REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CEBU TOYO CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 5650

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 28 2000

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DECISION

This petition for review is seeking for the refund or issuance of a tax credit certificate in the amount of P4,439,827.21, representing unutilized input value-added tax (VAT, for brevity) attributable to zero-rated export sales for the period April 1, 1996 to December 31, 1997.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal office located in Mactan Processing Zone Lapu-Lapu City. It is a subsidiary of Toyo Lens Corporation, a non-resident corporation organized under the laws of Japan. It is licensed by the Securities and Exchange Commission to engage primarily in the manufacture of element and assembled lenses or various optical components used in still TV, cameras, CD, and the like (Exh. A). It is a zone export enterprise registered with the Philippine Economic Zone Authority pursuant to the provisions of Presidential Decree No. 66, as amended, with Certificate of

Registration No. 95-17 (Exh. E). It is likewise registered with the Bureau of Internal Revenue as a VAT-registered entity with VAT Registration Certificate No. 080-004-262-570-VAT, dated February 21, 1995 (Exh. D).

Petitioner alleges that 80% of its finished products are sold to Toyo Lens Corporation, a company domiciled in Japan, pursuant to an Agreement For Offsetting (Exhibits R and U) while the remaining 20% are sold to Mactan Export Processing Zone enterprises (TSN, September 28, 1998, p. 24). Petitioner further avers that both sales are considered export sales subject to VAT at 0% rate pursuant to Section 100(a)(2)(A) of the 1996 Tax Code, as amended.

For the period April 1, 1996 to December 31, 1997, petitioner filed its quarterly VAT returns showing, among others, a total input VAT in the amount of P4,462,412.63. Out of the aforesaid amount, petitioner asserts that the sum of P4,443,827.21 pertains to payments of input VAT on purchases of goods and services attributable to its zero-rated sales and which is the subject of the instant petition, to wit:

Quarter Involved	Input Tax Per Return	Exh.	Input Tax Per Petition
April to June 1996	P 30,236.73	F	P 27,251.59
July to September 1996	835,287.68	G	822,950.90
October to December 1996	2,324,993.76	H	2,324,889.76
January to March 1997	395,731.54	I	393,038.44
April to June 1997	527,594.85	K	527,128.65
July to September 1997	130,271.94	M	130,271.94
October to December 1997	218,296.13	O	218,295.93
Total	P4,462,412.63		P4,443,827.21

On March 30, 1998, petitioner filed with the Tax & Revenue Group of 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 for the period April 1, 1996 to December 31, 1997, in the amount of P4,439,827.21, representing input VAT payments attributable to its zero-rated export sales (Exhs. S and T).

Without waiting for an action from the respondent, petitioner on June 26, 1998, filed the instant petition for review in order to toll the running of the two-year prescriptive period pursuant to Section 230 of the Tax Code, as amended

In his Answer, respondent raises, the following Special and Affirmative defenses:

> 6 Petitioner is not entitled to its claim for tax credit/refund for failure to show that it complied with the proviso on the second (2) sentence of Section 112(A) of the Tax Code, as amended; ;
>
> Sec. 112. Refunds or Tax Credits of Input Tax –
>
> (A) Zero-rated or Effectively Zero-rated Sales. x x x :x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a) [export sales](1), (2) and (B) 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 Bangko Sentral ng Pilipinas (BSP). (Emphasis ours)
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> Failure to prove that the foreign currency proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas is fatal to the action for tax refund/credit.
>
> 7. Petitioner miserably failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;
>
> 8. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;
>
> 9. 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;

10. 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;

11. 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 for refund, petitioner presented various documentary exhibits which consist of:

1. SEC Registration Certificate (Exhs. A and A-1);

2. Corporation Annual Income Tax Returns for the fiscal year ended August 31, 1996 and August 31, 1997 (Exhs. B, B-1, C and C-1);

3. VAT Registration Certificate (Exh. D);

4. EPZA Registration Certificate and Registration Agreement (Exhs. E, and W);

5. Original and some amended quarterly VAT returns for the period July 1996 to March 31, 1998 (Exhs. F to Q and V, inclusive of submarkings);

6. Agreement for Offsetting between Toyo Lens Co., Ltd. and Cebu Toyo Corporation (Exhs. R and U);

7. Application for VAT refund/credit (Exhs. S and T):

8. Photocopies of petitioner's VAT invoices and/or official receipts supporting the claim for refund of input taxes (Exhs. X-1 to X-62, Y-1 to Y-71, Z-1 to Z-62, AA-1 to AA-107, BB-1 to BB-157,CC-1 t CC-165, and DD-1 to DD-181);

9. Photocopies of petitioner's export sales invoices together with the summary of export sales and subsidiary ledgers (Exhs. EE-1 to EE-147, FF-1 to FF-3 and GG-1 to GG-4); and

10. Report of the commissioned independent CPA (Exh. II).

On the other hand, counsel for the respondent did not present any evidence. This case was submitted for decision after both parties presented their respective memoranda.

The issues to be resolved in the instant case are as follows:

1. Whether or not petitioner was able to comply with the provisions of Section 204 in relation with Sections 229 and 230 of the 1996 Tax Code, as amended, in filing the instant claim for refund; and

2. Whether or not petitioner was able to support with substantial evidence its entitlement to the claim pursuant to Section 106(a) of the Tax Code, as amended.

With respect to the first issue, this Court is convinced that petitioner was able to file on time the application for refund/credit with the respondent and the petition for review with this Court. The counting of the two-year period in claiming for refund of input VAT with the respondent is reckoned from the close of taxable quarter when the sales were made (starting on June 30, 1996) pursuant to Section 106(a) of the Tax Code, as amended. The judicial prescriptive period in claiming for the refund of input VAT is reckoned from the date of filing of the quarterly VAT return (**Nichimen Corporation Philippine Branch vs. Commissioner of Internal Revenue, C.T.A. Case No. 5384, August 18, 1998; Hopewell Power (Philippines) Corp. vs. Commissioner of Internal Revenue, CTA Case No. 5389, January 4, 1999**). Thus, when petitioner filed its application for refund/credit with the One-Stop Shop Inter-Agency Tax Credit and Duty

Drawback Center on March 27, 1998, and the present action with this Court on June 28, 1998, the dates of filing were within the two-year period.

We now proceed to the substantiation requirements laid down by the law and regulations which is the second issue at bar.

Section 106(a) of the Tax Code mandates:

> **Sec. 106. Refunds of tax credits of 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 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 (Underlining supplied).

Based on the records and evidences presented, petitioner was able to prove that:

1. It is a VAT registered entity with VAT Registration Certificate No. 080-0045-262-570-VAT (Exh. D);

2. Petitioner's sales to Toyo Lens Corporation, a Japanese enterprise, and to certain establishments in Mactan Export Processing Zone are export sales subject to VAT at 0% rate;

3. The administrative and judicial claims for refund were filed within the two-year period; and

4. The alleged input taxes covered by the claim have not been applied against any output tax (Exh. Q).

However, petitioner fell short in presenting proof to show that there were foreign currency exchange proceeds from its export sales. Petitioner failed to present documents to support its allegation that foreign currency was paid and remitted for these transactions. This is necessary in order to qualify petitioner to apply for the refund/credit of input taxes allegedly attributable to its zero-rated export sales based on the aforequoted law. Failure on petitioner's part to discharge such burden is fatal to its claim.

Although, petitioner may argue that it is illogical to present proof of foreign currency remittances considering that there exists an Agreement For Offsetting between petitioner and Toyo Lens Corporation resulting in no remittance of foreign currency proceeds from the sales (Exhs. R and U). To the Court's mind, such argument is bereft of merit considering that the period involved in this case is from April 1, 1996 to December 31, 1997 while the offsetting arrangement covers the period September 1, 1996 to December 31, 1998. Thus, there is still a period (April 1, 1996 to August 31, 1996) on which foreign currency remittance should have been supported by evidence. Furthermore, since the said agreement for offsetting is under the category of constructive inward remittance, the same still needs an approval and certification from Bangko Sentral ng Pilipinas as to the amount constructively remitted. In the absence of such evidence, the Court is placed in a position where it cannot compute with certainty how much petitioner is entitled to the refund/credit, considering that the Bureau of Internal Revenue has already prescribed the guidelines in the processing and issuance of tax credit certificates on value-added tax of zero-rated taxpayers under Revenue Audit Memorandum Order No. 2-93. Pertinent portions of which read as follows:

> III. AUDIT PROCEDURES
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> A. Checklisting: xxx
>
> B. Pre-Audit Steps: xxx
>
> C. Audit of Sales and Output Tax:
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> 1. Determination of gross taxable sale of goods and services. xxx
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> a.3. Sales declared as zero-rated actually emanate from export sales, foreign currency denominated sales, and other transactions that may qualify as zero-rated sales or effectively zero-rated sales (Sec. 100(a)(1) and (2); Sec. 102 (a)(1), (2) and (3), NIRC and Sec. 8, RR 5-87).
>
> a.3.1. For direct export sales, examine sales agreement with foreign buyers as to the nature of the products to be exported, pricing and other terms and conditions. Review export documents such as commercial invoices/receipts, bills of lading or airway bills, export declarations/permits, packing lists, etc., and ascertain that the proceeds of the sale had been actually inwardly remitted. This will require the liquidation statement from the Central Bank (CB) or any of its accredited agent banks certifying as to the amount of the export proceeds or consideration, the date of inward remittance, convertible rate and the total peso value thereof (RMO 23-88). Xxx
>
> a.3.4. In case of constructive inward remittance, the claimant shall also submit the following:
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> 1. Central Bank approval of offsetting arrangement.
>
> 2. Certification from the Central Bank on the amount constructively remitted under the off-setting arrangement. (Underlining supplied).
>
> Should the amount of inward remittance be less than the total zero-rated sales, the input tax pertaining to

> the discrepancy shall be removed from the allowable input tax using the following formula:
>
> | | | | | |
> |---|---|---|---|---|
> | Unremitted Export Proceeds / Total Zero-Rated Sales sales | X | Allowable Input Tax | = | Input Tax allocable to unremitted export |
>
> xxx xxx xxx.

Nowhere among the documents presented by petitioner did it submit liquidation statement from the Central Bank (CB) or any of its accredited agent banks certifying as to the amount of the export proceeds or consideration, the date of inward remittance, convertible rate and the total peso value with respect to export sales for the period April 1, 1996 to August 31, 1996, which are not covered by the offsetting arrangement. Neither did petitioner submit Central Bank's approval of the offsetting agreement with Toyo Lens Corporation and certification of constructive inward remittance with respect to the period covered by the agreement (September 1, 1996 to December 31, 1997). Furthermore, petitioner did not submit documents to prove foreign currency payments of the remaining sales to Mactan Export Processing enterprises. These documents are necessary in order to allocate the input taxes that may be found refundable to petitioner.

Moreover, as correctly pointed out by the respondent in his memorandum, no export document was presented which is also required under the present circumstances.

WHEREFORE, in view of the foregoing, the instant petition for review is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
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