\B

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

GRAND CEMENT MANUFACTURING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondents.

C.T. A. CASE NO. 4988

Promulgated:

AUG 29 1997

x- x

DECISION

This is a judicial claim for the tax credit/refund of excess creditable value-added tax (VAT) input payments on domestic purchases of taxable goods and services and on importation of taxable goods covering the period February 1, 1991 to April 30, 1992 in the cumulative amount of ₱7,741,454.12.

Petitioner is a domestic corporation organized and existing by virtue of the laws of the Republic of the Philippines. Pursuant to the requirements of Section 107 of the National Internal Revenue Code (Tax Code for brevity), it is a duly registered VAT taxpayer with the Bureau of Internal Revenue as shown by its VAT Registration Certificate No. 139369 and VAT Registration No. 60A-3-000346. It is likewise registered with the Board of Investments under Certificate of Registration No. DP 89-811 in accordance with the provisions of the Omnibus Investments Code of 1987.

On several quarters stretching the aforesaid period of herein claim, petitioner filed corresponding VAT returns, as follows:

Quarter/Year	Date Filed	Net Creditable Input Tax	Annex of Petition
Feb. 1 to Apr. 30, 1991	05-20-91	₱2,832,955.43	"D"
May 1 to July 31, 1991	08-20-91	474,910.88	"E"
Aug. 1 to Oct. 31, 1991	11-20-91	828,959.67	"F"
Nov. 1 1991 to. Jan. 31, 1992	02-20-92	1,592,047.99	"G"
Feb. 1 to Apr. 30, 1992	05-20-92	2,012,880.15	"H"
	Total	₱7,741,754.12	

On April 26, 1993, petitioner filed the requisite application for tax credit/refund of the abovestated amount of ₱7,741,754.12 with the Tax and Revenue Group/VAT Division of the One-Stop-Shop Tax Credit and Duty Drawback Center of the Department of Finance (Annex "I" of Petition).

Respondent Commissioner of Internal Revenue failed to act on the said application and with the statutory two-year prescriptive period for the judicial claim thereof (Section 230, Tax Code) about to lapse, petitioner instituted the present petition for review on May 12, 1993.

Originally, it was only respondent Commissioner of Internal Revenue who was impleaded in this case, but upon realization by the petitioner that the authority to issue and grant refund and/or tax credit of excess input VAT arising from importation of taxable goods is vested on the Commissioner of Customs, it filed a "Motion for Leave of Court to Admit Amended Petition for Review" (pp. 77-78, CTA records). The motion was granted and the Amended Petition for Review was appended to the records of this case, including as party respondent, the Commissioner of Customs.

It appears, however, that respondent Commissioner of Customs failed to file his answer and, thus, was consequently declared in default (Resolution, p. 176, CTA records).

At bar, petitioner repleads its stance *a quo*. In her Answer to the Amended Petition, respondent Commissioner of Internal Revenue contends, *inter alia*, that "... the petition does not state a cause of action as the claim sought to be recovered has already been paid by the issuance of Tax Credit Certificate in favor of petitioner covering the entire amount of the claim" (p. 124, CTA records).

Records would show however that in a motion to dismiss filed prior to the answer by respondent Commissioner of Internal Revenue, the latter admitted that only a partial refund, and not a refund of the entire claim of the petitioner, was granted. Thus:

> "In that hearing, it has been recognized even by the Court that a Tax Credit Certificate (TCC) has already been issued by the Commissioner of Internal Revenue in favor of the petitioner. The remaining portion not refunded in the said issued TCC are excess value added tax input (sic) arising from the importations of the taxable goods which is within the jurisdiction of the Commissioner of Customs to grant or deny. The petitioner even informed the Honorable Court that the claim for refund of the same is vested with the Commissioner of Customs" (Motion to Dismiss, p. 4; p. 93, CTA records).

It must be noted that petitioner merely submitted as its sole evidence the VAT Credit Claim Evaluation Report conducted by respondent Commisioner of Internal Revenue's officers on the subject claim (Exhibits "A", "A-1 to A-4," inclusive, p. 139-142, CTA records). The report showed an allowable input tax on domestic purchases of ₱4,651,730.69 (Exhibit "A-4") and ₱975,796.12 (Exhibit "A-6") for importations, all for a total amount of ₱5,627,526.71. Out of the entire claim of ₱7,517,269.79 in the report (Exhibit "A-5"), the amount of ₱1,889,742.98 was disallowed.

Construing the abovequoted statement of respondent Commissioner of Internal Revenue with that of the aforesaid report, the payment of tax credit certificate mentioned refers only to the amount of ₱4,651,730.69. The remaining ₱975,796.12 in the report which represents the creditable input taxes on importation of goods, has not been refunded or issued a tax credit certificate.

As regards the disallowed portion of ₱1,889,742.98, the petitioner failed to contest the same. In fact, it did not bother to present before this Court any piece of evidence, e.g., invoices and receipts, in order to substantiate its claim. By so relying singly on the said report, the petitioner has impliedly acknowledged the validity of the disallowance. This is borne by testimony of petitioner's counsel, to wit:

ATTY. DE LEON:

> There being no evidence presented, Your Honors, by the petitioner assailing the validity of disallowance of the portion claimed, we are no longer presenting our evidence, Your Honors.

JUDGE ACOSTA:

> Alright, Petitioner, comment?

