REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

UNION CARBIDE PHILIPPINES
(FAR EAST), INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4890

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:
FEB 13 1995

x - x

DECISION

Presented to us is a petition for review for the refund of input value-added tax paid by petitioner for the capital goods purchased during the third and fourth taxable quarters of 1990 in the amount of P361,909.00.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines with business address at the 15th floor, Royal Match Building, Ayala Avenue, Makati, Metro Manila. It is a VAT registered entity with VAT registration no.32A-4-005476 covered by VAT Registration Certificate no.087662 issued by the RDO of Makati-32-A (Exh. "A"). Under said registration, its first quarter starts February 1-April 30, Second quarter, from May 1 to July 31, Third quarter from August 1 to October 31 and Fourth quarter from November 1 to January 31 of calendar year. It is engaged in several business endeavors among them is the manufacture of goods particularly plastic products and brake fluid (see page 6, TSN). In order to effect their production, petitioner purchased various materials for which it paid value-added input taxes passed on to it by the sellers of these products. For the third quarter of 1990 covering the months of August to October, petitioner filed its VAT return on November 20, 1990 reflecting the total amount of P7,741,241.61 as VAT output tax and P11,972,893.65 corresponding to the VAT input tax (Exhibit "N", "N-2"; "N-3" respectively). On February 20, 1991, petitioner then filed its VAT return for the fourth quarter of 1990 with an output tax in the sum of P8,527,712.17 and an input tax in the total amount of P13,874,655.56 (Exhibit "N-1"; "N-4"; "N-5" respectively).

As a VAT-registered enterprise petitioner filed with the Bureau of Internal Revenue on December 18, 1992, an application for tax refund/credit in the amount of P361,909.00 corresponding to the input tax it paid on the capital goods it purchased during the third and fourth quarters of 1990 pursuant to Section 106 (c) of the National Internal Revenue Code.

Respondent failed to act on this claim, hence petitioner filed this appeal on December 22, 1992 to beat the prescriptive period provided by law in claiming for a refund.

In her answer, respondent adduced the following special and affirmative defenses, to wit:

> 3. Petitioner has failed to state any cause of action under Section 204 of the Tax Code, under which the Commissioner of Internal Revenue allegedly may credit or refund taxes erroneously or illegally received.
>
> 4. In the instant case, petitioner begs the issue, as it has miserably failed to show on the face of the petition that the collection of the aforesaid tax liability in the amount of P361,909.00 is illegal and erroneous as against the legal presumption that the collection thereof is lawful and regular.
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> 5. In addition, well-settled is the doctrine that provisions on the tax refund are construed strictly against the taxpayer as they are in the nature of tax exemption.
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> 6. Besides, in an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally paid and failure to do so is fatal to the action for refund.
>
> 7. Moreover, and in this case, the claim for refund is still under investigation.

Respondent did not submit any evidence to support her assertions and chose not to submit her memorandum leaving this case to be decided on the basis of the pleadings and evidence presented by the petitioner.

Petitioner, in support of its claim for refund, presented several VAT sales invoices to show that purchases of goods were made from VAT-registered suppliers during the period covered by the claim and that input taxes were paid on said purchases. In addition, the value-added tax returns for the third and fourth taxable quarters of 1990 were also submitted.

The sole issue to be resolved is whether or not petitioner is entitled to the refundable amount of P361,909.00 representing the input tax it allegedly paid on the capital goods it purchased during the third and fourth quarters of 1990.

Petitioner anchors its claim on Section 106(c) of the Tax Code, which provides, thus:

> **Section 106.** - A VAT- registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased to the extent that such input taxes have not been applied against output taxes. The application for refund may be made only after the expiration of 2 succeeding quarters following the quarter in which the importation or local purchase was made; Provided, that a VAT-registered person who is just commencing business may apply for refund of input taxes under this paragraph not earlier than 180 days from the date of registration or actual start of business operations whichever comes later: Provided, however, that the application is filed not later than 2 years from the dates herein prescribed:

We find for the petitioner.

A combination of substantive and procedural law were complied with by the petitioner providing this Court with a sound legal basis for granting the claim for refund of input taxes for the third and fourth quarters of 1990.

It is important to note at this point that the prescriptive period for claiming a refund of input taxes paid on capital goods by a VAT-registered person is that which is provided in Section 106(c) of the Tax Code (supra). The evidence presented by the petitioner shows that the claim for refund of input taxes for the 3rd and 4th quarters of 1990 fall within the prescribed period for claiming a refund.

Equally important to consider in deciding questions involving refund is the factual aspect of such claims. In the instant case, this Court finds that only the amount of P289,244.86 should be granted to petitioner as compared to the amount of P361,909.00 originally prayed for in the petition.

In the computation of this final amount, purchases of capital goods made outside the periods claimed were excluded, these are purchases made from the period April 1990 to July 1990 falling within the first and second quarters of 1990 which is not covered by the present petition. Likewise purchases made in March 1991 were not included as they already fall outside the fourth taxable quarter of 1990. These exclusions refer to Exhibits "B", "C", "C-1", "C-2", "C-3", "D", "D-1", "D-2", "E", "E-1", "E-2", "E-3", "E-4", "E-5", "E-6", "E-7" and "L". Moreover, Exhibit "G" which refers to a purchase of a National washing machine was also excluded in the final computation as it cannot be classified as "capital goods" as this term is defined in Revenue Regulations No. 5-87 implementing the value-added tax law, thus:

> Section 2. Definition of terms
>
> (o) "capital goods" refers to goods with estimated useful life greater than one year and which are treated as depreciable assets under Section 29(f), <u>used directly or indirectly in the production or sale of taxable goods or services</u>. (Underscoring supplied)

A summary of the final computation of all the capital goods purchased from the period August 1, 1990 to January 31, 1991 is listed hereunder thus:

Supplier	VAT No.	Invoice Number	Invoice Date	Exh.	Amount	VAT
Andy Steel Works & Construction, Inc.	30-8-002024	1351	08-03-90	F	P 22,195.00	P 2,017.73
Ono Hardware Co., Inc.	38-0-000216	410000	08-06-90	F-1	1,186.00	107.82
Ono Hardware Co., Inc.	38-0-000216	410051	08-10-90	F-2	152.00	13.82
Genasco Marketing Corp.	33-2-000-107	30101	08-09-90	F-2	19.00	1.73
Ono Hardware Co., Inc.	38-0-000216	410069	08-10-90	F-3	110.00	10.00
State Construction & Auto Supply	38-3-000163	21750	08-11-90	F-4	12,400.00	1,127.27
State Construction & Auto Supply	38-3-000163	21749	08-11-90	F-5	2,825.00	256.82
E.L. Saniel Construction	38-2-000461	862	08-17-90	F-6	38,100.00	3,463.64
RAB Professional Technologists, Inc.	23-002547	219	08-20-90	F-7	204,357.70	18,577.97
Andy Steel Works & Construction, Inc.	30-8-002024	1372	08-22-90	F-8	116,880.00	10,625.45
Andy Steel Works & Construction, Inc.	30-8-002024	1371	08-22-90	F-9	780.00	70.91
Rank Sales Corporation of the Phils.	32A-6-005144	4992	08-24-90	F-10	4,450.00	404.55
Thermo Engineering Supply Corporation	32A-9-000332	43232	09-01-90	G	24,000.00	2,181.82
Bauan Trading and Construction Supply	38-6-000277	5136	09-05-90	G-1	352,800.00	32,072.73
E.L. Saniel Construction	38-2-000461	899	09-13-90	G-2	52,073.17	4,733.92

Rasan Trading and Construction Supply	30-6-000277	5193	09-13-90	G-3	50,400.00	4,581.82
Lim's Folding Furniture Home Industry	32-4-002895	3525	09-18-90	G-4	6,000.00	545.45
Intra Development Co. Limited (Importation)		90/001i	09-21-90	G-5	236,753.00	21,523.09
Alpha Steel Mftg. Corp.	30-3-005626	7078	09-21-90	G-6	22,320.00	2,029.09
Andy Steel Works & Construction, Inc.	30-8-002024	1406	09-25-90	G-7	234,500.00	21,318.18
E.L. Samiel Construction	38-2-000461	ORN164	10-10-90	G-8	24,719.79	2,247.25
E.L. Samiel Construction	38-2-000461	ORN203	11-06-90	G-9	12,584.56	1,144.05
Mercado's Furniture	30-4-000170	[illegible]	09-29-90	G-11	1,800.00	163.64
Blims Fine Furniture	320-6-00[illegible]51	1582	10-02-90	H	7,000.00	[illegible]
Alpha Steel Mftg. Corp.	30-3-00[illegible]	[illegible]	10-17-90	H-1	507.00	46.09
Eurasia Heavy Industries Inc.	60-3-000270	151	10-18-90	H-2	6,500.00	590.91
Ramb Sales Corporation of the Phils.	320-6-005144	5161	10-19-90	H-3	23,150.00	2,104.55
Commodities UPI	31-0-000315	3525	10-24-90	H-4	6,386.40	580.58
PH Engineering Works	38-6-000285	3104	10-26-90	H-5	20,160.00	1,832.72
PH Engineering Works	38-6-000285	3102	10-26-90	H-6	1,430.00	130.00
PH Engineering Works	38-6-000285	3101	10-26-90	H-7	1,760.00	160.00
PH Engineering Works	38-6-000285	3103	10-26-90	H-8	5,582.50	507.50
Race-Haven Automation Philippines Inc.	320-7-000615	ORN554	10-29-90	H-9	65,000.00	5,909.09
S & C Trading, Inc.	31-60-03917	0207	11-20-90	I	21,000.00	1,909.09
Andy Steel Works & Construction, Inc.	30-8-002024	1429	11-21-90	I-1	26,000.00	2,363.64
Integral Builders & Supplies, Inc.	31-7-000052	4152	11-27-90	I-2	178,000.00	16,181.82
Ramb Sales Corporation of the Phils.	320-6-005144	5261	12-07-90	J	6,000.00	545.45
Fibertech Industries	31-0002808	061	12-08-90	J-1	499,350.00	45,395.45
R.V. Steel Manufacturer	31-1-001833	5348	12-19-90	J-2	7,800.00	709.09
Andy Steel Works & Construction, Inc.	30-8-002024	1443	12-20-90	J-3	59,400.00	5,400.00
Andy Steel Works & Construction, Inc.	30-8-002024	1442	12-20-90	J-4	51,300.00	4,663.64
Andy Steel Works & Construction, Inc.	30-8-002024	1445	12-20-90	J-5	12,600.00	1,145.45
Portland Chemicals Corporation	25-4-000733	63432	12-20-90	J-6	14,654.00	1,332.18
Portland Chemicals Corporation	25-4-000733	63431	12-20-90	J-7	27,930.00	2,539.09
Portland Chemicals Corporation	25-4-000733	63433	12-20-90	J-8	67,336.00	6,121.45
Millers Hardware & Industry Supply	23-9-002320	26466	12-26-90	J-9	7,179.20	652.65
3M Philippines, Inc.	32-1-000116	111015	12-27-90	J-10	84,572.40	7,688.40
Race-Haven Automation Philippines Inc.	320-7-000615	550	12-28-90	J-11	195,000.00	17,727.27
Race-Haven Automation Philippines Inc.	320-7-000615	548	12-28-90	J-12	65,000.00	5,909.09
Fibertech Industries	31-0002808	076	01-16-91	K	299,610.00	27,237.27
					P3,181,692.71	P289,244.86

WHEREFORE, in view of the foregoing, the respondent Commissioner of Internal Revenue is ordered to refund or issue a tax credit certificate to petitioner in the sum of P289,244.86 representing the input VAT paid by petitioner on the capital goods purchased during the aforesaid quarters.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
ASSOCIATE JUDGE

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals