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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HITACHI COMPUTER PRODUCTS (ASIA) CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5707

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 20 2001

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DECISION

This Petition for Review involves a claim for refund or issuance of a tax credit certificate in the amount of THREE MILLION ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED THIRTY FIVE PESOS AND FORTY-FIVE CENTAVOS (P3,137,535.45) representing unapplied or unutilized creditable value-added tax (VAT) paid for the period October 1, 1996 to December 31, 1996.

Petitioner is a domestic corporation organized and existing under the laws of the Republic of the Philippines, with its principal office located at the Special Export Processing Zone, Laguna Technopark, Biñan, Laguna. It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer on its sale of goods effective June 28, 1994 as evidenced by Certificate of Registration No. 94-570-000298. (Joint Stipulation of Facts, p. 37, CTA records)

It is likewise, registered with the Export Processing Zone Authority pursuant to the provisions of the Omnibus Investment Code of 1987 under Certificate of Registration No. 94-28 dated May 11, 1994. (Joint Stipulation of Facts, p. 38, CTA records)

As a special export zone enterprise with pioneer status, it is primarily engaged in the business of manufacturing hard disk drives, plain field head and other computer paraphernals for export. It has also availed a six (6) year income tax holiday under the PEZA law as shown in its EPZA Certificate of Board Resolution No. 94-212. (Exhibit L)

On May 8, 1997, Petitioner filed its quarterly VAT return with the BIR for the period October 1, 1996 to December 31, 1996 (Exhibit C). Thereafter, on November 8, 1999, Petitioner filed its Amended Quarterly VAT Return for the same period which reflected, among others, unapplied VAT input tax in the amount of P3,137,535.45 on its purchases of goods and services allegedly attributable to its zero-rated sales. (Exhibit O)

Furthermore, on December 22, 1998, an application for tax credit or refund of VAT input taxes for the period October 1, 1996 to December 31, 1996 in the amount of P3,137,535.45 was filed by Petitioner with the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance.

As the VAT application for refund was not acted upon, the instant Petition was filed with this Court on December 29, 1998.

Respondent in his Answer, advanced the following Special and Affirmative Defenses:

> "4. Assuming without admitting that Petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue.

5. Petitioner miserably failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.

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

7. 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.

8. It is incumbent upon the Petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended.

9. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, G.R. 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*)."

In support of its claim, Petitioner submitted the following documents:

1. Export Processing Zone Authority (EPZA) Certificate of Registration and EPZA Certificate of Board Resolution (Exhibits A and L)

2. BIR Certificate of Registration as VAT texpayer (Exh. B)

3. VAT Return for 4th Qtr. of 1996 (Exh. C inclusive of sub-markings)

4. VAT Return for 1st Qtr. of 1997 (Exh. D inclusive of sub-markings)

5. Report of Independent CPA and Addendum to Report (Exh. E and P inclusive of sub-markings)

6. Summary of Collection Report and Bank Passbook (Exh. F-1 to F-9)

7. Input tax supporting documents (Exh. G-1 to G-123)

8. Export Sales supporting documents (Exh. H-1 to H-431, Q-1 to Q-631)

9. Summary of Input Taxes for 4th Qtr. (Exh. I-1 to I-4)

10. Summary of Export Sales for 4th Qtr. (Exh. J-1 to J-9)

11. Registration Agreement with EPZA (Exh. K)

12. Amended Quarterly VAT Return for the 1st Qtr. of 1997 (Exh. M)

13. Application for Tax Refund (Exh. N)

14. Amended Quarterly VAT Return for the 4th Qtr of 1996 (Exh. O)

15. Bank Certifications of Inward Remittances (Exh. R-1 to R-4)

On the other hand, Respondent through his counsel, submitted the case for decision based on the pleadings.

The sole issue brought before this Court for consideration is WHETHER OR NOT PETITIONER IS ENTITLED TO THE TAX REFUND OR CREDIT OF THE EXCESS OR UNUTILIZED VAT INPUT TAXES FOR THE PERIOD OCTOBER 1, 1996 TO DECEMBER 31, 1996 in the amount of P3,137,535.45.

We rule in favor of Petitioner.

Petitioner basically anchored its claim for refund on Sections 100 and 106(a) of the Tax Code, quoted hereunder as follows:

> "**Section 100**. *Value-added tax on sale of goods or properties. – (a) Rate and base of tax.* – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.
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> (2) the following sales by a VAT-registered person shall be subject to 0%:
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> (A) Export sales. – The term 'export sales' means:

(i) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods and services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

"**Section 106**. *Refunds or tax credits of creditable input tax*. – (a) 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 100 (a)(2)(A)(i), (ii) and (b) and Section 102 (b)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the 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."

The foregoing provisions of the Tax Code dictate that the following basic requirements must be complied with in order that refunds or tax credits of input tax may granted:

1. That there be a sale of goods;

2. That the sale was made by a VAT-registered person;

3. That the sale qualifies as export sale as defined by law;

4. That the application for a tax credit or refund be made within two (2) years from the filing of the VAT quarterly return;

5. That the foreign exchange proceeds of said export sales are properly accounted for in accordance with the regulations of the BSP;

6. That the input taxes have not been applied against output taxes. (*Benguet Corporation vs. CIR, CTA Case No. 5532, Oct. 12, 1999*)

Petitioner filed its administrative claim for refund on December 22, 1998 with the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (Exhibit "N") and its judicial claim on December 29, 1998 with the Court of Tax Appeals. It can be recalled that the quarterly VAT return for the period October 1, 1996 to December 31, 1996 which is the subject of Petitioner's claim for refund was filed on May 8, 1997 and the Amended Quarterly VAT return for the same period, on November 8, 1999.

Both claims, therefore, were filed within the two-year reglementary period prescribed under then Section 230 in relation to Sections 106 (a) and (b) and 110 all of the Tax Code.

Before proceeding to the merits of the case, it is necessary to address the issue raised by Respondent, that since Petitioner is registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone Enterprise, its business is not subject to VAT pursuant to Section 24 of Republic Act No. 7916. Accordingly, Petitioner is not allowed any input tax credit previously paid pursuant to Section 4.103-1 of Revenue Regulations No. 7-95.

The Court has, however, ruled on the aforementioned issue in the case of **READ-RITE PHILIPPINES, INC. (formerly Sunward Technologies Phils., Inc.) vs. COMMISSIONER OF INTERNAL REVENUE, CTA Case No. 5659, dated September 29, 2000**, pertinent portions of which are hereunder quoted as follows:

"This Court would like to stress that under Section 23 of Republic Act No. 7916, two different fiscal incentives are granted to an ecozone enterprise to wit:

> Sec. 23. Fiscal Incentives. – Business establishments operating within the ECOZONE shall be entitled to the fiscal incentives as provided for under the Presidential Decree No. 66, the law creating the Export Processing Zone authority, **or** those provided for under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987."

Based on the aforequoted Section 23 of RA 7916, a PEZA registered enterprise has the option to choose between two sets of fiscal incentives. One is that which is provided for under Presidential Decree No. 66, as amended and Section 24 of RA 7916 which includes the 5% preferential tax on gross income earned which is in lieu of national and local taxes; and second as those provided for under Book VI of Executive Order No. 226, including but not limited to an income tax holiday (ITH) of 4 to 6 years depending on whether or not an entity is registered as a pioneer or non-pioneer enterprise. If an ecozone enterprise chooses the 5% preferential tax, it is exempt from payment of national and local taxes. However, if an ecozone enterprise chooses the income tax holiday, it is only exempt from payment of the income tax but still subject to other national internal revenue taxes including the value-added tax. The difference between these 2 sets of fiscal incentives was explained by the Bureau of Internal Revenue in VAT Ruling Nos. 037-98; 043-98; 027-99 and 063-99." (See also Resolutions in the cases of SEAGATE TECHNOLOGY (PHILIPPINES) vs. COMMISSSIONER OF INTERNAL REVENUE, CTA Case No. 5921, dated September 20, 2000 and TOSHIBA INFORMATION EQUIPMENT (PHILS) INC. vs. COMMISSIONER OF INTERNAL REVENUE, CTA Case No. 5762, dated January 17, 2001.) (Underlining ours)

Gleaned from the records of the case, Petitioner is subject to VAT since it is enjoying an income tax holiday as evidenced by the certificate of Board Resolution from the Philippine Export Zone Authority (Exh. L).

During the hearing held on January 10, 2000, Petitioner's witness, Mr. Jonathan D. Capunitan, Accounting Supervisor, attested thereto as follows:

Q: Can you tell this Honorable Court, Mr. Witness, where Hitachi is located?

