REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SEAGATE TECHNOLOGY (PHILIPPINES),
Petitioner,

- versus -

C.T.A. CASE NO. 6102

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 04 2001

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DECISION

This case involves a claim for refund in the amount of P16,101,245.34, representing unutilized input value-added tax (VAT, for brevity) on domestic purchases of capital goods and services for the calendar quarter ended March 31, 1998.

The following facts are undisputed:

Petitioner is a resident foreign corporation duly registered with the Securities and Exchange Commission to establish its branch office in the Philippines to manufacture and export computer components (Exh. D). It is registered with the Philippine Economic Zone Authority pursuant to the provisions of Republic Act 7916 as an ecozone export enterprise with Certificate of Registration No. 97-044, dated June 6, 1997 (Exh. A). It is likewise registered with the Bureau of Internal Revenue as a VAT taxpayer with Certificate of Registration RDO Control No. 97-083-000600-V, dated April 2, 1997 (Exh B).

For the period January 1, 1998 to March 31, 1998, Petitioner seasonably filed its Monthly VAT Declarations and Quarterly Value-Added Tax Return (Exhs. E, F, and G). These monthly VAT declarations and quarterly VAT return were simultaneously amended on January 25, 1999 showing, among others, accumulated input taxes in the amount of P52,045,039.94 as of March 31, 1998 (Exhs. E-1, F-1, and G-1). Out of the aforesaid amount, Petitioner claims that the sum of P16,101,245.34 refers to payments of input VAT on domestic purchases of capital goods for the period January 1, 1998 to March 31, 1998.

On October 4, 1999, Petitioner filed with the Revenue District Office No. 83 of the Bureau of Internal Revenue, a written application for refund of input taxes paid for the period January 1, 1998 to June 30, 1999 in the amount of P28,369,226.38 inclusive of P16,101,245.34 which is the subject of the instant petition. The application was premised on the fact that Petitioner did not commence its commercial operations in the Philippines and that its Board of Directors approved the disposal of its facility. Petitioner further alleges that it filed a notice of cessation of business with the PEZA on June 15, 1999 (Exh. C).

Due to the inaction of Respondent on its application for refund, Petitioner was compelled to file the instant Petition for Review with this Court on April 24, 2000 in order to toll the running of the two-year prescriptive period under Section 230 of the Tax Code, as amended.

Respondent, for his part, raised the following Special and Affirmative defenses, thus:

(1) That Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

(2) The amount of P16,101,245.34 being claimed by Petitioner as alleged VAT input taxes for the period 01 January 1998 to 31 March 1998 was not properly documented;

(3) In an action for 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;

(4) Petitioner must show that it has complied with the provisions of Sections 204(c) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;

(5) Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

The sole issue to be resolved by the Court is whether or not Petitioner is entitled to the refund of P16,101,245.34 representing input VAT paid on capital goods.

Petitioner cites as legal basis the provisions of Section 112(B) of the Tax Reform Act of 1997, to wit:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) x x x.
>
> (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.

Based on the aforementioned proviso, Petitioner should prove that (1) it is a VAT registered person; (2) the input taxes claimed were paid on capital goods; (3) the input taxes have not been applied against its output tax liability; and (4) the administrative claim for refund was seasonably filed **(Air Liquide Philippines, Inc. vs. Commissioner**

of Internal Revenue and Commissioner of Customs, CTA Case No. 5652, July 6, 2000).

A circumspect study of the records of the case together with the pleadings and evidence at hand, reveals that Petitioner complied with the above requisites. Petitioner is a VAT registered person as evidenced by the Certificate of Registration RDO Control 97-083-000-600-V duly issued by RDO No. 83 of the Bureau of Internal Revenue (Exh. B). The VAT invoices and official receipts submitted in evidence by Petitioner clearly show that it spent for the construction of its plant and building in Naga, Cebu (Exhs. DD-1-a, DD-2-a, and DD-3 to DD-7, inclusive of submarkings). This fact was corroborated by the testimony of Petitioner's witness, Ms. Annaliza Pueda, during the Court hearing held on October 9, 2000 (TSN, October 9, 2000, pp. 22-23). The plant and building are considered as capital goods within the definition of Section 2(o) of Revenue Regulations No. 5-87. The input taxes sought to be refunded were not utilized because Petitioner had no output tax liability against which the said input taxes can be offset. It bears stressing that Petitioner did not start its commercial operations in the Philippines and had filed a notice of cessation of business with the PEZA. Furthermore, the subject input VAT which form part of the sum of P52,582,756.36 reflected as "Any Refund/TCC Claimed" was already deducted from the accumulated input taxes as of October 1999 in the amount of P52,638,925.84 (Exhs. AA and AA-1). Lastly, the administrative claim for refund which was filed on October 4, 1999, was seasonably filed within two years from the close of the first calendar quarter of 1998.

In his Memorandum, Respondent maintains that Petitioner is not legally entitled to the claim for refund. Petitioner being registered with the PEZA as an ecozone export enterprise is exempt from the value-added tax pursuant to Section 24 of Republic Act No. 7916 in relation to Section 103 of the Tax Code, as amended by RA 7716 (now Section 109(q) of the Tax Reform Act of 1997) which provides:

> SEC. 24. Exemption from Taxes Under the National Internal Revenue Code. – Any provision of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu of paying taxes, five percent (5%) of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government xxx."
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> SEC. 103. The following shall be exempt from the value-added tax:
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> xxx xxx xxx
>
> (q) Transactions which are exempt under special laws, **except those granted under Presidential Decree Nos. 66**, 529, 972, 1491 and 1590, and non-electric cooperatives under Republic Act No. 6938, or international agreements to which the Philippines is a signatory (Underlining supplied)

Respondent contends that since Petitioner is exempt from VAT, the capital goods it purchased are considered not used in VAT taxable business and therefore, it is not entitled to the refund of input taxes paid on capital goods pursuant to Section 4.106-1 of Revenue Regulations No. 7-95 which provides as follows:

> "**Section 4.106-1**. *Refund or tax credits of input tax.* –
>
> x x x x x x x x x
>
> (b) *Capital Goods*. – Only a VAT-registered person may apply for issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased. The refund shall be allowed to the extent that such input taxes have not been applied against output taxes. The application should be made within two (2) years after the close of the quarter when the importation or purchase was made.

> Refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT taxable business. If it is also used in exempt operations; the input tax refundable shall only be the ratable portion corresponding to the taxable operation.
>
> '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 (f), used directly or indirectly in the production or sale of taxable goods or services."

We agree with the contention of Respondent that if an entity is registered with PEZA as an ecozone enterprise and is remitting 5% of its gross income to the national government, it is exempt from the payment of VAT. However, We do not agree that the aforequoted provisos are applicable to the case at bar. First, the records show that Petitioner is a VAT registered entity with Certificate of Registration RDO Control No. 97-083-0000600-V issued by the Revenue District Office No. 83 of the Bureau of Internal Revenue. Therefore, contrary to Respondent's allegation, Petitioner is evidently subject to value-added tax. Second, section 103(q) of the Tax Code, as amended, specifically excepted, among others, transactions under Presidential Decree No. 66 (now RA 7916), from transactions which are exempt from the VAT under special laws. Hence Petitioner, being registered with the PEZA under the provisions of Presidential Decree No. 7916, is not exempt from the payment of the value-added tax (see Resolution, **Seagate Technology (Philippines) vs. Commissioner of Internal Revenue, CTA Case No. 5921, September 20, 2000**). Third, Petitioner never remitted 5% final tax to the government because it was not able to commence its commercial operations in the Philippines.

In sum, Petitioner is entitled to the refund of unutilized input taxes in the amount of P16,101,245.34 which were all substantiated by VAT official receipts, to wit:

O.R. Date	O.R. No.	Supplier	Exh.	Input VAT
01-22-98	316	Western Philippines Corp.	DD-1-a	P 6,482,395.46
01-22-98	326	Western Philippines Corp.	DD-2-a	1,221,039.97
01-23-98	53041	Honda Car Cebu	DD-3-a	77,090.91
02-16-98	320	Western Philippines Corp.	DD-4-a	4,027,379.34
02-18-98	322	Western Philippines Corp.	DD-5-a	1,233,478.11
03-27-98	327	Western Philippines Corp.	DD-6-a	685,004.98
03-27-98	328	Western Philippines Corp.	DD-7-a	2,374,856.57
T O T A L				P16,101,245.34

WHEREFORE, in view of the foregoing, the Petition for Review is hereby *GRANTED.* Respondent is **ORDERED to REFUND** the amount of P16,101,245.34 in favor of Petitioner.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

AMANCIO Q. SAGA
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