REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EPSON PRECISION (PHILIPPINES) INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6184

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 17 2003

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DECISION

This is a judicial claim for refund in the amount of P547,770.84 allegedly representing unutilized input value-added tax (VAT) payments covering the period July 1, 1998 to September 30, 1998.

Petitioner is a domestic corporation organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Lot 1, Block 3, Phase 5, Ampere Street, Light Industry & Science Park, Barrio Diezmo, Cabuyao, Laguna *(par. 1, Joint Stipulation of Facts)*. Its primary purpose is to make, manufacture, assemble, import, export, buy, trade and/or otherwise deal at wholesale in electrical, plastic and metal parts and other electrical, plastic and metal products and goods of whatever nature, and any and all equipment, materials, supplies used or employed in or related to the manufacture of such finished products (*Exhibit B*).

Petitioner is registered with the Export Processing Zone Authority as an export enterprise with Certificate of Registration No. 95-18 issued on February 9, 1995 (*Exhibit*

D). It is likewise duly registered with the Bureau of Internal Revenue as a VAT taxpayer under Certificate of Registration No. 95-570-001315 dated October 11, 1995 (*Exhibit E*).

On October 19, 1998, petitioner filed its VAT return for the third quarter of 1998 reporting unutilized input VAT of P552,557.50 which are allegedly attributable to its zero-rated sales for the same period, thus:

		INPUT VAT			
Exhibit	Zero-rated Sales	Previous Quarter (a)	this Qtr (b)	Refund/ TCM Claimed (c)	Excess Input VAT (a) + (b) – (c)
F	P930,434,226.44	P15,781,548.14	P552,557.50	P13,741,494.55	P2,592,611.11

According to petitioner, the input taxes of P552,557.50 remained unutilized since it has not engaged in any business activity or transaction for which it may be liable for output VAT.

Accordingly, on October 19, 2000, petitioner filed 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 in the amount of P552,557.50 representing its reported input VAT for the third quarter of 1998. (*Annexes D to G of the Petition for Review, pages 10-13, CTA records*).

Due to the inaction of the respondent, petitioner elevated its claim before this court via a Petition for Review filed on October 23, 2000 but this time praying for the refund of a lower amount of P547,770.84. Petitioner cited as legal bases of its claim Sections 106(A)(2)(a)(1) and 110(B) in relation to 112(A) of the Tax Code.

Respondent, in his Answer filed on November 10, 2000, interposed the following Special and Affirmative Defenses:

"7. Petitioner did not file a formal claim for refund of the amount of P547,770.80 with the Bureau of Internal Revenue. Thus, in the absence of a formal claim for refund filed with the Bureau of Internal Revenue, the instant petition must be DISMISSED outright considering that Section 229 of the 1997 Tax Code explicitly states that no suit or proceeding shall be maintained in any court for recovery of national internal revenue tax unluess a claim for refund or credit has been duly filed with the Bureau of Internal Revenue;

8. Even assuming that petitioner really filed a formal claim for refund with the Department of Finance One-Stop-Shop Inter-Agency and Duty-Drawback Center, it must be stressed, however, that claims for refund are construed strictly against the claimant for the same partake the nature of tax exemption (Commissioner of Internal Revenue vs. Ledesma, G.R. L-13509, January 30, 1970, 31 SCRA 95), hence, "A claimant has the burden of proof to establish the factual basis of his/her claim for tax credit/refund." (Citibank NA vs. Court of Appeals, 280 SCRA 459). This considering, the claim for refund of the Petitioner in the amount of P547,770.84 must be DISMISSED outright for lack of any evidence to establish the factual basis of its claim for refund of the above-mentioned amount;

9. It is incumbent upon the petitioner to show that it has complied with the provisions of Sections 204(c) and 229 of the National Internal Revenue Code, as amended."

To support its claim, petitioner presented testimonial and documentary evidence. Respondent, on the other hand, did not present any controverting evidence.

On August 15, 2003, the case was submitted for decision without the respondent's memorandum.

