REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AIR LIQUIDE PHILIPPINES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 5652

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondents.

Promulgated:
JUL 06 2000

x - x

DECISION

This petition for review is seeking for the refund or issuance of a tax credit certificate in the original amount of P26,666,642.83, but was later amended to P10,966,711.75, representing unutilized input value-added tax (VAT, for brevity) on domestic purchases and importation of capital goods for the calendar quarter ended June 30, 1996.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office located at Lot 37 DBP Avenue, Food Terminal Inc. Complex, Taguig, Metro Manila. It is registered with the Bureau of Internal Revenue as a VAT entity with Certificate of Registration RDO Control No. 95-044-002738, dated October 9, 1995 (Exh. A-2).

On July 22, 1996, Petitioner seasonably filed its 1996 second quarterly VAT return showing, among others, input VAT in the amounts of P5,836,588.52 and P5,782,095.67, arising from domestic purchases of goods/services and importation of goods, respectively. Out of the aforesaid amounts, Petitioner asserted that the sum of

P10,966,711.75 pertains to payments of input VAT on domestic purchases and importation of capital equipment.

On June 29, 1998, believing that it is entitled to the refund of input tax on capital goods, Petitioner filed with the Revenue Enforcement Group of the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance an application for tax credit/refund of value-added tax paid pursuant to BIR Revenue Audit Memorandum Order No. 2-93 (Exh. E).

Without waiting for an action from the Respondents, Petitioner on the same day, filed the instant Petition for Review in order to toll the running of the two-year prescriptive period under the law.

In their Answers, Respondents raised as Special and Affirmative defenses that: The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid; the judicial action for the refund of taxes paid before June 29, 1996 had already prescribed; claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes; it is incumbent upon petitioner to show compliance with the provisions of Section 230 of the Tax Code, as amended; in an action for tax refund, the burden is upon the taxpayer to prove that he is entitled to the refund and failure to sustain the same is fatal to the action for refund; the alleged claim for refund is still subject to administrative routinary investigation and/or examination by the Respondents' Bureau; and the taxes so claimed have been paid and collected in accordance with law and regulations, hence not refundable.

In support of its claim for refund, petitioner presented various documentary exhibits which consist of:

1. BIR Certificate of Registration (Exh. A-2);

2. The original and amended quarterly value-added tax returns for the second and third quarters of 1996 (Exhs. A, A-1, B, C, D, and D-1);

3. Application for Tax Credit/Refund of VAT paid (Exh. E);|

4. Report of the commissioned independent auditor (Exh. F); and

5. Two folders containing photocopies of Petitioner's VAT official receipts and/or invoices, import entry declarations and other documents supporting the claim for refund on input taxes (Exhs. F-1 and F-2)

This case was submitted for decision sans the evidence memoranda of the Respondents.

The issues to be resolved in the instant case are as follows:

1. Whether or not Petitioner is entitled to the claim for refund/credit pursuant to Section 106(b) of the Tax Code; and

2. Whether or not Petitioner was able to support with substantial evidence its entitlement thereto.

Petitioner anchors its legal basis on Section 106(b) of the Tax Code which provides:

> **SECTION 106.** ***Refunds or tax credits of creditable input tax.*** — (a) xxx
>
> (b) *Capital goods.* — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

Based on the above proviso, Petitioner should prove that: (1) it is a VAT registered person; (2) the input taxes claimed by Petitioner were paid on capital goods; (3) the input taxes have not been applied against output tax liability; and (4) the administrative claim for refund was seasonably filed.

After a circumspect study of the evidence presented, it was established that Petitioner is a VAT-registered person as seen in the Certificate of Registration issued by the Bureau of Internal Revenue, dated October 9, 1995 (Exh. A-2). The sales invoices, official receipts, import entry declarations and other documents supporting Petitioner's claimed input taxes prove that Petitioner paid input VAT on its purchases and importation of capital equipment. It was also proven that input taxes sought to be refunded remained unapplied as shown by Petitioner's 1996 amended third quarterly VAT return where Petitioner deducted the sum of P10,966,711.75 from its total accumulated input taxes (Exhs. D and D-1). Lastly, Petitioner was able to prove that the administrative claim for refund was seasonably filed.

Under Section 106(b) of the Tax Code, an application for refund/credit may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made. In the present case, the close of the quarter was on June 30, 1996 and the application for refund/credit was filed on June 29, 1998 (Exh. F). Hence, it can be clearly seen that the administrative claim for refund was filed within the reglementary period of two years.

With respect to the affirmative defense of Respondent Commissioner of Internal Revenue that judicial action for the refund of taxes paid prior to June 29, 1996 had already prescribed, the Court had already ruled that the reckoning of the two-year period commences from the filing of the quarterly VAT return (***Resolution*, Atlas Consolidated Mining and Development Corporaton vs. Commissioner of Internal Revenue, C.T.A. Case No. 5296, dated July 20, 1998**). Since, Petitioner filed its 1996 second quarterly VAT return on July 22, 1996 and the Petition for Review on June 29, 1998, the filing of the judicial action is within the two-year period.

Although Petitioner appears to be entitled to the refund sought, still it must prove with substantial evidence the input taxes on capital goods in the amount of P10,966,711.75 for the period April 1, 1996 to June 30, 1996.

A verification of the report submitted by the independent auditor together with VAT official receipts, invoices, import entry declarations and other supporting documents (Exhs. F, F-1 and F-2), discloses that the input taxes derived from local purchases and importation of capital equipment were properly substantiated for VAT purposes. However, the Court deemed it proper to exclude input taxes on local purchases of capital goods which are not within the period of the claim and which the independent auditor failed to consider in arriving at his conclusion, to wit:

Date	Supplier	O.R. No.	Exh. F-1	Input Tax
07-25-96	Phelps Dodge Phils., Inc.	79300	239-240/303	P 59,356.82
07-01-96	Trigon Mgt & Ind. Corp.	3231	275-276/303	11,107.92
07-09-96	Meralco Industrial Engineering	24304	279-280/303	63,338.24
07-09-96	Meralco Industrial Engineering	24305	281-282/303	65,864.71
07-11-96	EEI Corporation	167420	283-284/303	198,228.80
07-03-96	MHE-Demag (P) Inc.	097	285-287/303	15,813.05
07-03-96	Datem, Inc.	375	288,299/303	32,703.01
07-02-96	Electrodynamics Const. & Dev.	452	300-301/303	2,767.17
07-12-96	Meralco Industrial Engineering	24303	302-303/303	2,494.57
	T o t a l			P 451,674.29

WHEREFORE, in view of the foregoing, Petitioner's claim for refund is hereby partially **GRANTED**. Respondents are **ORDERED** to **REFUND** in favor of Petitioner the amount of P10,515,037.46, representing input VAT on capital goods for the period April 1 to June 30, 1996.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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