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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INTEL PHILIPPINES MANUFACTURING, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5142

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 27 1997

x - x

DECISION

In the case at bar the issue which is presented for our consideration is whether or not petitioner's claim for a tax credit in the amount of ₱2,326,479.00 representing the balance of its VAT input taxes for the period March 1, 1993 to June 30, 1993, which was allegedly disallowed by the respondent due to non-compliance of invoicing requirements, be granted or denied.

Petitioner is a domestic corporation primarily engaged in the business of designing, developing, manufacturing and exporting advanced and large-scale integrated circuit components, commonly known as "VLSI" components or "IC's", and is a registered value-added tax entity, holding VAT Registration Certificate No. 32A-3-002649.

For the period covering March 1, 1993 to June 30, 1993, petitioner allegedly generated and recorded zero-rated export sales in the amount of ₱457,901,160.34, the consideration of which were allegedly paid for in acceptable foreign currency, inwardly remitted to the Philippines and accounted for in accordance with the regulations of the Central Bank of the Philippines. During the same period, petitioner paid VAT input taxes on its alleged domestic purchases of taxable goods and services in the amount of P7,878,360.37, as well as on its alleged importation of goods amounting to P1,399,564.25, or a total of P9,277,924.62.

Of the total amount of P9,277,924.62 VAT input taxes allegedly paid by petitioner, P9,268,200.02 have not been applied against its output tax liability.

On October 27, 1993, petitioner filed with respondent, thru the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance, an application for the issuance of Tax Credit Certificate in the amount of P9,035,630.98.

On May 4, 1994, respondent issued to the petitioner a tax credit but only to the amount of P6,709,151.98. The said Tax Credit Certificate No. SN 002654 in the abovementioned amount was received by the petitioner only on August 1, 1994. Petitioner thereby concluded that the balance of ₱2,326,479.00 was in effect denied by the respondent.

Hence, on August 30, 1994, petitioner filed with the Court this instant petition for review.

As earlier adverted to at the outset, the issue to be resolved by the Court is whether or not petitioner's claim for tax credit in the amount of P2,326,479.00 representing the balance of its VAT input taxes for the period March 1, 1993 to June 30, 1993, which was allegedly disallowed by the respondent due to non-compliance of invoicing requirements, be granted or denied.

Petitioner presents the proposition as reason for this petition for review that since it is a VAT-registered entity and its sales amounting to ₱457,901,160.34 for the period March 1, 1993 to June 30, 1993 were direct export sales which were paid for in acceptable foreign currency inwardly remitted to the Philippines in accordance with the regulations of the Central Bank of the Philippines, it follows that these export sales are not subject to ten percent (10%) value-added tax but zero-percent (0%), pursuant to Section 100(a)(1) of the Tax Code and Section 8(b)(1) of Revenue Regulations No. 5-87, which provides:

> **SECTION 100.** ***Value-added tax on sale of goods.*** - (a) *Rate and base of tax.* There shall be levied, assessed and collected on every sale, barter or exchange of goods, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods sold, bartered or exchanged, such tax to be paid by the seller or transferor: *Provided*, that the following sales by VAT-registered persons shall be subject to 0%:
>
> (1) Export sales.

> **SECTION 8.** ***Zero-rating.*** - (a) x x x
>
> (b) *Zero-rated sales of goods.* - The following sales by VAT-registered persons are zero-rated:
>
> (1) Export sales made directly by a VAT registered person. x x x

Petitioner pointed out that its VAT input taxes from March 1, 1993 to June 30, 1993 which totalled P9,277,924.62 were properly supported by sales invoices and/or official receipts and since its sales of P457,901,160.34 for the same period qualify as zero-rated export sales, it follows that its VAT input taxes <u>are available as tax credit</u> under Section 8(a) of Revenue Regulations No. 5-87, which states that "A zero-rated sale is a taxable transaction for value-added tax purposes. A sale by a VAT-registered person of goods and/or services taxed at zero-rate shall not result in any output tax. The input tax on this purchases of goods or services related to such zero-rated sale shall be available as tax credit or refundable in accordance with Section 16 of these Regulations."

Respondent, on the other hand, insists that the applicable provision of law are Sections 104(b) and 106(a) of the Tax Code, to wit:

> **SECTION 104.** *Tax Credits.* - x x x
>
> (b) *Excess output or input tax.* - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 106.
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> SECTION 106. ***Refunds or tax credits of input tax.*** - (a) *Export Sales.* - An exporter who is a VAT-registered person may within two years from the date of exportation, apply for the issuance of a tax credit certificate or refund of the input tax attributable to the goods exported, to the extent that such input tax has not been applied to output tax and upon presentation of proof that the foreign exchange proceeds has been accounted for in accordance with the regulations of the Central Bank of the Philippines.
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> xxx xxx xxx

Respondent claimed that the petitioner's right to claim tax credit or refund of the amount of P2,326,479.00 has already prescribed since it appears that the Tax

Credit Certificate No. SN 002645 in the amount of P6,709,151.98 was dated May 4, 1994 and that the petition for review was filed only on August 30, 1994, obviously more than thirty (30) days from the date of the Tax Certificate, in violation of the jurisdictional requirements of Section 11 of Republic Act No. 1125, which provides:

> **SECTION 11.** ***Who may appeal; effect of appeal.*** - Any person, association or corporation adversely affected by a decision or ruling of the Commissioner of Internal Revenue, the Collector of Customs or any provincial or city or Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty (30) days after the receipt of such decision or ruling. x x x.

Respondent further argued that there is still a need to file another claim for refund or tax credit before the Commissioner with regard to the disallowed input tax subject of the present case, before the Court acquires jurisdiction over the instant case in accordance with Section 230 of the Tax Code.

Lastly, respondent demurs and maintains that petitioner did not comply with the invoicing requirements required by the Tax Code, thus, the instant case should be dismissed for lack of merit.

A close scrutiny of the aforecited provisions of law and regulation invoked by the petitioner and respondent yields no repugnance with each other. All the said provisions/regulations are clear and precise and do not show any ambiguity or obscurity that will lead this Court to interpret the same in a different manner. All of those provisions/regulation aforementioned applies directly to the instant case, thus, no contention should be resorted as to what provisions of law will apply.

We do not agree with the proposition of the respondent that petitioner's right to claim tax credit or refund has already prescribed and that there is still a need to file another claim for refund or tax credit before the Commissioner with regard to the disallowed input tax subject of the present case before the Court may acquire jurisdiction over the instant case. The petition for review (no. 4, thereof) alleged that the Tax Credit Certificate No. SN 002654 amounting to ₱6,709,151.98 was received by the petitioner only on August 1, 1994. This allegation was not contradicted by the respondent in her answer nor did she offer evidence that will tend to show that it was received on a much earlier date; thus, since the petition was filed with this Court on August 30, 1994, the theory of the respondent is thereby negated. Corollarily, the disallowance by the respondent of the input tax subject of the present case is tantamount to its decision, thus, appealable to this Court. Again, the argument of the respondent is out of context.

Records of the case clearly show that the total amount of input taxes that were disallowed by the respondent for reasons of non-compliance with invoicing requirements was only P917,190.15 (Exh. 1-G), and not P2,326,479.00 as claimed by the petitioner. The application for issuance of tax credit certificate in the amount of P1,399,364.25 claimed by the petitioner as its input taxes on importation of goods was granted by the respondent (Exh. 2), but since this pertains to VAT on importations duly administered by the Bureau of Customs, respondent did not include the amount in the tax credit certification issued to petitioner. The amount of P9,724.60 representing petitioner's output tax on its sale of scraps was deducted from the petitioner's VAT input taxes (Exh. 1-H).

With respect to the input taxes paid by petitioner on its importations, it is noteworthy to quote a portion of this Court's resolution in the case of **Marine Colloids, Phils., Inc. v. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case No. 5339, dated August 22, 1996,** to wit:

> "By virtue of an internal arrangement/agreement between the Bureau of

> Internal Revenue and the Bureau of Customs,. the latter agency is given the authority to issue the tax credit certificates when it comes to VAT paid on importations. It cannot now shy away from the task which it had agreed to do. xxx xxx xxx."

Thus, there being an authority to issue a Tax Credit Certificate under RAMO No. 2-93 (Exh. 2), with regard to petitioner's VAT input taxes on its importation in the amount of ₱1,399,364.25, this Court will not delve on the same but instead will tackle on the disallowed amount of VAT input taxes on domestic purchases in the total amount of P917,190.15.

An examination of the evidence adduced by the petitioner as well as the BIR records, led this Court to agree with the findings of the respondent that indeed these disallowed input taxes on domestic purchases in the total amount of P917,190.15 represent those invoices, the dates of which were not within the period in the application, and in isolated instances, the suppliers were not registered as VAT taxpayers. The first findings were confirmed by the petitioner's external auditor, Punongbayan and Araullo, in its report to the petitioner dated March 20, 1995 (Exh. A).

IN THE LIGHT OF ALL THE FOREGOING, the petition is hereby **DISMISSED** for lack of merit and the refund/tax credit of the amount sought is hereby **DENIED.** However, respondent is hereby **ORDERED** to facilitate the release from the Bureau of Customs of the Tax Credit Certificate in the amount of ₱1,399,364.25, representing petitioner's VAT input taxes on its importations, which was previously approved by the respondent Commissioner of Internal Revenue.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this 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
Court of Tax Appeals