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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INTEL PHILIPPINES MANUFACTURING, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 4967

Promulgated:

MAR 10 1997

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DECISION

This is a claim for the refund of input taxes alleged to have been paid by the petitioner on its domestic purchases of goods and services covering the period March 1, 1991 to May 31, 1991 in the original amount of P4,327,151.63.

Petitioner is a domestic corporation engaged in the business of designing, developing, manufacturing and exporting advanced and large-scale Integrated circuit components commonly called "VLSI" components or "IC's". It is a VAT registered entity under VAT Registration Certificate No. 32A-3-002649, effective as of January 1, 1988.

Petitioner alleged that for the period starting March 1, 1991 to May 31, 1991 It generated export sales in the amount of P306,440,972.35 which were all paid for in acceptable foreign currency and inwardly remitted in accordance with existing regulations of the Central Bank and are therefore classified as zero-rated sales. Petitioner further claims that it paid input taxes on its domestic purchases of goods and services for the same period in the total amount of P4,327,151.63 which remained unutilized because of its zero output tax liability resulting from its zero-rated export sales. Such input taxes paid were allegedly attributable to petitioner's zero-rated sales. As a result, petitioner filed three separate applications for tax credit/refund of input taxes with respondent in the total amount of P4,327,151.63. All these applications were received by the respondent on March 18, 1992, July 24, 1992 and July 24, 1992, respectively. Respondent did not act upon these applications for tax credit/refund so petitioner finally elevated its claim to this Court through a petition for review filed on March 18, 1993.

On May 11, 1993, during the pendency of this case in Court, respondent issued a Tax Credit Certificate SN. 001873, dated May 11, 1993, in the amount of P1,052,889.44 in favor of the petitioner representing a portion of the total amount claimed as tax credit for the period covering March 1, 1991 to May 31, 1991. Thereafter, petitioner reduced the amount prayed for to

P3,274,262.19 representing the balance after deducting the allowed portion from the original amount.

Respondent's Answer was filed on May 12, 1993, stating by way of Special and Affirmative Defenses the following:

> 8. The petitioner states no cause of action as it does not state the specific date/s when the alleged input taxes were actually paid (Manufacturer's Bank and Trust Co., as Trustee for Gen. Trust Plan vs. Commissioner of Internal Revenue, C.T.A. Case No. 1659, November 29, 1965);
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> 9. Petitioner's claim for refund of the alleged creditable VAT input taxes is still under the usual routinary examination/ investigation by respondent's Bureau;
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> 10. The allegation that petitioner has creditable VAT input taxes does not *ipso facto* warrant a refund/tax credit;
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> 11. The alleged input taxes sought to be refunded herein were paid and collected pursuant to law and pertinent BIR implementing rules and regulations, hence, not refundable;
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> 12. Petitioner must prove that the alleged input taxes attributable to the alleged exported goods have not been applied to the output tax and must prove that the alleged total foreign exchange proceeds have been accounted for by the Central Bank of the Philippines. Likewise, input taxes allegedly paid by petitioner on its local purchases from VAT registered persons must be fully supported by invoices issued pursuant to Section 108 of the Tax Code and must be made In the manner provided for therein;
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> 13. Claims for refund/tax credit are construed strictly against claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma,

> 31 SCRA 95 [1970]; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35 [1975]);
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> 14. In a claim for refund, it is incumbent upon petitioner to prove that it is entitled thereto. It must be able to point to a positive provision of the law granting such right. Failure to do so is fatal to its claim for refund;
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> 15. Moreover, it is incumbent upon the petitioner to prove that it has complied with the provision of Section 230 of the Tax Code." (pp. 32-34, CTA rec.)

The sole issue involved in this case is whether or not the petitioner is entitled to the refund or tax credit of the remaining amount of P3,274,262.19 representing alleged unapplied input taxes paid for the period covering March 1, 1991 to May 31, 1991.

The petitioner anchors its claim on two assertions: first, that its sales from the period March 1, 1991 to May 31, 1991 are all classified as export sales and secondly, that all the input taxes claimed for refund are related or directly attributable to such export sales. These claims made by the petitioner, if proven to be true, shall lead to the eventual refund of the amount claimed because of clear provisions of the law and pertinent revenue regulations.

Section 100(a) of the Tax Code provides that export sales are subject to 0% VAT, thus:

> **SEC. 100. *Value-added tax on sale of goods.*** - (a) Rate and base of tax. - There

shall be levied, assessed and collected on every sale, barter or exchange of goods, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods sold, bartered or exchanged, such tax to be paid by the seller or transferor: *Provided*, That the following sales by VAT-registered persons shall be subject to 0%:

(1) Export sales; and

(2) sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate.

