REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TOWA INDUSTRY, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5552

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 0 9 1999

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DECISION

This case involves a claim for refund and/or issuance of a tax credit certificate in the amount of P316,557.00 allegedly representing excess creditable value added input taxes (VAT) paid for the period (third quarter) July 1, 1995 to September 30, 1995.

Petitioner is a domestic corporation engaged principally in the manufacture of world class housing components (TSN, Nov. 28, 1997, p. 18).

Effective March 1, 1993 (Exh. C-1), Petitioner became a registered VAT entity with the Bureau of Internal Revenue (BIR) bearing VAT Registration No. 002-003-434 (Exh. C). Petitioner is likewise registered with the Board of Investments (BOI) as shown by its Certificate of Registration No. EP 91-431 (Exh. B).

On May 20, 1997, Petitioner filed an amended quarterly VAT return for the quarter July 1, 1995 to September 30, 1995 declaring zero rated export sales in the sum of P37,957,175.24 and a net creditable input tax of P2,674,042.37 (Exh. A).

On June 30, 1997, Petitioner filed an application for tax credit/refund for the said quarter in the amount of P316,557.00 with the Tax Revenue Group of the One Stop Shop Inter Agency Tax Credit and Duty Drawback Center of the Department of Finance (Exh. D).

Contending inaction on the part of the Respondent, the instant petition was consequently filed on September 29, 1997, to toll the running of the two-year reglementary period.

Respondent, by way of Special and Affirmative Defenses, states:

> 1. Petitioner's claim for refund/tax credit is pending administrative investigation;
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> 2. Tax refunds are in the nature of tax exemptions. As such, they are regarded in derogation of sovereign authority and to be construed in *strictissimi juris* against the person or entity claiming the exemption;
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> 3. Taxes paid and collected are presumed to have been made in accordance with the laws and regulations; and
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> 4. It is incumbent upon the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the claim for refund.

Petitioner, in support of its claim, submitted the following documentary evidences, to wit:

a) Value-Added Tax Return for the third quarter of 1995 together with the schedule of input VAT;

b) Certificate of Registration issued by the BOI;

c) VAT Registration Certificate issued by the BIR;

d) Application for Tax Credit/Refund for the third quarter of 1995.

Respondent, on the other hand, was considered to have waived the presentation of his evidence due to the failure of his counsel to appear for three consecutive hearings (Resolution, June 24, 1998, CTA Rec., p. 51). However, in his memorandum, Respondent did not dispute that Petitioner has a valid claim of creditable input VAT nor the fact of the timely filing of its claim.

Hence, the sole issue to be resolved in this case is whether or not Petitioner has fully substantiated its claim for refund/tax credit in the amount of ₱316,557.00.

After a careful review of the evidence of Petitioner, both testimonial and documentary, this Court holds against the Petitioner. Records clearly reveal that Petitioner has not been able to prove the veracity of its claim.

Section 106 of the Tax Code provides:

> SEC. 106. ***Refunds or tax credits of creditable input tax.*** — (a) 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 100(a)(2)(A)(i), (ii) and (b) and Section 102(b)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted or in accordance with the regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, x x x.
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> "(b) *Capital Goods.* — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made. (Underscoring supplied)

In relation thereto, Section 16 of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88, requires that:

> x x x
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> 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:
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> 1. *Export Sales*
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> i) Photocopy of export document showing the amount of export, and the date and destination of the goods exported. With respect to foreign currency denominated sale, the copy of the invoice or receipt evidencing the sale of the goods, as well as the name of the 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.
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> x x x x x x x x x
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> In all case, the amount of refund or tax credit that may be granted shall be limited to the amount of the value-added tax (VAT) paid directly and entirely attributable to the zero-rated transaction during the period covered by the application for credit or refund. (Emphasis supplied)

As mentioned earlier, Petitioner only submitted the following documents to support its case, *viz*: (a) VAT return for the quarter involved; (b) BOI Certificate of Registration; (c) VAT Registration Certificate; and (d) Application for Tax Credit/Refund. Moreover, Petitioner did not make any appearance for all the succeeding hearings after it formally offered its evidence, and it did not even bother to file its memorandum.

Therefore, in the light of the documents so submitted and offered in evidence, Petitioner only proved that it filed its VAT return for the third quarter of 1995; that it is a BOI-registered enterprise as well as a VAT-registered taxpayer; and that it applied for a tax credit/refund for the said quarter of 1995. Nothing else. Petitioner therefore was not able to support its entitlement to the claim of creditable input VAT. With only the documents aforementioned on record, this Court has no way of determining the kind of goods and actual amount of export sales it allegedly made during the third quarter of 1995. The aforecited law and regulations mandate that the input tax being claimed must be shown to be entirely attributable to the export sales of goods. Of equal importance and crucial to Petitioner's claim are the invoices/receipts as well as the import entry documents and confirmation receipts to prove the fact of purchase of services and importation of goods which Petitioner failed to submit. Without said documents and the export documents, no determination can be made respecting Petitioner's claim. Mere listing or schedule of the invoices/receipts are not enough since this Court has no way of ascertaining the correctness of the data listed therein.

As already pointed out, what is allowed to be refunded are input taxes paid for goods or services which are directly attributable to the particular export sales. Petitioner did not present any evidence to prove that indeed the services it purchased, as well as the goods it imported, are directly attributable to the export sales for the period involved. Clearly and indubitably, Petitioner failed to substantiate its claim.

Once again, it is worth stressing that tax refunds partake the nature of tax exemptions and are construed in *strictissimi juris* against the taxpayer and in favor of the taxing authority. (**Resins, Inc. vs. Auditor General,** L-17888, 25 SCRA 754, October 29, 1968; **Commissioner of Internal Revenue vs. Ledesma,** L-17509, 31 SCRA 95, January 30, 1970; **Insular Lumber Co. vs. Commissioner of Internal Revenue and Court of Tax Appeals**, G.R. No. L-310057, May 29, 1981; **Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation**, G.R. Nos. L-83583-84, March 25, 1992).

WHEREFORE, in the view of all the foregoing, the instant Petition for Review is hereby **DISMISSED** for insufficiency of evidence.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
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 8 of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge