REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DYNO NOBEL PHILIPPINES, INC.,
Petitioner,

- versus - **C.T.A. CASE NO. 6098**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 14 2002

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DECISION

This Petition for Review involves a claim for the refund or for the issuance of tax credit certificate in the amount of P2,198,334.33 allegedly representing the unutilized input VAT paid on domestic purchases of goods and services and importation of capital goods, alleged to be attributable to its zero-rated export sales, covering the taxable year 1998.

The facts of the case as culled from the records are as follows:

Petitioner is a domestic corporation duly organized and existing under and by virtue of Philippine law and is principally engaged in the business of manufacturing ammonium nitrate for export and sale abroad *(Joint Stipulation of Facts, Item No. 1 & 3, CTA records, pp.83-84)*. It is duly registered with the BIR as a VAT taxpayer and with the Board of Investments as an exporter of chemical products *(ibid., Item No. 4 & 5, CTA records, p.84)*.

For the taxable quarters covering January 1. 1998 to December 31, 1998, petitioner filed its 1st, 2nd, 3rd and 4th Quarterly VAT returns. On May 27, 1999, petitioner filed an amended quarterly VAT returns pertaining to the same quarters of the same taxable year. Subsequently thereafter, on April 18, 2000, petitioner again filed an Amended Quarterly VAT returns for the 1st, 2nd, 3rd and 4th quarters of the period January 1, 1998 to December 31, 1998.

Records would show that for the first quarter of 1998, petitioner had total input VAT payments of P 1,543,714.41 pertaining to the previous quarters (4th quarter of 1997) unutilized input VAT payments of P 369,395.68 and current input VAT payments of P1,174,318.73. Said total input VAT payments of P1,543,714.41 were applied against the current output VAT of P 424,567.15 thus leaving an unutilized input VAT payments of P1,119,147.26 for the 1st quarter of 1998 *(Exhibit N).* For the 2nd quarter of 1998, petitioner had current input VAT payments of P1,118,895.01. Said input VAT payments were applied against the current output VAT of P508,324.24 thus leaving a balance of P610,570.77. Petitioner opted to carry over said unutilized input VAT payments to the succeeding quarter to be applied against petitioner's output VAT liability (Exhibit O). For the 3rd quarter of 1998, petitioner had total input VAT payments of P1,594,778.83 pertaining to previous quarter's unutilized input VAT of P610,570.77 and current input VAT payments of P984,208.06. Said total input VAT of P1,594,778.83 were applied against the current output VAT of P1,225,032.25 leaving a balance of P369,746.58 representing the unutilized input VAT payments for the 3rd quarter of 1998 *(Exhibit P).* For the 4th quarter of 1998, petitioner had current input VAT payments of P941,106.69. Said input VAT payments were applied against the current output VAT of P231,666.20 thus leaving a balance of P709,440.49 *(Exhibit Q).*

From the foregoing, petitioner is claiming the aggregate unutilized input VAT payments amounting to P 2,198,334.13 which pertains to the 1st, 3rd and 4th quarter of 1998 as these have not been carried over to the succeeding quarter, thus:

Quarter	Input VAT	Output VAT	Total Unutilized Input VAT
1st Q 1998	P 1,543,714.41	P 424,567.15	P 1,119,147.26
3rd Q 1998	1,594,778.83	1,225,032.25	369,746.58
4th Q 1998	941,106.69	231,666.20	709,440.49
TOTAL			P 2,198,334.33

Believing that it has unutilized input VAT credits, petitioner filed separate applications for refund/tax credit for the 1st, 3rd and 4th quarters of 1998 with the One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the DOF on March 27, 2000 together with the required BIR Form No. 2552.

To date, respondent has neither approved nor granted petitioner's claim for refund or application for tax credit of its unapplied VAT input taxes for the 1st, 3rd and 4th quarters of taxable year 1998 in the aggregate amount of P2,198,334.33. Hence, on April 19, 2000, petitioner filed a Petition for Review with this Court reiterating its stance.

Respondent, for his part raised the following Special and Affirmative Defenses, to wit:

1. Petitioner's alleged claim for refund is subject to administrative routinary investigation/ examination by Respondent's Bureau;

2. The amount of P2,198,334.33 being claimed by petitioner representing alleged excess and/or unutilized input VAT for the 1st, 3rd and 4th quarters of 1998 was not properly documented;

3. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit;

4. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code, as amended;

5. Petitioner miserably failed to prove compliance with the following:

   a. Section 4.100-2 in relation to Section 4.102-1 and Section 4.102-2 of Revenue Regulations No.7-95.

   b. Section 4.104-5 of Revenue Regulations 7-95.

6. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue, 31 SCRA 95)* and as such, they are looked upon with disfavor *(Western Minolco Corp. vs Commissioner of Internal Revenue, 124 SCRA 121)*

The issues to be resolved by this court which, has been jointly stipulated by the parties are:

1. Whether or not petitioner has unutilized input VAT for the taxable quarters covering the period January 1, 1998 to December 31, 1998 in the aggregate amount of P2,198,334.33 pertaining to domestic purchases of goods and services, and importation of capital goods 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 substantiated by documentary evidence in the form of invoices and official receipts.

3. Whether or not the said unutilized input VAT of the petitioner for the taxable year 1998 was carried forward to the succeeding taxable quarter and applied against any of the output VAT of the petitioner for the said period.

4. Whether or not petitioner generated export zero-rated sales for the period covering January 1, 1998 to December 31, 1998.

5. Whether or not the petitioner has proven by sufficient evidence that it is entitled to the refund/tax credit being claimed in the instant case.

As the foregoing issues are interrelated, we deem it best to streamline them into one main issue of **"Whether or not petitioner is entitled to the tax refund/credit in the aggregate amount of P2,198,334.60 allegedly representing the unutilized creditable input VAT pertaining to domestic purchases of goods and services and importation of capital goods for the taxable year 1998."**

Petitioner anchored its claim for refund based on Section 106(a) of the Tax Code (now Section 112(A) of the Tax Reform Act of 1997), as amended. To quote:

> ***"SEC. 106. Refunds or tax credits of creditable input tax.*** - (a) 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 100 (a) (2) (A) (i), (ii) and (b) and Section 102 (b) (1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the 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."

Corollary, Section 11 of the same code defined Export Sales in this guise:

> ***"Sec. 100. Value-added tax on sale of goods or properties.***-(a) x x x
>
> (2) The following sales by a VAT-registered person shall be subject to 0%:
>
> (A) **Export sales.**- The term 'export sales' means:

(i) 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 and services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

As per the amended quarterly VAT returns submitted by petitioner, it appears that petitioner has creditable input VAT due in the aggregate amount of P2,198,334.33, to the extent that said input VAT has not been applied against any output tax pursuant to Section 106 (A) (now Section 112 (A)) of the Tax Code.

It was established that for the period January 1, 1998 to December 31, 1998, petitioner had input VAT in the amount of P 2,198,334.33 arising from domestic purchases of goods and services as well as importation of goods, broken down as follows:

QTR. (A)	EXHIBIT (B)	PURCHASES OF GOODS & SERVICES DOMESTIC (C)	IMPORTATION (D)	INPUT VAT (E=C+D x 10%)	TAXABLE SALES (F)	CLAIM FOR REFUND (G=E-F)
CARRIED OVER FROM PREVIOUS QUARTER						369,395.68
1ST 98	N	P 5,837,747.25	P 5,905,440.00	P 1,174,[illegible]19.00	P 424,567.15	749,751.85
2ND 98	O	6,335,294.92	4,853,651.74	1,118,895.01	508,324.24	610,570.77
3RD 98	P	6,539,648.08	3,302,432.50	984,208.06	1,225,032.25	(240,824.19)
4TH 98	Q	5,281,566.86	4,129,510.00	941,106.69	231,666.20	709,440.49
	TOTAL	P 23,994,257.11	P 18,191,034.24	P 4,218,528.76	P 2,389,589.84	2,198,334.60

A run down of the records of the case would reveal that petitioner's unutilized/creditable input taxes pertaining to the domestic purchase of goods and importation of goods and services are supported by various invoices and official receipts ***(Exhibits AA-1-1 to Exhibits AA-8-244 to AA-8-524)*** which have been duly submitted with this court. Moreover, in the amended quarterly VAT returns, petitioner deducted the amount of input taxes claimed for each of the respective quarters (1st, 3rd and 4th) under the line: "Less: ANY REFUND/TCC CLAIMED". ***(Exhibits N, P, Q)***. Evidently, the total claimed unutilized creditable VAT input taxes was no longer carried over to the succeeding quarter, the 1st quarter of taxable year 1999 ***(Exhibit S)***.

True enough, the input VAT remained unutilized/unapplied because the goods of petitioner were allegedly 100% exported and therefore, subject to VAT at zero percent (0%) pursuant to Section 100(2)(A) of the Tax Code, as earlier quoted.

Petitioner, in its second amended Quarterly Value-Added Tax Returns for the 1st quarter to 4th quarter of 1998 declared zero-rated sales in the amount of P460,100,167.19, computed as follows:

QUARTER INVOLVED	EXHIBIT		EXPORT SALES
1st QTR	N	P	147,209,093.68
2nd QTR	O		153,850,374.44
3rd QTR	P		125,826,309.56
4th QTR	Q		33,214,389.51
	TOTAL	**P**	**460,100,167.19**

Section 100(a)(2) of the *National Internal Revenue Code* (then in effect at the time of the alleged exportation) defines "Export Sales" as the sale and 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. In that case, it is imperative for any claimant of a tax refund or credit in relation to the input VAT paid to prove not only the existence of the sale but also the actual shipment of the goods from the Philippines to a foreign country *(***Commissioner of Internal Revenue vs. Philippine Bobbin Corporation, CA G.R. SP No 59452, dated March 8, 2001***)*.

Thus, as can be gleaned from the records of the case as well as the verification made by the independent CPA, the export sales of petitioner were properly supported by bills of lading and shipping invoices. By and large, these documents affirm the authenticity of the export sales and if laid down together would establish the fact of exportation as they contain the information regarding the quantity of the goods, their destination as well as the amount involved.

With regards to petitioner's input VAT this court made reference to the findings of the independent accounting firm commissioned by the Court. Thus, pursuant to CTA Circular No. 1-95, as amended, petitioner engaged the services of SGV & Co. to conduct a special audit on the matter. Below is a summary of the independent CPA's findings ***(Exhibit Z)***:

	Findings	Amount of Disallowable Input Taxes
1	Domestic purchases of goods supported by documents other than VAT invoices (e.g. airway bill, ORs, delivery receipts, purchase order, statement of billing, cash slip, cash register, etc.)	P 29,746.82
2	Domestic purchases of services supported by documents other than VAT official receipts (ORs) (e.g. airway bill, invoices, delivery Receipts, purchase order, statement of billing, cash slip, cash Register, etc.)	50,140.52
3	Domestic purchases of goods supported by invoices with pre-printed TAN-VAT/V printed after July 31, 1991 with stamped TIN-V/VAT	2[illegible],255.65

4	Domestic purchases of services supported by ORs with stamped/ handwritten "VAT/V" only	58,761.82
5	Domestic purchases of goods supported by photocopied documents	1,400.35
6	Domestic purchases of services supported by photocopied documents	587.54
7	Domestic purchases of goods supported by VAT invoices not in the name of the company	31.82
8	Erroneous computation of input tax credits	53.53
9	Importation of goods without supporting documents	103,755.00
	Total	P **270,733.05**

After further verification of the documents submitted, we found the independent's report to be in order save from some minor but notable exceptions. Thus, the court found that the following input VAT, which the independent auditing firm failed to consider, should likewise be disallowed, to wit:

SUPPLIER	EXHIBIT	REF. NO.	AMOUNT				INPUT VAT
(a) Invoice with stamped "TIN-V/VAT after July 31, 1991							
CENTER TRADE PRINTHAUS	AA 2-202	6414	4,000.00			P	**363.64**
(b) Invoice or official receipt not in the name of the company							
COPYER COPY CENTER	AA 4-393	648938	46.41			P	4.22
CHUYTE ORDONEZ STORE	AA 6-275	393551	64.00				5.82
POST GROCERY	AA 6-367	185500	360.00				32.73
NEW ABIAN STORE	AA 8-479	30768	933.50				84.86
			Subtotal			P	**127.63**
(c) Overstated input VAT							
DON ATILANO	AA 4-402	12713	1,799.49	P	181.60	P	
					179.95		1.65

LEE SUPER PLAZA	AA 6-336	254003	39,834.55	P	3,654.55	
					3,621.32	33.23
DON ATILANO	AA 6-77	13981	9,076.43	P	832.70	
					825.13	7.57
DON ATILANO	AA 8-284	15308	1,445.34	P	132.60	
					131.40	1.20
DON ATILANO	AA 8-284	14193	5,199.84	P	477.05	
					472.71	4.34
			Subtotal		**P**	**47.99**
			Total		**P**	**539.26**

In sum, the court recommend to partially grant petitioner's claim for refund in the amount of P 1,927,062.02, computed as follows:

Amount claimed		P2,198,334.33
Less: Disallowances		
(a) Per independent CPA's verification	P270,733.05	
(b) Per Court's further verification	539.26	271,272.31
Amount Refundable		**P 1,927,062.02**

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED** but in the reduced amount of P1,927,062.02. Respondent Commissioner of Internal Revenue is **ORDERED** to **ISSUE A TAX CREDIT CERTIFICATE** in favor of herein petitioner in the amount of **ONE MILLION NINE HUNDRED TWENTY SEVEN THOUSAND SIXTY TWO PESOS AND 02/100** (P1,927,062.02) representing unutilized input VAT paid attributable to petitioner's zero-rated export sales covering the taxable year 1998.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

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