REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INTEL TECHNOLOGY PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6169

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 03 2003

x- x

DECISION

The instant Petition for Review involves a claim for the issuance of tax credit certificate in the amount of P8,219,916.15 allegedly representing input VAT on domestic purchases of goods and services attributable to zero-rated export sales for the period covering July 1, 1998 to September 30, 1998.

The antecedent facts of the case are as follows:

Petitioner is a corporation duly registered with the Securities and Exchange Commission and is primarily engaged in the business of designing, developing, manufacturing and exporting advanced and large-scale integrated circuits components or IC's, as stated in the Articles of Incorporation (*par. 1, Stipulation of Facts*).

146

On December 8, 1995, it registered with the Philippine Economic Zone Authority (PEZA) as an ecozone export enterprise (pioneer status) and was issued Certificate of Registration No. 95-133 *(Exhibit A).*

On January 30, 1996, it also registered with the Bureau of Internal Revenue, Revenue District Office No. 54 as a Value-Added Tax (VAT)-taxpayer bearing Certificate of Registration with RDO Control No. 96-540-000713 *(Exhibit B).*

From the third quarter of 1998 up to the second quarter of 1999, petitioner filed its Quarterly Value-Added Tax Returns as follows:

Period covered	**Date filed**	**Exhibits**
3rd Quarter (1998)	October 15, 1998	E
4th Quarter (1998)	January 22, 1999	G
1st Quarter (1999)	April 16, 1999	H
2nd Quarter (1999)	July 22, 1999	J

On May 17, 1999, petitioner amended its Quarterly Value-Added Tax Return for the third quarter of 1998, declaring zero-rated sales of P5,460,060,824.03 *(Exhibit F-5)* and VAT input tax from domestic purchases of goods and services in the amount of P8,219,916.15 *(Exhibit F-6).*

On May 18, 1999, petitioner filed a claim for tax credit/refund with the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (DOF) in the amount of P8,219,916.15 for the period starting July 1, 1998 to September 30, 1998 *(Exhibit K).*

Unable to find immediate action from the respondent and considering that the two (2) year prescriptive period was about to lapse, petitioner elevated its case to this court through a Petition for Review on September 29, 2000.

On October 19, 2000, respondent filed his Answer and alleged the following as Special and Affirmative Defenses, thus:

> "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 103 of the Tax Code, as amended by RA 7716. 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 7-95;
>
> 5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;
>
> 6. The amount of P8,219,916.15 being claimed by petitioner as alleged VAT input taxes for the period 01 July 1998 to 30 September 1998 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; and
>
> 9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation."

In their Joint Stipulation of Facts and Simplification of Issues filed on December 15, 2000, the parties submitted the following issues for this court's resolution:

> 1. Whether or not petitioner's sales were actually export sales subject to zero-rated (sic) for VAT purposes.
>
> 2. Whether or not the export proceeds of petitioner were inwardly remitted in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

148

3. Whether or not the VAT input taxes have not been applied to the output tax for the period covered in its claim or any succeeding quarter or quarters.

4. Whether or not the VAT input taxes on domestic purchases of goods and services are attributable to petitioner's zero-rated sales.

5. Whether or not petitioner is entitled to a refund of the VAT input taxes arising from domestic purchases of taxable goods and services from July 1, 1998 to September 30, 1998 in the amount of P8,219,916.15.

Petitioner claimed that it is entitled to the issuance of a tax credit certificate based on the provisions of Sections 106(A)(2)(a)(1) and 108(B)(1), Title IV, in relation to Section 112(A), of the 1997 Tax Code, which provide, thus:

SEC. 106. ***Value-Added Tax on Sale of Goods or Properties. -***

(A) x x x

(1) 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:

(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 and services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

xxx xxx xxx

Section 108. ***Value Added Tax on Sale of Services and Use or Lease of Properties. –***

149

(A) xxx

(B) *Transactions Subject to Zero Percent (0%) Rate*. – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are 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

Section 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.

According to petitioner, being a PEZA and VAT-registered enterprise engaged in export business, its sales are not subject to 10% but 0% value-added tax. Petitioner claimed that all its finished goods were actually exported and from such activities, it incurred revenues in the amount of P5,460,060,824.03. The export proceeds, which were paid in US Dollars through

150

inward remittances, were accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas. In support of its claim, petitioner submitted the copies of the sales invoices, certificates of inward remittances, official receipts, airway bills and export declarations *(Exhibits M to O, Y-1 to Y-608).* Considering that petitioner's goods were exported and that the input VAT of P8,219,916.15, which arose from domestic purchases of goods and services directly used by petitioner in its commercial and business operations, has not been applied against any output VAT liability, petitioner alleged that it is entitled to a refund.

On the other hand, respondent maintained that petitioner's business, being registered with Philippine Economic Zone Authority (PEZA), is not subject to VAT in accordance with Section 24 of Republic Act No. 7916, otherwise known as "The Special Economic Zone Act," which provides in part:

> "**SEC. 24**. *Exemption from Taxes Under the National Internal Revenue Code.* –Any provision of existing laws, rules and regulations to the contrary notwithstanding, 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 x x x"

Based on the above provision, respondent argued that business establishments operating within the ECOZONE like petitioner are exempt from national and local taxes, which includes the value-added tax. In lieu of paying taxes, said enterprises shall remit to the national government 5% of their gross income.

Moreover, respondent claimed that transactions of ECOZONE or PEZA-registered enterprises, being exempt from internal revenue taxes under Section 24 of R.A. No 7916, fall

ΛΊ

under "transactions which are exempt under special laws" which are exempt from VAT under Section 103(q) of the Tax Code, as amended by R.A. No. 7716, which in part provides:

> **Section 103.** *Exempt Transactions.*- The following shall be exempt from the value-added tax:
>
> xxx
>
> (q) Transactions which are exempt under special laws, except those granted under Presidential Decree Nos. 66, 529, 972, 1491 and 1590, and non-electric cooperatives under Republic Act 6938 or international agreements to which the Philippines is a signatory.

Corollarily, since petitioner's business is exempt from VAT (output tax), it is not allowed any tax credit on VAT (input tax) previously paid pursuant to Section 4.103-1 of Revenue Regulations No. 7-95.

After considering the arguments and the evidence of the petitioner, the apropos laws and jurisprudence, we rule to deny the instant petition.

The issues presented before this court for resolution are not novel. In a resolution promulgated on September 20, 2000 in the case of ***Seagate Technology (Philippines) vs. Commissioner of Internal Revenue***, *CTA Case No. 5921*, this court passed upon the issue, thus:

> "However, We do not agree that the aforequoted law is applicable to the case at bar. Section 23 of Republic Act No. 7916 provides:
>
>> **Section 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, **or** those provided for under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987."

N2

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 to 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.

The records of the case convince Us that Petitioner availed of the fiscal incentives under Executive Order No. 226 because of the fact that Petitioner is a VAT registered entity with Certificate of Registration RDO Control No. 97-083-000600-V duly issued by Respondent's Assistant Revenue District Officer, Ms. Gloria D. Decierdo, for and in behalf of Mr. Nieto A. Racho, Revenue District Officer, RDO No. 83, Dalisay, Cebu (Exh. B)."

Moreover, in the case of ***Seagate Technology (Philippines) vs. Commissioner of Internal Revenue, CTA Case No. 6102, promulgated on July 4, 2001***, which was later on affirmed by the Court of Appeals in the case of ***Commissioner of Internal Revenue vs. Seagate Technology (Philippines), CA-G.R. SP No. 65797, promulgated on September 5, 2002***, the court ruled in this wise:

"We agree with the contention of Respondent that if an entity is registered with PEZA as an ecozone enterprise and remitting 5% of its gross income to the national government, it is exempt from the payment of VAT. However, We do not agree that the aforequoted provisos are applicable to the case at bar. First, the records show that ***Petitioner is a VAT registered entity*** with Certificate of Registration RDO Control No. 97-083-0000600-V issued by the Revenue District Office No. 83 of the Bureau of Internal Revenue. ***Therefore, contrary to Respondent's allegation, Petitioner is evidently subject to value-added tax.*** Second, section 103 (q) of the Tax Code, as amended, specifically excepted, among others transactions under Presidential Decree No. 66 (now RA 7916), from transactions which are exempt from the VAT under special laws. Hence

153

Petitioner, being registered with the PEZA under the provisions of Presidential Decree No. 7916,[1] is not exempt from the payment of the value-added tax (see Resolution, Seagate Technology (Philippines) vs. Commissioner of Internal Revenue, CTA Case No. 5921, September 20, 2000). Third, Petitioner never remitted 5% final tax to the government because it was not able to commence its commercial operations in the Philippines." (*Emphasis supplied*)

Likewise, the Court of Appeals affirmed this court in the cases of ***Commissioner of Internal Revenue vs. EG &G OMNI, Inc., CA-G.R. SP No. 61402, September 24, 2002*** *and* ***Commissioner of Internal Revenue vs. KSS Philippines, Inc., CA-G.R. SP No. 66720, March 19, 2002***. Thus, the court having found petitioner as a VAT and PEZA-registered entity, it is legally entitled to claim a refund of its unutilized input VAT on domestic purchases of goods and services attributable to its zero-rated sales.

However, we are inclined to deny the petition for failure of the petitioner to substantiate its claim.

Section 2(c)(1)(2)(4) of Revenue Regulations No. 3-88 provides:

> **Section 2.** *Section 16 of Revenue Regulations No. 5-87 is hereby amended to read as follows:*
>
> **Section 16. Refunds or tax credits of input tax. –**
>
> (c) *Claims for Tax Credits Refunds.* - Application for Tax Credit/Refund of Value-Added Tax Paid (BIR Form No. 2552) shall be filed with the Revenue District Office of the city or municipality where the principal place of the business of the applicant is located or directly with the Commissioner, Attention: VAT Division.
>
> A photo copy of the purchase invoice or receipt evidencing the value added tax paid shall be submitted together with the application. The original copy of the said invoice/receipt, however, shall be presented for cancellation prior to the issuance of

[1] Should be R. A. No. 7916.

154

the Tax Credit Certificate or refund. In addition, the following documents shall be attached whenever applicable:

1. Export Sales

i) photocopy of export document showing the amount of export document, and the date and destination of the goods exported. With respect to the foreign currency denominated sale, the photocopy of the invoice or receipt evidencing the sale of the goods, as well as the name of person to whom the goods were delivered.

ii) statement from the Central Bank or any of its accredited agent banks that the proceeds of the sale in acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations.

Petitioner offered in evidence, among others, its export sales invoices. After a scrutiny of the documents, the court found that all the export sales invoices *(Exhibits Y-1 to Y- 608)* have no BIR permit to print and some do not even have the Taxpayer's Identification Number-VAT (TIN-V) *(Exhibits Y- 183, 187, 191, 192, 203, 205, 206, 208, 209, and 211)*. Thus, we find the documents not valid evidence to prove export sales of goods for VAT purposes for they violate the provisions of Section 113(A)(1), in relation to Section 237 of the 1997 Tax Code, hereunder reproduced for easy reference, to wit:

SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.-*

(A) *Invoicing Requirements.-* A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

1. <u>A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN)</u>

Section 237. *Issuance of Receipts or Sales or Commercial Invoices.-* All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or

ISS

> for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however*, That in the case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided further*, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer's Identification Number (TIN) of the purchaser. (*Emphasis supplied*)

WHEREFORE, in the light of the foregoing, petitioner's claim for the issuance of tax credit certificate in the amount of P8,219,916.15 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

LOVELL R. BAUTISTA
Associate Judge

156

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

157