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# FIRST DIVISION

# [ G.R. No. 182737, March 02, 2016 ]

## SILICON PHILIPPINES, INC. (FORMERLY INTEL PHILIPPINES MANUFACTURING, INC.), PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

## DECISION

**SERENO, C.J.:**

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Court of Tax Appeals (CTA) En Banc Decision[1] dated 18 January 2008 and Resolution[2] dated 30 April 2008 in CTA EB No. 298.

The CTA En Banc affirmed the CTA Second Division Decision[3] dated 5 February 2007 and Resolution[4] dated 29 June 2007 in CTA Case Nos. 6741, 6800 & 6841. That Decision denied the claim for tax refund or issuance of tax credit certificates corresponding to petitioner's excess/unutilized input value-added tax (VAT) for the 2nd, 3rd and 4th quarters of taxable year 2001. The CTA En Banc Resolution denied petitioner's motion for reconsideration.

### FACTS

Petitioner is a corporation engaged in the business of designing, developing, manufacturing and exporting integrated circuit components.[5] It is a preferred pioneer enterprise registered with the Board of Investments.[6] It is likewise registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer by virtue of its sale of goods and services[7] with a permit to print accounting documents like sales invoices and official receipts.[8]

On 24 July 2001, petitioner filed its 2nd Quarter VAT Return reporting the amount of P765,696,325.68 as its zero-rated sales.[9]

Its 3rd Quarter VAT Return filed on 23 October 2001 indicated zero-rated sales in the amount of P571,812,011.26.[10] This amount was increased to P678,418,432.83 in the Amended 3rd Quarter VAT Return filed on 29 October 2001.[11]

The 4th Quarter VAT Return filed on 15 January 2002 reported zero-rated sales in the amount of P1,000,052,659.89.[12] This amount remained unchanged in the Amended 4th Quarter VAT Return filed on 22 May 2002.[13]

Petitioner sought to recover the VAT it paid on imported capital goods for the 2nd quarter of 2001. On 16 October 2001, it filed with the One-Stop Shop Inter-Agency

Tax Credit and Duty Drawback Center, Department of Finance, an application for a tax credit/refund in the amount of P9,038,279.56.[14]

On 4 September 2002, petitioner also filed for a tax credit/refund of the VAT it had paid on imported capital goods for the 3rd and 4th quarters of 2001 in the amounts of P1,420,813.04[15] and P14,582,023.62,[16] respectively.

Because of the continuous inaction by respondent on the administrative claims of petitioner for a tax credit/refund in the total amount of P25,041,116.22,[17] the latter filed separate petitions for review before the CTA.

CTA Case No. 6741 filed on 30 July 2003 sought to recover P9,038,279.56 for the 2nd quarter of 2001;[18] CTA Case No. 6800 filed on 20 October 2003, the amount of P1,420,813.04 for the 3rd quarter of 2001;[19] and CTA Case No. 6841 filed on 30 December 2003, P14,582,023.62 for the 4th quarter of 2001.[20]

The three cases were consolidated by the CTA Second Division in a Resolution dated 20 February 2004.[21] Trial on the merits ensued, and the case was submitted for decision on 23 August 2007.[22]

**RULING OF THE CTA SECOND DIVISION**

In a Decision[23] dated 5 February 2007, the CTA Second Division dismissed the petitions for lack of merit.

It ruled that pursuant to Section 112 of the National Internal Revenue Code (NIRC), the refund/tax credit of unutilized input VAT is allowed (a) when the excess input VAT is attributable to zero-rated or effectively zero-rated sales; and (b) when the excess input VAT is attributable to capital goods purchased by a VAT-registered person.[24]

In order to prove zero-rated export sales,[25] a VAT-registered person must present the following: (1) the sales invoice as proof of the sale of goods; (2) the export declaration or bill of lading/airway bill as proof of actual shipment of the goods from the Philippines to a foreign country; and (3) bank credit advice or certificate of remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.[26]

The CTA Second Division found that petitioner presented nothing more than a certificate of inward remittances for the entire year 2001, in compliance with the third requirement only.[27] That being the case, petitioner's reported export sales in the total amount of P2,444,167,418.40[28] cannot qualify as VAT zero-rated sales.[29]

On the other hand, a taxpayer claiming a refund/tax credit of input VAT paid on purchased capital goods must prove all of the following: (1) that it is a VAT-registered entity; (2) that it paid input VAT on capital goods purchased; (3) that its input VAT payments on capital goods were duly supported by VAT invoices or official receipts; (4) that it did not offset or apply the claimed input VAT payments on

capital goods against any output VAT liability; and (5) that the administrative and judicial claims for a refund were filed within the two-year prescriptive period.[30]

The CTA Second Division found that petitioner was able to prove the first and the fifth requisites for the pertinent quarters of the year 2001.[31]

However, petitioner was not able to prove the fourth requisite with regard to the claimed input VAT payments for the 3rd and the 4th quarters of 2001. The evidence purportedly showing that it had not offset or applied the claimed input VAT payment against any output VAT liability was denied admission as evidence for being a mere photocopy.[32]

Petitioner also failed to prove the second and the third requisite with regard to the claimed input VAT payment for the 2nd quarter of 2001. Specifically, it failed to prove that the purchases were capital goods.[33]

For purchases to fall under the definition of capital goods or properties, the following conditions must be present: (1) the goods or properties have an estimated useful life of more than one year; (2) they are treated as depreciable assets under Section 29(f) of Revenue Regulations No. 7-95; and (3) they are used directly or indirectly in the production or sale of taxable goods or services.[34]

The CTA Second Division perused the Summary List of Importations on Capital Goods for the 2nd quarter of 2001 presented by petitioner and found items therein that could not be considered as depreciable assets.[35] As to the rest of the items, petitioner failed to present the detailed general ledgers and audited financial statements to show that those goods were capitalized in the books of accounts and subjected to depreciation.[36]

Petitioner filed a Motion for Reconsideration, which was denied in the Resolution dated 29 June 2007.[37] It then filed before the CTA En Banc a petition for review challenging the CTA Second Division Decision and Resolution.

**RULING OF THE CTA EN BANC**

The CTA En Banc issued the assailed Decision[38] dated 18 January 2008 dismissing the petition for lack of merit.

It affirmed the finding of the CTA Second Division that petitioner had failed to prove its capital goods purchases for the 2nd quarter of the year 2001.[39] The CTA En Banc emphasized the evidentiary nature of a claim that a VAT-registered person made capital goods purchases.[40] It is necessary to ascertain the treatment of the purported capital goods as depreciable assets, which can only be determined through the examination of the detailed general ledgers and audited financial statements, including the person's income tax return.[41] In view of petitioner's lack of evidence on this point, the claim for the refund or the issuance of tax credit certificates must be denied.

Petitioner's Motion for Reconsideration was denied in the challenged Resolution

dated 30 April 2008.[42]

**Issues**

Petitioner now comes before us raising the following issues for our consideration:

I.

> [WHETHER] THE COURT OF TAX APPEALS ERRED IN DENYING [PETITIONER'S] CLAIM FOR REFUND OF ITS EXCESS / UNUTILIZED INPUT VAT DERIVED FROM IMPORTATION OF CAPITAL GOODS DUE TO ITS FAILURE TO PROVE THE EXISTENCE OF ZERO-RATED EXPORT SALES.

II.

> [WHETHER] THE COURT OF TAX APPEALS ERRED IN FINDING THAT [PETITIONER] FAILED TO COMPLY WITH THE REQUIREMENTS OF A VALID CLAIM FOR REFUND / TAX CREDIT OF INPUT VAT PAID ON ITS IMPORTATION OF CAPITAL GOODS.

III.

> [WHETHER] THE COURT OF TAX APPEALS ERRED IN RULING THAT [PETITIONER] FAILED TO PROVE THAT THE GOODS IMPORTED ARE CAPITAL GOODS

IV.

> [WHETHER] THE INPUT VAT ON THE ALLEGED NON-CAPITAL GOODS ARE STILL REFUNDABLE BECAUSE THEY ARE ATTRIBUTABLE TO THE ZERO RATED SALES OF [PETITIONER, A 100% EXPORT ENTERPRISE][43]

In the Resolution dated 30 July 2008,[44] we required respondent to comment on the petition. The Comment dated 21 January 2009[45] was filed by the Office of the Solicitor General as counsel.

**OUR RULING**

The applicable provision of the NIRC, as amended, is Section 112,[46] which provides:

> 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.

(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.**

(C) *Cancellation of VAT Registration*. — A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes.

(D) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. — **In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with [Subsections] (A) [and (B)] hereof.

**In case of** full or partial denial of the claim for tax refund or tax credit, or the **failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals**.

(E) *Manner of Giving Refund*. — Refunds shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being countersigned by the Chairman, Commission on Audit, the provisions of the Administrative Code of 1987 to the contrary notwithstanding: Provided, That refunds under this paragraph shall be subject to post audit by the Commission on Audit. (Emphases supplied)

Under the foregoing provision, the administrative claim of a VAT-registered person for the issuance by respondent of tax credit certificates or the refund of input taxes paid on zero-rated sales or capital goods imported may be made within two years after the close of the taxable quarter when the sale or importation/purchase was made.