IRAP

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE SINTER CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4447

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 26 1995

x - x

DECISION

This case involves petitioner's claim for refund or tax credit of alleged creditable input value-added tax in the revised amount of ₱3,226,602.38 for the year 1988.

Petitioner is a domestic corporation, duly organized and existing under the laws of the Philippines. It is engaged in business as a manufacturer and exporter of sintered ore. It is duly registered with the Board of Investments (BOI) as a preferred pioneer enterprise under Republic Act No. 5186 with BOI Certificate of Registration No. 73-382, dated January 29, 1975. Petitioner is also registered as a BOI non-pioneer enterprise engaged in the production and manufacture for export of dried pinapple pulp feed under Presidential Decree No. 1789, as amended by B.P. Blg. 391, otherwise known as the Omnibus Investments Code, with BOI Certificate of Registration (Export Producer - New) No. 86-1139.

Petitioner is a VAT registered enterprise having been issued by the BIR a VAT Certificate of Registration No. 32A-6-000491. For the period from January 1 to December 31, 1988, petitioner filed its Quarterly VAT Returns showing a Refundable Input Tax of P12,107,759.75 for the last quarter of 1988, computed as follows:

1988

First Quarter:

Output Tax:	
Zero Rated Sales (Goods And Services)	-
Less: Creditable Input Tax:	
Carried Over From Previous Quarter	₱ 4,979,583.39
Domestic Purchase of Taxable Goods	1,758,730.58
Importation of Taxable Goods	11,268.60
Purchase of Taxable Services	134,947.66
Deemed Paid (BOI) Registered Pioneer Enterprise	-
Total	₱ 6,884,530.23
Net Creditable Input Tax (Balance Carried To Succeeding Quarter)	₱ 6,884,530.23

Second Quarter:

Output Tax:	
Taxable Sale of Services	₱ 21,996.55
Less: Creditable Input Tax:	

Carried Over From Previous Quarter	P 6,884,530.23
Domestic Purchase of Taxable Goods	1,395,959.78
Importation of Taxable Goods	-
Purchase of Taxable Services	449,912.46
Deemed Paid (BOI) Registered Pioneer Enterprise	-
Total	P 8,730,402.47
Net Creditable Input Tax (Balance Carried To Succeeding Quarter)	P 8,708,405.92

Third Quarter:

Output Tax	
Taxable Sale of Goods	P 50,799.61
Less: Creditable Input Tax:	
Carried Over From Previous Quarter	P 8,708,405.92
Domestic Purchase of Taxable Goods	1,358,143.78
Importation of Taxable Goods	-
Purchase of Taxable Services	491,209.41
Deemed Paid (BOI) Registered Pioneer Enterprise	-
Total	P10,557,759.11
Net Creditable Input Tax (Balance Carried To Succeeding Quarter)	P10,506,959.50

Fourth Quarter:

Output Tax	
Taxable Sale of Goods	P 38,001.60
Less: Creditable Input Tax:	
Carried Over From Previous Quarter	P10,506,959.50
Domestic Purchase of Taxable Goods	1,261,850.72
Importation of Taxable Goods	-
Purchase of Taxable Services	370,949.13
Deemed Paid (BOI) Registered Pioneer Enterprise	-
Total	P12,139,759.35
Net Creditable Input Tax	P12,101,759.75*

(Note: * should be P12,101,757.75)

Petitioner claims that as a domestic and export producer registered with the BOI it is not subject to the contractor's tax (now the VAT) for their registered operations under R.A. 5186 in relation with R.A. 6135 and Executive Order No. 1045. For its sales of services involving the processing of sintered ore for export to Japan, the same is subject to 0% rate pursuant to Section 102(a)(1) of the Tax Code. Hence, petitioner filed a claim for refund or tax credit with the BIR with respect to its refundable input taxes for the year 1988, pursuant to Section 106(b) of the Tax Code in relation with Section 16 of Revenue Regulations No. 5087, as amended by Revenue Regulations No. 3-88, computed as follows:

APPLICATION FOR TAX CREDIT/REFUND
OF VALUE-ADDED TAX PAID

Date filed: December 28, 1988

PARTICULARS	INCLUSIVE DATES OF INPUT TAX PAYMENTS FROM	TO	AMOUNT
TAX PAID ON IMPORTED/ LOCALLY PURCHASED CAPITAL EQUIPMENT	Jan., 1988	June 30, 1988	₱ 326,117.27
TOTAL VAT PAID ON PURCHASES PER INVOICES RECEIVED DURING THE PERIOD FOR WHICH THIS APPLICATION IS FILED	Jan. 1, 1988	June 30, 1988	3,402,705.26
AMOUNT OF TAX CREDIT APPLIED FOR:			₱3,728,822.53

Date filed: December 14, 1989

PARTICULARS	INCLUSIVE DATES OF INPUT TAX PAYMENTS FROM	TO	AMOUNT
TAX PAID ON IMPORTED/ LOCALLY PURCHASED CAPITAL EQUIPMENT	July, 1988	Sept, 1988	₱ 174,061.45
TOTAL VAT PAID ON PURCHASES PER INVOICES RECEIVED DURING THE PERIOD FOR WHICH THIS APPLICATION IS FILED	July, 1988	Sept., 1988	915,974.47
TOTAL VAT PAID ON PURCHASES PER INVOICES RECEIVED BEFORE THE PERIOD FOR WHICH THIS APPLICATION IS FILED BUT NOT PREVIOUSLY CLAIMED ON BIR FROM NO. 2550 AND BIR FORM NO. 2592.	Jan., 1988	June, 1988	91,676.55
AMOUNT OF TAX CREDIT/ REFUND APPLIED FOR:			₱1,181,712.47

Date filed: January 24, 1990

PARTICULARS	INCLUSIVE DATES OF INPUT TAX PAYMENTS FROM	TO	AMOUNT
TAX PAID ON IMPORTED/ LOCALLY PURCHASED CAPITAL EQUIPMENT	Oct, 1988	Dec., 1988	₱ 36,969.61
TOTAL VAT PAID ON PURCHASES PER INVOICES RECEIVED DURING THE PERIOD FOR WHICH THIS APPLICATION IS FILED	Oct., 1988	Dec., 1988	698,522.62

TOTAL VAT PAID ON PURCHASES PER INVOICES RECEIVED BEFORE THE PERIOD FOR WHICH THIS APPLICATION IS FILED BUT NOT PREVIOUSLY CLAIMED ON BIR FROM NO. 2550 AND BIR FORM NO. 2592.	July, 1988	Sept., 1988	302,516.31
AMOUNT OF TAX CREDIT/ REFUND APPLIED FOR:			₱1,039,008.54
TOTAL TAX CREDIT/REFUND APPLIED FOR:			₱5,949,543.54

Subsequent to the filing of this petition for review on April 20, 1990, respondent issued a Tax Credit Certificate (SN 000221) in favor of petitioner on June 16, 1992, in the amount of ₱3,669,779.26, in accordance with Section 106(a) of the NIRC, computed as follows:

Amount Claimed		₱5,949,543.54
Deductions:		
Due to invoices/receipts w/o VAT reg. no.	859,281.33	
Not properly documented	347,300.11	
Difference in the lists and documents over claim	36,969.61	
Input tax as claimed by Bohol (reimbursable)	559,576.74	1,803,127.79
Input Tax attributable to taxable activity (tugging services) $\frac{\text{P }29{,}069{,}462.38}{\text{P}776{,}425{,}159.82}$ x P4,146,415.75		155,242.36
Allowable Input Tax attributable to 0 rated sales		₱3,991,173.39
Less: Excess Output tax due		
Output tax due	₱3,371,843.74	
Penalty	10,000.00	
	₱3,381,843.74	
Less: Available Input Tax:		
Input tax on purchases attributable to taxable activities	₱ 155,242.36	

Allowable Presumptive Input tax	2,905,207.25	
	₱3,060,449.61	321,394.13
Allowable Input Tax attributable to 0 rated sales recommended for issuance of Tax Credit Certificate		₱3,669,779.26

Petitioner insist that it is still entitled to the refund of ₱3,226,602.38, computed as follows:

Allowable Input Tax	₱3,991,173.39
Presumptive Input Tax	2,905,207.25
	₱6,896,380.64
Less: Tax Credit Certificate	3,669,779.26
Creditable Input Tax applied on the alleged Output VAT of petitioner's tugging activities	₱3,226,602.38

(Note: * should be ₱3,226,601.38)

Respondent contends that the petition states no cause of action due to petitioner's failure to allege the dates when the taxes sought to be refund or credited were paid. The mere filing of the returns and applications for refund or tax credit does not *ipso facto* merit the grant of a refund or tax credit. In claims for refund/tax credit the burden is on the taxpayer to show proof that it is entitled to said claim. This is why claims for refund of taxes are strictly construed against the claimant, the same being in the nature of an exemption from taxation.

The issue is whether or not petitioner is entitled to the refund or issuance of a tax credit in the amount of P3,226,602.38, representing alleged overpaid input tax for the year 1988 not yet refunded in favor of petitioner.

It is petitioner's contention that the income from tugging and wharfing operations are zero-rated pursuant to Section 102(a)(2) of the Tax Code, as amended, which provides:

> "**SEC. 102. Value - added tax on sale of services. - (a) Rate and base of tax.** - There shall be levied, assessed and collected a value-added tax equivalent to 10% percent of gross receipts derived by any person engaged in the sale of services. The phrase 'sale of services' means the performance of all kinds of services for others for a fee, remuneration of consideration, including those performed or rendered by construction and service contractors; stock, real state commercial, customs and immigration brokers; lessors of personal property, lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; and similar services regardless of whether of not the performance thereof calls for the exercise or use of the physical or mental faculties: Provided, That the following serives performed in the Philippines by VAT-registered persons shall be subject to 0%:
>
> (1) xxx xxx xxx
>
> (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."

and VAT Ruling No. 054-92, dated April 28, 1992, to wit:

> "This refers to your letter dated May 23, 1991 requesting for a confirmation that your client, PHILIPPINE SINTER CORPORATION (PSC) is subject to zero percent VAT, pursuant to the provisions of Section 102(a)(2), NIRC, viz:

> 'Services . . . 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.'

It is represented that one of the principal businesses of PSC is tugging services for a fee (i.e., docking and undocking of foreign vessels to facilitate the unloading of the incoming cargo; that, PSC bills its clients-foreign vessel owners in U.S. dollar and its Philippine peso equivalent; that, the said foreign vessel-owners have shipping agents in the Philippines; that the said foreign owners remit payments in foreign exchange thru their said Philippine shipping agents to pay for your billings; that these foreign exchange inward remittances are accounted for in accordance with the Central Bank rules and regulations (i.e, converted into Philippine peso) and that your client is accordingly paid for by the said shipping agents already in terms of the Philippine peso.

In reply, please be informed that the premises of the aforequoted provisions of Section 102(a)(2), NIRC, is that a VAT-registered person's sales of services are paid for in foreign exchange, provided, said payment is inwardly remitted and accounted for according to the Central Bank rules and regulations. This means the said foreign exchange payment have been surrendered to the Central Bank for conversion into Philippine peso. These premises of the law are complied with based on facts submitted.

In view thereof, this Office hereby confirms that your client's sales of services to the aforementioned foreign owners of vessels, is subject to zero percent VAT, pursuant to Section 102(a)(2), NIRC."

Respondent's examiner seeks to justify the disallowance of input taxes attributable to petitioner's tugging services by claiming that the same is not zero-rated because "the company did not bill directly the foreign principal and that the payments were not received in foreign currency but in pesos" (Exh. 1-A). As a result, petitioner is still liable for output tax of P3,371,843.74. In addition, a compromise penalty of P10,000.00 was charged for use of official reciept without VAT registration number and non-issuance of sales invoices on scrap sales and other deemed sales transactions. The allowable presumptive input tax and input tax on purchases totalling P3,060,449.61 were applied from the output tax liability of a total of P3,381,843.74. The excess output tax of P321,394.13 (P3,381,843.74 less P3,060,449.61) was deducted from the allowable input tax of P3,991,173.39.

Furthermore, respondent opined that the Court cannot award a refund or credit in excess of that which petitioner has applied for in the administrative level. Petitioner's application for refund or credit of value-added tax for the year 1988, pursuant to Section 106 of the Tax Code, amounted to P5,949,543.54. Hence, petitioner is not entitled to claim for a refund or credit in excess of what it had actually applied for with the BIR. Having been awarded a Tax Credit Certificate in the amount of P3,669,449.61, petitioner cannot claim by way of this petition for review an additional amount of P3,226,602.38. Otherwise, it would exceed the original claim for refund/tax credit of P5,949,543.54.

Moreover, as indicated in the examiner's report of investigation, petitioner has agreed to their findings, quoted hereunder:

> "8. Subject taxpayer is agreeable to the foregoing findings per informal conference held on May 6, 1991 thru its authorized representative (see p. 482)."

The real question posed is, "Is the tugging operations of petitioner zero-rated or not?"

After a scrutiny of the real question at issue, we have arrived at the conclusion that the tugging operations of petitioner is zero-rated under Section 102(a)(2) of the Tax Code and BIR Ruling No. 054-92, dated April 28, 1992. Therefore, income from tugging operation is not subject to the output VAT. The tugging services rendered by petitioner to foreign vessels or foreign principals through its local shipping agents (New Filipino Maritime Agencies, Inc.) in the Philippines qualifies under Section 102(a)(2) as zero-rated VAT.

Petitioner rendered docking (Tuggage Entrance) and undocking services (Tuggage Departure) to foreign vessels (foreign principals). For the tuggage services rendered, petitioner bills New Filipino Maritime Agencies, Inc. (NFMAI), the local husbanding agent, tugging charges computed based on US Dollars and converted in its equivalent Philippine Pesos. The foreign principal then remits to NFMAI the payment thereof in US Dollars. NFMAI in turn pays petitioner in Philippine Pesos out of the converted dollar remittance from the foreign principal. This is so, because the foreign currency payment remitted to the Philippines through the banking system is automatically converted into Philippine Pesos pursuant to Central Bank laws and regulations.

With this antecedent facts established during the hearings of this case, petitioner has proven that indeed it's tugging services is zero-rated under Section 102(a)(2) of the Tax Code. This even finds support in the opinion of the Commissioner of Internal Revenue in BIR Ruling No. 054-92, April 28, 1992.

Under Section 245 of the Tax Code, the Commissioner of Internal Revenue is allowed to promulgate rulings or opinions in connection with the implementation of the provisions of internal revenue laws. In connection with this provision, the Supreme Court has ruled that the details and manner of carrying out the law are oftentimes left to the administrative agent entrusted with its enforcement. In this sense, it has been said that the rules and regulations are the product of a delegated power to create new or additional legal provisions that have the effect of law. **(Victorias Milling Co. Inc. v. Social Security Commission, March 17, 1962, 114 Phil. 555.)** Courts will and should respect the contemporaneous construction placed upon a statute by the executive officers, whose duty it is to enforce it, and unless such interpretation is clearly erroneous will ordinarily be controlled thereby. **(Molina v. Rafferty, February 1, 1918, 37 Phils. 545; see also People v. Hernandez, December 22, 1933, 59 Phils. 272.)** In the case at bar, we see nothing erroneous in the interpretation of respondent with respect to petitioner's tugging operation being zero-rated under Section 102(a)(2) of the Tax Code.

The only thing left to be done is the determination of the amount still allowable to be refunded or credited in favor of petitioner after the grant of a Tax Credit Certificate of P3,669,779.26. In the petition for review filed by petitioner, it prays for the refund or credit of P12,107,759.25. Subsequently, in the memorandum stage, petitioner after having been awarded a tax credit of P3,669,779.26 still prays for the refund or credit of P476,636.49. In a supplemental memorandum, petitioner changed its prayer from P476,636.49 to P3,226,602.38.

What is the correct amount to which petitioner is still entitled to be refunded or credited after arriving at the conclusion that its tugging operations is subject to a zero-rate VAT?

We believe that petitioner is still entitled to be refunded or issued a Tax Credit Certificate in the amount of P476,636.49 as indicated in its Memorandum filed on October 27, 1993. This Court has adopted the view that petitioner's tugging operation is subject to zero-rate VAT. Thus, respondent's examiner should not have disallowed the amounts of P155,242.36 as input tax attributable to taxable activity (tugging services) and P321,394.13 as excess output tax due after deducting the input tax on purchases and the presumptive input tax from what the examiner considered as tugging services subject to VAT inclusive of compromise penalty. Furthermore, the compromise penalty should not be imposed because the petitioner did not agree to its imposition. **(Wonder Mechanical Engineering Corporation v. Court of Tax Appeals, L-22805 & 27858, 64 SCRA 555, June 30, 1975.)**

It is noteworthy to point that petitioner applied only for the refund or credit of P5,949,543.54. Respondent is correct in saying that petitioner can only claim by way of a petition for review the same amount it had claimed for in the administrative level pursuant to Section 7 of Republic Act No. 1125. Thus, the corresponding disallowance made by the examiner pertaining to petitioner's tugging operations cover only the amounts of P155,242.36 and P321,394.13 or the sum of P476,636.49. Finding, petitioner's tugging operation is zero-rated, the amount of P476,636.49 should therefore be refunded or credited in favor of petitioner, it being covered by its application for refund or credit of P5,949,543.54. The Court finds that only the amount of P1,803,127.79 was properly disallowed from the claim of ₱5,949,543.54. With the issuance by the respondent of Tax Credit Certificate No. SN 000221, dated June 16, 1992, for the amount of ₱3,669,779.26, petitioner is entitled to an additional refund or credit of ₱476,636.49 per our findings.

WHEREFORE, in view of the foregoing, the petition for review is found to be meritorious and the same is hereby **GRANTED with modification**, that only the amount of ₱476,636.49 should be refunded or credited in favor of petitioner pursuant to Section 106 of the Tax Code. Respondent is hereby ordered to refund or issue a Tax Credit Certificate in favor of petitioner in the amount of ₱476,636.49 representing creditable input tax erroneously applied to the alleged output VAT liability of petitioner for the year 1988.

No costs of suits.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13 Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals