REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

**AIR LIQUIDE PHILIPPINES, INC.,**
Petitioner,

- versus -

**C.T.A. CASE NO. 5708**

**COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,**
Respondents.

Promulgated:
JUL 03 2000

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# DECISION

Petitioner, by way of this petition for review, is seeking for the refund or issuance of a tax credit certificate in the amount of P4,244,728.76, 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 calendar quarter ended December 31, 1996.

The facts and issues, as jointly admitted and stipulated by the parties and as approved by the Court[1], are the following:

FACTS ADMITTED

1. That Petitioner is a domestic corporation organized and existing under the laws of the Republic of the Philippines, with principal office at Lot 37, DBP Avenue, Food Terminal, Inc. Complex, Taguig, Metro Manila;

[1]See Resolution, dated May 20, 1999, CTA Records, p. 31.

2. That Respondent Commissioner of Internal Revenue is the person duly appointed as Commissioner of Internal Revenue and vested with the authority to exercise the functions of his office, among others, the power to act upon claims for refund; and

3. That Respondent Commissioner of Customs is the duly appointed person vested with the authority to act as such including the power to issue and grant refund and /or tax credits of excess value-added tax inputs from importation of goods and capital equipment.

## FACTS STIPULATED

1. That Petitioner is registered with the Bureau of Internal Revenue as a VAT taxpayer pursuant to the requirements of (then) Section 107 of the National Internal Revenue Code, as shown by the Certificate of Registration No. 95-044-002738 wherein Petitioner has been issued Registration Number 004-481-874 VAT on its sale of goods effective October 9, 1995. A copy of said certificate is attached as Annex "A" and made an integral part hereof;

2. That on January 20, 1997, Petitioner filed its quarterly VAT return for the period October 1, 1996 to December 31, 1996 with the Bureau of Internal Revenue which reflected a total net creditable input tax of P63,749,077.04. A copy of said quarterly VAT return is attached as Annex "B" and made an integral part hereof;

3. That on December 29, 1998, Petitioner filed its application for tax credit/refund of the aforestated net value-added tax input payments for the quarter ended December 31, 1996 in the amount of P4,244,728.76 with the Bureau of Internal Revenue. A copy of said application is attached as Annex "C" and made an integral part hereof;

4. That Petitioner filed with the Bureau of Internal Revenue its amended quarterly VAT return for the period January 1, 1997 to March 31, 1997; and

5. That to date, Respondents have not yet approved the aforesaid application;

## ISSUES

1. Whether or not Petitioner has unapplied or unutilized creditable value-added tax inputs as of December 31, 1996 arising from its

> domestic purchases of goods and services and importation of goods which is a proper object of a claim for refund pursuant to Section 112 of the National Internal Revenue Code, as amended;
>
> 2. Whether or not the said creditable value-added tax inputs of Petitioner for the quarter ended December 31, 1996 are substantiated by documentary evidence in the form of invoices and official receipts;
>
> 3. Whether or not said unapplied or unutilized creditable value-added tax inputs for the quarter ended December 31, 1996 was carried forward to the succeeding taxable quarter and applied against any of the value-added tax output of the Petitioner for the said period; and
>
> 4. Whether or not Petitioner has value-added tax output liability for the quarter ended December 31, 1996 against which the creditable value-added tax inputs of Petitioner for said quarter could be applied.

Before We can answer the number one issue at bar, it is necessary to address first the second and fourth issues.

Petitioner alleges that it has unutilized creditable input VAT in the amount of P4,244,728.76. Out of the aforementioned amount, the sum of P3,616,898.83 arose from domestic purchases of goods and services and the remaining amount of P627,829.93 from importation of goods. Petitioner believes that it is entitled to the refund or tax credit of unutilized input VAT arising from purchases of capital goods and domestic purchases of goods and services because its sales of goods to PEZA registered enterprises are effectively zero-rated (TSN, May 11, 1999, p. 6). The bases of its claim for refund/credit are the provisions of Section 106(a) and (b) of the Tax Code which provide:

> **SEC. 106.** *Refunds or tax credits of creditable 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 or effectively 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.

(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 (Emphasis supplied)

There is no argument that petitioner is a VAT registered taxpayer (Exhs. A and A-1) and has accumulated input taxes for the calendar quarter ended December 31, 1996. However, based on the report (Exh. E) submitted by the commissioned independent auditor, Mr. Ruben R. Rubio, not all the input taxes claimed in the amount of P4,244,728.76 are supported by evidence. Below is a table showing the result of the examination conducted by the independent auditor and which was verified by the Court to be in order: (Exh. E-1)

| | Per Application | Input taxes not related to capital goods | Input taxes related to capital goods | | |
|---|---|---|---|---|---|
| | | | w/o proper support | w/ support | Total |
| Local Purchases | P 3,616,898.83 | P 1,373,506.34 | P 1,416,343.95 | P 827,048.54 | P 2,243,392.49 |
| Importation | 627,829.93 | 3,144.00 | 278,797.93 | 345,888.00 | 624,685.93 |
| Total | P 4,244,728.76 | P 1,376,650.34 | P 1,695,141.88 | P 1,172,936.54 | P 2,868,078.42 |

Based on the above data, petitioner is not entitled to the sum of P1,376,650.34 and P1,695,141.88, representing input taxes not related to capital goods and related to capital goods, respectively, for lack of supporting documents.

Our study shows that even if Petitioner was able to present supporting documents with respect to input taxes not related to capital goods, the amount corresponding to input taxes cannot be granted. Under Section 106(a) of the Tax Code, Petitioner must prove that it has zero-rated sales in order to claim a refund or tax credit of unutilized input taxes attributable to it. In the instant case, petitioner failed to present evidence to prove that its sales of goods were made to PEZA registered enterprises because it is precisely this element that categorizes said sales as zero-rated. Petitioner failed to present its sales invoice to prove that sales were indeed made to PEZA-registered enterprises. Paradoxically, petitioner is subject to VAT at the rate of 10% as shown in the quarterly VAT returns for the fourth quarter of 1996 and the first quarter of 1997 (Exhs. B and D).

As to the remaining amount of P1,172,936.54 representing validly supported input taxes on capital goods, the same cannot be refunded.

The Court noted that for the fourth quarter of 1996, petitioner has an output VAT liability in the amount of P1,333,714.99 which was more than the amount of input taxes verified to have supporting documents. Going back to the fourth issue at bar, petitioner has an output tax in the amount of P1,333,714.99 which the input tax in the sum of P1,172,936.54 could be applied. Since the output VAT liability of petitioner is greater than the amount of validly supported input taxes for the calendar quarter ended December 31, 1996, it has no more unutilized input VAT payments which can be a subject of a claim for refund.

As regards the third issue at bar, the same needs no further explanation for being moot and academic.

**WHEREFORE**, in view of the foregoing, petitioner's claim for refund is hereby **DENIED** for insufficiency of evidence and lack of merit.

**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 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