REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

MARUBENI PHILIPPINES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 6898

Members:
ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
NOV 11 2009; 2:45pm

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DECISION

CASANOVA, *J.*:

The instant *Petition for Review* is seeking that a judgment be rendered ordering respondent to refund or issue a tax credit certificate to petitioner in the amount of P15,640,875.14 as unutilized input Value Added Taxes (VAT) for the period covering the first to the fourth quarters of 2002.

Petitioner is a domestic corporation duly-registered with the Securities and Exchange Commission (SEC) and existing under and by virtue of Philippine laws, with principal office located at 9th Floor, LV Locsin Building, Ayala Avenue corner Makati Avenue, Makati City[1].

Respondent is the duly appointed Commissioner of Internal Revenue with authority, among others, to decide, approve and grant claims for refund or tax credit

[1] Joint Stipulation of Facts and Issues (JSFI), pp. 105-111, par. 1.

of internal revenue taxes, with office address at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City, where he may be served with summons and other legal processes[2].

Petitioner is a VAT taxpayer, registered with the BIR in accordance with Section 236 of the National Internal Revenue Code of 1997 (1997 NIRC) with VAT Registration/Taxpayer Identification Number 004-519-222-000[3].

On October 29, 2003, petitioner, through its external auditor, filed with the BIR an administrative claim for refund and/or tax credit of its unutilized input VAT credits for all quarters of 2002, amounting to P15,640,875.14 representing excess of its accumulated input VAT payments over the output VAT due on domestic taxable sales[4].

Its administrative claim being left unresolved, and to protect its rights, petitioner filed the instant *Petition for Review* before this Court on March 22, 2004. In its *Petition*, petitioner alleged that it incurred the following input and output VAT for the period claimed, computed as follows[5]:

Purchases

PERIOD	**DOMESTIC PURCHASES**	**INPUT VAT**
1st Quarter	P 34,557,453.71	P 3,455,745.37
2nd Quarter	39,623,643.32	3,962,364.33
3rd Quarter	31,964,171.68	3,196,417.17
4th Quarter	53,557,472.39	5,355,747.24
Total Domestic Purchases	**P 159,702,741.10**	**P 15,970,274.11**

Sales

[2] Ibid., par. 2.
[3] Ibid., par. 3.
[4] Ibid., par. 4.
[5] Petition for Review, pp. 1-9, par. 5.

PERIOD	TAXABLE SALES	OUTPUT VAT	ZERO-RATED SALES
1st Quarter	P 751,675.44	P 75,167.66	P 30,075,954.09
2nd Quarter	530,544.53	53,054.47	30,957,640.82
3rd Quarter	530,544.53	53,054.47	25,846,135.04
4th Quarter	544,936.13	54,493.63	27,565,060.15
Total	**P 2,357,700.63**	**P 235,770.06**	**P114,444,790.10**

Petitioner stipulated that the bulk of its sales were attributable to zero-rated sales to non-resident entities and to entities registered with the Philippine Economic Zone Authority (PEZA). Petitioner stipulated further that out of the P15,970,274.11 input VAT it incurred, it is only claiming the amount of P15,640,875.14 as refundable excess input VAT, computed as follows [6]:

Input Tax Directly Attributable to Zero-rated Sales	P	11,277,700.43
Allocable Input Tax paid on services, capital Goods, office supplies and rentals		4,544,821.18
Subtotal	P	15,822,521.61
Less: Output VAT		181,646.47
Total Excess Input VAT	**P**	**15,640,875.14**

Petitioner cited Sections 106(A)(2)(a)(1), 112(A) and 112(B) of the 1997 NIRC and Section 4.112-2 of Revenue Regulations (RR) No. 7-95 as basis for its claim[7].

Respondent, for his part, filed his Answer[8] on May 11, 2004, with the following Special and Affirmative Defenses:

"4. Petitioner failed to show compliance with the substantiation requirements under the provision of Section 16(c)(3) of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88;

5. Petitioner failed to show that the alleged creditable input VAT was not carried over and utilized against the output VAT

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[6] Ibid., par. 7.
[7] Ibid., pars. 11-13.
[8] Rollo, pp. 76-77.

liabilities of the petitioner in the succeeding quarters of the year;

6. Amendment of the return is allowed only when no notice for audit or investigation of such return [has] been actually served upon the taxpayer;

7. Petitioner has not shown proof that [a] portion of the input tax is attributable to alleged zero-rated sales;

8. Petitioner failed to allege that the invoices issued by petitioner to PEZA enterprises are duly registered and stamped with the word 'zero-rated' considering that the stamping of such word has been a vital requirement mandated in recent jurisprudence enunciated by this Honorable Court;

9. Input VAT from zero-rated services cannot be refunded in the absence of zero-rated sales in VAT returns;

10. Claims for refund are construed strictly against the claimants, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35);

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

12. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable."

The parties submitted their *Joint Stipulation of Facts and Issues*[9] on November 2, 2004 which this Court approved *via* a *Resolution*[10] on November 5, 2004.

During the hearing of the case, petitioner presented documentary and testimonial evidence. Petitioner formally offered[11] its documentary evidence on April

[9] Rollo, pp. 105-111.
[10] Rollo, p. 112.
[11] Rollo, pp. 264-273.

23, 2007 which was resolved by this Court on July 19, 2007[12] admitting all offered exhibits except Exhibits "J-1-s" and "O-3-41a".

On August 8, 2007, petitioner filed an *Omnibus Motion (I) Motion for Reconsideration (Re: Resolution Dated July 19, 2007) (II) Motion to Admit Supplemental Formal Offer of Evidence*[13]. The Court granted the *Omnibus Motion* in a *Resolution*[14] dated October 19, 2007 and likewise admitted all previously denied and additional documentary exhibits offered.

On January 15, 2008, respondent's counsel manifested[15] that he is submitting the case for decision based on the pleadings. In a *Resolution*[16] dated January 22, 2008, the Court confirmed respondent's manifestation to submit the case for decision and at the same time ordered the parties to submit their *Memoranda* in thirty days.

However, on March 14, 2008, petitioner filed an *Urgent Omnibus Motion (I) For Leave of Court to Present Additional Evidence and (II) To Defer Submission of Memorandum*[17]. During the hearing on March 28, 2008, the said *Urgent Omnibus Motion* was granted by the Court[18].

After the presentation of additional evidence, petitioner filed its *Supplement to Formal Offer of Evidence*[19] on July 11, 2008 which the Court resolved by admitting all of the newly offered documents in a *Resolution*[20] dated September 3,

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[12] Rollo, pp. 391-392.
[13] Rollo, pp. 393-397.
[14] Rollo, pp. 407-408.
[15] Rollo, p. 411.
[16] Rollo, p. 413.
[17] Rollo, pp. 417-423.
[18] Rollo, p. 457.
[19] Rollo, pp. 481-491.
[20] Rollo, p. 715.

2008. Upon receipt of petitioner's *Memorandum*[21] on November 24, 2008, *sans* respondent's *Memorandum*, the instant *Petition* was submitted for decision on November 28, 2008 [22].

As jointly stipulated by the parties, the issues[23] for decision are as follows:

1. Whether or not the excess input VAT of P11,277,700.43 represents input VAT paid on domestic purchases of taxable goods that are directly attributable to its zero-rated export sales of goods;

2. Whether or not petitioner incurred input VAT in the amount of P4,638,450.02 in connection with its purchases of capital goods and office supplies, as well as rentals for the use of real property, which are not directly attributable to either its taxable domestic sales or its zero-rated sales of goods;

3. Whether or not of the total amount of P4,638,450.02, the amount of P4,544,821.18 may be allocated to petitioner's zero-rated sales;

4. Whether or not petitioner's excess input VAT for the first quarter to the fourth quarter of taxable year 2002 was applied or utilized against its output VAT in the succeeding taxable quarter/s;

5. Whether or not the excess input VAT arising from petitioner's purchases of goods and services for the period beginning the first quarter to the fourth quarter of taxable 2002, attributable to its zero-rated sales, and other purchases of goods and services the input VAT of which are applicable to said zero-rated sales, are duly supported by pertinent documents, such as VAT invoices and receipts;

6. Whether or not petitioner is entitled to the claim for refund in the amount of P15,640,875.14, representing unutilized and/or unapplied input VAT attributable to the excess of it accumulated input VAT payments over the output VAT due on domestic sales for the first quarter to the fourth quarter of taxable year 2002;

7. Whether or not petitioner declared zero-rated sales in its VAT returns;

8. Whether or not the invoices issue by petitioner to PEZA enterprises are duly registered with the BIR and stamp marked with the word "zero-rated";

[21] Rollo, pp. 724-742.
[22] Rollo. p. 743.
[23] JSFI, Rollo, pp. 109-110.

9. Whether or not the amendment of the petitioner's VAT returns for the first to the fourth quarters of 2002 is proper.

The above issues can be summarized into whether or not petitioner is entitled to VAT refund.

Section 112(A) of the 1997 NIRC provides:

"**SEC.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 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 sales 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."

Based on the foregoing, the following requisites must be complied with in order to be entitled to a refund/tax credit of unutilized input VAT:

1. there must be zero-rated or effectively zero-rated sales;
2. input taxes were incurred or paid;
3. such input taxes are attributable to zero-rated sales or effectively zero-rated sales;
4. the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and
5. the claim for refund was filed within the two-year prescriptive period.

As regards the first requisite, Section 106 (A)(2)(a)(1) of the 1997 NIRC states that export sales by VAT-registered persons shall be zero-rated. The pertinent section of the 1997 NIRC reads as follows:

"**SEC. 106.** ***Value-Added Tax on Sale of Goods or Properties.***

(A) Rate and Base of Tax. — xxx

xxx xxx xxx

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) Export Sales. — The term 'export sales' means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)."

Petitioner maintains that the bulk of its sales for the taxable year 2002 is subject to zero percent (0%) VAT. The sales allegedly pertained to petitioner's export sales of goods as well as its sales of indenting and related services to non-resident entities, the consideration for which was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

In the report of the Commissioned Independent CPA (ICPA), Mr. Noel P. Rabaja of SGV & Co., it was noted that the petitioner's export sales amounting to P114,444,790.08[24] were made solely to Marubeni Corporation – Tokyo. To substantiate its export sales for the first to the fourth quarters of taxable year 2002 and that the foreign currency proceeds thereof were duly accounted for in

[24] Per Quarterly VAT Return is P114,444,790.10, difference is due to rounding.

accordance with the rules and regulations of the BSP, petitioner presented its sales invoices, bills of lading, export declarations and proofs of inward remittances[25].

The ICPA summarized its findings in its report as follows:[26]

Item	Export Sales	Exhibit Reference	Amount (in PHP)
1	Export sales supported by original VAT invoices stamped with the word "zero-rated", original copies of bill of lading, certified true copies of export declaration/1; and included in the M/A summary	Exhibit M-2-a	110,441,061.40
2	Export sales supported by original VAT invoices stamped with the word "zero-rated", original copies of bill of lading, and included in the M/A summary	Exhibit M-2-b	4,003,728.68
	Total		**114,444,790.08**

Based from the evidence presented, this Court finds that petitioner's export sales in the amount of P114,444,790.08 fall within those transactions referred to as subject to zero percent (0%) VAT under Section 106 (A)(2)(a)(1) of the 1997 NIRC.

With respect to the requirement that input taxes should have been incurred or paid, petitioner submitted a summary list of input VAT claimed from the first to the fourth quarters of 2002[27] and the related suppliers' invoices/official receipts[28]. From these documents, it was shown that the excess input VAT arising from petitioner's purchases of goods and services for the taxable year 2002 should be attributable to its zero-rated sales.

However, this Court affirms the ICPA's report stating that out of the P15,970,274.11 input VAT declared per petitioner's 2002 Quarterly VAT Returns, only the amount of P14,714,006,29 was duly substantiated. The remaining amount of P416,730.51 and P49,081.55 should be disallowed due to reasons stated below.

[25] Exhibits O-2-1 to O-4-27.
[26] Exhibit J-2, p. 3.
[27] Exhibit J-1 to J-1-v-4; Exhibit K-1 to K-33.
[28] Exhibit L-1-1 to L-12-104e.

