REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ISOLA ASIA PACIFIC (PHILS.) INC.
(formerly Sumisola Corporation),
Petitioner,

- versus -

C.T.A. CASE NO. 6173

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 18 2003

x - x

DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P19,654,659.00 allegedly representing unutilized input value-added tax for the period July 1, 1998 to March 31, 2000.

The facts as borne out by the records and pleadings of the case are as follows:

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with address at the First Philippine Industrial Park, Sta. Anastacia, Santo Tomas, Batangas. It is engaged in the business of manufacturing and exporting of base materials for multi-layer printed circuit board and brominated resin (*Paragraph 4, Stipulation of Facts, page 56, CTA records*).

Petitioner is registered with the Securities and Exchange Commission and with the Philippine Economic Zone Authority (PEZA) as an Export Enterprise (*Paragraph 1, Stipulation of Facts, page 55, CTA records*). As an ecozone enterprise, petitioner availed of the fiscal incentive of income tax holiday *(TSN, Teddy A. Ditchella, July 11, 2001, pp. 10-13)*. granted under Republic Act No. 7916, otherwise known as the PEZA law, in relation to Book VI of the Omnibus Investments Code (*Executive Order No. 226*).

On April 3, 1998, it was registered with the Bureau of Internal Revenue as a value-added tax (VAT) taxpayer with Certificate of Registration bearing RDO Control No. 98-590-000269 (*Annex B, Petition for Review, page 9, CTA records*).

For the period July 1, 1998 to March 31, 2000, petitioner filed its quarterly Value-Added Tax Returns reflecting, among others, the following VAT input tax:

Period	Date Filed	Exhibit	VAT Input Tax Paid
3rd Qtr. 1998	07-26-99	A	P 1,878,035.33
4th Qtr. 1998	07-26-99	B	3,851,766.24
1st Qtr. 1999	07-26-99	C	6,176,989.66
2nd Qtr. 1999	07-26-99	D	6,934,379.69
3rd Qtr. 1999	10-25-99	E	789,682.86
4th Qtr. 1999	01-25-00	F	1,385,402.81
1st Qtr. 2000	04-25-00	G	173,646.01
Total			P 21,189,902.60
Less: 4th Qtr. 1999 adjustment			1,535,243.66
Net VAT input tax			P 19,654,658.94

The aforesaid returns were simultaneously amended on July 13, 2001, to reflect its alleged zero-rated sales of goods starting the third quarter of 1999, to wit:

Period	Date Filed	Exhibit	Zero Rated Sales	VAT Input Tax Paid
3rd Qtr. 1998	07-13-01	BB		P 1,878,035.33
4th Qtr. 1998	07-13-01	CC		3,851,766.24
1st Qtr. 1999	07-13-01	DD		6,176,989.66
2nd Qtr. 1999	07-13-01	EE		6,934,379.69
3rd Qtr. 1999	07-13-01	FF	P 69,017,185.14	789,682.86
4th Qtr. 1999	07-13-01	GG	199,716,267.00	1,385,402.21
1st Qtr. 2000	07-13-01	HH	209,314,277.84	173,646.01
Total			P 478,047,729.98	P 21,189,902.00
Less: 4th Qtr. 1999 adjustment[1]				1,535,243.66
Net VAT Input Tax				P 19,654,658.34

[1] Representing the difference between the input VAT carried over in the first quarter of 2000 as against the fourth quarter of 1999.

Petitioner alleged that the consideration for the above-listed sales were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas. Petitioner further avers that the accumulated input taxes are all attributable to its zero-rated sales and on the purchases of capital goods which have remained unutilized and unapplied against any output VAT.

On September 28, 2000, petitioner filed with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance, seven separate applications for tax credit/refund of excess input VAT on domestic purchases of goods and services for the period July 1, 1998 to March 31, 2000 in the total amount of P21,189,902.60 (*Paragraph 6, Stipulation of Facts, page 56, CTA records; Annex J, Petition for Review, pages 23 to 31, CTA records*).

On September 29, 2000, petitioner filed the instant Petition for Review in order to toll the running of the two-year prescriptive period under Section 229 of the Tax Code, as amended, in the lesser amount of P19,654,659.00.

In his Answer filed on October 27, 2000, respondent raised the following as Special and Affirmative Defenses:

> 3. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by respondent's Bureau;
>
> 4. Petitioner being allegedly registered with the Philippine Economic Zone Authority, is exempt from all local and national taxes, including, among others, the value-added tax, pursuant to Section 24 of Republic Act No. 7916, in relation to Section 103 of the Tax Code, as amended;
>
> 5. Since petitioner is not subject to VAT, its registration as a VAT taxpayer is erroneous, and it cannot claim for refund of the alleged VAT input taxes paid, pursuant to Sections 4.106-1 and 4.103-1 of Revenue Regulations No. 7-95;

6. The amount of P19,654,659.00 being claimed by petitioner as alleged unutilized VAT input tax paid for the period beginning the third quarter of 1998 to the first quarter of 2000 was not properly documented;

7. In an action for 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 claim for tax refund/credit;

8. Petitioner must show that it has complied with the provisions of Sections 204(c) and 229 of the Tax Code, as amended; and

9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).

On November 28, 2002, this case was submitted for decision after the parties filed their respective memorandum.

The following issues were jointly stipulated by the parties for resolution of the court:

1. Whether or not petitioner's export sales are zero-rated for VAT purposes;

2. Whether or not petitioner incurred input VAT in the amount of P19,654,659.00 for the period beginning the third quarter of 1998 to the first quarter of 2000;

3. Whether or not the alleged unapplied and unutilized input VAT paid by petitioner for the period beginning the third quarter of 1998 to the first quarter of 2000 are duly substantiated;

4. Whether or not petitioner has carried over to the succeeding taxable year/s the alleged creditable input VAT paid for the period beginning the third quarter of 1998 to the first quarter of 2000; and

5. Whether or not petitioner is entitled to the refund or tax credit in the total amount of P19,654,659.00 as alleged unapplied and unutilized input

VAT paid for the period beginning the third quarter of 1998 to the first quarter of 2000.

Before we address the foregoing stipulated issues, we will answer first the argument raised by respondent that petitioner, being a PEZA-registered enterprise, is exempt from VAT. Respondent maintained in his memorandum that petitioner is not entitled to the refund sought since the latter, being a PEZA registered enterprise, is exempt from paying any internal revenue tax, including the VAT, pursuant to Section 109(q) of the Tax Code, to wit:

> **Sec. 109.** ***Exempt Transactions.*** - The following shall be exempt from the value-added tax:
>
> xxx xxx xxx
>
> (q) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws, ***except those under Presidential Decree Nos. 66***, 529 and 1590; xxx (*Underscoring supplied*).

According to respondent, if an entity is registered with the PEZA, it is only liable for the 5% preferential tax on its gross income and it is exempt from the payment of any national internal revenue tax pursuant to Section 24 of Republic Act No. 7916 which provides:

> **Sec. 24.** ***Exemption from Taxes Under the National Internal Revenue Code.*** — Any provision of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu of paying taxes, five percent (5%) of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government. xxx"

We are not convinced.

This court had already settled such controversy in favor of the petitioner in a number of similar cases, which were subsequently affirmed by the Court of Appeals[2]. In the case of Commissioner of Internal Revenue vs. Hitachi Computer Products (Asia) Corp., CA GR SP No. 63340, promulgated on February 7, 2002, the Court of Appeals, in affirming this court's ruling, passed upon the issue in this wise:

> "The petitioner BIR Commissioner posits that transactions of ECOZONE or PEZA-registered enterprises, being exempt from internal revenue taxes under Sec. 24 of R.A. No.7916, fall under the phrase *"transactions which are exempt under special laws",* pursuant to Sec. 103 of the Tax Code, as amended, hence, are exempt from VAT. The petitioner further asseverates that inasmuch as HITACHI is exempt from VAT by virtue of the above referred provision, it is not allowed any tax credit on VAT input taxes paid on its purchases of goods and services alleged to be attributable to its zero-rated sales.
>
> We disagree.
>
> A careful reading of the very provision invoked by the petitioner elicits a conclusion antithetical to his claim. Apropos, the petitioner's assertion that the contested transactions of HITACHI are VAT exempt must be rejected.
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> As may be readily gleaned from the aforementioned proviso, while the Tax Code specifically excepted from the coverage of VAT transactions which are exempted under special laws, *those transactions made under Pres. Decree No. 66, among others, are deemed excluded and fall outside the umbrage of the said exemption.* Proceeding from the indisputable fact that HITACHI is registered with EPZA[3] under the provisions of Presidential

[2] Commissioner of Internal Revenue vs. Seagate Technology Philippines, CA GR SP No. 61189, June 18, 2001; Commissioner of Internal Revenue vs. Cebu Toyo Corporation, CA GR SP No. 60304, July 6, 2001; Commissioner of Internal Revenue vs. Toshiba Information Equipment, CA GR SP No. 59106, September 27, 2001; Commissioner of Internal Revenue vs. Seagate Technology, CA GR SP No. 66093, May 27, 2002; and Commissioner of Internal Revenue vs. Read-Rite Philippines, Inc., CA GR SP No. 62725, June 19, 2002.

[3] Now the Philippine Economic Zone Authority or PEZA.

Decree No. 66[4], it behooves Us to surmise that the latter could not be deemed covered by the exemption enumerated under Section 103.

Anent the exemption embodied under Sec. 24, R.A. 7916, the ratiocinations conveyed by the CTA in its decision are pertinent and accurate, viz:

> "On this point, we agree with the Respondent (petitioner herein) that if an entity is registered with PEZA as an ecozone enterprise and is remitting 5% of its gross income to the national government, it is exempt from the payment of VAT. However, We do not agree that the aforequoted provisos are applicable in the case at bar. First, Petitioner is under income tax holiday and is not remitting 5% of its gross income to the national government xxx.
>
> It bears stressing that under Section 23 of Republic Act No. 7916, two different incentives are granted to an ecozone enterprise, to wit:
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> *SEC. 23. Fiscal Incentives.* - Business establishments operating within the ECOZONE shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided for under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987.
>
> Based on the aforequoted Section 23 of RA 7916, a PEZA registered enterprise has the option to choose between two sets of fiscal incentives. One, is that provided for under Presidential Decree No. 66, as amended, and Section 24 of RA 7916 which includes the 5% preferential tax on gross income earned which is in lieu of national and local taxes; and second, as those provided for under Book VI of Executive Order No. 226, including but not limited to an income tax holiday (ITH) of 4 to 6 years depending on whether or not an entity is registered as a pioneer or non-pioneer enterprise. If an ecozone enterprise chooses the 5% preferential tax, it is exempt from payment of all national and local taxes. However, if an ecozone enterprise chooses the income tax holiday, it is only exempt from payment of the income tax but still subject to other national internal revenue taxes including the value-added tax.

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[4] Now Republic Act No. 7916.

> It must be pointed out that an ecozone enterprise cannot avail of these two sets of fiscal incentives at the same time. This was explained by the Bureau of Internal Revenue in VAT Ruling Nos. 037-98; 043-98; 027-99; and 063-99."

Clearly, the above pronouncement is on all fours with the case at bar. As proven, petitioner is enjoying an income tax holiday during the year 1999; hence, it is only exempt from payment of the income tax but still liable for the other national internal revenue taxes including the VAT. In fact, in the recent VAT Ruling No. 047-02 dated August 5, 2002, the then Commissioner Bañez ruled that a VAT-registered ecozone enterprise enjoying the income tax holiday under E.O. 226 is subject to value-added tax. The ruling even revoked all previous rulings of the bureau which are inconsistent with the said pronouncement. It follows then that petitioner is also not exempt from the payment of input VAT shifted to it by a VAT registered enterprise, it being liable to value-added tax.

We proceed to the remaining issues.

Petitioner anchors its claim on Section 112(A) and (B) of the 1997 Tax Code which provide:

> **Section 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 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 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.

As regards the aforequoted Section 112(A), petitioner should prove that (1) it is a VAT-registered person; (2) its sales are zero rated; (3) its administrative claim for refund was 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 rules and regulations of the Bangko Sentral ng Pilipinas.[5] With respect to Section 112(B), the following requisites must be proven: (1) that petitioner is a VAT-registered person; (2) the input taxes claimed were paid on capital goods; (3) the input taxes have not been applied against its output tax liability; and (4) the administrative claim for refund was seasonably filed.[6]

We shall tackle the foregoing requisites jointly.

During the pre-trial conference, the parties had already stipulated that petitioner is a VAT-registered person. It was also established that the claims for refund, both in the

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[5] Read-Rite Philippines, Inc. (formerly Sunward Technologies Phils., Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 5659, September 29, 2000.

[6] Air Liquide Philippines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case No. 5652, July 6, 2000.

administrative and judicial levels, were filed within the two year period reckoned from the respective dates of filing of the original quarterly VAT returns.[7] Petitioner filed its claims for refund with the Department of Finance on September 28, 2000, and this petition for review, on September 29, 2000, both well within the two-year period reckoned, at the earliest, from July 26, 1999, the date when petitioner filed its original 1998 third quarterly VAT return (*Exhibit A*). Also, the court was able to ascertain that petitioner did not utilize the input taxes sought to be refunded during the period involved or in the succeeding taxable quarters. In fact, the accumulated input VAT as of the second quarter of 2001 in the sum of P31,175,312.38 (*Exhibit QQ),* which included the amount subject of the instant claim for refund, was no longer carried over to the third quarter of 2001 as evidenced by the amended 2001 third quarterly VAT return (*Exhibit III*). Furthermore, to prove that its sales were zero-rated, petitioner presented the various export sales documents such as sales invoices, bills of lading, airway bills, delivery packing notes and bank certification of foreign currency inward remittances (*Exhibits U-1 to U-162, V-1 to V-341, W-1 to W-364, X-1 to X-234, Y-1 to Y-212, Z-1 to Z-295, and AA-1 to AA-167).* The said documents were examined by the commissioned independent CPA pursuant to CTA Circular 1-95, as amended. In his report dated August 1, 2001 (*Exhibit J*), the following findings were arrived at:

> Based on the procedures performed, we present below our findings and observations:
>
> **There are export sales not supported by export documents (i.e., bills lading or airway bills).**

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[7] Resolution, Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5296, July 20, 1998.

Findings	*Exhibit*	*Amount (In Pesos)*
Third Quarter 1999 (July 1 to September 30, 1999)	IIA1	P 21,012,026.06
Fourth Quarter 1999 (October 1 to December 31, 1999)	IIA2	40,234,654.95
First Quarter 2000 (January 1 to March 31, 2000)	IIA3	18,293,717.30
Total		**P 79,540,398.31**

We noted also that there were sales included in the "Schedule of Export Sales" which were sold/invoiced to PEZA registered enterprises (i.e., Rex Technologies Phils., Synertronix Inc., Cambridge Electronics Corp., Daeduck Philippines Inc., Epic Electronics Ind. Corp., Japan Circuit Technology Corp. and NEC Components Philippines, Inc.). Such deliveries are supported by "Delivery Packing Note". Below is a summary of these deliveries:

Findings	*Exhibit*	*Amount (In Pesos)*
Third Quarter 1999 (July 1 to September 30, 1999)	IIB1	P 21,574,443.60
Fourth Quarter 1999 (October 1 to December 31, 1999)	IIB2	29,140,722.17
First Quarter 2000 (January 1 to March 31, 2000)	IIB3	33,104,780.56
Total		**P 83,819,946.33**

Likewise, the independent CPA examined the voluminous VAT sales invoices and official receipts (*Exhibits L-1 to L-41, M-1 to M-15, N-1 to N-71, O-1 to O-489, P-1 to P-489, Q-1 to Q-370, R-1 to R-237*) supporting the claimed input VAT. This resulted to the following observations:

There are input taxes claimed on purchases of goods and services which are not properly substantiated for VAT purposes.

Findings	Amount of Disallowed Input Taxes
1. Domestic purchases of goods supported by documents other than invoices (i.e., cash register, supermarket receipt, delivery receipt)	P 523.36
2. Domestic purchases of services supported by documents other than official receipts (i.e., sales invoice, billing invoice, cash register)	429,097.20
3. Domestic purchase of service supported by an OR with pre-printed TIN-NON-VAT	22,738.64
4. Domestic purchase of services supported by a provisional receipt (PR)	3,181.82
5. Erroneous computation of input tax credits (amount claimed is greater than those indicated in invoice/OR)	8,919.83
6. Domestic purchases of services supported by photocopied Documents	7,601.65
7. Domestic purchases of goods without supporting documents	98,895.46
8. Domestic purchases of services without supporting documents	5,478,767.41
9. Domestic purchase of services supported by an OR with pre-printed TIN only with no date of printing	1,454.55
10. Input tax claimed on purchase of a motor vehicle with an engine displacement of more than 2000cc	154,545.36
TOTAL	**P 6,205,725.28**

In addition, the Company has purchases of services from El Cielito Inn supported by official receipts of First Sta. Rosa Hotel Corp. with a total input VAT amounting to P71,937.82. Based on the Certificate of Registration with the Department of Trade and Industry (DTI), the name El Cielito Inn is the business name registered by First Sta. Rosa Hotel Corp.

After an evaluation of the above report together with the evidence presented, the court finds the same to be in order. Thus, petitioner should be disqualified from claiming input VAT which were not properly documented for VAT purposes in the amount of P6,205,725.28. However, the notation of the independent CPA with respect to El Cielito official receipts would not affect the entitlement of petitioner to the 10% input VAT because the documents presented complied with the VAT invoicing requirements provided for under Section 113 of the National Internal Revenue Code and Section 4.108.1 of Revenue Regulations No. 7-95. Thus, in view of the above findings of the independent CPA, the court deems it proper to recompute the allowable input VAT to be granted to petitioner.

A comparison of the requisites for a claim for refund and Section 112(A) would show that under Section 112(B) of the Tax Code, the input taxes sought to be refunded on capital goods need not be attributable to petitioner's zero-rated sales unlike refund of input VAT on goods and services covered in Section 112(A) of the same code. Records show that petitioner has a total capital goods in the sum of P6,261,719.69 (*Exhibits GGG, GGG-1 to GGG-5*) which, upon verification, were all substantiated by VAT invoices and/or official receipts. Since petitioner was able to prove its compliance with the requirements of Section 112(B) as earlier enumerated, it is entitled to the refund of input tax on purchases of capital goods. However, it is different with regard to the refund of input tax attributable to zero-rated sales. Petitioner must prove that it has zero-rated sales validly supported by export documents. In the report of the commissioned independent CPA, out of the total amount of alleged zero-rated sales of P487,047,729.98, the amount of P163,360,344.64 [*the sum of P79,540,398.31 and P83,819,946.33 noted in the CPA report (Exhibit J)*]. was not properly documented for VAT purposes. Therefore, the court deemed it proper to exclude the input VAT credit proportionate to the sales which failed to qualify as zero-rated for VAT refund purposes, to wit:

Total input VAT claimed	P19,654,658.40
Less: Unsupported input VAT	6,205,725.28
Validly supported input VAT	P13,448,933.12

Less: Input VAT on capital goods	6,261,719.69
Supported input VAT not attributable to capital goods	P 7,187,213.43
Multiply by the rate of unsupported zero-rated sales (P163,360,344.64÷P487,047,729.98)	33%
Input VAT proportionate to the unsupported zero-rated sales	P 2,371,780.43

Anent Section 3 of Revenue Memorandum Circular No. 74-99 dated October 15, 1999, which provides:

> **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:
>
> (a) **Sale of goods (i.e., merchandise).** — This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916, in relation to ART. 77(2) of the Omnibus Investments Code.
>
> (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:
>
> (a) **Sale of goods (i.e., merchandise).** — This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916 in relation to ART. 77(2) of the Omnibus Investments Code.
>
> (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 suppliers from the Customs Territory, shall be treated effectively subject to the 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 the issuance of this Circular*. (*Underlining supplied*).

the court is convinced that the same is not a bar to petitioner in seeking for the refund of input VAT paid to its suppliers of goods and services from the customs territory (*VAT Ruling No. 040-02*). Since petitioner is subject to VAT, it is liable to input VAT shifted to it by its suppliers of goods and services which are supported by valid VAT invoices and/or official receipts. And under Section 112(A) and (B) of the Tax Code, any excess or unutilized input VAT may be refunded to it.

Revenue Memorandum Circular No. 74-99, which aimed to consolidate and harmonize all the pertinent tax laws and their corresponding implementing rules and regulations in respect of sales of goods, property and service to and from the Ecozones, cannot bind the court on interpretation of the law. The administrative interpretation of the law is at best merely advisory, for it is the courts that finally determine what the law means (*Peralta vs. Civil Service Commission, 212 SCRA 425 (1992); cited in Agpalo, Ruben E. Statutory Construction, Third Edition (1995), page 18*).

In sum, petitioner is entitled to the refund of input VAT attributable to its zero-rated sales and to input VAT paid on capital goods, computed as follows:

Input VAT on capital goods	P 6,261,719.69
Input VAT attributable to zero-rated sales	13,392,939.31
Total input VAT claimed	P19,654,659.00
Less: Disallowances	
a. Unsupported input VAT per CPA report	P 6,205,725.28
b. Input VAT proportionate to unsupported zero-rated sales	2,371,780.43
Total	P 8,577,505.71
Total amount refundable	P11,077,153.29

WHEREFORE, in view of the foregoing, the petition for review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED to REFUND or, in the alternative, ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of P11,077,153.29 representing unutilized input VAT for the period July 1, 1998 to March 31, 2000.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

JUANITO C. CASTANEDA, JR.
Associate Judge

LOVELL R. BAUTISTA
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