REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DFP SERVICES, INC.,
Petitioner,

- versus -

C.T.A. CASE NOS. 5981, 6023, 6115, and 6118

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 07 2003

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DECISION

These are cases involving claims for refund in the aggregate amount of P120,248,883.95 allegedly representing erroneously paid value-added tax on services. In view of the fact that the aforesaid cases involve the same parties, facts and issues, save for the amounts and periods covered, the court, upon motion of herein petitioner, ordered the consolidation of the four (4) cases.

The antecedent facts are as follows:

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines. It is engaged in the business of supplying manpower services. *(Joint Stipulation of Facts, CTA Case Nos. 5981, 6023, 6115 and 6118)*

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On May 1989, petitioner and Duty Free Philippines (*DFP, for brevity*) entered into a service contract whereby petitioner's entire manpower complement was engaged by DFP to manage and operate the various Duty Free Shopping Centers located throughout the Philippines. Petitioner conducted business exclusively with DFP and under the terms of the contract, petitioner was to be paid a basic fee equivalent to the salaries/remuneration and cost of other benefits actually paid by petitioner to its employees. *(par no. 3, Petitions for Review, CTA Case Nos. 5981, 6023, 6115 and 6118)*

Petitioner averred that from the inception of the service contract until December 1997, it did not charge any VAT on the amounts it received from DFP. *(par no. 3.1, Petitions for Review, CTA Cases Nos. 5981, 6023, 6115 and 6118)*

In 1997, petitioner was assessed deficiency value-added tax (*VAT, for brevity*) by the respondent for the amounts it received from DFP as salaries for the services rendered by the members of DFP-Employees Association (DEA) from 1989 to December 1997. *(Joint Stipulation of Facts, CTA Case Nos. 5981, 6023, 6115 and 6118)*

Believing that it was liable to pay VAT on the amounts it received from DFP, petitioner availed of the benefits provided for under Revenue Memorandum Order (RMO) No. 59-97, implementing the Voluntary Assessment Program (VAP), and paid the amount of P20,000,000.00 on December 29, 1997 as downpayment. The balance was supposed to be paid in twelve (12) equal monthly installments beginning January 31, 1998 until December 31, 1998. *(Exhibits "X"-5981; "K"-6023; "Q"-6115; "J"-6118)*

However, prior thereto or during the year 1996, petitioner's employees had formed a labor union, the DFP-Employees' Association (*DEA, for brevity*), because they contended that their direct employer was Duty Free Philippines. Thereafter, a petition for

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certification election was filed by the DEA with the Department of Labor and Employment (*DOLE, for brevity*) in a bid to become the sole and exclusive bargaining agent of DFP and not of herein petitioner, Duty Free Philippines Services, Inc. (*DFPSI, for brevity*). *(par no. 6, Petitions for Review, CTA Cases Nos. 5981, 6023, 6115 and 6118; p. 14, TSN, November 14, 2000, CTA Case No. 5981)*

The DEA's petition for certification election was granted by the Med-Arbiter of the DOLE in a decision dated April 22, 1997, which was affirmed by the then Secretary of Labor and Employment Leonardo A. Quisumbing in a Resolution dated January 19, 1998, pertinent portion of which is hereby quoted as follows:

> "xxx xxx xxx
>
> As gathered from the records, there is a bargaining history in the employer's unit sought to be represented by the petitioner as evidenced by Memorandum of Agreement previously entered into on June 8, 1990 by the Duty Free Philippines Employees Association, DFP and DFPSI, which recognized the former as sole and exclusive bargaining agent of all the rank-and-file employees of DFP-PTA. Besides, the agreement likewise provides for the application of the provision of the Labor Code and that DFP-PTA guarantees the payment of union members/employees' salaries and other economic benefits to which the union members/employees are entitled under the laws.
>
> Given all these undisputed facts, <u>Duty Free Philippines is clearly the direct and immediate employer</u>." *(Exhibits "D"-6023; "E"-6115; "C"-6118; inclusive of submarkings) (Underlining ours)*

The DOLE resolution was appealed by the DFP to the Supreme Court. In its Resolution dated December 7, 1998, the Supreme Court denied with finality DFP's appeal and held that "there is no grave abuse of discretion shown to have been committed by the public officials who issued the assailed Decision, Resolution, and Order

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sequentially, so as to enable the respondent Union-whose predecessor in interest was priorly recognized by the company as the sole and exclusive bargaining agent of the employees- to ascertain the will of its rank and file members in a certification election." *(Exhibits "K-1"-5981; "E-2"-6023; "F-1"-6115; "D-2"-6118).* Thus, on February 10, 1999, DEA entered into a Compromise Agreement with DFP whereby it was agreed upon, among others, that "Duty Free Philippines recognizes Duty Free Philippines Employees Association as the sole and exclusive bargaining unit of the rank-and-file employees of the Duty Free Philippines." *(par. no. 1, Compromise Agreement, Exhibits "Z"-5981; "L"-6023; "K"-6115; "L"-6118)*

On the basis of the resolutions of the DOLE and the Supreme Court, petitioner, on December 23, 1999, filed a claim for refund with the Bureau of Internal Revenue of the VAT payments made totalling P120,248,883.95 *(Exhibits "I"-5981; "C"-6023; "G"-6115; "B"-6118).*

There being no action taken by the Bureau of Internal Revenue (BIR) on the claim filed before it and to toll the running of the two-year prescriptive period, petitioner filed four (4) petitions for review before this court as follows:

CTA CASE NO.	DATE OF FILING w/ CTA	AMOUNT
5981	Dec. 24, 1999	P20,000,000.00
6023	Feb. 29, 2000	P14,754,158.87
6115	May 30, 2000	P56,609,927.86
6118	April 28, 2000	P14,338,478.52

On May 23, 2000, petitioner amended its petition for review in CTA Case No. 6023 in order to correct the "Prayer" portion to more accurately reflect the allegations in

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the Petition as well as to correct the typographical error in paragraph 8. Hence, in its amended petition, petitioner prayed for the refund of the amounts of P14,754,158.87 and P14,546,318.70 or an aggregate amount of P29,300,477.57 representing the VAT which petitioner paid on March 2, 1998 and March 31, 1998, respectively.

In his Answer, respondent raised the following Special and Affirmative Defenses:

CTA Case No. 5981

"4. Petitioner's alleged claim for refund is subject to administrative routinary investigations/examination by respondent's Bureau;

5. Petitioner failed miserably to show that the total amount of P20,000,000.00 claimed as VAT, was erroneously or illegally collected, or that the same was properly documented;

6. Taxes paid and collected are presumed to have been made in accordance with law; hence, not refundable.

7. In an action for tax refund, the taxpayer has the burden to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

8. It is incumbent upon petitioner to show that it has complied with the provisions of Section 204 (c) in relation to Section 229 of the Tax Code.

9. Well-established is the rule that refunds/tax credits are construed strictly against the taxpayer as they partake the nature of exemption from tax."

CTA Case No. 6023

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

5. Petitioner failed miserably to show that the total amount of P14,754,158.85 claimed as VAT, was erroneously or illegally collected, or that the same was properly documented;

6. Taxes paid and collected are presumed to have been made in accordance with law; hence, not refundable.

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7. In an action for tax refund, the taxpayer has the burden to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

8. It is incumbent upon petitioner to show that it has complied with the provisions of Section 204 (c) in relation to Section 229 of the Tax Code.

9. Well-established is the rule that refunds/tax credits are construed strictly against the taxpayer as they partake the nature of exemption from tax."

CTA Case No. 6115

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

5. Petitioner failed miserably to show that the total amount of P56,609,927.86 claimed as erroneously paid value-added tax is refundable;

6. Taxes paid and collected are presumed to have been paid in accordance with law; hence, not refundable;

7. In an action for tax refund, the burden is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

8. It is incumbent upon petitioner to show that it has complied with the provisions of Section 204 (c) in relation to Section 229 of the Tax Code;

9. Well-established is the rule that refunds/tax credits are construed strictly against the taxpayer as they partake the nature of tax exemptions."

CTA Case No. 6118

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

5. Petitioner failed miserably to show that the total amount of P14,338,478.52 claimed as erroneously paid value-added tax is refundable;

6. Taxes paid and collected are presumed to have been paid in accordance with law; hence, not refundable;

7. In an action for tax refund, the burden is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;

8. It is incumbent upon petitioner to show that it has complied with the provisions of Section 204 (c) in relation to Section 229 of the Tax Code;

9. Well-established is the rule that refunds/tax credits are construed strictly against the taxpayer as they partake the nature of tax exemptions."

The parties have jointly stipulated the following issues:

CTA Case No. 5981

(i) Whether or not the payments received by petitioner from DFP as salaries for its employees constituted payments for services rendered by individuals which are not subject to VAT;

(ii) Whether or not the amount of TWENTY MILLION PESOS (P20,000,000.00) was erroneously collected;

(iii) Whether or not petitioner is entitled to a refund of the amount of TWENTY MILLION PESOS (P20,000,000.00)

CTA Case No. 6023

(i) Whether or not the petitioner received payments from DFP;

(ii) Whether or not the payments which petitioner received from DFP were in the nature of salaries for petitioner's employees;

(iii) Whether or not the payments received by petitioner from DFP as salaries for its employees constituted payments for services rendered by individuals which are not subject to VAT;

(iv) Whether or not the amount of PESOS: FOURTEEN MILLION THREE HUNDRED THIRTY EIGHT THOUSAND FOUR HUNDRED SEVENTY EIGHT AND FIFTY TWO CENTAVOS (P14,338,478.52) was erroneously collected.

(v) Whether or not petitioner is entitled to a refund of the amount of PESOS: FOURTEEN MILLION THREE HUNDRED THIRTY EIGHT THOUSAND FOUR HUNDRED SEVENTY EIGHT AND FIFTY TWO CENTAVOS (P14,338,478.52)

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CTA Case No. 6115

(i) Whether or not the petitioner received payments from DFP;

(ii) Whether or not the payments which petitioner received from DFP were in the nature of salaries for petitioner's employees;

(iii) Whether or not the payments received by petitioner as salaries from DFP for its employees constituted payments for services rendered by individuals which are not subject to VAT;

(iv) Whether or not the amount of PESOS: FIFTY SIX MILLION SIX HUNDRED NINE THOUSAND NINE HUNDRED TWENTY SEVEN AND EIGHTY SIX CENTAVOS (P56,609,927.86) was erroneously collected;

(v) Whether or not petitioner is entitled to a refund of the amount of PESOS: FIFTY SIX MILLION SIX HUNDRED NINE THOUSAND NINE HUNDRED TWENTY SEVEN AND EIGHTY SIX CENTAVOS (P56,609,927.86);

CTA Case No. 6118

(i) Whether or not the payments were actually received by petitioner DFPSI from Duty Free Philippines;

(ii) Whether or not the payments received by petitioner DFPSI from Duty Free Philippines were received as salaries for the members of DFP-Employees Association;

(iii) Whether or not the payments received by petitioner from DFP as salaries for its employees constituted payments for services rendered by individuals which are not subject to VAT;

(iv) Whether or not the amount of FOURTEEN MILLION THREE HUNDRED THIRTY EIGHT THOUSAND FOUR HUNDRED SEVENTY EIGHT AND FIFTY TWO CENTAVOS (P14,338,478.52) was erroneously collected.

(v) Whether or not petitioner is entitled to a refund of the amount of FOURTEEN MILLION THREE HUNDRED THIRTY EIGHT THOUSAND FOUR HUNDRED SEVENTY EIGHT AND FIFTY TWO CENTAVOS (P14, 338,478.52).

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The foregoing issues may be summarized into the following issues, namely:

1. Whether or not petitioner has timely filed its claims for refund;

2. Whether or not the payments received by petitioner from DFP constituted salaries/wages and thus, were exempt from VAT;

3. Whether or not the amounts of P20,000,000.00, P14,338,478.52, P56,609,927.86, P14,754,158.87 and P14,546,318.70 representing erroneously paid VAT were actually remitted to the BIR.

As to whether or not petitioner's claims were timely filed, the court rules in the affirmative.

Section 229 of the National Internal Revenue Code (NIRC) provides, viz:

> "**Section 229.** ***Recovery of Tax Erroneously or Illegally Collected.*** – *No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.*
>
> *In any case, <u>no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax</u> or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."*

Pursuant to the foregoing provision of law, claims for refund, both in the administrative and judicial level, must be filed within two years from the date of payment

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of the tax or penalty. For clarity, hereunder are petitioner's dates of payment of the subject taxes and dates of filing with the BIR and this court:

Case No.	**Exhibit**	**Date of Payment**	**Amount**	**Date Filed w/ BIR**	**Date Filed w/ CTA**
5981	A	December 29, 1997	P 2,500,000.00		
	B	December 29, 1997	2,500,000.00		
	C	December 29, 1997	2,500,000.00		
	D	December 29, 1997	2,500,000.00		
	E	December 29, 1997	2,500,000.00		
	F	December 29, 1997	2,500,000.00		
	G	December 29, 1997	2,500,000.00		
	H	December 29, 1997	2,500,000.00		
			P20,000,000.00	12/23/99	12/24/99
6023	B	March 2, 1998	P14,754,158.87		
	A	March 31, 1998	14,546,318.70		
			P29,300,477.57	12/23/99	2/29/00
6115	A	June 1, 1998	P14,130,638.35		
	B	July 16, 1998	14,107,533.42		
	C	July 31, 1998	14,633,136.38		
	D	August 31, 1998	13,738,619.71		
			P56,609,927.86	12/23/99	5/30/2000
6118	A	April 30, 1998	P14,338,478.52	12/23/99	4/28/2000

Clearly from the foregoing, petitioner's administrative and judicial claims for refund were made within two years counted from the respective dates of payment of the value-added taxes.

On the second issue, petitioner anchors its claim on Section 109(o) of the National Internal Revenue Code, which states:

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"**Section 109. *Exempt Transactions.*** - *The following shall be exempt from the value-added tax:*

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(o) Services rendered by individuals pursuant to an employer-employee relationship;

xxx xxx xxx"

According to petitioner, in the light of the declaration of the DOLE and the Supreme Court that DFP is in effect the actual employer of these DFPSI employees, then necessarily, the amounts paid by DFP to DFPSI for the remuneration of these employees/personnel (actual labor costs only) all of whom work exclusively for DFP, should not be subject to VAT because these payments arose out of an employer-employee relationship. Petitioner further maintains that the findings of the DOLE on the nature of the employment relationship between DFP and the DFPSI employees is necessarily binding since it is the agency which is primarily tasked to resolve or adjudicate labor matters.

To support its position that the payments it received from DFP constituted payments for services pursuant to an employer-employee relationship, petitioner presented in evidence the resolution of the Department of Labor and Employment in OS-A-8-110-97/NCR-OD-9606-015 promulgated on January 19, 1998 *(Exhs. "J"-5981; "D"-6023; "E"-6115; "C"-6118)*, Supreme Court resolution in G.R. No. 134151 promulgated on December 7, 1998 *(Exhs. "K"-5981; "E"-6023; "F"-6115; "D"-6118)*, Compromise Agreement of DEA and DFP in NLRC NCR Case I.C. 000864-99 dated February 10, 1999 *(Exhs. "Z"-5981; "L"-6023; "K"-6115; "L"-6118)* and the Contract

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for Professional Services between Employment Consultant of the Philippines, Inc. (ECPI) and The Philippine Tourism Authority (Duty Free Philippines Division) executed June 30, 1988 *(Exhs. "S"-5981; "G"-6023; "J"-6115; "F"-6118).* Likewise, in order to prove the VAT payments made and the total amount of income from services received from DFP for the period 1989 to 1996, petitioner offered in evidence the machine validated VAT returns *(Exhs. "A" to"H"-5981; "A", "B"-6023; "A" to "D"-6115; "A"-6118)* and the Commissioner's report dated June 10, 2001 *(Exhs. "R"-5981; "F"-6023; "H"-6115; "E"-6118).*

Respondent, on the other hand, submitted his case based on the records of the case and failed to file his memorandum within the period given by the court (*pages 183 and 227, CTA Records, Case No. 5981*).

After a careful examination of the documents adduced solely by petitioner, this court finds that petitioner's employees who comprise the DEA were indeed employees of the DFP for the following reasons:

First, the above-mentioned Contract for Professional Services entered into by and between the Philippine Tourism Authority (Duty Free Philippines Division) [*PTA (DFP), for brevity]* and Employment Consultant of the Philippines, Inc. (ECPI), described ECPI as a company formed by the contractual employees of PTA (DFP) and offering its services to provide PTA (DFP) its manpower requirements. It is to be noted that this contract was subsequently assigned by ECPI to herein petitioner, as testified to by petitioner's witness, Ms. Remedios Lopez, thus:

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Atty. Desiderio:

Q: Ms. Witness, you mentioned that you have a Service contract, I am showing to you a Contract dated June 30, 1988 entitled contract for Professional Services, executed between the Philippine Tourism Authority and Duty Free Philippines and the Employment Contract of Duty Free Philippines Services, Incorporated. Can you please take a look at this contract and tell us what relation it bears to Employment Contract which you refer to and the Service Contract which you stated?

Ms. Lopez:

A: Yes, actually the Duty Free Philippines and Employment Consultant of the Philippines have such relation to DFPSI since Employment Consultant of the Philippines assigned these services to DFP Services, Incorporated

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Q. Ms. Witness, you also stated that this Contract, which we just marked as Exhibit "S" was assigned by Employment Consultant of the Philippines, Incorporated (ECPI) to Duty Free Philippines Services, Incorporated. I am showing you a document denominated as Deed of Assignment dated 11 May 1989 between Employment Consultant of the Philippines, Inc. and Duty Free Philippines Services, Incorporated. Could you please take a look at this document, and tell us what relation it bears to the assignment that you earlier referred to, Ms. Witness?

A: This is really the assignment of ECPI and DFP Services, Incorporated to provide manpower to DFP. *(pages 12-14, TSN, November 13, 2001, CTA Case No. 5981)*

Moreover, the said contract provided that PTA(DFP) retains full control and management of its operations and have merely contracted ECPI to provide for its manpower requirements; that all ECPI employees seconded to PTA(DFP) as a result of the contract shall act within guidelines, policies, and instructions of PTA(DFP) Management and that PTA(DFP) Management shall approve all selections of personnel, promotions, employees transfers, disciplinary actions, promotions and merit increases,

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hiring and termination of personnel, prepare and approve a detailed organizational chart and shall have the sole right to alter this and the concurrence of PTA(DFP) Management shall be required for incentive/commission schemes that may be given as a direct result of duty free operations such as sales incentive programs, quota bonuses, etc.

Furthermore, the Compromise Agreement executed by Duty Free Philippines and DEA recognized the latter as the sole and exclusive bargaining unit of the rank-and-file employees of the DFP.

More importantly, we adhere to the resolution rendered by the Department of Labor and Employment holding that DFP is the direct and immediate employer of petitioner's employees. As mentioned earlier, such resolution was affirmed by the Supreme Court in its Resolution in G.R. No. 134151 promulgated on December 7, 1998. While the petitioner in the DOLE case was Duty Free Philippines Employees Association (DFPEA – Independent Union) and the petitioner in these cases is DFP Services Inc., it is undisputed that the members of the DFP-Employees Association are the same persons who comprise petitioner's employees.

Considering that we find petitioner's employees to be employees of DFP, then the payments made by DFP for the services rendered by petitioner's employees may aptly be considered as salaries/wages which are exempt from VAT pursuant to Section 109 (o) of the Tax Code of 1997.

Finally, as to whether or not the amounts of P20,000,000.00, P14,338,478.52, P56,609,927.86, P14,754,158.87 and P14,546,318.70 representing erroneously paid VAT were actually remitted to the BIR, the court rules in the affirmative. With the validated

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VAT returns presented by petitioner, the court is convinced that the amounts subject of these claims for refund have been paid to the BIR.

WHEREFORE, petitioner's claims for refund in CTA Cases Nos. 5981, 6023, 6115 and 6118 in the aggregate amount of P120,248,883.95 are hereby **GRANTED**. Respondent is hereby **ORDERED** to **REFUND** in favor of the petitioner the amount of P120,248,883.95 representing erroneously paid value-added tax.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

LOVELL R. BAUTISTA
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

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