Item	Nature	Exhibit No.	Amount (in PHP)
1	Input VAT on domestic purchases of goods supported by documents other than VAT Invoice (i.e., VAT OR, Statement of Account)	Exhibit J-1-i	38,976.01
2	Overclaimed input tax on domestic purchases of goods due to erroneous computation	Exhibit J-1-j	13,771.80
3	Input VAT on domestic purchases of goods supported by VAT invoice issued not in the company's name	Exhibit J-1-k	1,037.63
4	Input VAT on domestic purchases of goods supported by invoice without pre-printed TIN VAT No.	Exhibit J-1-l	12,026.77
5	Overclaimed input tax on domestic purchases of goods paid in foreign currency because foreign exchange rate used does not tally with the prevailing interbank reference rate (IRR)	Exhibit J-1-m	31,887.27
6	Input VAT on domestic purchases of services supported by document s other than VAT OR (i.e., VAT Invoice, Statement of Account)	Exhibit J-1-n	270,116.91
7	Input VAT on domestic purchases of services supported by VAT OR issued not in the Company's name	Exhibit J-1-o	16,654.54
8	Input VAT on domestic purchases of services supported by VAT ORs not dated within the calendar year 2002	Exhibit J-1-p	27,870.23
9	Input VAT on domestic purchases of services supported by OR without pre-printed TIN VAT No.	Exhibit J-1-q	2,120.26
10	Input VAT on domestic purchases of services supported by "TIN NON-VAT" OR	Exhibit J-1-r	1,909.09
11	Input VAT on domestic purchases of services supported by ORs with pre-printed "VAT No." without the supplier's TIN	Exhibit J-1-s	360.00
	Total		**416,730.51**

Item	Nature	Exhibit No.	Amount (in PHP)
1	Input VAT on domestic purchases of goods supported by Invoice with pre-printed "TIN-V"	Exhibit J-1-d	4,545.45
2	Input VAT on domestic purchases of services supported by OR with pre-printed "TIN-V"	Exhibit J-1-e	636.36
3	Input VAT on domestic purchase of goods supported by Invoice with pre-printed TIN and VAT Reg. No.	Exhibit J-1-f	525.45
4	Input VAT on domestic purchases of goods supported by VAT Invoice not dated within the quarter in which it was claimed but within the same calendar year covered by the claim.	Exhibit J-1-g	11,420.61
5	Input VAT on domestic purchases of services supported by VAT ORs not dated within the quarter in which it was claimed but within the same calendar year covered by the claim.	Exhibit J-1-h	31,953.68
	Total		**49,081.55**

In addition to the above findings of the ICPA, this Court further observes that the input tax amounting to P790,455.76 should also be disallowed because the supporting documents were not available at the time of the review, hence, were not verified by the ICPA.

From the substantiated input VAT of P14,714,006.29, a portion shall be applied against petitioner's reported output tax liability for the four quarters of 2002 in the amount of P235,770.05[29]. After deduction of the output VAT, the input VAT attributable to petitioner's zero-rated sales for the year 2002 amounts to P14,478,236.24, as computed below:

Input VAT per Quarterly VAT Returns		P 15,970,274.11
Less: Disallowances		
Unverified Input VAT	P 790,455.76	
Disallowances under b.ii of ICPA Report	49,081.55	
Disallowances under b.iii of ICPA Report	416,730.51	1,256,267.82
Substantiated Input VAT		P 14,714,006.29
Less: Output VAT		235,770.05
Excess Input VAT Attributable to Zero-Rated Sales		**P 14,478,236.24**

On the requirement that the input taxes should not have been applied against any output VAT liability, petitioner's Quarterly VAT Returns for the taxable quarters of 2003, 2004 and 2005 show that the subject claim was not applied against any output VAT in the succeeding quarters.[30]

Finally, it was established that the subject claim was filed within the two-year prescriptive period. The reckoning of the two-year prescriptive period for input VAT refund claims starts from the filing of the corresponding quarterly VAT returns[31]. Counting from April 25, 2002[32], July 25, 2002[33], October 14, 2002[34] and January 24, 2003[35], the dates when petitioner filed its Quarterly VAT Returns for the first, second, third and fourth quarters of 2002, both the administrative claim filed on

[29] Exhibits "D" and "F".
[30] Exhibits "P", "Q", "R", "S", "FF" to OO-4" (inclusive of submarkings).
[31] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 141104 & 148763, June 8, 2007.
[32] Exhibit "B".
[33] Exhibit "D".
[34] Exhibit "F".
[35] Exhibit "H".

October 29, 2003[36] and the Petition for Review filed on March 22, 2004 fall within the two-year prescriptive period.

Having complied with all the requisites under Section 112 of the 1997 NIRC, this Court finds that petitioner has established its right to its refund claim.

WHEREFORE, in view of the foregoing, the instant *Petition for Review* is **PARTIALLY GRANTED**. Respondent is ordered to **REFUND** to or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the reduced amount of P14,478,236.24 representing its unutilized excess input VAT for the first to the fourth quarters of 2002.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division

[36] JSFI, par. 4.