REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MATSUSHITA BUSINESS MACHINE CORPORATION OF THE PHILIPPINES,
Petitioner,

-versus-

C.T.A. Case No. 5896

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 17 2001
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DECISION

This is a Petition for Review filed by herein Petitioner on June 30,1999 which seeks for the refund or tax credit in the aggregate amount of **NINE MILLION TWENTY FIVE THOUSAND SIX HUNDRED SEVENTY THREE & 71/100 (P9,025,673.71)** allegedly representing the unutilized input VAT paid on domestic purchases of goods/services directly attributable to zero-rated sales for the period covering April 1, 1997 to March 31,1998.

The facts of the case are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws with principal office at Bo. Mapandan, Ortigas Avenue Extension, Taytay, Rizal. It is registered with the BIR as a VAT taxpayer under Certificate of Registration No. 95-460-001266 *(Joint Stipulation of Facts, item Nos. 1 & 3, respectively, CTA records, page 43).*

Petitioner is duly registered with the BOI in accordance with the provisions of the Omnibus Investment Code of 1987 as a preferred pioneer enterprise for the production and export of plain paper copiers, sub-assemblies, parts and components with Certificate of Registration No. EP 95-216 dated October 2, 1995 *(Joint Stipulation of Facts, item no.4, CTA records page 43)*. Under the specific terms and conditions of its BOI registration, Petitioner is entitled to among other incentives, a six-year income tax holiday starting from April 1996 or actual start of commercial operations, whichever comes first but not earlier than the date of its registration *(4th page of Exhibit A, CTA records, page 142)*.

Records reveal that on various dates from July 21, 1997 to April 27, 1998, Petitioner filed its quarterly VAT returns for FY 1997 covering the period of April 1, 1997 to March 31, 1998 (Exhibits C to F, inclusive), declaring an aggregate amount of P884,289,909.38 zero-rated sales, total taxable sales of P1,558,263.90 with the corresponding output VAT of P155,826.39 and accumulated input VAT payments of P9,182,111.83 on its domestic purchases of goods/services broken down as follows:

Exh	FY 1997	Period Covered	Zero-rated Sales	Taxable Sales	Output VAT	Input VAT
C	1st qtr	Apr 1-Jun 30 '97	P156,697,129.46	-	-	P 3,556,501.88
D	2nd qtr	Jul 1-Sept 30 '97	138,485,124.54	-	-	1,125,239.67
E	3rd qtr	Oct 1-Dec 31 '97	281,749,672.89	-	-	2,637,372.63
F	4th qtr	Jan 1-Mar 31 '98	307,357,982.49	P 1,558,263.90	P 155,826.39	1,862,997.65
		Total:	P884,289,909.38	P 1,558,263.90	P 155,826.39	P 9,182,111.83

After offsetting the output VAT of P155,826.39 against the total input VAT payments of P9,182,111.83, Petitioner reflected in its FY 1997 fourth quarterly VAT return (Exhibit F) the amount of P9,025,673.71 as excess input VAT payments for FY 1997.

On September 10, 1998, Petitioner filed an application for tax credit/refund of its reported excess input VAT payments of P9,025,673.71 for the period of April 1, 1997 to March 31, 1998 which were allegedly directly attributable to its zero-rated sales for the same period.

Due to the Respondent's inaction on the aforementioned claim, Petitioner filed a Petition for Review with this Court on June 30, 1999.

In answer to the instant Petition for Review, Respondent raised the following Special and Affirmative Defenses:

1. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Respondent's Bureau;
2. In a claim 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;
3. Rudimentary is the rule that claims for refund are construed in *strictissimi juris* against the taxpayer for they partake the nature of exemption from tax;
4. Moreover, Petitioner must prove that it has complied with the governing rules with reference to tax refund, which are found in Sections 204 and 229 of the Tax Code, as amended.

Petitioner for its part, introduced the following documentary evidence to substantiate its claim for refund, thus:

EXHIBIT	DESCRIPTION
A	Certificate of Registration No. EP 95-216 issued by the Bureau of Investments
B	VAT Certificate of Registration No. 95-460-001266
C, D, E, F	Quarterly VAT Return for 1st, 2nd, 3rd and 4th quarters of taxable year 1997
G, H	Quarterly VAT Return for 1st and 2nd quarters of taxable year 1998
I	Certificate issued by Security Bank Corporation
J and J-1	Letter-application for refund filed with the BIR
L	Certification issued by the Personnel Manager of MEPCO
M	Amended Quarterly VAT Return for 2nd Quarter of 1998
N, Y	Report of SGV & Co on Petitioner's Excess Input Tax as well as its addendum thereto
O-1 to O-19	Summary of Input Tax
P-1 to P-30	Summary of Export Sales
Q-1 to T-720	Various ORs and invoices issued to Petitioner for its domestic purchase of goods and services
U-1 to X-506	Various export sales invoices and bank credit memos
Z-1 to CC-529	Various Airway bills/ Bills of Lading and Export Declarations
DD-1 to DD-34	Supporting Export Sales Schedule for the 2nd Quarter of 1997 to 1st Quarter of 1998

As jointly stipulated by the parties, the issues to be resolved by this Court are as follows (Joint Stipulation of Facts & Issues, CTA records, pp. 43-44):

1.) Whether or not Petitioner's sales of its goods are zero-rated for VAT purposes.

2.) Whether or not Petitioner's input VAT, subject matter of the instant judicial claim for refund, is attributable to its zero-rated sales.

3.) Whether or not Petitioner's input VAT was not utilized or applied against its output VAT liabilities in subsequent quarters.

4.) Whether or not Petitioner is entitled to the refund of the amount of P9,025,673.71 representing unutilized input VAT for the period April 1, 1997 to March 31, 1998.

In asseverating that its sales of goods for the period April 1, 1997 to March 31, 1998 is zero-rated for VAT purposes, Petitioner cited as its legal basis Section 100(A)(2)(a)(i) of the Tax Code which provides:

> Section 100. 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
>
> (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;

Corollarily, Section 4.100-2 of Revenue Regulations No. 7-95 also provides:

> Section 4.100-2. Zero rated sales. – (a) In general. – A zero-rated sale by a VAT registered person, which is a taxable transaction for VAT purposes, shall not result in any output tax. However, the input tax on his purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these regulations.

On the basis of the testimonial and documentary evidence introduced to this Court, Petitioner was able to prove that its export sales from April 1, 1997 to March 31, 1998 qualify for zero-rating under Section 100(a)(2)(A)(i) [now 106(A)(2)(a)(I)] of the Tax Code]. During the course of the hearing, witness for the Petitioner testified that the company exported its products and such sales were classified as zero-rated sales, thus:

Atty. Agan:	Mr. Witness, for the Quarter Ended June 30, 1997, how much input VAT was paid by the Petitioner?
Mr. Asis:	As shown in the Tax return, the company paid the amount of P3,586,501.88.
Atty. Agan:	For the same period, how much output VAT liability was incurred by the company as shown in Exhibit C?
Mr. Asis:	The company did not incur any output VAT liability for this period since the company exported its product and the company's export sales was classified as zero-rated sales. (*TSN, January 11, 2000, page 17*)

True enough, for the period of April 1, 1997 to March 1, 1998, Petitioner actually generated export sales amounting to P883,781,681.14 (page 3 of Exhibit Y) as evidenced by various export documents for the same period such as export invoices (Exhibits U-1 to U-487, V-1 to V-561, W-1 to W-551 & X-1 to X-506, inclusive), airway bills, bills of lading and export declarations (Exhibits Z-1 to Z-287, Z-289 to Z-528, AA-1 to AA-257, AA-259 to AA-267, AA –269 to AA-367, AA-369 to AA-602, BB-1 to BB-557, CC-1 to CC-529 & DD-1 to DD-34, inclusive). Likewise, the said export sales were paid for in US dollars, inwardly remitted and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas as shown by the Security Bank Certification (Exhibit I) and various bank credit memoranda (Exhibits U-1 to U-487, V-1 to V-561, W-1 to W-551 & X-1 to X-506, inclusive).

Considering that its export sales are zero-rated, Petitioner is not liable to pay output VAT thereon and it can claim tax credit/refund of the unutilized input VAT payments directly attributable to such zero-rated sales as provided under Sections 104(b) [now 110 B] and 106(a) [now 112(A)] of the Tax Code.

However, in order to be entitled to a refund/tax credit of the alleged unutilized input VAT payment of P9,025,673.71, Petitioner must prove that:

1.) the claimed creditable input taxes 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 108 [now 113] and 238 [now 237] of the Tax Code;
2.) the claimed creditable input taxes are directly attributable to zero-rated sales;
3.) the claimed creditable input taxes have not been applied against any output tax nor carried over to the succeeding months/quarters; and
4.) both the administrative and judicial claims for refund were filed within two-years after the filing of the quarterly VAT return as provided under Section 4.106-2(c) of Revenue Regulations No. 7-95.

Whether or not Petitioner complied with the second and third requisites is similar to the second and third issues raised by both parties.

Section 4.104-5 of Revenue Regulations No. 7-95 explicitly provides for the requisites in order to establish that a taxpayer is indeed entitled to the input tax credit being claimed. It provides thus:

> (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Section 108(a) and 238 of the Code.

A review of the records of the case reveals an attempt on Petitioner's part to comply with the aforesaid requirement. However, the commissioned auditing firm discovered some unsubstantiated amount. In its report (Exhibit N), SGV & Co. found, that out of the total claimed input taxes of P9,025,673.71 for the period of April 1, 1997 to March 31, 1998, the amount of P72,771.19 (CTA records, pp. 166-167) was not properly supported by VAT invoices or official receipts. A further verification by this Court of Petitioner's Summary of Input Tax (Exhibits O-1 to O-90) suppliers' invoices/official receipts (Exhibits Q-1 to Q-756, R-1 to R-622, S-1 to S-653 & T-1 to T-720, inclusive) disclosed that aside from the exceptions noted by SGV & Co of P72,771.19, the input taxes of P1,956,719.58 (see Annex A) were not also properly substantiated by VAT invoices or official receipts resulting to a total disallowance of P2,029,490.77 from Petitioner's total claim of P9,025,673.71. Hence, Petitioner was able to present valid VAT invoices or official receipts only for the remaining claim of P6,996,182.94.

With respect to the second requirement, Petitioner's FY 1997 quarterly VAT returns covering the period April 1 to March 31, 1998 (Exhibits C to F, inclusive) show that the claimed excess input taxes of P9,025,673.71 were already net of Petitioner's output VAT liability of P155,826.39 for the same period and are therefore all attributable to its zero-rated sales.

With reference to the third requirement, it was established that although the claimed excess input taxes of P9,025,673.71 were carried over to Petitioner's first and second quarters of fiscal year 1998 as shown in its quarterly returns for said periods, (Exhibits G & M), the same were deducted as "Any VAT Refund/TCC Claimed" (Exhibit M-1) from the "Total Available Input Tax" of P13,862,841.61 indicated in Petitioner's FY 1998 amended second quarterly VAT return (Exhibit M). Thus, the resulting net excess creditable input taxes of P4,837,167.90 to be carried over to the succeeding third quarter of FY 1998, pertain only to Petitioner's declared excess input VAT payments for FY 1998 first and second quarters and did not include the claimed amount of P9,025,673.71.

Finally, counting from the respective dates when the quarterly VAT returns for the period April 1, 1997 to March 31, 1998 were filed (Exhibits C to F, inclusive), both the administrative and judicial claims filed by Petitioner on September 10, 1998 (Exhibit J) and June 30, 1999, respectively, fall within the two-year prescriptive period provided under Section 4.106-2(c) of Revenue Regulations No.7-95.

In sum, Petitioner sufficiently proved that it is entitled to a refund/tax credit of excess input VAT payments for the period April 1, 1997 to March 31, 1998 which are directly attributable to its zero-rated sales for the same period but in a reduced amount of P6,996,182.94 computed as follows:

Claimed Excess Input Taxes		P 9,025,673.71
Less: Disallowances		
1.) Per SGV Report (Exhibit N)	P 72,771.19	
2.) Per this Court's Further Verification (see Annex A)	1,956,719.58	2,029,490.77
Refundable Excess Input Taxes		P 6,996,182.94

In view of the above findings, this Court finds that Petitioner is entitled to the refund but only up to the extent of P6,996,182.94.

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED.** Respondent is hereby **ORDERED** to **REFUND** or issue a Tax Credit Certificate in favor of Petitioner the reduced amount of SIX MILLION NINE HUNDRED NINETY SIX THOUSAND ONE HUNDRED EIGHTY TWO & 94/100 (P6,996,182.94) representing the excess and unutilized input tax for the period of April 1, 1997 to March 31, 1998.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

Juanito C. Castañeda, Jr.
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

CTA CASE NO. 5896
SCHEDULE OF ADDITIONAL DISALLOWANCES
ON CLAIMED INPUT VAT
FOR THE PERIOD APRIL 1, 1997 - MARCH 31, 1998
PER THIS COURT'S VERIFICATION

	Month Covered	Supplier	Exhibit	Ref. #		Invoice Amount		Disallowed Input VAT
1.)	**Invoices and/or Official Receipts not under the name of Matsushita Business Machine Corporation of the Philippines**							
	Apr. '97	Manila Emroidery	Q-130	10610	P	223.30	P	20.30
	Apr. '97	Jacinto Kyung-In Chemical	Q-54	1736		819.00		74.46
	Apr. '97	Jacinto Kyung-In Chemical	Q-55	1824		7,650.00		695.46
	May '97	Robinson's Dept. Store	Q-330	37826		297.00		27.00
	May '97	National Bookstore	Q-360	18613		189.00		17.18
	June '97	Northgate Technologies	Q-570	18335		2,600.00		236.36
	June '97	Cardinal Santos Center	Q-576	197041467		2,803.85		254.89
	June '97	Cardcraft Phils.	Q-579	7915		1,900.00		172.73
	June '97	Odyssey Records	Q-599	1074		560.00		50.91
	June '97	Northgate Technologies	Q-754	18335		28,500.00		2,590.91
	July '97	East Garden Restaurant	R-49	17189		6,000.00		545.45
	July '97	Nandau Restaurant	R-50	18787		3,333.00		303.00
	Sept. '97	Steelite Construction	R-425	0800		21,000.00		1,909.09
	Oct. '97	Takamura Japanese Rest.	S-193	879		2,064.00		187.64
	Oct. '97	Fit-Walk Shoes	S-30	21936		132.75		12.07
	Nov. '97	Cainta Trading Co.	S-293	200982		47.00		4.27
	Jan '98	Electroworld	T-39	4877		10,995.00		999.55
	Feb. '98	Allbba	T-224	3432		7,900.00		718.18
	Feb. '98	National Bookstore	T-242	39940		129.89		11.81
	Feb. '98	National Bookstore	T-258	2548		4,095.70		372.34
	Feb. '98	National Bookstore	T-262	41111		66.75		6.07
	Feb. '98	National Bookstore	T-262	41176		842.25		76.57
	Mar. '98	D 'Rey Printing Corp.	T-447	2959		1,000.00		90.91
	Mar. '98	Tropical Hut	T-489	24057		95.00		8.64
	Mar. '98	Steelite Construction	T-648	1052		7,200.00		654.55
						subtotal	**P**	**10,040.33**
2.)	**Invoices and/or Official Receipts not within the period of claim**							
	Apr. '97	Gemini Customs Services	Q-138	957	P	2,800.00	P	254.55
	Apr. '97	National Bookstore	Q-86	477298		106.75		9.70
	Apr. '97	Tropical Hut	Q-87	20551		39.75		3.61
	Apr. '97	Foto World Sales	Q-87	16246		154.50		14.05
	May '97	Rapid Air Freight	Q-382	97599		1,084.45		98.59
	May '97	NYK Fil-Japan Shipping Cor	Q-383	MNL-97-00028		24,046.56		2,186.05
	June '97	New Trading Paint Center	Q-575	1683		300.00		27.27
	Mar. '98	Lep Int'l Inc.	T-691	174806		5,123.00		465.73
	Mar. '98	Kaizenfreight Inc.	T-695	183		63,500.00		5,772.73
						subtotal	**P**	**8,832.27**
3.)	**Without supporting documents**							
	July '97	Pola Von Transport		1632	P	23,980.00	P	2,180.00

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Month Covered	Supplier	Exhibit	Ref. #		Invoice Amount		Disallowed Input VAT
Dec. '97	B.I.R.				10,698,685.36		972,607.76
Mar. '98	Yerco Packaging Prod.				9,043.98		822.18
					subtotal	**P**	**973,429.94**

4.) Supported by documents other than Invoices and/or Official Receipts such as provisional receipt, delivery receipt, etc.

Month Covered	Supplier	Exhibit	Ref. #		Invoice Amount		Disallowed Input VAT
May '97	Kim-Len Merchandise	Q-361	1402	P	200.00	P	18.18
Aug. '97	Everlasting Photo Express	R-212	898		151.00		13.73
					subtotal	**P**	**31.91**

5.) Invoices and/or Official Receipts printed prior to July 31, 1991 with only TAN#/VAT#

Month Covered	Supplier	Exhibit	Ref. #		Invoice Amount		Disallowed Input VAT
Apr. '97	Esh & Mock-up Fabrication	Q-100	358	P	3,225.00	P	293.18
Apr. '97	Encargo	Q-198	780		76,389.96		6,944.54
June '97	Manuel Metal Industries	Q-588	87		1,200.00		109.09
June '97	Encargo	Q-652	SA14		6,236.80		566.98
June '97	Encargo	Q-652	SA16		10,373.90		943.08
Feb. '98	Tropical Hut	T-261	23330		80.85		7.36
					subtotal	**P**	**1,626.51**

6.) Invoices and/or Official Receipts printed after July 31, 1991 without V/VAT after TIN; TIN-V/VAT

Month Covered	Supplier	Exhibit	Ref. #		Invoice Amount		Disallowed Input VAT
May '97	Sta. Lucia East	Q-330	9584	P	265.00	P	24.09
May '97	Sta. Lucia East	Q-331	9682		449.50		40.86
June '97	Hapag-Lloyd Phils.	Q-640	27495		1,721.20		156.47
June '97	Hapag-Lloyd Phils.	Q-641	28190		1,720.50		156.41
Mar. '98	DCM Interior & Supply	T-495	345		18,720.00		1,701.82
					subtotal	**P**	**2,014.70**

7.) Invoices printed after July 31, 1991 with only stamped TIN/V

Month Covered	Supplier	Exhibit	Ref. #		Invoice Amount		Disallowed Input VAT
May '97	J.A. Burgos Store	Q-350	0350	P	2,535.00	P	230.45
Aug. '97	J.A. Burgos Store	R-193	361		290.00		26.36
Aug. '97	J.A. Burgos Store	R-194	389		290.00		26.36
Aug. '97	J.A. Burgos Store	R-226	294		399.00		36.27
Feb. '98	J.A. Burgos Store	T-230	443		1,000.00		90.91
					subtotal	**P**	**410.36**

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	Month Covered	Supplier	Exhibit	Ref. #		Invoice Amount		Disallowed Input VAT
8.)	**Non-VAT Official Receipt**							
	Jan. '98	Nancy Padilla	T-146	0003	P	921,291.36	P	83,753.76
						subtotal	**P**	**83,753.76**
9.)	**Invoice twice reported**							
	July '97	Pola Von Transport	R-3	1671	P	23,980.00	P	2,180.00
						subtotal	**P**	**2,180.00**
10.)	**Claimed amount is not an input VAT**							
	May '97	MEI Royalty - Tech. Fee	Q-461 to Q-463		P	9,618,397.75	P	874,399.80
						subtotal	**P**	**874,399.80**
						T o t a l	**P**	**1,956,719.58**

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