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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NICHIMEN CORPORATION
- PHIL. BRANCH,
Petitioner,

- versus -

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5159

Promulgated:
NOV 24 1997

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DECISION

This is a petition for review filed by the petitioner, NICHIMEN CORPORATION - PHIL. BRANCH, against the respondent COMMISSIONER OF INTERNAL REVENUE, for the latter's inaction on the petitioner's claim for refund amounting to ₱53,129.54, allegedly representing its excess input value added tax for the last two (2) quarters ended September 30 and December 31, 1992.

Petitioner is a corporation duly organized and existing under the laws of Japan and is licensed to do business in the Philippines, specifically in the business of indenting, wholesaling, buying and selling lumber, abaca, sugar, mineral ores, machinery, steel products, cement and sundry goods in the Philippines. It is also engaged in the business of buying and selling of industrial materials, textiles, foodstuffs to include oilseed, feeds, canned goods, etc., chemicals, steel products of ferrous and non-ferrous metal products and products allied to those mentioned above (Exh. A). Petitioner is registered with the Bureau of Internal Revenue (BIR) as a value added tax (VAT) taxpayer holding VAT Registration Certificate No. 32-6-000293 (Exh. B).

On October 20, 1992 and January 20, 1993, petitioner timely filed its value added tax (VAT) returns for the quarters ended September 30, 1992 (Exh. C) and December 31, 1992 (Exh. D), respectively, with the former application filed with the UCPB - Makati Avenue Branch and the latter filed with the Development Bank of the Philippines.

On October 18, 1994, petitioner filed with the respondent its application for tax credit/refund of the above-mentioned amounts, together with that of the first two quarters of 1992, in the belief that its sales of services is subject to zero rate (0%) under Section 102(a)(2) [now (b)(2)] of the Tax Code (Exh. "N") and considering further that its sales were paid for in acceptable foreign currency which were inwardly remitted to the Philippines and accounted for in accordance with the Rules and Regulations of the Central Bank. A day after or on October 19, 1994, petitioner filed with this Court the instant Petition for Review.

Respondent on the other hand raised in her Answer the usual token of defense that (1) in an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action, (2) claims for tax refunds are construed strictly against the taxpayer, and (3) the taxpayer - herein petitioner has no cause of action.

The sole issue to be resolved by the Court is whether or not petitioner is entitled to the refund or tax credit of the amount of P53,129.54 allegedly representing its input VAT for the third and last quarters of 1992.

The governing provisions on zero-rated sales and refunds of input taxes which are pertinent to the case at bar are quoted hereunder:

> "**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% percent 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.

(2) Services other than those mentioned in the preceding subsection, the consideration for which is paid for in acceptable foreign currency which is remitted inwardly to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines. (Underscoring supplied)

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"**Sec. 106.** ***Refunds or tax credits of input tax.*** x x x

(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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It is undisputed that petitioner is VAT-registered subject to value-added tax at 0% rate following the above-quoted Section 102(a)(2) of the 1992 Tax Code. In support of its claim, petitioner submitted photocopies of the receipts evidencing the value-added tax paid, as well as the statements from the Rizal Commercial Bank Corporation [an accredited agent bank of the Bangko Sentral ng Pilipinas], to the effect that the acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations.

Respondent, on her part, alleged that it did not give due course to petitioner's claim for the third and fourth quarters of 1992 for failure on the part of the latter to produce the documents requested and denied the petitioner's claim for the first and second quarters of 1992 on grounds of prescription.

We agree with the respondent with respect to her denial of the petitioner's claim for the first and second quarters of 1992 but with regard to the claim for the third and fourth quarters, we rule otherwise. Respondent's demand for additional requirements are unnecessary considering that the documentary and testimonial evidence adduced by the petitioner were uncontroverted. The same evidence has clearly substantiated petitioner's claim to the satisfaction of the Court.

Furthermore, petitioner's position is strengthened and supported not only by existing law, but also by jurisprudence. In **CTA Case No. 4431, entitled Nichimen Corporation-Philippine Branch vs. Commissioner of Internal Revenue, dated February 13, 1995,** this Court held:

> "The records show that petitioner is a VAT registered person subject to value-added tax at 0% rate pursuant to Sec. 102(a)(2) [(now (b)(2)] of the Tax Code, as amended, as the services rendered by it are paid for in foreign currency which are inwardly remitted to the Philippines in accordance with the rules and regulations of the Central Bank of the Philippines (Exh. "A"). Therefore, Petitioner has the privilege to claim refund of input taxes pursuant to Sec. 106(b) of the Tax Code as amplified by Revenue Regulations No. 5-87."

IN THE LIGHT OF ALL THE FOREGOING, We are persuaded to extend the relief sought for by the petitioner. Respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a Tax Credit Certificate in favor of herein petitioner in the amount of P53,129.54, without pronouncement as to costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

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
Court of Tax Appeals