(Exhibits L and M, inclusive of submarkings).*

For the period January 1, 1999 to March 31, 2000, petitioner seasonably filed its corresponding Monthly VAT Declarations and quarterly Value-Added Tax Returns reflecting an unutilized input VAT in the amount of P49,959,689.90 as of March 31, 2000 *(Exhibits S to EE, and II to OO, inclusive of submarkings).*

On March 30, 2000, petitioner filed with the Bureau of Internal Revenue its claim for refund in the amount of P50,069,259.90 *(Exhibits BBB and DDD)* which was later on amended through a letter dated June 28, 2000 to adjust the claim from P50,069,259.90 to the lower amount of P49,959,689.90 *(Exhibit CCC).*

On June 30, 2000, petitioner filed the instant petition for review in order to toll the running of the two-year prescriptive period under the law.

In his Answer filed on December 7, 2000, respondent raised the following Special and Affirmative Defenses:

> "4. Petitioner's alleged claim for tax refund/tax credit is subject to administrative investigation/examination by the respondent's Bureau;
>
> 5. Since petitioner does not have an approved application for zero-rating for the lease transaction in 1999, its transaction otherwise entitled to zero percent VAT shall only be considered exempt from VAT pursuant to Revenue regulations No. 7-95. Hence, it is not entitled to refund of input tax;
>
> 6. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;
>
> 7. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;
>
> 8. Petitioner must be able to prove that its alleged purchases are covered by the provision of Section 112(B) of the 1997 Tax Code;

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

10. Moreover, petitioner must show compliance with the provisions of Sections 204(c) and 229 of the Tax Code, as amended;

11. Finally, there is no way to dispute the cardinal rule in taxation that tax exemptions are highly disfavored in law and he who claims tax exemption must be able to justify his claim or right. The exemption cannot be established by mere implication but it must be clearly expressed. **(Wonder Mechanical Engineering Corporation vs. Court of Tax Appeals, et al., 64 SCRA 555).**

On May 28, 2002, this case was submitted for decision without respondent's evidence and memorandum.

The jointly stipulated issues to be resolved by the court are as follows:

1. Whether or not petitioner's lease transactions in 1999 is effectively zero-rated for VAT purposes;

2. Whether or not the petitioner has unutilized input VAT in the amount of Forty Nine Million Nine Hundred Fifty Nine Thousand Six Hundred Eighty Nine Pesos and Ninety Centavos (PHP49,959,689.90) for the period from June 1998 to December 1999 pertaining to domestic purchases of goods and services;

3. Whether or not the said unutilized input VAT is substantiated by documentary evidence; and

4. Whether nor not said unutilized input VAT was carried over to the succeeding quarter and applied against any of the petitioner's output VAT for the said period; and

5. Whether or not petitioner is entitled to a refund of the said unutilized input VAT.

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Anent the first issue, petitioner claims that its rental income derived from FCPC, a PEZA-registered enterprise, is subject to VAT at zero percent pursuant to the provisions of Section 108(B)(3) of the Tax Code, to wit:

> **Section 108.** ***Value-added Tax on Sale of Services and Use or Lease of Properties.*** –
>
> (B) xxx;
>
> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;

And to further bolster its stand, petitioner offered in evidence Revenue Memorandum Circular No. 74-99 *(Exhibit UUU)* which was promulgated by the respondent "to consolidate and harmonize all the pertinent tax laws and their corresponding implementing rules and regulations in respect of sales of goods, properties and services to and from the ECOZONES, in relation to the provisions of R.A. No. 7916, as amended by R.A. No. 8748, entitled "The Special Economic Zone Act of 1995" which created the Philippine Economic Zone Authority (PEZA)." Pertinent portions of the circular read as follows:

> SECTION 3. Tax Treatment Of Sales Made By A VAT Registered Supplier From The Customs Territory, To A PEZA Registered Enterprise.–
>
> (1) If the Buyer is a PEZA registered enterprise which is subject to the 5% special tax regime, in lieu of all taxes, except real property tax, pursuant to R.A. No. 7916, as amended:
>
> (a) Sale of goods (i.e., merchandise). xxx.
>
> (b) Sale of service. – This shall be treated subject to zero percent (0%) VAT under the "*cross border doctrine*" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.

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(2) If the Buyer is a PEZA registered enterprise which is not embraced by the 5% special tax regime, hence, is subject to taxes under the NIRC, e.g., Service Establishments which are subject to taxes under the NIRC rather than the 5% special tax regime:

(a) Sale of goods (i.e., merchandise). xxx.

(b) Sale of service. – This shall be treated subject to zero percent (0%) VAT under the *"cross border doctrine"* of the VAT System, pursuant to VAT Ruling No. 032-98, dated Nov. 5, 1998.

xxx xxx xxx

This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and **shall serve as sufficient compliance to the requirement for prior approval of zero-rating** imposed by Revenue Regulations No. 7-95 effective as of the date of the issuance of this Circular.[1] *(Underlining supplied).*

On the basis of the above circular, petitioner opines that its rental income are subject to VAT at zero percent.

We agree with the petitioner. The above contemporaneous construction given by the then Commissioner Beethoven L. Rualo of the Bureau of Internal Revenue is consistent with the intent of Section 108(B) of the 1997 Tax Code. Hence, the same must be respected and given great weight by the court. "The principle that the contemporaneous construction of a statute by the executive officers of the government, whose duty it is to execute it, is entitled to great respect, and should ordinarily control the construction of the statute by the courts, is so firmly embedded in our jurisprudence that no authorities need be cited to support it."*(PAFLU vs. Bureau of Labor Relations, 72 SCRA 396, citing the case of Pennoyer vs. McConnaughly* ,140 US 1)

[1] RMC No. 74-99 was issued on October 15, 1999.

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In a number of VAT rulings, the respondent had also repeatedly ruled that suppliers of PEZA-registered enterprises are no longer required to secure from the BIR a prior permit for zero rating because Revenue Memorandum Circular No.74-99 will serve as a sufficient basis to entitle a supplier of a PEZA-registered enterprise to the benefit of the zero percent (0%) VAT *(VAT Ruling Nos. 010-00, 016-00, 054-00, 024-01; and 028-01)*.

Evidently, effective October 15, 1999,[2] petitioner's rental income from its sole client FCPCP, a PEZA-registered enterprise, is subject to VAT at zero percent (0%).

We now proceed to the factual aspects of the case which are the remaining issues at bar.

Section 112 of the Tax Code provides:

> **Section 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 rules and 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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[2] The date of effectivity of RMC No. 74-99.

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By the express provisions of the above-quoted law and insofar as applicable in the present case, petitioner must prove that: (1) it is a VAT registered person; (2) its sales are zero-rated; (3) the administrative claim for refund is seasonably filed; (4) the input taxes claimed were attributable to zero-rated sales; and (5) the input taxes were not applied against the output tax **(Hitachi Computer Products (Asia) Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5756, March 16, 2001)**.

A circumspect study of the records of the case reveals that petitioner qualifiedly complied with the above requirements.

It is a jointly stipulated fact that petitioner is a VAT registered person. And as discussed earlier, its rental income is subject to VAT at 0% effective October 15, 1999. The administrative claim for refund was seasonably filed within the two-year period reckoned from the close of each taxable quarter involved in the present case, to wit:

Period	Close of the Taxable Quarter	Exh.	Date of Filing of Admin. Claim for Refund	Exh.
2nd Qtr. 1998	06-30-98	FF	03-30-00	BBB, CCC
3rd Qtr. 1998	09-30-98	GG	03-30-00	BBB, CCC
4th Qtr. 1998	12-31-99	HH	03-30-00	BBB, CCC
1st Qtr. 1999	03-31-99	II	03-30-00	BBB, CCC
2nd Qtr. 1999	06-30-99	JJ	03-30-00	BBB, CCC
3rd Qtr. 1999	09-30-99	KK	03-30-00	BBB, CCC
4th Qtr. 1999	12-31-99	MM	03-30-00	BBB, CCC

Likewise, the petition for review filed on June 30, 2000 was well within the two-year prescriptive period counted from the date of filing of the1998 second quarterly VAT return on July 20, 1998, which is the earliest date of filing of the quarterly VAT returns involved in the present case (*Paragraph 12, Stipulation of Facts, CTA records, page 354-B*; **Resolution, Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5296, July 20, 1998).** The input

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taxes claimed were indubitably attributable to petitioner's rental income and were not utilized by petitioner during the subject period. Moreover, the same were already deducted from the total accumulated input taxes as of March 31, 2000 as evidenced by the amended first quarterly Value-Added Return for the year 2000 *(Exhibits NN to NN-5)*.

However, not all the input taxes sought to be refunded were supported by valid VAT invoices and official receipts. Based on the evaluation of available documents, the input taxes in the amount of P8,952.72 supported by Provisional Receipt Nos. 3992 and 3888 *(Exhibits LLL and PPP)* should be disallowed for failure to comply with the VAT invoicing requirement provided under Section 113 of the Tax Code. In addition, input VAT in the sum of US$544.00 should also be deducted because it does not represent payment of input VAT but a negative adjustment of input VAT previously paid *(Exhibits E and F, inclusive of submarkings)*.

In sum, petitioner is entitled to the claim for refund but in the reduced amount of P49,929,547.18, computed as follows:

Total input VAT claimed		P49,959,689.90
Less: Disallowances		
1. Supported only by provisional receipts	P 8,952.72	
2. Not valid payment of input VAT (US$544.00 x P38.9522039/US$)	21,190.00	30,142.72
Amount Refundable		P49,929,547.18

WHEREFORE, in view of the foregoing, the petition for review is hereby partially **GRANTED.** Accordingly, respondent is **ORDERED** to **REFUND** or, in the

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alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the sum of P49,929,547.18 representing unutilized creditable input VAT for the period June 1, 1998 to December 31, 1999.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

JUANITO C. CASTANEDA, 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

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