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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AIR LIQUIDE PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5591

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondents.

Promulgated:

SEP 14 2000

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DECISION

This is a petition seeking for the refund or issuance of a tax credit certificate in the amount of P26,666,642.83 allegedly representing unutilized creditable input value added tax (VAT) arising from Petitioner's domestic purchases of goods and services and importation of capital goods during the first quarter of 1996.

The antecedent facts are as follows:

Petitioner is a domestic corporation organized and existing under the laws of the Republic of the Philippines. It is engaged in the manufacture of industrial gases and registered with the Bureau of Internal Revenue as a VAT taxpayer with Certificate of Registration No. 95-044-002738 dated October 9, 1995 (Exh. A)

On April 19, 1996, Petitioner filed its VAT return for the quarter ended March 31, 1996 (Exh. B), reflecting domestic purchases of goods/services in the amount of P32,494,832.90 and importation of goods amounting to P242,408,436.92, with the corresponding VAT input taxes of P2,966,962.04 and P24,240,843.00, respectively (Exhs. B-2 and B-3). But since Petitioner was supposedly still on its pre-operating stage at the time, its VAT return for the said quarter showed no output tax.

Thus, pursuant to Revenue Audit Memorandum Order No. 2-93, Petitioner filed on March 30, 1998, with 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 quarter ended March 31, 1996 in the amount of P26,666,642.83 (Exh. C).

As there was no immediate action on Petitioner's application, the latter filed with this Court a Petition for Review on March 31, 1998 against the Commissioner of Internal Revenue, which Petitioner amended on August 5, 1998, to implead the Commissioner of Customs as an additional party Respondent.

In his Answer, Respondent Commissioner of Internal Revenue claimed that:

> 4. The petition states no cause of action as it does not alleged (sic) the dates when the taxes sought to be refunded were actually paid (Manufacturer's Bank and Trust Co., etc. vs. Commissioner of Internal Revenue, CTA Case No. 1659, November 29, 1965);
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> 5. The judicial action for the refund of taxes paid before March 31, 1996 had already prescribed;
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> 6. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (*Commissioner of Internal Revenue, vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35);*
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> 7. It is incumbent upon petitioner to show compliance with the provision of Section 230 of the Tax Code, as amended;
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> 8. In an action for tax refund, the burden is upon the taxpayer to prove that he is entitled to the refund and failure to sustain the same is fatal to the action for refund.

On his part, Respondent Commissioner of Customs raised the following Special and Affirmative Defenses:

> 4. The alleged claim for refund is still subject to administrative routinary investigation and/or examination by the respondent's Bureau;
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> 5. The taxes so claimed have been paid and collected in accordance with law and regulations, hence not refundable;
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> 6. Claims for refund are construed strictly against the claimant for the same partakes of the nature of an exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95).* Taxation is an inherent power of the State and taxes are considered the lifeblood of the nation. It is therefore incumbent upon petitioner to prove by express provision of law that it is entitled thereto. Failure on the part of the petitioner to do so, all doubts as to the regularity of the claim for refund must be resolved in favor of the respondent;
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> 7. Moreover, it is incumbent upon petitioner to prove that it has complied with the provisions of Section 230 of the Tax Code;

The issues, therefore, that We are tasked to resolve are: first, whether or not the judicial action for the refund of taxes paid before March 31, 1996 has prescribed; and second, whether or not Petitioner is entitled to the refund sought on the basis of the evidence presented.

It is to be noted that this case was originally submitted for decision on September 28, 1999 pursuant to this Court's resolution dated September 24, 1999 (see page 151, CTA records). However, on December 7, 1999, Petitioner filed a Motion for Leave of Court to Reopen the Case and Allow the Presentation of Additional Evidence. This motion was denied by this Court in a Resolution dated January 31, 2000 (see pages 160 to 161, CTA records). Subsequently, Petitioner again filed an Omnibus Motion on February 22, 2000, seeking among others, for the reconsideration of this Court's denial to reopen the case for the presentation of additional evidence. On April 14, 2000, this Court once again denied the Motion (see pages 181 to 183, CTA records). In a persistent effort to have the case reopened, Petitioner filed another Motion for Reconsideration on May 12, 2000. This Court, to finally put an end to the seemingly endless Motions for Reconsideration filed by Petitioner, denied the motion for reconsideration filed on May 12, 2000 and submitted the case for decision on July 20, 2000 (see CTA resolution dated July 20, 2000).

We now proceed to the resolution of the issues presented.

Anent the first issue, We rule in the negative.

In this Court's resolution in CTA Case No. 5296 entitled Atlas Consolidated Mining and Development Corporation promulgated last July 20, 1998. We ruled that:

> "xxx the two year period should be counted from the date of filing of the corresponding VAT quarterly return which is within twenty (20) days after the close of each taxable quarter. This will harmonize Section 106 with Section 230 of the Tax Code which was interpreted by the Supreme Court in the cases of Commissioner of Internal Revenue vs. TMX Sales Inc. and the Court of Appeals, GR No. 83736, dated January 15, 1992; and ACCRA Investments Corporation vs. Commissioner of Internal Revenue, 204 SCRA 957, that the two (2) year period should be counted from the filing of the final income tax return, because it is only during that date that the exact tax liability or refundability of tax can be determined. In the same manner, it is only after the filing of the quarterly VAT return that we can determine the VAT liability or refundability of VAT. It should be noted that the basic requirement is that VAT refund can only be granted to the extent that the input taxes have not been applied against output tax. All these things can only be determined if a return is filed. It is logical therefore, to conclude that the two year period should not immediately be counted from the close of the quarter but from the date of filing of the VAT return.
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> Section 110 (b) of the National Internal Revenue Code, as amended, provides:
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> "***Section 110. Return and payment of value-added tax***. –a) Where to file the return and pay the tax- x x x x
> b) Time for filing of return and payment of tax. –<u>The return shall be filed and the tax paid within 20 days</u>

> following the end of each quarter specifically prescribed for a VAT registered person under regulations to be promulgated by the Secretary of Finance: Provided, however, that any person whose registration is cancelled in accordance with paragraph (e) of Section 107 shall file a return within 20 days from the cancellation of such registration. (Underlining supplied)
>
> Based on such provision, it is clear that the filing of the quarterly VAT return should be made within 20 days after the close of the calendar quarter. It is from this point that the two-year prescriptive period shall begin to run.

In the case at bar, Petitioner timely filed its VAT return for the first quarter of 1996 on April 19, 1996. Thus, counting from the said date, the last day within which Petitioner could validly file a judicial action was on April 19, 1998. Clearly, when Petitioner elevated its petition for review before us on March 31, 1998, prescription had not set in.

We proceed to the second issue.

To support its case, Petitioner presented the following in evidence:

EXHIBIT	**DESCRIPTION**	**PURPOSE**
"A"	BIR Certificate of Registration No.95-044-00738 issued to Petitioner by the Bureau of Internal Revenue RDO No. 44 -Taguig-Pateros	To prove that Petitioner is a registered Value-Added Tax Taxpayer with the respondent's Bureau of Internal Revenue;
"B"	Value-Added Tax Return (BIR Form No. 2550) of Petitioner for the First Quarter of 1996	To prove that Petitioner filed its Value-Added Tax Return for the First quarter of 1996 with the Bureau of Internal Revenue;
"C"	Application for Tax Credit/Refund of Value Added Tax Paid (BIR Form No. 2552) of Petitioner for the period January, 1996 to March, 1996 in the amount of P26,666,642.83	To prove that petitioner filed its application for tax credit/refund of the unapplied creditable value-added tax inputs for the period January, 1996 to March, 1996 with the Bureau of Internal Revenue

1354

"D"	Value-Added Tax Return (BIR Form No. 2550) of Petitioner for the Second Quarter of 1996	To prove that Petitioner has no output Value-Added Tax liability for the Second Quarter of 1996 against which to apply its creditable value-added tax inputs for the first Quarter of 1996
"E"	Folder representing the supporting documents on the tax credit application of Petitioner for the Quarter ended March 31. 1996 consisting of 275 documents	To prove the documentary evidence relative to the payment of the creditable value added tax inputs of Petitioner for the quarter ended March 31, 1996 consisting of invoices and official receipts on its domestic purchases of goods/services and importations of goods for the period;
"F"	SGV letter dated March 1, 1999 addressed to the Court of Tax Appeals containing the report on the verification of the creditable input taxes of petitioner for the First Quarter of 1996	To prove the report of the independent certified public accountant who has been commissioned by the Honorable Court on the verification of the creditable value-added tax inputs of Petitioner arising from its domestic purchases of goods/services and importations of goods for the First Quarter of 1996

On the other hand, Respondents Commissioner of Internal Revenue and Commissioner of Customs submitted this case for decision without presenting any evidence, the latter however submitted his memorandum.

After a careful examination of the documents presented, We find against Petitioner. Note that Petitioner offered its VAT Return for the second quarter of 1996 to prove that it has no output VAT liability for the second quarter of 1996 against which its input taxes paid during the first quarter may be applied. But while this Court is convinced that Petitioner was not able to apply its first quarter input tax payments during the second quarter, the same return disclosed that Petitioner again opted to carry over to the succeeding quarter not only its input tax payments for the second quarter but also its input tax payments from the previous quarter, the subject of the instant claim for refund. Unfortunately, however, Petitioner failed to show its returns for the succeeding quarters in order for us to ascertain that, indeed, its input tax payments made for the first quarter of 1996 was never applied against any of its tax liabilities for the succeeding quarters.

In CTA Case Nos. 5187 and 5199 promulgated last October 2, 1997 and cited in CTA Case No. 5304 promulgated on January 20, 1998, all entitled AMI Philippines, Inc. versus Commissioner of Internal Revenue, this Court ruled:

> "We note that petitioner's excess VAT credits (input taxes) beginning from the last quarter of 1992 up to the last quarter of 1993 have been cumulatively added and forwarded to succeeding quarters as shown under box no. 16 of the respective VAT return for each quarter involved (Exhibits "B" to "B-4). Thus, the input taxes being claimed by the petitioner have been forwarded to the succeeding first quarter of 1994. At this point, We cannot ascertain whether or not said input taxes have been applied to petitioner's output tax liability for the first quarter of 1994 and other succeeding quarters thenceforth. Petitioner has not introduced any evidence to prove this point. It could have submitted one of its succeeding VAT returns right after it decided to file an application for refund and reflecting under box 15 thereof that it had deducted the amount being claimed for refund. Unless shown, there is really nothing to refund because the input taxes being claimed have actually been elected by the petitioner to be forwarded as excess VAT credits to the succeeding first quarter of 1994. To grant petitioner's claim for refund, without proof of deduction of the corresponding amount, would be dangerous and tantamount to granting twice the refund herein sought to be refunded, to the prejudice of the Government." (Underscoring supplied)

WHEREFORE, in view of all the foregoing, Petitioner's claim for refund or issuance of a tax credit certificate of unutilized input VAT payments during the first quarter of 1996 is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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