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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TOKUMI ELECTRONICS PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5558

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAR 03 2000

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DECISION

Before Us for consideration is a Petition for Review filed by the Petitioner on October 20, 1997, seeking for a refund of the amount of TWO MILLION FOUR HUNDRED THIRTY SEVEN THOUSAND EIGHT HUNDRED SIX AND 16/100 PESOS (PhP2,437,806.16) representing alleged unutilized input taxes paid by the Petitioner on its local purchases of goods and services directly attributable to its zero-rated sales for the period July 1, 1995 to December 31, 1995.

The antecedent facts of the case giving rise to the controversy at bar are as follows:

Petitioner is a domestic corporation organized and existing under and by virtue of the laws of the Republic of the Philippines. It is a VAT-registered entity (Exhs. A & C) engaged primarily in the business of manufacturing, exporting buying and selling at wholesale of speakers, assemblies, microphones, headphones and other electronic goods of similar nature. Petitioner is also registered with the Export Processing Zone Authority ("EPZA") having been issued EPZA Certificate of Registration No. 92-024.

Records reveal that on October 20, 1995 and January 22, 1996, Petitioner filed with the Bureau of Internal Revenue its VAT returns for the third and fourth quarters of 1995, respectively, reporting a total amount of zero-rated export sales of P379,350,941.94 and total input tax payments of P2,437,806.16 on local purchases directly attributable to said sales broken down as follows:

			Input VAT		
1995	Exh.	Zero-rated Sales	Carried over From previous quarter	On purchases this quarter	Carried over to subsequent Quarter
3rd qtr	D	P 200,268,423.02	P 1,812,194.28	P 1,120,518.09	P 2,932,712.37
4th qtr	E	179,082,518.92	2,932,712.37	1,317,288.07	4,250,000.44
Total		P 379,350,941.94		P 2,437,806.16	

As a VAT-registered entity and with export sales that were paid for in acceptable foreign currency inwardly remitted to the Philippines and accounted for in accordance with existing regulations of the Bangko Sentral ng Pilipinas (BSP), Petitioner contends that the said export sales are not subject to 10% value added tax but are subject to 0% pursuant to Section 100(a)(2)(A) of the 1995 National Internal Revenue Code.

For having erroneously paid the aforesaid VAT input taxes, and having no VAT output tax liability during the period July 1, 1995 to December 31, 1995 and in any succeeding quarter, Petitioner claims that it is entitled to refund pursuant to Section 4.102-2 of Revenue Regulations No. 7-95 and Section 106(b) of the NIRC which reads, thus:

> "**Section 4.100-2.** ***Zero-rated sales.*** A zero-rated sale by a VAT registered person, which is a taxable transaction for VAT purposes, shall not

result in any output tax. However, the input tax on his purchases of goods, properties or services related to such zero-rated sale shall be available as a tax credit or refund in accordance with these regulations." (Rev. Reg. 7-95)

"**Section 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."

Consequently, on October 17, 1997, Petitioner filed with the Bureau of Internal Revenue an administrative claim for refund of its unutilized input VAT payments attributable to its zero-rated sales for the period July 1 to December 31, 1995 amounting to P2,437,806.16 (Exhibit "J").

There being no affirmative response from the Respondent, and the two-year prescriptive period about to lapse, Petitioner elevated its grievance to this Court on October 20, 1997.

In his Answer to the Petition for Review, Respondent interposed the following Special and Affirmative Defenses, to wit:

3. Petitioner's right to claim refund has partially, if not totally, prescribed;

4. Petitioner's claim for refund is still pending administrative investigation and evaluation;

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

6. In an action for tax refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the corresponding action;

7. Claims for refund are strictly construed against claimants since they partake of the nature of an exemption from taxation.

The issue in this case is whether or not Petitioner was able to substantially prove its entitlement to a refund.

The Court, after a thorough evaluation and painstaking scrutiny of the records of this case, conformably with existing laws and jurisprudence on the matter, is of the position, that the claim for refund must be granted.

A perusal of all the evidence presented reveals that petitioner has complied with all the requirements for zero rating of its sales set forth under Section 100(a)(2) of the Tax Code which provides, thus:

> **Section 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 or properties, 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.
>
> (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).

In the course of the proceeding, Petitioner was able to prove that it is a VAT-registered entity having been issued Value-Added Tax Registration Certificate No. 001-504-637-V (Exh. C). As shown by its Summary Export Sales, export invoices, airway bills, bills of lading and RCBC credit memos (Exhs. P, Q, S to S-1775, inclusive) covering the period July 1 to December 31, 1995, the period covered by this petition, there is no squabble that the Petitioner actually made export sales in the amount of P378,802,543.04 which were paid for in acceptable foreign currency inwardly remitted and accounted for in accordance with Bangko Sentral ng Pilipinas regulations. Although Petitioner's total reported zero-rated export sales of P379,350,941.94 in its 1995 third and fourth quarterly VAT returns was over by P548,398.90 as against its actual export sales of P378,802,543.04, it does not alter the fact that its sales are zero-rated.

However, Petitioner was only able to overcome the burden of proof of excess input VAT in the amount of P1,676,017.24 as this is the amount ascertained and verified by the Court to be the correct refundable amount to the petitioner, properly substantiated and supported by documents in accordance with the existing VAT law.

After verification and examination of the accuracy of Petitioner's claim for refund, Punongbayan and Araullo certified in its report that the total amount of P682,198.26 was not supported by Petitioner's supplier's invoices/official receipts, thus must be disallowed:

	Reason for the Disallowance	Exh.	Amount
a.)	Purchases not in the account of Tokumi Electronics Philippines, Inc.	O-1	P 3,095.86
b.)	Purchases prior to the period covered in the application	O-17	403,741.64
c.)	Invoices/Official Receipts were not on file and could no longer be located	O-18	14,390.10
d.)	Invoices/Official Receipts do not indicate the VAT registration number of the supplier or the VAT registration number was only stamped	O-23	225,414.46
e.)	Invoices/Official Receipts do not show the BIR permit number of the printer	O-24	3,427.53
f.)	Payment of services for which Tokumi Electronics Phils. Inc received provisional receipts or acknowledgement receipts only	O-25	22,234.30
g.)	No machine validation on billing statements for services availed by Tokumi Electronics Phils. Inc. The machine validation is required for the billing statements to serve as official receipts.	O-28	9,894.37
	Total:		P 682,198.26

Likewise, in addition to the aforementioned disallowance, this Court finds the amount of P79,590.66 as not properly substantiated for not complying with the invoicing requirements and the prescriptive period, broken down as follows:

	Reason for the Disallowance	Amount
1.)	Reported twice	P 629.00
2.)	Not in the name Tokumi Electronics Philippines, Inc.	439.35
3.)	Not within the period of claim	5,259.69
4.)	Overstatement of reported invoice amount	103.72
5.)	Without Invoice/Official Receipt but only supported by a statement of account	17,052.33
6.)	Without supporting documents	3,475.44
7.)	Invoice/Official Receipt without TIN	43.18
8.)	Discrepancy between amount of input taxes per vat Return & amount of input taxes per summary	52,587.95
	Total:	P 79,590.66

As earlier adverted to, We are persuaded to extend the relief sought by Petitioner but only up to the amount of P1,676,017.24 after considering the above findings and the fact that the said excess input tax was never applied against any output tax liability of the

Petitioner for the third and fourth quarters of 1995 and even in the succeeding quarters as evidenced by its quarterly VAT returns (Exhs. D, E & T to W, inclusive), computed as follows:

Amount of Claim (Exhs. D, E & J)			P 2,437,806.16
Less: Disallowances			
a.) Per Punongbayan & Araullo's Findings (Exh. L)			
1.) Purchases not in the account of Tokumi Electronics Philippines, Inc. (Exh. O-1)	P 3,095.86		
2.) Purchases prior to the period covered in the application (Exh. O-17)	403,741.64		
3.) Invoices/Official Receipts were not on file and could no longer be located (Exh. O-18)	14,390.10		
4.) Invoices/Official Receipts do not indicate the VAT Registration number of the supplier or the VAT registration number was only stamped (Exh. O-23)	225,414.46		
5.) Invoices/Official Receipts do not show the BIR Permit number of the printer (Exh. O-24)	3,427.53		
6.) Payment of services for which Tokumi Electronics Phils. Inc. received provisional receipts or or acknowledgement receipts only (Exh. O-25)	22,234.30		
7.) No machine validation on billing statements for services availed by Tokumi Electronics Phils. Inc. The machine validation is required for the Billing statements to serve as official receipts (Exh.O-28)	9,894.37	P682,198.26	
b.) Per Court's Further Verification (Annex A)			
1.) Reported twice	P 629.00		
2.) Not in the name Tokumi Electronics Philippines, Inc.	439.35		
3.) Not within the period of claim	5,259.69		
4.) Overstatement of eported invoice amount	103.72		
5.) Without Invoice/Official Receipt but only supported by a statement of account	17,052.33		
6.) Without supporting documents	3,475.44		
7.) Invoice/Official Receipt without TIN	43.18		
8.) Discrepancy between amount of input taxes per vat Return & amount of input taxes per summary	52,587.95	79,590.66	761,788.92
Amount Refundable			P 1,676,017.24

WHEREFORE, in the light of all the foregoing, the petition is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a TAX CREDIT

CERTIFICATE to herein Petitioner in the amount of ONE MILLION SIX HUNDRED SEVENTY SIX THOUSAND SEVENTEEN PESOS and 24/100 (P1,676,017.24), representing the latter's input VAT for the period July 1 to December 31, 1995.

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

TOKUMI ELECTRONICS PHILIPPINES, INC.
vs. COMMISSIONER OF INTERNAL REVENUE
CTA CASE NO. 5558
SCHEDULE OF COURT'S DISALLOWANCES
ON CLAIMED INPUT TAXES -
3rd & 4th QUARTERS 1995

Supplier	Month	Exh.	Invoice Number	O.R. Number	Invoice Amount	Disallowed Input Taxes Claimed - 1995 3rd Quarter	4th Quarter	Total
1.) Not in the name of Tokumi Electronics Phils. Inc.								
Cargohaus	Sep-95	R-982	239691	142964	P 188.98	P 17.18	P	P 17.18
Cargohaus	Nov-95	R-1475	239625	142967	376.20			
Cargohaus	Nov-95	R-1618	254780	153802	1,010.58			
Cargohaus	Nov-95	R-1620	253541	152748	341.64			
Cargohaus	Nov-95	R-1624	254778	153803	266.51			
Cargohaus	Nov-95	R-1626	254781	153801	618.69			qa
Cargohaus	Nov-95	R-1628	256115	154916	2,030.28			
					P 4,643.90		422.17	422.17
					subtotal	**P 17.18**	**P 422.17**	**P 439.35**
2.) Not within the period of claim								
Cargohaus	Jul-95	R-296	216297	127013	P 362.05			
Cargohaus	Jul-95	R-297	210720	123221	1,018.49			
Cargohaus	Jul-95	R-298	210721	123222	663.05			
Cargohaus	Jul-95	R-299	215005	125962	228.33			
Cargohaus	Jul-95	R-300	208067	121847	597.99			
Cargohaus	Jul-95	R-301	208066	121846	166.56			
Cargohaus	Jul-95	R-302	210718	123219	594.28			
Cargohaus	Jul-95	R-303	208068	121848	540.90			
Cargohaus	Jul-95	R-304	215007	125964	1,184.81			
Cargohaus	Jul-95	R-305	215006	125963	817.45			
Cargohaus	Jul-95	R-306	217049	127526	1,505.95			
Cargohaus	Jul-95	R-307	217050	127527	282.20			
Cargohaus	Jul-95	R-308	217048	127525	3,691.78			
K Line Air Service Phils., Inc.	Jul-95	R-309	10821	10821	500.00			
K Line Air Service Phils., Inc.	Jul-95	R-310	10993	10993	500.00			
K Line Air Service Phils., Inc.	Jul-95	R-311	10545	10545	500.00			
K Line Air Service Phils., Inc.	Jul-95	R-312	10457	10457	500.00			
PAC-Atlantic Lines	Jul-95	R-149, R-150	0015428	29744	1,183.60			
Pair Cargo & Warehousing	Jul-95	R-313	429579	429579	246.55			
Pair Cargo & Warehousing	Jul-95	R-314	429403	429403	1,331.22			
Pair Cargo & Warehousing	Jul-95	R-315	432944	432944	144.43			
Pair Cargo & Warehousing	Jul-95	R-316	428992	428992	1,053.80			
Pair Cargo & Warehousing	Jul-95	R-317	436343	436343	228.47			
Pair Cargo & Warehousing	Jul-95	R-318	436342	436342	614.35			
Pair Cargo & Warehousing	Jul-95	R-319	437749	437749	145.20			
Pair Cargo & Warehousing	Jul-95	R-320	436341	436341	302.39			
Phil. Skylanders, Inc.	Jul-95	R-321	068513	068513	353.87			
Phil. Skylanders, Inc.	Jul-95	R-322	075489	075489	640.42			
Phil. Skylanders, Inc.	Jul-95	R-323	075001	075001	662.64			
Phil. Skylanders, Inc.	Jul-95	R-324	071701	071701	1,365.54			
Phil. Skylanders, Inc.	Jul-95	R-325	075496	075496	1,429.89			
Philcopy Corporation	Jul-95	R-186 to R-188	16641	97617	34,500.00			
					P 57,856.61	P 5,259.69	P	P 5,259.69
					subtotal	**P 5,259.69**	**P -**	**P 5,259.69**
3.) Overstatement of reported invoice amount								
OOCL Phils. Inc.	Dec-95	R-1992, R-1993	8060595	7969				
			Repórted Amount		P 10,610.45			
			Actual Amount		9,645.50			
			Overstatement		P 964.95			
Overseas Agency Services	Dec-95	R-2146		57209				
			Reported Amount		P 1,936.00			
			Actual Amount		1,760.00			
			Overstatement		P 176.00			
					P 1,140.95	P	P 103.72	P 103.72
					subtotal	**P -**	**P 103.72**	**P 103.72**

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TOKUMI ELECTRONICS PHILIPPINES, INC.
vs. COMMISSIONER OF INTERNAL REVENUE
CTA CASE NO. 5558
SCHEDULE OF COURT'S DISALLOWANCES
ON CLAIMED INPUT TAXES -
3rd & 4th QUARTERS 1995

Supplier	Month	Exh.	Invoice Number	O.R. Number	Invoice Amount	Disallowed Input Taxes Claimed - 1995 3rd Quarter	4th Quarter	Total
4.) Without invoice/official receipt but supported only by a statement of account								
KC Business Management	Dec-95	R-2279	0519	0379	P 187,575.62	P	P 17,052.33	P 17,052.33
					subtotal	**P -**	**17,052.33**	**17,052.33**
5.) Without supporting documents								
Cargohaus	Aug-95		223551	131621	P 460.79			
AHK Awards	Aug-95		0792	0792	8,641.60			
National Bookstore	Sep-95				430.50			
					9,532.89	866.63		866.63
A.N. Villaluz Construction	Oct-95			3099	870.00			
A.N. Villaluz Construction	Oct-95			3095	643.00			
Archetype Computer Service	Oct-95		13858	3207	400.00			
Columbia Computer Center	Oct-95			005125	150.00			
Dee Hwa Liong Electronics	Oct-95			29995	8,120.00			
Espana Photo Express	Oct-95			0090	126.00			
ICTSI	Oct-95		351751	351751	165.99			
ICTSI	Oct-95	R-1167	353621	353621	24.25			
Lucy Salazar Hardware	Oct-95			0842	75.00			
Minda's Commercial Center, Inc.	Oct-95			1586	3,280.00			
Motor Express	Oct-95			468	3,500.00			
MR-2 Music & Gen. Merchandise	Oct-95			0996	778.00			
MR-2 Music & Gen. Merchandise	Oct-95			0995	5,957.50			
National Bookstore	Oct-95			351905	110.50			
National Bookstore	Oct-95			733196	167.50			
Photo City Manila	Oct-95			5388	454.60			
S. Serafico Hardware & Elect. Supp	Oct-95			63465	200.00			
Tatoland Hardware & Const. Supp	Oct-95			8127	792.00			
Toyota Bel-Air	Oct-95		237396	193907	2,882.60			
ICTSI	Oct-95	R-1144	1093715	1093715	P 2,998.60			
ICTSI	Oct-95	R-1145	1092900	1092900	1,306.80			
ICTSI	Oct-95	R-1163	1080438	1080438	1,306.80			
ICTSI	Oct-95	R-1169	1085468	1085468	1,306.80			
					P 35,615.94		3,237.81	3,237.81
					subtotal	**P 866.63**	**P 3,237.81**	**P 4,104.44**
6.) Invoice/Official Receipt without TIN								
Airlift Asia	Jul-95	R-457	8716	8716	P 475.00	P 43.18	P	P 43.18
					subtotal	**P 43.18**	**P -**	**P 43.18**

7.) Discrepancy between amount of input taxes reported per vat return and amount of Input taxes per summary

	Per Vat Return (Exhs. M,D,E)	Per Summary (Exhs. M,N)	Overstatement		3rd Quarter	4th Quarter	Total
July	358,085.29	308,136.69	49,948.60		P 49,948.60	P	P 49,948.60
Aug	495,184.87	495,067.10	117.77		117.77		117.77
Nov.	441,540.69	439,019.11	2,521.58			2,521.58	2,521.58
				subtotal	**P 50,066.37**	**P 2,521.58**	**P 52,587.95**
				Total	**P 56,253.05**	**P 23,337.62**	**P 79,590.66**

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