REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. EB No. 416
(C.T.A. Case No. 7271)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

AICHI FORGING COMPANY OF ASIA, INC.,
Respondent.

Promulgated:
FEB 04 2009

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DECISION

BAUTISTA, J.:

The Case

Before Us is a Petition for Review[1] filed on August 11, 2008, praying for the reversal of:

[1] *Rollo*, C.T.A. EB No. 416 (C.T.A. Case No. 7271), pp. 1 – 58 with Annexes.

1. the Decision dated June 10, 2008 of the Second Division of the Court ("Court in Division") in C.T.A. Case No. 7271, partially granting herein respondent's claim for refund and/or tax credit certificate in the reduced amount of Three Million Seven Hundred Ninety Two Thousand Nine Hundred Seventy Pesos and 77/100 (P3,792,970.77), representing the unutilized input value added taxes ("VAT") attributable to zero-rated sales incurred for the months of April to June 2003; and

2. the Resolution dated July 22, 2008, denying the "Motion for Partial Reconsideration" of herein petitioner.

Antecedent Facts

As recapitulated by the Court in Division, the following facts are undisputed:

> "Petitioner[2] is duly registered with the Bureau of Internal Revenue as a value-added tax entity, pursuant to *Section 107 (now Section 236)* of the Tax Code on May 19, 1995. Consequently, it was issued Certificates of Registration, with RDO Control No. 95-570-000481 (BIR Form No. 1556) and OCN IRC 000148499 (BIR Form No. 2303).
>
> Petitioner has also registered its products, 'close impression due steel forgings' and 'tool and dies', with the Board of Investments (BOI) as a pioneer status, enjoying the privileges granted by the BOI. As such, it was issued Certificates of Registration Nos. 74-336, DP-92-057 & EP 95-132 by the Board of Investments.
>
> For the period covering April 1, 2003 to June 30, 2003, petitioner allegedly generated and recorded zero-rated sales in the amount of P171,942,121.15. Said amount was paid to petitioner in acceptable foreign currency and was inwardly remitted, in accordance with existing

[2] Herein Respondent.

regulations of the Central Bank of the Philippines, pursuant to *Section 106 (A) (2) (a) (1), (2) and (3) of the Tax Code.*

Petitioner purportedly incurred and paid VAT input taxes amounting to P5,307,313.37 from domestic purchases of goods, services, capital goods and from importation of goods and capital goods, which were all attributable to its zero rated sales.

On June 14, 2005, petitioner filed a claim for refund in the total amount of P5,307,313.37 with respondent,[3] through Revenue District Office 57, San Pedro, Laguna.

For failure of the respondent to act on the request and in order to toll the running of the two-year prescriptive period, on June 21, 2005, petitioner filed the instant Petition for Review.

In her Answer, respondent alleged by way of special and affirmative defenses that:

> '6. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
>
> 7. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the Bureau of Internal Revenue;
>
> 8. Be that as it may, it is imperative for petitioner to prove that it has complied with the following requirements mentioned below, to wit:
>
>> (a) The registration requirements of a Value Added Taxpayer pursuant to Section 6 (a) & (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95.
>>
>> (b) That the VAT input taxes of Php5,307,313.37 allegedly paid by petitioner from its importation and purchases of capital goods and other taxable goods and services were attributable to its zero-rated sales and such tax has not been applied against any output tax.
>>
>> (c) That petitioner's claim for tax credit or refund of excess Input Value Added Tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 4.106-1 (Re: Refunds or Tax Credits of Input Tax) and Section 4.106-2 (Re: Procedures for Claiming Refunds or Tax

[3] Herein Petitioner.

> Credits of Input Tax) of Revenue Regulations No. 7-95.
>
> (d) That petitioner's domestic purchases of services were made in the course of its trade or business, properly supported by invoices or receipts and import entry or other equivalent documents showing that it actually paid VAT in pursuance to Section 4.104-5 (a) & (b) of Revenue Reg. No. 7-95. (Re: Substantiation of Claims for Input tax Credit).
>
> (e) The requirements as enumerated under Section 4.104-2 of the Rev. Reg. 7-95 (Re: Persons who can avail of the Input Tax Credits)
>
> (f) That Petitioner has complied with the governing rules and regulations with reference to recovery of tax erroneously or illegally collected as explicitly found in Sections 112 (A) and 229 of the Tax Code as amended.
>
> xxx xxx.

9. Furthermore, it is incumbent for petitioner to prove by sufficient evidence that it is entitled to the refund consistent with the well settled principle in taxation, that claims for refund are construed strictly against the claimant as they partake the nature of an exemption from tax and it is incumbent upon petitioner to prove that it is entitled thereto under the law. Failure to prove the same is fatal to its claim for tax refund. Exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications (Asia Petroleum Co. vs. Llamas, 49 Phil. 466)'

Petitioner presented Jesus B. Oliveros, Jr. and Ma. Wencita C. Salvador, as witnesses, and documentary evidence, marked as *Exhibits 'A'* to *'MM'*, inclusive of submarkings, which were admitted by the Court, except for *Exhibits 'B' and 'P'* for failure of petitioner to identify the same during trial and compare the same with their originals.

On the other hand, respondent waived her right to present evidence and submitted the case for decision.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice. Both parties having complied thereto, the case was deemed submitted for decision on January 18, 2008."[4] *(Citations omitted)*

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[4] *Rollo*, pp. 29 - 32.

The Ruling of the Court in Division

The following issues were submitted by the parties for resolution by the Court in Division:

"I

WHETHER OR NOT PETITIONER[5] HAS GENERATED AND RECORDED ZERO-RATED SALES AS CONTEMPLATED BY LAW IN THE AMOUNT OF PHP171,942,121.15 DURING THE PERIOD APRIL 1, 2003 TO JUNE 30, 2003.

II

WHETHER OR NOT THE AMOUNT OF PHP171,942,121.15 WAS PAID FOR TO PETITIONER IN ACCEPTABLE FOREIGN CURRENCY AND WAS INWARDLY REMITTED IN ACCORDANCE WITH EXISTING REGULATIONS OF BSP.

III

WHETHER OR NOT THE PETITIONER INCURRED AND PAID VAT AMOUNTING TO P5,307,313.37 DURING THE PERIOD APRIL 1, 2003 TO JUNE 30, 2003 FROM DOMESTIC PURCHASES OF GOODS, SERVICES AND CAPITAL GOODS, AND FROM IMPORTATION OF GOODS AND CAPITAL GOODS.

IV

WHETHER THE VAT PAYMENTS IN THE AMOUNT OF PHP5,307,313.37 WERE ATTRIBUTABLE TO THE PETITIONER'S ALLEGED ZERO-RATED SALES OF PHP171,942,121.15.

V

WHETHER OR NOT THE ALLEGED VAT INPUT TAXES WERE PAID IN CONNECTION WITH THE TAXPAYER'S TRADE OR BUSINESS AND WERE DULY SUBSTANTIATED BY VALID RECEIPTS AND/OR INVOICES IN ACCORDANCE WITH SECTIONS 113 AND 237 OF THE TAX CODE, AS AMENDED.

VI

WHETHER OR NOT THE SAID AMOUNT HAS BEEN APPLIED AGAINST ANY VAT OUTPUT TAX LIABILITY OF THE PETITIONER

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[5] Herein Respondent.

COVERING THE SAME PERIOD, OR ANY SUCCEEDING PERIOD OR PERIODS.

VII

WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND IN THE TOTAL AMOUNT OF PHP5,307,313.37 ALLEGEDLY REPRESENTING VAT INPUT TAXES PAID DURING THE PERIOD APRIL 1, 2003 TO JUNE 30, 2003.

VIII

WHETHER OR NOT THE ADMINISTRATIVE AND JUDICIAL CLAIMS FOR TAX REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE OF THE PETITIONER WERE FILED WITHIN THE TWO (2)-YEAR STATUTORY PERIOD."[6]

The Court in Division summed up the issues as: whether or not herein respondent is entitled to a refund or issuance of a tax credit certificate in the amount of P5,307.313.37, representing VAT input taxes for the period covering April 1, 2003 to June 30, 2003.[7]

It then proceeded to determine whether respondent complied with the four requisites set out in Section 112 (A) of the National Internal Revenue Code of 1997 ("NIRC"), namely: (1) the taxpayer is VAT-registered; (2) the taxpayer is engaged in sales which are zero-rated or effectively zero-rated; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

After a careful examination of the evidence, the Court in Division ruled that respondent complied with the first three requirements. However, as to the

[6] *Rollo*, pp. 32 – 34.
[7] *Id.*, p. 34.

fourth requirement, it found that some documents and claims of respondent have not been satisfactorily substantiated.

The Court in Division excluded several invoices from the total zero-rated sales/receipts, as these invoices were not imprinted with the words "zero-rated." As regards the input VAT for refund, several claims were disallowed because these were outside of the period covered. A number of illegible receipts were also not included. Various sales of services supported by mere invoices were likewise excluded since no official receipts were submitted by respondent. In addition, respondent's claim on its alleged input VAT on capital goods was disallowed as respondent failed to substantiate the same.

Since respondent's substantiated input VAT cannot be directly or entirely attributed to its zero-rated, taxable and exempt sales, the refundable amount of input VAT had to be allocated proportionately to its zero-rated sales on the basis of its volume of sales.

In view of the foregoing, the Court in Division disposed of the case in this wise:

> "**WHEREFORE**, premises considered, the present Petition for Review is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the reduced amount of **THREE MILLION SEVEN HUNDRED NINETY TWO THOUSAND NINE HUNDRED SEVENTY PESOS AND 77/100** (P3,792,970.77), representing the unutilized input VAT attributable to zero-rated sales incurred for the months of April to June 2003.
>
> **SO ORDERED.**"[8]

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[8] *Rollo*, pp. 52 - 53.

On June 30, 2008, herein petitioner filed a "Motion for Partial Reconsideration"[9] to which herein respondent filed an Opposition.[10]

On July 22, 2008, the Court in Division denied the "Motion for Partial Reconsideration" for lack of merit.[11]

The Issue

Hence, the instant Petition where petitioner raises the issue of whether or not the Honorable Division erred in holding that respondent is entitled to a refund or issuance of tax credit certificate in the amount of P3,792,970.77.[12]

Petitioner's Arguments

Petitioner contends that the Court in Division erred in ruling that respondent is entitled to a refund or tax credit for the following reasons:

> "A. The Honorable Division failed to discuss and address the arguments of petitioner that respondent filed a *pro forma* administrative claim for refund that would justify non-entitlement of respondent to the subject claim for refund;
>
> B. Likewise, the Honorable Division failed to address petitioner's arguments that respondent failed to comply with Section 112 (D) [now (C)] of the 1997 Tax Code, as amended, thus, it adds more reason for the dismissal of the instant judicial claim for refund on the ground of prescription;
>
> C. Respondent failed to prove compliance with the BOI terms and conditions;
>
> D. Respondent failed to prove that it had generated zero-rated sales in the amount of P171,942,121.15 during the period 01 April 2003 to 30 June 2003;

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[9] *Records*, C.T.A. Case No. 7271, pp. 389 - 402.
[10] *Id.*, pp. 404 - 407.
[11] *Rollo*, pp. 54 – 55.
[12] *Id.*, p. 8.

> E. Respondent also failed to prove that the amount of P171,942,121.15 was paid for in acceptable foreign currency and was inwardly remitted in accordance with existing BSP regulations;
>
> F. Respondent failed to substantially prove that it paid VAT in the amount of P3,792,970.77 from domestic purchases of goods, services and capital goods, and from importation of goods and capital goods, and that the same amount were attributable to respondent's alleged zero-rated sales of P171,942,121.15; and
>
> G. Respondent failed to discharge its burden of proving entitlement to a refund in all material respect."[13]

Respondent's Counter-Arguments

For its part, respondent counters that the allegations and matters raised by petitioner are mere repetitions, if not reiterations of previously laid down arguments, which have been thoroughly considered and passed upon by the Court in Division in its Decision dated June 10, 2008 and Resolution dated July 22, 2008.

Respondent insists that its administrative and judicial claims were filed within the two (2)-year period. It maintains that it has properly and substantially complied with all the requirements for refund or tax credit and that it has presented documentary and testimonial evidence to support its claim.

Regarding the issue of compliance with the terms and conditions of the Board of Investments ("BOI"), respondent points out that it was issued Certificate of Registration No. 74-336, Certificate of Registration No. DP 92-057 and Certificate of Registration No. EP 95-132 by the BOI. For this reason, respondent claims that it is entitled to the incentives provided for in the Omnibus Investment Code, which includes among others, income tax holiday,

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[13] *Rollo*, p. 9.

additional deduction for labor expense, tax and duty free importation of capital equipment, tax credit on domestic capital equipment, simplified customs procedure, employment of foreign national, unrestricted use of consigned equipment, access to bonded manufacturing warehouse, exemption from taxes and duties on imported parts on imported equipment, tax credit for taxes and duties on raw materials, exemption from VAT for its export sales, exemption from wharfage dues and any export tax, duty, impost and fees, and unrestricted use of consigned equipment.

The Ruling of the Court En Banc

The Petition for Review is bereft of merit.

After a careful study of the records and the pleadings submitted by the parties, We find the arguments raised by petitioner without merit. As aptly pointed out by respondent, petitioner's arguments are mere reiterations of his previous arguments, which were thoroughly discussed and passed upon by the Court in Division. Nevertheless, in order to clear any lingering doubt on the matter, We shall discuss them hereunder.

Respondent's administrative and judicial claims were timely filed

The fact that the judicial claim for refund was filed by respondent only on June 21, 2005, or barely seven days after it filed its administrative claim for refund on June 14, 2005, does not make the administrative claim *pro forma*.

A taxpayer-claimant need not wait for the lapse of the 120-day period, provided in Section 112 (D) [now (C)] of the NIRC, as amended,[14] before he could seek judicial relief with the Court by way of Petition for Review. Neither is it required that the Commissioner should first act on the claim of a particular taxpayer before the Court may acquire jurisdiction, particularly if the claim is about to prescribe. Hence, a decision of the Commissioner is not a condition or requisite before the taxpayer can resort to the judicial remedy afforded by law.[15]

Incidentally, a taxpayer cannot be faulted for taking advantage of the full 2-year period set by law for filing his claim for refund for there is no provision in the NIRC requiring the claim for refund to be filed at the earliest instance in order to give the Commissioner an opportunity to rule on it and the Court to review the ruling of the Commissioner of Internal Revenue on appeal. [16]

Thus, when the 2-year period is about to prescribe and the claim for refund with the Commissioner of Internal Revenue has not been acted upon, for the protection of the interest of the taxpayer, he should file a Petition for Review with this Court within the said 2-year period; otherwise, if the decision of the

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[14] "SEC. 112. Refunds or Tax Credits of Input Tax. —

(D) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

[15] Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.), C.T.A. EB No. 251 (C.T.A. Case Nos. 6628 & 6732), May 30, 2007, *citing BIR Ruling [DA-489-03] dated December 10, 2003, signed by Deputy Commissioner (Legal and Enforcement Group) Jose Mario C. Buñag.*

[16] Commissioner of Internal Revenue v. Mirant Pagbilao Corporation, *supra*, note 15, *citing Commissioner of Internal Revenue v. Hitachi Computed Products (Asia) Corporation, CA-G.R. SP No. 63340, February 7, 2002.*

Commissioner is adverse to the taxpayer and it was made after the 2-year period, he can no longer appeal the same to this Court.[17]

In this connection, Section 112 (A) of the NIRC, *infra,* provides that the prescription of claims for excess input VAT is counted from the close of the taxable quarter when the sales were made, which in this case is from June 30, 2003. Considering that respondent filed its administrative claim on June 14, 2005 and its judicial claim on June 21, 2005, we agree with the ruling of the Court in Division that these claims were filed within the 2-year period.

Respondent having been registered in accordance with the provisions of the Omnibus Investment Code, is entitled to certain benefits and privileges

Records show that respondent was issued the following Certificates of Registration by the BOI: Certificate of Registration No. 74-336 on June 28, 1974 for its closed impression die steel forgings, Certificate of Registration No. DP 92-057 on April 22, 1992 for its tools and dies, and Certificate of Registration No. EP 95-132 on June 8, 1995 for its closed die impressions and forgings.[18] Having been duly registered with the BOI, respondent is entitled to all the incentives provided in the Omnibus Investment Code, within a ten (10)-year period from the date of registration. Hence, for the period of April 1, 2003 to June 30, 2003, respondent is entitled to income tax holiday, additional deduction for labor expense, tax credit on domestic capital equipment, simplified customs procedure, employment of foreign national, unrestricted use of consigned equipment, access to bonded

[17] Commissioner of Internal Revenue v. Mirant Pagbilao Corporation, *supra,* note 15, *citing Commissioner of Internal Revenue v. Hitachi Computed Products (Asia) Corporation, CA-G.R. SP No. 63340, February 7, 2002.*
[18] *Records,* p. 253, *Exhibit "D."*

manufacturing warehouse, exemption from taxes and duties on imported parts on imported equipment, and tax credit for taxes and duties on raw materials under Certificate of Registration No. EP 95 - 132.[19]

The contention of petitioner that respondent failed to prove compliance with the terms and conditions of the BOI has no leg to stand on, as there is adequate evidentiary basis to establish that respondent indeed complied with the terms and conditions of the BOI. Respondent's compliance with the terms and conditions of the BOI may be deduced from the Certification dated May 31, 2005 issued by the Department of Trade and Industry and the BOI. The Certification states that respondent had registrations with the BOI, that it was entitled to several incentives, and that its Certificates of Registration were cancelled on May 5, 2004 in view of its transfer of registration to Philippine Economic Zone Authority ("PEZA"). Had respondent failed to comply with the terms and conditions of the BOI, the Certification would have noted this fact considering that the Certification clearly states that it was issued upon the request of respondent for the purpose of its claim for refund of VAT.[20]

Respondent is entitled to a refund or tax credit in the reduced amount of P3,792,970.77

To validly claim a refund of unutilized input VAT attributable to zero-rated sales, a taxpayer must comply with Section 112 (A) of the NIRC of 1997, as amended, which provides:

[19] *Supra*, at note 18.
[20] *Supra*, at note 18.

> "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: xxx"

Considering that the timeliness of the filing of respondent's administrative and judicial claims have already been resolved in favor of respondent, the only question left for resolution is whether respondent was able to substantiate its claim for refund or tax credit.

Respondent is a VAT-registered entity engaged in zero-rated sales.[21] In its Quarterly VAT Return for the second quarter of 2003, respondent declared that it generated and recorded zero-rated export sales in the amount of P171,509,980.39.[22] These were mostly export sales to PEZA-registered entities subjected to VAT at 0% rate.[23] However, as correctly found by the Court in Division, a total amount of P7,942,138.51 should be disallowed and excluded from the total zero-rated sales/receipts as the invoices of these sales failed to comply with the requirements of the law for VAT zero-rating, particularly the imprinting of the words "zero-rated."[24] Accordingly, the total amount of zero-rated sales should be reduced to P163,567,841.88.[25]

In determining the actual amount of input VAT available for refund or tax credit, We fully subscribe to the findings of the Court in Division, to wit:

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[21] *Rollo*, p. 38.
[22] *Id.*, p. 42.
[23] *Id.*, p. 45.
[24] *Rollo*, pp. 43 – 44.
[25] *Id.*, p. 51.

"<u>Substantiation of Input VAT other than Capital Goods</u>

After a thorough scrutiny of the evidence on record, the Court finds certain disallowable claims, in addition to the exceptions found by the independent CPA, as they were issued beyond the period covered by petitioner's claim, which will result to a discrepancy in the input VAT available for refund, to wit:

Outside of the period covered							
EXHIBITS	**COMPANY**	**Invoice No.**	**O.R. No.**	**Date of Invoice**	**Date of OR**	**Total Invoice Amount**	**Input VAT**
Y, Y-1	K Line Air Service Phils., Inc.	416	42956	3/3/2003	3/3/2003	1100	100
Y-3, Y-4	K Line Air Service Phils., Inc.	448	43302	3/12/2003	3/12/2003	1100	100
Y-5, Y-6	K Line Air Service Phils., Inc.	491	43470	3/26/2003	3/26/2003	1100	100
Y-96, Y-97	Ammex Machine Tools Phils.	5739	3557	3/31/2003		52000	4727.27
Y-158	Aries Technologies, Inc.		121		7/25/2003	88,363.64	
Y-159		312		6/25/2003		90000	8181.81
Y-160	Aries Technologies, Inc.		122		8/1/2003	156208.25	
Y-161		303		6/19/2003		16101	1463.73
Y-162		309		6/23/2003		143000	13000
Y-163	Aries Technologies, Inc.		123		8/1/2003	177123.93	
Y-164		315		6/27/2003		180404	16400.36
Y-167	Asia Machine Shop	18592	1414	6/30/2003	8/1/2003	91602	8327.45
Y-233	Asian Transmission Corp.		23016		0710/2003	22688.73	
Y-234		11330		11/29/2001		5416	492.36
Y-235		497		12/00/2002		17272.73	1570.25
Y-236	Assistco Energy & Ind. Corp		16972		6/20/2003	15780	
Y-237		18273		3/31/2003		15780	1434.55
Y-246	Autrans Phil. Corp		820		no date	93456.05	
Y-247		423		3/30/2003		102801.66	9345.61
Y-345	BPI/MS Insurance Corp		10178062	6/24/2003	7/9/2003	262.39	23.85
Y-352, Y-353	Cairhill Metrology Inc.	242	135	6/10/2003	7/25/2003	13365	1215
Y-354	CAJ International Forwarders		404		2/25/2003	3500	318.18
Y-357, Y-358	Cargohaus, Inc.	385107	885575	3/13/2003	3/13/2003	229.46	20.86
Y-359, Y-360	Cargohaus, Inc.	390119	890335	3/27/2003	3/27/2003	229.35	20.85
Y-364, Y-365	Cargohaus, Inc.	385122	885566	3/11/2003	3/13/2003	413.93	37.63
Y-382, Y-383	Castillo, Zamora & Poblador Law Offices	9799	250	5/19/2003	7/9/2003	149699	13609
Z-33, Z-34	DHL Worldwide Express	LGN121870	427744	6/9/2003	7/4/2003	292210.64	26564.6
Z-117	Exel Philippines, Inc		8839		3/7/2003	997	90.63
Z-118	Exel Philippines, Inc		8888		7/13/2003	997	90.63
Z-119, Z-120	Famous Pacific Forwarding Phils.	IMP#016986	43824	3/5/2003	3/6/2003	715	65
Z-126, Z-127	Fanuc Phils. Corp.	S1000306	1929	6/20/2003	8/1/2003	13750	1250
Z-137, Z-138	Filsonics Equipment & Services Inc	118	31	6/25/2003	9/5/2003	12870	1170
Z-166	German Tech Asia Pacific, Inc.	18	10	3/28/2003	5/16/2003	33000	3000
Z-204,z-205	GRM International Inc	25933	54144	2/27/2003	2/28/2003	880	80
Z-243	Intnl Container Terminal Services, Inc.		101786		2/28/2003	501.11	45.56
Z-244	Intnl Container Terminal Services, Inc.		101946		2/28/2003	355.03	32.27

Z-245	Intnl Container Terminal Services, Inc.		1953418		2/28/2003	2541	231
Z-293, Z-294	Laguna Internet, Inc.	3233	14366	6/22/2003	7/2/2003	2707.89	246.17
Z-303	Liquid Honey, Inc.	11573		3/18/2003		350	31.82
Z-304	Liquid Honey, Inc.	11597		3/19/2003		150	13.64
Z-305	Liquid Honey, Inc.	11621		3/20/2003		200	18.18
Z-306	Liquid Honey, Inc.	11647		3/21/2003		300	27.27
Z-307	Liquid Honey, Inc.	11662		3/22/2003		200	18.18
Z-309	Liquid Honey, Inc.	11676		3/24/2003		250	22.73
Z-310	Liquid Honey, Inc.	11690		3/25/2003		250	22.73
Z-311	Liquid Honey, Inc.	11709		3/26/2003		200	18.18
Z-312	Liquid Honey, Inc.	11732		3/27/2003		250	22.73
Z-314	Liquid Honey, Inc.	11757		3/28/2003		250	22.73
Z-315	Liquid Honey, Inc.	11770		3/29/2003		150	13.64
Z-316	Liquid Honey, Inc.	11786		3/31/2003		200	18.18
AA-14, AA-15	Matsushita Electric Phils. Corp	1212139	15227	4/1/2003	7/25/2003	9800	890.01
AA-38	Mesco, Inc.	111290		1/23/2003		2336	212.36
AA-61	Mesco, Inc.	110904		1/2/2003		9430	857.27
AA-62	Mesco, Inc.	110905		1/2/2003		18860	1714.55
AA-63	Mesco, Inc.	111357		1/24/2003		1658	150.73
AA-87, AA-88	MJD & sons, Inc.	4682	1927	6/20/2003	8/1/2003	52900	4809.09
AA-89, AA-90	MOF Company, Inc.	151910	326397	2/21/2003	2/24/2003	6751.8	613.8
AA-160	PID Controllers&Contractors Corp	4695	4176	5/20/2003	2/19/2003	54098	4918
AA-161	PID Controllers&Contractors Corp	4696	4326	5/20/2003	7/11/2003	6688	608
AA-164	PID Controllers&Contractors Corp	4696	4181	5/20/2003	3/13/2003	3344	304
AA-206	Ra-Tris General Merchandise	57		7/10/2003		3000	272.73
AA-376	Slick Energy Distributors	216		3/31/2003		17290	1571.82
BB-23	Spareman, Inc		351		7/4/2003	6466.59	587.87
BB-39, BB-40	Speedway Electronics & Office Supplies	544	2037	7/1/2003	7/2/2003	1180	107.27
BB-73	Steelworks Industrial Sales	2402		3/10/2003		3405.6	309.6
BB-115, BB-116	Sun Logistics Tech, Inc.	2048	596	6/9/2003	7/4/2002	23100	2100
BB-165, BB-166	Toyota	2424	3438	5/26/2003	7/25/2003	11250	1022.72
BB-167	Toyota		97003		7/18/2003	274341	24940.09
BB-181, BB-182	Transorient Container Terminal Services	129534	83276	3/12/2003	3/12/2003	5110.25	464.56
BB-188	Tri-Link Marketing Co.	2997		3/31/2003		22080	2007.27
SUBTOTAL						2336361.03	**162,066.37**

On the other hand, the Court finds that the following receipts are not legible, such that the Court cannot verify the amounts being claimed:

Unacceptable Receipts (not readable-not proven CTC)							
EXHIBITS	**COMPANY**	Invoice No.	O.R. No.	Date of Invoice	Date of OR	Total Invoice Amount	Input VAT
Z-218 to Z-241	ntegrated Logistics Phils. Inc.	6610	4/30/2003	4/30/2003		41366.71	3760.61
		6433	2/21/2003	2/21/2003		18362.65	1669.33
		6434	3/21/2003			18362.65	1669.33
		6466	3/29/2000			18362.65	1669.33

		6478	3/31/2003			52600	4781.82
		6566	4/22/2003			52600	4781.82
		6551	4/14/2003			18271.89	1661.27
		6641	5/5/2003			10939.06	994.46
		6667	5/9/2003			10939.06	994.46
		6749	6/4/2003			9827.04	893.37
		6753	5/30/2003			18422.36	1674.76
SUBTOTAL							24,550.56

While the following sales of service are supported by invoices, in violation of *Section 113 of the NIRC of 1997, as amended*:

No Official Receipts (Sale of Services)							
EXHIBITS	COMPANY	Invoice No.	O.R. No.	Date of Invoice	Date of OR	Total Invoice Amount	Input VAT
Y-2	K Line Air Service Phils. Inc.	607		4/24/2003		1100	100
Y-363	Cargo Haus	401682		10-Apr		227.56	20.68
SUBTOTAL							120.68

With regard to the missing documents, as found by the Independent CPA, We adopt her findings during her examination *(Annex H.1 of the Independent CPA's Report, Exhibit 'LL')* based on the evidence presented and the schedule of petitioner submitted to her. However, upon verification, the Court finds that the computation of the total amount is not correct, hence, it is hereby recomputed as follows:

Name of Vendor	Invoice No.	Date of Invoice	O.R. No.	Date of O.R.	Purchase of Capital Goods	Purchase of Supplies	Purchase of Services	Amount	Input VAT	Total Invoice Amount
Asian Terminals, Inc.			1857292				5,090.70	22,949.50	2,291.95	5,599.78
Autrans Phils., Corp.	0430	18 Jun 03	00829	27-Jun-03			29,406.00	61,261.23	2,940.60	32,346.65
Autrans Phils., Corp.	0431	19 Jun 03	00829	27 Jun 03			22,949.50	181.82	2,291.95	25,244.48
King's Devt, Inc.	57525						18.19	6,600.00	1.82	6,601.82
Primeworld Digital Systems, Inc.							750.00	7,751.33	75.00	7,826.33
Roston Marketing Corp.	95521		10723	16 May-03		6,600		163.64	660.00	7,260.00
Sandvik Philippines, Inc.						3,420			342.00	342.00
TOTAL									8,609.32	

<u>Substantiation of Input VAT on Capital Goods</u>

Moreover, with respect to the claimed input VAT on capital goods amounting to P329,031.42, a careful examination of the records reveals that petitioner failed to present proofs of its purchases of capital goods and the paid input tax on such transactions. Capital goods or properties, as defined in *Revenue Regulations No. 7-95*, are 'goods and 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.' Thus, goods and properties used by the taxpayer in its VAT-taxable business, subject to depreciation or amortization in accordance with the Tax Code, are considered capital goods. Input VAT on the purchase of such capital goods is creditable against the taxpayer's output VAT. The taxpayer is further given the option to claim refund of the input VAT on its capital goods, but only to the extent that the said input VAT has not been applied to its output VAT. Conversely, the Court will not allow unsupported claims. Hence, for failure to show proof of substantiation of its claim, We disallow petitioner's claim on its alleged input VAT paid on capital goods.

