REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ECW JOINT VENTURE, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6398

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 2 2 2004

x - x

DECISION

This Petition for Review involves a claim for refund of the alleged overpaid output Value-Added Tax in the total amount of P10,265,726.00 for the quarter ended March 31, 2000.

The antecedents, as culled from the records of the case are summarized as follows:

Petitioner is a corporation duly organized and existing under and by virtue of laws of the Republic of the Philippines, with principal office address at RCBC Plaza, Ayala Avenue, corner Gil Puyat Avenue, Makati City. It is habitually engaged in the business of general construction and was engaged as contractor in the construction of the RCBC Plaza Building located at Makati City *(Joint Stipulation of Facts, Items No. 1 & 3).* It was duly registered with the Bureau of Internal Revenue as a Value-Added Tax enterprise on September 3, 1997 of which the respondent issued to petitioner VAT

Registration Certificate No. OCN 9RC0000015285 *(Joint Stipulation of Facts, Item No. 4).*

In consideration for its services as a general contractor in the construction of the RCBC Building, petitioner was paid the amount of P427,910,270 *(Petitioner's memorandum, CTA docket, p. 111)* and the amount of US$2,823,074 which were remitted to its US Dollar Savings Account in Rizal Commercial Banking Corporation (RCBC) with Peso equivalent of P112,922,984 *(Exhibit L-7).*

On various dates, petitioner filed its Monthly/Quarterly Value-Added Tax Declaration *(BIR Form No. 2550M and 2550Q)* for the first quarter of calendar year 2000 and paid thereon value added taxes in the total amount of P11,603,840.24, which are detailed as follows:

Month	Exhibit	Date filed & paid	Amount
January	A	02/24/2000	P 2,570,734.00
February	B	03/24/2000	7,971,162.61
March	C	04/19/2000	1,061,943.63
		T O T A L	P11,603,840.24

Thereafter, petitioner amended its 2000 first Quarterly Value-Added Tax Return on February 4, 2002 *(Exhibit F)*, reflecting an output tax payable of P42,791,027, an input tax of P P41,452,912 and VAT payments of P11,603,841. Petitioner likewise declared therein zero-rated sales in the amount of P112,922,984.00 *(Exhibit F-7)* which resulted in an overpaid output VAT in the amount of P10,265,726.00, computed as follows:

Total Receipts & Output Tax	P	427,910,270.00	P	42,791,027.00
Zero-Rated Receipts		112,922,984.00		
		540,833,254.00		
Input Tax Carried-Over from Previous Quarter			P	742,912.00
Domestic Purchases for the Quarter	P	407,100,000.00		40,710,000.00
Total Available Input Tax			P	41,452,912.00
VAT Payable			P	1,338,115.00
Less: Tax Credits/Payments				
Monthly VAT Payments				10,541,897.00
VAT paid in return previously filed				1,061,944.00
Total			P	11,603,841.00
Total Amount Payable/(Overpayment)			P	(10,265,726.00)

On February 6, 2002, petitioner filed with the respondent BIR Revenue District Office No. 50, an administrative claim for refund *(Exhibit I)* in the amount of P10,265,726.00 covering the quarter ended March 31, 2000 representing overpayment of value added tax. As of this date the respondent has not rendered his decision on the petitioner's claim for refund. Thus, the inaction of the respondent prompted petitioner to elevate the matter to this court by way of a Petition for Review on February 20, 2002.

On March 13, 2002, respondent filed an Answer to the instant petition for review and raised the following Special and affirmative Defenses, to wit;

1. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative defenses;

2. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigations/examinations by the respondent's Bureau;

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

4. Petitioner's claim for refund in the amount of P10,265,726.00 as alleged overpaid value-added tax for the quarter ended March 31, 2000 was not fully substantiated;

5. Petitioner's instant claim for refund representing the alleged overpaid value-added tax for the quarter ended March 31, 2000 is not subject to Section 108 (B)(2) of the 1997 Tax Code;

6. It is incumbent upon the latter to show that it has complied with the provisions under Section 204(c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund;

7. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and as such, they are looked upon with disfavor *(Western Minolco Corp. vs Commissioner of Internal Revenue, 124 SCRA 1211).*

In a decision promulgated on May 26, 2003, petitioner's claim was denied due to insufficiency of evidence. On June 26, 2003, petitioner filed a Motion for Reconsideration and New Trial which this court granted in a resolution dated September 3, 2003.

