REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

TAKENAKA CORPORATION PHILIPPINES BRANCH,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6752

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

JAN 0 2 2007

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DECISION

CASTAÑEDA, JR., J.:

Before Us is a Petition for Review seeking the refund or issuance of a tax credit certificate in the amount of P45,855,382.32 allegedly representing petitioner's unutilized and unapplied input value-added taxes for the third quarter of taxable year 2001.

Petitioner is a foreign corporation organized and existing under the laws of Japan with branch office at Andrews Ave., Villamor Airbase, Pasay City. It is duly licensed to transact business in the Philippines and is registered with the Bureau of Internal Revenue ("BIR") as value-added tax ("VAT") taxpayer evidenced by its Certificate of Registration bearing the Taxpayer Identification No. 005-301-571-000.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes, with office address at BIR National Office Building, BIR Road, Diliman, Quezon City.

For the purpose of constructing the Ninoy Aquino International Airport Terminal III ("NAIA-APT3 Project"), petitioner as sub-contractor entered into an On-Shore Construction Contract with the Philippine International Air Terminal Co., Inc. ("PIATCO"). PIATCO is a corporation duly organized and existing under the laws of the Philippines and was duly-registered with PEZA as an Ecozone Developer/Operator under Republic Act No. 7916.

Petitioner filed its Quarterly VAT Return for the third quarter (covering July 1, 2001 to September 30, 2001) of taxable year 2001 on October 25, 2001, which showed that it paid/incurred VAT input tax in the amount of P157,359,389.95 arising out of its input tax on domestic purchases of goods and/or services for the pertinent quarter amounting to P47,238,004.27 and input tax carried over from previous quarter in the amount of P110,121,385.68.

On January 14, 2003, petitioner filed its 1st Amended Quarterly VAT Return for the third quarter of taxable year 2001 by reducing its total input tax for the third quarter of taxable year 2001 to only P44,713,185.20 consisting of input taxes on domestic purchases for the quarter amounting to P44,713,185.20.

On January 30, 2003, petitioner filed its Application for Tax Credits/Refunds before the BIR Revenue District Office No. 51 (Pasay City) for the third quarter of taxable year 2001 amounting to P44,713,185.20. On even date, petitioner, through its external auditor SGV & Co., filed a formal letter addressed to the BIR requesting for the refund of unutilized input VAT attributable to zero-rated sales for the third quarter of 2001 amounting to P44,713,185.20 and likewise submitting the complete documents in support of its administrative claim.

On July 14, 2003, petitioner filed its 2nd Amended Quarterly VAT Return for the third quarter of taxable year 2001 by increasing the total input tax for the third quarter from P44,713,185.20 to P45,855,382.32 consisting of only input taxes on domestic purchases for the quarter in the amount of P45,855,382.32.

Petitioner then filed on August 12, 2003, its Amended Application for Tax Credits/Refunds before the BIR Revenue District Office No. 51 (Pasay City) for the third quarter of taxable year 2001 together with a supplemental formal letter addressed to said RDO informing the latter of the increased claim of P45,855,382.32 and further signifying that it has filed the complete documents in support of its administrative claim for refund or the application for issuance of Tax Credit Certificate.

There being no action on the part of the respondent of its claim petitioner filed its Petition for Review with this Court on August 20, 2003.

In respondent's Answer filed on December 8, 2003, he averred the following Special and Affirmative Defenses:

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

5. Sale of goods, properties or services to PEZA registered enterprises do not qualify as zero-rated (0%) sale;

6. Well-settled is the rule that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless such, interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances and rulings that override, instead of remaining consistent and in harmony with the law which they seek to apply and implement (Philippine Bank of Communications vs. Commissioner of Internal Revenue, G.R. No. 112024, 302 SCRA 241, January 28, 1999);

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

8. 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;

9. It is incumbent upon petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended as well as the requirements provided for in Revenue Regulations No. 5-87 as amended by Revenue Regulations No. 3-88 and Revenue Regulations No. 7-95, as amended; and

10. Claims for refund are construed strictly against the claimant for the same partakes [of] the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, G.R. *(sic)* No. L-13509, January 30, 1970, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)."

The parties have jointly stipulated on the following issues for resolution of this Court, to wit:

I.

Whether or not the petitioner has an unutilized VAT in the amount of P45,855,382.32 for the 3rd quarter of taxable year 2001;

II.

Whether or not petitioner's sale of service to a PEZA-registered enterprise qualify as zero-rated sales; and

III.

Whether or not petitioner's claim for refund/tax credit allegedly representing unutilized input VAT for the 3rd quarter of taxable year 2001 in the amount of P45,855,382.32 is substantiated by documentary evidence.

This Court finds it appropriate to resolve first the second issue of whether not petitioner's sale of service to a PEZA-registered enterprise qualify as zero-rated sales.

Petitioner asserts that it is entitled to the claim for refund or issuance of a tax credit certificate of unutilized input VAT on its zero-rated sales to a PEZA registered enterprise pursuant to Sections 108(B)(3), 110(B) and 112(A) of the 1997 National Internal Revenue Code ("NIRC"), Section 3 of Revenue Memorandum Circular No. 74-99 and Bureau of Internal Revenue VAT Committee Ruling No. 011-2003, which read:

> **"SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties.** –
>
> (A) xxx xxx xxx
>
> (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:
>
> xxx xxx xxx
>
> (3) Services rendered to persons or entities whose exemption under special law or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate."
>
> **"SEC. 110. Tax Credits. –**
>
> (A) xxx xxx xxx

(B) Excess Output or Input Tax. – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."

"SEC. 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: xxx"

Revenue Memorandum Circular No. 74-99

Section 3. Tax Treatment of Sales Made by a VAT Registered Supplier from the Customs Territory, to a PEZA Registered Enterprise. –

(3) In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to Art. 77(2) of the Omnibus Investment Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the "Cross Border Doctrine" of the VAT System.

VAT Committee Ruling No. 011-2003

"Therefore, the sale of goods and services rendered by Takenaka to PIATCO are subject to zero percent (0%) VAT and requires no prior approval for zero-rating based on RMC No. 74-99. Accordingly, Takenaka is covering all its accumulated VAT

> input taxes in relation to its services rendered by PIATCO and from its purchase of goods and services from duly registered VAT taxpayers, duly supported by a VAT invoice or official receipt conforming with the requirements of Section 113 and 237 of the Tax Code of 1997; provided that the application for refund or issuance of a Tax Credit Certificate (TCC) is made within two years after the close of the taxable quarter when the sales were made."

In the case of ***Takenaka Corporation Philippines Branch vs. Commissioner of Internal Revenue, CTA Case No. 6653, April 21, 2006***, it was held that the services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subject the supply of such services to zero percent (0%) VAT.

PIATCO's exemption from VAT is pursuant to Section 1(A) of Rule XIV and Rule XX of the Rules and Regulations implementing Republic Act No. 7916. Thus, petitioner's sales of services to PIATCO, a PEZA-registered enterprise, do qualify as a zero rated sale subject to zero percent (0%) VAT pursuant to Section 108 (B)(3) of the NIRC.

Relative to the construction services it rendered to PIATCO, petitioner actually generated zero-rated receipts in the amount of P426,290,202.44 *(Exhibit F-6)* which are duly supported by **VAT official receipts** *(Exhibits Q-1-a1, Q-1-b1, Q-1-c1, Q-1-d1 and Q-1-e1)* and following the above ruling, petitioner's reported sales for the taxable year 2001 are subject to zero percent (0%) VAT.

We now resolve the first and third issues jointly as they are interrelated.

Verifications were made by the Court's commissioned independent CPA of the submitted suppliers invoices and official receipt. In the CPA report

(Exhibit N), it was found that out of the total claimed input VAT of P45,855,382.32, only the amount of P42,733,991.33 was duly substantiated and the remaining amount of P3,121,390.99 should be disallowed due to the following reasons:

Item	Nature	Amount	Reference
1.	Input VAT on purchases of services with mark TIN V and stamp VAT.	P 1,216,924.27	Exhibit O-1
2.	Input VAT on purchases of goods and services without supporting documents.	792,070.60	Exhibit O-2
3.	Input VAT on purchases of services supported by stamp VAT invoices.	607,345.87	Exhibit O-3
4.	Input VAT on purchases of services supported by ORs with mark TIN V and stamp VAT	205,571.32	Exhibit O-4
5.	Input VAT on purchases of services supported by photocopied invoices.	14,812.00	Exhibit O-5
6.	Input VAT on purchases of services supported by billings not invoices.	136,005.82	Exhibit O-6
7.	Input VAT on purchase of goods supported by TIN V ORs only.	61,275.58	Exhibit O-7
8.	Input VAT on purchase of goods supported by TIN V ORs only.	37,398.90	Exhibit O-8
9.	Input VAT on purchases of services where the amount of VAT claim in the ORs and invoices of suppliers cannot be found.	14,460.01	Exhibit O-9
10.	Input VAT on purchases of services supported by ORs with no BIR permit to print.	12,308.15	Exhibit O-10
11.	Input VAT on purchase of goods supported by invoices with no BIR permit to print.	8,068.18	Exhibit O-11
12.	Input VAT on purchase of services supported by invoices with no BIR permit to print.	6,400.28	Exhibit O-12
13.	Input VAT on purchase of goods and services Not in the name of the Company.	3,034.17	Exhibit O-13
14.	Input VAT on purchase of goods supported by stamp VAT invoices.	2,286.36	Exhibit O-14
15.	Input VAT on purchase of goods supported by photocopied invoices.	1,593.75	Exhibit O-15
16.	Input VAT on purchase of services supported SOA not invoices.	1,034.00	Exhibit O-16
17	Input VAT on purchase of goods supported by ORs with mark TIN and stamp VAT.	472.73	Exhibit O-17
18.	Input VAT on purchase of services with no EWT.	329.00	Exhibit O-18
	Total disallowed VAT claims	P 3,121,390.99	

After a careful evaluation, it was determined that the recommended substantiated input VAT of P42,733,991.33 made by the commissioned independent CPA should be further reduced by P197,227.99 which consists of P196,899.22 input VAT on purchases of services supported by an undated Official Receipt *(Exhibit Q2-126i)* and P328.77 amount of input VAT on purchase of service supported by an Official Receipt dated earlier than the period of the subject claim *(Exhibit Q2-1a-2)*.

The input VAT of P196,899.22 on purchases of services supported by an undated official receipt should be disallowed as it violates Section 4-108-1 of Revenue Regulations No. 7-95 implementing Section 113(A) in relation to Section 237 of the 1997 National Internal Revenue Code, as amended, wherein it is required that the date of transaction must appear on the face of the receipt or invoice issued by all VAT-registered persons. The pertinent portion of the said regulations is quoted hereunder:

> "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)*

Likewise, the input VAT of P328.77 on the purchase of service which is supported by an Official Receipt dated earlier than the period of the subject claim is disallowed. In the case of ***Lepanto Consolidated Mining Co. vs.***

Commissioner of Internal Revenue, CTA Case Nos. 6368 & 6480,[1] this Court ruled that input VAT supported by VAT invoices and official receipts dated earlier than the period of claims can no longer be claimed for refund. To quote:

> "We agree with the respondent.
>
> The alleged unutilized input VAT of P5,820,863.87 should be denied since the supporting invoices and official receipts thereof bore dates which were earlier than the period of petitioner's claim. Section 110(A)(2) of the 1997 Tax Code provides:
>
> > "Sec. 110. *Tax Credits.* -
> >
> > A. *Creditable Input Tax.* -
> >
> > 2. The input tax on domestic purchase of goods or properties shall be creditable:
> >
> > (a) To the purchaser upon consummation of sale and on importation of goods or properties; and
> >
> > However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee."
>
> It is clear from the above-quoted provisions of law that for purchases of goods, the corresponding input value added taxes of which is creditable to the purchaser upon consummation of sale, that is, upon the issuance of the corresponding invoice. On the other hand, for purchases of services, the corresponding input value added taxes of which is creditable to the purchaser upon payment of compensation, rental, royalty, or fee, that is, upon the date of official receipt. Section 110(A) is explicit. It states "upon consummation", in the case of domestic purchases of goods, and "upon payment", in the case of purchases of services. It does not provide any qualification, such as "upon

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[1] December 15, 2004, also cited in the recent case of *Mirant (Navotas II) Corporation (formerly Sourthern Energy Navotas II Power, Inc. versus Commissioner of Internal Revenue, CTA Case No. 6418, April 11, 2006.*

delivery of invoice or official receipt" which is the main thesis of petitioner's contention.

In a resolution of the case entitled ***Telecommunications Technologies Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6168, promulgated on July 28, 2004,*** this Court elucidated that "the input VAT on domestic purchases of goods or properties shall be allowed as tax credit to the purchaser upon consummation of sale, which means upon issuance by the seller of the VAT sales invoices evidencing the sale of goods/properties. On the other hand, the input VAT on purchases of services shall be available as tax credit to the purchaser only upon payment of the compensation or fee, *i.e.,* upon issuance by the seller of the VAT official receipt evidencing receipts of the payment for services performed or yet to be performed."

Thus, it is indubitable on the part of the petitioner to declare the input value added taxes on domestic purchases of goods and services at the end of the corresponding taxable quarter where purchases of goods were consummated, as evidenced by VAT invoice and for payment of services, as evidenced by VAT official receipt.

Therefore, the amount of input VAT of P5,820,863.87 which is supported by VAT invoices and official receipts dated earlier than the period of petitioner's claims can no longer be claimed for refund pursuant to Section 110(A) in relation with Section 112(A) of the 1997 National Internal Revenue Code."

Moreover, in the case of ***Mirant Navotas Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6257, June 16, 2003***, this Court also denied portion of Mirant's claim on the ground that the dates of VAT official receipts and invoices fall outside the subject period of claim.

Thus, applying the afore-quoted ruling of this Court, petitioner's claimed input VAT in the amount of P328.77 can not be granted since the same should have been declared in the corresponding taxable quarter when the purchase of service was paid as evidenced by VAT official receipt. Therefore, only the amount of P42,536,763.34 *(P42,733,991.33 less P197,227.99)* is properly supported by VAT invoices and/or official receipts.

Based on the records of this case, petitioner's original and amended VAT returns *(Exhibits D, E, and F)* show that it has no exempt or taxable sales but only zero-rated sales to PIATCO. Consequently, the substantiated input VAT of P42,536,763.34 can only be attributed to petitioner's zero rated sales for the third quarter of 2001.

Moreover, an examination of the evidence on records discloses that petitioner did not carry over its unutilized input VAT for the third quarter of 2001 to the succeeding taxable quarter. This is evidenced by its amended fourth (4^{th}) Quarterly VAT Return for taxable year 2001 wherein the figure "0.00" was indicated in the space for "Input Tax Carried Over from Previous Quarter" *(Exhibit M)*. Considering that petitioner did not carry-over to the succeeding quarters its unutilized input VAT for the third quarter of 2001, the same remains to be unutilized.

Petitioner likewise proved that its Application for Tax Credits/Refunds filed on January 30, 2003 as well as its subsequent Amended Application for Tax Credits/Refunds filed on August 12, 2003 *(paragraphs 7 and 10, Facts Admitted, Joint Stipulation of Facts and Issues)* and the instant Petition for Review filed on August 20, 2003 were all within the two (2)-year prescriptive period required by law reckoned from October 25, 2001, the date when petitioner filed its original Quarterly VAT Return for the third quarter of 2001 *(par. 5, Facts Admitted, Joint Stipulation of Facts and Issues; Exhibit D)*.

WHEREFORE, premises considered, petitioner's claim is hereby **GRANTED** in the reduced amount of P42,536,763.34. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P42,536,763.34

representing unutilized input VAT attributable to zero-rated sales for the third quarter of 2001.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest 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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice