REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NEC TOPPAN CIRCUIT SOLUTIONS PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6261

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 06 2003

x - x

DECISION

This case involves a claim for refund or issuance of a tax credit certificate amounting to P11,568,461.02 allegedly representing excess or unutilized creditable VAT input taxes paid for the four quarters of the taxable year 1999, arising from domestic purchases of goods and services and royalties attributable to its zero-rated export sales.

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

Petitioner is a domestic corporation organized and existing under the laws of the Republic of the Philippines, with principal office address at the Light Industry and Science Park 2, Brgys. Real and La Mesa, Calamba, Laguna *(par. 1, Stipulated Facts)*. It is primarily engaged in the business of designing, engineering, manufacturing and exporting of electronic components, particularly, printed wiring board (PWB) and electromechanical devices (EMD or relays) *(par. 5, Stipulated Facts)*. As an exporter, petitioner alleged that it exports approximately one hundred percent (100%) of its production (*pages 12 and 13, TSN, September 6, 2001*).

Petitioner is registered with the Bureau of Internal Revenue (BIR) as a value-added tax taxpayer pursuant to the requirements of (then) Section 107 of the National Internal Revenue Code, as indicated in the Certificate of Registration wherein it was issued Taxpayer Identification No. 004-520-936-V. It is likewise registered as an Ecozone Export Enterprise with the Export Processing Zone Authority (EPZA) pursuant to the provisions of the Omnibus Investment Code of 1987 with Certificate of Registration No. 96-045 *(pars. 3 & 4, Stipulated Facts)*.

On May 15, 1996, petitioner and NEC Corporation of Japan executed Technical License Agreement No. 1940 and Technical License Agreement No. 1941, under which the petitioner had been granted a non-exclusive and non-transferable right and license under know-how to manufacture EP2 power relays and PWB, respectively *(par. 7, Stipulated Facts; Exhibits B and C)*. The Agreements were registered with the Department of Trade and Industry on April 1, 1997. In the said Technical Licensing Agreements, particularly Section 10, par. 10.2, the parties agreed that:

> "All payments hereunder shall be free and clear of all taxes, charges and duties except the income taxes withheld at source in the Republic of the Philippines on the payments specified in Section 7.1 hereof to the extent such withholding taxes are to be credited against the income taxes of LICENSOR in Japan under the Convention between Japan and the Republic of the Philippines for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income. All taxes, charges and duties other than such withholding taxes which may be levied in the Republic of the Philippines in connection with such payments shall

> be borne and paid by LICENSEE. LICENSEE shall furnish LICENSOR with appropriate evidence of any withholding tax payments made by LICENSEE without delay."

In a letter dated February 3, 1998, petitioner requested for a ruling from the BIR on the tax implication of the royalty payments to be made by petitioner to NEC Corporation. The BIR, in response to the query, issued BIR Ruling No. DA-168-98-4-23-98, which pertinently stated, thus:

> "Additionally, NEC-Japan is liable to a 10% value-added tax (VAT) on the royalties remitted to it by NEC-Philippines. Pursuant to Section 4.102-1 (b) of Revenue Regulations No. 7-95, as amended, which provides as follows:
>
> "The VAT on rentals and/or royalties payable to non-resident foreign corporations or owners for the sale of services and use or lease of properties in the Philippines shall be based on the contract price agreed upon by the licensor and the licensee. The licensee shall be responsible for the payment of VAT on such rentals and/or royalties in behalf of the non-resident corporation or owner by filing a separate VAT declaration/return for this purpose. The duly validated VAT declaration/return is sufficient evidence in claiming input tax credit by the licensee." *(par. 8, Stipulated Facts)*

For the first, second, third, and fourth quarters of 1999, petitioner filed the appropriate quarterly returns on April 26, 1999 *(Exhibit I)*, July 26, 1999 *(Exhibit K)*, October 25, 1999 *(Exhibit M)* and January 25, 2000 *(Exhibit O)*, respectively. All these returns were subsequently amended to reflect the following details:

Exhibit	Taxable Quarter	Zero-rated Sales	Input Tax Domestic Purchases	Royalties
MM	1st Quarter	P 379,812,454.65	P 214,148.86	P 2,401,087.56
L	2nd Quarter	406,897,887.02	169,021.34	3,421,012.82

NN	3rd Quarter	508,507,954.76	335,492.89	
00	4th Quarter	528,779,130.10	176,491.23	4,851,206.32
		TOTAL	895,154.32	10,673,306.70

On March 29, 2001, petitioner filed various applications for refund of the aforestated VAT input taxes for the four quarters of taxable year 1999 in the total amount of P11,568,461.02 with the Tax and Revenue Group of the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (OSS-DPF) *(par. 11, Stipulated Facts).* Petitioner claims that the zero-rate prescribed under Section 106(A)(2)(a)(1) of the Tax Reform Act of 1997 applies because its sales were exported, paid for in acceptable foreign currency, inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas; hence, it is entitled to claim for a refund or tax credit pursuant to Section 112 of the Tax Code.

To toll the running of the two-year prescriptive period, petitioner filed the instant petition for review on March 30, 2001.

On May 8, 2001, respondent filed his Answer and raised the following Special and Affirmative Defenses:

> "4. Petitioner being allegedly registered with the Philippine Economic Zone Authority, is exempt from all taxes, including value-added tax, pursuant to Section 24 of Republic Act No. 7916 in relation to Section 109 (q) of the Tax Code. Since its sales are not zero-rated but are exempt from VAT, petitioner is not entitled to refund of input tax pursuant to Section 4.103-1 of Revenue Regulations No.7-95;
>
> 5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

6. The amount of P11,568,461.02 being claimed by petitioner as alleged excess creditable VAT input taxes for the year 1999 was not properly documented;

7. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

8. Petitioner must show that it has complied with the provisions of Sections 204(c) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;

9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation."

The following issues were stipulated by the parties in their Joint Stipulation of Facts and Issues filed with this court on July 27, 2001:

1. Whether petitioner's sales are exempt from VAT or are zero-rated;
2. Assuming *arguendo* that the petitioner's sales are zero-rated, whether or not the VAT input taxes are attributable to zero-rated sales for the 1^{st}, 2^{nd}, 3^{rd} and 4^{th} quarters of 1999;
3. Whether or not the creditable VAT input taxes of petitioner for the 1^{st}, 2^{nd}, 3^{rd} and 4^{th} quarters of 1999 are substantiated by documentary evidence;
4. Whether or not the said unapplied or unutilized creditable input (VAT) for the 1^{st}, 2^{nd}, 3^{rd} and 4^{th} quarters of 1999 were carried over to the succeeding taxable quarter(s) and applied against any output tax liability of the petitioner for the said period.

Before we rule on the stipulated issues, we shall first determine the timeliness of the instant petition.

As stated earlier, for the first, second, third, and fourth quarters of 1999, petitioner filed its quarterly returns on April 26, 1999 *(Exhibit I)*, July 26, 1999 *(Exhibit K)*, October 25, 1999 *(Exhibit M)* and January 25, 2000 *(Exhibit O)*, respectively. Counting from April 26, 1999, the earliest date of filing of the quarterly returns, petitioner's administrative claims for refund for the four quarters of 1999 filed with the Tax and Revenue Group of the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance on March 29, 2001 *(Exhibits R, S, T & U)* as well as the instant petition filed with this court on March 30, 2001 fall within the two-year prescriptive period.

We proceed to the first stipulated issue. In its memorandum, petitioner alleged that its sales for the four quarters of 1999 are export sales classified as zero-rated under Sections 106(A)(2)(a)(1), (2) (5) and 106 (A)(2)(b) of the 1997 Tax Code which provide:

> "***SEC. 106. Value-Added Tax on Sale of Goods or Properties. -***
>
> *(A) Rate and Base of Tax.- xxx.*
>
> *(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:*
>
> *(a) Export Sales. - The term 'export sales' means:*
>
> *(1) 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);*

> (2) *Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);*
>
> *xxx xxx xxx*
>
> (5) *Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws.*
>
> (b) *Foreign Currency Denominated Sale. - The phrase 'foreign currency denominated sale' means sale to a nonresident of goods, except those mentioned in Sections 149 and 150, assembled or manufactured in the Philippines for delivery to a resident in the Philippines, paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)."*

Petitioner argued that while it made sales to foreign companies the delivery of which were made locally as well as sales made/delivered to PEZA registered enterprises, nevertheless these sales are still subject to zero percent VAT for they may be classified as export sales under the aforequoted Section 106(A)(2) and (5) or as foreign currency denominated sale under Section 106(A)(2)(b) of the Tax Code, as amended. Thus, according to petitioner, it is entitled to claim a refund or tax credit pursuant to Section 112 of the Tax Code which states in part:

> ***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."*

Respondent, on his part, contended that petitioner, being registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone Export Enterprise, its business is not subject to VAT pursuant to Section 24 of Republic Act No. 7916, otherwise known as the Special Economic Zone Act and that under the law, business establishments operating within the ECOZONE, such as petitioner, are exempt from national and local taxes. In lieu of paying taxes, said enterprises shall remit to the national government 5% of the gross income earned by them. This exemption allegedly includes the VAT.

Respondent further argued that under Section 103 (*now 109*) of the Tax Code, transactions which are exempt under special laws are exempt from VAT. Since transactions of ECOZONE or PEZA-registered enterprises are exempt from internal revenue taxes under Section 24 of R.A. No. 7916, they fall under the phrase "transactions which are exempt under special laws" and therefore exempt from VAT.

We find for the petitioner.

There is no dispute that under Section 24 of Republic Act No. 7916, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE and that in lieu of paying taxes, 5% of the gross income earned by said businesses and enterprises shall be remitted to the national government. However, this court has already ruled on several occasions that Section 24 of R.A. No. 7916 does not apply where a PEZA-registered enterprise has opted for the income tax holiday, as in the case at bar. In this court's resolution in the case of ***Seagate Technology (Philippines) vs. Commissioner of Internal Revenue, CTA Case No. 5921, promulgated on September 20, 2000,*** this court passed upon the issue in this wise:

> "Respondent is correct in arguing that if an entity is registered with PEZA as an ecozone enterprise and is remitting 5% of its gross income to the national government, it is exempt from payment of the VAT pursuant to provisions of Section 24 of Republic Act No. 7916, to quote:
>
> > **SEC. 24.** ***Exemption from Taxes Under the National Internal Revenue Code.*** - Any provision of existing laws, rules and regulations to the contrary notwithstanding, <u>no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu of paying taxes, five percent (5%) of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government</u> x x x." (Underlining supplied).
>
> However, We do not agree that the afore-quoted law is applicable to the case at bar. Section 23 of Republic Act No. 7916 provides:
>
> > "**SEC. 23.** ***Fiscal Incentives.*** - Business establishments operating within the ECOZONE shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, **<u>or</u>** those provided for under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987.
>
> Under the aforementioned law, a PEZA registered enterprise has the option to choose between two sets of fiscal incentives. One, that which is provided for under Presidential Decree No. 66, as amended, and Section 24 of RA 7916 which includes the 5% preferential tax on gross income earned, which is in lieu of national and local taxes; and second, as that provided for under Book VI of Executive Order No. 226, including but not limited to an income tax holiday (ITH) of 4 or 6 years depending on whether an entity is registered as a pioneer or non-pioneer enterprise. If an ecozone enterprise chooses the 5% preferential tax, it is exempt from payment of all national and local taxes. However, if an ecozone enterprise opted for the income tax holiday, it is only exempt from payment of the income tax but still subject to

> other national internal revenue taxes including the value-added tax. These were explicitly elucidated by the Bureau of Internal Revenue in VAT Ruling Nos. 037-98; 043-98; 027-99; and 063-99."

It is significant to state that this court's ruling in the above case has been affirmed by the Court of Appeals in the case of ***Commissioner of Internal Revenue vs. SEAGATE Technology Philippines, CA-G.R. SP. No. 61189, June 18, 2001.*** Likewise, in the cases of ***Commissioner of Internal Revenue vs. Cebu Toyo Corporation, CA-G.R. SP No. 60304, July 6, 2001, Commissioner of Internal Revenue vs. Toshiba Information Equipment, CA-G.R. SP No. 59106, September 27, 2001; Commissioner of Internal Revenue vs. Hitachi Computer Products (Asia) Corp., CA-G.R. SP No. 63340, February 7, 2002; Commissioner of Internal Revenue vs. Seagate Technology, CA-G.R. SP No. 66093, May 27, 2002; and Commissioner of Internal Revenue vs. Read-Rite Philippines, Inc., CA-G.R. SP No. 62725, June 19, 2002,*** the Court of Appeals consistently agreed with this court's position that under Section 23 of Republic Act No. 7916, a PEZA registered enterprise has the option to choose between two sets of fiscal incentives. Thus, if an ecozone enterprise opted for the income tax holiday, it is only exempt from payment of the income tax but still subject to other national internal revenue taxes including the value-added tax.

In the present case, petitioner has availed of a six-year income tax holiday *(Exhibit A-1; pages 14-16, TSN, September 6, 2001)*. Hence, it is only exempt from payment of income tax but it is still liable to pay other national internal revenue taxes. Moreover, the fact that petitioner is a VAT-registered entity was not disputed (*par. 3, Stipulated Facts*). Thus, petitioner is subject to VAT. Nonetheless, inasmuch as petitioner's sales are approximately 100% exported, it is subject to VAT at 0% pursuant to Sec. 106 (A)(2)(a)(1) of the 1997 Tax Code. Consequently, petitioner may claim for the refund or tax credit of input VAT attributable thereto under Section 112(A), *hereinbefore quoted.*

With regard to the second stipulated issue, we rule in the affirmative.

In the case of ***Babcock Hitachi (Phils.) Inc. vs. Commissioner of Internal Revenue and the Court of Tax Appeals, CA-GR SP No. 40703, November 21, 1996,*** it was ruled that "where petitioner exports 100% of its products, thus, engaged in purely zero-rated sales, all input taxes incurred on its purchases of goods and services and on capital goods imported or locally purchased are all considered directly attributable to its zero-rated sales. As stated earlier, petitioner in this case exports approximately 100% of the total production of its electronic components abroad. Hence, all of its input VAT on purchases of goods and services are deemed directly attributable to its zero-rated sales.

For the four taxable quarters of 1999, petitioner generated export sales as follows:

Exhibit	Period	Export Sales Reported
MM	First Quarter of 1999	P379,812,454.65
L-4	Second Quarter of 1999	406,897,887.02
NN	Third Quarter of 1999	508,507,954.76
OO	Fourth Quarter of 1999	528,779,130.10 ------------------------------------
	Total	P1,823,997,426.53 =====================

To prove its export sales, petitioner presented sales invoices, airway bills, export declarations, bills of lading and delivery receipts *(Exhibits EE-1 to EE-699, FF-1 to FF-754, GG-1 to GG-902 and HH-1 to HH-952)* which were summarized in the Schedules of Export Sales *(Exhibits DD-1 to DD-37)*. Likewise, various bank certifications were presented in order to prove that the said export sales were paid for in acceptable foreign currencies which were inwardly remitted and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas *(Exhibits JJ-1 to JJ-30).*

Moreover, it was noted in the "Other Matters" section of the independent CPA's report that there were sales included in the "Schedule of Export Sales" which were sold to foreign companies and/or PEZA registered enterprises (i.e. Electronics Assemblies, Hitachi Asia Pte., Ltd., Hitach Computer Products Corp., NEC Corporation, NEC Electronics Hongkong Ltd., NEC Technologies Phils., Inc., and Shimadzu Philippines Mfg., Inc.) but were delivered locally to PEZA entities (i.e., Cebu Mitsumi Inc., Electronic Assemblies Inc., Hitachi Computer Products Corp., Ionics Circuits Inc., Kenwood EL Precision Cebu Inc., Mitsumi Philippines Inc., NEC Technologies Phils., Pricon Microelectronics Inc., Sakata Inx Log. Phils. Inc., San Technology Inc, Shimadzu Philippines Mfg., Inc., Temic Philippines, Toritsu Industry Cebu Inc., Toshiba Information Equipment Inc., and Uniden Phils Laguna Inc.). Such deliveries in the aggregate amount of P181,298,751.37 were supported by "Delivery Receipts", summary of which is presented below:

Sales Made To	Delivered To	Amount
First Quarter 1999		
Hitachi Asia Pte., Ltd.	Pricon Microelectronics Inc.	P 1,113,606.29
Hitachi Computer Products Corp.	Hitachi Computer Products Corp.	20,547,975.90
NEC Corporation	Sakata Inx Log. Phils. Inc.	31,668.00
NEC Electronics Hongkong Ltd.	Electronic Assemblies Inc.	2,416,716.12
NEC Electronics Hongkong Ltd.	Mitsumi Philippines Inc.	4,512,998.56
NEC Electronics Hongkong Ltd.	Toritsu Industry Cebu Inc.	8,803,921.63
NEC Electronics Hongkong Ltd.	Uniden Phils. Laguna Inc.	1,960,732.36
NEC Technologies Phils., Inc.	NEC Technologies Phils., Inc.	3,278,932.13
Shimadzu Philippines Mfg., Inc.	Shimadzu Philippines Mfg., Inc.	1,297,899.79
Subtotal		**P 43,964,450.78**

Second Quarter 1999		
Hitachi Computer Products Corp.	Hitachi Computer Products Corp.	P 19,305,601.80
NEC Electronics Hongkong Ltd.	Cebu Mitsumi Inc.	119,743.56
NEC Electronics Hongkong Ltd.	Electronics Assemblies, Inc.	1,353,175.72
NEC Electronics Hongkong Ltd.	Kenwood EL Precesion Cebu Inc.	776,766.67
NEC Electronics Hongkong Ltd.	Mitsumi Philppines, Inc.	5,337,790.00
NEC Electronics Hongkong Ltd.	San Technology, Inc.	815,178.89
NEC Electronics Hongkong Ltd.	Toritsu Industry Cebu Inc.	11,738,858.52
NEC Electronics Hongkong Ltd.	Toshiba Information Equipment Inc.	27,816.00
NEC Electronics Hongkong Ltd.	Uniden Phils Laguna Inc.	1,496,529.54
NEC Technologies Phils., Inc.	NEC Technologies Phil., Inc.	8,075,394.68
Subtotal		**P 49,046,855.38**
Third Quarter 1999		
Hitachi Computer Products Corp.	Hitachi Computer Products Corp.	P 26,773,376.92
NEC Corporation	Temic Philippines	7,940.00
NEC Electronics Hongkong Ltd.	Cebu Mitsumi Inc.	1,077,195.78
NEC Electronics Hongkong Ltd.	Electronics Assemblies, Inc.	1,807,168.85
NEC Electronics Hongkong Ltd.	Kenwood EL Precision Cebu, Inc.	401,764.00
NEC Electronics Hongkong Ltd.	San Technology Inc.	2,245,545.74
NEC Electronics Hongkong Ltd.	Toritsu Industry Cebu, Inc.	3,363,081.99
NEC Electronics Hongkong Ltd.	Toshiba Information Equipment Inc.	18,548.88
NEC Electronics Hongkong Ltd.	Uniden Phils. Laguna Inc.	10,051.47
NEC Technologies Phils., Inc.	NEC Technologies Phils., Inc.	4,778,328.60
Shimadzu Philippines Mfg., Inc.	Shimadzu Philippines Mfg., Inc.	162,000.77
Subtotal		**P 40,645,003.00**
Fourth Quarter 1999		
Electronics Assemblies	Electronics Assemblies Inc.	P 164,645.37
Hitachi Computer Products Corp.	Hitachi Computer Products Corp.	26,048,605.88
NEC Corporation	Ionics Circuits, Inc.	1,982,864.47
NEC Electronics Hongkong Ltd.	Cebu Mitsumi Inc.	1,591,704.93
NEC Electronics Hongkong Ltd.	Electronics Assemblies Inc.	1,408,249.39
NEC Electronics Hongkong Ltd.	San Technology Inc. (Cavite)	3,153,197.25
NEC Electronics Hongkong Ltd.	Toritsu Industry Cebu, Inc.	5,674,433.41
NEC Electronics Hongkong Ltd.	Uniden Phils., Laguna Inc.	185,584.20
NEC Technologies Phils., Inc.	NEC Technologies Phils., Inc.	7,390,050.02
Shimadzu Phils. Mfg. Inc.	Shimadzu Phils. Mfg. Inc.	43,107.30
Subtotal		**P 47,642,442.22**
TOTAL		**P 181,298,751.37**

However, as found by the independent CPA *(Exhibit W)*, there were export sales which were not supported by export documents (i.e., bills of lading or airway bills), to state:

Findings	Reference	Amount of Export Sales (In Pesos)	Percentage to Total Export Sales*
A. Export sales with invoices but without supporting bills of lading, airway bills or delivery receipts			
First Quarter of 1999	**IIA1**	P 3,942,995.23	0.216%
Second Quarter of 1999	**IIA2**	15,827,837.53	0.868%
Third Quarter of 1999	**IIA3**	8,367,000.77	0.459%
Fourth Quarter of 1999	**IIA4**	14,058,532.02	0.771%
Subtotal		**P 42,196,365.55**	**2.314%**
B. Export sales without supporting invoices, bills of lading, airway bills or delivery receipts			
First Quarter of 1999	**IIB1**	P 12,215,911.16	0.670%
Second Quarter of 1999	**IIB2**	284,088.00	0.016%
Third Quarter of 1999	**IIB3**	7,326,708.35	0.402%
Subtotal		**P 19,826,707.51**	**1.088%**
Total		**P 62,023,073.06**	**3.402%**

*Total export sales amounts to P1,823,997,426.56

Thus, this court rules to disallow the refund of input taxes attributable to export sales not supported by export documents.

As to the independent CPA's finding that the amount of export sales reflected in the "Petition for Review" was understated by P10,365,183.60 with that reflected in the "Summary of Export Sales," this is due to the fact that the amount of export sales reflected in the "Petition for Review" was taken from the original quarterly returns while the amount of export sales appearing in the "Summary of Export Sales" was taken from the amended returns. This court believes that the said finding will not affect the determination of the refundable amount. Anent the CPA's observation that the "General Ledger" balance of export sales was understated by P222,772.61 with that reflected in the "Summary of Export Sales, again this court believes that the same will not affect the determination of the refundable amount. While it may be true that the "General Ledger" balance of export sales differ with that reflected in the "Summary of Export Sales," the same will likewise not affect the determination of the refundable amount since the total amount of export sales reported in petitioner's returns is even higher than the export sales found in the ledger.

With regards, however, to the independent CPA's finding that export sales proceeds in the amount of P253,564,134.08 were not supported by bank certifications, the court rules to disallow the input taxes pertaining to said export sales, detailed as follows:

Period	Reference	Amount in Pesos
First Quarter of 1999	IIIA1	41,007,856.62
Second Quarter of 1999	IIIA2	60,546,459.20
Third Quarter of 1999	IIIA3	36,286,940.99
Fourth Quarter of 1999	IIIA3	115,722,877.27
Total		**253,564,134.08**

As to whether or not the creditable VAT input taxes of petitioner from the first to the fourth quarter of 1999 are substantiated by documentary evidence, this court rules in the affirmative.

That petitioner is primarily engaged in the business of designing, manufacturing and exporting electronic components, particularly, printed wiring boards and electromechanical devices is undisputed *(par. 5, Joint Stipulation of Facts)*. Moreover, the fact that petitioner has two Technical License Agreements with NEC Corporation of Japan concerning the grant of a non-exclusive and non-transferable right and license under know how to manufacture the licensed products had been admitted by respondent. Under the said agreements, petitioner is obliged to pay royalties to NEC Corporation and is also responsible for the remittance of the corresponding value-added taxes due thereon.

An examination of the documents disclose that for the year 1999, petitioner remitted VAT on the royalties paid to NEC Corporation totalling P10,673,306.70. These remittances were duly supported by machine validated monthly VAT declarations, detailed as follows:

Exhibit	Month	Date Filed	Input VAT on Royalties
D	January	Feb. 25, 1999	P2,401,087.56
E	April	May 25, 1999	88,449.30
F	June	July 26, 1999	3,332,563.52
G	October	Nov. 25, 1999	98,389.51
H	December	Jan. 25, 2000	4,752,816.81 ----------------------------
		Total	P10,673,306.70 =================

Pursuant to Section 4.102-1(b) of Revenue Regulations No. 7-95, the VAT returns constitute sufficient evidence in claiming for input tax credit, to wit:

> "The VAT on rental and/or royalties payable to non-resident foreign corporations or owners for the sale of services and use or lease of properties in the Philippines shall be based on the contract price agreed upon by the licensor and the licensee. <u>The licensee shall be responsible for the payment of VAT on such rentals and/or royalties in behalf of the non-resident foreign corporation or owner by filing a separate VAT declaration/return for this purpose. The duly validated VAT declaration/return is sufficient evidence in claiming input tax credit by the licensee</u>." (Underscoring supplied)

Clearly from the foregoing, the VAT returns filed by petitioner corresponding to its remittances of royalties constitute sufficient evidence for claiming for input tax credit.

With respect to petitioner's input VAT on domestic purchases of goods and services, the court agrees with the independent CPA's finding that there are input taxes claimed on purchases of goods and services which were not properly substantiated for VAT purposes in the total amount of P218,286.36. Upon further verification by the court, it was found out that the amount of P538,133.33 consisting of the following:

Supplier	**Exhibit**	**Input Tax**
Araro Philippines Corp.	Y-5 to Y-18	P 96,000.00
KSY Land Development Corp.	Z-25 to Z-38	118,000.00
Harmony Homes Inc.	AA-13 to AA-27	108,000.00
Ma. Luisa Ozamiz	AA-57 to AA-69	102,000.00
Victoria Picornell	BB-1 to BB-11	113,333.33 -------------------------
	Total	P538,133.33 =============

must also be disallowed since the foregoing input VAT payments should have been properly treated as fringe benefits *(housing benefits)* and not as input taxes. This is because it is not the petitioner who benefited from the payments but its employees/officers.

Finally, petitioner was able to establish that despite the carry-over of the claimed input taxes of P11,568,461.02 to its succeeding quarterly VAT returns up to the first quarter of 2000 *(Exhibits J, L, N, P, Q, MM, NN and OO)*, the same were not utilized since petitioner had no output VAT liability for the said quarters. Furthermore, in the first quarterly VAT Return of petitioner for the year 2000 (*Exhibit Q*), the input taxes in the amount of P11,568,461.02 was deducted as "Any VAT Refund/TCC Claimed" *(Exhibit Q-3)*. The resulting "Excess Input Tax" of P102,045.60 *(Exhibit Q-4)* to be carried over to the succeeding second quarter of 2000 indubitably did not include the claimed input taxes of P11,563,461.02 *(Exhibits Q and V)*.

In fine, petitioner is entitled to the refund or issuance of a tax credit certificate in the amount of P8,941,346.84, computed as follows:

Amount Claimed		P11,568,461.02
Less: Exceptions		
Noted by the commissioned independent CPA	P218,286.36	
Noted by the court	538,133.33 --------------------	756,419.69 ---------------------
Total		P10,812,041.33
Less: Apportionment of export sales not supported by export Documents and bank certification		
Export sales not supported by export documents (P62,023,073.06/P1,823,997,426.56) P10,812,041.33	P367,651.85	
Export sales not supported by bank certification (P253,564,134.08/P1,823,997,426.56) P10,812,041.33	1,503,042.63 --------------------	1,870,694.49 ---------------------
Amount Refundable		P 8,941,346.84 ============

WHEREFORE, petitioner's claim is ***PARTIALLY GRANTED.*** Accordingly, respondent is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P8,941,346.84 representing excess/unutilized VAT input taxes paid during the four quarters of taxable year 1999 arising from domestic purchases of goods and services and royalties attributable to its zero-rated export sales.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

JUANITO C. CASTAÑEDA, JR.
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