The issues, as jointly stipulated by the parties are as follows:

(a) Whether or not Petitioner's sale of services is zero-rated for VAT purposes under Section 108(B)(2) of the Tax Code.

(b) Whether or not Petitioner had erroneous/overpayment of VAT in the amount of P10,265,726 for the first quarter ending March 31, 2000.

(c) Whether or not Petitioner's erroneous/overpayment of VAT for the first quarter ending March 31, 2000 are duly substantiated.

(d) Whether or not Petitioner has not carried over to the succeeding taxable quarter the erroneous/overpayment of VAT for the first quarter ending March 31, 2000.

(e) Whether or not Petitioner is entitled to the refund in the amount of P10,265,726 as erroneous/overpayment of VAT for the first quarter ending March 31, 2000.

Since the issues stipulated by the parties are interrelated, this court deems it best to streamline them into one main issue of WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND IN THE AMOUNT OF P10,265,726.00 REPRESENTING OVERPAID VAT FOR THE QUARTER ENDING MARCH 31, 2000.

Petitioner cites as its legal bases Section 108(B)(2) of the 1997 Tax Code and Section 4.102-2(b) of Revenue Regulations No. 7-95 which provide:

> ***SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. -***
>
> (A) x x x
>
> (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) x x x
>
> (2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).
>
> ***SEC. 4.102-2. Zero-Rating. – (a) x x x***
>
> (b) **Transactions subject to zero-rate.-** The following services performed in the Philippines by VAT-registered persons shall be subject to 0%.
>
> (1) x x x

(2) Services other than those mentioned in the preceding subparagraph, e.g., those rendered by hotels and other service establishments, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.

The language of the law is clear. By the categorical wordings of Section 108(B)(2) of the 1997 Tax Code, in order for sale of services to qualify as zero-rated sales, the following requirements must be complied with:

1) That the payment of service fees must be in acceptable foreign currency;

2) That the service rendered does not include processing, manufacturing or repacking goods for other persons doing business ***outside*** the Philippines which goods are subsequently exported;

3) That the payments of services are accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

Thus, in case of sale of services, it is sufficient that payment be made in acceptable foreign currency. The law no longer requires that the rendition of services be exported or used by non-resident foreign entities. As correctly pointed out by the petitioner in its memorandum, in case of sale of services, for as long as payments are made in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP, then the same are classified as zero-rated sales for VAT purposes. This conclusion finds support in the case of ***American Express International, Inc. – Philippine Branch vs. Commissioner of Internal Revenue, CTA Case No. 6099, April 19, 2002***, where it declared VAT Ruling No. 040-98 (November 23, 1998) as a clear contravention of the Tax Code. The said VAT ruling issued by the respondent, actually limits the zero-rated services only to such sales which are destined for consumption outside of the Philippines or to other similar services sold by a resident of the Philippines to a non-resident foreign client since its services are likewise destined to be consumed abroad, thus:

> Indeed, respondent in VAT Ruling No. 040-98, while purportedly interpreting Section 4.102-2(b)(2) of Revenue Regulations No. 5-96, cannot contravene the terms of the statute itself, the language of which is clear and unequivocal.
>
> x x x x x x x x x
>
> Note that while Section 108(B)(2) of the Tax Code only requires payment of the services in acceptable foreign currency, accounted for in accordance with existing BSP regulations, VAT Ruling No. 040-98 requires that the services be "destined for consumption abroad and not rendered within the Philippines." In fact, said VAT ruling appears to digress even from the very revenue regulations, which it purports to interpret. Section 4.102-2(b)(2) of Revenue Regulations No. 5-96 does not require that the services to be rendered by a VAT registered person to be destined, consumed or rendered abroad.

Likewise, the Court of Appeals, had an occasion to rule that:

> "VAT Ruling No. 040-98, while purportedly interpreting Section 4.102-2(b)(2) of Revenue Regulations No. 5-96 can not contravene the terms of the said revenue regulations as well as the Tax Code, the language of which are clear and unequivocal. From the aforequoted provisions of Rev. Regs. No.5-96 and Section 108(B)(2) of the NIRC, it is apparent that the requirement that the services must be consumed abroad which, VAT Ruling No. 040-98 imposes, is not mandated therein in order that the services be zero-rated. VAT Ruling No. 040-98 does not only expand the language of the NIRC but also Revenue Regulations No. 5-96, the regulations interpreting the NIRC. In fact, it imposes a higher standard of care or stricter requirement than that imposed by the NIRC as it improperly extended the operative effect or

> enlarged the policy of the Tax Code, the governing statute. Therefore, petitioner's reliance on VAT Ruling No. 040-98 which was rendered by the Commissioner of Internal Revenue is unwarranted since said ruling went beyond the sphere of interpretation and into that of legislation. In fine, there was an attempt to exercise legislative powers on the part of the Commissioner that has not been delegated to him" ***(Commissioner of Internal Revenue vs. American Express International-Philippine Branch CA GR Sp. No. 62727, February 28, 2002)***.