As jointly stipulated by the parties, the issues to be resolved by this court are:

1. Whether or not petitioner has unutilized input VAT for the taxable quarter covering the period 01 July 1998 to 30 September 1998 in the amount of P547,770.84 pertaining to domestic purchases of goods and services, which is a proper object of a claim for refund pursuant to Section 112 of the National Internal Revenue Code, as amended;

2. Whether or not the said unutilized input VAT of the petitioner was duly established through factual and legal bases;

3. Whether or not the said unutilized input VAT of the petitioner for the taxable quarter covering 01 July 1998 to 30 September 1998 was carried forward to the succeeding quarter and applied against any of petitioner's output VAT for the said period;

4. Whether or not petitioner generated zero-rated export sales for the period covering 01 July 1998 to 30 September 1998; and

5. Whether or not petitioner is entitled to refund or tax credit in the aggregate amount of P547,770.84 representing unutilized input VAT for the taxable quarter covering 01 July 1998 to 30 September 1998.

All of the above issues center on the sole issue of: Whether or not petitioner, based on the evidence presented, is entitled to the refund or issuance of a tax credit certificate in the amount of P547,770.84 representing unutilized input VAT payments which are directly attributable to zero-rated sales for the third quarter of 1998.

We rule to deny petitioner's claim.

Section 110(B) in relation to Section 112(A) of the Tax Code provides as follows:

> "**SEC. 110.** ***Tax Credits.*** –
> xxx
> "**(B)** ***Excess Output or Input Tax***. – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. **Any input tax attributable** to the purchase of capital goods or **to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112**. (*emphasis supplied*)"
>
> "**SEC. 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." (emphasis supplied)

Relative thereto Section 4.104-5 of Revenue Regulations No. 7-95 reads as follows:

> ***SECTION 4.104-5. Substantiation of claims for input tax credit.*** — (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Section 108 (a) and 238 of the Code. Input tax on purchases of real property should be supported by a copy of the public instrument i.e. deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with the VAT receipt issued by the seller.

Conformably with the afore-quoted provisions of law, in order that a refund/tax credit of input VAT may be granted, the following conditions must be met:

1) there must be zero-rated or effectively zero-rated sales;

2) that input taxes were incurred or paid and duly supported by VAT invoices and/or receipts;

3) that such input taxes are directly attributable to zero-rated or effectively zero-rated sales;

4) that the input taxes were not applied against any output VAT liability; and

5) that the claim for refund was filed within the two-year prescriptive period. (***Burmeister and Wain Scandinavian Contractor Mindanao, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6220, Resolution dated August 26, 2003***)

We find it appropriate to discuss first the requirement on prescription as this would be determinative of whether or not the other issues still deserve our consideration.

In a ***Resolution*** dated ***July 20, 1998*** in the case of ***Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5296***, this court ruled that the reckoning of the two-year period for input VAT refunds shall be from the filing of the corresponding quarterly VAT return, thus:

> "xxx, this Court, xxx consequently agrees with the interpretation of petitioner that 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, G.R. 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 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 the filing of the VAT return."

In the case at bar, petitioner filed its VAT return for the third quarter of 1998 on October 19, 1998 (*Exhibit F*). Counting from this date, petitioner had until October 18, 2000 within which to file its claim both in the administrative and judicial levels (*considering that the year 2000 is a leap year)*. Therefore, petitioner's Application for Tax Credit/Refund of Value-Added Tax Paid filed in the administrative level on October 19, 2000 and the Petition for Review filed before this court on October 23, 2000 fall outside of the two-year prescriptive period. Accordingly, petitioner may no longer claim for the refund of the alleged unutilized input VAT of P547,770.84 for the third quarter of 1998 as the same has already prescribed.

Finding petitioner's claim to be time-barred, the court finds it unnecessary to delve into the rest of the issues raised.

IN VIEW OF THE FOREGOING, the instant Petition for Review is hereby **DENIED** on account of prescription.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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