REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AIR LIQUIDE PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5748

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

Promulgated:

JAN 23 2002

x - x

DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P15,240,112.20 (originally in the amount of P6,948,939.18) allegedly representing unutilized input value-added tax (VAT, for brevity) on domestic purchases of goods and services and importation of goods and capital equipment for the four calendar quarters of 1997.

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal office address at Lot 37, DBP Avenue, FTI Complex, Taguig, Metro Manila (Exhibit H). It is registered with the Bureau of Internal Revenue as a VAT taxpayer with Certificate of Registration bearing RDO Control No. 95-044-002738, dated October 9, 1995. (Exhibit I).

For the four calendar quarters of 1997, Petitioner seasonably filed its quarterly Value-Added Tax Returns (Exhibits Y to Y-3, AA to AA-3, DD to DD-3, and GG to GG-

3). These VAT returns were simultaneously amended on November 12, 1998, reflecting a total output tax liability in the amount of P6,816,316.03 for the year 1997 with aggregate input tax in the sum of P15,240,112.02 for the same period, to wit:

Quarter Involved	Exhibit	Output Tax	Input Tax
1st Quarter 1996	A & A-1	P 1,166,105.17	P 2,803,132.51
2nd Quarter 1996	BB to BB-3	1,238,883.08	2,377,372.26
3rd Quarter 1996	FF to FF-3	2,608,766.29	7,188,672.37
4th Quarter 1996	HH to HH-3	1,802,561.49	2,870,934.88
T o t a l		P6,816,316.03	P15,240,112.02

On February 23, 1999, Petitioner filed four separate Applications for Tax/Credit of Value-Added Tax Paid with RDO No. 44 of the Bureau of Internal Revenue in the total amount of P15,240,112.02 representing unapplied input VAT on domestic purchases and importation of goods and capital equipment for the year 1997 (Exhibits Z to Z-3, CC to CC-3, FF to FF-3, and II to II-3). In these applications, Petitioner declared (indirect) export sales in the aggregate sum of P8,650,154.10.

On March 26, 1999, Petitioner filed the instant petition for review in order to toll the running of the two-year prescriptive period under the law.

In the Answers filed by the Commissioner of Internal Revenue and the Commissioner of Customs, the following were raised as Special and Affirmative defenses, thus:

> 1. The petition states no cause of action as the it does not allege the dates when the taxes sought to be refunded were actually paid;
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> 2. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes;

3. One who claims to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute;

4. In an action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund; and

5. It is incumbent upon Petitioner to show compliance with the provisions of Section 112 in relation to Sections 229 and 230 of the Tax Code, as amended.

In support of its claim for refund, Petitioner presented the following evidence:

1. Original and amended quarterly VAT returns for the years 1995, 1996, 1997, and 1998 (Exhibits A, K, L, N, O, Q, R, U, V, Y, AA, BB, DD, EE, GG, HH, KK, LL, and MM);

2. Report of the commissioned independent CPA on the input taxes claimed by Petitioner (Exhibits B and B-1);

3. Summary lists of input taxes for non-capital and capital expenditures for the years 1995, 1996, and 1997 together with their supporting invoices and official receipts (Exhibits C-1-1 to C-1-33, D-1-1 to D-1-129, E-1-1 to E-1-396, F-1-1 to F-182, F-2-1 to F-4-176, and G-1-1 to G-1-267);

4. SEC certificate of filing amended articles of incorporation (Exhibit H);

5. BIR certificate of registration (Exhibit I);

6. Applications for tax credit/refund of VAT paid on a quarterly basis starting from the first quarter of 1996 to the fourth quarter of 1997 with some letters-application for refund (Exhibits M, P, S, T, W, X, Z, CC, FF, II, and JJ, inclusive of their sub-markings); and

7. Air Liquide Phils., Inc. VAT schedule (Exhibits NN and NN-1)

This case was submitted for decision without the evidence and memorandum of the Respondents.

The issues jointly stipulated by the parties are as follows:

> 1. Whether or not Petitioner has unapplied or unutilized creditable value-added tax inputs for the four quarters of 1997 arising from its domestic purchase of goods and services and importation of goods which is a proper object of a claim for refund pursuant to Section 112 of the (1997) National Internal Revenue Code, as amended;
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> 2. Whether or not the said creditable value-added tax inputs of Petitioner for the four quarters of 1997 are substantiated by documentary evidence in the form of invoices and official receipts; and
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> 3. Whether or not said unapplied or unutilized creditable value-added tax inputs for the four quarters of 1997 was carried forward to the succeeding taxable quarter of 1998 and applied against any of the value-added tax output of the Petitioner for the said period.

Petitioner asserts that it is entitled to the refund of input taxes derived from domestic purchases and importation of goods and capital equipment in the amount of P15,240,112.02, broken down as follows: (Exhibit B)

	Not Related to Capital Goods	Related to Capital Goods	Total
Local Purchases	P1,813,631.62	P 7,443,261.40	P 9,256,893.02
Importation	98,324.00	5,884,895.00	5,983,219.00
T o t a l	P1,911,955.62	P13,328,156.40	P15,240,112.02

The Petitioner's legal anchor is based on the provisions of Section 106(a) and (b) [now Section 112(a) and (b)] of the Tax Code, as amended, which provides:

> **Sec. 106. Refunds or tax credits of 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 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.
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> (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.

There is no argument that Petitioner is a VAT-registered person and has accumulated net creditable input taxes in the amount of P28,028,139.98 as of December 31, 1997. These facts were already stipulated upon by both parties during the pre-trial conference (see Joint Stipulation of Facts and Issues, paragraphs 1 and 5, CTA records, pp. 116 and 117). The applications for refund/tax credit with the BIR and the petition for review with this Court were timely filed within the two-year prescriptive period reckoned from the respective dates of filing of the 1997 original quarterly VAT returns (**see Resolution, Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5296, July 20, 1998**).

However, we are constrained to deny the claim for refund of Petitioner with respect to input taxes not related to capital goods.

Section 106(a) of the Tax Code, mandates that a VAT-registered taxpayer should have generated zero-rated or effectively zero-rated sales before the input taxes attributable thereto can be refunded. Since Petitioner is claiming a refund of input taxes not related to capital goods, it must show proof that it generated zero-rated sales.

In its 1997 applications for Refund/Credit of Value-Added Tax Paid, Petitioner declared the total amount of P8,650,154.10 as (indirect) export sales (Exhibits Z, CC, FF, and II). Nevertheless, it failed to present its own sales invoices and official receipts to support such sales. Without these documents, the Court cannot verify the authenticity of the declaration of Petitioner insofar as the amount of P8,650,154.10 is concerned. It should be emphasized that the quarterly VAT returns for the year 1997 reflected no record of zero-rated sales. On the contrary, what was shown were taxable sales in the gross amount of P68,163,160.30. For this reason, we have to deny the refund of input taxes not related to capital goods in the amount of P1,911,955.62 for insufficiency of evidence.

We now proceed to the remaining input taxes on capital goods in the sum of P13,328,156.40.

Section 106(b) of the Tax Code requires every taxpayer claiming a refund of input taxes on capital goods to prove that: (1) it is a VAT registered person; (2) the input taxes claimed 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 **(Air Liquide Philippines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case No. 5652, promulgated on July 6, 2000, with Entry of Judgment dated October 10, 2000)**.

As discussed earlier, Petitioner already complied with the first and fourth requirements. Therefore, what is left for determination is Petitioner's compliance with the second and third requisites.

In the report of the commissioned independent CPA, out of the total input taxes related on capital goods in the amount of P13,328,156.40, only the sum of P6,873,517.36 was supported by valid VAT invoices and official receipts (Exhibits B and B-1). Hence, only the amount of P6,873,517.36 is a proper object of a claim for refund. Moreover, the Court ascertained that the said input VAT was not utilized as credit to the output tax liability of Petitioner for the year 1997 as well as to the succeeding quarter.

With respect to compliance with the third requirement, records show that Petitioner's output tax liability in 1997 in the amount of P6,816,316.03 was offset against the 1995 unutilized input taxes in the amount of P13,464,412.86 which were supported by valid documents as examined by the independent auditor (see page 4 of Exhibit B). Moreover, the total claimed input taxes in the amount of P15,240,112.92 were deducted from the available input taxes as of March 31, 1998 as "VAT Refund/TCC Claimed" (Exhibit MM-3).

WHEREFORE, in view of the foregoing, the petition for review is hereby partially **GRANTED**. Respondents are **ORDERED to REFUND** or in the alternative to **ISSUE A TAX CREDIT CERTIFICATE** in favor of Petitioner the amount of P6,873,517.36, representing input VAT on capital goods for the year 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

AMANCIO Q. SAGA
Associate Judge

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