REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LAZI BAY RESOURCES DEVELOPMENT, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6031

COMMISSIONER OF INTERNAL REVENUE
Respondent.

Promulgated:

JUN 27 2002

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DECISION

This is a claim for refund/tax credit of unutilized input value-added tax allegedly paid by petitioner on its domestic purchases of goods and services and importation of capital goods in the aggregate amount of P9,481,911.23 (originally in the amount of P5,309,705.53) covering the period January 1, 1998 to December 31, 1998.

Petitioner is a domestic corporation organized and existing under the laws of the Republic of the Philippines, with principal place of business at Room 107, FCC Building, 119 Rada Street, Legaspi Village, Makati City, Metro Manila. It is engaged in the mining business, which includes exploration, development and operation of mining properties for purposes of commercial production of limestone for the export sale of the said product abroad (*pars. 1 & 3, Joint Stipulation of Facts*).

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Petitioner was registered with the Bureau of Internal Revenue as a value-added tax (VAT) registered taxpayer on February 1, 1996 with Tax Identification No. 004-656-458-VAT/RDO Control No. 96-047-005989 (*Exhibit C; par. 1, Joint Stipulation of Facts*).

Petitioner was likewise duly registered with the Board of Investments ("BOI") as a non-pioneer enterprise exporting at least seventy (70%) percent of its limestone production under BOI Certificate of Registration No. EP 95-369 issued on January 26, 1996 (*par. 4, Joint Stipulation of Facts*). Under the specific terms and conditions of its BOI registration, petitioner is entitled to a four-year income tax holiday effective from the start of commercial operation in December 1996 or from actual start of commercial operation, whichever comes first, but not earlier than the date of registration (*Exhibit B, CTA records, page 315*).

For the period January 1, 1998 to December 31, 1998, petitioner filed its quarterly VAT returns declaring unutilized input VAT paid on domestic purchases of goods/services and importation of capital goods in the total amount of P2,955,263.07, broken down as follows:

			I N P U T V A T			
			Carried-over from previous quarter	This quarter		
Exh	Date of Filing	1998		Domestic Purchases	Importation of goods	Total
D	05/04/98	1st qtr	P 53,592,293.07	P 936,250.45	P 28,652.92	P 964,903.37
E	07/27/98	2nd qtr	54,357,628.18	263,210.48	557,175.46	820,385.94
F	10/26/98	3rd qtr	54,803,392.11	605,550.09	519,612.07	1,125,162.16
G	01/25/99	4th qtr	56,250,671.28	25,191.90	19,619.70	44,811.60
				P 1,830,202.92	P 1,125,060.15	P 2,955,263.07

On February 4, 2000, petitioner simultaneously amended its 1998 quarterly VAT returns increasing its reported unutilized input VAT payment from P2,955,263.07 to P5,309,505.53, as shown below:

Exhibit	1998	INPUT VAT			
		Carried-over from previous quarter	This quarter		
			Domestic Purchases	Importation of goods	Total
H	1st qtr	P 48,047,134.56	P 978,688.11	P 1,430,109.87	P 2,408,797.98
I	2nd qtr	2,408,797.98	263,210.48	557,175.46	820,385.94
J	3rd qtr	3,229,183.92	605,350.09	519,612.07	1,124,962.16
K	4th qtr	4,354,346.08	724,870.67	230,488.78	955,359.45
			P 2,572,119.35	P 2,737,386.18	P 5,309,505.53

Subsequently, on April 10, 2000, petitioner further amended its 1998 quarterly VAT returns in order to reflect its 1998 zero-rated sales of US$1,531,040.00, detailed as follows:

