REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HITACHI COMPUTER PRODUCTS (ASIA) CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5756

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 16 2001

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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 P2,505,048.85, representing unapplied input value-added tax (VAT, for brevity) for the period January 1, 1997 to March 31, 1997.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal office located at Special Export Processing Zone, Laguna Technopark, Biñan, Laguna. It is licensed by the Securities and Exchange Commission to "operate, conduct and maintain the business of manufacturing exporting, buying, selling or otherwise dealing in at wholesale electric, electronic and software products and industrial properties, including but not limited to hard disk drive and component parts" (Exhibit B). It is an export enterprise registered with the Export Processing Zone Authority pursuant to the provisions of Presidential Decree No. 66, as amended, with Certificate of Registration No. 94-28, dated May 11, 1994. It is also registered with the Bureau of Internal Revenue as a VAT taxpayer with Certificate of Registration RDO Control No. 94-570-000298, dated June 28, 1994.

On October 7, 1994, the Export Processing Zone Authority through the Special Board issued Resolution No. 94-212 approving Petitioner's application for pioneer status of its small-sized, high density hard disk drive and thin film magnetic head manufacturing facility. The Special Board further resolved that Petitioner's facility/project is entitled to six (6) years income tax holiday (Exhibit C).

On April 21, 1997, Petitioner filed its 1997 first Quarterly Value-Added Tax Return with the Bureau of Internal Revenue reflecting, among others, a total VAT input tax on domestic purchases of goods/services and royalty payments in the amount of P18,850,916.36 (Exhibit A, inclusive of submarkings). Out of the aforementioned sum, Petitioner claims the refund of the amount of P2,505,048.85 by way of the instant petition.

On March 25, 1999, Petitioner filed with the Tax and 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 January 1, 1997 to March 31, 1997, in the amount of P2,505,048.85.

On March 29, 1999, Petitioner lodged its appeal with this Court in order to toll the running of the two-year prescriptive period provided under Section 230 of the Tax Code, as amended.

In his Answer, Respondent raised the following Special and Affirmative defenses:

> 5. Petitioner's alleged claim for refund/tax credit is subject to administrative routinary investigation/examination by respondent's Bureau;
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> 6. Petitioner failed miserably to show that the total amount of P2,505,048.85, claimed as VAT input taxes, were erroneously or illegally collected, or that the same are properly documented;

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

8. In an action for tax refund, the burden is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;

9. 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; and

10. Well-established is the rule that claims for refund/tax credit are construed in strictissimi juris against the taxpayer as it partakes the nature of exemption from tax.

In support of its claim for refund, Petitioner presented various documentary exhibits which consist of:

1. The original and amended Value-added Tax Returns for the first quarter of 1997 and the amended VAT returns for second and third quarters of 1997 (Exhs. A, E, F, and M, inclusive of submarkings);

2. Articles of Incorporation, EPZA Certificate of Board Resolution No. 94-212, and Registration Agreement between the Export Processing Zone Authority and Petitioner (Exhs. B, C, and D);

3. Summaries of input taxes, export sales, and collections and bank passbook for the first quarter of 1997 (Exhs. G, H, and I, inclusive of submarkings);

4. Photocopies of VAT invoices and/or official receipts supporting the input VAT claimed by Petitioner (Exhs. J to J-92);

5. Photocopies of Petitioner's sales invoices and export sales documents (Exhs. K to K-149, and O);

6. The original report of the commissioned independent CPA with addendum (Exhs. L, L-1, and N); and

7. Certification from RCBC with respect to inward remittances for the year 1997 (Exhs. P to P-2).

On the other hand, counsel for the Respondent failed to present any controverting evidence and memorandum. The case was submitted for decision on January 26, 2001, after the Court granted Petitioner's "Motion to Admit Memorandum".

The issues to be resolved by the Court as stipulated by the parties are as follows:[1]

1. Whether or not Petitioner has unapplied or unutilized creditable value-added tax inputs as of March 31, 1997 arising from its domestic purchases of goods and services which is a proper subject of a claim for refund pursuant to Section 112 of the National Internal Revenue Code, as amended;

2. Whether or not the said creditable value-added tax inputs of Petitioner for the quarter ended March 31, 1997 are substantiated by documentary evidence in the form of invoices and official receipts;

3. Whether or not said unapplied or unutilized creditable value-added tax inputs for the quarter ended March 31, 1997 was carried forward to the succeeding taxable quarter and applied against any of the value-added tax output liability of the Petitioner for said period; and

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[1] Joint Stipulation of Facts and Issues, CTA records, p. 37.

4. Whether or not the export sales to which the domestic purchases of goods and services were attributed were paid for in acceptable foreign currency inwardly remitted to the Philippines in accordance with Bangko Sentral ng Pilipinas Regulations.

Petitioner believes that it is entitled to the refund or tax credit of unutilized input VAT arising from purchases of domestic goods and services because its sales of goods are 100% exported. Petitioner cites as legal bases the provisions of Section 106(a) in relation with Section 100(a)(2)(A)(i) of the Tax Code, as amended, [now Section 112(A) and 106((A)(2)(a)(1) of the 1997 Tax Code] to wit:

> SEC. 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.
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> xxx xxx xxx
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> SEC. 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, 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:
>
> (1) xxx

(2) The following sales by VAT-registered persons shall be subject to 0%:

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 or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

Based on the above provisions of the Tax Code, Petitioner must prove that (1) it is a VAT registered person; (2) its sales are zero-rated; (3) the administrative claim for refund is seasonably filed; (4) the input taxes claimed were attributable to zero-rated sales and were not applied against the output tax liability; and (5) foreign currency exchange proceeds had been duly accounted for in accordance with the regulations of Bangko Sentral ng Pilipinas.

A circumspect study of the records of the case together with the pleadings and evidence at hand, reveals that Petitioner qualifiedly complied with the above requisites.

It is an admitted fact that Petitioner is a VAT registered person as evidenced by the Certificate of Registration RDO Control No. 94-570-000298 issued by RDO No. 57 of the Bureau of Internal Revenue[2]. The records of this case also show that Petitioner's manufactured products are 100% exported to Hitachi Limited Japan (see also TSN, September 8, 1999, p. 11; TSN, November 9, 1999, pp. 6 to 7; and Exhs. K to K-149 and O) and therefore subject to VAT at zero percent pursuant to Section 100(a)(2)(A)(i) of the Tax Code, as amended. The administrative claim for refund which was filed on

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[2]Joint Stipulation of Facts and Issues, CTA records, p. 35.

March 25, 1999[3], was seasonably filed within two years from the close of the first calendar quarter of 1997. Furthermore, the input taxes claimed were attributable to the goods exported (**Babcock Hitachi (Phils.) Inc. vs. Commissioner of Internal Revenue and Court of Tax Appeals, CA-G.R. SP No. 40703, November 21, 1996**). They were not applied against any output tax liability nor were carried over to the third quarter VAT return as evidenced by the 1997 second and third Quarterly Value-Added Tax Returns (Exhs. Exhs. F, F-1, F-2, M, M-1, and M-2). Lastly, Petitioner was able to prove that foreign currency exchange proceeds in US dollars, representing inward remittances, were credited to its US Dollar Savings Account Number SAHO 8-000-05593-0, as certified by the First Vice President of Head Operations Division I, Ms. Almabella Venus Duran, of Rizal Commercial Banking Corporation and were corroborated by the bank passbook (Exhs. P-1, P-2, and I-1 to I-16).

However not all the input taxes sought to be refunded are supported by valid VAT invoices and official receipts. As attested to by Mr. Ruben R. Rubio, the commissioned independent CPA tasked to verify the correctness of Petitioner's summary of input taxes, the sum of P1,516,644.27 were not properly substantiated for VAT purposes (see Exhibit "L"). Thus, the Court after evaluating the report submitted by the independent CPA, find the same in order and is hereby adopted for purposes of reaching a final conclusion.

In sum, Petitioner is entitled to the refund of unutilized input VAT in a reduced amount of P988,404.58, computed as follows:

Total input VAT claimed per Petition for Review	P2,505,048.85
Less: Exceptions made by the independent CPA	1,516,644.27
Amount of input VAT supported and verified	P 988,404.58

[3]Joint Stipulation of Facts and Issues, CTA records, p. 36.

WHEREFORE, in view of the foregoing, the Petition for Review is hereby *PARTIALLY GRANTED*. Respondent is **ORDERED to REFUND or ISSUE a TAX CREDIT CERTIFICATE** in the amount of P988,404.58 in favor of Petitioner.

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