Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

MARUBENI PHILIPPINES CORPORATION,
Petitioner,

C.T.A. CASE NO. 6514

Members:

- versus -

CASTAÑEDA, JR., *Chairperson*
UY, and
PALANCA-ENRIQUEZ, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

FEB 1 7 2006

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DECISION

***CASTAÑEDA, J., J.*:**

This is a Petition for Review claiming for a refund or for the issuance of a tax credit certificate in the amount of P2,945,944.85 allegedly representing unutilized input VAT on domestic purchases of goods and services for the second quarter of taxable year 2000.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines, duly registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer, with office address at the 9th floor, LV Locsin Building, Ayala Avenue corner Makati Avenue, Makati City. It was organized to principally engage in the business of buying, selling, distributing, marketing at wholesale insofar as may be permitted by law, all kinds of goods, commodities, wares and merchandise of every kind and description, and to enter into all kinds of contracts for the export, import, purchase, acquisition, sale at wholesale and other disposition for its own account as principal or in representative capacity as manufacturer's representative, merchandise broker, indentor, commission merchant, factors or agents, upon consignment of all kinds of goods, wares, merchandise or products, whether natural or artificial.

Respondent, on the other hand, is the duly appointed official authorized, among others, to decide, approve and grant tax credits and/or refunds of overpaid or erroneously paid internal revenue taxes, with office address at the 5th Floor, BIR National Office Building, Diliman, Quezon City.

For the 2nd Quarter ending June 30, 2000, petitioner filed with respondent its Quarterly VAT Return on July 25, 2000, showing, among others, the aggregate amount of input VAT that it had paid for the same period on its domestic purchases of capital goods and other taxable goods and services.

On October 25, 2000, petitioner filed an Amended Quarterly VAT Return for the period ending June 30, 2000. Then, on July 22, 2002, petitioner filed its second Amended Quarterly VAT Return for the period ending June 30, 2000, and the amended return showed the following details:

PURCHASES	**AMOUNT**	**INPUT VAT**
Domestic	P31,443,742.17	P3,144,382.03
SALES	**AMOUNT**	**OUTPUT VAT**
Taxable	P 1,852,537.08	P 185,253.63
Zero-rated	77,894,128.05	-0-
	P79,746,665.13	
EXCESS INPUT VAT		**P 2,959,128.40**

Pursuant to Section 112(A) of the 1997 National Internal Revenue Code, as amended, petitioner, through its external auditor, Sycip, Gorres, Velayo and Company, filed with respondent on July 22, 2002, a written claim for the refund and/or tax credit of its unutilized input VAT credits for the 2nd Quarter of 2000 amounting to P2,945,944.85, representing the excess of its accumulated input VAT payments over the output VAT due on domestic taxable sales.[1] Petitioner alleges that part of its reported input VAT payments amounting to P567,489.40 were incurred in connection with its purchases of capital goods and office supplies, as well as rentals for the use of real property. However, only a portion of said input VAT maybe credited to its zero-rated sales in the amount of P554,306.46. Hence, the discrepancy in the amount of P13,182.94 was deducted from the declared excess input VAT of P2,959,128.40, resulting to the amount of P2,945,944.85 sought to be refunded.

In order to toll the running of the prescriptive period, petitioner filed this Petition for Review on July 25, 2002.

On September 17, 2002, respondent filed his Answer raising the following Special and Affirmative Defenses:

"4. Petitioner's alleged claim for refund/issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;
5. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.
6. Petitioner's claim for refund/tax credit in the amount of P2,945,944.85 as alleged unutilized input VAT paid on its domestic purchases of goods and services for the second quarter of taxable year 2000 were not duly substantiated.
7. Petitioner's instant claim for refund/tax credit representing the alleged unutilized input VAT paid on its domestic purchases of goods and services for the second quarter of the taxable year 2000 is not subject to zero percent (0%) rate of VAT under Sections 106 (A)(2)(a) and 108 (B)(2)(3) of the 1997 Tax Code.
8. Petitioner's claim for refund/credit of the alleged unutilized input VAT paid on its domestic purchases of goods and services for the second quarter of taxable year 2000 has already prescribed pursuant to Section 112 (A) (B) of the 1997 Tax Code.
9. It is incumbent upon the latter to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.
10. 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 as such looked upon with disfavor ***(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).***"

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[1] *CTA Records, pages 193-196*

Pursuant to CTA Circular No 1-95, the Court, on February 17, 2003, commissioned SGV & Co, through its tax partner Noel P. Rabaja, to verify petitioner's claim.[2] In his report dated August 25, 2003, Mr. Rabaja found that out of the reported input VAT of P3,144,382.03 only the amount of P2,281,418.00 was substantiated by proper documents.[3] Considering the recommendation made by the said Independent CPA, petitioner reduced the amount prayed for to P2,106,898.11 in its Memorandum filed on August 11, 2005.[4]

Respondent, for his part, manifested that since there is no report of investigation in this case, he is submitting the case for decision. With the submission of petitioner's Memorandum and respondent's failure to file his Memorandum within the period prescribed by the Court, the case was submitted for Decision on September 1, 2005.

The parties submitted the following issues for this Court's consideration:

"1. Whether or not Petitioner's sale of goods and services are zero-rated for VAT purposes under Section 106 (A)(2)(a) and (c) and 108 (B)(2)(3) of the 1997 Tax Code;

2. Whether or not the amount of P2,945,944.85, out of the total excess input VAT of P3,144,382.03, represents input VAT paid on domestic purchases of taxable goods that are directly attributable to its zero-rated export sales of goods and services;

3. Whether or not Petitioner incurred input VAT in the amount of P567,489.40, in connection with its purchases of capital goods and office supplies, as well as rentals for the use of real property, which are not directly attributable to either its export sales of goods and services or its taxable sale of goods and services;

4. Whether or not Petitioner's input VAT which are not directly attributable to either its zero-rated or taxable sales should be allocated to either operation, with the amount of P544,306.46 to be credited to Petitioner's zero-rated sales;

5. Whether or not Petitioner's excess input VAT for the second quarter of taxable year 2000 was applied or utilized against its output VAT in the succeeding taxable quarters;

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[2] *CTA Records, page 62*
[3] *Exhibit H, page 4*
[4] *CTA Records, pages 260-261*

6. Whether or not the excess input VAT arising from Petitioner's purchases of goods and services for the period April 1, 2000 to June 30, 2000 attributable to its zero-rated sales, and other purchases of goods and services the input VAT of which are allocable to said zero-rated sales, are duly supported by pertinent documents, such as VAT invoices and receipts;

7. Whether or not Petitioner is entitled to the claim for refund in the amount of P2,945,944.85 representing unutilized and/or unapplied input VAT attributable to the excess of its accumulated input VAT payments over the output VAT due on domestic sales for the second quarter of taxable year 2000."[5]

Being interrelated, the issues raised shall be discussed simultaneously.

Petitioner is engaged in the business of buying and selling all kinds of goods and services. The bulk of its sales pertains to direct sales of goods, as well as indenting services, to non-resident entities (i.e., Marubeni Corporation in Japan) the consideration of which was paid for in acceptable foreign currency and duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). Likewise, petitioner sold services to entities registered with the Philippine Economic Zone Authority (PEZA).

Thus, applicable are the foregoing provisions of the 1997 National Internal Revenue Code:

"**SEC. 106**. ***Value-added Tax on Sale of Goods or Properties.*** —

xxx xxx xxx

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(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 (BSP);

xxx xxx xxx

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[5] *Joint Stipulation of Issues, Records, pages 44-45*

> (5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws."
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> "**SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. —**
>
> xxx xxx xxx
>
> (B) Transactions Subject to Zero Percent (0%) Rate. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> (2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)."

Moreover, Revenue Memorandum Circular (RMC) No. 74-99, issued on October 15, 1999, which provides that sale of goods, property, or services to PEZA registered enterprise shall be treated as indirect export, and therefore subject to 0% VAT, pursuant to Section 106(A)(2)(a)(5) of the NIRC of 1997 and Section 23 of Republic Act (RA) No. 7916, in relation to Article 77(2) of the Omnibus Investments Code, likewise apply.

Based on the foregoing, petitioner's direct sales of goods to Marubeni Corporation of Japan ("Marubeni" for brevity) and sale of indent services to Marubeni and other non-resident foreign affiliates, both paid for in acceptable foreign currency duly accounted for in accordance with the rules and regulations of the BSP, are zero-rated transactions, and are thus subject to 0% VAT. Similarly, petitioner's sales to PEZA-registered enterprises are also subject to 0% VAT.

Petitioner declared P77,894,128.05 as zero-rated sales/receipts in its amended 2nd quarter VAT return for 2000.[6] However, scrutiny of the evidence presented, including the report of the commissioned Independent CPA, shows that not the entire declared amount was properly substantiated.

Section 237 of the NIRC of 1997 provides that all persons subject to an internal revenue tax, shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service.

In *VAT Ruling No. 179-88 dated May 24, 1988*, the Bureau of Internal Revenue held that VAT invoices are for sellers of goods and VAT Official Receipts are for sellers of services. *Section 4.108-1 of Revenue Regulation (RR) No. 7-95* requires VAT-registered persons to print their TIN followed by the word "VAT" in their invoices or receipts and this shall be considered as a "VAT Invoice". It also reiterates that all VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices, which must show:

a. the name, TIN and address of seller;
b. date of transaction;
c. quantity, unit cost and description of merchandise or nature of service;
d. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
e. the words "zero rated" imprinted on the invoice covering zero-rated sales; and
f. the invoice value or consideration

In several issuances of the Bureau of Internal Revenue however, the stamping of the word "zero-rated" instead of printing the same on the VAT Invoice/OR is allowed.[7]

Thus, TIN-VAT official receipts and invoices, imprinted/stamped with "zero-rated," must support petitioner's zero-rated sales, consideration for which was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP. In addition, with regard to export sales, petitioner must also prove that its zero-rated sales are validly supported by export documents.[8]

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[6] *Exhibit C*
[7] *VAT Ruling No. 028-00 dated August 21, 2000 and 035-00 dated September 20, 2000*
[8] *Isola Asia Pacific vs. Commissioner of Internal Revenue, CTA Case No. 6173, August 18, 2003*

A verification of the evidence presented reveals that the amount of P51,629,274.89 should be excepted for insubstantial documentation, detailed as follows:

Export Sales to Marubeni Corporation without any supporting documents		P 16,524.00
Sale of Services to PEZA-registered enterpises		
a. Sales to Dowa Hightech w/o supporting ORs	P 56,614.79	
b. Sales to Ishida Philippines w/o supporting ORs	74,791.11	131,405.90
Sale of Services to Non-residents		
a. Sales to Marubeni supported by Mutual Account Summary and Credit Advice	P37,411,484.89	
b. Sales to other affiliates supported by debit and credit advice	14,069,860.10	51,481,344.99
Total		**P51,629,274.89**

(Exhibits H-2, I-3-a to I-4-c-4, and K-1-1 to K-6-4)

Therefore, out of the reported zero-rated sales of P77,894,128.05, only the amount of P26,264,853.16 was properly substantiated.

Having established that petitioner had properly-substantiated its zero-rated sales of P26,264,853.16, it may now claim for the refund of input taxes attributable thereto. Nonetheless, petitioner must still prove its claimed unapplied input taxes in the total amount of P2,945,944.85 by valid VAT invoices and official receipts.

After a careful evaluation of the exhibits presented, the Court agrees with the findings of the commissioned Independent CPA disallowing the amount of P862,964.03 out of the reported input taxes in the amount of P3,144,382.03 in petitioner's amended 2nd quarter VAT Return for taxable year 2000:

Item	Nature	Exhibit No.	Amount
1.	Input VAT on purchases of goods supported by VAT invoices with no date	I-2-c	P 968.79
2.	Input VAT on purchases of goods supported by invoices not dated within the 2nd quarter of 2000 but within the same calendar year	I-2-d	21,014.33
3.	Input VAT on purchases of goods supported by VAT invoices but name of supplier indicated in the Summary List is wrong	I-2-e	1,100.34
4.	Input VAT on purchases of services supported by ORs with no date	I-2-f	2,000.00
5.	Input VAT on purchases of services supported by ORs not dated within the quarter but within the same calendar year	I-2-g	1,280.35
	SUBTOTAL (A)		**P26,363.81**
1.	Input VAT on purchases of goods already claimed in the first quarter of CY 2000	I-2-h	P 427,610.14