__Refundable Input VAT__

The above disallowed claims resulted to a discrepancy in the available input VAT available for refund, computed as follows:

Input Tax on capital goods	P	329,031.42
Add: Input tax other than capital goods		4,978,281.95
Total Input Tax, per application	P	5,307,313.37
Less: Total exceptions as found by the Court		
A. Purchases Other than Capital Goods:		
Outside of the period covered	162,066.37	
Unacceptable receipts (fax copy only)	24,550.56	
No official receipts	120.68	
Missing ORs/Invoices	8,609.32	
Unlocated Difference per VAT Return & Schedule of importation	3,770.00	199,116.93
B. Purchases of Capital Goods		
Unsubstantiated Capital Goods		329,031.42
Substantiated Input Tax		P 4,779,165.02

Inasmuch as petitioner's input tax cannot be directly or entirely attributed to its zero-rated, taxable and exempt sales; the refundable amount of input tax shall be allocated proportionately to its zero-rated sales on the basis of its volume of sales, to wit:

Period Covered	Zero-Rated Sales	Exempt	VAT Sales	Total Sales	Substantiated Input Tax
2003	A	B	C	D	E
2nd quarter	163,567,841.88	432,140.76	7,619,710.16	171,619,692.80	4,779,165.02

Period Covered	Substantiated Input Tax Attributable to			Total Substantiated Input Tax	Output VAT
	Zero-Rated Sales	Exempt Sales	VAT Sales		
2003 Second Quarter	[(A/D) x (E)] 4,554,941.77	[(B/D) x (E)] 12,034.00	[(C/D) x (E)] 212,189.25	4,779,165.02	761,971.00

In addition, relative to the report of the independent CPA, We agree that in computing the input VAT available for refund, petitioner did not deduct the output VAT for sales subject to VAT in the amount of P761,971.00 *(Independent CPA's Report, Exhibit 'LL')*.

Based on the foregoing, the output tax payable must be applied against its substantiated claimed input tax allocated to zero-rated sales, resulting to a refundable input tax of P3,792,970.77 only, computed as follows:

Total Input tax allocable to zero-rated sales	P	4,554,941.77
Less: Output Tax that should have been paid		761,971.00
Total Input Tax Available for Refund	**P**	**3,792,970.77**

Likewise, it is also worthy to note that although petitioner carried-over the claimed input VAT of P5,307,313.37 to the succeeding quarters of 2003, all quarters of 2004 and until the second quarter of 2005, as evidenced by Quarterly VAT Returns for the said taxable periods *(Exhibits 'I', 'I-1', 'J', 'J-1', 'K', 'L','M','N','O', and 'R')*, the same was not applied against any output VAT for the said periods. Moreover, the same was deducted as 'Any VAT Refund/TCC' claimed from the total available input tax of P18,911,940.14, as of the second quarter of 2005. In other words, the subject claim no longer formed part of the excess input VAT of P13,122,121.34, as of the month of July 2005, which was to be carried over/applied to the succeeding third quarter of 2005.

In sum, petitioner has sufficiently proved that it is entitled to a refund or issuance of a tax credit certificate representing unutilized excess input VAT payments for the period April 1, 2003 to June 30, 2003, which are attributable to its zero-rated sales for the same period, but in the reduced amount of P3,792,970.77."[26]

We need not belabor that the question of whether or not the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.[27] Thus, in the absence of the Court's abuse or improvident exercise of authority, findings of facts made by the Court in Division, especially if supported by the evidence, must be accorded deference and respect.[28] Such is the situation in the present case.

[26] *Rollo*, pp. 46 – 52.
[27] El Greco Ship Manning and Management Corporation v. Commissioner of Customs, C.T.A. EB No. 172 (C.T.A. Case No. 6618), March 14, 2007.
[28] Union Refinery Corporation v. Commissioner of Customs, C.T.A EB NO. 149 (C.T.A. Case No. 5917), January 15, 2007.

All told, We find respondent entitled to a refund or tax credit in the reduced amount of P3,792,970.77.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED.** Accordingly, the Decision dated June 10, 2008 and the Resolution dated July 22, 2008 are hereby **AFFIRMED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice