REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ITALIAN-THAI DEVELOPMENT PUBLIC COMPANY LIMITED – PHILIPPINE BRANCH OFFICE,
Petitioner,

- versus -

C.T.A. CASE NO. 6172

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 12 2002

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DECISION

This case involves a claim for the issuance of tax credit certificate for petitioner's alleged unused/excess input taxes arising from its purchase of capital goods in September 1998 in the amount of P10,550,387.

The facts as borne out by the records are as follows:

Petitioner is a foreign corporation licensed to transact business in the Philippines under Securities and Exchange Commission (SEC) Registration No. AFO96-068 through a branch office with business address at 1408 Tektite Tower 1 Building, Exchange Road, Ortigas Center, Pasig City (*par. 1, Stipulation of Facts*). It is engaged in the construction and repair of infrastructure/development projects covered in Republic Act No. 7718, also known as the Expanded BOT Law and projects which are foreign funded or assisted and required to undergo international competitive bidding and in the manufacture and production of concrete products and to sell the same on wholesale (*par. 3, Petition for Review*).

Petitioner is registered with the Bureau of Internal Revenue (BIR) as a value-added tax ("VAT") taxpayer with Tax Identification No. 004-964-006-VAT under the Certificate of Registration issued by Revenue District Office No. 43 of the BIR (*par. 3, Stipulation of Facts*).

On September 7, 1998, petitioner purchased certain heavy equipment from MCRP Construction Corporation, a domestic corporation registered with the BIR as a VAT taxpayer with Tax Identification No. 004-637-775-VAT and with business address at 1408 Tektite Tower 1 Building, Exchange Road, Ortigas Center, Pasig City (*pars. 4 and 5, Stipulation of Facts*).

The heavy equipment sold and the corresponding price of each are as follows:

a. One (1) unit wheel loader (Volvo BM L180) – US$196,903.26;
b. One (1) unit Hitachi, Kobe K45, Pistol King, Rubber K45 – US$249,027.43;
c. One (1) unit Wheel Loader (Volvo BM L180 C) – US$395,979.19;
d. One (1) unit Used "KATO" SS-550 (45 Ton) – US$339,968.48;
e. One (1) unit Brand New Tractor D7h – US$241,413.82;
f. One (1) unit Used Comedil Tower Crane – US$208,060.37;
g. One (1) unit Brand New Tractor D6R – US$254,657.02;
h. One (1) unit Vibrating Compactor – US$95,777.53;
i. One (1) unit Used Kobelco K45 Diesel Pile Hammer – US$76,544.42; and
j. One (1) unit Kobelco Hydrolic Crane Model BM800 – US$618,813.97.

The total invoice price of the heavy equipment sold is TWO MILLION SIX HUNDRED SEVENTY SEVEN THOUSAND ONE HUNDRED FORTY FIVE AND 49/100 US DOLLARS (US$2,677,145.49). Petitioner and MCRP Construction Corporation agreed to use the foreign exchange rate of One (1) US DOLLAR (US$1.00) is to FORTY-THREE and 35/100 PHILIPPINE PESOS (P43.35). The value in Philippine Pesos of the total invoice price of TWO MILLION SIX HUNDRED SEVENTY SEVEN THOUSAND ONE HUNDRED FORTY FIVE AND 49/100 US

DOLLARS (US$2,677,145.49) is equivalent to ONE HUNDRED SIXTEEN MILLION FIFTY FOUR THOUSAND TWO HUNDRED FIFTY SEVEN PESOS (P116,054,257.00) (*pars. 7 to 9, Stipulation of Facts*).

In consideration for the sale of the subject heavy equipment, petitioner applied the amount of P116,054,257.00 against its outstanding credit to MCRP Construction Corporation instead of an actual cash payment. Out of the total amount of P116,054,257.00, P10,550,387.00 represents the input VAT paid by petitioner on the purchase of the subject capital goods (*pars. 13 and 14, Petition for Review*). According to petitioner, it has not applied the total input VAT of P10,550,387.00 which was paid on the purchase of the capital goods, against its output tax liability (*par. 16, Petition for Review*).

On September 26, 2000, petitioner filed with the RDO No. 43 of the BIR a formal claim for the issuance of tax credit certificate for the amount of TEN MILLION FIVE HUNDRED FIFTY THOUSAND THREE HUNDRED EIGHTY SEVEN PESOS (P10,550,387.00) (*par. 10, Joint Stipulation of Facts*).

In order to suspend the running of the two-year prescriptive period under the law and to preserve its right to judicially claim for tax refund, petitioner filed the instant Petition for Review on September 29, 2000.

In his Answer filed on October 27, 2000, the respondent raised the following Special and Affirmative Defenses:

> "4. The claim for refund is subject to investigation by the Bureau of Internal Revenue;

5. Taxes paid and collected are presumed to have been made in accordance with laws and regulations, hence, not refundable. Claims for tax refund are construed strictly against the claimant as they partake of the nature of an exemption from tax **(Commissioner of Internal Revenue vs. Ledesma**, G.R. No. L-13509, 31 SCRA 95) and it is incumbent upon the petitioner to prove that it is entitled thereto under the law **(Western Minolco Corp. vs. Commissioner of Internal Revenue**, 124 SCRA 121) and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law;

6. Moreover, petitioner must prove that it has complied with the governing rules with reference to tax recovery or refund, which are found in Sections 204 and 229 of the Tax Code, as amended, which are quoted as follows:

   "Section 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. – The Commissioner may –

   (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use or refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered a written claim for credit or refund."

   "Section 229. Recovery of Tax Erroneously or Illegally Collected – No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner collected, until a claim for refund or credit has been duly filed with the Commissioner; whether or not such tax, penalty, or sum has been paid under protest or duress.

   In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of the payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, that the Commissioner may, even without a written claim thereof, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

The parties likewise stipulated the issues to be resolved by this court, namely:

1. Whether or not the heavy equipment purchased by the petitioner from MCRP Construction Corporation on September 7, 1998 covered by Sales Invoice No. 267 are considered capital goods;
2. Whether or not petitioner has unused/excess input taxes arising from the purchase of capital goods; and
3. Whether or not petitioner has output taxes against which any excess input taxes may be credited.

(*p. 59, CTA, Records, Joint Stipulation of Facts and Issues*)

After considering the attending facts, evidence, laws and jurisprudence applicable in this case, the court partially grants the instant Petition for Review.

Section 112(B) of the Tax Code, as amended, in relation to Section 4.106-1 of Revenue Regulations No. 7-95, provides for the requirements in order to be entitled to a refund or tax credit of unutilized input VAT on capital goods. In view of the significance of these provisions, they are quoted, thus:

"**Section 112. Refunds or Tax Credits of Input Tax. -**

x x x x x x x x x

(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.

"**Section 4.106-1. Refunds or tax credits of input tax** (a) x x x

> (b) **Capital Goods** – Only a VAT-registered person may apply for issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased. The refund shall be allowed to the extent that such input taxes have not been applied against output taxes. The application should be made within two (2) years after the close of the taxable quarter when the importation or purchase was made.
>
> Refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT taxable business. If it is also used in exempt operations; the input tax refundable shall only be the ratable portion corresponding to the taxable operations.
>
> **"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) [now 34 (f)], used directly or indirectly in the production or sale of taxable goods or services."** (*Emphasis supplied*)

Based on the foregoing, goods or properties are considered capital goods if: (1) they have an estimated useful life greater than one year; (2) treated as depreciable assets; and (3) used directly or indirectly in the production or sale of taxable goods or services.

On the other hand, property is considered depreciable only if it is: (1) used in a trade or business or held for the production of income; and (2) subject to exhaustion within a determinable period of time, that is, it has a limited useful life (**Chap. 23A.01. – p. 2, Merten's Law on Federal Income Taxation**).

Records show that petitioner is primarily engaged in the construction and repair of infrastructure/development projects covered in Republic Act No. 7718, also known as the Expanded BOT Law and projects which are foreign funded or assisted and required to undergo international competitive bidding and in the manufacture and production of concrete products and to sell the same on wholesale (*par. 3, Petition for Review, Exhibit "A"*). Based on the description of the various equipment appearing in the invoice issued by MCRP Construction Corporation (*Exhibit "E"*), the court is convinced that the same were to be used by petitioner in its business operations. They are assets subject to depreciation pursuant to Section 34 (F) of the Tax Code, as amended. Hence, they are considered as capital goods.

As regards the two (2) year period requirement for claim for refund or tax credit, it can be said that petitioner managed to satisfy the same. As aptly cited by petitioner, this court has previously ruled in the case of **Toshiba Information Equipment (Phils.), Inc. vs. The Commissioner of Internal Revenue** (CTA Case No. 5672, May 8, 2000) that the administrative claim for refund or tax credit of input VAT paid on the purchase of capital goods should be filed within two (2) years after the close of the taxable quarter when the purchase was made while the two (2) year prescriptive period in claiming for refund of input VAT in the judicial level is counted from the date of filing of the quarterly VAT return. The relevant portion of the decision reads as follows:

> "Anent the first issue, this Court is convinced that petitioner was able to file on time the applications for refund/credit of input VAT with the respondent and the petition for review with this Court. x x x The filing of the applications is within the two-year period considering that the administrative claim for refund is reckoned, in case of input VAT attributable to export sales [Section 106(a)], after the close of the taxable quarter when such sales were made; and in case of capital goods [Section 106(b)], within two years after the close of the taxable quarter when the importation or purchase was made. The prescriptive period in claiming for the refund of input VAT in the judicial level is reckoned from the date of filing of the quarterly VAT return (**Nichimen Corporation Philippine Branch vs. Commissioner of Internal Revenue**, CTA Case No. 5384, August 18, 1998; **Hopewell Power (Philippines) Corp. vs. Commissioner of Internal Revenue**, CTA Case No. 5389, January 4, 1999). From the foregoing, it is clear that the claims for refund both in the administrative and judicial levels were filed within the prescriptive period prescribed by law."

In the case before this court, the close of taxable quarter when the petitioner purchased the subject capital goods was on September 30, 1998. Accordingly, the two (2)-year prescriptive period within which to file with the BIR the claim for issuance of tax credit certificate is upto September 29, 2000. Hence, petitioner timely filed its administrative claim for refund on September 26, 2000. On the other hand, petitioner filed its quarterly VAT return on October 20, 1998. Its Petition for Review was filed with this court on September 29, 2000, which is clearly within the two-year prescriptive period.

The two remaining issues shall be discussed jointly as the same are interrelated.

On March 28, 2001, petitioner amended its quarterly VAT returns from the third quarter of 1998 up to the fourth quarter of 2000, reflecting, among others, the following data.

Quarter Involved	Exhibit	Output VAT	Input VAT
3rd Quarter 1998	JJ	-	10,550,387.00
4th Quarter 1998	KK	-	10,550,387.00
1st Quarter 1999	MM	-	10,550,387.00
2nd Quarter 1999	NN	-	10,550,387.00
3rd Quarter 1999	OO	-	10,559,934.54
4th Quarter 1999	PP	-	10,560,018.06
1st Quarter 2000	QQ	-	10,561,103.45
2nd Quarter 2000	RR	-	10,574,956.31

3rd Quarter 2000	SS	2,114,879.05	14,686,217.08
4th Quarter 2000	UU	2,450,746.68	5,269,466.61

From the above table, the court noted that in the 3rd quarterly VAT return for taxable year 1998 (*Exhibit "JJ"*) petitioner declared the input VAT on capital goods in the sum of P10,550,387.00 which was not reflected in the original third quarterly VAT return for 1998 (*Exhibit "H"*). This amount was carried over by petitioner from one quarter to another quarter until the third quarter of 2000.

In the third quarterly 2000 VAT return, petitioner reflected, among others, an output VAT liability in the amount of P2,114,879.05, input VAT carried over from previous quarter in the sum of P10,559,934.54, inclusive of the claimed input tax on capital goods of P10,550,387.00, and the current input VAT of P4,126,282.54. It is also during this period that petitioner deducted the amount sought to be refunded in the sum of P10,550,387.00.

Applying the "first-in-first-out" principle, petitioner should have utilized first the available input VAT carried over from previous quarter in order to pay the output liability for the third quarter of 2000. Otherwise, the purpose of "carry-over" allowed under Section 110 (B) of the Tax Code and as reflected in every monthly VAT declaration and quarterly VAT return will be negated. (**Intel Philippines Manufacturing, Inc. vs. Commissioner of Internal Revenue**, CTA Case No. 5941, dated February 5, 2002 and **BASF Philippines, Inc. vs. Commissioner of Internal Revenue**, CTA Case No. 6175, dated March 20, 2002)

In sum, petitioner is entitled to the refund sought but in the reduced amount of P8,435,507.95, computed as follows:

Amount Claimed	P10,550,387.00
Less: Output Tax Liability	2, 114,879.05
Amount Refundable	P 8, 435,507.95

WHEREFORE, in the light of the foregoing, the instant petition is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **ISSUE a TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P8,435,507.95 representing the latter's excess input taxes arising from its purchase of capital goods in September 1998.

SO ORDERED.

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

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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