REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NEC COMPONENTS PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5653

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 13 2000

x - x

DECISION

This is a Petition for Review filed by Petitioner NEC COMPONENTS PHILIPPINES, INC. against Respondent Commissioner of Internal Revenue for the failure of the latter to act on the former's claim for refund in the amount of P73,994,916.63 allegedly representing its excess/unutilized input value-added tax (VAT) for six (6) quarters commencing April 1, 1996 up to September 30, 1997.

As represented, Petitioner is a domestic corporation primarily engaged in the business of designing, engineering, manufacturing and exporting electronic components, particularly, Printed Wiring Board (PWB) and ElectroMechanical Devices (EMD or relays) [Exh. A]. It exports approximately 100% of the total production of its electronics components abroad (TSN, August 27, 1998, p. 10).

It is registered with the Philippine Economic Zone Authority (PEZA) as an export enterprise with Certificate of Registration No. 96-045 [Exh. "B"], enjoying a six-year income tax holiday provided under its Registration Agreement with PEZA (Exhibit "C"]. It is also registered with the Bureau of Internal Revenue (BIR) as a value-added tax

(VAT) taxpayer subject to zero-percent (0%) rate in accordance with Section 236 of the National Internal Revenue Code of 1997 (then Section 107 of the Old Tax Code) with Taxpayer Identification Number (TIN) 004-520-936V [Exhibit "D"].

Petitioner allegedly filed its VAT Return for the period April 1, 1996 to June 30, 1996 on August 13, 1996 with the BIR [Exhibit "E"] showing, among others, the following:

Input tax on domestic purchases of goods and services	P27,508,977.65
TOTAL INPUT TAX	**P27,508,977.65**

On October 21, 1996, Petitioner allegedly filed its VAT Return for the period July 1, 1996 to September 30, 1996 with the BIR [Exhibit "F"] showing, among others the following:

(Input tax) Carried over from the previous quarter	P27,508,977.65
Input tax on domestic purchases of goods and services (this quarter)	268,277.89
TOTAL INPUT TAX	**P27,777,255.54**

On January 20, 1997, Petitioner filed its VAT Return for the period October 1, 1996 to December 31, 1996 [Exhibit "G"] showing, among others, the following:

(Input tax) Carried over from the previous quarter	P27,777,255.54
Input tax on domestic purchases of goods and services (this quarter)	744,258.55
TOTAL INPUT TAX	**P28,521,514.09**

On July 21, 1997, Petitioner filed its amended VAT Return for the period January 1, 1997 to March 31, 1997 [Exhibit "H"] showing, among others, the following:

(Input tax) Carried over from the previous quarter	P28,521,514.09
Input tax on domestic purchases of goods and services (this quarter)	43,020,219.05
TOTAL INPUT TAX	**P71,541,733.14**

On July 21, 1997, Petitioner filed its VAT Return for the period April 1,1997 to June 30, 1997, [Exhibit "I"] showing, among others, the following:

(Input tax) Carried over from the previous quarter	P71,541,054.05
Input tax on domestic purchases of goods and services (this quarter)	2,732,011.55
Input tax on importation of goods (this quarter)	1,016.00
TOTAL INPUT TAX	**P74,274,081.60**

On June 22, 1998, Petitioner filed its VAT Return for the period July 1,1997 to September, 1997 [Exhibit "J"] showing, among others, the following:

(Input tax) Carried over from the previous quarter	P74,274,081.60
Input tax on domestic purchases of goods and services (this quarter)	551,798.67
Less: Purchases not qualified for Input tax credits	(830,963.64)
TOTAL INPUT TAX	**P73,994,916.63**

Pursuant to Revenue Audit Memorandum Order No. 2-93, Petitioner filed with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (OSS-DOF) on June 25, 1998, six (6) separate Applications for Tax Credit/Refund of its excess/unutilized input tax payments for the following taxable quarters, to wit:

Quarter Ending	Exhibits	Amount of Excess and Unutilized Input Taxes Claimed
June 30, 1996	"K" and "L"	P27,508,977.65
September 30, 1996	"M" and "N"	P268,277.89
December 31, 1996	"O" and "P"	P744,258.55
March 31, 1997	"Q" and "R"	P43,020,219.05
June 30, 1997	"S" and "T"	P2,733,027.55
September 30, 1997	"U" and "V"	P551,798.67

Although Petitioner submitted to Respondent, through the One-Stop Shop of the Department of Finance, all documentary requirements in support of its claim for VAT refund or tax credit for the period, April 1, 1996 to September 30, 1997, Respondent failed to act upon the same within the one hundred twenty (120) day period provided by Section 112 (D) of the NIRC of 1997. Thus, lest it be barred by prescription, Petitioner on June 29, 1998 filed with this Court the instant Petition for Review.

Petitioner presents the proposition as reason of the petition for review that under Sections 106 (A) (2) (a) (1), 112 (A) and 112 (B) [then Sections 100 (a) (2) (A) (i), 106 (a) and 106 (b), respectively] of the Tax Code, quoted below, it is entitled to the refund of the aforementioned VAT input taxes. It said that its sales were all exports paid for in acceptable foreign currency, inwardly remitted to the Philippines and accounted for in accordance with the Rules and Regulations of the Bangko Sentral ng Pilipinas.

> **"Section 106. Value-added tax on sale of goods or properties.-**
> (A) *Rate and Base of Tax.-* There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.
>
> (1)x x x

(2) The following sales by VAT- registered persons shall be subject to zero percent (0%) rate:

(a) *Export sales.* – The term "export sales" means:

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

"Section 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 such sales, except transitional input tax, to the extent that such input tax has 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; x x x"

(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. x x x"

In his Answer filed on July 24, 1998, specifically in his Special and Affirmative defenses, Respondent argued that (1) Petitioner's claim for refund/tax credit is still undergoing administrative routinary investigation/examination by Respondent's Bureau,

(2) Petitioner miserably failed to demonstrate that the taxes subject of the case at bar were erroneously or illegally collected on account of its dereliction to present proofs showing that, indeed, its alleged sales are covered by the provisions of Section 106 (A)(2)(a)(1) of the Tax Reform Act of 1997, (3) the total amount of P73,994,916.63 being claimed by Petitioner as alleged unutilized input tax credits for the period April 1, 1996 to September 30, 1997 was not properly documented, (4) in an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit, and (5) claims for tax/refund/credit are construed in *strictissimi juris* against the taxpayer as it partakes the nature of exemption from tax, thus, it prayed that the instant petition be dismissed for lack of merit.

During the trial of the case, Petitioner presented testimonial and documentary evidence that it is entitled to the refund as prayed for in its Petition for Review. It presented its Accounting Supervisor, Ms. Luzviminda S. Fule, to testify on the facts stated in the Petition for Review. She related to the Court the nature of the Petitioner's business and the grounds upon which it is claiming the instant VAT refund or tax credit. In the course of her testimony, she identified pertinent documents, namely: Petitioner's Articles of Registration, Certificate of Registration with the Philippine Economic Zone Authority (PEZA) [Exhibit "B"], Registration Agreement between the Petitioner and the PEZA [Exhibit "C"], and its VAT Returns for the period, April 1, 1996 to September 30, 1997, which show the nature and details of its input VAT payment for the said period.

She likewise testified that the amount of the instant claim for refund or tax credit of unutilized input VAT payments for the period, April 1, 1996 to September 30, 1997, amounting to P73,994,916.63, were carried over to the succeeding quarters until this amount was deducted from the accumulated excess input VAT credits as reported in Petitioner's amended VAT Return for the period, January 1, 1999 to March 30, 1999 [Exhibit "LL"]. Hence, the amount of the instant input VAT claim will never be available as credit against output taxes, in the succeeding quarter/s.

Petitioner further presented and offered in evidence the pertinent photocopies of invoices and official receipts in support of its reported input taxes, which are pre-marked as Exhibits "BB", "BB-1" to "BB-20", "CC", "CC-1 to "CC-34", "DD", "DD-1 to "DD-84", "EE", "EE-1" to "EE-695", "FF", "FF-1" to "FF-1659", "GG", and "GG-1" to "GG-59" per CTA Circular No. 1-95, as amended. Petitioner also presented as evidence the Certification issued by Bank of TOKYO-Mitsubishi (Manila Branch) to show that the latter received during the period March 1997 to March, 1998 inward remittances for export proceeds in the total amount of $5,343,222.85 and that the same was credited to the account of Petitioner (Exh. Z)

The independent Certified Public Accountant (CPA), Mr. Ruben R. Rubio of Sycip, Gorres, Velayo and Company (SGV & Co.), engaged by the Petitioner, to verify and certify the herein claim for refund issued a Certification [Exhibit "AA"] in accordance with CTA Circular No. 1-95, as amended by Circular No. 10-97, established that out of Petitioner's total input VAT claim for the period, April 1, 1996 to September 30, 1997, amounting to P74,826,559.36, the amount of P71,484,256.67 is properly substantiated and supported by documents in accordance with the existing VAT laws and their implementing rules and regulations. The independent CPA likewise certified that the inward remittance of foreign currency proceeds of Petitioner's export sales for the period, January 1, 1997 to December 30, 1997, are all accounted for, and they correspond to the reported amount of Petitioner's export sales for the same period [Exhibits "HH-1", and "HH-1-1" to "II-1-1].

On the other hand, Respondent did not present any evidence to rebut the claim of Petitioner and did not bother to present evidence to support his material allegations as well as his special and affirmative defenses.

The issue that comes to fore for our consideration is whether or not Petitioner has adduced sufficient evidence to prove its entitlement to the claimed refund/tax credit in the amount of P71,484,256.67, the amount of input VAT recommended by the independent CPA to be refundable.

Prefatorily, it must be pointed out that Petitioner has complied with the prescriptive period provided under Section 112 (then Sec. 106) in relation to Section 114 (then 110) and 229 (then 230) of the Tax Code. It filed its administrative claim for refund with the OSS-DOF on June 25, 1998 (Exh. L to V) and with this Court on June 29, 1998. Both dates fall within the two-year prescriptive period counting from August 13, 1996, the date when the Quarterly VAT return for the period April 1, 1996 to June 30, 1996 was filed with the Respondent (Exh. E), hence, there is no question as to the timeliness of the instant petition.

