REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

PHILBEST CANNING CORPORATION, represented by Mr. Engracio R. Sestina
Petitioner,

- versus -

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7202

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
NOV 10 2008

x -x

DECISION

BAUTISTA, ***J.:***

The instant *Petition for Review* seeks the refund or issuance of tax credit certificate in the amount of P2,528,680.28, allegedly representing unutilized input value-added tax (VAT) on domestic purchases of goods and services which are attributable to zero-rated sales for the first quarter of taxable year 2003.

Philbest Canning Corporation (Petitioner) is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at Tambler, General Santos City. It is principally engaged in the business of processing, canning, selling and exporting canned and processed tuna and other marine products.[1] Petitioner is a VAT-registered taxpayer, with Tax Identification No. 005-735-785-000.[2]

---

[1] Par. 1, Summary of Admitted Facts, Parties' Joint Stipulation of Admitted Facts and Issues (PJSAFI), Docket, pp. 159-160; Annex "B", Petition for Review

[2] Exhibit "C"

577

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue (BIR), who is duly appointed and empowered to perform the duties of his office, including among others, the duty to collect internal revenue taxes and to approve claims for refund and for issuance of tax credit certificates of overpaid internal revenue taxes as provided by law.[3]

On April 24, 2003, petitioner filed its VAT Returns, which were subsequently amended on March 16, 2005.[4]

Petitioner filed an application for tax credit or refund with the One-Stop-Shop Inter-Agency and Duty Drawback Center of the Department of Finance on March 29, 2005.[5] To date, however, the said application for tax credit or refund remains unresolved. Hence, this *Petition* filed on April 13, 2005.

In his *Answer*[6], respondent asserted the following Special and Affirmative Defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;
>
> 5. The amount of P2,528,680.28 being claimed by petitioner as alleged overpaid VAT input taxes for the first quarter of 2003 was not properly documented;
>
> 6. In an action for 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 claim for refund/credit;
>
> 7. Petitioner must show that it has complied with the provisions of Sections 204(C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;
>
> 8. 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 such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).*"

Thereafter, the case was set for Pre-Trial Conference on July 29, 2005.[7]

[3] Par. 2, PJSAFI, Docket , p. 160
[4] Exhibits "H", "I", and "J"
[5] Exhibit "P"
[6] Docket, pp. 104-105

(518)

On July 29, 2005, petitioner moved for the resetting of the pre-trial, manifesting that a claimant's agreement form is pending approval by the Deputy Commissioner. The Court granted the resetting of the pre-trial and ordered the parties to submit their *Supplemental Pre-trial Briefs* within ten (10) days therefrom.[8]

Petitioner submitted its *Supplement to the Pre-Trial Brief (for the Petitioner)* on August 8, 2005.[9]

On September 9, 2005, petitioner moved for the resetting of the pre-trial on the ground that its claim for refund is being processed in the administrative level, and is on the threshold of approval only that it is still for final and last audit. The Court granted the resetting of the pre-trial for the last time.[10]

On October 7, 2005, the Court ordered the filing of the parties' *Joint Stipulation of Facts and Issues* within fifteen (15) days after the termination of the pre-trial conference.[11]

In a Resolution dated November 18, 2005, the Court approved the *Parties' Joint Stipulation of Admitted Facts and Issues*[12] and terminated the pre-trial.[13]

On, July 14, 2006, Magno Francisco Y. Mateo, Jr. was commissioned as an Independent Certified Public Accountant (CPA).[14]

After the presentation of its documentary and testimonial evidence, petitioner filed its *Formal Offer of Documentary Exhibits*[15] on July 2, 2007, with respondent's *Comment (Re: Petitioner's Formal Offer of Evidence)*[16] filed on July 3, 2007; which the Court resolved in a *Resolution* dated July 18, 2007.[17]

---

[7] Docket, p. 108
[8] Docket, p. 124
[9] Docket, pp. 139-141
[10] Docket, p. 152
[11] Docket, p. 156
[12] Docket, pp. 159-161
[13] Docket, p. 162
[14] Docket, p. 235
[15] Docket, pp. 420-429
[16] Docket, pp. 432-434
[17] Docket, pp. 437-439

After the oral manifestation of respondent's counsel that she will not present any evidence and that she is submitting the case for decision, the parties were given thirty (30) days to file their respective *Memorandum*.[18]

On March 13, 2008, the case was submitted for decision, taking into consideration the *Memorandum* [19] filed by respondent on January 30, 2008, and petitioner's *Memorandum*[20] on February 29, 2008.[21]

Hence, this decision.

The parties agreed on the following issues[22] to be resolved by this Court:

1. Whether or not the petitioner, under the facts and applicable laws obtaining, is entitled to the tax refund prayed for in the complaint;
2. Whether or not the petition was seasonably filed;
3. Whether or not the proceeds of export sales were inwardly remitted in accordance with the rules of the *Bangko Sentral ng Pilipinas (BSP)*; and
4. Whether or not the purchases are attributable to export sales.

The Court will first resolve the second issue pertaining to the question of timeliness of the claim.

Section 229 of the NIRC of 1997, as amended, provides as follows:

> "**SEC. 229. Recovery of Tax Erroneously or Illegally Collected.** -- No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

[18] Docket, p. 476
[19] Docket, pp. 487-496
[20] Docket, pp. 503-513
[21] Docket, p. 576
[22] PJSAFI, Docket, p. 160

520

> In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided, however,* That the Commissioner may, even without a claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphasis supplied)*

Based on case records, petitioner filed its VAT Returns on April 24, 2003; filed its application for tax credit or refund with the One-Stop-Shop Inter-Agency and Duty Drawback Center of the Department of Finance on March 29, 2005[23]; and then filed the instant *Petition* before this Court on April 13, 2005.

From petitioner's filing of the VAT Returns on April 24, 2003, it had two years within which to file its claim for refund or tax credit. Thus, petitioner had until April 24, 2005[24] within which to pursue its claim.

However, respondent argues that petitioner's resort to judicial action was premature; since as provided in Section 112(D) of the NIRC of 1997, the 120-day period given to the Commissioner within which to decide the claim would have expired only on July 22, 2005.

The Court does not agree.

Section 112(D) must be read with reference to its preceding subsection, Section 112(A), thus:

> "**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: xxx.
>
> xxx xxx xxx
>
> **(D) Period within which Refund or Tax Credit of Input Taxes shall be Made.** - In proper cases, **the Commissioner shall**

---

[23] Exhibit "P"
[24] 2004 was a leap year

> **grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof**.
>
> In case of full or partial denial of the claim for tax refund or tax credit, of the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of one hundred twenty-day period, appeal the decision or the unacted claim with Court of Tax Appeals.**" *(Emphasis supplied)*

Even if apparently contradictory, the quoted provisions should be allowed to stand and be given effect by reconciling them.[25]

A reading of Section 112 (D) and (A), and Section 229 of NIRC of 1997, shows that the 120 days given to the Commissioner within which to act on the application and the thirty (30) days within which to elevate the case must be made within the two-year prescriptive period.

Stated differently, the administrative claim and the subsequent judicial claim must be filed within the two-year period.[26] As long as there is an administrative claim prior to the filing of a judicial case both within the prescriptive period, this Court has jurisdiction to take cognizance of the claim.

The Court will now proceed to resolve the remaining issues, which can be summarized into:

"Whether or not petitioner is entitled to a tax refund or tax credit certificate in the amount of P2,528,680.28, representing excess input tax on domestic purchase of goods and services attributable to its zero-rated sales for the first quarter of 2003".

Petitioner relies on Section 112(A) of the NIRC of 1997 as basis for its claim for issuance of tax credit certificate or refund of creditable input VAT, which states:

---

[25] Araneta vs. Concepcion, 99 Phil. 709
[26] Commissioner of Internal Revenue vs. Victorias Milling Co., Inc., 22 SCRA 12

> **"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 sales 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."

Based on the afore-quoted provision, in order to be entitled to a refund/tax credit of unutilized input VAT, the following requisites must be complied with:

1. there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes are directly attributable to zero-rated sales or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and
5. that the claim for refund was filed within the two-year prescriptive period.

As a VAT-registered entity, petitioner's export sales may fall within those transactions referred to as subject to VAT at zero percent (0%) as provided by Section 106(A)(2)(a) of the NIRC of 1997, as amended. As such, no output VAT is due or may be collected from the export sales it made to foreign buyers. In turn, all input VAT paid by it are refundable, pursuant to Sections 112(A) and 110(B) of the NIRC of 1997, as amended. The pertinent portions of the above-mentioned laws are quoted hereunder:

> **"SEC. 106. Value-added Tax on Sale of Goods or Properties. -**
>
> **(A) Rate and Base of Tax.** - xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

f

(323)

(a) *Export Sales.* — The term **'export sales'** means:

(1) 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;

(2) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Banko Sentral ng Pilipinas (BSP);

(3) Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;

(4) xxx

(5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws."

"SEC. 110. Tax Credits. —

xxx xxx 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 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."

Under Section 106(A)(2)(a) of the NIRC of 1997, as amended and Revenue Regulations No. 3-88, any VAT-registered person claiming zero-rated export sales must present at least three documents, namely: (a) the sales invoice as proof of sale of goods; (b) the export declaration or the bill of lading/airway bill as proof of actual shipment of the goods from the Philippines to a foreign country; and (c) the bank credit advice or certificate of remittance or any other document proving payment of the goods in acceptable foreign currency or its equivalent in goods and services.

However, in the present case, records reveal that petitioner failed to fully substantiate its zero-rated sales for the first quarter of taxable year 2003 in the amount of P439,118,259.39 as it merely presented the following documents:

1. Amended Monthly VAT Returns[27] for the months of January and February 2003, as well as the Amended Quarterly VAT Return[28] for the first quarter of taxable year 2003;

2. Certification of Amount of Zero-Rated Sales[29] to prove the amount of to P439,118,259.39 as zero-rated export sales for the period covering January 1, 2003 to March 31, 2003; and

3. Certification of Inward Remittances[30] issued by Equitable PCI Bank dated June 30, 2004 to prove that petitioner has total actual export remittances amounting to US$8,192,134.03.

The Court-commissioned Independent Certified Public Accountant, in her Report[31], ascertained that the total zero-rated sales for the first quarter of taxable year 2003 in the "Schedule of Gross Receipts and Summary of Zero-Rate Sale" amounting to P439,118,259.39 is equal to the total zero-rated sales declared in the petitioner's original copy of the pertinent Monthly and Quarterly VAT Returns which were duly stamped received by the BIR and that she examined the original copies of the supporting documents, such as the Commercial Invoices issued for Zero-Rated (Export) Sales. However, the Court finds that petitioner failed to present the VAT sales invoices/official receipts and other export documents that would support its zero-rated sales.

The Court believes that the documents presented were insufficient, as this Court has repeatedly held that the commercial invoices or receipts, bills of lading, airway bills, export declarations or permits, and bank credit advices/certificate of remittances, taken collectively, are the best means to prove exportation of goods and proof of receipt of the corresponding foreign currency payments. In a claim for refund/credit, the burden of proof is on the

[27] Exhibits "H" and "I"
[28] Exhibit "J"
[29] Exhibit "G"
[30] Exhibit "M"
[31] Pages 2-3, Exhibit "S"

taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit. Thus, for failure to substantiate its claim, petitioner's reported export sales in the amount of P439,118,259.39 cannot qualify as VAT zero-rated sales.

Consequently, the claimed input VAT of P2,528,680.28 allegedly attributable thereto cannot be granted. Section 112(A) of the NIRC of 1997, as amended, explicitly provides that there must be zero-rated or effectively zero-rated sales in order that a refund of input VAT could prosper.

WHEREFORE, with the foregoing disquisitions, the instant *Petition for Review* is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division

526