Exh	1998	Zero-rated Sales (in US$)	INPUT VAT			
			Carried-over from previous quarter	This quarter		
				Domestic Purchases	Importation of goods	Total
L	1st qtr	120,960.00	P 48,047,134.56	P 978,688.11	P 1,430,109.87	P 2,408,797.98
M	2nd qtr	469,280.00	2,408,797.98	263,210.48	557,175.46	820,385.94
N	3rd qtr	537,600.00	3,229,183.92	605,350.09	519,612.07	1,124,962.16
O	4th qtr	403,200.00	4,354,346.08	724,870.67	230,488.78	955,359.45
		1,531,040.00		P 2,572,119.35	P 2,737,386.18	P 5,309,505.53

Pursuant to Revenue Audit Memorandum No. 2-93, petitioner filed on March 13, 2000 with the Department of Finance One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (DOF-OSS), separate administrative claims for refund corresponding to

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its alleged unutilized input VAT payments for the taxable year 1998. Yet the amount claimed was not the sum of P5,309,505.53 as reported above but in the amount of P5,309,705.53, *viz*:

Exhibit	1998	Imported VAT	Local VAT	Total
P, T	1st qtr	P 1,430,109.87	P 978,688.11	P 2,408,797.98
Q, U	2nd qtr	557,175.46	263,210.48	820,385.94
R, V	3rd qtr	519,612.07	605,550.09	1,125,162.16
S, W	4th qtr	230,488.78	724,870.67	955,359.45
		P 2,737,386.18	P 2,572,319.35	P 5,309,705.53

Claiming inaction on the part of the respondent and to toll the running of the prescriptive period, petitioner filed the instant Petition for Review on March 28, 2000. However, petitioner filed a Supplemental Petition for Review on September 29, 2000 substantially increasing its original claim for refund of P5,309,705.53 to P9,481,911.23. The same was admitted by this Court on October 6, 2000 (*CTA records, pages 157 & 158*).

Petitioner also filed with the DOF-OSS on September 28, 2000 and September 29, 2000, supplemental administrative claims for refund in the amounts of P1,207,782.22 and P3,051,623.48, respectively, or totaling P4,259,405.70 (*Exhibits FF, GG, HH & II*). This Court observed that petitioner's total administrative claim (original claim of P5,309,705.53 and supplemental claim of P4,259,405.70) in the amount of P9,569,111.23 is higher than the judicial claim of P9,481,911.23.

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To reflect the increase in its 1998 unutilized input VAT payment, petitioner amended for the third time on September 28, 2000 its 1998 quarterly VAT returns, as follows:

			INPUT VAT			
		Zero-rated	Carried-over	This quarter		
		Sales	from previous	Domestic	Importation	
Exh	1998	(in US$)	Quarter	Purchases	of goods	Total
BB	1st qtr	120,960.00	P 48,047,134.56	P 1,648,040.20	P 1,430,109.87	P 3,078,150.07
CC	2nd qtr	469,280.00	3,078,150.07	1,363,529.33	557,175.46	1,920,704.79
DD	3rd qtr	537,600.00	4,998,854.86	1,887,302.63	519,612.07	2,406,914.70
EE	4th qtr	403,200.00	7,405,769.56	1,845,652.89	230,488.78	2,076,141.67
		1,531,040.00		P 6,744,525.05	P 2,737,386.18	P 9,481,911.23

Respondent, for his part, raised the following Special and Affirmative Defenses, to wit:

"4) The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;

5) It is incumbent upon herein petitioner to show that it has complied with the provision of Section 229 of the Tax Code;

6) Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35);

7) One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute (Asiatic Petroleum vs. Llanes, 49 Phil. 466; Union Garment Co. vs. Court of Tax Appeals, 4 SCRA 304);

8) In action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund; and

9) Taxes paid and collected are presumed to have been made in accordance with the law and regulations, hence, not refundable."

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To support its case, petitioner presented voluminous documents and witnesses to identify the same. Upon the other hand, respondent was declared to have waived his right to present evidence for his failure to appear in court for three consecutive times. *(CTA records, pages 424, 426, 428 & 429)*. This case was submitted for decision sans memorandum of the respondent.

The issues elevated to this Court for resolution are:

(1) Whether or not petitioner's export sales for the year 1998 qualified as zero-rated sales;

(2)Whether or not petitioner paid input VAT on its domestic purchases of goods and services and importation of capital goods;

(3) Whether or not the input VAT for 1998 were directly attributable to its zero-rated sales;

(4) Whether or not petitioner's input VAT remained unutilized or unapplied against any output VAT liability, if any.

Anent the first issue, We quote the pertinent provision of the Tax Code, as amended:

"SEC. 106. *Value-added Tax on Sale of Goods or Properties*. —

"(A) *Rate and Base of Tax*. — These shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

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"(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);

Prescinding from the above law, in order for an export sale to qualify as zero-rated the following conditions must be present:

1.) there was sale and actual shipment of goods from the Philippines to a foreign country;

2.) the sale was made by a VAT registered person;

3.) the sale was paid for in acceptable foreign currency or its equivalent in goods or services; and

4.) the payment was accounted for in accordance with the rules and regulations of the BSP.

In the case at bar, it is an undisputed fact that petitioner is a VAT-registered entity (*Exhibit C; par. 1, Joint Stipulation of Facts*). And culled from the records of this case, petitioner, for the four quarters of 1998, generated export sales in the total amount of US$1,531,040.00 as evidenced by the various export sales invoices (*Exhibits OO-7 to OO-19*) and export declarations/bills of lading (*Exhibits OO-31 to OO-59*). However, as noted by the commissioned auditing firm, SGV & Co., in its amended report dated March 12, 2001 (*Exhibit NN*), out of the total export sales of petitioner amounting to US$1,531,040.00, only the sum of US$895,319.88 was inwardly remitted and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* as per the certifications issued by Hongkong Bank (*Exhibits OO-1 to OO-6*). In effect, only the export sales of US$895,319.88 qualified for zero-rating under Section 106(A)(2)(a)(1) of the 1997 Tax Code.

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Considering that petitioner's export sales of US$895,319.88 are zero-rated, it follows that petitioner is not liable to pay any output VAT thereon. Thus, petitioner may file a claim for refund/tax credit of the input VAT paid on its domestic purchases of goods/services and importation of capital goods. However, We have to determine first if petitioner indeed paid input VAT on its domestic purchases of goods and services and importation of capital goods as well as ascertain that such input VAT paid were directly attributable to its zero-rated sales. Moreover, the same input VAT paid must not have been utilized or carried over to the succeeding taxable quarters.

Under Section 112(A) of the 1997 Tax Code, it is provided that:

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"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."

Indubitably, in order to be entitled to a refund/tax credit of input VAT paid, herein petitioner must necessarily prove that:

1.) the claimed input VAT payments 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 113 and 237 of the Tax Code;
2.) the claimed input VAT payments are directly attributable to zero-rated sales;
3.) the claimed input VAT payments were not applied against any output tax nor carried over to the succeeding month(s)/quarter(s); and
4.) both the administrative and judicial claims for refund were filed within the two-year prescriptive period. (*Taganito Mining Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5983, dated October 11, 2001.*)

To prove compliance with the first requisite, petitioner submitted various suppliers' invoices/official receipts (*Exhibits KK-1 to KK-807*), BOC import entry declarations/official receipts (*Exhibits LL-1 to LL-29*) which were verified by the commissioned auditing firm, SGV & Co. However, the aforesaid documents as summarized in Annex I-1 to I-17 of the SGV & Co. report (*CTA records, pages 359 to 375*) reflected input taxes in the total amount of only P8,926,927.26 which is lower by P554,983.97 as compared against Petitioner's claim of P9,481,911.23. Thus, the discrepancy of P554,983.97 should be denied outright for lack of supporting documents. Upon scrutiny of the documents supporting the claim of P8,926,927.26, SGV & Co. noted the following observations and exceptions in its amended report dated March 12, 2001 (*Exhibit NN*):

1.) Input taxes on importations amounting to P1,873,301.21 were supported by certified true copies of the Import Entry and Internal Revenue Declarations (IEIRDs) duly signed by authorized officials of the Bureau of Customs (*Annex I of Exhibit NN*).

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2.) Input taxes amounting to P2,426,730.16 were not properly supported by VAT invoices/official receipts, BOC IEIRDs/official receipts (*Annexes II-A-1 to II-L of Exhibit NN*)

In its memorandum, petitioner manifested that the offer of certified true copies in lieu of the originals of the Bureau of Customs Import Entry and Internal Revenue Declarations (IEIRDs) was done in accordance with Section 5 of Rule 130 of the Rules of Court. According to petitioner, the Bureau of Customs requires all seven copies of the IEIRDs to go to a particular office of the Bureau to secure the release of the imported capital goods. Petitioner further manifested that the IEIRDs are accountable forms entrusted to licensed customs broker to document the importation for the purpose of facilitating the release of the shipment of imported goods and that it is common knowledge among licensed customs brokers that the taxpayer-importer himself cannot secure an original copy thereof.

Upon a thorough review of petitioner's documents, this Court found that out of the input taxes paid by petitioner on its importation which were supported by certified true copies amounting to P1,873,301.21, only the amount of P618,782.26 represents a valid claim. The reason is simple. The corresponding certified true copies of said IEIRDs were either machine validated or had accompanying BOC official receipts proving actual payment of the input VAT of P618,782.26. As to the remaining input taxes of P1,254,518.95, the certified true copies of the IEIRDs submitted were not machine validated or did not have the corresponding BOC official receipts. The same should, therefore, be deducted from petitioner's claim, namely:

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Payee	Exhibit	Date	IEIRD Serial No.	Claimed Input VAT
Bureau of Customs	LL-1	12-Jan-98	9421903	P 1,142,123.95
Bureau of Customs	LL-5	17-Jul-98	14303055	112,395.00
				P 1,254,518.95

In addition, it is worth emphasizing that although the exceptions of P2,426,730.16 noted by SGV & Co. were found to be proper disallowances from petitioner's claim, nevertheless, an additional amount of P699,373.90 should likewise be disallowed because the corresponding invoices were not issued under the name of the petitioner or were dated outside of the period of claim, itemized below for easy reference:

Supplier	Exhibit	Invoice Number	Date	O R Number	Date	Amount Billed	Disallowed Input VAT
Metaphil	KK-61	42957	9/30/97	57832	1/30/98	P 167,619.71	P 15,238.16
Metaphil	KK-64	43376	11/30/97	57833	1/30/98	265,917.62	24,174.33
Metaphil	KK-81	43372	11/30/97	57841	2/16/98	111,513.54	10,137.59
Metaphil	KK-83	43374	11/30/97	57840	2/16/98	511,278.55	46,479.87
Metaphil	KK-84	43391	12/22/97	57840	2/16/98	495,506.23	45,046.02
Metaphil	KK-114	43371	11/30/97	60319	3/27/98	950,623.62	86,420.33
Metaphil	KK-157	43338	12/31/97	60317	3/27/98	389,908.77	35,446.25
Metaphil	KK-158	43488	12/22/97	60317	3/27/98	361,340.94	32,849.18
Metaphil	KK-159	43375	11/30/97	60317	3/27/98	762,439.87	69,312.72
Metaphil	KK-160	43226	10/31/97	60317	3/27/98	918,742.66	83,522.06
Metaphil	KK-161	43129	9/30/97	60317	3/27/98	1,241,305.98	112,846.00
Metaphil	KK-263	066	1/31/98	60344	5/15/98	246,029.79	22,366.34
Metaphil	KK-372 KK-374	201/316	2/26/98	60378/ 61509	7/7/98	220,264.00	20,024.00
Metaphil	KK-397	473	4/30/98	473	8/7/98	1,050,621.55	95,511.05
						P 7,693,112.83	P 699,373.90

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Apparently and pursuant to Section 4.104-5 of Revenue Regulations No. 7-95, only the input taxes of P4,546,304.25 shall be allowed as creditable input VAT, computed as follows:

Claimed Input VAT	P 9,481,911.23
Less: Disallowances	
1.) Discrepancy between the claimed input taxes and input taxes shown in the summary	554,983.97
2.) Input taxes with certified true copies of IEIRDs which were not machine validated or did not Have accompanying BOC official receipts	1,254,518.95
3.) Other exceptions noted by SGV & Co.	2,426,730.16
4.) Add'l input taxes not properly substantiated per this Court's verification	699,373.90
Allowable Input VAT	P 4,546,304.25

We now resolve the issue of whether or not the input VAT paid by petitioner in 1998 are directly attributable to petitioner's zero-rated sales.

As already discussed earlier, not all of petitioner's export sales are zero-rated. Only the amount of US$895,319.88 qualified as zero-rated export sales for the year 1998. Thus, the allowable input VAT of petitioner amounting to P4,546,304.25 shall be apportioned between petitioner's zero-rated export sales of US$895,319.88 and export sales which were found to be without foreign currency remittances in the sum of US$635,720.12. Upon proper calculation, only the input VAT of P2,658,582.78 can be directly attributed to petitioner's 1998 zero-rated export sales of US$895,319.88, computed as follows:

Allowable Input VAT	P 4,546,304.25
Less: Input taxes corresponding to export sales without foreign currency inward remittances (P635,720.12/P1,531,040.00 x P4,546,304.25)	1,887,721.47
Input VAT attributable to zero-rated sales	P 2,658,582.78

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To prove that the input VAT were not applied against any output VAT for the taxable year 1998, petitioner submitted its third amended 1998 quarterly VAT returns (*Exhibits BB to EE*). Notwithstanding the fact that petitioner carried-over the claimed input taxes of P9,481,911.23 to the first quarter of 1999 as shown in its 1999 amended first quarterly VAT return (*Exhibit JJ-1*), the same were deducted as "Any VAT Refund/TCC Claimed (*Exhibit JJ-1-a*) from the "Total available input taxes" of P11,298,395.83 as of March 31, 1999. In short, the resulting excess input taxes of P1,816,484.60 to be carried-over to the succeeding second quarter of 1999 no longer included the claimed 1998 input taxes of P9,481,911.23. It pertained only to the reported input taxes for the first quarter of 1999. In this regard, it appears that petitioner's claimed 1998 input taxes of P9,481,911.23 were not utilized nor applied against any output VAT for the second, third and fourth quarters of 1999 (*Exhibits JJ-11, JJ-28 & JJ-41*).

Finally, petitioner was able to establish compliance with the two-year prescriptive period requirement. As ruled by this Court in a Resolution dated July 20, 1998 in the case of ***Atlas Consolidated Mining and Development Corp. vs. Commissioner of Internal Revenue***, CTA Case No. 5296, the two-year prescriptive period provided under Section 112(A) in relation to Sections to 114(A) and 229 of the Tax Code shall be reckoned from the date of filing of the corresponding quarterly VAT returns. Hence, counting from May 4, 1998, the date when petitioner filed its original 1998 first quarterly VAT return, both the original administrative and judicial claims for

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refund filed on March 13, 2000 and March 28, 2000, respectively, fell within the two-year prescriptive period.

In sum, petitioner complied with all the requirements set forth in claiming for the refund of unutilized input taxes directly attributable to zero-rated sales but only to the extent of P2,658,582.78.

WHEREFORE, in view of all the foregoing, petitioner's claim is hereby **PARTIALLY GRANTED**. Respondent Commissioner of Internal Revenue is **ORDERED to REFUND** or in the alternative, **ISSUE a TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P2,658,582.78 representing unutilized input VAT directly attributable to petitioner's zero-rated sales for the period January 1, 1998 to December 31, 1998.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
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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