

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

ECW JOINT VENTURE, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6509

**COMMISSIONER OF INTERNAL
REVENUE,**
Respondent.

Promulgated:

MAR 01 2004

x -----x

D E C I S I O N

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P15,855,075.64 (*originally in the amount of P16,098,142.00*) allegedly representing unutilized input value-added tax (VAT, for brevity) on domestic purchases of goods and services attributable to zero-rated sales of construction services for the period April 1, 2000 to December 31, 2000.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at RCBC Plaza, Ayala Avenue corner Gil Puyat Avenue, Makati City (*Paragraph 1, Joint Stipulation of Facts, page 41, CTA records; Annex A, Petition for Review, pages 6-11, CTA records*). It is habitually engaged in general construction and was engaged for the construction of RCBC Plaza Building located at Makati City (*Paragraph 3, Joint Stipulation of Facts, page 41, CTA records*).

Petitioner was duly registered with the Bureau of Internal Revenue as a VAT enterprise on September 3, 1997 for which the respondent issued Certificate of Registration

104

DECISION -
CTA CASE NO. 6509
PAGE 2

No. OCN 9RC0000015285 (*Paragraph 4, Joint Stipulation of Facts, page 41, CTA records; Annex B, Petition for Review, page 12, CTA records*).

For the period April 1, 2000 to December 31, 2000, petitioner seasonably filed its Quarterly Value-Added Tax Returns reflecting the following information:

Period 2000	Date Filed	Exh.	Taxable Sales	Output VAT	Carried from Previous Qtr.	Input VAT for the Qtr.	Excess Input VAT
2nd Qtr	07-19-00	A	P220,204,076.00	P22,020,407.00	-	P 47,404,541.00	P25,384,134.00
3rd Qtr	10-24-00	B	557,839,790.00	55,783,979.00	P25,384,135.00	47,388,614.00	16,988,770.00
4th Qtr	01-23-01	C	210,899,830.00	21,089,983.00	16,988,770.00	35,207,548.00	31,106,335.00
Total			<u>P988,943,696.00</u>	<u>P98,894,369.00</u>		<u>P130,000,703.00</u>	

Petitioner alleged that portions of its total taxable sales were paid for in acceptable foreign currency (US Dollars) and were deposited in its US Dollar Account No. 8-000-07558-3 maintained in Rizal Commercial Banking Corporation. Hence, petitioner believes that its foreign currency denominated sales were subject to VAT at zero percent pursuant to Section 108(B)(2) of the Tax Code.

On June 19, 2002, petitioner simultaneously amended its aforementioned 2000 quarterly VAT returns to reflect its zero-rated sales of goods and to allocate the input taxes accumulated for the period as follows:

Period 2000	Exh.	Taxable Sales	Output VAT	Zero-Rated Sales	Input VAT Carried from Previous Qtr.	Input VAT for the Qtr.	Input VAT Carried Over to Succeeding Qtr.	Excess Input VAT
2nd Qtr	E	P196,443,260.00	P 19,644,326.00	P 26,136,880.00	-	P 47,404,541.00	P 25,384,134.00	P 2,376,081.00
3rd Qtr	F	445,837,130.00	44,583,713.00	123,202,920.00	P25,384,134.00	47,388,611.00	16,988,766.00	11,200,266.00
4th Qtr	G	185,681,840.00	18,568,184.00	27,739,760.00	16,988,766.00	35,207,548.00	31,106,335.00	2,521,795.00
-Total		<u>P827,962,230.00</u>	<u>P 82,796,223.00</u>	<u>P177,079,560.00</u>		<u>P130,000,700.00</u>		<u>P16,098,142.00</u>

And on even date, petitioner filed with Revenue District Office No. 50 of the Bureau of Internal Revenue, an administrative claim for refund in the amount of P16,098,142.00

105

representing excess input VAT for the second, third and fourth quarters of the year 2000
(Exhibit H).

On July 19, 2002, petitioner filed the instant Petition for Review in order to toll the running of the two-year prescriptive period under Section 229 of the Tax Code, as amended.

In his Answer, respondent raised the following as Special and Affirmative Defenses:

3. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;

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

5. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit;

6. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended as well as the requirements provided for in Revenue Regulations No. 5-87 as amended by Revenue Regulations No. 3-88 and Revenue Regulations No. 7-95, as amended; and

7. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (**Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95**) and as such, they are looked upon with disfavor (**Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121**).

This case was submitted for decision on November 20, 2003 without the evidence and memorandum of the respondent.

The issues to be resolved by the court were already jointly stipulated by the parties as follows:

(a) Whether or not Petitioner has an unutilized input VAT for the period April 1 to December 31, 2000 in the aggregate amount of P16,098,142;

(b) Whether or not Petitioner's sale of services qualify as zero-rated sales under Section 108(B)(2) of the Tax Code;

106

(c) Whether or not the unutilized input VAT for the period April 1 to December 31, 2000 were carried over and applied against its output tax liability for the succeeding taxable quarters;

(d) Whether or not Petitioner's claim for refund of the unutilized input VAT for the period April 1 to December 31, 2000 VAT are substantiated by documentary evidence; and

(e) Whether or not Petitioner is entitled to the refund in the amount of P16,098,142 as unutilized input VAT for the three quarters from April 1 to December 31, 2000. (*page 42, CTA records*).

We shall resolve first the issue of whether or not petitioner's sales of services qualify as zero-rated sales under Section 108 (B)(2) of the Tax Code.

Petitioner claims that the portion of its sales of services which are paid for in US dollars and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas are subject to VAT at 0%.

We agree. In the earlier case of *ECW Joint Venture, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6398, January 22, 2004*, this court ruled that payments received by petitioner in US dollars arising from its sales of services in the Philippines qualify as zero-rated. This finds legal support in Section 108(B)(2) of the Tax Code which provides:

Section 108. Value-added Tax on Sale of Services and Use or Lease of Properties. - xxx

(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) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(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) (Underlining supplied).

Under paragraph 2 of Section 108(B) of the 1997 Tax Code, sale of services may qualify as zero-rated provided it has complied with the following requisites:

1. The services must be other than processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported;
2. The consideration for the services is paid in acceptable foreign currency; and
3. The payments are accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

Records show that petitioner was able to meet the foregoing requirements. It is engaged in construction business which is not within the sphere of 'processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported.' The consideration for its services is partly paid for in US dollars and the payments thereof were credited to its US Dollar Account No. 8-000-07558-3 maintained in Rizal Commercial Banking Corporation (*Exhibit I, inclusive of submarkings*).

The payments of services in foreign currency were accounted for and detailed as follows:

O.R. No.	Exh.	Date	Amount in US\$	Amount in Pesos	Peso Amount Per Qtr.
1314	P-1	05-07-00	205,668.76	8,226,750.00	
1440	P-2	06-06-00	56,305.90	2,252,236.00	
1441	P-3	06-06-00	391,447.58	15,657,903.00	26,136,889.00
1576	P-4	07-21-00	1,318,404.57	52,736,182.00	
1635	P-5	08-11-00	649,936.27	25,997,450.00	
1690	P-6	08-28-00	911,838.09	36,473,523.00	
1801	P-7	09-28-00	199,894.15	7,995,766.00	123,202,921.00
1907	P-8	10-29-00	398,597.48	15,943,899.00	
1997	P-9	11-29-00	294,897.36	11,795,894.00	27,739,793.00
Total			4,426,990.16	177,079,603.00	177,079,603.00

108

Since petitioner was able to prove its foreign currency denominated sales, it appears to be entitled to the refund of input VAT attributable thereto pursuant to Section 112(A) of the Tax Code, to quote:

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 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.

However, petitioner must still establish its claim for refund by substantial evidence. Upon verification of the amounts declared by petitioner in its amended VAT returns, the court found out that petitioner failed to substantiate its taxable sales in the sum of P827,962,230.00. Petitioner did not present as evidence the VAT official receipts supporting its taxable sales. These documents are necessary for the court to ascertain the correctness of the output VAT liability in the sum of P82,796,223.00 declared by petitioner in its quarterly VAT returns for the second, third and fourth quarters of 2000. It must be stressed that the excess input VAT of petitioner in the sum of P16,098,142.00 was arrived at after it has deducted the total input VAT of P98,894,365.00 (net of input VAT carried over to succeeding quarter) against its output VAT of P82,796,223.00. Thus, it follows that in computing for the amount of excess input VAT, petitioner must also substantiate its taxable sales. These documents will guide

the court in determining the correct amount of output VAT liability to be offset against the verified input VAT. In the absence of the official receipts evidencing the amount of taxable sales, the court cannot compute with accuracy the amount of excess input VAT that may be granted to petitioner. These documents are important in verifying the declaration of taxable sales in the petitioner's quarterly VAT returns for any discrepancy will affect petitioner's claim for refund. To illustrate, an under-declaration of output VAT liability will reduce the excess VAT credit (*Honda Trading Philippines Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6282, August 21, 2003*). Therefore, the VAT official receipts for taxable sales are material documents to support its claim for refund. The failure to submit the same is a fatal defect.

Likewise, we noted that in the amended VAT returns for second, third and fourth quarters of 2000, petitioner failed to deduct the amount sought to be refunded. This violates Section 110(C) of the Tax Code which mandates:

SEC. 110. *Tax Credits.* –

(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 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.

Although the amount to be carried over to succeeding quarter is net of the amount of claim for refund, still the input value-added taxes were not deducted and merely reflected as an overpayment. This creates the impression that petitioner still had the input VAT in its

books of accounts and is available as a credit against its future output VAT liability. The reason for the deduction is to assure that the claimed input VAT shall not be applied against any future output VAT liability (*Sagara Metro Plastics Industrial Corp. vs. Commissioner of Internal Revenue, CTA Case Nos. 6295, 6320 & 6333, October 10, 2003*).

Based on the above findings, we cannot grant petitioner's prayer.

Well-settled is the rule that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption (*Commissioner of Internal Revenue vs. Procter and Gamble Phil. Mfg. Corp., 204 SCRA 377*).

The other issues raised in this case are unnecessary to pass upon based on the above conclusion.

WHEREFORE, in view of the foregoing, petitioner's claim for refund in the reduced amount of P15,855,075.64 is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding 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.

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

112