REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

KAWASAKI HEAVY INDUSTRIES LTD.
(MANILA OFFICE),
Petitioner,

-versus -   C.T.A. CASE NO. 4473

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.   6/11/93

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D E C I S I O N

Petitioner, (KHI, Manila) is the Manila representative office of Kawasaki Heavy Industries Ltd. of Japan with address at 20th Floor, Metrobank Plaza, Sen. Gil J. Puyat Avenue, Makati, Metro Manila. Petitioner was established in March 1978 under authority of Securities and Exchange Commission Certificate of Registration No. 804 and Board of Investment Registration Certificate of Authority No. 974. Under said authorizations, Petitioner may engage in the following business activities:

(1) To oversee the implementation of the joint venture agreement between the Philippine government (through NIDC) AND Kawasaki Heavy Industries, Ltd.;

(2) To conduct and make surveys and studies of market, economic and financial conditions in the Philippines; and

(3) To advise and render assistance to local distributors/investors and customers in the Philippines.

On July 20, 1988 and allegedly upon advice of its auditors, Petitioner paid the amount of P80,971.98 representing 10% of value-added tax for the second quarter ending June 30, 1988 (Exhs. E, F & G).

On July 4, 1989, Respondent issued BIR Ruling No. 25-000-00-136-89 which confirms the following taxable situations of the Petitioner:

(1) Petitioner is not a resident foreign corporation since it is not engaged in any income generating business activities in the Philippines (Sec. 20(h), Tax Code);

(2) It is a non-resident foreign corporation not engaged in trade or business in the Philippines. The technical services fees it has been remitting to KHI are considered royalties subject to income tax rate of 35% (Sec. 25(b)(1), *ibid*);

(3) KHI does not maintain a branch in the Philippines;

(4) KHI Manila office is not subject to VAT since it is not engaged in any income generating business activity in the Philippines. A person is subject to VAT if it renders services "in the course of trade or business" (Sec. 99, Tax Code).

On account of the aforesaid ruling, Petitioner filed a claim for refund on April 19, 1990 with the BIR to recover the said amount of P80,971.98 as erroneously paid value-added tax. To date, Respondent has not resolved nor granted the said claim. Hence, the instant petition for review was instituted to beat the two-year prescriptive period.

Respondent for his part admits and denies certain facts in the petition for review. More importantly, he admits the existence of the BIR ruling aforecited and the fact of filing by Petitioner of the claim for refund on April 19, 1990. He alleged futher by way of special and affirmative defenses that the taxes paid were due the government, refunds should be construed strictly against the taxpayer, that it is incumbent upon the taxpayer to show that the taxes paid were erroneous, and that Petitioner has to show compliance with the requirements of Section 230 of the Tax Code. Beyond those allegations in his Answer, Respondent failed to present any evidence disputing the said claim for refund.

The only issue presented is whether or not Petitioner is subject to value-added tax.

We find for the Petitioner. The facts as above narrated are supported by the various exhibits presented by the Petitioner during the hearings and admitted by this Court in its resolution dated December 5, 1991. Not a single evidence was presented by the Respondent to show otherwise. In fact, in a resolution dated March

30, 1992, he was considered by this Court to have waived his right to the presentation of evidence in view of his consistent failure to appear despite proper notices, evidencing lack of interest to defend his case.

The applicable provision of law is Section 99 of the National Internal Revenue Code, quoted hereunder:

> "Sec. 99. *Person Liable.* - Any person who in the course of trade or business, sells, barters or exchange goods, renders services, engages in similar transactions and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 100 to 102 of this Code."

In view of the findings of the BIR as embodied in its aforementioned ruling that Petitioner is not engaged in any income generating business activity in the Philippines, this Court likewise believes that it will not be subjected to value-added tax pursuant to the aforequoted Section 99 of the Tax Code. Value-added tax is imposable only against person, individual or juridical entity, in the course of their trade or business activities selling, bartering or exchanging of goods, or rendering services for a fee or other similar transaction. Respondent failed to present any evidence that will show that Petitioner has been engaged in any of these economic activities, at least to dispute its own findings contained in the said BIR ruling.

In view of the foregoing, judgment is hereby rendered ordering Respondent to refund to Petitioner the amount of P80,971.98 representing erroneously paid 10% value-added tax.

SO ORDERED.

Quezon City, Metro Manila, June 11, 1993.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among 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