A: Hitachi Computer products (Asia) Corproration is located at Technology Avenue, Phase II, Laguna Techno Park, Binan, Laguna.

Q: Is there any particular reason to your knowledge that Hitachi is located in PEZA Laguna Techno Park?

A: Yes. Our mother company decided to locate Hitachi Computer Products in Laguna Techno park in order to avail of the incentives such as income tax holiday, as provided in the law under Republic Act 7962.

Q: What is your basis in saying that Hitachi is entitled to income tax holiday under R.A. 7962?

A: Hitachi Computer Products (Asia) Corporation was granted income tax holiday under the Certificate of Board Resolution, attached to the Registration Agreement between Hitachi Computer Products (Asia) Corporation and PEZA.

Thus, since Petitioner is still enjoying an income tax holiday, it shall only be exempt from payment of income tax but shall be subject to other national internal revenue taxes including the value-added tax.

A perusal of the records of the case disclose that Petitioner's Amended Quarterly VAT Return for the 4th Quarter of 1996 reported zero-rated sales in the amount of P1,878,649,262.24 (Exh. O). However, based on the addendum report of the independent CPA, the zero-rated sales for the 4th Quarter of 1996 in the amount of P50,537,044.44 were not substantiated by the necessary export documents. On the other hand, the zero-rated sales amounting to P1,828,112,217.80 were supported by export documents such as

Export Sales Invoices and Airway Bills (Exhs. H-1 to H-431, Q-1 to Q-631 and P) (Addendum Report of SGV – Exh. P)

Moreover, Petitioner's inward remittances representing payments of export sales were supported by certifications from Rizal Commercial Banking Corporation (RCBC) and Pilipinas Bank (Exhibits R-2 to R-A) and partly corroborated by Petitioner's passbook from RCBC (Exhibits K-8 & K-9). The independent CPA further reported that there was an insignificant discrepancy of P4,613,769.36 or 0.245% out of the total export sales proceeds of P1,878,649,262.24 which cannot be traced from the bank certifications. (Exh. P)

The claimed unutilized creditable VAT input taxes for the period October 1, 1996 to December 31, 1996 were not carried over to the succeeding period as adduced in Petitioner's VAT Return for the 1st quarter of 1997 showing a nil VAT input tax carried over.

To prove its claim, Petitioner submitted various VAT invoices and official receipts.

In the special audit conducted by the independent CPA, the amount of P641,872.18 was disallowed as it was not properly substantiated for VAT purposes. (Exh. E)

The verification conducted by the Court further added the following disallowances:

SUPPLIER	EXHIBIT	DATE	AMOUNT	INPUT VAT
(a) Not within the period of claim				
DOLPHIN ENVIRONMENTAL CONTROL	G-5 to G-8	Prior to Oct. '96	P 60,919.98	P 5,538.16
DOLPHIN ENVIRONMENTAL CONTROL	G-12 to G-17	Prior to Oct. '96	96,720.03	8,792.73
DOLPHIN ENVIRONMENTAL CONTROL	G-9 to G-10	9/21/96	35,360.05	3,214.55
THE ONLINE ADVANCED SYSTEMS	G-26	4/11/96	62,722.33	5,706.03
THE ONLINE ADVANCED SYSTEMS	G-27	5/3/96	15,949.34	1,449.94

ROYAL INSURANCE	G-41	9/17/96		234,704.58		21,336.78
PHIL. FUJI XEROX CORP.	G-104	1/10/97		136,118.29		12,374.39
	Subtotal		P	**642,494.60**	P	**58,412.58**
(b) No supporting document						
PHPC CO. LTD.			P	**2,658,448.65**	P	**241,677.15**
	Total		P	**3,300,943.25**	P	**300,089.73**

In sum, Petitioner has sufficiently complied with all the requirements for the grant of the refund. However, due to the foregoing disallowances by the independent CPA and the Court, Petitioner's claim is granted but in the reduced amount of P2,195,573.54, computed as follows:

Amount Claimed		P3,137,535.45
Less: Disallowances		
(a) Per SGV's Verification (Exh. E)	P641,872.18	
(b) Per Court's Verification	300,089.73	941,961.91
Amount Refundable		P2,195,573.54

WHEREFORE, in view of all the foregoing, Respondent is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of Petitioner in the amount of P2,195,573.54 representing excess creditable VAT input taxes paid for the period October 1, 1996 to December 31, 1996.

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