ATTY. JAURIGUE:

> After the Commissioner of Internal Revenue's turn to present evidence, we have already impleaded the Bureau of Customs so, I believe it is the turn of the Commissioner of Customs to present his evidence, Your Honors.
> (TSN, Hearing of January 18, 1996, pp. 5-6)

The petitioner thus is seen in this petition as interested only in seeking the refund or tax credit of that portion pertaining to the allowable input taxes on importations amounting to ₱975,796.12. Thus:

JUDGE ACOSTA:

> Why are you impleading the Commissioner of Customs?

ATTY. JAURIGUE:

> Your Honors, because there is a portion that the TCC is to be issued by the Bureau of Customs.

JUDGE ACOSTA:

> What is that TCC? What does that represent?

ATTY. JAURIGUE:

It pertains to the value added tax on the importations of equipment, Your Honors.

JUDGE ACOSTA:

It's a collection.

ATTY. JAURIGUE:

Yes, Your Honors.

JUDGE ACOSTA:

The Commissioner of Customs is just an agent of the Commissioner of Internal Revenue.

ATTY. JAURIGUE:

Yes, Your Honors, but there is a memorandum of agreement between the Commissioner of Customs wherein in cases of claim for refund on value added tax on the importation of equipment it is the Bureau of Customs that will issue the tax credit certificate.
(TSN, Hearing of January 18, 1996, pp. 10-12)

The sole issue in this case therefore is petitioner's entitlement to the refund or tax credit of allowable input taxes on its importations of taxable goods for the period February 1, 1991 to April 30, 1992.

After a careful study of the attending circumstances and applicable regulations on the matter, We readily rule in favor of the petitioner.

In the case at bar, petitioner is evidently entitled to its claim for refund. It has proven its case through the VAT Credit Claim Evaluation Report (Exhibits "A", "A-1" to "A-6", inclusive) prepared by respondent Commissioner of Internal Revenue's officers. Records show that respondent Commissioner of Internal Revenue has failed to make any comment or objection on the subject report when it was formally offered by the petitioner (Resolution, dated October 12, 1995; p. 145, CTA records).

Added to this, her issuance of a tax credit certificate for allowable input taxes for domestic purchases of goods and services amounting to P4,651,730.69 as stated in said report, is a manifestation of her agreement with the other findings contained therein. In fact, her statement, *supra*, that the remaining allowable input taxes on importation of goods is within the jurisdiction of respondent Commissioner of Customs, sans any doubt on their correctness, lucidly affirms her conformity to said report. It must be observed further that such report was prepared by her own revenue examiners whose integrity and competence were never questioned by her during the entire proceedings conducted in this case. It is presumed thus that in preparing the subject report, said revenue officers performed their official duty in a regular manner [Section 3(m), Rule 131, Revised Rules of Court].

Both the petitioner and respondent Commissioner of Internal Revenue are of parallel thinking that the authority to issue the Tax Credit Certificate on the allowable input taxes on importation of taxable goods is lodged with respondent Commissioner of Customs, there being an Authority to Issue VAT Credit Under RAMO No. 2-93, dated April 13, 1994, reproduced hereunder as follows (p.143, CTA record):

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
ONE-STOP SHOP INTER-AGENCY TAX CREDIT AND DUTY
DRAWBACK CENTER
TAX AND REVENUE GROUP
MANILA

AUTHORITY TO ISSUE VAT CREDIT UNDER RAMO NO. 2-93

April 13, 1994
Date

GRAND CEMENT MANUFACTURING CORPORATION 60A-3-000346
VAT Registered Name VAT Reg. No.

2nd Floor, CRM Building, cor. Escario & Molave Sts.
Cebu City . 601-000-272-097
Address Tax Iden. No.

Period Covered: February, 1991 to April, 1992 Year:_________.

	Amount in figures	Amount in words
BIR	₱ 4,651,730.69	PESOS FIVE MILLION SIX HUNDRED
BOC	975,796.12	TWENTY SEVEN THOUSAND FIVE
Total	₱ 5,627,526.81	HUNDRED TWENTY SIX & 81/100.

RENE G. IBANEZ
Deputy Commissioner of Internal Revenue
Member, Executive Committee, CENTER-DOF

In reality, the job of respondent Commissioner of Customs is merely to issue the tax credit certificate as found by respondent Commissioner of Internal Revenue, subject to certain verification procedures.

We observed that it is unfortunate that petitioner's claim has to be elevated before this Court. Except for the usual deadline on the peremptory two-year prescriptive period for the filing of a judicial claim for refund, the matter could have been settled administratively without loss of taxpayer's money and of this Court's precious time. The agreement mentioned above is crystal clear on the role of both parties.

In view of the issuance of the Authority to Issue VAT Credit by the respondent Commissioner of Internal Revenue, there is nothing more to be done by the respondent Commissioner of Customs except to issue the Tax Credit Certificate in favor of the petitioner.

WHEREFORE, in view of the foregoing, the instant Amended Petition for Review is hereby **PARTIALLY GRANTED.** The respondent Commissioner of Customs is ordered to issue in favor of petitioner a Tax Credit Certificate in the amount of ₱975,796.12 representing excess input value added tax on importation of goods and services for the period February 1, 1991 to April 30, 1992. No cost of suits.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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
Court of Tax Appeals