REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INTEL PHILIPPINES MANUFACTURING, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6212

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

NOV 18 2003

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DECISION

This petition for review seeks for the issuance of tax credit certificate in the total amount of P31,902,507.50 allegedly representing unutilized input value-added tax (VAT, for brevity) on domestic purchases of goods and services attributable to zero-rated export sales and importation of capital goods for the period October 31, 1998 to December 31, 1998.

The facts as borne out by the records and pleadings of the case are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office at 1321 Apolinario Street, Bangkal, Makati City, Metro Manila. It is primarily engaged in the business of designing, developing, manufacturing and exporting advance and large-scale integrated circuit components, commonly referred to in the industry as Integrated Circuits or “IC’s”.

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Petitioner is registered with the Bureau of Internal Revenue as a VAT taxpayer with Certificate of Registration bearing RDO Control No. 94-048-02621 dated July 6, 1994 *(Exhibit "B"; originally with RDO Control No. 32A-3-002649 dated January 1, 1988, Exhibit "A")*. It is likewise registered with the Board of Investments as a preferred pioneer enterprise enjoying a six-year income tax holiday in accordance with the provisions of the Omnibus Investments Code *(Exhibit "C")*.

For the period October 1, 1998 to December 31, 1998, petitioner seasonably filed its fourth Quarterly Value-Added Tax Return on January 25, 1999 reflecting, among others, output VAT in the amount of P237,616.80, input VAT on domestic purchases and importation of goods in the respective amounts of P16,970,042.30 and P15,170,082.00, and zero-rated export sales in the sum of P3,027,880,818.42 *(Exhibit "D", inclusive of submarkings)*.

Petitioner alleges that the aforementioned zero-rated sales in the amount of P3,027,880,818.42 arose from its exportation of goods and were paid for in acceptable foreign currency inwardly remitted in accordance with the regulations of the Bangko Sentral ng Pilipinas. It further avers that the 1998 fourth quarter input taxes in the total amount of P31,902,507.50 were directly attributable to its zero-rated export sales.

On the belief that it is entitled to the refund of input taxes attributable to its recorded zero-rated export sales, petitioner, on May 21, 1999 filed with the One-Stop-Shop Inter Agency Tax Credit and Duty Drawback Center of the Department of Finance an Application for Tax Credit/Refund of Value-Added Tax Paid covering the following input taxes for the fourth quarter of 1998: *(Exhibits I and J)*

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	Amount
Tax Paid on Imported/Locally Purchased Capital Equipment	P15,170,082.00
Total VAT Paid on Purchases per Invoices Received During the Period for which this Application is Filed	16,732,425.50
Amount of Tax Credit/Refund Applied For	P31,902,507.50

After the expiration of the period of one hundred twenty (120) days allowed under Section 112(D) of the Tax Code (*for the respondent to act on said application*) without an action from the respondent, petitioner, on December 27, 2000, filed the instant petition for review in order to toll the running of the two-year prescriptive period provided under Section 229 of the Tax Code.

In his Answer filed through registered mail on February 12, 2001, respondent raised as Special and Affirmative Defenses the following:

> 8. The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded/credited were actually paid;
>
> 9. It is incumbent upon herein petitioner to show that it complied with the provisions of Section 229 of the Tax Code as amended;
>
> 10. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35);
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> 11. One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute (Asiatic Petroleum vs. Llanes, 49 Phil. 466; Union Garment Co. vs. Court of Tax Appeals, 4 SCRA 304);
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> 12. In an action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for refund. Furthermore, as pointed out in the case of William Li Yao vs. Collector (L-11875, December 28, 1963), amounts sought to be recovered or credited should be shown to be taxes which are erroneously or illegally collected; that is to say, their payment was an independent single act of voluntary payment of a tax believed to be due and collectible and accepted by the government, which had therefor become part of the

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State moneys subject to expenditure and perhaps already spent or appropriated; and

13. Taxes paid and collected are presumed to have been made in accordance with the law and regulations, hence not refundable.

The issues to be resolved by the court as jointly stipulated by the parties are the following:

(a) Whether or not petitioner generated export sales for the fourth quarter of 1998;

(b) Whether or not the petitioner's export sales were paid for in acceptable foreign currency exchange and the proceeds thereof had been duly accounted in accordance with the regulation of the Bangko Sentral ng Pilipinas;

(c) Whether or not the VAT input taxes on domestic purchases of the petitioner are all attributable to petitioner's zero rated sales;

(d) Whether or not the petitioner's claim for VAT refund of an alleged unutilized input VAT for the fourth quarter f 1998 is duly substantiated/supported by documentary evidence;

(e) Whether or not the VAT input taxes have not been applied to any output tax for the period covered in its claim or any succeeding period; and

(f) Whether or not petitioner is entitled for the credit/refund of the tax arising from domestic purchases of taxable goods and services and importation of capital goods from October 1, 1998 to December 31, 1998 in the amount of P31,902,507.50 subject of this Petition.

Petitioner anchors its claim on the provisions of Section 112(A) and (B) of the Tax Code, as amended, and Section 4.100-2 of Revenue Regulations No. 7-95 which provide:

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"**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 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 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."

"**Sec. 4.100-2.** ***Zero-rated sales.*** A zero-rated sale by a VAT-registered person, which is a taxable transaction for VAT purposes, shall not result in any output tax. However, the input tax on his purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these regulations.

xxx xxx xxx"

It should be noted that out of the total claim for refund of P31,902,507.50, the amount of P16,732,425.50 pertains to input VAT on locally purchased goods and services while the sum of P15,170,082.00 refers to input VAT on importation of capital goods.

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We shall tackle first the compliance of petitioner with Section 112(A) of the Tax Code pertaining to its claim for refund of input VAT attributable to its zero rated sales. Foremost, petitioner must substantiate its alleged zero rated sales by documentary evidence. Particularly, it must show compliance with the invoicing requirements of Section 113 of the Tax Code in relation to Section 237 of the same code and with the additional invoicing requirement under Revenue Regulations No. 7-95 entitled the Consolidated Value-Added Tax Regulations.

Section 113 Tax Code requires that every invoice or receipt issued by a VAT registered person should contain the following information:

> **SEC. 113.** *Invoicing and Accounting Requirements for VAT-Registered Persons-*
>
> **(A)** ***Invoicing Requirements.*** – A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
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> 1. A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
>
> 2. The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

Such invoice or receipt must be duly registered with the Bureau of Internal Revenue as prescribed under Section 237 of the Tax Code, to wit:

> **SEC. 237.** ***Issuance of Receipts or Sales or Commercial Invoices.*** – All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, **issue duly registered** receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service xxx. (Emphasis supplied)

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A careful examination of all the sales invoices of petitioner reveals that the aforesaid documents were not duly registered with the Bureau of Internal Revenue as mandated under Section 237 of the Tax Code *(Exhibits FF-1 to FF-1037)*. There was no authority to print or BIR permit number reflected on the said invoices. Basic is the rule that before a printer can print receipts or sales or commercial invoices an *authority to print* must be secured first from the Bureau of Internal Revenue by all persons who are engaged in business pursuant to Section 238 of the Tax Code. Pertinent portion of Section 238 is quoted hereunder for easy reference:

> **SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.***- All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same. (*Emphasis supplied*)

The above provision seeks to eliminate the use of unregistered and double or multiple sets of receipts by striking at the very root of the problem – the printer *(Hector S. De Leon, The National Internal Revenue Code Annotated, Seventh Edition, page 901)*. Since petitioner failed to show that it has secured BIR authority to print sales invoices, the court cannot consider the sales invoices offered as valid proof of export sales subject to VAT at 0%. While we note that the invoices appear to be computer generated, this does not mean that the requirement of securing prior BIR authority to print can be dispensed with. Contrariwise, a stringent monitoring should be effected because it is the petitioner that prints its invoice without the required authority. Moreover, we have noticed that the computer generated sales invoices were not in the same format *(see Exhibits FF-505, FF-508, FF-515, FF-518, FF-533, FF-538 and FF-591)*. But even assuming that the computer program of petitioner is able to print sales invoices and is

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duly registered with the Bureau of Internal Revenue, still the same must be authorized by the Bureau and must not vary as to form.

Aside from the above infirmities, the court also noted that the sales invoices failed to indicate the word "zero-rated" for transactions covering zero-rated export sales. This violates Section 4.108-1 of Revenue Regulations No. 7-95 requiring, thus:

> **SEC. 4.108-1**. ***Invoicing Requirements***. – All VAT-registered persons shall, for every sale or lease of goods or properties or services, **issue duly registered** receipts or sales or commercial invoices which must show:
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> 1. the name, TIN and address of seller;
> 2. date of transaction;
> 3. quantity, unit cost and description of merchandise or nature of service;
> 4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
> 5. the **word "zero rated" imprinted** on the invoice covering zero-rated sales; and
> 6. the invoice value or consideration. *(Emphasis supplied)*

Considering the violations enumerated above, we consider all the export sales invoices of petitioner of no probative value in establishing petitioner's zero-rated sales for VAT purposes. Therefore, all input VAT credits on local purchases of goods and services attributable thereto in the amount of P16,732,425.00 cannot be refunded to it.

As to the other evidence presented by petitioner to prove actual exportation of goods such as certification of inward remittance, export declarations, and airway bills *(Exhibits GG-1 to GG-157)*, the court cannot consider these documents as sufficient. It should be noted that all of the aforementioned documents together with the duly registered VAT invoices or receipts, *taken collectively*, are the best means to prove exportation of goods (***The Commissioner of Internal Revenue vs. Philippine Bobbin Corporation, CA-G.R. SP No. 59452, February 19, 2001***).

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Well entrenched in our jurisprudence is that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption ***(Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., 309 SCRA 87 [1999])***. Accordingly, the claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund ***(Citibank N.A. vs. Court of Appeals, 280 SCRA 459 [1997])***.

We proceed to the remaining claim for refund of petitioner in the amount of P15,170,082.00 representing unutilized input VAT on capital goods.

In the case of ***Air Liquide Philippines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs****, CTA Case No. 5652, promulgated on July 6, 2000*, the court laid down the following requirements for a taxpayer to comply with in order to be entitled to the claim for refund of input VAT on capital goods based on Section 112(B) of the Tax Code. These are:

1. That it is a VAT registered person;
2. That the input taxes claimed by petitioner were paid on capital goods;
3. That the input taxes have not been applied against output tax liability; and
4. That the administrative claim for refund was seasonably filed.

In addition, petitioner must prove actual payment of VAT on the imported goods by submitting documents specified in Section 4.104-5 (b) of Revenue Regulations No. 7-95, which provides:

> **"Input tax on importations shall be supported with the import entry or other equivalent document showing actual payment of VAT on the imported goods."**

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Records show that petitioner is a VAT registered person. This fact was admitted by the respondent in his Answer and was evidenced by BIR Certificates of Registration *(Exhibits A and B)*.

However, with respect to the second requirement, out of the total claimed input VAT on capital goods in the amount of P15,170,082.00 as reflected in its Summary of Importation of Goods *(Exhibit N-3)*, only the amount of P9,898,867.00 can be classified as input VAT paid on capital goods. This is shown in the table below, to wit:

Invoice Date	Supplier	Exh.	Item	AWB/BL	Date	O.R. Number	O.R. Date	VAT Paid
10-12-98	LKT Automation	GG-17 to GG-22	ITM Handler	PEN 01310504	10-17-98	4774621	10-21-98	P2,263,201.00
10-23-98	Zavatech AG	GG-36 to GG-39	Die Attached Machine	BRN 1108225	11-07-98	4775967	11-11-98	1,988,739.00
09-03-98	Katech Int'l Ltd	GG-92 to GG-97	Blue Oven	CLT 0165366	11-17-98	4776725	11-20-98	113,844.00
11-18-98	Intel Corporation	GG-126 to GG-130	Advantest Tester	3479438	11-22-98	4776822	11-23-98	5,533,083.00
	Total							P 9,898,867.00

The rest of the items purchased reflected in the summary such as those expended for training materials, office supplies, posters, banners, T-shirts, books, and the like, cannot be classified as capital goods. Capital goods have been defined under Section 4.106-1(b) of Revenue Regulations No. 7-95 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 or services.

As to the third requirement, the court is convinced that the amount sought to be refunded was not applied against petitioner's output VAT. In the 1999 second quarterly VAT return, petitioner deducted the amount of P113,390,321.01 (*which included the amount of P31,902,507.50*) from its total accumulated input VAT *(Exhibit H, inclusive of submarkings)*.

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Lastly, both the administrative *(Exhibits I and J)* and judicial claims which were filed on May 21, 1999 and December 27, 2000, respectively, were well within the two-year prescriptive period allowed under the Tax Code reckoned from January 25, 1999, the date of filing of petitioner's 1998 fourth Quarterly VAT Return *(Exhibit D)*.

WHEREFORE, in view of the foregoing the instant petition for review is hereby ***PARTIALLY GRANTED***. Respondent is **ORDERED** to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of P9,898,867.00 representing input VAT on importation of capital goods. However, the claim for refund of input VAT attributable to petitioner's alleged zero-rated sales in the amount of P16,732,425.50 is hereby **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
Associate Judge

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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

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