REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DYNO NOBEL PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6291

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 10 2003

x - x

DECISION

This is a judicial claim for refund filed by the petitioner, Dyno Nobel Phils. Inc., in the amount of P3,239,358.10 which allegedly represents its unutilized and/or unapplied input VAT for the four quarters of the taxable year 1999 attributable to its export sales during the same period.

The facts of the case are as follows:

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at Bo. Buntis, Bacong, Negros Oriental (*Joint Stipulation of Facts and Issues, par. 1*).

Petitioner is duly registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) enterprise and with the Board of Investments (BOI) as a preferred pioneer enterprise for the production, manufacture and export of ammonium nitrate, in accordance with the provisions of Republic Act No. 5186, as amended (*Joint Stipulation of Facts and Issues, paragraphs 3 and 4; Exhibits "A" and "B"*).

In 1999, petitioner filed its Quarterly Value-Added Tax Returns covering the period from January 1, 1999 to December 31, 1999, reflecting the following details:

Exhibit	Period Covered	Date Filed	Taxable Sales	Zero-rated Sales	Output VAT	Input VAT
*C**	1st qtr.	4/26/99				
*D***	1st qtr.	5/27/99	6,924,834.15	82,556,910.27	692,483.42	1,257,459.30
E	2nd qtr.	7/26/99	9,607,252.10	67,415,572.48	960,725.21	2,077,911.54
F	3rd qtr.	10/25/99	8,579,323.58	112,700,689.36	857,932.36	1,694,331.30
G	4th qtr.	1/25/00	12,752,949.91	87,520,337.83	1,275,294.99	1,996,091.94
TOTAL			**37,864,359.74**	**350,193,509.94**	**3,786,435.98**	**7,025,794.08**

* *Original*
** *Amended*

According to petitioner, payment for the said zero-rated sales were in US Dollars inwardly remitted to petitioner in accordance with the existing rules and regulations of the Bangko Sentral ng Pilipinas (*Exhibits "NN-1" to NN-36"; TSN, December 5, 2001, p. 15*).

On March 28, 2001, on the belief that it is entitled to a tax refund or credit of its excess or unutilized input VAT in the amount of P3,239,358.10 for the period January 1, 1999 to December 31, 1999, petitioner filed four separate administrative claims for refund or tax credit with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (DOF) (*Joint Stipulation of Facts and Issues, paragraph 9, Exhibits "I" to "L"; "I-1" to "L-1"*).

Then, on April 25, 2001, petitioner filed the instant Petition for Review to toll the running of the prescriptive period for claiming tax credit or refund.

In his Answer filed on May 31, 2001, respondent countered by raising the following Special and Affirmative Defenses:

> "4. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
>
> 5. Petitioner's alleged claim for refund/tax credit is still subject to administrative routinary investigation/examination by the respondent's Bureau;
>
> 6. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;
>
> 7. Petitioner's claim for tax credit or refund of alleged unutilized VAT input taxes paid for the 1st quarter of 1999 has already prescribed pursuant to Section 4.106-1 of Rev. Reg. No. 7-95;
>
> 8. Petitioner failed to prove compliance with the following:
>
>   a. Section 4.100-2 in relation to Section 4.102-1 and Section 4.102-2 of Rev. Reg. No. 7-95;
>
>   b. Sections 4.104-5 and 4.104-5 (b) of Rev. Reg. No.7-95;
>
> 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)**.
>
> (*Answer, pages 1-2; CTA Records, pages 35-36*)

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

1. Whether petitioner has unapplied or unutilized creditable value-added tax for the taxable year 1999 in the amount of P3,239,358.10, which input taxes are attributable to its export sales.
2. Whether the said creditable value-added tax inputs of petitioner are substantiated by documentary evidence in the form of invoices and official receipts.
3. Whether the said unapplied or unutilized creditable value-added tax inputs for the year 1999 was carried forward to the succeeding taxable quarter and applied against any of the value-added tax output of petitioner.
4. Whether petitioner is entitled to the refund/credit of the amount of P3,239,358.10 representing its unutilized and/or unapplied input VAT for the period January 1, 1999 to December 31, 1999.
5. Whether petitioner's export sales are zero-rated for VAT purposes.

(*Joint Stipulation of Issues; CTA Records, page 68*)

Inasmuch as the issues are interrelated, they shall be discussed jointly.

Petitioner anchored its claim for refund of its excess and/or unutilized input VAT on the following provisions of the 1997 NIRC:

"*Section 110. Tax Credits.* –

x x x x x x 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 112."

x x x x x x x x x

"***Section. 112. Refunds or tax credits of input tax.*** – (A) 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 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."

Section 204. ***Authority of the Commissioner to compromise, abate, and refund/credit taxes.*** - The Commissioner may:

x x x x x x x x x

(1) 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 and 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 the payment of the tax or penalty: *provided, however*, that a return filed showing an overpayment shall be considered as a written claim for credit or refund.

The case at bar is not one of first impression. In this court's previously decided case entitled ***Dyno Nobel Philippines, Inc. v. Commissioner of Internal Revenue***, *CTA Case No. 6098, promulgated on May 14, 2002*, involving the same issues and parties, we upheld the contention of petitioner that as a VAT-registered entity, its export sales of ammonium nitrate are subject to zero percent (0%) rate for VAT purposes pursuant to Section 100(a)(2)(A) of the Tax Code [now Section 106A(2)(a) of the NIRC of 1997], as amended, hereunder quoted for easy reference:

"**Sec. 106. Value-added tax on sale of goods or properties.** –

(A) **Rate and base of tax**. – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

x x x x x x x x x

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export sales.* - The term 'export sales' means:

(i) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

Hence, based on the aforequoted pronouncement of this court and the documentary evidence showing the fact that petitioner is an exporter of ammonium nitrate as evidenced by its Certificate of Registration No. 77-516 issued by the BOI and that the domestic purchases of goods and services and the importation of capital goods are attributable to petitioner's zero-rated export sales, we find that petitioner's export sales are subject to zero percent (o%) rate for VAT purposes and, therefore, it may apply for the issuance of a tax credit certificate or refund of excess creditable input tax due or paid attributable to such sales.

We now proceed to the issue on substantiation.

In order to be entitled to refund or tax credit of unutilized input VAT payments directly attributable to zero-rated sales, petitioner must prove that:

1. Both the administrative and judicial claims for refund were filed within two (2) years upon filing of the quarterly VAT return(s) covered by the claim as provided under Section 4-106.2(c) of Revenue Regulations No. 7-95 in relation to Section 112(D) of the Tax Code;

2. The claimed input VAT payments were not applied against any output tax during the period covered by the claim and in the succeeding periods;

3. The claimed input VAT payments are directly attributable to zero-rated sales; and

4. The claimed input VAT payments are duly supported by VAT invoices or official receipts in accordance with Section 4.104-5 of Revenue Regulations No. 7-95 in relation to Sections 113 and 237 of the Tax Code **(Intel Philippines Manufacturing, Inc. v Commissioner of Internal Revenue, CTA Case Nos. 5460 and 5902, February 05, 2002).**

Regarding the first requirement, petitioner managed to file both its administrative and judicial actions on time pursuant to Section 112 of the Tax Code, as amended, in relation to Section 229 of the same code. The quarterly VAT return for the first, second, third and fourth quarters of taxable year 1998 were filed on April 26, 1999, July 26, 1999, October 25, 1999 and January 25, 2000, respectively. Since the administrative claims were filed on March 28, 2001 and the appeal to this Court on April 25, 2001, clearly, the filing of both were well within the period prescribed by law reckoned from the corresponding dates of filing of quarterly VAT returns for 1999 **(Resolution, Atlas Consolidated Mining and Development Corporation v Commissioner of Internal Revenue, CTA Case No. 5296, dated July 20, 1998; Air Liquide Philippine v Commissioner of Internal Revenue and Commissioner of Customs, CTA Case No. 5748, promulgated January 23, 2002).**

We shall now dwell on the other three requirements.

Insofar as petitioner's sales are concerned, the court agrees with the findings of the commissioner that petitioner's input VAT are attributable to both its export and local sales. Petitioner's export sales were properly supported by bills of lading and export sales invoices (*Exhibits MM-1 to MM-58*). Moreover, records show that the proceeds of the said export sales had been inwardly remitted in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas as evidenced by bank certificates of inward remittance (*Exhibits NN-1 to NN-36*).

Petitioner's input VAT were also supported by VAT invoices and/or official receipts *(Exhibits EE-1 to LL-62)*. However, as found by the commissioned independent CPA (*CTA records, pages 141-205*), the following input taxes must be disallowed for reasons stated hereunder:

A. Input Taxes with Improper Substantiation

	Findings	**Reference**	**Amount of Disallowable Input Taxes**
1.	Domestic purchases of goods supported by documents other than invoices (i.e., cash slips, official receipts, order slips)	Exhibit AA-10	P 4,083.03
2.	Domestic purchases of goods supported by documents other than official receipts (ORs) (i.e., invoice, storage receipt, time delivery contract, cash freight receipt, freight receipt, cash auxiliary slips)	Exhibit AA-10	20,619.74
3.	Domestic purchases of services supported by provisional receipts (PRs)	Exhibit AA-10	3,306.74
4.	Domestic purchases of services supported by ORs with TIN NV	Exhibit AA-10	5,129.92

5.	Domestic purchases of goods supported by invoices pre-printed after July 31, 1991 with stamped TIN-VAT	Exhibit AA-11	8,880.14
6.	Domestic purchases of services supported by invoices pre-printed after July 31, 1991 with stamped TIN-V	Exhibit AA-11	2,727.27
7.	Erroneous computation of input tax credits	Exhibit AA-11	1,441.98
8.	Domestic purchase of goods supported by a VAT invoice not in the Company's name	Exhibit AA-12	1.09
9.	Domestic purchases of goods supported by photocopied documents	Exhibit AA-12	418.00
10.	Domestic purchase of services supported by a photocopied document	Exhibit AA-12	903.44
11.	Domestic purchase of goods supported by invoices stamped with "VAT" only	Exhibit AA-12	7,115.44
12.	Domestic purchase of services supported by an OR stamped with "VAT" only	Exhibit AA-13	8,115.00
13.	Domestic purchases of services supported by ORs with pre-printed TIN only, printed before July 31, 1991 (includes no date of printing)	Exhibit AA-13	5,279.79
14.	Importation of goods supported by photocopied documents	Exhibit AA-13	13,439.00
15.	Importation of goods without supporting Documents	Exhibit AA-13	47,121.00
	Total		**P 128,581.58**

B. Input Taxes with Undated Documents

Period	***Reference***	***Amount of Input Tax***
Second Quarter	Exhibit AA-33	P 38.64
Third Quarter	Exhibit AA-48	57.99
Fourth Quarter	Exhibit AA-58	2,051.95
Total		**P2,148.58**

C. Allocation of Input Taxes Pertaining to Local Sales

Amount of Excess Input Tax Credits for Refund/Tax Credit		P3,239,358.10
Less: Adjustment to the Input Taxes:		
Input taxes with improper substantiation (Annex A) – Exhibit OO-4 to OO-5	P128,581.58	
Input taxes with undated documents (Annex B) – Exhibit OO-6	2,148.58	130,730.16
Available Balance of Possible Input Tax Credit for Refund		P3,108,627.94
Multiplied by Ratio of Local Sales to Total Sales		
Amount of Local Sales	P37,864,359.74 ÷	
Total Sales (Export sales of P383,907,090.86[1] plus local sales of P37,864,359.74)	421,771,450.60	8.98%
Amount of Input Taxes Attributable to Local Sales		**P 279,154.79**

Lastly, petitioner was able to prove that it did not carry over and apply its excess/unutilized input VAT for taxable year 1999 in the amount of P3,239,358.10 to the first quarter of taxable year 2000 as shown in its amended first quarterly VAT return for the year 2000 (Exhibit M).

Based on the above discussions, petitioner is entitled to a refund in the reduced amount of P2,829,473.15, computed as follows:

[1] The amount was taken from the Summary of Export Sales for the year 1999 (Exhibit DD-1). It was noted by the independent CPA that there was an unaccounted difference of P33,713,580.92 in the third and fourth quarters' export sales summary (Exhibits DD-6 and DD-8).

Amount claimed		P3,239,358.10
Less: Disallowances		
Input Taxes with Improper Substantiation	P 128,581.58	
Input Taxes with Undated Documents	P2,148.58	
Allocation of Input Taxes Pertaining to Local Sales	279,154.79	409,884.95
Amount Refundable		**P2,829,473.15**

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED** but in the reduced amount of P2,829,473.15. Respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND OR ISSUE TAX CREDIT CERTIFICATE** in favor of herein petitioner the above-mentioned amount representing unutilized input VAT paid attributable to petitioner's zero-rated export sales covering the taxable year 1999.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
Associate 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