REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

OVERSEAS OHSAKI CONSTRUCTION CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6288 & 6317

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAY 19 2004

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DECISION

These two Petitions for Review are seeking for the refund or issuance of a tax credit certificate of alleged unutilized input value-added tax on domestic purchases of goods and services in the total amount of P6,268,757.45 covering the first and second quarters of 1999.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office located at 4/F Ferguson Park Tower, Plaza Ferguson, M. H. Del Pilar St., Manila. It is engaged in the business of providing construction services and as such it is registered with the Bureau of Internal Revenue as a value-added tax (VAT) taxpayer with Certificate of Registration bearing OCN IRC0000013395 issued on February 2, 1998 *(Exhibit A)*.

Sometime in 1998, petitioner entered into a Construction Contract *(Exhibit L)* with Mitsumi Philippines, Inc. (Mitsumi), a duly Philippine Economic Zone Authority (PEZA) registered enterprise *(Exhibit C)*, whereby it undertook the implementation of the construction of four (4)-storey factory building belonging to the latter. Convinced that its sale of services to

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Mitsumi was subject to VAT at zero percent, petitioner filed an Application/Certification for Zero Rate with the respondent on February 3, 1999 which was approved and covered the sale of services from February 4, 1999 to December 31, 1999 *(Exhibit B)*.

For the first and second quarters of 1999, petitioner filed its quarterly Value-Added Tax Returns within the legally prescribed period *(Exhibits D and F, inclusive of submarkings)*. These VAT returns were later on amended to reflect its alleged zero rated sales in the total amount of P118,113,167.17 for the first and second quarters of 1999 and to correct its input taxes in the sum of P8,963,779.01 for the same period *(Exhibits E and G, inclusive of submarkings)*.

Believing that it is entitled to the refund of input VAT attributable to its zero-rated sales of services to a PEZA registered enterprise, petitioner filed on two separate occasions, administrative claims for refund with Revenue Region No. 6 of the Bureau of Internal Revenue. The first application was filed on April 24, 2001 covering the period January 1, 1999 to March 31, 1999 *(Exhibit K, inclusive of submarkings)*. The second application was filed on July 20, 2001 covering the period April 1, 1999 to June 30, 1999 *(Exhibit M, inclusive of submarkings)*.

On April 24, 2001 and July 23, 2001, petitioner filed the instant Petitions for Review in order to toll the running of the two-year prescriptive period under the law:

CTA Case No.	Period Involved	Amount
6288	First Quarter of 1999	P3,556,897.59
6317	Second Quarter of 1999	2,711,859.86
Total		P6,268,757.45

These two cases were consolidated pursuant to the order given in open court on October 26, 2001, upon written motion of petitioner's counsel *(page 85, CTA records)*.

In his Answers filed on June 1, 2001 (for CTA Case No. 6288) and August 30, 2001 (for CTA Case No. 6317), respondent raised the following as Special and Affirmative Defenses:

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3. Assuming but not admitting that petitioner filed an application for tax credit/refund of unutilized input taxes for the first and second quarters of 1999, the same is subject to administrative investigation and resolution, hence, petition is premature;

4. Taxes are presumed to have been collected in accordance with law. Hence, petitioner must prove that the taxes sought to be refunded were erroneously or illegally collected;

5. Petitioner must show that it has complied with the provisions of section 51(c) and (d) of the Tax Code, as amended, as enunciated in City Trust Finance Corporation vs. C.T.A., to wit:

a) That the claim is filed with the Commissioner of Internal Revenue within the 2-year period from the date of payment;

b) It must be shown on the return of the recipient that the income payment received was declared as part of the gross income; and

c) The fact of withholding is established by a copy of the statement duly issued by the payor to payee showing the amount paid and the amount of tax withheld therefrom.

6. Petitioner must show that it has complied with the provisions of Sections 204(c) and 229 of the Tax Code; and

7. Claims for refund of taxes are construed strictly against claimants, the same being in the nature of an exemption from taxation (Manila Electric Co. vs. Commissioner of Internal Revenue).

