REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

American Express International, Inc., (TRS) -- Philippine Branch,
Petitioner,

- versus -

C.T.A. Case No. 5031

Commissioner of Internal Revenue,
Respondent.

Promulgated:
AUG 16 1996

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DECISION

This is a petition for review initiated by American Express International, Inc. (TRS) -- Philippine Branch, against the Commissioner of Internal Revenue for the refund of value-added taxes which it paid on its domestic purchases of taxable goods and services in the amount of ONE MILLION SEVEN HUNDRED SEVEN THOUSAND SEVEN HUNDRED SEVEN AND 55/100 PESOS (P1,707,707.55) for the period March 1, 1991 to February 29, 1992.

Petitioner is the Philippine Branch of American Express International, Inc. (AMEX, for brevity), whose function is primarily to facilitate collection of AMEX receivables from card members by receiving the bills of service establishments in the Philippines and forward them to its Regional Operating Centers (ROCs). These services performed by petitioner for the ROCs are paid for by the latter in US dollars inwardly remitted through the banking system and accounted for by the Central Bank of the Philippines.

Petitioner registered itself as a value-added tax entity and was issued VAT registration certificate no. 32A-3-004868 effective March 1988 (Exhibit "E"). On January 27, 1989, it filed an application with the Bureau of Internal Revenue to justify the imposition of zero-rate on the above-mentioned activities to which the Bureau ruled in the affirmative, to wit:

> *xxx as a VAT registered entity whose service is paid for in acceptable foreign currency which is remitted inwardly to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines, your service income is automatically zero-rated effective January 1, 1988. xxx (VAT Ruling No. 080-89).*

From March 1, 1991 to February 29, 1992, herein petitioner generated and recorded sales in the amount of P40,372,235.89, paid in acceptable foreign currency (US dollars) inwardly remitted pursuant to Central Bank regulations. It also incurred and paid during the same period, VAT input taxes on its domestic purchases amounting to P2,084,650.26.

Based on the ruling provided by the Bureau of Internal Revenue, the petitioner alleged that the sales above-mentioned were zero-rated and all the VAT input taxes referred to were all directly attributable to said sales, and that ONE MILLION SEVEN HUNDRED SEVEN THOUSAND SEVEN HUNDRED SEVEN AND 55/100 PESOS (P1,707,707.55) were undiminished by any VAT output tax liability during the period covered or any succeeding quarters thereafter, hence it requested for a refund on September 2, 1993, as follows:

Quarter	**Amount Claimed**
March 1991 to May 1991 (Exh. "D-1")	P 581,414.80
June 1991 to August 1991 (Exh. "D-2")	436,404.49
Sept. 1991 to Nov. 1991 (Exh. "D-3")	419,942.43
Dec. 1991 to Feb. 1992 (Exh. "D-4")	269,945.84

The petitioner submitted documentary evidence necessary to substantiate its claim for refund pursuant to Sec. 16 of Revenue Regulations No. 5-87 such as, a certification from an accounting firm as to the accuracy of the input taxes paid being claimed (Exh. "A"); photocopy of supplier's invoices and/or official receipts (Exh. "B"); bank advises (Exh. "C"); and an application for refund filed in a form prescribed by the Bureau (BIR Form No. 2552) (Exh. "D"), among others.

On account of the two-year prescriptive period for the filing of claim for refunds, herein petitioner did not wait for the action of the Commissioner of Internal Revenue and elevated to this Honorable Court its request by way of this petition.

The governing provisions on refunds of input taxes which are pertinent to the case at bar are quoted hereunder:

> **SECTION 106.** ***Refunds or tax credits of input taxes.*** -
>
> (a) Export sales - xxxx
>
> (b) Zero-rated or effectively zero-rated sales - Any person except those covered by paragraph (a) above, whose sales are zero-rated or are effectively zero-rated may, within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the input taxes attributable to such sales to the extent that such input tax has not been applied against output tax. (Underscoring supplied)
>
> xxx xxx xxx

REV. REG. 5-87:

> **SEC. 16.** ***Refunds or tax credits of input tax.*** - (a) Zero-rated sales of goods and services. - Only a VAT-registered person may be given a tax credit certificate or refund of value-added taxes paid corresponding to

> the zero-rated sales of goods or services, to the extent that such taxes have not been applied against output taxes, upon showing of proof of compliance with the conditions in Section 8 of these Regulations.
>
> For export sales the application should be filed with the Bureau of Internal Revenue within two years from the date of exportation. For other zero-rated sales the application should be filed within two years after the close of the quarter when the transaction took place. (Underscoring supplied)

xxx *xxx* *xxx*

Tax refund partakes the nature of a tax exemption and therefore cannot be allowed unless granted in the most explicit and categorical manner (**Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining**, 207 SCRA 550). As the power of taxation is a high prerogative of sovereignty, its relinquishment is never presumed and any reduction or diminution thereof with respect to its mode or its rate must be strictly construed, and the same must be couched in clear and unmistakable terms in order that it may be applied. Needless to say, the law frowns against exemption from taxation and it looks upon it with a jaundiced eye.

In the case at bar, it is not controverted that petitioner is a VAT-registered person subject to value-added tax at 0% rate pursuant to Sec. 102(a)(2) of the Tax Code, as amended. This is even confirmed by respondent's ruling, dated April 3, 1989 (Exh. "F-1"). Petitioner has complied with the rules and regulations prescribed by the Central Bank in reference to the foreign currency payments inwardly remitted to the country (Exh. "C" to "C-1,056). Hence, petitioner has the right to claim refund of input taxes pursuant to Sec. 106(b) of the Tax Code.

However, when petitioner filed its formal application for refund with the Bureau on September 2, 1993, petitioner's right to claim the input taxes paid for the first and second quarters of 1991 (Exh. "D-1" and "D-2") were already barred by prescription, because more than two years had already elapsed from the dates such sales were made counted from the time the application for tax refund/credit were filed, as shown below:

Period Claim	Close of the Quarter	Date Filed BIR	CTA
*March 1991 - May 1991	May 31, 1991	Sept. 2, 1993	Sept. 17, 1993
*June 1991 - August 1991	August 31, 1991	Sept. 2, 1993	Sept. 17, 1993
September 1991 - November 1991	November 30, 1991	Sept. 2, 1993	Sept. 17, 1993
December 1991 - February 1992	February 28, 1992	Sept. 2, 1993	Sept. 17, 1993

Sec. 102(b) is explicit in saying that for zero-rated sales, applications for issuance of a tax credit certificate or refund must be made "within two years after the close of the quarter when such sales were made". To reiterate the recent ruling promulgated by this Court in the case entitled **Nichimen Corporation, Philippine Branch vs. Commissioner of Internal Revenue** (CTA Case No. 4431, Feb. 13, 1995): "This Court is convinced that Sec. 106 of the same code (Tax Code) applies, on a case to case basis, in applying for the refund as well as in computing for the period within which to claim. With regard to the instant case, Sec. 106(b) applies. That is, '(w)ithin two years after the close of the quarter when such sales were made xxx". Therefore, petitioner is entitled to a tax refund, but only for that portion corresponding to the third and fourth quarter (from September 1, 1991 to November 30, 1991 and December 1, 1991 to February 29, 1992) in the amounts of P419,942.43 and P269,945.84, respectively.

WHEREFORE, judgment is hereby rendered ordering the respondent to refund to petitioner the amount of SIX HUNDRED EIGHTY NINE THOUSAND EIGHT HUNDRED EIGHTY-EIGHT AND 27/100 PESOS (P689,888.27), representing input taxes for the period September 1, 1991 to February 29, 1991.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

I concur:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge