REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NICHIMEN CORPORATION
(MANILA BRANCH),
Petitioner,

- versus -

C.T.A. CASE NO. 5637

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 02 2001 [signature]

x - x

DECISION

This Petition for Review involves a claim for refund or tax credit in the amount of ONE MILLION ONE HUNDRED SEVENTY ONE THOUSAND SIX HUNDRED SIXTY FIVE & 81/100 (P1,171,665.81) allegedly representing excess input Value Added Tax (VAT) payments on its purchases of taxable goods and services for the year 1996.

The facts of the case are as follows:

Petitioner is a foreign corporation organized under the laws of Japan and is licensed to establish a branch office in the Philippines to engage in the business of indenting, wholesaling and selling lumber, abacca, sugar, mineral ores, machinery, steel products, cement and sundry goods in the Philippines as well as to engage in manufacturing and engineering activities. It is also involved in the business of buying and selling of industrial materials and the like. (Exhibits A and A-1, CTA records pp. 127 and 129). Records show that Petitioner is duly registered with the Bureau of Internal

Revenue (BIR) as a VAT taxpayer and was issued a Certificate of Registration with RDO Control No. 94-490-000394 dated June 17, 1994 (Exh. B).

In compliance with the VAT provisions of the Tax Code and its implementing rules and regulations, Petitioner filed its quarterly VAT returns with the Bureau of Internal Revenue covering the four (4) quarters of taxable year 1996 declaring therein vital information, thus:

a. On April 12, 1996, Petitioner declared an output tax of P11,818.18, and input tax carry over from previous quarter of P59,909.90 and input tax from domestic purchases of goods and services of P242,935.19 resulting in an excess input tax of P291,026.91 (Exh. C);

b. On July 16, 1996, Petitioner declared an input tax carry over from previous quarters of P291,026.91 and an input tax from domestic purchases of goods and services of P237,272.09 resulting in an excess input tax of P528,299.00 (Exh. D);

c. On October 9, 1996, Petitioner declared an input tax carry over from previous quarters of P528,299.00 and an input tax from domestic purchases of goods and services of P308,803.56 resulting in an excess input tax of P837,102.56 (Exh. E);

d. And for the last quarter of 1996, Petitioner declared an input tax carry over from previous quarters of P837,102.56 and an input tax from domestic purchases of goods and services of P394,473.15 resulting in an excess input tax of P1,231,575.71 (Exh. F).

All in all, the quarterly VAT returns showed that Petitioner has a total excess input tax payment of P1,171,665.81 hereunder summarized as follows:

<u>TAXABLE YEAR 1996</u>

<u>Quarter covered</u>		<u>Excess Input Tax</u>
1st	P11,818.18 (Output) Less: P242,935.19 (Input)	P 231,117.01
2nd		237,272.09

3rd	308,803.56
4th	394,473.15
TOTAL	P1,171,665.81

According to Petitioner, it is subject to Value Added Tax at zero rate (0%) in its sales of services as provided for under Section 102(b)(2) of the 1996 Tax Code since the services it rendered were allegedly paid for in acceptable foreign currency which is duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas. For easy reference, Section 102(b)(2) is hereunder quoted as follows:

> "Section 102. Value-added tax on sale of services – x x x
>
> (b) Transaction subject to zero rate – The following services performed in the Philippines by VAT-registered persons shall be subject to 0%:
>
> (1) x x x x
>
> (2) Services other than those mentioned in the preceding subsection, the consideration for which is *paid for in acceptable foreign currency which is remitted inwardly to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines x x x"* (italics ours)

On the basis of its theory that its revenues are considered zero-rated for VAT purposes, Petitioner filed an application for Tax Credit/Refund of VAT paid on April 14, 1998 (Exh. H) and subsequently filed a written claim for refund with the Respondent Bureau on April 17, 1998 (Exh. G). As Respondent failed to act upon said claim, Petitioner filed a Petition for Review with this Court on April 20, 1998, in order to toll the running of the 2-year prescriptive period provided by law.

In response to the instant Petition, Respondent avers in his answer the following Special and Affirmative Defenses, to wit:

"6. Petitioner's claim for refund of alleged excess VAT input taxes is still under investigation/examination by the BIR;

7. Tax refunds are in the nature of tax exemptions. As such, they are regarded in derogation of sovereign authority and to be construed in *strictissimi juris* against the entity claiming the exemption. The burden of proof is upon him who claims the exemption in his favor and he must be able to justify his claim by clearest grant of organic or statute law. Failure on the part of Petitioner to do so is fatal to its claim for refund;

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

The lone issue to be resolved in the case at bar is WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OR TAX CREDIT OF THE AMOUNT OF P1,171,665.81 REPRESENTING ITS EXCESS INPUT TAX PAYMENTS FOR THE FOUR (4) QUARTERS OF TAXABLE YEAR 1996.

The peculiar factor which differentiates the instant case from other cases of the same nature, parties and subject matter, is Petitioner's failure to declare in its VAT return the definite amount which corresponds to its alleged zero-rated sales of services. A circumspect examination of Petitioner's quarterly VAT returns for taxable year 1996 (Exhs. C, D, E and F) would show that no zero rated sales were declared by Petitioner which would verily give merit to Petitioner's claim for refund of creditable input tax. As explicitly stated in Section 106(a) of the 1996 Tax Code, as amended, the refund of creditable input tax due or paid shall be attributable to the claimant's zero rated sales, thus:

"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 sales 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." (underlining supplied)

It is clear from the aforequoted provision of the Tax Code that the prerequisite to the refund of creditable input tax is the categorical showing of zero-rated sales in a claimant's VAT return. However, contrary to what is required, Petitioner only declared in its 1996 first quarterly VAT return a VAT taxable sale of P118,181.80 which resulted to an output tax of P11,818.18. As no zero-rated sales were declared by the Petitioner in its return, this Court is incapable of determining the very basis from which the amount of creditable input tax could be computed.

In an effort to prove its foreign currency inward remittances, Petitioner offered in evidence various bank credit advices (Exh. A-2 to A-22) issued by Rizal Commercial Banking Corporation which account for the total foreign exchange receipts of Petitioner for the indenting services it rendered for the year 1996.

However, these bank credit advices have little probative value. The remittances cannot be possibly linked to sales of 1996 since there was no declaration of zero-rated sales in the VAT returns during the year. In addition, there was no collaborating evidence such as sales invoices to support its claim that there were vatable sales.

The fact that there were no zero-rated sales declared during the taxable year 1996, Petitioner is not entitled to claim the refund of input taxes paid. (*Toshiba Information Equipment (Phils.), Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 5672, dated May 8, 2000*).

As tax refunds are in the nature of tax exemptions and regarded as in derogation of sovereign authority, it should be construed *strictissimi juris* against the claimant (*Commissioner of Internal Revenue vs. Procter and Gamble Phil., Mfg. Corp., 204 SCRA 377*). Failure to meet any requirement provided by law is fatal to a claimant's cause of action insofar as tax refunds are concerned.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** for lack of merit.

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