**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

# FIRST DIVISION

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**PSI DEVELOPMENT CORPORATION,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**C.T.A. CASE NO. 6926**

Members:

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

**Promulgated:**

JUL 11 2007, 1:00PM

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# DECISION

***BAUTISTA, L., J.:***

This Petition for Review is seeking for a refund or the issuance of a Tax Credit Certificate in the amount of Fourteen Million One Hundred Twenty Nine Thousand Five Hundred Forty Five Pesos (₱14,129,545.00) allegedly representing input value added tax ("VAT") paid on the purchase of capital goods during the first quarter of 2002.

PSI Development Corporation("petitioner") is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal address located at the Medical City Building, San Miguel Avenue corner Lourdes Road, Quezon City. Its primary purpose is "[t]o acquire by purchase, lease, donation or otherwise, and/or to own, use, improve, subdivide, manage, sell, mortgage, exchange, lease, engage in high-rise development and construction and hold for investment or otherwise deal in or dispose of real estate of all kinds, classes, description and purpose, and/or any improvements thereon or any interest and right therein, whether as principal agent, or broker, and/or to manage, operate, equip, furnish, alter and otherwise deal in, or dispose of buildings, houses, apartments and other structures and immovables of whatever kind, class, description or purpose, together with their appurtenances, whether as principal, agent or broker."[1] It is registered as a value added tax ("VAT") registered entity with Certificate of Registration No. OCN 3RC0000087275.[2]

On the other hand, the Commissioner of Internal Revenue ("respondent") is vested with the power to grant refunds of internal revenue taxes erroneously paid, assessed or collected pursuant to the 1997 National Internal Revenue Code ("NIRC"), as amended. His principal address is located at the Bureau of Internal Revenue National Office, BIR Building, BIR Road, Diliman, Quezon City.

Petitioner financed the construction and development of the Medical Arts Tower building, also known as the "New Medical City," situated at Meralco Avenue, Pasig City; while Summa Kumasai, Inc.-Kumasai Gumi ("SKI-KG JV"), the contractor, undertook the actual construction and development of the New Medical City.[3] In connection with the construction,

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[1] Exhibit F-1.
[2] Exhibit G.
[3] See TSN, March 29, 2005 and May 26, 2005.

the SKI-KG JV billed petitioner 20% downpayment in the amount of ₱152,599,090.91, inclusive of VAT, for the construction. Petitioner paid the said amount and was issued SKI-KG official receipt no. 153, dated February 15, 2002.[4]

On April 10, 2002, petitioner filed an original Quarterly VAT Return for the first quarter of 2001;[5] and on March 29, 2004, petitioner filed an Amended Return reflecting the purchases of capital goods in the amount of ₱155,425,000.00 and the corresponding input VAT in the amount of ₱14,129,545.00.[6]

On March 29, 2004, petitioner requested the Bureau of Internal Revenue("BIR") for a refund of input VAT in the amount of ₱14,129,545.00 covering the first quarter of 2002, in connection with the construction costs of the building based on Section 112(B) of the 1997 NIRC, as amended.[7]

On April 12, 2004, due to respondent's inaction on its claim for refund, petitioner filed a verified Petition for Review before this Court.[8]

For his failure to file an Answer within the prescribed period, and acting on petitioner's Motion for Order of Default and *Ex-Parte* Presentation of Evidence, this Court issued a Resolution dated September 24, 2004 declaring respondent in default and set the case for *ex-parte* presentation of evidence.[9]

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[4] TSN, March 29, 2005, p. 16; May 26, 2005, p. 7. See also Exhibit A.
[5] Paragraph 10, as well as Annex B, of the Petition for Review.
[6] Exhibit B.
[7] Exhibit D.
[8] Docket, pp.1-11.
[9] Docket, p. 22.

After presentation of evidence, both testimonial and documentary; and after petitioner filed its Memorandum on January 3, 2007, this case was deemed submitted for decision through a Resolution dated January 8, 2007.[10]

The sole issue for the Court's consideration is whether petitioner is entitled to the refund of P14,129,545.00 representing input VAT paid on the purchase of capital goods made to the contractor in February 2002.[11]

Petitioner's claim for refund or tax credit certificate is premised on Section 112(B) of the 1997 NIRC, as amended, which reads:[12]

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* – xxx
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> (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 within two (2) years after the close of the taxable quarter when the importation or purchase was made."

It is well-settled that in order that refund or issuance of a tax credit certificate of unutilized input VAT paid on capital goods may be granted, petitioner must prove the following: [13]

1. that petitioner is a VAT registered entity;
2. that input taxes claimed were paid on capital goods duly supported by VAT invoices and/or official receipts;
3. that petitioner did not offset or apply the claimed input VAT payment on capital goods against any output VAT liability; and

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[10] Docket, pp. 212-221.
[11] Docket, p. 5
[12] Implemented by Revenue Regulation No. 7-95 ("Consolidated Value-Added Tax Regulations").
[13] *Telecommunications Technologies Philippines, Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 6018, November 24, 2003; and *MSF Tire and Rubber, Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 6804, September 14, 2006.

4. that the claim for refund was filed within the two-year prescriptive period both in the administrative and judicial levels.

First, the Court shall first determine the timeliness of the claim. The administrative and judicial claims for refund filed on March 29, 2004[14] and April 12, 2004,[15] respectively, were well within the two-year prescriptive period reckoned from the date when petitioner actually filed its Return on April 10, 2002. This is in consonance with this Court ruling in *Jideco Manufacturing Philippines, Inc. vs. Commissioner of Internal Revenue*,[16] as affirmed *en banc*.[17] It must be noted that counting from April 10, 2002, the date when petitioner filed its original Quarterly VAT Return for the first quarter of 2001, petitioner had until April 9, 2004 within which to file its Petition for Review considering that taxable year 2004 was a leap year. However, since April 9, 2004 was a legal holiday and since it falls on a Friday, petitioner had until the next working day, which was April 12, 2004, within which to file it judicial claim.

As regards the first requirement, it was sufficiently established that petitioner is a VAT-registered entity as shown in the Certificate of Registration issued by the BIR.[18]

As regards the second requirement, it is appropriate to determine first the nature of capital goods or properties as basis for refund or issuance of a tax credit certificate. Section 4.106-1 (b) of Revenue Regulations No. 7-95 provides that "capital goods or properties" refer to goods or properties with

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[14] Exhibit D.
[15] Docket, pp. 1-6.
[16] CTA Case No. 6552, September 16, 2004.
[17] CTA EB No. 53, June 7, 2005.
[18] Exhibit G.

estimated useful life greater than one year and which are treated as depreciable assets under Section 29(f) [now Section 34(F)], used directly or indirectly in the production or sale of taxable goods or services. In order for the purchased goods and properties to qualify as "capital goods," it must have the following qualities:[19]

1. useful life greater than one (1) year;
2. treated as depreciable assets under Section 29 (f) [now Section 34(F)]; and
3. used directly or indirectly in the production or sale of taxable goods or services.

Although, the downpayment in the amount of ₱152,599,090.91, inclusive of VAT, for the construction of the Medical Tower building to SKI-KG JV is established,[20] the Court cannot ascertain whether the said payment should be classified as payment for capital goods. The testimonies of Witnesses Amy Ydel, petitioner's accountant, and Ms. Benita J. Macalagay, petitioner's Chief Operating Officer, as to the purpose of constructing the subject building are conflicting. Ms. Ydel testified that petitioner was selling shares for a corresponding unit of the building; while Ms. Macalagay testified that petitioner leases commercial spaces.

Ms. Amy Ydel testified:[21]

"JUSTICE BAUTISTA:

Q. Is this Medical Arts Building, the units to be sold or to be rented by the doctors who occupy the units of the building?

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[19] *MSF Tire and Rubber, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 6804, September 14, 2006; and, *Kepco Ilijan Corporation vs. The Commissioner of Internal Revenue*, CTA Case No. 6324, June 7, 2005.
[20] Exhibit A
[21] TSN, March 29, 2005, pp. 19-20.

MS. YDEL:
A. The Medical Arts Tower, sir, is selling shares for the doctors after they buy the share, a unit is assigned to them for them to practice their profession.

JUSTICE BAUTISTA:
Q. So, one (1) share is equivalent to one (1) unit?

MS. YDEL:
A. It depends on the number of square meters and the floors. There is an equivalent number of shares for each unit.

JUSTICE BAUTISTA:
Q. For each unit?

MS. YDEL:
A. Yes, sir.

xxx xxx xxx"

On the other hand, Ms. Benita J. Macalagay testified:[22]

"ATTY. AZARRAGA:
Q. Ms. Witness, can you please state what essentially the business of the petitioner?

MS. MACALAGAY:
A. PSI Development Corporation is involved in realty development, and management of building, particularly the Medical Arts Tower.

ATTY. AZARRAGA:
Q. And how do you know that petitioner is involved in the foregoing business?

MS. MACALAGAY:
A. Because as COO, of course, and because I'm involved in the business operation of the company on a day to day business.

ATTY. AZARRAGA:
Q. Could your please describe what do you mean of the day to day business being involved by petitioner?

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[22] TSN, August 3, 2006, pp. 8-9.

MS. MACALAGAY:
A. We lease commercial spaces in the building.

ATTY. AZARRAGA:
Q. Why is that you are leasing the commercial spaces?

MS. MACALAGAY:
A. We are leasing as our business because this is not a condominium corporation."

In view of the conflicting testimonies of said witnesses, petitioner should have presented its Books of Accounts (Journal and Ledger), Audited Financial Statements, as well as its Income Tax Return, so that this Court may be able to ascertain whether petitioner had really capitalized the payment made to the contractor and that the related depreciation was recognized. Absence of such important documents is fatal to petitioner's claim.

In the case of ***MSF Tire and Rubber, Inc. vs. Commissioner of Internal Revenue,***[23] the Second Division of this Court denied the claim of petitioner therein on the ground that the documents presented failed to prove that the purchase made by petitioner can be properly classified as capital goods. The pertinent portions of the decision read:

> "A thorough examination, however, of the above documents failed to show and to convince this Court that indeed the purchase made by petitioner can be classified as "capital goods," which may entitle petitioner to claim for a refund of the alleged input VAT paid.
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> Based on the Lease Agreement, EEI shall cause the purchase, installation, operation and maintenance of a Bunker C Fuel Power Station (the 'Equipment'), which comprises of '2 units of 5.2 Megawatt each brand new Pielstick generating sets and one unit of 1.5 Megawatt high-speed engine and all related equipment necessary for the delivery of a continuous, reliable and sufficient supply of power . . . .' The Equipment clearly has a useful life greater than one year.

[23] CTA Case No. 6804, September 14, 2006.

> However, there is nothing in the records that would prove that the generating sets were treated by petitioner as 'depreciable assets under Section 29(f)'. The second requirement does not only mean that the 'capital goods' is depreciable in nature, as what petitioner has argued, but rather, petitioner must have itself treated the same as its depreciable asset, or as part of its 'properties/assets' in its books. How can petitioner treat the same as depreciable assets when in the first place, the same does not even form part of its properties and assets? The generating sets and accessories purchased by petitioner that formed part of the Equipment were owned by EEI. The ownership was only transferred to petitioner upon its purchase of the same after its dissolution on March 1, 2001. In fact, the official receipt allegedly evidencing the purchase of two generating sets with accessories and showing the net purchase price was issued on July 17, 2001. Similarly significant is the finding that according to the records of the case, the generating sets were never used by petitioner, either directly or indirectly, in its trade or business. Nowhere in the documents and allegations presented did it reveal that petitioner even used the generating sets in the production or sale of its taxable goods and services. It is noteworthy that after its purchase of the generating sets from EEI, petitioner sold the same to Orix Leasing through the Sale and Purchase Agreement dated February 20, 2003 (Exhibit 'E'). Thus, it cannot be concluded that the generating sets purchased by petitioner may be considered as 'capital assets.'"

Settled is the rule that claims for refund are in the nature of availing tax exemptions, and are to be construed *strictissimi juris* against the entity claiming the same. Indubitably, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund. [24] In this case, petitioner failed to discharge its burden.

The Court sees no cogent reason to discuss other matters in view of the above findings.

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[24] *Philippine Geothermal, Inc. vs. The Commissioner of Internal Revenue*, G.R. No. 154028, July 29, 2005 (465 SCRA 308); and *Commissioner of Internal Revenue vs. Tokyo Shipping Co. Ltd.*, G.R. No. 68242, May 26, 1995(244 SCRA 332).

**WHEREFORE**, the Petition for Review is hereby **DENIED** for insufficiency of evidence.

**SO ORDERED**.

**LOVELL R. BAUTISTA**
Associate Justice

WE CONCUR:

**ERNESTO D. ACOSTA**
Presiding Justice

**CAESAR A. CASANOVA**
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