REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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APPLIED FOOD INGREDIENTS, INC.,
Petitioner,

C.T.A. CASE NO. 6687

Members:

- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 22 2006

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DECISION

CASANOVA, C., J.:

This case involves a claim for the issuance of a tax credit certificate in the amount of SEVEN MILLION ONE HUNDRED THIRTY ONE THOUSAND TWO HUNDRED EIGHTY AND 35/100 PESOS (P**7,131,280.35)** allegedly representing excess/unused input value-added taxes in the importation of goods specifically and directly attributable to export sales for the period covering January 1, 2001 to December 31, 2001.

Petitioner is a corporation duly organized and existing under the laws of the Philippines with principal office address at 2505 West Tower, PSE Building, Exchange Road, Ortigas Center, Pasig City. It is registered with the Securities and Exchange Commission under Certificate of Registration No. AS091-198357 dated November 25, 1991 *(par. 1, Joint Stipulation of Facts & Issues)*. Petitioner is likewise registered with the Bureau of Internal Revenue as a Value-Added Tax taxpayer *(par. 3, Joint Stipulation of Facts & Issues).*

Respondent, on the other hand, is the duly appointed government officer vested with the power to decide, approve, and grant refunds or tax credits of overpaid internal revenue taxes as provided by law *(par. 2, Joint Stipulation of Facts & Issues).*

For the taxable year 2001, petitioner filed its 1st, 2nd, 3rd and 4th Quarterly Value-Added Tax Returns on April 25, 2001, July 24, 2001, October 23, 2001 and January 25, 2002, respectively. During these quarters, petitioner reported the following export sales of food ingredients, totaling the amount of P87,273,402.86, as follows:

Quarters	Export Sales
1st Quarter	4,237,139.26
2nd Quarter	16,888,609.83
3rd Quarter	46,413,208.51
4th Quarter	19,734,445.26

For these export sales, petitioner alleges that it had paid the amount of P7,131,280.35 as input taxes. On the rationale that it has incurred additional input taxes for the taxable year 2002 which have not been applied to any output tax, thus, it can no longer utilize its 2001 excess input taxes on its importation of food ingredients in the amount of P7,131,280.35, petitioner, on March 28, 2003, then filed an administrative claim for refund for the same amount. Petitioner likewise anchors its claim on the provisions of Sections 106 (A)(2)(a)(1) and 110(B) of the National Internal Revenue Code of 1997, as amended, in relation to Section 4.102-2 of Revenue Regulations No. 7-95.

Before it could be barred by prescription, petitioner filed this instant Petition for Review with this Court on April 25, 2003.

To refute petitioner's claims, respondent, in his Answer, stated the following Special and Affirmative Defenses:

7. The request for tax credit certificate is still under examination by respondent's examiners;

8. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund;

9. The grant of a claim for refund is tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority; and

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.

This case was submitted for decision on December 1, 2005 sans respondent's Memorandum.

The parties have jointly stipulated the following as the issues of this case:

1. Whether or not petitioner has excess unutilized input taxes amounting to P7,131,280.35 which were derived from the importation of food ingredients.

2. Whether or not such input tax is attributable to export sales.

3. Whether or not the export sales were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

4. Whether or not petitioner did apply the excess unutilized input taxes against its output taxes.

Considering that the issues raised are interrelated, this Court shall discuss them jointly.

Petitioner relies on the provisions of Section 112 (A) of the National Internal Revenue Code (NIRC) of 1997 for its claim for the issuance of a tax credit certificate of alleged excess/unutilized input taxes attributable to its importation of food ingredients which provides that:

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 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.

Based on the above provision, in order for a taxpayer to be entitled to a refund or issuance of a tax credit certificate for excess unutilized input value-added taxes attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1. there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred and paid;
3. that such input taxes are directly 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.[1]

As regards the first requirement, petitioner submits that its export sales of food ingredients are not subject to ten percent (10%) value-added tax but are zero-rated pursuant to Section 106 (A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended, to wit:

SEC. 106. Value-Added Tax on Sale of Goods and Properties. -

(A) x x x

(1) xxx

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

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[1] Epson Precision (Philippines), Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6184, November 17, 2003

(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 arrangements 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 the rules and regulations of the Bangko Sentral ng Pilipinas.

Petitioner avers that it is an importer and exporter of food ingredients and other goods of similar nature, and had in fact, for the period covering April 1, 2000 to December 31, 2001, imported the same which were subsequently exported during the period covering January 1, 2001 to December 31, 2001. It accordingly generated and reported the amount of P87,273,402.86 as its export sales of food ingredients for the taxable year 2001 and that it paid the amount of P7,131,280.35 as input taxes attributable to its importation of food ingredients.

To further substantiate its claim that its export sales for the taxable year 2001 complies with the first requisite, petitioner submitted the following documents:

Description	Exhibit
Summary of Sales and Corresponding Excess Input Taxes per VAT return	B to B-2
CPA Report	D
Official Receipts issued by Petitioner	H to H-11
Petitioner's Export Invoices	J to J-17
Credit Advice issued by ANZ Bank	L to L-11
Petitioner's Export Bills of Lading	M to M-18
Petitioner's Export Declarations	N to N-16

A close scrutiny of the above documents reveals that petitioner's food ingredients were indeed sold and shipped abroad. Likewise, records show that in consideration thereof, petitioner was paid in foreign currencies which were duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas. Thus, these export sales of petitioner may properly fall within the export sales transactions subject to zero percent (0%) VAT, referred to under Section 106 (A)(2)(a)(1) of the NIRC of 1997, as amended.

More so, as regards the fifth requisite, petitioner's administrative and judicial claims for refund were filed within the two-year prescriptive period allowed by law. The earliest quarter covered by the instant claim is the first quarter of 2001 for which petitioner filed its 1st Quarterly VAT Return on April 25, 2001, it had until April 25, 2003 within which to file its administrative and judicial claims for refund. It has been admitted by respondent that petitioner's administrative claim for refund was filed on March 28, 2003. Likewise, this judicial claim was filed on April 25, 2003. Therefore, both claims fall within the prescriptive period allowed by law.

Going now to the substantiation requirement under the third requisite, it must be emphasized that supplementary to the much relied Section 106 (A)(2)(a)(1) of the NIRC of 1997, as amended, are Section 113 of the same Code, which prescribes for the invoicing requirements VAT registered persons must comply with, and, Section 4.108.1 of Revenue Regulations No. 7-95, which provide that:

> **Section 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:
>
> 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.
>
> **Section 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:
>
> 1. the name, TIN and address of seller;
> 2. date of transaction;

(120)

3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of 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.

xxx xxx xxx

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoices or receipts and this shall be considered as a "VAT Invoice". All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax. *(Underscoring Ours)*

Furthermore, such invoices must comply with the provision of Section 237 of the NIRC of 1997, as amended, which states that:

> **Section 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: x x x

In this regard, petitioner failed to comply. A thorough examination of the documents, more particularly the export invoices (*Exhibits "J" to J-17")*, presented by petitioner reveals that the vital information as required under Sections 113 and 237 of the NIRC of 1997, in relation to Section 4.108-1 of Revenue Regulations No. 7-95, are wanting. The export invoices offered in evidence by petitioner do not show the following:

1. imprinted word "zero-rated";
2. petitioner's TIN-VAT;
3. the Bureau of Internal Revenue's Permit to Print number.

Without any legitimate VAT sales invoices containing the above required data, petitioner's export sales in the total amount of P87,273,402.86 for the year 2001 cannot qualify for zero-rating under Section 106 (A)(2)(a)(1) of the NIRC of 1997. Consequently, petitioner's claim of P7,131,280.35 as excess unutilized input taxes attributable thereto cannot be granted for failure to comply with the third requisite that these input taxes are directly attributable to zero-rated sales or effectively zero-rated sales.

WHEREFORE, in view of the foregoing, this instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(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
Chairperson, First Division