REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INTEL PHILIPPINES MANUFACTURING, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6170

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 24 2003

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DECISION

This petition for review seeks for the issuance of a tax credit certificate in the total amount of P25,531,312.83 allegedly representing unutilized input value-added tax (*VAT, for brevity*) on domestic purchases of goods and services attributable to zero-rated export sales and importation of capital goods for the period July 1, 1998 to September 30, 1998.

The facts as borne out by the records and pleadings of the case are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office at 1321 Apolinario Street, Bangkal, Makati City, Metro Manila. It is primarily engaged in the business of designing, developing, manufacturing and exporting advance and large-scale integrated circuit components, commonly referred to in the industry as Integrated Circuits or "IC's".

Petitioner is registered with the Bureau of Internal Revenue as a VAT taxpayer with Certificate of Registration bearing RDO Control No. 94-048-02621 dated July 6, 1994 *(Exhibit "B"; originally with RDO Control No. 32A-3-002649 dated January 1, 1988, Exhibit "A").* It is likewise registered with the Board of Investments as a preferred pioneer enterprise enjoying a six-year income tax holiday, in accordance with the provisions of the Omnibus Investments Code. *(par. 1, Stipulation of Facts, page 44, CTA records; Exhibit "C").*

For the period July 1, 1998 to September 30, 1998, petitioner seasonably filed its third quarterly Value-Added Tax Return on October 26, 1998 reflecting, among others, output VAT in the amount of P66,084.56, input VAT on domestic and importation of goods in the respective amounts of P24,045,873.39 and P1,551,524.00, and zero-rated export sales in the sum of P1,822,253,889.33 *(Exhibits "D", inclusive of submarkings).*

Petitioner alleges that the aforementioned zero-rated sales in the amount of P1,822,253,889.33 arose from its exportation of goods and were paid for in acceptable foreign currency inwardly remitted in accordance with the regulations of the Bangko Sentral ng Pilipinas. It further avers that the input taxes in the sum of P25,531,312.83 were directly attributable to such zero-rated export sales.

Believing that it is entitled to the refund of input taxes attributable to its recorded zero-rated export sales, petitioner filed on May 6, 1999 with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance an Application for Tax Credit/Refund of Value-Added Tax Paid covering the following input taxes for the third quarter of 1998: *(Exhibits J and K)*

	Amount
Tax Paid on Imported/Locally Purchased Capital Equipment	P 2,425,764.00
Total VAT Paid on Purchases per Invoices Received During the Period for which this Application is Filed	23,105,548.83
Amount of Tax Credit/Refund Applied For	P25,531,312.83

After the expiration of the one hundred twenty (120) days allowed under Section 112(D) of the Tax Code (*for the respondent to act on said application*) without an action from the respondent, petitioner on September 29, 2000 filed the instant petition for review in order to toll the running of the two-year prescriptive period provided in Section 229 of the Tax Code.

In his Answer filed through registered mail on November 28, 2000, respondent raised as Special and Affirmative Defenses the following:

> 4. The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;
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> 5. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35);
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> 6. One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute (Asiatic Petroleum vs. Llanes, 49 SCRA Phil. 466; Union Garment Co. vs. Court of Tax Appeals, 4 SCRA 304);
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> 7. In action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;
>
> 8. It is incumbent upon petitioner to show compliance with the provisions of Section 229 of the National Internal Revenue Code; and
>
> 9. Taxes paid and collected are presumed to have been made in accordance with the law and regulations, hence not refundable.

The issues to be resolved by the court as jointly stipulated by the parties are as follows:

> (a) Whether or not petitioner's sale for the third quarter of 1998 were export sales subject to zero-rated rate;

(b) Whether or not the petitioner's claim for VAT refund of input VAT for the third quarter of 1998 is duly substantiated/supported by documentary evidence;

(c) Whether or not the VAT input taxes have not been applied to any output tax for the period covered in its claim or any succeeding period(s);

(d) Whether or not the VAT input taxes on domestic purchases of goods and services and importation of capital goods are attributable to petitioner's zero rated sales;

(e) Whether or not the petitioner's export sales were paid for in acceptable foreign currency exchange and the proceeds thereof had been duly accounted in accordance with the regulation of the Bangko Sentral ng Pilipinas; and

(f) Whether or not petitioner is entitled to a refund of the VAT input taxes arising from domestic purchases of taxable goods and services and importation of capital goods from July 01, 1998 to September 30, 1998 in the amount of P25,531,312.83 subject of this Petition.

Petitioner anchors its claim on the provisions of Section 112(A) and (B) of the Tax Code, as amended, which provide:

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: ***Provided, however***, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): ***Provided, further***, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

> **(B)** *Capital Goods.* - 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 may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

We shall tackle first the compliance of petitioner with Section 112(A) of the Tax Code pertaining to its claim for refund of input VAT attributable to its zero rated sales in the amount of P23,105,548.83. Foremost, petitioner must substantiate its alleged zero rated sales. Particularly, it must show its compliance with the invoicing requirements of Section 113 of the Tax Code in relation to Section 237 of the same code and with the additional invoicing requirement under Revenue Regulations No. 7-95 entitled the Consolidated Value-Added Tax Regulations.

Section 113 Tax Code requires that every invoice or receipt issued by a VAT registered person should contain the following information:

> **SEC. 113.** ***Invoicing and Accounting Requirements for VAT-Registered Persons-***
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> **(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:
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> 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.

Such invoice or receipt must be duly registered with the Bureau of Internal Revenue as prescribed under Section 237 of the Tax Code, 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 xxx. (Emphasis supplied)

A careful examination of all the sales invoices of petitioner reveals that the aforesaid documents were not duly registered with the Bureau of Internal Revenue as mandated under Section 237 of the Tax Code *(Exhibits HH-1 to HH-940)*. There was no authority to print or BIR permit number reflected on the said 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 Bureau of Internal Revenue by all persons who are engaged in business pursuant to Section 238 of the Tax Code. Pertinent portion of Section 238 is quoted hereunder for easy reference:

> **Section 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 *(Hector S. De Leon, The National Internal Revenue Code Annotated, Seventh Edition, page 901)*. Since petitioner failed to show that it has secured BIR authority to print sales invoices, the court cannot consider the sales invoices offered as valid proof of export sales subject to VAT at 0%. While the invoices appear to be computer generated, this does not mean that the requirement of securing prior BIR authority to print can be dispensed with. Contrariwise, stringent monitoring should be effected because petitioner prints its invoice without the required authority. The authority to use computer-generated form of invoices issued by the BIR should have been produced as part of petitioner's evidence.

Aside from the above infirmity, the court also noted that the sales invoices failed to indicate the word "zero-rated" for transactions covering zero-rated export sales. This violates Section 4.108-1 of Revenue Regulations No. 7-95 requiring, thus:

> 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:
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> 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)*

Considering the violations set forth above, the input VAT credits attributable to petitioner's export sales in the amount of P23,105,548.83 cannot be refunded.

As to the other evidence presented by petitioner to prove actual exportation of goods such as certification of inward remittance, export declarations and airway bills, the court cannot consider these documents as sufficient. It should be noted that all of the aforementioned documents, together with the duly registered VAT invoices or receipts, *taken collectively*, are the best means to prove the exportation of goods. ***(The Commissioner of Internal Revenue vs. Philippine Bobbin Corporation, CA-G.R. SP No. 59452, February 19, 2001)***.

In the case of ***Toshiba Information Equipment (Phils), Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 5672, dated May 8, 2000***, this court partially denied petitioner's claim for refund on the ground that the export sales invoices presented failed to comply with the requirements of a valid VAT invoice pursuant to the abovementioned provisions of the 1997 Tax Code. We held therein that petitioner is not entitled to zero percent rate of VAT and refund of input VAT credits attributable thereto. The same pronouncement holds true in the case at bar.

Well entrenched in our jurisprudence is that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption ***(Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., 309 SCRA 87 [1999]).*** Accordingly, the claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund ***(Citibank N.A. vs. Court of Appeals, 280 SCRA 459 [1997]).***

We proceed to the remaining claim for refund of petitioner in the amount of P2,425,764.00 representing unutilized input VAT on capital goods.

Unlike refund of input VAT attributable to zero-rated sales under Section 112(A) of the Tax Code which requires proof of export sales, refund of input VAT on capital goods pursuant to Section 112(B) of the Tax Code does not provide for the same requirement. This is explicit in the wordings of the afore-quoted provisions of law.

In the case of ***Air Liquide Philippines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs****, CTA Case No. 5652, promulgated on July 26, 2000*, the court laid down the following requirements for claimants to comply with in order to be entitled to the claim for refund of input VAT on capital goods based on Section 112 (B) of the Tax Code. These are:

1. That it is a VAT registered person;
2. That the input taxes claimed by petitioner were paid on capital goods;
3. That the input taxes have not been applied against output tax liability; and
4. That the administrative claim for refund was seasonably filed.

In addition, petitioner must prove actual payment of VAT on the imported goods by submitting documents specified in Section 4.104-5 (b) of Revenue Regulations No. 7-95, which provides:

> **"Input tax on importations shall be supported with the import entry or other equivalent document showing actual payment of VAT on the imported goods."**

Records show that petitioner is a VAT registered person. This fact was admitted by the respondent in his Answer and was evidenced by BIR Certificates of Registration *(Exhibits A and B)*.

With respect to the second requirement, petitioner was able to establish that the total input VAT of P2,425,764.00 was paid on importation of capital goods as supported by suppliers' official receipts, airway bills, and official receipts from the Landbank of the Philippines, detailed in the table below: *(Exhibits GG-1 to GG-18)*

Invoice Date	Supplier	Item	AWB/BL	Date	O.R. Number	O.R. Date	VAT Paid
07-16-98	Intel Corporation	Novtek 2000A Systems	SFO 8172477	07-20-98	4443291	07-23-98	P 915,331.00
06-30-98	Assembly Automation Ltd.	UBGA Singulation System & Stamping Tool	385625	08-02-98	4444222	08-05-98	931,872.00
08-12-98	Sensomatic	Security Equipment	2076794281	08-12-98	4445294	08-20-98	161,370.00
08-12-98	Excel Precision SDN, BHD	Handling Machine	PENO1 299179	08-15-98	4445293	08-20-98	458,282.00
	Total						P2,466,855.00
	Less reversal for last quarter entry						41,091.00
	Amount of Input VAT Paid						P2,425,764.00

Thirdly, the amount sought to be refunded was not applied against petitioner's output VAT. In the 1999 second quarterly VAT return, petitioner deducted the amount of

P113,390,321.81, which amount included the amount of P25,531,312.83 subject of this petition, from its total accumulated input VAT *(Exhibit I, inclusive of submarkings).*

Lastly, both the administrative and judicial claims *(Exhibits J and K)* which were filed on May 6, 1999 and September 29, 2000, respectively, are within the two-year prescriptive period required under the Tax Code reckoned from October 26, 1998, the date of filing of petitioner's 1998 third quarterly VAT Return *(Exhibit D).*

WHEREFORE, in view of the foregoing, the instant petition for review is hereby ***PARTIALLY GRANTED***. Respondent is **ORDERED** to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of P2,425,764.00 representing input VAT on importation of capital goods. However, the claim for refund of input VAT attributable to petitioner's alleged zero-rated sales in the amount of P23,105,548.83 is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
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