Legally speaking, the services performed by herein petitioner in the Philippines and paid for in US$ dollars and accounted for in accordance with the rules and regulations of the BSP, fall under Section 108(B)(2) of the 1997 Tax Code and Section 4.102-2(b)(2) of Revenue Regulations No. 7-95, as amended by Revenue Regulations No. 5-96. Undoubtedly, the payments received by petitioner in US dollar arising from its sales of services in the Philippines amounting to US$2,823,074.60 (with peso equivalent of P112,922,984.00) qualify as zero-rated and as such petitioner is entitled to the overpaid output VAT of P10,265,726.00.

After resolving the legal issue besetting the instant case, we now proceed to the aspect of substantiation in order to determine whether petitioner is entitled to the refund of the amount being sought for.

The particular provisions in point are Section 2(c)(2) of Revenue Regulations No. 3-88 and Section 4.108-1 of Revenue Regulations No. 7-95, which provides for the substantiation and invoicing requirements, to wit:

> ***"Section 2. Section 16 of Revenue Regulations No. 5-87 is hereby amended to read as follows:***
>
> ***Section 16. Refunds or Tax Credit 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 photocopy 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 the Tax Credit Certificate or refund. In addition, the following documents shall be attached whenever applicable:

1. export sales – x x x.

x x x x x x x x x

2. Zero-rated sale of services.

i) authenticated copy of the contract showing the person for whom the services were rendered, the amount of the consideration and description of the services and document evidencing actual payments.

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

Under subparagraphs 1(ii) and 2(ii), the statement shall show the amount in foreign currency of the export proceeds or consideration and the date of inward remittance, conversion rate into Philippine currency and the total peso value thereof". (Underlining supplied).

"*SEC. 4.108-1.* ***Invoicing Requirements*** – All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

2. the name, TIN and address of seller;
3. date of transaction;

4. quantity, unit cost and description of merchandise or nature of service;
5. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
6. **the word "zero rated" imprinted on the invoice covering zero-rated sales; and**
7. the invoice value or consideration".
(Emphasis supplied).

Records show that petitioner presented the following evidence to establish its alleged zero-rated sales of services:

DOCUMENT	EXHIBIT
1. Summary of Zero-Rated Sales	N, N-1 & N-2
2. Foreign Currency Savings Account Passbook	K
3. Certifications from RCBC	K-4, O
4. Details of Progress Billing	L
5. Report of the independent CPA	P
6. Articles of Agreement and Conditions of Contract dated May 14, 1998	O
7. Copies of Official Receipts issued by petitioner to RCBC Realty Corp.	R, S, T

A scrutiny of the aforementioned exhibits shows that petitioner was actually hired as contractor by RCBC Realty Corporation for the construction of the latter's RCBC Plaza building. For services rendered, petitioner was partly paid for in US dollars totaling US$2,823,074.60 (with the peso equivalent of P112,922,984.00) for the first quarter of 2000, which were duly covered by valid official receipts issued by petitioner to RCBC Realty Corporation. These foreign currency payments were accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas as can be seen in the documents previously submitted by petitioner, namely: (a) the Certifications from Rizal Commercial Banking Corporation (*Exhibits K-4 and O*) and (b) certain pages of petitioner's passbook for its Foreign Currency Savings Account No 8-000-7558-3 maintained at RCBC (*Exhibits K to K-3*).

In fine, petitioner complied with all the requirements for the zero rating of its sales of services for the first quarter of 2000 amounting to P112,922,984.00 as set forth under Section 108(B)(2) of the Tax Code and implemented by Section 2(c)(2) of Revenue Regulations No. 3-88 and Section 4.108-1 of Revenue Regulations No. 7-95. Out of the total taxable receipts of P530,567,530.00 reported by petitioner in its original VAT return for the 1st quarter of 2000 filed on April 19, 2000 (*Exhibit C*), only the amount of P427,910,270.00 pertained to its taxable receipts with the related output VAT of P42,791,027.00 (*Exhibit F*).

To determine petitioner's actual excess output VAT payments for the first quarter of 2000, it is necessary to ascertain the validity of the total tax credits/payments of P53,056,753.00 reflected in its amended VAT return for the said quarter (*Exhibit F*) which were offset/applied against its total output VAT liability of P42,791,027.00. Below is the breakdown of the amount of P53,056,753.00:

Input Tax Carried Over from Previous Quarter		P 742,912.00
Add: Input Tax on Domestic Purchases -1st Qtr 2000		40,710,000.00
Total Available Input Tax		P 41,452,912.00
Add: Total VAT payments		
Monthly VAT payments - January & February 2000	P 10,541,897.00	
VAT paid per original 1st quarter 2000 VAT return	1,061,944.00	11,603,841.00
Total Tax Credits/Payments		P 53,056,753.00

While petitioner was able to establish the fact of payment of the value-added taxes of P11,603,840.24 or P11,603,841.00 (*Exhibits A, A-4, B, B-4, C and C-4*), it failed, however, to fully substantiate the total input VAT payments of P41,452,912.00

representing the sum of the excess input VAT for the 4th quarter of 1999 of P742,912.00 and input VAT payment for the first quarter of 2000 of P40,710,000.00. No VAT invoices/official receipts were presented to prove the existence of the input taxes of P742,912.00, hence, the same shall be disallowed outright. As regards the input VAT of P40,710,000.00, the commissioned auditing firm, Rayos Del Sol and Associates, in its report dated July 22, 2002, (*Exhibit P*), noted the following exceptions:

			Input Tax
1.	Purchases of goods or services supported by VAT Invoices/OR's issued not in the Company's Name		P 7,840.76
2.	Purchases of goods or services supported by VAT Invoice/OR's without Customer Name		828.77
3.	Purchases of goods or services supported by Non-VAT Invoice/OR		38,398.34
4.	Input Taxes Claimed on purchases of goods or services without supporting documents		1,354.85
		Total:	P48,422.72

Upon examination of the various suppliers' invoices and official receipts (*pre-marked Exhibits M-1 to M-509*) supporting the input VAT of P40,710,000.00, it was found that in addition to the above input taxes of P48,422.72, the following input VAT of P3,290.68 should likewise be disallowed for failure to meet the substantiation requirements under Section 4.104-5 of Revenue Regulations No. 7-95:

SUPPLIER	EXHIBIT	REFERENCE NO.	AMOUNT	INPUT VAT
Input VAT supported only by a Billing Statement				
GLOBE TELECOM	M-177	BS4	P 2,412.49	P 219.32
Invoices/official receipts not in the name of ECW Joint Venture, Inc.				

BENTLY TRADING	M-335	CI13085	P 100.00	P 9.09
KISM MULTISALES & SERVICES CORP	M-275	SI9735	760.00	69.09
NEW FIVE STAR AUTO SUPPLY	M-66	CI26091	95.00	8.64
TIREMASTERS AUTO CARE CENTER	M-318	CI87090	80.00	7.27
Subtotal			P 1,035.00	P 94.09
Non-VAT Invoices				
LEDDEN TRADING	M-24	SI198	P 21,850.00	P 1,986.36
LEDDEN TRADING	M-30	SI199	6,600.00	600.00
LEDDEN TRADING	M-411	SI201	4,300.00	390.91
Subtotal			P 32,750.00	P 2,977.27
Total			**P 36,197.49**	**P 3,290.68**

Prescinding from the aforesaid disallowances, only the input VAT of P40,658,286.60 (P40,710,000.00 less P48,422.72 less P3,290.68) and VAT payments of P11,603,840.24 may be applied against petitioner's output VAT liability of P42,791,027.00 resulting to an excess VAT payment of P9,471,099.84, computed as follows:

Taxable Receipts/Output VAT	P 427,910,270.00	P 42,791,027.00
Zero-rated Receipts	112,922,984.00	
Total Receipts	P 540,833,254.00	
Less: Properly Substantiated Input VAT for the quarter		40,658,286.60
VAT Payable		P 2,132,740.40
Less: Monthly VAT payments-January 2000	P 2,570,734.00	
February 2000	7,971,162.61	
VAT paid per original 1st qtr 2000 VAT return	1,061,943.63	11,603,840.24
Excess VAT Payments		P 9,471,099.84

IN VIEW OF ALL THE FOREGOING, petitioner's claim is hereby **GRANTED** but in a reduced amount of P9,471,099.84. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND** to the petitioner the amount of P9,471,099.84 representing excess output VAT payments for the quarter ended March 31, 2000.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

LOVELL R. BAUTISTA
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