REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

MARUBENI PHILIPPINES CORPORATION,	**C.T.A. CASE NO. 6469**
Petitioner,	Members:
	CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
-versus-	**Promulgated:**
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	JUN 0 2 2009 4:25 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

The reckoning of the two-year prescriptive period for the filing of a claim for a refund or the issuance of a TCC for input VAT under *Section 112(A) and (B) of the National Internal Revenue Code ("NIRC") of 1997, as amended*, commences from the close of the taxable quarter when the relevant sales, importation or purchases were made, regardless of whether said tax was paid or not.

THE CASE

This is a Petition For Review filed by Marubeni Philippines Corporation (hereafter "petitioner"), praying for a refund or the issuance of a tax credit certificate ("TCC") in the amount P3,887,419.00, representing its excess input value-added taxes ("input VAT") paid on domestic purchases of goods and services which are attributable to petitioner's zero-rated sales of goods and services for the first quarter of taxable year 2000; and input VAT paid by petitioner on its local purchases of capital goods.

THE PARTIES

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with office address at 9th floor, LV Locsin Building, Ayala Avenue, corner Makati Avenue, Makati City.

Respondent, on the other hand, is the duly-appointed Commissioner of Internal Revenue, with authority, among others, to decide, approve and grant tax credits and/or refunds of overpaid or erroneously paid internal revenue taxes, with office address at the 5th floor, BIR National Building, Diliman, Quezon City, where he may be served with summons and other legal processes.

THE FACTS

The facts, as stipulated by the parties, are as follows:

Petitioner was organized to principally engage in the business of buying, selling, distributing, marketing at wholesale insofar as may be permitted by law, all kinds of goods, commodities, wares and merchandise of every kind and description, and to enter into all kinds of contracts for the export, import, purchase, acquisition, sale at wholesale and other disposition for its own account as principal or in representative capacity as manufacturer's representative, merchandise broker, indentor, commission merchant, factors or agents, upon consignment or all kinds of goods, wares, merchandise or products whether natural or artificial.

As a seller of goods and services, petitioner is duly registered with the Bureau of Internal Revenue (hereafter "BIR") as a Value-Added Tax (hereafter "VAT") taxpayer, as evidenced by its BIR certificate of registration dated February 29, 1996.

For the first quarter ending March 31, 2000, on April 25, 2000, petitioner filed with the BIR its Quarterly VAT Return, showing, among others, the aggregate amount of input VAT that it had paid for the same period on its domestic purchases of capital goods and other taxable goods and services.

On October 25, 2000, petitioner filed an Amended Quarterly VAT Return for the period ending March 31, 2000.

On January 25, 2002, petitioner further amended its VAT Return for the period ending March 31, 2000.

On April 24, 2002, petitioner filed its third Amended Quarterly VAT Return for the period ending March 31, 2000, and the amended return showed the following details:

PURCHASES	**AMOUNT**	**INPUT VAT**
Domestic	P42,386,782.77	P4,238,679.22
SALES	**AMOUNT**	**OUTPUT VAT**
Taxable	P3,148,688.97	P314,868.60
Zero-rated	P65,783,916.32	
Total	P68,932,605.29	P314,868.60
EXCESS INPUT VAT		P3,923,810.62

Pursuant to *Section 112(A) of the Tax Code of 1997, as amended*, on March 27, 2002, petitioner, through its external auditor, Sycip, Gorres, Velayo and Company, filed with the BIR a written claim for a refund and/or the issuance of a TCC of its unutilized input VAT credits for the 1st Quarter of 2000 amounting to P3,911,838.33, representing the excess of its accumulated input VAT payments over the output VAT due on domestic taxable sales.

However, due to a reduction in the amount of the VAT claim from P3,911,838.33 to P3,887,419.31 brought about by the allocation of input VAT that could not be directly attributable to either of petitioner's taxable domestic sales of goods and services or its zero-rated sales of goods and services, on April 25, 2002, petitioner, through its external auditor, Sycip, Gorres, Velayo and Company, filed with the BIR an amended claim for a refund and/or the issuance of a TCC of its unutilized input VAT credits for the 1st quarter of 2000, attributable to its zero-rated sales.

To date, the administrative claim for refund and/or tax credit has not been acted upon by respondent.

In his answer, respondent alleged the following special and affirmative defenses:

> "3. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;

4. Petitioner's alleged claim for refund/issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;

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

6. Petitioner's claim for refund/tax credit in the amount of P3,887,419.31 as alleged unutilized input VAT paid on its domestic purchases of goods and services for the period January 1, 2000 to March 31, 2000 was not fully substantiated;

7. Petitioner's instant claim for refund/tax credit representing the alleged unutilized input VAT paid for the period January 1, 2000 to March 31, 2000 is not subject to zero percent (0%) rate of VAT under Sections 106 (A)(2)(a) and 108(B)(2) and (3) of the 1997 Tax Code;

8. Petitioner's claim for refund/credit of the alleged unutilized input VAT paid on its domestic purchases of goods and services for the period January 1, 2000 to March 31, 2000 has already prescribed pursuant to Section 112 (A)(B) of the 1997 Tax Code;

9. It is incumbent upon the latter to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund;

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)."

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Petitioner presented Rosalyn Peret, and Noel Rabaja, the duly commissioned Independent CPA, as witnesses, and documentary evidence, marked as *Exhibits "A" to "O"*, inclusive of their submarkings.

On the other hand, respondent submitted the case for decision based on his pleadings.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice. Petitioner having filed its "Memorandum" on November 7, 2005, without respondent's memorandum, the case was deemed submitted for decision on December 2, 2005.

On April 10, 2006, petitioner filed an "Urgent Motion to Re-Open Case for Trial and for Leave of Court to Present Additional Evidence", which the Court, in the higher interest of substantial justice, granted in a Resolution dated July 14, 2006.

As additional evidence, petitioner presented Rosalyn Peret, as witness, and *Exhibits "AA" to "KK",* inclusive of their submarkings, which the Court admitted in its Resolution dated October 6, 2008, and the parties were ordered to file their simultaneous memoranda, within thirty

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(30) days from notice; afterwhich the case will be deemed submitted for decision.

On December 8, 2008, petitioner filed its "Memorandum", without respondent's memorandum. On January 15, 2009, the case was deemed submitted for decision.

Hence, this decision.

ISSUES

As stipulated by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT THE AMOUNT OF P3,393,191.37, OUT OF THE TOTAL EXCESS INPUT VAT OF P4,238,679.22, REPRESENTS INPUT VAT PAID ON DOMESTIC PURCHASES OF TAXABLE GOODS THAT ARE DIRECTLY ATTRIBUTABLE TO ITS ZERO-RATED EXPORT SALES OF GOODS.

II

WHETHER OR NOT PETITIONER INCURRED INPUT VAT IN THE AMOUNT OF P796,662.31, IN CONNECTION WITH ITS PURCHASE OF CAPITAL GOODS AND OFFICE SUPPLIES, AS WELL AS RENTALS FOR THE USE OF REAL PROPERTY, WHICH ARE NOT DIRECTLY ATTRIBUTABLE TO EITHER ITS EXPORT SALES OF GOODS AND

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SERVICES OR ITS TAXABLE SALE OF GOODS AND SERVICES.

III

WHETHER OR NOT PETITIONER'S INPUT VAT WHICH ARE NOT DIRECTLY ATTRIBUTABLE TO EITHER ITS ZERO-RATED OR TAXABLE SALES SHOULD BE ALLOCATED TO EITHER OPERATION, WITH THE AMOUNT OF P760,272.54 TO BE CREDITED TO PETITIONER'S ZERO-RATED SALES.

IV

WHETHER OR NOT PETITIONER'S CLAIM FOR REFUND/TAX CREDIT IN THE AMOUNT OF P3,887,419.31 AS ALLEGED UNUTILIZED INPUT VAT PAID ON ITS DOMESTIC PURCHASES OF GOODS AND SERVICES FOR THE PERIOD JANUARY 1, 2000 TO MARCH 31, 2000 ARE DULY SUBSTANTIATED.

V

WHETHER OR NOT PETITIONER'S SALES OF GOODS AND SERVICES ARE ZERO-RATED FOR VAT PURPOSES UNDER SECTIONS 106(A)(2)(a) AND 108(B)(2)(3) OF THE 1997 TAX CODE.

VI

WHETHER OR NOT PETITIONER'S EXCESS INPUT VAT FOR THE FIRST QUARTER OF TAXABLE YEAR 2000 WAS APPLIED OR UTILIZED AGAINST ITS OUTPUT VAT IN THE SUCCEEDING TAXABLE QUARTERS.

VII

WHETHER OR NOT PETITIONER'S RIGHT TO CLAIM FOR REFUND/TAX CREDIT THE ALLEGED UNUTILIZED INPUT VAT PAID ON ITS DOMESTIC PURCHASES OF GOODS AND SERVICES FOR THE PERIOD JANUARY 1, 2000 TO MARCH 31, 2000 HAS PRESCRIBED, PURSUANT TO SECTION 112(A)(B) OF THE 1997 TAX CODE.