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

1. Whether or not petitioner has unapplied or unutilized creditable value-added tax inputs as of March 31, 1999 and June 30, 1999 arising from its domestic purchases of goods and services which is a proper object of a claim for refund pursuant to Section 112 of the National Internal Revenue Code, as amended;

2. Whether petitioner's sale of construction services to Mitsumi Philippines, Inc., a PEZA registered enterprise are zero-rated for VAT purposes;

3. Whether or not the said creditable value added tax inputs of Petitioner for the quarters ended March 31, 1999 and June 30, 1999 are substantiated by documentary evidence in the form of invoices and official receipts;

4. Whether or not said unapplied or unutilized creditable value-added tax inputs for the quarters ended March 31, 1999 and June 30, 1999 were carried forward to the succeeding taxable quarter and applied against any of the value-added tax output of the petitioner for said period; and

5. Whether the receipts derived from Mitsumi Inc. were paid for in acceptable foreign currency.

We shall address first issue number two, the resolution of which will determine the necessity of discussing the other issues raised.

Petitioner claims that its sale of services to Mitsumi Inc., a PEZA-registered enterprise, is subject to VAT at zero percent. Petitioner cites as bases Section 4.102.2(c) and Section 4.107-1(d) of Revenue Regulations No. 7-95 (the VAT Implementing Regulations), to wit:

SEC. 4.102.2. **Zero-Rating.** – (a) In general- xxx

(b) **Transactions subject to zero-rate**. The following services performed in the Philippines by VAT-registered persons shall be subject to 0%.
(1) xxx;
(2) xxx;
(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero-rate;
(4) Services rendered to vessels engaged exclusively in international shipping;
(5) Services performed by subcontractors and/or contractors duly accredited by either the Board of Investments or the Export Development Council in processing, converting, or manufacturing goods for an enterprise whose export sales exceed seventy percent (70%) of the total annual production.

(c) **Effectively zero-rated sale of services**. – Effectively zero-rated sales of services shall refer to the sale by a VAT-registered person to a person or entity who was granted indirect tax exemption under special laws, or international agreements. Under these Regulations, effectively zero-rated transactions shall be

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limited to the local sale of services to persons or entities who enjoy exemptions from indirect taxes under subpar. (b) Nos. (3), (4) and (5) of this section.

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SEC. 4.107-1. **Registration of Value Added Taxpayers**. (a) In general. xxx

(b) **Mandatory**. xxx
(c) **Optional Registration of VAT-Exempt Person.** xxx
(d) **Application for effective zero-rating.** – Except for actual export sale, other cases of zero-rated sales in Sec. 4.100-3 and Sec. 4.102-2(c) shall require prior application with the Revenue District Office for effective zero-rating. Without an approved application for effective zero-rating, the transaction otherwise entitled to zero-rating shall be considered exempt.

Pursuant to the above regulations, petitioner secured from the Bureau of Internal Revenue an approved application for zero-rating *(Exhibit B)*. Petitioner further established that its client, Mitsumi Philippines Inc., was a PEZA-registered enterprise as evidenced by the Certification issued by the Philippine Economic Zone Authority *(Exhibit C).*

Petitioner having complied with the requisites under the Section 4.107.1(d) of Revenue Regulations No. 7-95, this court hereby affirms that its sale of services to Mitsumi Philippines, Inc., a duly PEZA registered enterprise, is subject to VAT at 0% pursuant to Section 108(B)(3) of the Tax Code and as implemented by the aforementioned revenue regulations.

Section 108(B)(3) of the Tax Code is hereby quoted for easy reference, to wit:

Section 108. Value-added Tax on Sale of Services and Use or Lease of Properties. — xxx

(B) Transactions Subject to Zero Percent (0%) Rate. – xxx

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate.

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We shall now proceed to the factual aspect of the case which are the remaining issues at bar.

In claiming for the refund of input taxes attributable to zero-rated sales, petitioner must foremost establish that it has zero-rated sales. The best evidence for the VAT-sale transactions are the valid VAT invoices and/or VAT official receipts.

Records disclose that petitioner failed to formally offer its alleged VAT official receipts for the first and second quarters of 1999. What was offered by petitioner as evidence to prove its zero-rated sales was the Schedule of Zero-rated Sales for the said period *(Exhibit PP).* The official receipts were merely attached to the said schedule. They were not marked, identified during trial nor were they offered as evidence. Neither were they pre-marked by the commissioned independent CPA.

Well-settled is the rule that evidence not formally offered, even if identified during trial, is of no value and cannot be considered by the court pursuant to Section 35 Rule 132 of The Rules of Court ***(Veran vs. Court of Appeals, G.R. No. L-41154, January 29, 1988)***. Under this rule, evidence not formally offered in court will not be taken into consideration by the court in disposing of the issues of a case ***(Martin, Revised Rules on Evidence, page 589)***. This was emphasized by us in the case of ***PBC Capital Investment Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6068, promulgated May 23, 2002,*** wherein we ruled:

> "Central to the dispute is Section 34, Rule 132 of the Revised Rules of Court which provides:
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>> "Section 34. Offer of Evidence. — The Court shall consider no evidence which has not been offered. The purpose for which the evidence is offered must be specified." (Emphasis supplied)

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Under the aforesaid rule, it is quite clear that an evidence not formally offered even if identified during the trial is of no value and cannot be considered by the Court.

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Mr. Justice Ricardo Francisco, in his book "Rules on Evidence" *(1996, Third Edition, pages 537–538)*, discussed the rationale behind the rule in this wise:

> "Any evidence which a party desires to submit for the consideration of the Court must formally be offered by him. Such a formal offer is necessary because it is the duty of the judge to rest his findings of facts and his judgment only and strictly upon the evidence offered by the parties at the trial. The offer may be made in any form sufficient to show that the party is ready and willing to submit the evidence to the Court."

The situation in the case at bar is even worse. Petitioner even failed to mark and identify the official receipts for the first and second quarters of 1999 during the trial but merely attached said documents to the Schedule of Zero-Rated Sales.

Even assuming, for the sake of argument, that the attached official receipts were formally offered in evidence, the same were not sufficient to warrant the granting of the present claim for refund. This court noted the said official receipts are invalid for VAT purposes. All of the official receipts issued by petitioner to cover its alleged zero-rated sales for the first and second quarters of 1999 were printed on April 23, 1992. Under paragraph (c) of the Transitory Provisions of Revenue Regulations No. 7-95, the unused invoices or receipts as of December 31, 1995 can only be used up to June 30, 1996, to quote:

> (c) **Unused invoices or receipts**. – Taxpayers who changed status from NON VAT to VAT or from VAT to NON-VAT as a result of the implementation of RA 7716 should submit on or before January 31, 1996 an inventory of unused invoices or receipts as of December 31, 1995 indicating the number of booklets and the corresponding numbers. Unused non-VAT invoices/receipts shall be allowed for use in transactions subject to VAT provided the phrase "VAT-

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> registered as of ______________" is stamped on all copies thereof. Likewise, unused VAT invoices/receipts shall be allowed in VAT-exempt transactions provided the phrase "Non-VAT registered as of ______________" is stamped on all copies thereof. These unused invoices or receipts with the proper stamp **shall be allowed for use** in transactions subject to VAT/NON-VAT **up to June 30, 1996.** (Underlining supplied).

This court finds it incomprehensible why petitioner still used such official receipts which under the regulations were no longer permitted. Ignorance of said regulations is inexcusable considering that on February 2, 1998, the date when petitioner was registered as a VAT entity, Revenue Regulations No. 7-95 was already in force. Thus, for failure to meet the requirements under the VAT law and its implementing regulations, the official receipts used by petitioner to cover its alleged zero-rated sales are of no probative value and the same are not considered as valid proofs for VAT purposes.

Furthermore, Section 113(A) of the Tax Code explicitly provides that the official receipt or invoice must show a statement that the seller is a VAT-registered person followed by his taxpayer's identification number (TIN). Pertinent portions of which read as follows:

> 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
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> (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. (Underlining supplied).

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A scrutiny of Official Receipt Numbers 4039 and 4050 dated January 8, 1999 and February 12, 1999, respectively, does not reveal that petitioner is a VAT registered person. We also find it inconsistent that the address indicated in the official receipts was Rm. 1202 National Life Insurance Bldg., 6762 Ayala Avenue, Makati, Metro Manila while the address in the VAT registration certificate was 4/F Ferguson Park Tower, Plaza Ferguson, M.H. Del Pilar St., Ermita, Manila.

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 [1997]).***

IN VIEW OF ALL THE FOREGOING, the petitions for review are hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

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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 Justice