REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BASF PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6175

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAR 2 0 2002

x -

DECISION

This petition for review prays for the issuance of a tax credit certificate in the amounts of P4,677,461.53 and P4,497,570.04 allegedly representing excess input value-added tax (VAT, for brevity) paid on domestic purchases and importation of capital goods for the quarters ended September 30, 1998 and December 31, 1998, respectively.

The following facts are undisputed:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office address at Road #5, Phase I GIZ, Carmelray Industrial Park I, 4028 Canlubang, Calamba, Laguna.

Petitioner is registered with the Bureau of Internal Revenue as a value-added tax taxpayer with Certificate of Registration No. OCN 1RC0000034522, dated January 1, 1997 (Annex A, CTA records, p. 6). It is engaged in the business of manufacturing various chemical products.

For the period July 1, 1998 to December 31, 1998, Petitioner seasonably filed its quarterly Value-Added Tax Returns (Exhibits "A" and "F", inclusive of submarkings) reflecting an aggregate output tax liability in the amount of P21,778,753.36 and unutilized input VAT in the sum of P36,214,053.22 as of December 31, 1998, detailed as follows:

Third Quarter: (Exhibit "C")

VAT Output Tax		P13,255,465.14
Less: VAT Input Tax		
a. Carried Over from Previous Quarter	P30,857,284.97	
b. Domestic Purchases	5,431,696.18	
c. Importation of Goods	9,581,565.00	
Total Available Input Tax	P45,870,546.15	
Less: Any VAT Refund/TCC Claimed	-	
Net Creditable Input Tax		45,870,546.15
Excess Input Tax		P32,615,081.01

Fourth Quarter: (Exhibit "F")

VAT Output Tax		P 8,523,288.22
Less: VAT Input Tax		
a. Carried Over from Previous Quarter	P32,615,081.01	
b. Domestic Purchases	5,429,286.43	
c. Importation of Goods	6,692,974.00	
Total Available Input Tax	P44,737,341.44	
Less: Any VAT Refund/TCC Claimed	-	
Net Creditable Input Tax		44,737,341.44
Excess Input Tax		P36,214,053.22

The aforesaid excess input VAT in the amount of P36,214,053.22 for the quarter ended December 31, 1998, included the sum of P9,278,495.26 representing input VAT paid on domestic purchases and importation of capital goods for the period July 1, 1998 to December 31, 1998, broken down as follows:

			Input VAT	
Supplier	Date	Exhibit	Domestic	Importation
Summa Kumagai, Inc.	07-22-98	BB	P 3,691,286.45	
Trans-Asia (Philippines), Inc.	07-29-98	CC	33,712.13	
Summa Kumagai, Inc.	09-21-98	DD	952,462.95	
Summa Kumagai, Inc.	11-19-98	EE	928,806.80	
Trans-Asia (Philippines), Inc.	12-18-98	FF	33,712.13	
Trans-Asia (Philippines), Inc.	01-13-99	GG	33,712.13	
Trans-Asia (Philippines), Inc.	11-25-98	HH	33,712.13	
Trans-Asia (Philippines), Inc.	10-19-98	II	33,712.13	
Summa Kumagai, Inc.	10-30-98	JJ	766,178.17	
Summa Kumagai, Inc.	11-19-98	KK	7,029.15	
Edeleanu Asia Pte Ltd	09-21-98	LL to OO		P1,271,700.00
Summa Kumagai, Inc.	12-17-98	PP	1,492,471.09	
Totals			P8,006,795.26	P1,271,700.00

On September 29, 2000, Petitioner filed its administrative claim for refund with the Revenue District Office No. 56 of the Bureau of Internal Revenue together with the Applications for Tax Credit/Refund of Value-Added Tax Paid in the amounts of P4,779,961.54 and P4,537,190.94 for the third and fourth quarters of 1998, respectively, pursuant to Section 112(b) of the 1997 Tax Code (Annex "T", CTA records, pp. 63 to 66).

On October 2, 2000, Petitioner filed the instant petition for review in order to toll the running of the two-year prescriptive period under the law.

In answer to the petition, Respondent interposed the following Special and Affirmative Defenses:

"5. Petitioner's alleged claim for tax refund/tax credit is subject to administrative investigation/examination by the respondent's Bureau;

6. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;

7. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;

8. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to adduce sufficient proof is fatal to the action for tax refund/credit;

9. Moreover, petitioner must show compliance with the provisions of Section 204(c) and 229 of the Tax Code, as amended;

10. Finally, there is no way to dispute the cardinal rule in taxation that tax exemptions are highly disfavored in law and he who claims tax exemption must be able to justify his claim or right. The exemption cannot be established by mere implication but it must be clearly expressed (Wonder Mechanical Engineering Corporation vs. Court of Tax Appeals, et. al., 64 SCRA 555).

The issues to be resolved by the Court are the following:

1. Whether or not the Petitioner has excess input taxes for the third taxable quarter covering the period July 1 to September 30, 1998 and for the fourth taxable quarter covering the period of October 1 to December 31, 1998;

2. Whether or not the alleged excess input taxes are substantiated by documentary evidence; and

3. Whether or not the Petitioner is entitled to the tax credit of the amounts of P4,779,961.00 and P4,537,190.00 representing the 10% value-added tax paid on imported and/or locally purchased capital goods for the third taxable quarter covering the period of July 1 to September 30, 1998 and for the fourth taxable quarter covering the period of October 1 to December 31, 1998.

Anent the first issue, Petitioner is claiming the refund of excess input tax in the total amount of P9,175,031.57 paid on the importation and domestic purchases of capital goods that were allegedly paid on the construction of its administrative building, warehouse, workshop and factory plant in Canlubang, Laguna. The Petitioner's legal anchor is based on the provisions of Section 112(b) of the 1997 Tax Code, to wit:

> **SEC. 112.** ***Refunds or Tax Credits of Input Tax.*** **–**
>
> (A) *Zero-rated or Effectively Zero-rated Sales. – xxx.*
>
> (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.

Petitioner further avers that the aforementioned amount of P9,175,031.57 which was earned during the period July 1, 1998 to December 31, 1998 was not applied against its output tax liability up to September 31, 2000. To prove such fact, Petitioner presented the monthly VAT declarations and the quarterly VAT returns for the period July 1, 1998 up to September 31, 2000 (Exhibits "A" to "AA", inclusive of submarkings). In the quarterly VAT returns, the input taxes even exceeded the output tax due for the period. Petitioner also did not deduct any amount of input VAT refund or tax credit claimed against the accumulated input VAT (Exhibits "B", "C-2", "D-2", "E-2", "F-2", "G-2", "H-2", "I-2", "J-2", "L-2", "M-2", "N-2", "O-2", "P-2", "Q-2", "R-2", "S-2", "T-2", "U-2", "V-2", "W-2", "X-2", "Y-2", "Z-2", and "AA-2"). Hence, Petitioner concluded that the input VAT paid on capital goods for the period July 1, 1998 to December 31, 1998 remained unutilized and should be refunded.

Despite the foregoing ratiocination of Petitioner, the Court is still inclined to deny the present claim.

After a punctilious examination of the monthly VAT declarations and quarterly VAT returns submitted by Petitioner, the Court noted that the excess input taxes beginning July 1, 1998 up to September 31, 2000 have been cumulatively added and forwarded to succeeding quarters under the line "Input Tax Carried Over from Previous Quarter". Such being the case, Petitioner should offset the accumulated input taxes of the previous quarter against the (present) output tax liability until the same is fully utilized. This is in accordance with the "first-in-first-out" policy. If Petitioner desires to refund the input tax paid on capital goods, it should deduct the corresponding amount under the line "Less: Any VAT Refund/TCC Claimed" provided in every quarterly VAT return.

In the instant case, the accumulated input taxes of Petitioner as of December 31, 1998 in the amount of P36,214,053.22 (from which the amount sought to be refunded in the sum of P9,175,031.57 was included) was totally applied to the output VAT liability of Petitioner by the end of June 30, 2000, detailed as follows:

QUARTER ENDED	EXH	QUARTER'S OUTPUT TAX	ACCUMULATED OUTPUT TAX
March 31, 1999	I	P 11,366,567.20	P 11,366,567.20
June 30, 1999	L	5,096,532.21	16,463,099.41
September 30, 1999	O	5,139,553.39	21,602,652.80
December 31, 1999	R	6,257,651.92	27,860,304.72
March 31, 2000	U	7,111,721.87	34,972,026.59
June 30, 2000	X	7,194,273.93	42,166,300.52
September 30, 2000	AA	6,963,040.52	49,129,341.04

The above table shows that Petitioner has an accumulated output tax liability in the amount of P42,166,300.52 as of June 30, 2000. Applying the compiled input taxes in the amount of P36,214,053.22 at the end of December 31, 1998 (Exhibit "F-1") to the aforesaid output tax liability, Petitioner has a remaining output tax due in the sum of P5,952,247.30 which can now be offset against the input taxes paid during the first quarter of 1999 in the amount of P10,596,786.57 (Exhibit "I"). Clearly, the input taxes as

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of December 31, 1998, in the sum of P36,214,053.22, which the claimed amount of P9,175,031.57 was part of, was already fully utilized by the second quarter of 2000.

We do not give much weight to Petitioner's explanation that since it has an accumulated excess input VAT in the amount of P77,400,052.47 at the end of the third quarter of 2000, the amount of P9,175,031.57 is still unutilized. The fact that the amount of P9,175,031.57 formed part of the accumulated input taxes which were habitually being carried over from one period to another until the same was fully utilized by the end of June 30, 2000 (as discussed earlier) belies the claim of Petitioner. The point is that Petitioner still has the option to utilize or apply the same to its future output tax liabilities. Simply put, we cannot refund an amount which is still with the Petitioner. As earlier discussed, Petitioner should have deducted the corresponding amount under the category "Less any VAT Refund/TCC claimed" provided in every quarterly return, to assure us that it will no longer be applied to its future output tax liabilities.

Assuming *arguendo* that the same was not applied against any of the output tax liability during the period July 1, 1998 to September 30, 2000, the same is still included in the amount of P77,400,052.47 which will be forwarded by Petitioner to the next quarter which is the fourth quarter of 2000. For purposes of clarity, the amount of P77,400,052.47 consists of the following:

Remaining Output VAT for the quarter ended June 30, 2000	P	5,952,247.30
Less: Input VAT 1st Qtr. 1999		10,596,786.57
Excess Input VAT 1st Qtr. 1999	P	4,644,539.27
Less: Output VAT 2nd Qtr. 2000		6,963,040.52
Balance Output VAT 2nd Qtr. 2000	P	2,318,501.25
Less: Input VAT 2nd Qtr. 1999		15,580,905.39

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Excess Input VAT 2nd Qr. 1999			*P*	*13,262,404.14*
Add: Unutilized Input VAT for following periods				
3rd Qtr. 1999	*P*	*16,495,325.12*		
4th Qtr. 1999		*9,852,588.09*		
1st Qtr. 2000		*12,673,569.01*		
2nd Qtr. 2000		*12,444,087.85*		
4th Qtr. 2000		*15,552,262.09*		*67,017,832.16*
Total			*P*	*80,280,236.30*
Less: Adjustments				
a. For 1st Qtr. 1999				
Excess input tax reflected in 4th quarter 1998	*P*	*36,214,053.22*		
Carried over in the 1st qtr. VAT return for 1999		*32,673,163.21*		
Overclaimed input taxes	*P*	*3,540,890.01*		
b. For 3rd Qtr. 1999				
Excess input tax reflected in 2nd quarter 1999	*P*	*42,387,755.76*		
Carried over in the 3rd qtr. VAT return for 1999		*43,048,461.94*		
Underclaimed input taxes	*P*	*(660,706.18)*		
Total				*2,880,183.83*
As Accounted For			*P*	*77,400,052.47*

Based on the available evidence, the Court has no way of determining if the aforementioned amount was not applied by Petitioner against its output tax liability.

Without convincing evidence that the subject input taxes were not utilized nor carried over as credit to the subsequent quarters, the Court cannot grant Petitioner's prayer. To grant Petitioner's claim for refund, without proof of deduction of the corresponding amount, would be dangerous and tantamount to granting twice the refund herein sought to be refunded, to the prejudice of the Government (**AMI Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case Nos. 5187 and 5199, October 2, 1997; Intel Philippines Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case Nos. 5760 and 5902, February 5, 2002; Intel Philippines Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5941, February 5, 2002).**

It is well settled that tax refunds are in the nature of tax exemptions, and as such they are regarded as in derogation of sovereign authority and hence should be construed in *strictissimi juris* against the person or entity claiming the exemption. In general, there is no disagreement that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund **(Citibank vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459).**

Inasmuch as the Petitioner failed to fully substantiate its claim for the issuance of tax credit certificates on input taxes paid on capital goods, we find no cogent reason to delve into the other issues involved in this case.

WHEREFORE, in view of the foregoing, the instant petition for review is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
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

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