Item	Nature	Exhibit No.	Amount
2.	Input VAT on purchases of goods without supporting documents	I-2-i	14,769.98
3.	Input VAT on purchases of goods supported by documents other than invoice (i.e., VAT OR, quotation letter)	I-2-j	10,077.27
4.	Input VAT on purchases of goods supported by "TIN NON-VAT invoice"	I-2-k	1,125.48
5.	Input VAT on purchase of goods supported by invoices not issued in the Company's name	I-2-l	2,806.18
6.	Input VAT on purchases of goods supported by invoice printed with supplier's VAT number only	I-2-m	1,750.00
7.	Input VAT on purchases of services without supporting documents	I-2-n	333,411.07
8.	Input VAT on purchases of services supported only by documents other than OR (i.e., VAT invoice, Statements of Account/Account Summaries, machine-validated payment slips, provisional receipts)	I-2-o	44,400.61
9.	Input VAT on purchases of services supported by OR without preprinted TIN VAT number	I-2-p	649.04
	SUBTOTAL (B)		**P836,599.77**
	Unaccounted Difference between VAT Return and Summary List		.45
	SUBTOTAL (C)		**P836,600.22**
	TOTAL (A+C)		**P862,964.03**

(Exhibits H, I-1 to I-2-q-iii, and J-1-1 to J-3-584)

Thus, based on the evidence offered by petitioner, the total substantiated excess input taxes amounted to P2,096,164.37, computed as follows:

Total Input VAT per 2nd Quarter VAT Return for 2000	P3,144,382.03
Less: a) Disallowance per Independent CPA	862,964.03
b) Output VAT per 2nd Quarter VAT Return for 2000	185,253.63
Total Substantiated Excess Input VAT	**P2,096,164.37**

Allocating the above substantiated input VAT to the verified zero-rated sales that have been duly accounted for would result to a refundable amount of P706,798.46, computed as follows:

$$\frac{P26{,}264{,}853.16}{P77{,}894{,}128.05} \times P2{,}096{,}164.37 = \underline{\mathbf{P706{,}798.46}}$$

Notwithstanding the foregoing, petitioner's claim for refund or issuance of tax credit certificates must fail. The Court cannot ascertain whether the reported excess input taxes for the 2nd quarter of 2000 in the amount of P2,959,128.40 remained unapplied against any output tax liability in the succeeding taxable quarters. Petitioner presented as evidence its amended 3rd quarter VAT return for taxable year 2000[9] wherein no amount was indicated in the space for "Input Tax Carried Over from Previous Quarter".[10] Based on this document, petitioner alleges that the unutilized input taxes for the 2nd quarter of 2000 were not applied to the subsequent quarter. However, this document is not sufficient to dispel doubt as to whether these input taxes really remained unapplied. Since only the VAT return for the 3rd quarter of 2000 was submitted as evidence, the question remains: whether the input taxes were applied against output taxes of quarters succeeding thereto.

It must be noted that the amended 3rd quarter return was filed on September 17, 2002. Before this date, petitioner should have already submitted VAT returns for quarters subsequent to the 3rd quarter of 2000, i.e., the 4th quarter of 2000, the four quarters of 2001, and the 1st and 2nd quarters of 2002 as required by law. These ensuing VAT returns should have been submitted as evidence to prove that indeed the input taxes for the 2nd quarter of 2000 were not utilized or applied against subsequent output tax liability. Absent the same, there is doubt as to the application of the 2nd quarter of 2000 input taxes to output taxes of the succeeding taxable quarters.

Tax refunds are in the nature of tax exemptions. As such, these are regarded as in derogation of sovereign authority and are to be strictly construed against the person or entity claiming it.[11]

PREMISES CONSIDERED, the Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[9] *Exhibit E*
[10] *Exhibit E-1*
[11] *BPI Leasing Corporation vs. Court of Appeals, 416 SCRA 4*

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest 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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice