REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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PANASONIC COMMUNICATIONS IMAGING CORPORATION OF THE PHILIPPINES (formerly: MATSUSHITA BUSINESS MACHINES CORPORATION OF THE PHILIPPINES),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6715

Members:

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

Promulgated:
MAR 24 2009 ; 10:30 am

x - x

DECISION

CASANOVA, *J.*:

STATEMENT OF THE CASE

Before Us is a Petition for Review seeking the issuance of a tax credit certificate in the amount of P35,052,113.31 representing unutilized and/or unapplied input VAT for the period covering April 1, 2001 to March 31, 2002.

STATEMENT OF FACTS

Petitioner, Panasonic Communications Imaging Corporation of the Philippines, is a corporation duly organized and existing under and by virtue of the laws of the

Republic of the Philippines, with principal office address at Lot C4-10, Carmelray Industrial Park II, Brgy. Punta, Calamba, Laguna.[1] It is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) enterprise with Tax Identification No. 004-649-223.[2]

Petitioner is registered with the Board of Investments (BOI) in accordance with the provisions of the Omnibus Investments Code of 1987[3] as a preferred pioneer enterprise for the production and export of plain paper copiers, sub-assemblies, parts and components per Certificate of Registration No. EP 95-216 issued by the BOI on October 2, 1995.[4]

Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of his office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law, with office address at 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[5]

For the period April 1, 2001 to March 31, 2002, petitioner allegedly generated export sales in the aggregate amount of P4,072,076,147.98 and that such export sales were allegedly paid for in acceptable foreign currencies and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).[6]

For the same period, petitioner allegedly paid input VAT in the total amount of P35,052,113.31 on its purchases of goods and services which were attributable to its export sales for such period. Said input VAT of P35,052,113.31 were allegedly

[1] Joint Stipulation of Facts and Issues (JSFI), Facts Admitted, paragraph 1, Rollo, p. 57.
[2] Exhibit "B".
[3] Executive Order No. 226.
[4] JSFI, Facts Admitted, paragraph 3, Rollo, p. 58.
[5] Ibid., paragraph 2, Rollo, p. 57.
[6] Petition for Review, paragraph 5, Rollo, p. 2.

reported in petitioner's VAT returns for the second, third, and fourth quarters of 2001 and for the first quarter of 2002.[7]

Petitioner avers that the input VAT on its purchases of goods and services attributable to its export sales for the above period has not been utilized or applied against petitioner's output VAT liabilities for the succeeding quarters. Thus, on June 23, 2003, petitioner filed with the BIR, a written application for refund of the amount of P35,052,113.31 representing its alleged unutilized input VAT for the period April 1, 2001 to March 31, 2002.[8]

Due to the respondent's inaction on its claim, petitioner filed a Petition for Review before this Court on June 30, 2003 in order to toll the running of the two-year prescriptive period.

Respondent, in his Answer[9] filed on August 1, 2003, interposed the following Special and Affirmative Defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue;
>
> 5. The amount of P35,052,113.31 being claimed by petitioner as alleged unutilized input taxes paid on the purchases [of] goods and services attributable to zero-rated sales for the period of April 1, 2001 to March 31, 2002 is not properly documented;
>
> 6. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
>
> 7. Petitioner must show that it has complied with the provisions of Sections 204(C) and 229 of the 1997 Tax Code on the prescriptive period for claiming tax refund/credit;

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[7] Ibid., paragraph 7.
[8] Supra, note 1, paragraph 4, Rollo, p. 58.
[9] Rollo, pp. 32-34.

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)** and as such, they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).**"

During the course of trial, petitioner presented documentary and testimonial evidence to substantiate its claim for refund. Respondent, on the other hand, waived his right to present his evidence and instead submitted the case for decision based on the pleadings.[10] Thus, on June 19, 2006, both parties were given a period of thirty (30) days to submit their respective Memorandum. Upon receipt of the parties' Memoranda, the case was deemed submitted for decision on February 26, 2007.[11]

However, finding that the certified true copies and/or original copies of the supporting documents of petitioner's export sales and purchases (invoices, official receipts, bills of lading/airway bills, bank advices, export declarations, certificates, etc.) and other supporting documents used by the duly commissioned independent CPA, Ms. Mary Ann C. Capuchino, as bases for her report were not submitted, the Court issued an Order[12] on November 28, 2007, requiring Ms. Mary Ann C. Capuchino to submit the said documents.

In collaboration with the independent CPA, petitioner complied and submitted the certified true copies of the supporting documents consisting of Exhibits Q, R, S-1 to S-12, U-1 to U-4, V, W, X-1 to X-12, Y and Z on December 19, 2007.[13]

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[10] Transcript of Stenographic Notes (TSN), June 13, 2006, p. 3.
[11] Resolution, June 19, 2006, Rollo, p. 317.
[12] Rollo, p. 320.
[13] Compliance and Manifestation, Rollo, pp. 327- 332.

However, upon examination of the documents submitted by the independent CPA, petitioner noticed that Exhibit "Z" was never formally offered as evidence in its Formal Offer[14] dated February 6, 2006 and in its second Formal Offer[15] dated October 26, 2006. Thus, on December 19, 2007, petitioner filed its Motion With Leave of Court to File Supplemental Offer of Evidence[16] corresponding to Exhibit "Z" representing the various documents supporting petitioner's domestic sales for the period from second quarter of 2001 to first quarter of 2002. The Court granted the said Motion in a Resolution[17] dated February 7, 2008.

After the filing of petitioner's supplemental Formal Offer of Evidence[18] on February 22, 2008 and respondent's Comment (Re: Petitioner's Formal Offer of Evidence)[19] on March 3, 2008, the Court admitted Exhibit "Z" in a Resolution[20] dated April 4, 2008. The case was submitted for decision as of the promulgation of the said resolution.

DISCUSSION

Petitioner maintains that its export sales are subject to zero percent (0%) VAT pursuant to Section 106(A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997 which is quoted herein below for easy reference:

> **"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:

[14] Rollo, pp. 159- 167.
[15] Rollo, pp. 261- 263.
[16] Rollo, pp. 322-326.
[17] Rollo, pp. 336-337.
[18] Rollo, pp. 338-339.
[19] Rollo, pp. 341- 342.
[20] Rollo, p. 346.

> **(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)."

To substantiate its export sales covering the second quarter of 2001 to the first quarter of 2002 and the foreign currency proceeds thereof, petitioner proffered before this Court the following documents:

Description	**Exhibit**
Quarterly VAT Returns for the period from the second quarter of 2001 to the first quarter of 2002	E, H, K & N
Summary of Sales Per Department for the period from the second quarter of 2001 to the first quarter of 2002	V
Detailed Schedule of Sales Per Department for the period from the second quarter of 2001 to the first quarter of 2002	W
Various documents such as invoices, bills of lading, airwaybills and export declarations supporting the export sales indicated in petitioner's VAT returns for the second quarter of 2001 to the first quarter of 2002	X-1 to X-12
Certificates of Inward Remittance Advice/Bank Remittance Advices with Summary of Collections supporting the collection of export sales proceeds for the second quarter of 2001 to the first quarter of 2002	Y
Final and Consolidated Report of the Court-Commissioned Independent CPA, Ms. Mary Ann C. Capuchino	AA

A perusal of the aforesaid documents reveals that petitioner's products were actually sold and shipped abroad and in consideration thereof, petitioner received foreign currency payments inwardly remitted in accordance with the BSP rules and regulations. These export sales may fall within the export sales transactions subject to zero percent (0%) VAT referred to under Section 106(A)(2)(a)(1) of the NIRC of 1997.

However, Section 106(A)(2)(a)(1) of the NIRC of 1997 should not be read in isolation of but in conjunction with Section 113 of the same Code, which prescribes that a VAT registered person like petitioner, shall for every sale, issue an invoice or receipt which must contain the following information:

> **"SEC. 113.** ***Invoicing and Accounting Requirements for VAT Registered Persons.*** —
>
> (A) ***Invoicing Requirements.*** — A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
> (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax."

> **"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."

Such invoices or official receipts must be duly registered with the Bureau of Internal Revenue as prescribed under Section 237 of the NIRC of 1997, to wit:

> **"SEC. 237.** ***Issuance of Receipts or Sales or Commercial Invoices.*** - All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, **issue duly registered receipts or sales or commercial invoices,** prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service x x x" (Emphasis supplied)

A scrutiny of petitioner's sales invoices shows that the same were not duly registered with the BIR as mandated under Section 237 of the NIRC of 1997. There was no authority to print or BIR permit number reflected on the said invoices.

Also, petitioner failed to show that the BIR authority to print has been secured by petitioner as to its export sales invoices. Basic is the rule that before a printer can print receipts or sales or commercial invoices, an authority to print must be secured first from the BIR by all persons who are engaged in business pursuant to Section 238 of the NIRC of 1997.

The pertinent portion of Section 238 is quoted hereunder for easy reference:

> **"SEC. 238.** ***Printing of Receipts or Sales or Commercial Invoices.*** — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same." (Emphasis supplied)

The above provision seeks to eliminate the use of unregistered and double or multiple sets of receipts by striking at the very root of the problem — the printer.

Without **duly registered VAT sales invoices** containing the required information particularly petitioner's TIN-VAT number and the imprinted word "zero rated", petitioner's export sales for the period April 1, 2001 to March 31, 2002 cannot qualify for VAT zero rating under Section 106 (A)(2)(a)(1) of the NIRC of 1997. Consequently, petitioner's claimed input VAT allegedly attributable thereto in the amount of P35,052,113.31 cannot be granted.

Thus, this Court finds it unnecessary to discuss petitioner's compliance with the other requisites for refund of unutilized input VAT.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(Concurring and Dissenting Opinion)
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
Chairman, First Division