REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

MARUBENI PHILIPPINES CORPORATION,
Petitioner,

C.T.A. CASE NO. 6581

Members:

- versus -

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 18 2006

x -x

DECISION

BAUTISTA, L., J.:

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P2,772,523.61 allegedly representing unutilized input value-added tax attributable to zero-rated sales of goods and services for the fourth quarter of 2000.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines, with office address at the 9th Floor, LV Locsin Building, Ayala Avenue corner Makati Avenue, Makati City. Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, with authority, among others, to decide, approve and grant tax credits and/or refunds of overpaid or erroneously paid internal revenue taxes, with office address at the 5th Floor, BIR National Office Building, Diliman, Quezon City (*pars. 1 & 2, Admitted Facts*)

Petitioner is primary engaged in the business of buying, selling, distributing, marketing at wholesale insofar as may be permitted by law, all kinds of goods, commodities, wares and merchandise of every kind and description, and to enter into all kinds of contracts for the export, import, purchase, acquisition, sale at wholesale and other disposition for its own account as principal or in representative capacity as manufacturer's representative, merchandise broker, indentor, commission merchant, factors or agents, upon consignment or all kinds of goods, wares, merchandise or products whether natural or artificial. It is duly registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer (*pars. 3 & 4, Admitted Facts*).

On January 25, 2001, petitioner filed its VAT return for the fourth quarter of 2000 (*Exhibit C*), declaring an excess input VAT in the amount of P39,224,816.94, computed as follows:

Taxable sales & Output Tax	P 24,046,297.05	P 2,404,629.64
Zero-rated Sales/Receipts	129,375,827.44	
Total Sales/Receipts	P153,422,124.49	
Less: Input Tax		
Input Tax Carried Over from Previous Quarter		P 36,298,045.98
Domestic Purchases for the Quarter	P 53,313,989.84	5,331,400.60
Importation of Goods for the Quarter	33,200,782.50	
Total Purchases	P 86,514,772.34	
Total Available Input Tax		P 41,629,446.58
Excess Input Tax		P 39,224,816.94
Less: Tax Credits/Payments		-
Tax Overpayment		P(39,224,816.94)

On September 17, 2002, petitioner amended the said return reducing its excess input VAT payment to P6,908,625.46 (*Exhibit D*), as shown below:

Total Sales/Receipts & Output Tax	P24,047,251.60	P 2,404,725.09
Zero-rated Sales/Receipts	110,594,773.05	
Total Sales/Receipts	P134,642,024.65	
Less: Input Tax		
Input Tax Carried Over from Previous Quarter		P 3,981,951.29
Domestic Purchases-Capital Goods	P 1,573,253.80	157,325.38

Domestic Purchases-Goods other than Capital Goods	50,271,786.75	5,027,178.57
Domestic Purchases-Services	1,468,952.09	146,895.31
Total Purchases	P53,313,992.64	
Total Available Input Tax		P 9,313,350.55
Excess Input Tax		P(6,908,625.46)
Less: Tax Credits/Payments		-
Tax Overpayment		P(6,908,625.46)

On October 28, 2002, petitioner amended for the second time its VAT return for the fourth quarter of 2000 (*Exhibit E*), reflecting a lower excess input VAT payment of P2,926,674.17 computed as follows:

Total Sales/Receipts & Output Tax	P 24,047,251.60	P 2,404,725.09
Zero-rated Sales/Receipts	110,594,773.05	
Total Sales/Receipts	P134,642,024.65	
Less: Input Tax		
Input Tax Carried Over from Previous Quarter		P -
Domestic Purchases-Capital Goods	P 1,573,253.80	157,325.38
Domestic Purchases-Goods other than Capital Goods	50,271,786.75	5,027,178.57
Domestic Purchases-Services	1,468,952.09	146,895.31
Total Purchases	P 53,313,992.64	
Total Available Input Tax		P 5,331,399.26
Excess Input Tax		P(2,926,674.17)
Less: Tax Credits/Payments		-
Tax Overpayment		P(2,926,674.17)

On December 19, 2002, petitioner filed a letter with the BIR requesting for the refund or issuance of a tax credit certificate in the amount of P2,772,523.61 out of the total excess input VAT payment of P2,926,674.17 reported in its VAT return for the fourth quarter of 2000 (*Exhibit G*). The claimed amount of P2,772,523.61 allegedly represents unutilized input VAT paid on domestic purchases of taxable goods and services (including capital goods) which are directly attributable to petitioner's zero-rated sales/receipts for the fourth quarter of 2000.

Due to respondent's inaction on its claim, petitioner filed the instant Petition for Review before this Court on December 27, 2002.

Respondent, in his Answer to the Petition for Review, interposed the following Special and Affirmative Defenses:

4. Petitioner failed to show compliance with the substantiation requirements under the provision of Section 16(c)(3) of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88;

5. Petitioner failed to show that the alleged creditable VAT was not carried over and utilized against the value-added tax liability of the petitioner in the succeeding quarters or year;

6. Amendment of the return is allowed only when no notice for audit or investigation of such return been actually served upon the taxpayer;

7. Petitioner has not shown proof that portion of the input tax is attributable to zero-rated sales;

8. The invoices issued by petitioner to PEZA enterprises must be duly registered and stamped with the word "zero-rated";

9. Input VAT from zero-rated services cannot be refunded in the absence of zero-rated sales in VAT returns;

10. 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);

11. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund; and

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

On November 21, 2005, this case was submitted for decision sans the memorandum of the respondent.

The parties, in their Joint Stipulation of Facts and Issues, submitted the following issues for this Court's resolution:

1. Whether or not the amount of P2,772,523.61, out of the total excess input VAT of P2,926,674.17, represents input VAT paid on domestic purchases of taxable goods and services that are directly attributable to its zero-rated export sales;

2. Whether or not petitioner incurred input VAT in the amount of P863,098.36, in connection with its purchases of capital goods and office supplies, as well as rentals for the use of real property, which are not directly attributable to either its export sales of goods and services or its taxable sales of goods and services;

3. Whether or not petitioner's input VAT which are not directly attributable to either its zero-rated or taxable sales should be allocated to either operation, with the amount of P708,947.80 to be credited to petitioner's zero-rated sales;

4. Whether or not petitioner's excess input VAT for the fourth quarter of taxable year 2000 was applied or utilized against its output VAT in the succeeding taxable quarters;

5. Whether or not the excess input VAT arising from petitioner's purchases of goods and services for the period October 1, 2000 to December 31, 2000 attributable to its zero-rated sales, and other purchases of goods and services the input VAT of which are allocable to said zero-rated sales, are duly supported by pertinent documents, such as VAT invoices and receipts;

6. Whether or not petitioner is entitled to the claim for refund in the amount of P2,772,523.61 representing unutilized and/or unapplied input VAT attributable to the excess of its accumulated input VAT payments over the output VAT due on domestic sales for the fourth quarter of taxable year 2000; and

7. Whether or not the invoices issued by petitioner to PEZA enterprises are duly registered and stamped with the word "zero-rated".

All of the above issues may be simplified into: *Whether or not, petitioner, based on the evidence presented, is entitled to the refund or issuance of a tax credit certificate in the amount of P2,772,523.61 representing unutilized input VAT paid on domestic purchases of taxable goods and services (including capital goods) for the fourth quarter of 2000 which are directly attributable to zero-rated sales/receipts for the same period.*

Section 112(A) of the National Internal Revenue Code (NIRC) of 1997 provides:

> **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 where 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."

Based on the afore-quoted provisions of Section 112(A), in order to be entitled to a refund/tax credit of unutilized input VAT, the following requisites must be complied with:

1) there must be zero-rated or effectively zero-rated sales;
2) that input taxes were incurred or paid;
3) that such input taxes are directly attributable to zero-rated sales or effectively zero-rated sales;
4) that the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and
5) that the claim for refund was filed within the two-year prescriptive period.

Anent the first requisite, petitioner maintains that the bulk of its sales for the fourth quarter of 2000 are subject to zero percent (0%) VAT pursuant to Sections 106(A)(2)(a)(1) and 108(B)(2) and (3) of the NIRC of 1997. These sales allegedly pertain to petitioner's export sales of goods as well as its sales of indenting and related services to non-resident entities, the consideration for which were paid for in acceptable foreign currency and duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). Also, petitioner allegedly generated zero-rated sales of services to entities that are registered with the Philippine Economic Zone Authority (PEZA).

In its amended VAT return for the fourth quarter of 2000 (*Exhibit E*), petitioner's declared zero-rated sales amounted to P110,594,773.05. As noted by the Court commissioned auditing firm, SGV & Co., in its report dated March 29, 2004 (*page 3 of Exhibit H*), the amount of P110,594,773.05 treated by petitioner as zero-rated sales consisted of the following:

Nature of Zero-Rated Sales	Amount
Export Sales	P 40,555,212.15
Commission from PEZA-registered enterprises	345,989.85
Commission from non-residents	69,693,571.05
Total	**P110,594,773.05**

A scrutiny of the said report of SGV & Co. and petitioner's supporting documents such as VAT invoices, bills of lading and export declarations *[Exhibits Q-109 to Q-149];* Mutual Account Summary of General Ledger (B/S Account) [*Exhibits S-1 to S-38*]; Mutual Account Summary of Remittances from Marubeni Corporation *[Exhibits T-1 to T-72*]; and Monthly Credit Advices from Marubeni Corporation *[U-1 to U-4*], shows that for the fourth quarter of 2000 petitioner had direct export sales to Marubeni Corporation of Tokyo, Japan and Marubeni International Petroleum, Singapore which were 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 BSP. These direct export sales fall within those transactions referred to as subject to zero percent (0%) VAT under Section 106(A)(2)(a)(1) of the NIRC of 1997, which states:

> "**SEC. 106.** ***Value-Added Tax on Sale of Goods or Properties.*** -
> "(A) *Rate and Base of Tax.* – x x x
> xxx xxx xxx
> "(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
> "(a) *Export Sales.* – The term 'export sales' means:
> "(1) 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 or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)."

However, out of the total amount of P40,555,212.15 direct export sales reported by petitioner, the amount of P527,408.00 did not have corresponding bills of lading, export declarations and foreign currency remittances. Therefore, only the direct export sales amounting to P40,027,804.15 qualifies for zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997.

As to the alleged zero-rating of petitioner's commission from PEZA registered companies in the amount of P345,989.85 and commission from non-residents in the amount of P69,693,571.05, petitioner relies on Section 108(B)(2) and (3) of the NIRC of 1997 which provides:

> '**SEC. 108.** ***Value-Added Tax on Sale of Services and Use or Lease of Properties.***-
> 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
> "(2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

"(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."

With respect to petitioner's sale of services to PEZA registered companies, petitioner likewise cites relevant portions of Revenue Memorandum Circular (RMC) No. 74-99, thus:

"SECTION 3. **Tax Treatment of Sales Made By A VAT Registered Supplier from the Customs Territory, To A PEZA Registered Enterprise.**-

"(1) If the Buyer is a PEZA registered enterprise which is subject to the 5% special tax regime, in lieu of all taxes, except real property tax, pursuant to R.A. No. 7916, as amended:

xxx xxx xxx

(b) **Sale of service.** – This shall be treated subject to zero percent (0%) VAT under the "cross border doctrine" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.

(2) If Buyer is a PEZA registered enterprise which is not embraced by the 5% special tax regime, hence, subject to taxes under the NIRC, e.g., Service Establishments which are subject to taxes under the NIRC rather than the 5% special tax regime:

xxx xxx xxx

(b) **Sale of Service.** – This shall be treated subject to zero percent (0%) VAT under the "cross border doctrine" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.

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 Investments Code, while all sales of services to the said enterprises, made by VAT registered supplies from the Customs Territory, shall be treated effectively subject to 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.

"This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of issuance of this Circular."

Clearly from the foregoing provisions of Section 108(B)(3) and as clarified under RMC No. 74-99, petitioner's sales of services to PEZA registered companies in the amount of P345,989.95 which was duly supported by VAT official receipts qualifies for VAT zero-rating.

Similarly, petitioner's sales of services to non-residents for the fourth quarter of 2000 which were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP may fall under the category of services subject to zero percent (0%) VAT under Section 108(B)(2) of the NIRC of 1997. Nevertheless, since petitioner's reported sales of services in the amount of P69,693,571.05 was not duly supported by VAT official receipts in accordance with Section 113 of the NIRC of 1997, the same shall not qualify for VAT zero-rating.

Accordingly, out of the total declared sales of P110,594,773.05 for the fourth quarter of 2000, only the amount of P40,373,794.00 qualifies for VAT zero-rating, detailed as follows:

Export Sales	P 40,027,804.15
Sales of Services	
Commission from PEZA registered companies	345,989.85
TOTAL	**P 40,373,794.00**

In compliance with the second requisite, petitioner submitted summary lists of input VAT claimed for the fourth quarter of 2000 (*Exhibits J-1 to J-8*) and the related suppliers' invoices/official receipts (*Exhibits K-1 to K-946*). However, as correctly noted by the Court commissioned auditing firm, SGV & Co. in its report dated March 29, 2004 (*pages 13 & 14, Exhibit H*), the following input taxes totalling P486,589.67 failed to meet the substantiation requirements under Section 4.104-5 of Revenue Regulations No. 7-95 in relation to Sections 110 and 113 of the NIRC of 1997 and should, therefore, be disallowed from petitioner's claim:

Item	Nature	Exhibit No.	Amount (in Php)
1	Input Tax Claimed from a Purchase of Service Supported by a Photocopied VAT OR	2-A	41.73
2	Input Taxes Claimed from Purchases of Goods Supported by Photocopied VAT Invoices	2-B	27,773.14
	subtotal		**27,814.87**
3	Input Taxes Claimed from Purchases of Services Supported by VAT ORs not dated within the 4th quarter of 2000 and not within the same calendar year	2-C	170,587.28

4	Input Taxes Claimed from Purchases of Services Without Supporting Documents	2-D	31,514.99
5	Input Taxes Claimed from Purchases of Services Supported by Documents other than VAT ORs	2-E	97,042.23
6	Input Tax Claimed from a Purchase of Services Supported by an OR Without TIN	2-F	207.99
7	Input Taxes Claimed from Purchases of Services Supported by VAT ORs with TAN-VAT	2-G	20,409.28
8	Erroneous Computation of Input Taxes Claimed from Purchases of Services	2-H	1,183.58
9	Input Taxes Claimed from Purchases of Goods Without Supporting Documents	2-I	912.70
10	Input Tax Claimed from Purchases of Goods Supported by Documents other than VAT Invoices	2-J	5,280.39
11	Input Tax Claimed from a Purchase of Goods Supported by a VAT Invoice Without BIR permit	2-K	1,636.36
12	Input VAT Erroneously Claimed from Purchase of Automobile	2-L	130,000.00
	subtotal		**458,774.80**
	Total		**486,589.67**

Likewise, the input taxes of P229,543.95 and P582,392.34 for which the dates of the related VAT official receipts and invoices fall outside the subject period of claim *(see items 4 & 5, pages 14 & 15 of Exhibit H)* should also be deducted from the total claim of P2,772,523.61.

Therefore, petitioner was able to substantiate by proper VAT invoices and/or official receipts only the input taxes of P1,473,997.65, computed as follows:

Amount of Claimed Input VAT		P 2,772,523.61
Less:	1.) Input taxes without valid VAT invoices or official receipts	486,589.67
	2.) Input taxes claimed on purchases of services for which the date of the related VAT official receipts fall outside the period of claim	229,543.95

3.) Input taxes claimed on purchases of goods for which the date of the related VAT invoices fall outside the period of claim	582,392.34
Substantiated Input VAT	**P 1,473,997.65**

As to the third requisite, petitioner's second amended VAT return for the fourth quarter of 2000 shows that the substantiated input VAT of P1,473,997.65 is already net of the reported output VAT liability of P2,404,725.09 (*Exhibit E*). However, of the input VAT of P1,473,997.65, only the input VAT of P545,379.13 can be attributed to the zero-rated sales of P40,373,794.00 that have been duly substantiated, thus:

Substantiated Zero-rated Sales	P 40,373,794.00
Divided by Total Reported Zero-rated Sales	÷ 110,594,773.05
Multiplied by Substantiated Input VAT	× 1,473,997.65
Input VAT attributable to Substantiated Zero-rated Sales	**P 545,379.13**

With reference to the fourth requisite, it was established that petitioner did not carry-over the subject claim in its VAT return for the succeeding first quarter of 2001 (*Exhibit F-3*).

Finally, as to the last requisite, the reckoning of the two-year prescriptive period for the filing of a claim for VAT refund starts from the date of filing of the corresponding quarterly VAT return (***JIDECO MANUFACTURING PHILIPPINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE, CTA Case No. 6552, September 16, 2004***). In the present case, the claim covers the fourth quarter of 2000 for which petitioner originally filed its VAT return on January 25, 2001 (*Exhibit C*). Counting from this date, petitioner had until January 25, 2003 within which to file its claim both administratively and judicially. Hence, the administrative claim for refund filed on December 19, 2002 (*Exhibit G*) as well as the Petition for Review filed on December 27, 2002 fall within the two-year prescriptive period.

In fine, this Court finds petitioner to have sufficiently proven its entitlement to the refund or issuance of a tax credit certificate representing unutilized input VAT attributable to zero-rated sales for the fourth quarter of 2000 in the reduced amount of P545,379.13 as discussed above.

WHEREFORE, the Petition is hereby **PARTIALLY GRANTED**. Respondent is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** to the petitioner in the amount of P545,379.13 representing unutilized input VAT for the fourth quarter of 2000.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified 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.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division