The Court finds no obscurity in the language of Section 106 (A)(2)(a)(1) [then Sec. 100 (a)(2)(A)(i)] of the Tax Code, *supra*, that would pose an ambiguity in its application. The provision itself furnishes the best means of its own exposition that the export sales of a VAT registered person which are paid for in acceptable foreign currency inwardly remitted to the Philippines and accounted for in accordance with existing rules and regulations of the BSP is not subject to 10% VAT. In other words, evidence as to its registration as VAT entity and the actual export such as sales invoices, bank credit memoranda, export declarations and export permit are necessary, to be considered zero-rated.

Evidence on record shows that Petitioner substantially complied with the aforesaid requirement when it presented its VAT Registration Certificate (Exh. D) and the Export Sales Invoices, Bank Credit Advices (Exhibits HH-1-1 to HH-1-629 and II-1 to II-78), hence, doubt as to the status of the Petitioner as a zero-rated VAT enterprise is eliminated.

Moreover, Section 112(A) [then 106 (a)] of the Tax Code, quoted earlier, is explicit that the input tax attributable to the goods exported by a VAT-registered person is refundable/creditable to the exporter, provided such has not been applied to any output tax and upon presentation of proof that the foreign exchange proceeds has been accounted for in accordance with the rules and regulations of the BSP, thus, the right to claim refund of VAT input taxes by an exporter who is a VAT registered person is in order.

In the case at bar, since Petitioner was able to show (1) that it is indeed a zero-rated VAT enterprise, (2) that its export sales for the period in question were properly supported by sales invoices, Bank Credit Memos and Airway Bills , (3) that it received the total amount of $5,343,222.85 as inward remittance/payment from its importers during the period of March 1997 to March 1998 (Exh. Z), (4) that total input taxes for the period April 1, 1996 up to September 30, 1997 in the total amount of P73,994,916.63, subject of this claim, were deducted from the total accumulated input taxes as of the end of the first quarter of 1999, so that it can no longer be carried over and applied against its output tax to the succeeding quarters (Exh. LL & LL-1), (5) that said input taxes have not been applied to any VAT output tax, (6) that the said input taxes are properly supported by sales invoices and/or official receipts issued by Petitioner's suppliers, as certified by the Auditing Firm, SGV & Company, and considering that respondent did not submit any documentary evidence to support its case and considering further the uncontroverted evidence of the Petitioner, the Court was persuaded to grant the relief sought by Petitioner but in a lesser amount due to an additional disallowance by the Court of P203,221.85 again on reasons of violations of invoicing requirements, the details and the breakdown of which are stated below:

SUPPLIER	QUARTER	EXHIBIT	REFERENCE NO.		INVOICE AMOUNT		INPUT TAX
(a) Supported by provisional receipt only							
MAPRE ASIAN INSURANCE	1st qtr 1997	EE-407	003773	P	**1,841,932.62**	P	**167,448.42**
(b) No supporting document							
AIRFREIGHT 2100, INC.	3rd qtr 1996		CC	P	749.54	P	68.14
ALS MARKETING	2nd qtr 1997		FF		4,095.00		372.27
ROYAL CARGO CORP.					327,424.71		29,765.88
ROYAL CARGO CORP.					4,416.28		401.48
		Subtotal		P	336,685.53	P	30,607.77

(c) Invoice/Official receipt without TIN or "V" / VAT after TIN

GCB ENG'G & MACHINE SHOP	1st qtr 1997	EE-385	0583	P	16,880.00	P	1,534.55
ROYAL STAR APPLIANCE	2nd qtr 1997	FF-1578			2,400.00		218.18
		Subtotal		**P**	**19,280.00**	**P**	**1,752.73**

(d) Supported by non-vat invoice

PHILDREAM MARKETING	1st qtr 1997	EE-460	0402	P	**36,357.00**	P	**3,305.18**

(e) Overstatement of input tax claimed

PROCESS ENHANCEMENT PROD.	2nd qtr 1997	FF-1030 to 1033	926	P	-	P	95.21
ISLAND AIR PRODUCTS CORP.		FF-517/518	120294/120214		-		12.62
				P	**-**	**P**	**107.83**
		Total		**P**	**2,234,255.15**	**P**	**203,221.93**

Accordingly, the total allowable input taxes that should be granted to Petitioner as a refund or as tax credit should only be P70,449,392.01, computed as follows:

Amount per claim		P73,994,916.63
Less: Disallowances		
(a) Per SGV Verification (Exh. AA)	P3,342,302.69	
(b) Per Courts Verification (Aforestated)	203,221.93	3,545,524.62
Amount Refundable		P70,449,392.01

IN THE LIGHT OF ALL THE FOREGOING, Respondent is hereby **ORDERED** to **REFUND** in favor of herein Petitioner the amount of P70,449,392.01 representing the latter's excess/unutilized VAT input taxes for the period April 1, 1996 to September 30, 1997. No costs.

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 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