REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EASTERN TELECOMMUNICATIONS PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6255

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 12 2003

x - x

DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P23,070,911.75 representing unutilized input value-added tax (VAT, for brevity) allegedly attributable to petitioner's zero-rated sales of services to a non-resident foreign corporation for the taxable year 1999.

The facts of the case are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office at the 8th Floor Telecoms Plaza Bldg., 316 Sen. Gil Puyat Ave., Salcedo Village, Makati City, Metro Manila ***(par. 1.1, Joint Stipulation of Facts and Issues, p. 71, CTA Records)***. Its primary purpose is "[t]o land, own, construct, maintain, operate, manage, install and establish commercial telecommunication, point-to-point domestic interisland and international communications xxx, television and broadcasting stations, telephony, facsimile, teleprinting teletype telephoto, data, voice/data, telex, message service and other telecommunications services, xxx" ***(Exhibit B-1)***. As such, it registered with the Bureau of Internal Revenue as a Value-Added Tax taxpayer in accordance with Section 236 of the Tax Code, with BIR Certificate of Registration bearing RDO Control No. 94 (*must be 49*)-490-000205 dated June 10, 1994 ***(par. 1.3, Joint Stipulation of Facts and Issues, p. 72, CTA Records).***

Petitioner is a grantee of a legislative franchise to engage in telecommunications services by virtue of Republic Act No. 808 ("R.A. No. 808") which was originally granted to Eastern Extension Australasia and China Telegraph Company Limited, and Presidential Decree No. 489 ("P.D. No. 489") authorizing the transfer of the franchise under R.A. No. 808 to petitioner ***(par. 1.4, Joint Stipulation of Facts and Issues, p. 72, CTA Records)***

Through the years, petitioner entered into various international service agreements ***(Exhibits M to JJ; WWW to WWW-274)*** with international telecommunications carriers. It likewise handles, among others, incoming telecommunications services for non-resident foreign telecommunication companies and the relay of said international calls within and around other places in the Philippines. Also, in order to broaden its distribution coverage of telecommunications services throughout the country vis-a-vis incoming calls from abroad, petitioner entered into various interconnection agreements with local carriers that can readily receive the foreign calls relayed by petitioner and distribute them to the intended local end-receiver.

For the services rendered by petitioner to non-resident foreign corporations, the latter pays the former in foreign currency inwardly remitted to petitioner's US dollar accounts in banks such as MetroBank, Hongkong and Shanghai Banking Corporation (HSBC) and Citibank. The manner and mode of payments to petitioner by the non-resident foreign telecommunications carriers follow an internationally established standard which is embodied in a Blue Book, or Manual, prepared by the Consultative Commission of International Telegraph and Telephony and implemented between the contracting parties in consonance with a set of procedural guidelines denominated as Traffic Settlement Procedure ***(Exhibit L).***

For the year 1999, petitioner seasonably filed its Quarterly VAT Returns, reflecting among others, the following information:

QUARTER INVOLVED	EXHIBIT	DATE FILED	TAXABLE SALES	VAT OUTPUT TAX	DOMESTIC PURCHASES	VAT INPUT TAX
1st	D-2	4/29/99	P28,564,276.00	P 2,856,427.60	P 28,357,980.00	P 2,835,798.00
2nd	E-2	7/26/99	30,676,982.20	3,067,698.22	(7,290,013.30)	(729,001.33)
3rd	F-2	10/25/99	(1,141,687.40)	(114,168.74)	44,569,369.40	4,456,936.94
4th	G-2	1/25/00	(26,144,836.70)	(2,614,483.67)	41,747,511.00	4,174,751.10
TOTALS			**P 31,954,734.10**	**P 3,195,473.41**	**P 107,384,847.10**	**P 10,738,484.71**

The aforesaid returns were simultaneously amended on February 22, 2001 to correct its input VAT on domestic purchases of goods and services and also to reflect its zero-rated and exempt sales for the year 1999, to wit:

QUARTER INVOLVED	EXHIBIT	VAT OUTPUT	ZERO-RATED SALES	EXEMPT SALES	VAT INPUT DOMESTIC	EXCESS INPUT VAT
1st	D	P 246,493.67	P 117,492,585.78	P 68,961,171.91	P 6,646,624.35	P 6,400,130.68
2nd	E	396,701.57	406,216,049.26	238,424,702.46	5,955,933.54	11,959,362.65
3rd	F	234,620.78	245,267,026.51	143,957,182.21	6,108,825.34	17,833,567.22
4th	G	975,939.54	279,851,242.11	164,256,063.38	6,759,948.00	23,617,575.67
TOTALS		**P1,853,755.56**	**P1,048,826,903.66**	**P 615,599,119.96**	**P 25,471,331.23**	

The amounts indicated under the column "Excess Input VAT" of petitioner's Amended Returns for the year 1999 were jointly stipulated by the parties and approved by this court on June 19, 2001 ***(p. 76, CTA Records)***, to wit:

> "Petitioner's Amended Quarterly VAT Return (BIR Form No. 2550Q) for the first (1st) quarter of 1999 filed with the BIR reflects the amount of **Six Million Four Hundred Thousand One Hundred Thirty and 68/100 Pesos (P6,400,130.68)** as excess input VAT paid for purchases of goods and services allocable to VAT-taxable and zero-rated sales.
>
> Petitioner's Amended Quarterly VAT Return (BIR Form No 2550Q) for the second (2nd) quarter of 1999 filed with the BIR reflects the amount of **Eleven Million Nine Hundred Fifty Nine Thousand Three Hundred Sixty Two and 65/100 Pesos (P11,959,362.65)** as excess input VAT paid for purchases of goods and services allocable to VAT-taxable and zero-rated sales.
>
> Petitioner's Amended Quarterly VAT Return (BIR Form No 2550Q) for the third (3rd) quarter of 1999 filed with the BIR reflects the amount of **Seventeen Million Eight Hundred Thirty Three Thousand Five Hundred Sixty Seven and 22/100 Pesos (P17,833,567.22)** as excess input VAT paid for purchases of goods and services allocable to VAT-taxable and zero-rated sales.
>
> Petitioner's Amended Quarterly VAT Return (BIR Form No 2550Q) for the fourth (4th) quarter of 1999 filed with the BIR reflects the amount of **Twenty Three Million Six Hundred Seventeen Thousand Five Hundred Seventy Five and 67/100 Pesos (P23,617,575.67)** as excess input VAT paid for purchases of goods and services allocable to VAT-taxable and zero-rated sales." ***(Emphasis Supplied)***

Believing that it is entitled to the refund/tax credit of unutilized input VAT attributable to its alleged zero-rated sales, petitioner filed an administrative claim for refund with the Bureau of Internal Revenue on March 23, 2001, ***(Annex H, Petition for Review)*** pursuant to Section 108(B)(2) of the 1997 Tax Code as implemented by Section 4.102-2(b)(2) of Revenue Regulations No. 7-95 and in relation with Section 112(A) of the same code.

Without waiting for an answer from the respondent, petitioner filed the instant Petition for Review on March 26, 2001 in order to toll the running of the two-year prescriptive period under the law.

In his Answer filed on April 30, 2001, respondent advanced the following Special and Affirmative Defenses:

"4. Petitioner's alleged claim for tax refund/tax credit is subject to administrative investigation/examination by the respondent's Bureau;

5. Since petitioner does not have an approved application for zero rating, its transaction otherwise entitled to zero percent VAT shall only be considered exempt from VAT pursuant to Revenue Regulation No. 7-95. Hence, it is not entitled to refund of input tax;

6. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;

7. Taxes paid and collected are presumed to have been paid in accordance wit law and regulations, hence, not refundable;

8. Petitioner must be able to prove that its alleged purchases are covered by the provision of Section 112(A);

9. The petition states no cause of action since petitioner did not allege any date of payment of the VAT input taxes which is the subject matter of its claim for refund. There is no showing in the petition that the tax sought to be refunded was actually paid;

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

11. Absent from the petition are the allegations that petitioner met the conditions necessary for the refund under the VAT system as laid down in Section 112 of the Tax Code as amended;

12. The petitioner corporation has no cause of action for failure to allege in the instant Petition for Review any authority by way of a board resolution or special power of attorney to that effect, granting Miss REGINA E. DE LEON, Senior Manager for Controllership and Finance, as its duly authorized representative for and on its behalf;

13. Finally, there is no way to dispute the cardinal rule in taxation that tax exemptions are highly disfavored in law and he who claims tax exemption must be able to justify his claim or right. The exemption cannot be established by mere implication but it must be clearly expressed. (Wonder Mechanical Engineering Corporation vs. Court of Tax Appeals, et al., 64 SCRA 555)."

