10

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SAN YEI (PHILS.) TRADING CORPORATION,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 4501

Promulgated:
APR 23 1996

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DECISION

Involved in this case is a claim for refund of petitioner in the amount of P1,055,066.56 as alleged creditable input taxes for the period July 1988 to June 1990.

The following are the facts of the case as borne by the records of the case.

San-Yei (Phil.) Trading Corp. is a registered corporation, duly licensed to engage in business of exporting ladies accessories, baby apparel, household furnitures, among others, to various points in Asia, Europe and America.

For the period from July 1, 1988 to June 30, 1990, it allegedly accumulated excess input taxes in the total amount of P1,055,066.56, which arose from its domestic purchase of goods and services that were necessary in the conduct of its business as an export trader. Said amount was computed as follows:

Input tax per 1988 Amended Return (Net of input tax from January 1 to June 30, 1988)	P 777,736.72
Less: Output Tax	227,346.58
Balance carried over to next quarter	P 550,390.14

1st Quarter, 1989

1.	Input Tax Carried over from previous quarter	P 550,390.14
2.	Add: Total input tax this quarter	96,073.70
3.	Total Input Tax	P 640,463.84
4.	Less: Output Tax	39,597.09
5.	Balance carried over to succeeding quarter	P 606,866.75

2nd Quarter 1989

1.	Input Tax Carried over from previous quarter	P 606,866.75
2.	Add: Total input tax this quarter	144,644.23
3.	Total Input Tax	P 751,510.91
4.	Less: Output Tax	73,558.19
5.	Balance carried over to succeeding quarter	P 677,952.72

3rd Quarter 1989

1.	Input Tax Carried over from previous quarter	P 677,952.72
2.	Add: Total input tax this quarter	112,593.53
3.	Total Input Tax	P 789,646.25
4.	Less: Output Tax	53,242.78
5.	Balance carried over to succeeding quarter	P 736,403.47

4th Quarter 1989

1.	Input Tax Carried over from previous quarter	P 736,403.47
2.	Add: Total input tax this quarter	35,683.58
3.	Total Input Tax	P 772,087.05
4.	Less: Output Tax	73,940.37
5.	Balance carried over to succeeding quarter	P 699,146.37

437

1st Quarter 1990

1.	Input Tax Carried over from previous quarter	P 699,146.37
2.	Add: Total input tax this quarter	200,606.80
3.	Total Input Tax	P 899,753.17
4.	Less: Output Tax	48,901.00
5.	Balance carried over to succeeding quarter	P 850,852.17

2nd Quarter ended June 30, 1990

1.	Input Tax Carried over from previous quarter	P 850,852.17
2.	Add: Total input tax this quarter	238,293.36
3.	Total Input Tax	P1,089,145.53
4.	Less: Output Tax	34,078.97
	Net Creditable Input Tax	P1,055,066.56

On October 3, 1990, in its letter of September 27, 1990, petitioner through counsel filed a written claim for tax credit with respondent's VAT Division Office.

Then on October 5, 1990, petitioner elevated its claim to this Court by filing a Petition for Review. It anchors its claim on Section 104(b) of the Tax Code which substantially provides that any excess of input tax over output tax may, at the option of the VAT registered person, be carried over to the succeeding quarter or quarters or be refunded or tax credited against other internal revenue taxes, subject to the provisions of Section 106.

In her Answer (pp. 26-28, CTA rec.) filed with this Court on January 2, 1991, respondent raised as special and affirmative defenses the following:

> "5. Petitioner has no cause of action against respondent as the former's application for tax credit of VAT is still pending investigation by the B.I.R.;
>
> 6. Petitioner, who has the burden of proving that it is entitled to tax credit, has failed to establish any clear interest in or right over its claim for tax credit in the amount of P1,055,066.56. There is no showing that the claim is supported by valid VAT invoices from petitioner's suppliers;
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> 7. The claim for tax credit, being in the nature of an exemption from taxation, cannot be allowed unless granted in the most explicit and categorical language and must be construed strictly against petitioner (**Insular Lumber Co. vs. Court Tax Appeals**, 104 SCRA 710 [1981])."

True to her word, that the claim of petitioner is pending investigation, on February 13, 1992 respondent's examiner Virginia Bangay came out with the results of her examination of petitioner's claim. In her Memorandum report for the Commissioner, submitted thru Channels, (Exh. "1", Resp.; pp. 257 and 259, BIR records), Ms. Bangay recommended the issuance of a tax credit certificate only in the amount of P773,477.15, computed as follows:

Amount claimed (net of output tax)		P1,055,066.56
Less: Disallowances of input tax	P246,482.70	

Output tax on other taxable transactions	25,106.71	
Compromise penalty	10,000.00	281,589.41
Amount recommended for issuance of TCC		P 773,477.15

The examiner's explanation for the disallowance of the amount of P246,482.70 was presented in the following manner:

No VAT number	P 4,012.81
No OR on purchases of services ...	16,021.12
Unsupported	33,003.95
No BIR permit	183,867.19
Sold to Cash	9,577.63
TOTAL	P246,482.70

The disallowed amount of P25,106.71 represents output tax imposed on taxable transactions which were not previously subjected to output tax.

A compromise penalty in the amount of P10,000.00 was also deducted from petitioner's claim for petitioner used invoices without VAT registration number.

Upon review of the memorandum report, the office of respondent's Deputy Commissioner recommended that a recomputation be made on the amount of TCC to be issued, as there were some prescribed input taxes that should also be disallowed. Hence, in another memorandum dated January 21, 1993, marked as Exh. "5" for respondent (p. 271, BIR rec.), the amount of TCC to be issued to petitioner was revised from P773,447.15, and was further reduced to P552,167.69, breakdown of which is presented hereunder:

Amount previously recommended	P773,477.15
Less: Additional disallowance - Prescribed Input Tax from July 1 to October 2, 1988	221,309.46
Amount Recommended for Issuance of TCC (as revised)	P552,167.69

Summary of the prescribed input tax in the total amount of P221,309.46, was presented and offered as "Exh. "6" of respondent (p. 270, BIR rec.).

On March 15, 1993, respondent issued to petitioner Tax Credit Certificate No. 001847 in the amount of P522,167.69, a xerox copy of which was marked as "Exh. "Q" for petitioner(p. 112, CTA rec.)

The lone factual issue to be resolved in this case is whether or not petitioner is entitled to a tax credit in the amount of P1,055,066.56 as alleged creditable input taxes for the period July 1988 to June 1990.

Petitioner insists that it is entitled to a tax credit in the total amount of P1,055,066.56. For in the hearing held on July 28, 1993, its counsel, Atty. D. Ramos informed the court that there was already partial refund granted by respondent (see Minutes of Hearing on July 28, 1993; p. 57, CTA rec.).

Then in its Formal Offer of Evidence, page 5, last par. thereof (p. 90, CTA rec.), Exh. "Q", which was TCC

No. 001847, was offered for the purpose of proving that petitioner was granted a partial tax credit. Petitioner's treatment of P522,167.69, the amount granted under TCC No. 001847, as mere partial refund, implies clearly petitioner's stance that it is still entitled to the balance of P532,898.87 (P1,055,066.56 - 522,167.69).

On the contrary, it is respondent's contention that the subject petition may already be dismissed, as the claim of petitioner has already been granted with the issuance of TCC No. 001847, but only in the reduced amount of P522,167.69, details of which are explained as follows:

Amount claimed			P1,055,066.56
Less:	Disallowed input taxes	P246,482.70	
	Other taxable transactions	25,106.71	
	Prescribed input taxes	221,309.46	
	Compromise penalty	10,000.00	502,898.87
			P 552,167.69

Based on the documentary and testimonial evidence presented and offered by both litigants, the Court resolves the sole factual issue in favor of respondent. The latter substantially supported her position that only the above-mentioned amount of P552,167.69 should be tax credited in the name of petitioner. Her documentary evidence which were contained/listed in her "Formal Offer of Evidence" (pp. 134-136, CTA rec.) and which effectively and convincingly proved, that only such amount of P552,167.69 should be granted to petitioner, consisted of the following:

<u>Exhibit</u>	<u>Description</u>	<u>Purpose</u>
1	Memorandum for the Commissioner dated February 13, 1992 (pp. 257-259, BIR records)	Exhibits 1, 1-A, 1-B, 2, 2-A, 2-B, 2-C, 2-D and 3 are offered to prove the result of the investigation of petitioner's claim for VAT refund in the amount of P1,055,066.56 for the period July 1, 1988 to June 30, 1990 wherein the amount recommended for refund is P773,477.15.
1-A	Signature of Virginia L. Bangay	
1-B	Signature of Elizabeth C. Arias	
2, 2-A, 2-B, 2-C, 2-D	Worksheets on Disallowances July 1, 1988 to June 30, 1990 (pp. 191-195, BIR records)	
3	Worksheet on Summary of Transactions Not Subjected to Output Tax July 1988 to June 1990 (p. 190, BIR records)	
4	Memorandum to REOs V. Bangay and E. Arias dated October 19, 1992 (pp. 268-269, BIR records)	Exh. 4 is offered to prove that the Revenue Officers who investigated the claim for refund were instructed by higher authorities to recompute the amount recommended for refund taking into account the prescribed portion.

Exhibit	Description	Purpose
5	Memorandum for the Commissioner dated January 21, 1993 (p. 271, BIR records)	Exhs. 5, 5-A, 5-B, 6, 6-A, 6-B, 6-C, 6-D, 6-A-1, 6-B-1, 6-C-1 and 6-D-1 are offered to prove the result of the recomputation of the amount recommended for refund which was reduced to P552,167.69.
5-A	Signature of Virginia L. Bangay	
5-B	Signature of Elizabeth C. Arias	
6	Worksheet on Summary of Prescribed Input Tax (p. 270, BIR records)	
6-A, 6-B, 6-C, 6-D	Worksheets on VAT Purchases from July 1 to September 30, 1988 (pp. 120-123, BIR records)	
6-A-1	Amount of P140,800.79 (prescribed)	
6-B-1	Amount of P67,108.88 (prescribed)	
6-C-1	Amount of P28,258.74 (prescribed)	
6-D-1	Amount of P1,990.75 (prescribed)	

For purposes of identifying and explaining the contents of above-mentioned exhibits/documents, on January 30, 1995, respondent presented in Court, Ms. Virginia Bangay, the examiner who conducted examination on petitioner's subject claim. In her testimony, Ms. Bangay discussed <u>how</u> the aforementioned four (4) items of deductions from petitioner's claim were computed or arrived at, and <u>why</u> were they disallowed or deducted.

Thus, as regards the first item of disallowed input tax she testified as follows:

"ATTY. BASTES

Q. In your report of investigation it is stated and I quote:

'Total disallowances of input tax amounted to P246,482.70 is broken down as follows:

No VAT number	P 4,012.81
No OR on purchases of services	16,021.12
Unsupported	33,003.95
No BIR permit	183,867.19
Sold to cash	9,577.63

Do you confirm that?

A. Yes.

Q. Did you prepare a schedule of these disallowances?

A. Yes, I prepared the schedule.

Q. I am showing to you worksheets which are found on pages 191, 192, 193, 194 and 195 of the BIR records. What is the connection of theses worksheets to the schedule of disallowances which you mentioned?

A. These are the schedule of disallowances of the input tax from the claim of the petitioner." (pp. 8-10, TSN of Hearing on January 30, 1995; Underscoring supplied)

The above-quoted testimony explained how the disallowed amount of P246,482.70 was computed. The following testimony quoted hereunder discussed why each of the component figures of said amount was disallowed. hence. Ms. Bangay continued to testify that:

"Q. Under the column No VAT Number, what are the entries under that column?

A. This column, these are the disallowed input tax made on purchases of the petitioner on their suppliers which are not VAT registered.

Q. Which are not VAT registered?

A. Yes.

Q. What are not VAT registered?

A. Those who failed to register. Because their suppliers failed to register as VAT, so their input taxes were likewise disallowed because they are not entitled to input tax because they are not VAT registered. So I made a disallowance on the input tax made by them.

Q. How did you know that they are not VAT registered?

A. Because the number do not appear on the invoice.

Q. Under the column No OR Services, what are the entries thereunder?

A. These are the input tax disallowed on purchase of services which has no official receipts.

Q. How about under the column Unsupported, what are the entries thereunder?

A. On this unsupported column, these are purchases made by petitioner of which the invoices were not presented upon verification of their claim.

Q. How about under the column No BIR permit, what are the entries thereunder?

A. No BIR permit means the suppliers used invoices which has no BIR permit to print.

Q. To print what?

A. They have no BIR permit to print. The invoices have no BIR permit to print. So they were likewise disallowed.

Q. How about the last column, Sold to Cash or Other Persons, what are the entires thereunder?

A. Sold to Cash or other persons are purchases included in the claim of the petitioner but the invoices are not in their name."

(pp. 11-14, Ibid.; Underscoring supplied)

With regard to the second disallowed item in the amount of P25,106.71, Ms. Bangay stated the following:

"Q. Did you prepare a schedule of this particular amount of the P25,106.71?

A. Yes, I did.

Q. I am showing to you worksheet found on page 180 of the BIR records. What is the connection of this worksheet to the schedule that you just mentioned?

A. This is the schedule of taxable transactions which were not subjected to the 10% output tax.

xxx xxx xxx

Q. In this worksheet there are entires under sample sales. Will you explain that?

A. Under this, there are sample sales and profits from sale of property and equipment with a total value of P251,067.12, and the output tax is P25,106.71. These were not previously assessed a 10% so I made an assessment on this.

Q. Why did you assess 10% output tax on sample sales?

A. Because these transactions generated income to taxpayer but they did not subject it to output tax of 10%.

Q. How about the sale of company aircraft, why did you assess output tax?

A. This sale of company aircraft is also an income generating activity of the petitioner.

Q. How about the proceeds on sale of property and equipment, why did you asses output tax?

A. The same. it generated income to the petitioner." (pp. 15-17, Ibid.)

Relative to the disallowed prescribed input taxes in the amount of P221,309.46, Ms. Bangay admitted in her testimony that she took this into consideration only when she made a recomputation of the amount of tax credit previously recommended. Thus, she narrated as follows:

"Q. I am showing to you a memorandum dated January 21, 1993. What is the connection of this document to the supplemental memorandum that you just mentioned?

A. This is my supplemental memorandum to the Commissioner recomputing the amount of tax credit previously recommended taking into account the prescribed portion of the input tax from July 1 to October 2, 1988.

xxx xxx xxx

Q. Did you prepare a schedule of the prescribed portion of the amount of tax credit that you recommended.

A. Yes, I prepared a summary.

Q. I am showing to you a worksheet found on page 270 of the BIR records. What is the connection of this document to the summary that you just mentioned?

A. This is the summary of the prescribed input tax." (pp. 20-22, Ibid.)

The last deduction from the amount being claimed as refundable/tax creditable by petitioner, was the compromise penalty in the amount of P10,000.00. This was not touched by Ms. Bangay in her testimony, but it was explained in her Memorandum of February 13, 1992 (Exh. "1", Resp.), that it was imposed as penalty for using invoices without VAT registration number.

As a whole, presentation of evidence by respondent was overwhelmingly convincing and credible, and has strongly supported or justified the issuance to petitioner of a tax credit certificate only in the amount of P552,167.69.

The records of the Court, particularly the pleadings of the case, bear witness to the fact that petitioner miserably failed to rebut the findings of the respondent's examiner.

The Court respects and recognizes as final, the factual findings of respondent's examiner. For well-settled is the rule that:

> "Findings of administrative or quasi-judicial agencies which have acquired expertise/special knowledge because their jurisdiction is confined to specific matters are accorded not only respect but also finality." (**Latchme Motoomull** vs. **Dela Paz**, 187 SCRA 743; **Villanueva vs. Court of Appeals**, 205 SCRA 537; **Sesbreno vs. Ala**, 208 SCRA 359; **Villanueva vs. Leodegardo, Jr.**, 215 SCRA 835).

WHEREFORE, finding the claim of petitioner for creditable input taxes for the period from July 1988 to June 1990 as already satisfied with the issuance of Tax Credit Certificate No. 001847 in the amount of P522,167.69, the instant petition is hereby **DISMISSED**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among 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