'Export Sales' means the sale and shipment or exportation 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, or foreign currency denominated sales. 'Foreign currency denominated sales' means sales to non-residents of goods assembled or manufactured in the Philippines, for delivery to residents in the Philippines and paid for in convertible foreign currency remitted through the banking system in the Philippines."

Section 8(a) of Revenue Regulation No. 5-87 authorizes the refund of input taxes paid in relation to such export sales, thus:

SEC. 8. ***Zero-rating*** - (a) In general. - A zero-rated sales is a taxable transaction for value-added tax purposes. A sale by a VAT registered person of goods and/or services taxed at zero rate shall not result in any output tax. The input tax on his purchases of goods or services related to such zero-rated sale shall be available as tax credit or refundable in accordance with Section 16 of these Regulations.

Section 104(b) of the Tax Code provides the following:

> **SEC. 104.** ***Tax Credits.*** - (a) *Creditable input tax.* - xxx.
>
> (b) *Excess output or input tax.* - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 106.

Section 106(a) of the same Code further provides thus:

> "SEC. 106. ***Refunds or tax credits of input tax.*** - (a) Export Sales. - An exporter who is a VAT-registered person may within two years from the date of exportation, apply for the issuance of the input tax attributable to the goods exported, to the extent that such input tax has not been applied to output tax and upon presentation of proof that the foreign exchange proceeds has been accounted for in accordance with the regulations of the Central Bank of the Philippines.

As a BOI-registered enterprise with a pioneer status as export producer, petitioner was able to obtain VAT Ruling No. 102(a)(1)-402(88) which contained the declaration that its service income is automatically zero-rated (Exhibit "F", p. 156, CTA rec.).

Petitioner's zero-rated taxability on its export sales, as confirmed by the above-mentioned VAT-ruling, led it to claim for the refund of unutilized input taxes that were paid for its domestic purchases of goods and services directly attributable to such export sales.

To support this particular claim for refund, petitioner presented the following documentary evidence:

1) Certification/Report of Punongbayan and Araullo, dated November 29, 1993, which included petitioner's Export Sales Summary for the period March 1, 1991 to May 31, 1991 and the Summary of Input Taxes paid for the same period (Exhibit "J", pp. 165-167, CTA rec.). This certification/report contained a summary of the procedures done in verifying the accuracy of the amount claimed as tax credit;

2) Photocopies of supplier's sales invoices and official receipts for the period March 1, 1991 to May 31, 1991, to prove that the input taxes claimed as tax credit are duly supported by invoices and official receipts (Exhibits "K-1" to "K-4722"); and

3) Photocopies of sales invoices, airway bills and bank credit memos to prove the accuracy of the amount alleged to have been generated by its export sales from the period March 1, 1991 to May 31, 1991. The bank credit memos were particularly offered to prove that its

export sales were paid for in acceptable foreign currency inwardly remitted to the Philippines in accordance with existing Central Bank Regulations (Exhibits "L" to "L-655").

A thorough analysis of the evidence presented leads this Court to the conclusion that petitioner is entitled to a tax credit in the amount of P88,568.74, detailed as follows:

Ref. Nos.	Supplier's Name	Invoice Date	Invoice Number	VAT Reg. Number	Total Amount	Net Amount	VAT Amount	Exh. No.
4142	Aggregate Ventures Phils., Inc.	04-04-91	12658	32A-8-001372	P 510.00	P 463.64	P 46.36	K- 120
41497	Gascon Technology	04-12-91	079	32A-1-008	3,500.00	3,181.82	318.18	K-1705
41498	Gascon Technology	04-12-91	083	32A-1-008	3,500.00	3,181.82	318.18	K-1706
41499	Gascon Technology	04-12-91	081	32A-1-008	2,200.00	2,000.00	200.00	K-1707
5366	Gascon Technology	04-26-91	093	32A-1-008	10,577.00	9,615.45	961.55	K-1709
3220	Gascon Technology	04-03-91	074	32A-1-008	25,000.00	22,727.27	2,272.73	K-1717
4221	Gascon Technology	04-03-91	075	32A-1-008	21,375.00	19,431.82	1,943.18	K-1719
4222	Gascon Technology	04-05-91	076	32A-1-008	1,650.00	1,500.00	150.00	K-1720
4223	Gascon Technology	03-26-91	073	32A-1-008	22,000.00	20,000.00	2,000.00	K-1722
4484	Gascon Technology	04-05-91	077	32A-1-008	12,500.00	11,363.64	1,136.36	K-1724
4485	Gascon Technology	03-26-91	071	32A-1-008	43,500.00	39,545.45	3,954.555	K-1726
4897	Gascon Technology	04-12-91	082	32A-1-008	4,000.00	3,636.36	363.64	K-1728
4898	Gascon Technology	04-12-91	078	32A-1-008	5,300.00	4,818.18	481.82	K-1729
5824	Gascon Technology	05-10-91	099	32A-1-008	36,152.00	32,865.45	3,286.55	K-1733
31742	Gascon Technology	03-21-91	069	32A-1-008	8,000.00	7,272.73	727.27	K-1738
41139	Gascon Technology	04-13-91	088	32A-1-008	8,550.00	7,772.73	777.27	K-1741
41140	Gascon Technology	04-15-91	089	32A-1-008	55,000.00	50,000.00	5,000.00	K-1742
51193	Gascon Technology	05-09-91	095	32A-1-008	39,600.00	36,000.00	3,600.00	K-1744
51258	Gascon Technology	05-20-91	103	32A-1-008	1,500.00	1,363.64	136.36	K-1745
31611	Gras Mktg. & Enter	03-27-91	14	32A-5-008	7,031.50	6,392.27	639.23	K-1848
3703	IBM Phils.	03-01-91	878404	32-0-0003	27,520.47	25,018.61	2,501.86	K-2165
5595	IBM Phils.	03-11-91	026391	32-0-0003	69,578.41	63,253.10	6,325.31	K-2169
41015	IBM Phils.	07-01-91	878871	32-0-0003	27,520.47	25,018.61	2,501.86	K-2171
5205	JCR Mercantile	05-04-91	4698/96	34-6-0003	67,915.00	61,740.91	6,174.09	K-2462
5206	JCR Mercantile	05-02-91	4693/4713	34-6-0003	96,600.00	87,818.18	8,781.82	K-2463
4207	JCR Mercantile	05-09-91	4712/4700	34-6-0003	48,000.00	43,636.36	4,363.64	K-2465
4915	JCR Mercantile	04-17-91	4639/27	34-6-0003	84,600.00	76,909.09	7,690.91	K-2497

Ref. Nos.	Supplier's Name	Invoice Date	Invoice Number	VAT Reg. Number	Total Amount	Net Amount	VAT Amount	Exh. No.
5860	JCR Mercantile	05-11-91	4721/26	34-6-0003	65,800.00	59,818.18	5,981.82	K-2506
5861	JCR Mercantile	05-17-91	4745	34-6-0003	32,200.00	29,272.73	2,927.27	K-2507
41047	Lane Moving	03-25-91	25389	32A-1-001	12,397.27	11,270.25	1,127.02	K-2739
4387	Realto Photo & Optical	04-16-91	39257	24-4-000352	13,800.00	12,545.45	1,254.55	K-3586
41382	SGV Dimensions Int'l.	04-16-91	951	32A-4-002358	1,100.00	1,000.00	100.00	K-3837
4684	The Online Adv. System	04-01-91	12708	32A-0-000927	104,678.97	95,162.70	9,516.27	K-4054
411	J.E. Automated Parts Ent.	11-01-91	735	---	11,100.00	10,090.91	1,009.09	K-4675
					P974,256.09	P885,687.35	P88,568.74	

The input taxes that are not directly attributable to petitioner's zero-rated export sales were excluded in the computation of the final amount awarded as credit. These are the following:

1) Purchases of fire extinguishers, fire sprinklers, fire hose cabinet and service charges for their installation and repair, all of which do not form part of the product exported (Exhibits "K-1702", "K-1704", "K-1731", "K-1732", "K-1736", "K-1739"); and

2) Repair and maintenance of the fax machine which cannot be directly attributable to the zero-rated export sales of the petitioner (Exhibit "K-2444").

Invoices that were also excluded are those whose dates are not within the period being claimed (Exhibits "K-1711", "K-1713", "K-1714", "K-1735", "K-2162").

Moreover, this Court also excluded in its computation the invoices that were cancelled by the Department of Finance as these were already considered in the tax credit earlier granted in favor of petitioner.

WHEREFORE, in view of the foregoing, this Court hereby orders respondent to **issue a TAX CREDIT CERTIFICATE** in favor of petitioner the amount of P88,568.74 representing the balance of unutilized input taxes paid for the period March 1, 1991 to May 31, 1991.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that this 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
Court of Tax Appeals