Petitioner, on the other-hand, filed its Reply on May 17, 2001, in response to the above-stated Special and Affirmative Defenses found in the Answer of respondent.

To bolster its claim for refund petitioner, aside from the testimonies of its witnesses, presented the following documentary evidence:

DOCUMENT	EXHIBIT
1. Certificate of Filing of Amended Articles of Incorporation	A
2. Amended Articles of Incorporation	B, incl. of submarkings
3. Certified True Copy of the Decision of NTC in NTC Case No. 87-58	C
4. Amended Quarterly VAT Return for 1st quarter 1999	D, D-1
5. Quarterly VAT Return for 1st quarter 1999	D-2
6. Amended Quarterly VAT Return for 2nd quarter 1999	E, E-1
7. Quarterly VAT Return for 2nd quarter 1999	E-2
8. Amended Quarterly VAT Return for 3rd quarter 1999	F, F-1
9. Quarterly VAT Return for 3rd quarter 1999	F-2
10. Amended Quarterly VAT Return for 4th quarter 1999	G, G-1
11. Quarterly VAT Return for 4th quarter 1999	G-2
12. Quarterly VAT Return for 1st quarter 2000	H
13. Quarterly VAT Return for 2nd quarter 2000	J
14. Quarterly VAT Return for 3rd quarter 2000	K
15. Traffic Settlement Procedure	L, incl. of submarkings
16. International Telecommunications Services Agreements	M to JJ
17. Commissioned independent CPA's partial report	KK, incl.of submarkings
18. Summary of 1999 Input Taxes	LL, incl.of submarkings
19. Various Official Receipts/Invoices issued by suppliers	MM to PP, incl. of submarkings
20. General Ledger Excerpts of Input Taxes Entries	QQ, incl. of submarkings
21. Addendum Auditor's Report	RR, incl. of submarkings
22. 4th Quarter 1999 Income Statement	SS
23. Revenue Documents from 1st to 4th quarter 1999	TT to VVV, incl. of submarkings
24. Interconnection Contracts with International Telecommunication Companies	WWW,incl. of submarkings
25. Official Receipts, Bank Certifications, Bank Statements and Credit Advices	XXX,incl.of submarkings
26. Settlement of Statements	YYY, incl. of submarkings
27. Central Bank Monthly Conversion Rates	ZZZ, incl. of submarkings
28. Supplemental Auditor's Report	AAAA, incl. of submarkings

Respondent, on the other hand, moved to submit this case for decision without presenting any evidence to controvert petitioner's claim ***(p. 304, CTA Records)***. The motion was granted by the court. Respondent likewise failed to submit his memorandum within the period given by the court.

The parties have agreed that the issues to be resolved by the court are the following:

a. Whether or not petitioner's sales of services for the period January 1999 to December 1999 constitute zero-rated transactions.

b. Whether or not petitioner has unutilized input VAT in the amount of P23,070,911.75 for the period January 1999 to December 1999 pertaining to purchases and importation of goods and services.

c. Whether or not the said unutilized input VAT is substantiated by documentary evidence.

d. Whether or not said unutilized input VAT was carried over to the succeeding quarter and applied against any of the petitioner's output VAT for the said period.

e. Whether or not petitioner is entitled to a refund of the said unutilized input VAT.

Petitioner claims that its sales of services to non-resident telecommunications carriers were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas; hence, subject to VAT at 0%. Petitioner's legal anchor is Section 108(B)(2) of Tax Code which provides:

> **Section 108.** ***Value-added tax on Sale of Services and Use or Lease of Properties.*** - x x x
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate;
>
> (1) xxx
>
> (2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for

in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

x x x x x x x x x

Moreover, petitioner asserts that it is entitled to the refund of unutilized input VAT attributable to the said zero-rated sales pursuant to Section 112(A) of the same Code, to wit:

Section 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 sale 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.

In view of the afore-quoted provisions of law, petitioner must foremost prove the existence of its zero-rated sales.

Records show that petitioner is engaged in various transactions. It has sales of services subject to VAT at 10% or 0% and exempt from VAT. Under Section 4.108-1 of Revenue Regulations No. 7-95, petitioner is required to issue separate invoices or receipts for the taxable and exempt transactions. For easy reference, Section 4.108-1 of Revenue Regulations No. 7-95 is hereby quoted as follows:

SEC. 4.108-1. Invoicing Requirements – All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

> 1. the name, TIN and address of seller;
> 2. date of transaction;
> 3. quantity, unit cost and description of merchandise or nature of service;
> 4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
> 5. **the word "zero-rated" imprinted on the invoice covering zero-rated sales**; and
> 6. the invoice value or consideration. ***(Emphasis supplied)***
>
> xxx xxx xxx
>
> Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoices or receipts and this shall be considered as a "VAT Invoice". All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax.
>
> **If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations**. A "VAT Invoice" shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the Code.
>
> xxx xxx xxx.
> ***(Emphasis supplied).***

It should be stressed that for transactions subject to VAT at 0%, the word "zero-rated" must be imprinted on the VAT invoice or receipt. From among the transactions of petitioner, only the sales allegedly subject to VAT at 0% were supported by documents. The other sales transactions subject to VAT at 10% and exempt sales were not supported.

After a meticulous scrutiny of the VAT official receipts presented to support the alleged zero-rated sales, the court noted that petitioner failed to imprint the word "zero-rated" on the face of the said documents. This act clearly violates Section 4.108-1 of Revenue Regulations No. 7-95 which implemented the VAT law. For such failure, this court believes that in the absence of other documents to show zero-rated sales, the transactions covered by the VAT invoices are subject to VAT at 10% pursuant to Section 108(C) of the Tax Code which provides:

> SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.*
>
> (A) xxx
>
> (B) xxx
>
> (C) *Determination of the Tax.* – The tax shall be computed by multiplying the total amount indicated in the official receipt by one-eleventh (1/11).

Further, petitioner failed to substantiate its taxable and exempt sales. In the case of ***Honda Trading Philippines Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6282, August 21, 2003,*** the court denied petitioner's claim for refund for its failure to present the documents supporting its taxable sales, to wit:

> "Considering, however, that petitioner reported taxable sales along with its zero-rated and exempt sales, the court finds it also necessary for the petitioner to submit invoices pertaining to the taxable sales and the corresponding input VAT. These documents are necessary to determine the veracity of such declaration for any discrepancy will affect petitioner's claim for refund. To illustrate, an underdeclaration of output VAT liability or overstatement of input VAT will reduce the excess VAT credit.
>
> Based on the evidence submitted by petitioner, we cannot verify if the latter had indeed incurred any excess input VAT credits. Petitioner failed to present the invoices and/or official receipts pertaining to the said taxable sales and purchases of goods and services to support its taxable sales and the input VAT attributable thereto. As a consequence, the court cannot verify the amounts declared in the quarterly VAT returns. We cannot determine with accuracy the allocated input VAT for taxable sales. Petitioner's presentation of the abovementioned documents is material to its claim for refund. Its failure to do so is a fatal defect."

This court has also noted that the commissioned independent CPA did not include in his examination the verification of taxable and exempt sales. Hence, the court cannot adopt automatically the allocation of verified input VAT to taxable, exempt and zero-rated sales.

Well-entrenched in our jurisprudence is that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption (***Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc. 309 SCRA 87 [1999]***).

The power of taxation is a high prerogative of sovereignty, the relinquishment is never presumed and any reduction or diminution thereof with respect to its mode or its rate, must be strictly construed, and the same must be coached in clear and unmistakable terms in order that it may be applied. Specifically stated, the general rule is that any claim for tax exemption from the tax statute should be strictly construed against the taxpayer ***(Acting Commissioner of Customs vs. Manila Electric Co., 77 SCRA 469; The Commissioner of Internal Revenue vs. P.J. Kiener Co., Ltd., 65 SCRA 142).***

WHEREFORE, in view of the foregoing, the petition for review is hereby **DENIED** or lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
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