REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

SITEL PHILIPPINES CORPORATION [formerly: Clientlogic Philippines, Inc.],
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7423

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
OCT 21 2009 ; 9:50 am

x - x

DECISION

CASANOVA, *J.*:

STATEMENT OF THE CASE

This instant case is a claim for refund or issuance of a tax credit certificate in the amount of P23,093,899.59 allegedly representing unutilized input VAT arising from petitioner's domestic purchases of goods and services which are attributable to zero-rated transactions and purchases/importations of capital goods for the taxable year 2004.

STATEMENT OF FACTS[1]

Petitioner SITEL PHILIPPINES is a corporation organized and existing under the laws of the Philippines with office address at 22nd Floor, Wynsum Corporate Plaza, Emerald Avenue, Ortigas Center, Pasig City.

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) who holds office at the BIR National Office Building located at Agham Road, Diliman, Quezon City.

Petitioner is engaged in the business of providing call center services from the Philippines to domestic and offshore business including, but not limited to, tactical telemarketing campaigns and programs and customer relationship management services. It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with TIN/VAT Registration No. 2008-780-708 effective December 14, 2000 and with BIR Certificate of Registration No. OCN 3RC0000244761 issued by BIR Revenue District Office No. 43 (Pasig). Petitioner is likewise registered with the Board of Investments (BOI) as a new information technology service firm in the field of call center on pioneer status with Board Investment Certificate of Registration No. 2001-091.

Petitioner was formerly known as "Contact World, Inc." prior to the change in its corporate name to "ClientLogic Philippines, Inc." effective February 19, 2004 as evidenced by the Certificate of Filing of Amended Articles of Incorporation issued by the Securities and Exchange Commission.

For the period from January 1, 2004 to December 31, 2004, petitioner filed with the BIR its Quarterly VAT Return as follows:

---

[1] Joint Stipulation of Facts and Issues, Rollo, pp. 57-59

Period Covered	***Date Filed***
1st Quarter 2004	26 Apr-04
2nd Quarter 2004	26 Jul-04
3rd Quarter 2004	25 Oct-04
4th Quarter 2004	25 Jan-05

Petitioner's Amended Quarterly VAT Returns from the 1st, 2nd, 3rd, and 4th quarters of 2004 declare as follows:

	Taxable Sales (A)	**Zero-Rated Sales (B)**	**Total Sales (C=A+B)**	**Input Tax For the Qtr. (D)**	**Input Tax From Capital Goods (E)**	**Input Tax From Regular Transactions (F+D-E)**	**Input Tax Allocated to Taxable Sales [G=(A/C)x(F)]**	**Input Tax Allocated to Zero-Rated Sales [H=(B/C)x(F)]**
Qtr 04	509,799.74	180,450,030.29	180,957,830.03	3,842,714.21	2,422,090.40	1,400,623.81	3,930.40	1,396,693.41
2nd Qtr 2004	0	142,664,271.00	142,664,271.00	3,554,922.94	2,846,225.66	708,696.58	-	708,696.58
3rd Qtr 2004	517,736.36	205,021,590.46	205,539,326.82	9,568,047.25	7,629,734.40	1,938,312.85	4,882.45	1,933,430.40
4th Qtr 2004	0	334,384,766.48	334,384,766.48	6,137,028.74	3,005,573.11	3,313,455.63	-	3,313,455.63
	1,025,536.10	**862,520,658.23**	**863,546,194.33**	**23,102,712.44**	**15,923,623.57**	**7,179,088.87**	**8,812.85**	**7,170,276.02**

On March 28, 2006, petitioner filed separate formal claims for refund or issuance of tax credit with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance for its unutilized input VAT arising from domestic purchase of goods and services attributed to zero-rated transactions and purchases/importations of capital goods for the 1st, 2nd, 3rd and 4th quarters of 2004.

To date, respondent has not yet acted upon petitioner's claim for refund or tax credit.

Respondent in his Answer[2] interposed the following Special and Affirmative Defenses:

> "7. The claim for refund is still under examination by the respondent's Bureau;
>
> 8. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund or issuance of tax credit certificate;
>
> 9. The grant of claim for refund tantamounts to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
>
> 10. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same."

After trial on the merits, this case was submitted for decision on February 9, 2009 taking into consideration petitioner's Memorandum filed on January 16, 2009. Respondent did not file his Memorandum.

STATEMENT OF THE ISSUE

The parties jointly stipulated and submitted this sole issue for this Court's resolution:[3]

> "Whether or not petitioner is entitled to a refund or tax credit of its unutilized input VAT arising from purchase of goods and services attributed to zero-rated sales and purchases/importations of capital goods for the 1st, 2nd, 3rd and 4th quarters of the taxable year 2004 in the amount of 23,093,899.59."

---

[2] Rollo, p. 36
[3] Joint Stipulation of Facts and Issues, Rollo, p. 60

THE COURT'S RULING

Petitioner anchors its claim on Sections 110(B) in relation to Sections 112(A) and (B) of the National Internal Revenue Code (NIRC) of 1997, as amended, to wit:

> "**SEC. 110.** ***Tax Credits.—***
>
> **(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 purchases 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 112.
>
> xxx
>
> "**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 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 sales 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."
>
> "**(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.

Petitioner's claim amounts to P23,093,899.59 allegedly consisting of P15,923,623.57 input VAT paid on capital goods purchased and P7,170,276.02 input

VAT attributable to zero-rated sales covering the period January 1, 2004 to December 31, 2004.[4]

This Court shall discuss first petitioner's claim in the amount of P7,170,276.02 representing input VAT attributable to zero-rated sales for the period January 1, 2004 to December 31, 2004.

Pursuant to the aforequoted provision of Section 112(A) of the NIRC of 1997, in order that a refund/tax credit of input VAT attributable to zero-rated or effectively zero-rated sales shall be granted, the following requisites must be present:

1) there must be zero-rated or effectively zero-rated sales;
2) that input taxes were incurred or paid;
3) that such input taxes are attributable to zero-rated sales or effectively zero-rated sales;
4) that the input taxes were not applied against any output VAT liability; and
5) that the claim for refund was filed within the two-year prescriptive period.

Anent the first requisite, petitioner is engaged in the business of providing call center services from the Philippines to domestic and offshore businesses including, but not limited to, tactical telemarketing campaigns and programs and customer relationship management services.[5]

For the year 2004, petitioner allegedly generated sales in the amount of P862,520,658.23 from rendering call center services to various non-residents the consideration for which was paid for in acceptable foreign currency and accounted for in accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). Petitioner maintains that such services qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended, which reads:

[4] supra
[5] ibid. , p. 58

SEC. 108. ***Value-added Tax on Sale of Services and Use or Lease of Properties.—***

xxx

> **(B)** ***Transactions Subject to Zero Percent (0%) Rate.***—The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx
>
> (2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

Petitioner, in order to support its claim, presented a Breakdown of Export Sales/Zero-rated Sales[6] and the related official receipts[7], its various service agreements with non-resident foreign clients[8], Certifications of Non-Registration of petitioner's clients issued by the Securities and Exchange Commission (SEC),[9] as well as Certificates of Inward Remittances issued by Metrobank and the HongKong and Shanghai Banking Corporation Ltd.[10]

The Supreme Court held in ***COMMISSIONER OF INTERNAL REVENUE vs. BURMEISTER AND WAIN SCANDINAVIAN CONTRACTOR MINDANAO, INC.,***[11] that in order for the supply of services to be VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended [*then Section 102(b)(2) of the NIRC of 1977, as amended*], the following requisites must be met:

1) the services must be other than processing, manufacturing or repacking of goods;
2) payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations and

[6] Exhibit N
[7] Exhibit O
[8] Exhibit L
[9] Exhibits L-1 to L-5 and L-19 to L-26
[10] Exhibits F and H-1 to H-3
[11] G.R. No. 153205. January 22, 2007

3) the recipient of such services is doing business outside the Philippines.

Petitioner complied with the first requisite as the call center services it renders are not the same category as "processing, manufacturing or repacking of goods". Likewise, the second requisite was satisfactorily met. For call center services rendered in the year 2004, petitioner received foreign currency payments which were accounted for in accordance with the BSP rules and regulations as evidenced by the official receipts issued by petitioner to its alleged non-resident foreign clients and the Certificates of Inward Remittances issued by Metrobank and the Hongkong and Shanghai Banking Corporation, Ltd as seen in Exhibit M, Annexes 2 and 3.

However, Petitioner failed to comply with the third requisite.

While the SEC Certificates of Non-Registration submitted by petitioner prove that the alleged non-resident foreign clients of petitioner are not registered corporations in the Philippines, nevertheless, the same do not prove that such corporations are non-residents doing business outside the Philippines.

Hence, for petitioner's failure to prove that the call services it rendered for the year 2004 were made to non-resident foreign clients doing business outside the Philippines, its alleged sales therefrom in the amount of P862,520,658.23 cannot qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended. Consequently, the input VAT of P7,170,276.02 allegedly attributable to the said sales cannot be refunded.

It is clear under Section 112(A) of the NIRC of 1997, as amended, that the refund/tax credit of unutilized input VAT is premised on the existence of zero-rated or effectively zero-rated sales. Settled is the rule that a claim for tax refund is in the nature of tax exemption. Laws granting tax exemption are construed *stricticissimi juris* against the taxpayer and liberally in favor of the taxing authority. Taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and he who thus seeks to be privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted. Petitioner has a burden of proof to establish the factual basis of its claim for tax refund, which it failed to do.[12]

Anent the remaining claim amounting to P15,923,623.57 representing input VAT paid on capital goods purchased for the period January 1, 2004 to December 31, 2004, Section 112(B) of the NIRC of 1997 allows the refund/tax credit of input VAT paid on capital goods purchased subject to the taxpayer's compliance with the following requisites:

1. that it is a VAT registered entity;
2. that input taxes were paid on capital goods purchases;
3. that such input taxes were not applied against any output VAT liability; and
4. that the claim for refund was filed within the two-year prescriptive period.

It is settled that petitioner is duly registered with the BIR as a VAT taxpayer.[13]

Anent the second requisite, petitioner submitted VAT invoices and official receipts[14], which upon verification thereof, the Court-commissioned independent CPA[15] found that out of the P15,923,623.57 claimed input tax on capital goods, only P13,824,129.14 was properly substantiated for VAT purposes, broken down as follows:[16]

---

[12] Sea-Land Services, Inc. vs. Court of Appeals, 223 SCRA 316
[13] Joint Stipulation of Facts and Issues, Paragraph 8
[14] Exhibits X, X-1 to X-2564
[15] Ms. Katherine O. Constantino of Constantino Guadalquiver & Co.
[16] Exhibit M, Annex 34-2

	Attached to Exhibit M as	Input Tax
Domestic purchases of goods properly supported by VAT invoices	Annex 22	P 7,434,538.72
Domestic purchases of services properly supported by VAT ORs	Annex 23	3,766,019.07
Domestic purchases of goods supported by VAT invoices pre-printed TIN-V after July 31, 1991 but before January 1, 1996	Annex 24	3,000.00
Domestic purchases of services supported by ORs pre-printed TIN-V after July 31, 1991 but before January 1, 1996	Annex 25	2,665,852.55
Domestic purchases of services supported by VAT ORs printed before July 31, 1991	Annex 26	615,929.70
Adjustments/reversals made by the company on its purchases during the calendar year.	Annex 32	(661,210.90)
TOTAL		**P13,824,129.14**

However, this Court finds that the ICPA recommended amount of P13,824,129.14 should be further reduced by P2,668,852.55[17] representing input taxes claimed on domestic purchases of goods and services which are supported by invoices and ORs, respectively, with pre-printed TIN-V instead of TIN-VAT as required under Section 4.108-1 of Revenue Regulations No. 7-95.

Thus, Petitioner's claimed input VAT on capital goods which is duly substantiated amounts to only P11,155,276.59.[18]

As to whether or not the input VAT claim of P11,155,276.59 pertains to capital goods purchases, Section 4.106-1(b) of Revenue Regulations No. 7-95 defines "capital goods or properties" as follows:

> "Capital goods or properties" refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29(f), used directly or indirectly in the production or sale of taxable goods and services."

Clearly, from the foregoing, in order that the items purchased can be classified as "capital goods or properties", the following conditions must be present:

a) that the goods or properties must have estimated useful life or more than one year;
b) they are treated as depreciable assets under Section 29(f); and

[17] Exhibit M, Annexes 24 and 25
[18] *(P13,824,129.14 less P2,668,852.55).*

c) they are used directly or indirectly in the production or sale of taxable goods or services.

The suppliers' invoices and ORs supporting the input VAT of P11,155,276.59 showed that the same was incurred by petitioner on payments for the supply of materials and labor for its office renovation and on purchases of computer equipments, Sony digital camcoder, fire suppression systems, pantry equipments, office furnitures, CCTV and door access systems, public address system, camera, PABX system, modem, laserjet printers, cd-rom drive, air-con system, filing cabinets and computer software. Evidently, these purchases are in the nature of depreciable assets which have useful life of more than one year.

In addition thereto, petitioner's audited financial statements[19], Reconciliation of Additions to Property, Plant and Equipment account[20], and Schedule of Purchases (Capital Asset)[21] for the year 2004, showed that these purchases formed part of its Property, Plant and Equipment account subjected to depreciation and that the same were used in connection with its business. Undoubtedly, these purchases related to the input VAT claim of P11,155,276.59 fall within the meaning and scope of "capital goods or properties" under Section 4.106-1(b) of Revenue Regulations No. 7-95.

As to whether or not the substantiated input VAT of P11,155,276.59 was applied against any output VAT liability, this Court rules in the negative.

Petitioner had sufficient input VAT on regular transactions against which the output VAT liabilities of P50,719.97 and P51,773.64 reflected in its amended Quarterly VAT Returns for the first and third quarters of 2004, respectively, in the aggregate amount of P102,493.61 may be applied/credited. Thus, the substantiated

---

[19] Exhibit I
[20] Exhibit Y
[21] Exhibit Y-1 to Y-10

input VAT claim on capital goods purchases in the amount of P11,155,276.59 is undiminished of any output VAT liability for the year 2004. Moreover, petitioner did not carry-over/apply the said claim in the succeeding quarters as petitioner's claimed input tax for each quarter was deducted from the total available input tax for the same quarter[22].

Anent the timeliness of the claim, petitioner filed its administrative claim on March 28, 2006[23] and its Petition for Review was filed on March 30, 2006. Both dates of filing are well within the two-year prescriptive period; reckoned from April 26, 2004 when petitioner filed its Quarterly VAT Return for the first quarter of 2004[24], the earliest quarter covered by the subject claim.

In view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Petitioner is entitled to the instant claim in the reduced amount of P11,155,276.59 computed as follows:

Amount of Input VAT Claim		P 23,093,899.59
Less:	Input VAT Claim on Zero-Rated Sales	7,170,276.02
Input VAT Claim on Capital Goods Purchases		P 15,923,623.57
Less:	Not Properly Substantiated Input VAT Claim on Capital Goods Purchases	
	Per ICPA Report *(P15,923,623.57 less P13,824,129.14)*	2,099,494.43
	Per this Court's further verification	2,668,852.55
Refundable Input VAT on Capital Goods Purchases		**P11,155,276.59**

Accordingly, respondent is **ORDERED to REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **P11,155,276.59** representing unutilized input VAT arising from petitioner's domestic purchases of goods and services which

[22] Exhibits A to D, specifically line 25A thereof
[23] Joint Stipulation of Facts and Issues, Paragraph 7
[24] Joint Stipulation of Facts and Issues, Paragraph 10

are attributable to zero-rated transactions and purchases/importations of capital goods for the taxable year 2004.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division