LW.

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

**SOUTHERN CROSS CEMENT CORPORATION,**
Petitioner,

- versus -

**C.T.A. CASE NOS. 5932 and 5747**

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

Promulgated:
SEP 26 2001

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# DECISION

At bar are consolidated Petitions for Review filed on March 25, 1999 and September 27, 1999 seeking for a refund of an aggregate amount of P27,482,365.97 representing alleged unutilized Value Added input taxes arising from purchases of domestic capital goods and services and importation of goods.

The facts of the case are as follows:

Petitioner is a corporation organized and existing under and by virtue of the laws of the Philippines. It is principally engaged in the business of manufacturing, exporting, importing, buying, selling or otherwise dealing in at wholesale cement and any equipment, materials and supplies used, employed in or related to the manufacture of cement. As such, it is a VAT-registered entity with Certificate of Registration No. 97-500-005519.

Records show that for the first, third and fourth quarters of 1997, Petitioner filed its quarterly VAT returns reflecting therein alleged input taxes paid on domestic purchases of goods and services and on its importation of capital goods. Also, Petitioner alleged that for the first and second quarters of 1998 it filed its quarterly return indicating therein its payment of input taxes on purchases and importation of goods.

Payments of input taxes allegedly made by Petitioner are detailed as follows:

| | | | INPUT TAXES | | | | |
|---|---|---|---|---|---|---|---|
| QUARTER | EXHIBIT | | DOMESTIC | | IMPORTATION | | TOTAL |
| 1ST 1997 | B, B-1 | P | 17,267,019.37 | P | | P | 17,267,019.37 |
| 3RD 1997 | D, D-1 | | 276,592.34 | | 7,392,109.28 | | 7,668,701.62 |
| 4TH 1997 | QQ, QQ-1 | | | | 452,074.87 | | 452,074.87 |
| 1ST 1998 | E, E-1 | | 3,336,425.83 | | 4,744,043.46 | | 8,080,469.29 |
| 2ND 1998 | F, F-1 | | 815,742.33 | | 1,642,199.55 | | 2,457,941.88 |
| | **Total** | **P** | **21,695,779.87** | **P** | **14,230,427.16** | **P** | **35,926,207.03** |

Out of the above-mentioned input taxes, Petitioner alleged that the sum of P27,482,365.97 pertains to purchases of capital goods, to wit:

| | | | INPUT TAXES | | | | |
|---|---|---|---|---|---|---|---|
| QUARTER | EXHIBIT | | DOMESTIC | | IMPORTATION | | TOTAL |
| 1ST 1997 | B-2-1, B-4-a | P | 16,996,500.00 | P | | P | 16,996,500.00 |
| 3RD 1997 | D-4-a, D-5 | | 80,454.55 | | 7,392,109.28 | | 7,472,563.83 |
| 4TH 1997 | QQ-1 | | | | 452,074.87 | | 452,074.87 |
| 1ST 1998 | E-2-a, E-3-a | | 2,076,227.27 | | | | 2,076,227.27 |
| 2ND 1998 | F-4-a | | 485,000.00 | | | | 485,000.00 |
| | **Total** | **P** | **19,638,181.82** | **P** | **7,844,184.15** | **P** | **27,482,365.97** |

All of the above input taxes allegedly arose from the construction of Petitioner's Manila Cement Terminal at the North Harbor Center where it had to engage the services of Shimizu Philippine Contractors, Inc. (Exhibit G), Fujitsu Philippines, Inc. (Exhibit H) and Onoda Engineering, Co. Ltd.

On the basis of Section 106(b) [now Section 112(B)] of the Tax Code which provides for the refund or tax credit of input taxes paid on capital goods imported or locally purchased. Petitioner filed an administrative claim for refund with the Bureau of Internal Revenue on June 8, 1998 corresponding to the third and fourth quarters of 1997. Subsequently, on December 17, 1998, Petitioner again filed an administrative claim for refund this time referring to the first and third quarters of 1997 and the first and second quarters of 1998.

To comply with the two-year period of prescription, Petitioner immediately filed its appeal with this Court on March 25, 1999 and September 25, 1999, docketed as CTA Case Nos. 5747 and 5932, respectively.

Pertinent issues to be resolved are the following:

> (1) Whether or not Petitioner is entitled to the claim for refund or issuance of a tax credit certificate of excess unutilized input VAT covering the 1st and 3rd quarters of 1997 and the 1st and 2nd quarters of 1998 on its domestic purchases of capital goods and services in the amount of P19,638,181.82 and for the 3rd and 4th quarters of 1997 on its importation of capital goods in the amount of P7,844,184.15;
>
> (2) Whether or not the said creditable value-added tax inputs were fully substantiated by VAT invoices and/or official receipts;
>
> (3) Whether or not said unapplied or unutilized value added input taxes were carried forward to the succeeding taxable quarters and applied against the output VAT of Petitioner.

Judging from the wordings of Section 106 of the Tax Code, it would appear that Petitioner is entitled to the refund of the amount sought. However, Petitioner must still comply with the substantiation requirements under Section 4.106-1(b) of Revenue Regulations No. 7-95 in relation to Section 4.104-5 of the same regulation and Section 16(c)(4) of Revenue Regulations No. 5-87, viz:

> **SEC. 4.104-5.** ***Substantiation of claims for input tax credit.*** - (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under section 108(a) and 238 of the Code. Input tax on purchases of real property should be supported by a copy of the public instrument i.e. deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with the VAT receipt issued by the seller.
>
> x x x x
>
> (b) Input tax on importation shall be supported with the import entry or other equivalent document showing actual payment of VAT on the imported goods.
>
> (c) x x x x
> (d) x x x x
> (e) x x x x
>
> **SEC. 16(c)(4).** ***Purchase of Capital goods.*** -
>
> i) Original copy of invoice or receipt showing the date of purchase, purchase price, amount of VAT paid and description of the capital equipment locally purchased.
>
> ii) With respect to capital equipment imported, the photocopy of import entry document for internal revenue tax purposes and the confirmation receipt issued by the Bureau of Customs for the payment of VAT.

A painstaking scrutiny of the documentary exhibits presented in evidence by the Petitioner disclose the fact that Petitioner was able to comply with the aforementioned substantiation requirements. Hence, We grant the claim.

For its local purchases of capital goods and services, Petitioner presented VAT invoices and/or official receipts which this Court finds to be genuine and authentic, not to mention Respondent's reluctance to dispute the said documents.

As regards its importation of capital goods, Petitioner, to support its claim, presented in evidence import entries and internal revenue declarations and official receipts to which we are inclined to extend probative value having been issued in the ordinary course of business.

Detailed below is the more itemized computation of Petitioner's input taxes claimed by the Petitioner:

**(a) Domestic purchases of capital goods and services**

| SUPPLIER | EXHIBIT | | AMOUNT | | INPUT VAT |
|---|---|---|---|---|---|
| 1ST QUARTER 1997 | | | | | |
| SHIMIZU PHILS | L, L-1 | P | 6,168,457.50 | P | 616,845.75 |
| SHIMIZU PHILS | P | | 169,965,000.00 | | 16,379,654.25 |
| **SUBTOTAL** | | **P** | **176,133,457.50** | **P** | **16,996,500.00** |
| 3RD QUARTER 1997 | | | | | |
| FUJITSU PHILS | AA | P | **804,545.45** | P | **80,454.55** |
| 1ST QUARTER 1998 | | | | | |
| FUJITSU PHILS | FF, GG | | 818,181.82 | | 81,818.18 |
| SHIMIZU PHILS | S | | 9,442,500.00 | | 944,250.00 |
| FUJITSU PHILS | II, JJ | | 327,272.73 | | 32,727.27 |
| FUJITSU PHILS | OO, NN | | 731,818.18 | | 73,181.82 |
| SHIMIZU PHILS | V | | 9,442,500.00 | | 944,250.00 |
| SUBTOTAL | | P | **20,762,272.73** | P | **2,076,227.27** |
| 2ND QUARTER 1998 | | | | | |
| SHIMIZU | Y | P | **4,850,000.00** | P | **485,000.00** |
| TOTAL | | P | **202,550,275.68** | P | **19,638,181.82** |

**(b) Importation of capital goods**

| SUPPLIER | EXHIBIT | | INPUT VAT |
|---|---|---|---|
| 3RD QUARTER 1997 | | | |
| ONODA ENGINEERING | XX-1 to XX-6 | P | 1,105,334.00 |
| ONODA ENGINEERING | XX-30, XX-31 | | 6,272,512.00 |
| DAITO-NAN-SHIN | XX-45, XX-46 | | 14,263.28 |
| **SUBTOTAL** | | **P** | **7,392,109.28** |
| 4TH QUARTER 1997 | | | |
| DAITO-NAN-SHIN | YY-5 | | 43,903.87 |
| BUREAU OF CUSTOMS | YY-15, YY-16 | | 408,171.00 |
| **SUBTOTAL** | | **P** | **452,074.87** |
| **TOTAL** | | **P** | **7,844,184.15** |
| **GRANDTOTAL** | | **P** | **27,482,365.97** |

As to the third issue, records of this case further reveal that the amounts of P19,638,181.82 and P7,844,184.15 sought to be refunded were already deducted from the total available input tax under the caption "Less: Any VAT refund/TCC claimed (Exhibits PP-2, PP-3, FFF and FFF-1) thus proving that these amounts were not carried forward to the succeeding taxable quarters and applied against the output VAT of Petitioner.

The onus having been discharged satisfactorily by the Petitioner, this Court grants the claim in the amount of P27,482,365.97.

**WHEREFORE,** in view of all the foregoing, Respondent is hereby **ORDERED** to **REFUND** or, in the alternative, to **ISSUE A TAX CREDIT CERTIFICATE** in the amount of P27,482,365.97, in favor of the Petitioner, representing unutilized VAT input taxes paid from purchases of domestic capital goods and services and importation of goods.

**SO ORDERED.**

**AMANCIO Q. SAGA**
Associate Judge

**I CONCUR:**

**ERNESTO D. ACOSTA**
Presiding 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