VIII

WHETHER OR NOT PETITIONER IS ENTITLED TO THE CLAIM FOR REFUND IN THE AMOUNT OF P3,887,419.31 REPRESENTING UNUTILIZED AND/OR UNAPPLIED INPUT VAT ATTRIBUTABLE TO THE EXCESS OF ITS ACCUMULATED INPUT VAT PAYMENTS OVER THE OUTPUT VAT DUE ON DOMESTIC SALES FOR THE FIRST QUARTER OF TAXABLE YEAR 2000.

Principal Issue

The foregoing issues raised by both parties boil down to the principal issue of whether or not petitioner is entitled to a refund or the issuance of a TCC in the amount of P3,887,419.00, representing its excess input VAT paid on domestic purchases of goods and services which are attributable to petitioner's zero rated sales of goods and services for the first quarter of taxable year 2000, and input VAT paid by petitioner on its local purchases of capital goods.

THE COURT'S RULING

The petition lacks merit.

Petitioner anchors its claim for a refund or the issuance of a TCC under *Section 112(A) and (B) of the NIRC of 1997, as amended*, which provides:

> "**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.
>
> **(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."

The aforequoted provisions allow the refund/tax credit of excess input VAT in two instances, namely: (1) when the excess input VAT is attributable to zero-rated or effectively zero-rated sales; and (2) when the excess input VAT is attributable to capital goods purchased by a VAT-registered person.

In order to be entitled to a refund or issuance of a TCC of input VAT due or paid attributable to zero-rated or effectively zero-rated sales, petitioner must prove compliance with the following requisites:

1) that there must be zero-rated or effectively zero-rated sales;

2) that the input taxes were incurred or paid;

3) that such input taxes are directly attributable to zero-rated 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.

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On the other hand, in order to be entitled to a refund or issuance of a TCC of input VAT paid on capital goods purchased, petitioner must prove compliance with the following requisites:

1) petitioner is a VAT-registered entity;

2) that its input taxes claimed were paid on capital good duly supported by VAT invoices and/or official receipts;

3) petitioner did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and

4) the claim for refund was filed within the two-year prescriptive period both in the administrative and judicial levels.

Thus, it is imperative that petitioner should be able to prove the above-prescribed requisites.

Prescription

We deal first with the timeliness of the filing of the instant claim.

Pursuant to the aforequoted provision, a VAT registered taxpayer whose sale is 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 a refund or the issuance of a TCC of its creditable input tax due or paid attributable to such sales.

In the recent case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.), 565 SCRA 154*, the Supreme Court definitely settled the issue on the reckoning of the prescriptive period on claims for refund of input VAT attributable to zero-rated or effectively zero-rated sales, as follows:

> "The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Sec. 112(A) of the NIRC pertinently reads:
>
>> (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 <u>when the sales were made</u>, apply for the issuance of a tax credit certificate or refund of creditable input tax <u>due or paid</u> attributable to such sales,** except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x. (Emphasis ours.)
>
> The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years **reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not**. As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112(A),

> '[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued.' Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid. Be that as it may, and given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years after September 30, 1996 or, to be precise, on September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed."

From the foregoing, it is clear that the two-year prescriptive period provided in *Section 112(A) of the NIRC of 1997, as amended*, should be reckoned not from the payment of the tax, but from the close of the taxable quarter when the sales were made.

On the other hand, *Section 112 (B)* provides that the taxpayer may apply for a refund or the issuance of a TCC, within two (2) years from the close of the taxable quarter when the importation or purchase was made.

In this case, petitioner is claiming for a refund or the issuance of a TCC of its unutilized input VAT paid on domestic purchases of goods or

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services attributable to its zero rated sales of goods and services, and paid on its local purchases of capital goods for the first quarter of 2000, hence, the two (2) year prescriptive period should be reckoned from March 31, 2000, the close of the taxable first quarter. Accordingly, petitioner had until April 1, 2002 (March 31, 2002, being a Sunday), within which to file its claim both in the administrative and judicial levels.

Records show that while the original administrative claim for refund or the issuance of a TCC filed by petitioner on March 27, 2002 *(par. 8, Joint Stipulation of Facts and Issues)* falls within the two (2)-year prescriptive period; however, the Petition for Review filed before this Court on April 25, 2002 *(Original Docket, p. 1)* is beyond the two (2)-year period prescribed by law. Thus, petitioner is barred from claiming refund of the alleged unutilized input taxes for the first quarter of 2000 in the amount of P3,887,419.31, due to prescription.

In view of the foregoing discussion, the Court finds it no longer necessary to discuss petitioner's compliance with the other requisites for the refund of unutilized input taxes for the first quarter of 2000.

WHEREFORE, premises considered, the petition is hereby **DENIED DUE COURSE,** and accordingly, **DISMISSED**.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
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.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, Second Division