REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SAGARA METRO PLASTICS INDUSTRIAL CORP.,
Petitioner,

- versus -

C.T.A. CASE NOS. 6295, 6320 & 6333

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

OCT 10 2003

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D E C I S I O N

This is a consolidation of the three (3) Petitions for Review filed by petitioner, all praying for the issuance of a tax credit certificate in the aggregate sum of P19,521,870.03 allegedly representing unutilized input value-added taxes (VAT) which are directly attributable to zero-rated sales for the taxable years 1999 and 2000, broken down as follows:

CTA CASE NO.	PERIOD COVERED	CLAIMED INPUT VAT
6295	January 1 - March 31, 1999	P 1,262,706.24
6320	April 1 – June 30, 1999	1,811,987.90
6333	July 1, 1999 - Dec. 31, 2000	16,447,175.89
	Total:	P 19,521,870.03

Petitioner is a corporation duly organized and existing under Philippine laws, with principal office address at Brgy. Paciano Rizal, Calamba, Laguna. It is primarily engaged in the business of manufacturing, producing, designing, distributing, selling, exporting or otherwise dealing in connectors for wiring harness, components thereof

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and/or parts, moldings, related products, and to do all things required for or incidental to the manufacture, production, packing, storage, warehousing or disposition thereof, including but not limited to purchase, acquisition, importation and handling of raw materials, components, accessories and related items (*page 29, Folder 1, BIR records*).

On July 4, 1994, petitioner was registered with the Bureau of Internal Revenue as a VAT taxpayer with Certificate of Registration No. 94-560-000769 (*Exhibit B, CTA Case No. 6295*).

On September 5, 1994, petitioner was likewise registered with the Board of Investments (BOI) under Certificate of Registration No. EP 94-295 as an expanding producer of plastic products such as but not limited to plastic components for automotive wiring harness on a non-pioneer status (*Exhibits A to A-2, CTA Case No. 6295*). Under the specific terms and conditions of its BOI registration, petitioner is required to export at least 70% of its total production. (*Exhibit A-3, CTA Case No. 6295*).

For the taxable years 1999 and 2000, petitioner allegedly generated total sales of P570,896,833.20 and P731,993,049.87, respectively, the bulk of which consisted of export sales in the amounts of P566,869,875.15 and P725,852,820.31, respectively (*petitioner's memorandum, page 313, CTA Records*).

Since the aforementioned export sales were allegedly subject to zero percent VAT pursuant to Section 106(A)(2)(a) of the Tax Code, petitioner was unable to utilize its alleged input tax payments of P7,487,047.83 for taxable year 1999 and P12,034,673.20 for taxable year 2000 or in the sum of P19,521,721.04 (*page 3, Exhibit G, CTA Case No. 6295*).

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On April 24, 2001, petitioner filed with the Bureau of Internal Revenue a formal request for the issuance of a tax credit certificate corresponding to its alleged unutilized input VAT for the years 1999 and 2000 in the total amount of P19,521,721.04 (*Exhibit G, CTA Case No. 6295*).

Due to respondent's inaction, petitioner elevated its claim before this court through the filing of three (3) separate Petitions for Review, but this time praying for the aggregate sum of P19,521,870.03 instead of P19,521,721.04 as shown below:

CTA Case No.	Date of Filing of Petition for Review	Period Covered	Claimed Input VAT
6295	April 25, 2001	January 1 – March 31, 1999	P 1,262,706.24
6320	July 23, 2001	April 1 – June 30, 1999	1,811,987.90
6333	Sept. 19, 2001	July 1, 1999 - Dec. 31, 2000	16,447,175.89
		Total:	P19,521,870.03

On January 25, 2002, petitioner moved for the consolidation of the above cases considering that the parties and issues are the same and differ only in the amounts and periods involved in each case. The court granted the said motion in open court on the same date, followed by a confirming resolution dated February 22, 2002 (*pages 70 & 73, docket, CTA Case No. 6295*).

The parties, in their Joint Stipulation of Facts and Issues, submitted the following issues for this court's resolution:

<u>CTA Case No. 6295</u>

1. Whether or not petitioner has unutilized input taxes as to justify its claim for issuance of a tax credit certificate in the amount of P1,262,706.24;

2. Whether or not the petitioner's claimed 99.28% sales are export sales;

3. Whether or not the petitioner's alleged export sales are considered zero-rated sales; and

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4. Whether or not the petitioner's unutilized input taxes have not been applied against output taxes.

CTA Case No. 6320

1. Whether or not the petitioner's export sales are zero-rated for VAT purposes;

2. Whether or not the alleged unutilized input VAT paid by petitioner in the amount of P1,811,987.90 for the second quarter of taxable year 1999 are duly substantiated;

3. Whether or not petitioner has carried over to the succeeding taxable quarter/year the alleged unutilized input VAT paid for the second quarter of taxable year 1999;

4. Whether or not petitioner has complied with the requirements under Section 204(C) in relation to Section 229 of the Tax Code; and

5. Whether or not petitioner is entitled to the refund or tax credit in the sum of P1,811,987.90 as alleged unutilized input VAT paid for the second quarter of taxable year 1999.

CTA Case No. 6333

1. Whether or not the petitioner's export sales are zero-rated for VAT purposes;

2. Whether or not the alleged unutilized input VAT paid by petitioner in the amount of P16,447,175.89 for the period covering July 1999 to December 2000 are duly substantiated;

3. Whether or not petitioner has carried over to the succeeding taxable quarter/year the alleged unutilized input VAT paid for the period covering July 1999 to December 2000;

4. Whether or not petitioner has complied with the requirements under Section 204(C) in relation to Section 229 of the Tax Code; and

5. Whether or not petitioner is entitled to the refund or tax credit in the sum of P16,447,175.89 as alleged unutilized input VAT paid for the period covering July 1999 to December 2000.

All of the above issues center on the sole issue of: Whether or not petitioner, based on the evidence presented, is entitled to the issuance of a tax credit certificate in the

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total sum of P19,521,870.03 representing unutilized input VAT payments which are directly attributable to zero-rated sales for the taxable years 1999 and 2000.

We rule to deny petitioner's claim.

The present cases are anchored on Sections 110(B) and 112(A) of the Tax Code, the pertinent portions of which read as follows:

> "**SEC. 110.** ***Tax Credits.*** –
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> "**(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**. (emphasis supplied)"
>
> "**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." (emphasis supplied)

Based on the aforequoted provisions of law, the privilege of a refund/tax credit of unutilized input VAT is available to a VAT-registered person whose sales are zero-rated or effectively zero-rated.

We quote below the pertinent provisions of Section 106(A)(2)(a)(1), (3) and (5) of the Tax Code, thus:

> "**SEC. 106.** ***Value-Added Tax on Sale of Goods or Properties.*** -
> "(A) *Rate and Base of Tax.* – 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 or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
> xxx
> "(3) Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;
> xxx
> "(5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws."

It is undisputed that petitioner is a VAT-registered entity (*par. 2, Joint Stipulation of Facts; Exhibit B, CTA Case No. 6295*). And as summarized in Annex C of the report of the commissioned auditing firm, Punongbayan and Araullo (*Exhibit PP*), petitioner's total export sales amounted to P550,664,113.44 and P745,374,141.96 for taxable years 1999 and 2000, respectively, broken down as follows:

	1999	2000
Direct Export Sales	P 85,020,734.16	P 63,696,370.31
Indirect Export Sales	465,643,379.28	681,677,771.65
Total	P 550,664,113.44	P 745,374,141.96

A scrutiny of the various invoices, airway/seaway bills and export declarations (*pre-marked exhibits Annex F 001 to 192; Annex G 001 to 264*) supporting petitioner's direct export sales of P85,020,734.16 and P63,696,370.31 for taxable years 1999 and 2000, respectively, (*Annex C of Exhibit PP*) shows that the same were made to Sagara

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Plastics Industrial Co., Ltd. of Japan. However, these direct export sales cannot qualify for zero-rating under the aforequoted provisions of Section 106(A)(2)(a)(1) of the Tax Code because petitioner failed to submit proofs that these were 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.

As to the indirect export sales of P465,643,379.28 and P681,677,771.65 for taxable years 1999 and 2000, respectively (*Annex C of Exhibit PP*), the various invoices submitted by petitioner revealed that these were made to the following:

	Sales Amount	
Sold to:	*1999*	*2000*
EDS MFG., INC.	P 201,297,647.62	P 299,738,978.79
YAZAKI-TORRES MFG., INC.	245,287,642.00	336,697,742.31
IPF-TAK, INC.	466,646.88	186,268.27
EPSON PRECISION (PHILS.) INC.	16,723,738.73	34,313,795.32
K & K MOLDING INC.		7,681,565.25
LAGUNA AUTO-PARTS MFG. CORP.	1,628,331.60	2,931,089.25
RYONAN ELECTRIC PHILS. CORP.	239,373.56	128,332.43
	P 465,643,380.39	P 681,677,771.62

While it was established that the products sold by petitioner in 1999 and 2000 to Yazaki-Torres Manufacturing, Inc. and EDS Manufacturing, Inc., both BOI registered export enterprises, were used by the latter as raw materials (*Exhibits A to A-2 & M, CTA Case No. 6320, pages 13-15, TSN, February 13, 2002)*, the said sales cannot qualify for zero-rating under Section 106(A)(2)(a)(3) of the Tax Code, as earlier quoted. Although it is undisputed that petitioner has an approved application for zero rate insofar as the sales of its products to these BOI companies is concerned (*par. 3, Joint Stipulation of Facts, CTA Case No. 6333*), petitioner failed to present proofs that the export sales generated by

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Yazaki-Torres Manufacturing, Inc. and EDS Manufacturing, Inc., exceeded 70% of their total annual production.

Likewise, as regards petitioner's sales to IPF-TAK, Inc., no evidence was adduced by petitioner to prove that the same can be classified as zero-rated sales.

As to petitioner's remaining sales to companies registered with the Philippine Economic Zone Authority (PEZA), namely, Epson Precision Philippines, Inc., K & K Molding, Inc., Laguna Auto-Parts Mfg. Corp., and Ryonan Electric Phils. Corp., in the total amount of P18,591,443.89 for taxable year 1999 and P45,054,782.25 for taxable year 2000, the same are subject to zero percent (0%) VAT pursuant to Section 106(A)(2)(a)(5) of the Tax Code, as earlier quoted. These are considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, as amended. In this regard, we quote the relevant portion of Article 23 of E.O. 226 as follows:

> "Art. 23. "Export Sales" shall mean the Philippine port F.O.B. value, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer or the net selling price of export product sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: *Provided*, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates of similar commercial documents: *Provided, further*, That without actual exportation the following shall be considered "constructively exported" for purposes of this provision: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; **(2) sales to export processing zones**; x x x" (emphasis supplied)

Respondent, in his memorandum, argues that petitioner is exempted from VAT and that its registration as a VAT taxpayer is erroneous. According to the respondent, one of the specific terms and conditions of petitioner's BOI registration is that it is

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entitled to an exemption from contractor's tax, whether national or local. Since contractor's tax is a business tax which was replaced by value-added tax, the sale of its products to other export oriented companies namely, Yazaki-Torres Manufacturing, Inc. and EDS Manufacturing for the years 1999 and 2000 fall under Section 109(q) of the Tax Code, to wit:

> "**SEC. 109.** ***Exempt Transactions***. – The following shall be exempt from the value-added tax:
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> xxx
>
> "(q) **Transactions which are exempt** under international agreements to which the Philippines is a signatory or **under special laws**, except those under Presidential Decree Nos. 66, 529, 1590. (emphasis supplied)

Respondent concludes that petitioner is exempted from VAT by virtue of its BOI Registration, which is governed by a special law and thus, cannot claim for a refund/tax credit of input VAT.

We disagree. True, under Article 39 of E.O. 226, otherwise known as the Omnibus Investments Code of 1987, one of the incentives provided to registered enterprises is exemption from contractor's tax (now VAT), whether national or local. However, Republic Act No. 7918 amending Article 39 of E.O. 226 deleted the said exemption. Since R.A. 7918 took effect on May 5, 1994, which is prior to petitioner's registration with the BOI on September 5, 1994, the VAT exempt provision no longer applies to petitioner.

Considering, therefore, that petitioner's indirect export sales to PEZA registered companies for taxable years 1999 and 2000 of P18,591,443.89 and P45,054,782.25, respectively, qualify as zero-rated sales, petitioner is not liable to pay any output VAT

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thereon and may claim for the refund/tax credit of the unutilized input VAT directly attributable thereto in accordance with the provisions of Section 112(A) of the Tax Code.

However, in order to be entitled to a refund/tax credit of input VAT, petitioner must also prove that:

1.) the claim was filed within the two-year prescriptive period;

2.) the claimed input taxes were not applied against any output VAT liability;

3.) the claimed input taxes are directly attributable to zero-rated sales;

4.) the claimed input taxes are duly supported by VAT invoices and/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.

It was established that petitioner's claim, both in the administrative and judicial levels, was filed within the two-year prescriptive period. In a ***Resolution*** dated ***July 20, 1998*** in the case of ***Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5296***, this court ruled that the reckoning of the two-year period for input VAT refunds shall be from the filing of the corresponding quarterly VAT return. Counting from April 26, 1999 (for CTA Case No. 6295), July 26, 1999 (for CTA Case No. 6320) and October 25, 1999 (for CTA Case No. 6333), the respective dates of filing of the quarterly VAT returns for the first, second and third quarters of 1999, both the administrative claim filed by petitioner on April 24, 2001 and the Petitions for Review filed on April 25, 2001 (for CTA Case No. 6295), July 23, 2001 (for CTA Case No. 6320) and September 19, 2001 (for CTA Case No. 6333) fall within the two-year prescriptive period.

With reference to the second requirement, a perusal of the quarterly VAT returns filed by petitioner for taxable years 1999 and 2000 (*Exhibits F [CTA Case No. 6295], H*

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[CTA Case No. 6320], G, J, M, P, S & V [CTA Case No. 6333]) discloses that petitioner deducted its output VAT liability from its reported input VAT payments for each quarter. However, petitioner continuously carried-over the excess input VAT in a given quarter to the succeeding quarter(s). Since petitioner did not submit its VAT returns for the succeeding quarters of 2001, this court cannot verify with certainty whether or not the claimed input VAT was carried-over nor applied against any output VAT in 2001 or other succeeding quarters thenceforth. Although under Section 110(B) of the Tax Code, petitioner is allowed to carry-over the excess of the input tax over the output tax of a given quarter to the next quarter, petitioner should have deducted the claimed input taxes from its accumulated input VAT as of the quarter when it opted to file a claim therefor. Section 110(C) of the Tax Code provides thus:

> "**SEC. 110.** ***Tax Credits***. –
>
> "(A) ***Creditable Input Tax***. -
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> xxx
>
> "(C) ***Determination of Creditable Input Tax***. – The sum of the excess input tax carried over from the preceding month or quarter and the input tax creditable to a VAT-registered person during the taxable month or quarter **shall be reduced by the amount of the claim for refund or tax credit for value-added tax** and other adjustments, such as purchase returns or allowances and input tax attributable to exempt sale.
>
> "The claim for tax credit referred to in the foregoing paragraph shall include not only those filed with the Bureau of Internal Revenue but also those filed with other government agencies, such as the Board of Investments and the Bureau of Customs." (emphasis supplied)

The reason for the deduction is to assure that the claimed input VAT shall not be applied against any future output VAT liability.

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Without convincing evidence that the subject input taxes were not utilized nor carried over as credit to the subsequent quarters, this 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 (***BASF Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6175, March 20, 2002; Intel Philippines Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case Nos. 5760 & 5902, February 5, 2002; AMI Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5304, January 20, 1998; AMI Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case Nos. 5187 & 5199, October 2, 1997***).

Accordingly, this court finds it unnecessary to resolve the rest of the issues raised.

WHEREFORE, petitioner's claim for the issuance of a tax credit certificate in the aggregate sum of P19,521,870.03 is hereby **DENIED** due to insufficiency of evidence.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
Associate Judge

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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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