REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

THIRD DIVISION

PILIPINAS TOTAL GAS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7863

Members:

BAUTISTA, Chairperson,
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

JAN 13 2011
ABFernando 2:11p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by Pilipinas Total Gas, Inc. (hereafter "petitioner") praying for the refund or issuance of a tax credit certificate (TCC) in the aggregate amount of P7,898,433.98, representing its unutilized input VAT paid on its purchases of taxable goods and services, for the first and second quarters of calendar year 2007.

THE PARTIES

Petitioner Pilipinas Total Gas, Inc. is a domestic corporation duly organized and existing under Philippine laws, with principal office at MDD 121 East Science Avenue, Laguna Technopark, Biňan, Laguna.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. He may be served with summons, pleadings and other legal processes at the BIR National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

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

Petitioner is engaged in the sale, transportation and distribution of industrial gas, as well as sale of gas equipment and other related business as shown in its Securities and Exchange Commission Certificate of Registration number AS095-011466.

Petitioner is registered with the BIR, as a VAT taxpayer, as evidenced by its BIR Certificate of Registration bearing Taxpayer Identification Number 004-609-538-000.

On the following dates, petitioner filed with the BIR its Original Quarterly VAT Returns for the first and second quarters of 2007, respectively:

Taxable Quarter	Date of Filing of Original Return
1st	April 20, 2007
2nd	July 20, 2007

On the following dates, petitioner filed with the BIR its Amended Quarterly VAT Returns for the first to second quarters of 2007, reflecting petitioner's vatable sales, zero-rated sales, domestic purchases of non-capital, and services:

2007 Taxable Quarter	Date of Filing of Amended Return	Current Transactions				
		Vatable Sales	Zero-rated Sales (P)	Exempt Sales	Domestic Purchases-Goods Other than Capital Goods (P)	Domestic Purchases-Services (P)
1st	May 20, 2008	1,169,920.98	47,262,774.66	0.00	36,308,089.75	1,462,946.16
2nd	May 20, 2008	713,132.06	31,906,108.49	18,026,481.31	24,661,608.92	5,270,691.44
Total						

For the first to second quarters of 2007, petitioner incurred unutilized input VAT credits from its domestic purchases of non-capital goods and services in the total amount of P8,124,400.35, to wit:

2007 Taxable Quarter	Unutilized Input VAT Credits		Total
	Domestic Purchases-Goods Other than Capital Goods (P)	Domestic Purchases-Services (P)	
1st	4,356,970.77	175,553.54	4,532,524.31
2nd	2,959,393.07	632,482.97	3,591,876.04
Total			8,124,400.35

Of the total accumulated input VAT of P8,124,400.35, the amount of P7,898,433.98 is the excess or unutilized input VAT for the first to second quarters of 2007.

On May 15, 2008, petitioner filed an administrative claim for refund of unutilized input VAT for the two quarters of taxable year 2007. On the same date, petitioner submitted additional supporting documents to the BIR.

In view of respondent's inaction, on January 23, 2009, petitioner filed its judicial claim for refund with this Court, docketed as C.T.A. Case No. 7863.

In his Answer, respondent alleged by way of special and affirmative defenses:

> "5. Petitioner's alleged claim for refund is subject to administrative routine investigation/examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because the Commissioner of Internal Revenue still has to investigate and ascertain the veracity of the claim;

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6. Petitioner must prove that it paid the alleged input VAT taxes for the period in question;

7. Petitioner must prove that the alleged input VAT was not utilized against any output VAT liability;

8. Petitioner must prove that its sales are VAT zero-rated as contemplated under Section 112(A) of the National Internal Revenue Code of 1997 (NIRC of 1997);

9. Petitioner must prove that the alleged VAT input taxes for the period in question are attributable to its alleged VAT zero-rated sales;

10. Petitioner must prove that the claim was filed within the period prescribed by law;

11. Petitioner must prove that its claim for the issuance of a tax credit certificate in the amount of P7,898,433.98 representing unutilized input VAT arising from its zero-rated transactions for the period covering first and second quarters of taxable year 2007 is properly documented. In an action for refund, it is a working rule that petitioner as taxpayer-claimant, has the burden of proof to show that it is entitled to refund of the amount claimed as refundable. The burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund *(Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 336)*. Failure to present the necessary evidence is fatal to its claim;

12. Taxes paid and collected by the Bureau of Internal Revenue are presumed to have been made in accordance with law and the rules and regulations, and the burden to prove otherwise is upon petitioner;

13. It is a well-settled principle that the tax refunds are in the nature of tax exemptions and are to be construed in

> *strictissimi juris* against the entity claiming the same *(Filinvest Development Corporation vs Commissioner of Internal Revenue, GR No. 146941, August 9, 2007)*. Exemptions from taxation are highly disfavored, so much that they may be odious to the law *(PLDT vs. City of Davao, G.R. No. 143867, August 22, 2001)*. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted *(Davao Gulf Lumber Corporation vs. Commissioner of Internal Revenue and Court of Appeals, G.R. No. 117359, July 23, 1998)*. A state cannot be stripped off this most essential power by doubtful words and of this highest attribute of sovereignty by ambiguous language. He who claims an exemption must be able to point the provision creating the said right.

Petitioner presented Rosalia T. Yu and Richard Go, as witnesses, and documentary evidence, marked as Exhibits *"A"* to *"ZZ-1"*, inclusive of their submarkings, which were all admitted by the Court.

On the other hand, respondent's counsel submitted the case for decision, without presenting any evidence.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice; afterwhich the case shall be deemed submitted for decision.

Both parties having complied thereto, the case was deemed submitted for decision on August 18, 2010.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT PETITIONER'S CLAIM FOR TAX CREDIT OR REFUND OF ITS EXCESS AND UNUTILIZED INPUT TAX FOR THE FIRST AND SECOND QUARTER OF TAXABLE YEAR 2007 WAS FILED WITHIN THE PERIOD PRESCRIBED BY LAW.

II

WHETHER PETITIONER HAS COMPLIED WITH THE INVOICING AND ACCOUNTING REQUIREMENTS FOR VAT-REGISTERED PERSONS, AS WELL AS THE FILING AND PAYMENT OF VAT, IN COMPLIANCE WITH THE PROVISION OF SECTIONS 113 AND 114 OF THE TAX CODE OF 1997, AS AMENDED.

III

WHETHER THE INPUT TAXES OF SEVEN MILLION EIGHT HUNDRED NINETY EIGTH THOUSAND FOUR HUNDRED THRITY THREE AND 98/100 (P7,898,433.98), REPRESENTING PETITIONER'S EXCESS AND UNUTILIZED CREDITABLE INPUT VAT FOR THE FIRST AND SECOND QUARTERS OF TAXABLE YEAR 2007, ARE ATTRIBUTABLE TO PETITIONER'S ZERO-RATED SALES.

IV

WHETHER OR NOT PETITIONER'S ALLEGED UNUTILIZED INPUT VAT FOR THE FIRST AND SECOND QUARTERS OF TAXABLE YEAR 2007 WERE

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PAID BY THE PETITIONER AND APPLIED AGAINST ITS OUTPUT TAXES.

V

WHETHER OR NOT PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND OR ISSUANCE OF TCC ON ITS UNUTILIZED INPUT TAX IN THE AMOUNT OF P7,898,433.98, INCURRED DURING THE FIRST AND SECOND QUARTERS OF TAXABLE YEAR 2007.

Principal Issue

The foregoing issues raised by both parties boil down to the principal issue of whether or not petitioner is entitled to a refund or issuance of a TCC in the aggregate amount of P7,898,433.98, representing its excess and unutilized input VAT for the first and second quarters of taxable year 2007 on its domestic purchases of non-capital goods and services.

THE COURT'S RULING

The petition is without merit.

Section 112 of the NIRC of 1997, as amended, provides:

"SEC. 112. *Refunds or Tax Credits of Input Tax.* –

(A) *Zero-rated or Effectively Zero-rated Sales.* – 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

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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 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated 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: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

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(C)Period within which Refund or Tax Credit of Input Taxes shall be Made. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals."

[signature]

Pursuant to the above quoted *Section 112(A)*, a taxpayer may apply a claim for refund of unutilized input VAT payments not otherwise used for any internal revenue tax due, within two years reckoned from the close of the taxable quarter when the relevant sales were made.

In the case at bench, records show that on May 15, 2008, petitioner filed its administrative claim for refund, together with the supporting documents, for the first and second quarters of 2007, which is within the two (2) year prescriptive period.

On August 28, 2008, petitioner submitted supporting documents (Certification from the DOF) to complete its application for refund with the BIR, which letter was received by Revenue Officer Jimmy E. Belen.

Petitioner now contends that the 120-day period should start to commence on August 28, 2008, the date when it submitted the supporting documents to substantiate its claim for refund.

We do not agree.

Revenue Memorandum Order No. 53-98 prescribes the requisites needed to substantiate a taxpayer's claim for refund of its unutilized input VAT on purchases of goods and services, to wit:

"A. Requirements from Taxpayers (Annex B)

1. Proof of claimed tax credits
2. Proof of Tax Compliance Certificate applied

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3. Xerox copy of used Tax Credit Certificate (TCC) with the annotation of issued TDM at the back, if applicable
4. Proof of payment of deficiency tax, if any
   - Current year/period
   - Previous year/period
5. Certification of the appropriate government agency as to taxpayer's entitlement to tax incentives, if applicable
6. Xerox copies of the Official Receipts evidencing VAT payments on imported purchases, if applicable
7. Proof of exemption under special law, if applicable
8. Certification of the appropriate regulatory agency as to the exempt or zero-rated sales of the taxpayer under its regulatory supervision, if applicable
9. Certification of Registration issued by the appropriate regulatory agency, together with the conditions attached to such registration, if applicable
10. Proof of "approval of Effective Zero-rating of Sales, if applicable
11. Proof that the acceptable foreign currency proceeds on export sales/foreign currency denominated sales had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas, if applicable

Annex B-1
VALUE-ADDED TAX (For audit involving claim for Refund/TCC)

a. Requirements from taxpayer
   I. Requirements mentioned in Annex B
   II. Additional General Requirements
      (1) 3 copies of "Application for VAT Credit/Refund
      (2) Summary List of Local Purchases specifying the following:
         a. Registered name of supplier
         b. VAT number of supplier
         c. Invoice number
         d. Date of Invoice
         e. OR no.

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f. Date of OR
g. Amount of purchase
h. Input Tax
i. Total Invoice amount

(3) Photocopies of VAT purchases of goods and official receipts for purchase of services.

(4) Summary of importation made during the period with the following details:

a. Date of Invoice
b. Supplier
c. Item
d. A WB/BL No.
e. Date of Arrival
f. Total Value
g. Date of Payment
h. OR No.
i. VAT

(5) Photocopies of invoices, import entry documents, official receipts or confirmation receipts evidencing payments of VAT

(6) VAT returns filed for the quarter showing the amount applied for refund/TCC has been reflected as a deduction from the total available input tax, as well as VAT return for the succeeding quarter.

(7) Certification of taxpayer showing the amount of Zero-rated sales, Taxable sales, and Exempt sales.

(8) A statement showing the amount and description of the sale of goods and services, the name of persons or entities to whom the goods or services were sold and the date of the transactions, where the applicant's zero-rated transactions are regulated by certain government agency

(9) Article of incorporation

(10) Sales Contract/Agreement

(11) BOI Certificate of Registration

(12) BIR Certificate of Registration

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(13) Certification from BOI, DOF, BOC, PEZA, etc. that subject taxpayer has not filed similar claim for refund covering the same period
(14) Sworn statement that ending inventory as of the close of the period covered by the claim has been used directly or indirectly in the products subsequently exported as supported by export documents, if the applicant is 100% exporter
(15) Documents of liquidation evidencing the actual utilization of the raw materials in the manufacture of goods at least 70% of which has been actually exported, if the applicant is an indirect exporter
(16) Copy of the ITR and Certified Financial Statements, if applicable
(17) Beginning and ending inventory of raw materials, work-in-process xxx."

A careful examination of the evidence on record shows that petitioner failed to prove that it has submitted the complete supporting documents to warrant the granting of the application for tax refund and to reckon the commencement of the 120-day period for the BIR Commissioner to decide its claim for refund, more particularly the submission of the required Summary List of Local Purchases and the certifications from the Office of the Board of Investment, Bureau of Customs, and the Office of the PEZA that the subject taxpayer has not filed any similar claim for refund covering the same period.

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Pursuant to the aforequoted *Section 112 (C) of the NIRC of 1997, as amended,* the CIR has 120 days from the submission of the complete supporting documents to decide the claim for refund. Thus, a taxpayer must first submit the complete supporting documents before the 120-day period should commence. The BIR Commissioner cannot decide the claim for refund without the complete supporting documents.

Considering that petitioner failed to submit to the BIR the required complete supporting documents, we find the filing of the instant Petition for Review with this Court premature.

Well settled is the rule that exhaustion of available administrative remedies is a condition precedent before taking judicial action.

In the case of *Lopez vs. City of Manila, 303 SCRA 458,* the Supreme Court ruled that where a remedy is available within the administrative machinery, this should be resorted to before resort can be made to courts, not only to give the administrative agency the opportunity to decide the matter by itself correctly, but also to prevent unnecessary and premature resort to courts.

Equally settled is the rule that claims for tax refunds, when based on statutes granting tax exemptions, partake of the nature of an exemption; thus, the rule of strict interpretation against the taxpayer-claimant similarly applies *(Commissioner of Internal Revenue vs. Fortune Tobacco Corporation, 559 SCRA 160)*. Hence, a taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund *(Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc., G.R. No. 163835, July 7, 2010)*. Failure to comply therewith warrants a dismissal of the taxpayer's claim for refund.

For all the foregoing, the premature filing of petitioner's claim for refund of unutilized excess input VAT for the first and second quarters of 2007 before this Court warrants a dismissal of the petition, as no jurisdiction was acquired by this Court.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE,** and, accordingly **DISMISSED** for having been prematurely filed.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified 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.

ERNESTO D. ACOSTA
Presiding Justice