Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

INTEL PHILIPPINES MANUFACTURING INC., Petitioner,	**C.T.A. E.B. NO. 23** (C.T.A. Case No. 6212)
	Presents:
- versus -	**Acosta**, *P.J.*, **Castañeda, Jr.**, **Bautista**, **Uy**, **Casanova**, and **Palanca-Enriquez**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 30 2005

x - x

DECISION

***UY, J.*:**

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed on September 20, 2004 under Republic Act No. 9282, seeking for the reversal of the Decision and subsequent Resolution rendered by the then Court of Tax Appeals, which under R.A. No. 9282, is now a Division of the current Court of Tax Appeals, in C.T.A. Case No. 6212, of the same title, to wit:

178

1. Decision of the Original Division promulgated on November 18, 2003 partially granting petitioner's claim for refund in the amount of P31,902,507.50 and accordingly Ordered respondent to issue a Tax Credit Certificate in the amount of P9,898,867.00 representing input VAT on importation of capital goods; and

2. Resolution promulgated on August 10, 2004 denying petitioner's Motion for Reconsideration of the aforementioned Decision.

The undisputed facts as culled from the records of the case are briefly narrated as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with business address at 1321 Apolinario Street, Bangkal, Makati City, Metro Manila. It is primarily engaged in the business of designing, developing, manufacturing and exporting advance and large scale integrated circuit components, commonly referred to in the industry as Integrated Circuits or "ICs". Petitioner is likewise registered as a Value-Added Tax taxpayer, as evidenced by its Certificate of Registration No. RDO Control No. 94-048-02621 issued on July 6, 1994.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue vested with the authority to act as such, including the power to decide, approve and grant refunds and/or tax credits of excess value-added tax input payments with office address at BIR National Office Building, Diliman, Quezon City.

On December 27, 2000, petitioner instituted a Petition for Review seeking for the issuance of a tax credit certificate in the amount of P31,902,507.50

179

allegedly representing unutilized input value-added tax on its domestic purchases of goods and services attributable to zero-rated sales as well as on its importation of capital goods for the period covering October 31, 1998 to December 31, 1998.

In a Decision rendered on November 18, 2003, this Court only partially granted petitioner's claim for refund representing input VAT on importation of capital goods but denied its claim for refund of input VAT attributable to petitioner's alleged zero-rated sales. The dispositive portion of said Decision reads as follows:

> "**WHEREFORE**, in view of the foregoing the instant petition is **PARTIALLY GRANTED**. Respondent is **ORDERED to ISSUE A TAX CERTIFICATE** in favor of petitioner in the reduced amount of P9,898,867.00 representing input VAT on importation of capital goods. However, the claim for refund of input VAT attributable to petitioner's alleged zero-rated sales in the amount of P16,732,425.50 is hereby **DENIED** for lack of merit."

The bulk of the denial of the claim for refund was based on the following grounds:

1. Failure of petitioner to comply with the invoicing requirements as mandated in Section 113 of the 1997 National Internal Revenue Code in relation to Section 237 of the same Code.

2. Failure of petitioner to comply with the basic requirement of reflecting on its sales/export invoices the Bureau of Internal Revenue's authority to print permit number, which is in violation of Section 238 of the 1997 National Internal Revenue Code.

(180)

3. Its computer generated sales invoices failed to meet the required format as authorized by the Bureau of Internal Revenue.

4. Failure of petitioner to comply with the requirements under Section 4.108-1 of Revenue Regulations No. 7-95.

5. Misclassification of certain amounts as capital goods.

On December 10, 2003, the parties filed their respective Motions for Reconsideration, both seeking for the modification of this Court's Decision of November 18, 2003.

In a Resolution promulgated on August 10, 2004, this Court denied both motions, with the dispositive portion thereof quoted hereunder:

> *"ACCORDINGLY, the Motion for Reconsideration and the Supplemental Motion for Reconsideration filed by petitioner as well as the Motion for Partial Reconsideration of respondent are hereby* ***DENIED*** *for lack of merit. The pronouncement in the assailed Decision is* ***REITERATED.****"*

Hence, this Petition for Review *En Banc* filed on September 20, 2004.

In this instant petition, petitioner submits the following assignments of errors:

1. Respondent First Division of the CTA erred in partially denying petitioner's claim due to the absence of the BIR's Permit to Print on its Export Invoices;

2. Respondent First Division of the CTA erred in denying certain sales invoices presented and formally offered by the petitioner due to the absence of the imprinted word "zero-rated" thereon;

3. Respondent First Division of the CTA erred in finding that the petitioner failed to comply with the substantiation requirements provided by law in proving its claim for refund;

4. Respondent First Division of the CTA erred in reducing the amount of petitioner's tax credit for input vat on importation of capital goods; and

5. Respondent First Division of the CTA erred in denying petitioner's claim for refund or input vat attributable to petitioner's zero-rated sales.

This Court notes that petitioner raised the same issues which have already been thoroughly discussed in the assailed Decision, as well as, in the Resolution denying petitioner's Motion for Partial Reconsideration.

With regard to the first assigned error, this Court reiterates that, the requirement of imprinting the BIR permit to print on the face of the sales invoices and official receipts is a control mechanism adopted by the Bureau of Internal Revenue to safeguard the interest of the government.

This requirement is clearly mandated under Section 238 of the 1997 National Internal Revenue Code, which provides that:

> SEC. 238. *Printing of Receipts or Sales or Commercial Invoice.* – All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

The above mentioned provision seeks to eliminate the use of unregistered and double or multiple sets of receipts by striking at the very root of the problem – the printer *(H. S. de Leon, The National Internal Revenue Code Annotated, 7th Ed., p. 901).* And what better way to prove that the required permit to print was secured from the Bureau of Internal Revenue than to show or print the same on the face of the invoices. There can be no other valid proof of compliance with

182

the above provision than to show the Authority to Print Permit number imprinted on the sales invoices and official receipts.

With regard to petitioner's failure to print the word "zero-rated" on the face of its export sales invoices, it must be emphasized that Section 4.108-1 of Revenue Regulations No. 7-95 specifically requires that all value-added tax registered persons shall, for every sale or lease of goods or properties or services, issue duly registered invoices which must show the word "zero-rated" imprinted on the invoices covering zero-rated sales.

It is not enough that petitioner prove that it is entitled to its claim for refund by way of substantial evidence. Well settled in our jurisprudence that tax refunds are in the nature of tax exemptions and as such, they are regarded as in derogation of sovereign authority *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95).* Thus, tax refunds are construed in *strictissimi juris* against the person or entity claiming the same *(Commissioner of Internal Revenue vs. Procter & Gamble Philippines Manufacturing Corporation, 204 SCRA 377; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332).*

In this case, not only should petitioner establish that it is entitled to the claim but it must most importantly show proof of compliance with the substantiation requirements as mandated by law or regulations.

The rest of the assigned errors pertain to the alleged errors of the First Division: in finding that the petitioner failed to comply with the substantiation

183

requirements provided by law in proving its claim for refund; in reducing the amount of petitioner's tax credit for input vat on importation of capital goods; and in denying petitioner's claim for refund of input vat attributable to petitioner's zero-rated sales.

It is petitioner's contention that it has clearly established its right to the tax credit or refund by way of substantial evidence in the form of material and documentary evidence and it would be improper to set aside with haste the claimed input VAT on capital goods expended for training materials, office supplies, posters, banners, t-shirts, books and the like because Revenue Regulations No. 7-95 defines capital goods as to include even those goods which are indirectly used in the production or sale of taxable goods or services.

Capital goods or properties, as defined under Section 4.106-1(b) of Revenue Regulations No. 7-95, refer "to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29 (f), used directly or indirectly in the production or sale of taxable goods or services."

Considering that the items (training materials, office supplies, posters, banners, t-shirts, books and the like) purchased by petitioner as reflected in the summary were not duly proven to have been used, directly or indirectly in the production or sale of taxable goods or services, the same cannot be considered as capital goods as defined above, the same may not be then claimed as such.

(164)

WHEREFORE, in view of the foregoing, this instant Petition for Review is hereby **DENIED DUE COURSE** and hereby **DISMISSED** for lack of merit. This Court's Decision of November 18, 2003 and Resolution of August 10, 2004 are hereby **AFFIRMED** in all respects.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(See Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

(See Separate Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice

185

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY
En Banc

INTEL PHILIPPINES MANUFACTURING, INC., *Petitioner,*	**C.T.A. EB No. 23** **(C.T.A. Case No. 6212)**
	Present:
-versus-	**Acosta, *P.J.*** **Castañeda, Jr.,** **Bautista,** **Uy,** **Casanova, and** **Palanca-Enriquez, *JJ*.**
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 30 2005

x--x

Concurring and Dissenting Opinion

I concur with the majority opinion that petitioner is entitled to an input VAT refund paid on capital goods in the reduced amount of P9,899,867 for reasons stated in the original decision of the Interim Court. However, I humbly express my disagreement with the position of the majority concerning the view that petitioner's failure to reflect on its sales invoices its BIR authority to print and/or the word "zero-rated" will automatically make the same invalid, incompetent and irrelevant and the consequent denial by the Court *En Banc* of petitioner's claim for refund representing its unutilized creditable input VAT attributable to its zero-rated transactions, which was also previously denied by this Court's Interim Division per Decision dated November 18, 2003 and Resolution dated August 10, 2004.

(186)

At this juncture, I deem it proper to quote the pertinent provisions of the 1997 Tax Code, namely, Section 113 in relation to Section 237, to wit:

> "**Section 113. Invoicing and Accounting Requirements for VAT registered persons – (A) Invoicing Requirements** – A VAT-registered person, shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
>
> 1. A statement that the seller is a VAT-registered person followed by his taxpayer's identification number (TIN); and
>
> 2. The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.
>
> xxx
>
> "**Section 237. Issuance of Receipts or Sales of Commercial Invoices.** – All persons subject to an internal revenue tax shall, for each sale, or transfer of merchandise or for services rendered valued at Twenty five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service; Provided however, That in case of sales, receipts or transfers in the amount of One Hundred Pesos (P100.00) or more, regardless of amount where the sale or transfer is made by a person liable to value added tax to another person also liable to value added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations, or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser; customer or client: Provided further, That where the purchaser is a VAT registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer's Identification Number (TIN) of the purchaser. xxx".

Based on the afore-quoted provisions, the information required to be indicated in an invoice or official receipt are as follows:

(1) A statement that the seller is a VAT-registered person;
(2) The taxpayers identification number (TIN);
(3) The total amount which the purchaser pays or is obligated to pay to the seller indicating the inclusion of the value-added tax;
(4) Transaction date;
(5) Quantity of merchandise;
(6) Description of merchandise or nature of service;

(7) Unit cost;
(8) The name, business style, if any, and address of the purchaser, customer or client in the case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees; and
(9) The TIN of the VAT-registered purchaser.

Unmistakably, the petitioner's authority to print and the word "zero-rated" are not among the information needed to appear on its sales invoice or official receipt as a condition for claiming refund of input VAT paid.

This view has been strengthened by the recent pronouncement of the Honorable High Tribunal in the case of **Commissioner of Internal Revenue vs. Seagate Technology (Philippines)**, *G.R. No. 153866, February 11, 2005*, where the Supreme Court emphasized the need to focus only on the legally mandated requirements for claims for VAT refund and explained that, *A VAT-registered status, as well as compliance with the invoicing requirements (Section 113 (A) of the Tax Code), is sufficient for the effective zero rating of the transactions of a taxpayer. The nature of its business and transactions can easily be perused from, as already clearly indicated in, its VAT registration papers and photocopied documents attached thereto. xxx. Administrative convenience cannot thwart legislative mandate.*

Section 112 (A) of the Tax Code likewise lends statutory support to this opinion, which states, thus:

> "(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)

188

> 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."

Based on the foregoing, the undersigned humbly repeats that contrary to the decision of the Interim Division and the Court *En Banc*, the petitioner did not violate any of the said provisions of law or regulations since none of the same requires the petitioner to indicate the BIR Authority to Print or the word "zero-rated" in its invoices.

Assuming *arguendo* that there was a violation of the supposed requirements to indicate the Authority to Print/BIR permit number or the term "zero-rated", such omissions do not automatically invalidate the invoices for purposes of proving the fact of the transactions. The invoices are still material, relevant and competent. It must be pointed out that "admissibility" refers to the question of whether or not the evidence is to be considered at all, while "competency" refers to whether or not the evidence is expressly excluded by law or the rules.

A denial of petitioner's claim for tax refund on the ground that there was no indication of the BIR Permit to Print and/or the word "zero-rated" in its invoices is a penalty too harsh to be even considered by this Court. The absence of the authority to print, if at all, makes the petitioner only liable for penalties under the Tax Code, particularly, Section 264.

The Revenue Bureau made a corroborative finding in **BIR Ruling DA-375-03** which states thus:

189

> "xxx The fact that the official receipts issued by DITFI do not bear the information that DITFI is a VAT-registered taxpayer as required under Section 4.108-1 of Rev. Regs. No. 7-95, **does not *motu propio* invalidate the claim for input tax credit** of Stanfilco xxx.
>
> "Finally, **the Revenue District Officer (RDO) concerned is hereby ordered to impose the corresponding penalty against DITFI as prescribed in Revenue Memorandum Order No. 56-2000, in relation to Section 264 of the Tax Code of 1997, for failure to issue the prescribed receipts."** *(Emphasis supplied)*

It must be pointed out that invalidation of the sales invoice and automatic denial of the refund claim are not among the prescribed penalties.

The majority opinion manifests that this court placed too much importance on the sales invoice which are not accurate confirmations that goods were actually shipped out of the country (**CIR vs. Philippine Bobbin Corporation,** *C.A.G.R. SP No. 59452, February 19, 2001*). It is merely a written account of the particulars of merchandise shipped or sent to a purchaser or consignee with the value or prices and charges annexed (**Philippine Law Dictionary**, *3rd Ed., p. 495*). The export sales invoices alone are insufficient evidence that the subject goods were actually exported.

It worth emphasizing that the applicable statutes rather than limiting the documentary requirements to just the export invoices, recognize and specifically instruct the production of "export documents" to prove the fact of export sales. In commercial practice, export documents include commercial invoices or receipts, bills of lading, airway bills and export declarations or permits. These documents, taken collectively are the best means to prove the exportation of goods.

The CTA has rendered decisions supporting this view. In the case of **Nichimen Corporation (Manila Branch) vs. CIR**, *CTA Case No. 5746 dated January 4, 2001*, this court resolved to accept bank credit advices to prove the claimant's zero-rated sales without requiring the production of official receipts.

Similarly, in **Nichimen Corporation (Manila Branch) vs. CIR,** *CTA Case No. 5221 dated January 8, 1998*, in support of the petitioner's claim that its sales were zero-rated, it only submitted the statements from RCBC to the effect that the acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations. Although the respondent objected to the refund claim for alleged failure to submit substantial proof that the sales were really zero-rated, this court still held that, "Respondent's demand for additional requirements is unnecessary considering that the documentary and testimonial evidence adduced by the petitioner are uncontroverted. The same evidence has clearly substantiated petitioner's claim to the satisfaction of the Court."

In the above-cited case of Nichimen Corporation, the petitioner therein completely failed to submit copies of its VAT invoices to support its claim for refund. Despite such omission, this court nonetheless held that other proofs or evidence might still be presented as a replacement for said VAT invoices. The aforementioned CTA decisions reinforce the contention that the court is willing to accept other proofs or evidence in lieu of VAT invoices to establish the existence of zero-rated transactions.

Revenue Memorandum Circular No. 42-03 dated July 15, 2003, is quoted hereunder inasmuch as it acknowledges the evidentiary importance of other export-oriented documents such as audited financial statement, books of accounts, export invoices, bills of lading or airway bills. The relevant portion states that:

> "**If the taxpayer did not reflect zero-rated sales in the VAT returns but it is claiming for tax credit or refund based on zero-rated sales, the Revenue Officer should mandatorily establish the existence of zero-rated sales from the audited financial statements, books of accounts, export invoices, bills of lading or airway bills and by comparing the reported sales against output tax reflected in the VAT return.** When zero-rated sales have been determined despite the fact that specific amounts were not categorically reflected in the

191

> VAT return, the claim may be processed upon sufficient proof of its existence xxx." *(Emphasis supplied)*

In the case before Us, the petitioner has established its right to the tax refund through its formally offered material and documentary exhibits such as sales invoices, official receipts, export declarations, airway bills and bank certification of inward remittance to petitioner of the proceeds from export sales which proves that petitioner's products were actually exported. Accordingly, having proven the actual shipment or export of its products abroad and the petitioner, being a VAT-registered entity, it is subject to VAT at the rate of zero percent (0%).

The court should be reminded of the basic principle that when the statute is clear and explicit, there is no need for any extended court ratiocination on the law - there is no room for interpretation, vacillation or equivocation, only application (**Caguioa vs. Laviña,** *345 SCRA 49*). After all, the function of all judicial instrumentalities is to apply the law as they find it, not to reinvent or second-guess it (**Del Mar vs. Philippine Amusement and Gaming Corporation,** *358 SCRA 768*). *Maledicta expositio quo corrupti textum.* It is dangerous construction which is against the text of the statute. To determine otherwise will amount to inappropriate judicial interpretation.

Consequently, there should be no distinction as to the evidentiary value of an invoice, an official receipt and other documentary evidence to prove the fact of export sales. After all, these laws and regulations made no pronouncement as to the use only of a VAT invoice to the exclusion of all other equally relevant and competent evidence. The elementary rule in statutory construction is that where the law does not distinguish, the courts should make no distinction. *Ubi lex non distinguit nec nos*

192

distinguire debemos (**Mendoza, et. al. vs. COMELEC, et. al.**, *G. R. No. 149736, December 17, 2002).*

While the Court is aware that taxes are the lifeblood of the government, it is equally sensitive of its responsibility to employ by the principles of justice, equity and fairness as its guidepost in its important tasks of weighing the evidence and of deciding cases. Accordingly, the petitioner is entitled to the full refund.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

INTEL PHILIPPINES MANUFACTURING INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 23
(C.T.A. Case No. 6212)

Promulgated:

SEP 30 2005 [signature]

x -x

SEPARATE CONCURRING OPINION

I concur with the majority opinion that petitioner's failure to comply with the invoicing requirements set forth under Section 113 of the 1997 National Internal Revenue Code in relation to Section 237 of the same Code and Revenue Regulations No. 7-95 warrants the denial of the present appeal. In addition, I would like to discuss a few points pertaining to the substantiation requirements of claims for refund or issuance of tax credit certificate of unutilized input VAT.

In ***ATLAS CONSOLIDATED MINING & DEVELOPMENT CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE,***

194

G.R. No. 134467, November 17, 1999, the Supreme Court discussed the invoicing requirements for VAT-registered persons.

The Supreme Court ruled that "[i]t is clear that a **VAT invoice** can be used only for the sale of goods or services that are subject to VAT". This means that the issuance of VAT invoices or official receipts are mandatory for sales that are subject to VAT either at 10% or 0% (zero-rated sales). The Supreme Court likewise expressed that "it is the duty of the seller to comply with the invoicing and accounting requirements laid down in, among others, Section 108 of the Tax Code". A clear recognition that there are other sources of VAT invoicing and accounting requirements aside from Section 108 of the Tax Code (now Sec. 113 of the NIRC of 1997), such as implementing rules and regulations issued by the administrative agencies of the government which shall also be strictly complied with, *i.e.* Revenue Regulations. As held by the Supreme Court in the above-cited case:

> "A careful perusal of the violations specifically listed down in Sections 111 and 263 of the Tax Code shows that they do not encompass all possible types of violations of Section 108. Certainly, there are other ways of noncompliance with the requirements the latter has laid down, and these too must have their corresponding consequences. Section 21 of the Revenue Regulation 5-87 is not invalid, as it simply prescribes the penalty for failure to comply with the accounting and invoicing requirements laid down in Section 108, a penalty similar to that found in Sections 111 and 263. In short, Section 108 provides the guidelines and necessary requirements for VAT invoices; Sections 111 and 263 of the Tax Code provide penalties for different types of violations of Section 108; and Section 21 of Revenue Regulation 5-87 specifies the penalty for a specific violation of Section 108."

195

In the case before Us, the then Court of Tax Appeals found that all of petitioner's export sales invoices "were not duly registered with the Bureau of Internal Revenue as mandated under Section 237 of the Tax Code *(Exhibits FF-1 to FF-1037).* There was no authority to print or BIR Permit number reflected on the said invoices" *(Decision, C.T.A. Case No. 6212, November 18, 2003, p. 7).*

Applying the ruling in the afore-cited ***Atlas*** *case*, it is clear that petitioner failed to comply with the mandatory invoicing requirements pursuant to Section 113 in relation to Sections 237 and 238 of the 1997 NIRC. Consequently, petitioner's sales invoices cannot qualify as VAT invoices because "only registered receipts or sales or commercial invoices are considered as VAT invoices" *(INTEL TECHNOLOGY PHILIPPINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE, CA-G.R. SP No. 79327, AUGUST 12, 2004).*

The failure of the petitioner to register its sales invoices coupled with the absence the Authority/Permit to Print number on the face of the sales invoices is fatal to petitioner's claim for the issuance of tax credit certificate because Section 113 in relation to Section 237 requires that the VAT invoices shall be duly registered with the Bureau of Internal Revenue. Section 237, quoted hereunder, reads:

196

> "**SEC. 237**. **Issuance of receipts or sales or commercial invoices**. - All persons subject to internal revenue tax **shall**, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, **issue duly registered** receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service; *provided, however*, xxx xxx xxx". (Emphasis supplied)

In addition to the foregoing, Section 238 of the 1997 NIRC requires that all persons who are engaged in business **shall** secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same. Sections 237 and 238, which are both mandatory, are implemented by Revenue Regulations No. 2-78 entitled "Printing of Receipts or Sales or Commercial Invoices". Section 3 of Revenue Regulations No. 2-78 (as amended), in part, provides:

> **Section 3. Prior approval and registration of books of accounts, registers, records, invoices and receipts.** – Section 19 of Revenue Regulations V-1, as amended, shall read as follows:
>
> Section 19. Authentication and registration of book, register of record; authority to print receipts, sales or commercial invoices; and registration and stamping of receipts and invoices.
>
> xxx xxx xxx
>
> c. Authority to print receipts, sales or commercial invoices. – xxx xxx xxx
>
> 3. Other requirements. –
>
> 1. Every copy of invoice or receipt approved for printing under these regulations **shall bear on the original and every copy thereof** on its lower left hand corner the name, business address and **authority number** of the printer.

197

d. Registration and stamping of receipts and invoices – Before being used**, the printed receipts, sales or commercial invoices shall be registered with the Revenue District Officer** where the principal place of business of the taxpayer is located within thirty (30) days from the date of the invoice issued by the printer. The registration of the printed receipts or invoices shall be evidenced by an appropriate stamp on the face of the taxpayer's copy of the authority to print as well as on the front cover, on the back of the middle page and on the back of the last invoice or receipt of the registered booklet or pad, authenticated by the signature of the officer authorized to place the stamp thereon. (Emphasis supplied)

The imprinting of the authority/permit to print on the invoices assures the public that the invoice documenting the transaction bears the imprimatur of the government. For its part, the government is assured of, at the very least, compliance with the invoicing requirements of the 1997 NIRC.

The fact that petitioner was granted permission to use computerized sales invoices and official receipts from August 31, 2001 is not material because the period involved in the present appeal pertains to October 31, 1998 up to December 31, 1998 only. The sales invoices in question were issued long before the authority to issue computerized sales invoices was granted. Be that as it may, the Approval of the Permit to Use Computerized Accounting Documents such as Sales Invoice and Official Receipt requires the petitioner "to have the BIR Permit Number imprinted in the header of the document" *(RESOLUTION, C.T.A. Case No. 6212, August 10, 2004, p. 4).*

198

The then Court of Tax Appeals "also noted that the sales invoices failed to indicate the word zero-rated for transactions covering zero-rated export sales" as required by Revenue Regulations No. 7-95. It should be noted that Revenue Regulations No. 7-95 otherwise known as "The Consolidated Value-Added Tax Regulations", was promulgated by the Secretary of Finance pursuant to the authority granted by Section 245 of the National Internal Revenue Code of 1977.

> SEC. 245. ***Authority of Secretary of Finance to promulgate Rules and Regulations***. – The Secretary of Finance, upon the recommendation of the Commissioner, shall promulgate **all needful rules and regulations** for the effective enforcement of the provisions of this Code.

The above provision was re-enacted *in toto* under Section 244 of the 1997 NIRC. To further strengthen the rule making power of the Secretary of Finance in coordination with the Bureau of Internal Revenue, an additional section (SEC. 245) was incorporated defining the extent of such rule making power. Section 245, in pertinent part, provides:

> SEC. 245. **Specific provisions to be contained in rules and regulations.** – The rules and regulations of the Bureau of Internal Revenue shall, among others things, contain provisions specifying, prescribing or defining:
>
> xxx xxx xxx
>
> (g) The manner in which revenue shall be collected and paid, the instrument, document or object to which revenue stamps shall be affixed, the mode of cancellation of the same, **the manner in which the** proper books, records, **invoices** and other papers **shall be kept and *entries therein made*** by the person subject to the tax, as well

199

> as the manner in which licenses and stamps shall be gathered up and returned after serving their purposes; (Emphasis/italics supplied)

Considering the legislative grant of authority to the Secretary of Finance to promulgate all needful rules and regulations for the effective enforcement of the provisions of the NIRC, Section 4.108-1 of RR 7-95 requiring the imprinting of the words "zero-rated" on sales invoices or official receipts cannot be said as having no valid basis. On the contrary, it is both reasonable and necessary for the effective implementation of the provisions of the NIRC concerning zero-rated sales. Moreover, the requirement cannot be taken as an enlargement or expansion of the law for the reason that it merely implements the provisions on zero-rated sales vis-à-vis VAT taxable and exempt sales. The imprinting of "zero-rated" is necessary to distinguish sales subject to 10% VAT, exempt, and those that are zero-rated. The distinction is necessary to enable the Bureau of Internal Revenue to properly implement and enforce the other provisions of the 1997 NIRC on VAT, namely:

1. Zero-rated sales [Sec. 106 (A) 2 and Sec. 108 (B)];
2. Exempt transactions [Sec. 109] in relation to Sec. 112 (A);
3. Tax credits [Sec. 110]; and
4. Refunds or tax credits of input tax [Sec. 112].

The rule is that as long as the administrative regulation is not in conflict with the law it seeks to implement, the same should be taken as

2n

part of the law taking into consideration the underlying purpose of the rule or regulation. In ***Nestle Philippines, Inc. vs. Court of Appeals, G.R. No. 86738, November 13, 1991 (203 SCRA 511)***, it was held that the construction given to a statute by an administrative agency charged with the interpretation and application of that statute is entitled to great respect and should be accorded great weight by the courts. The Supreme Court explained this policy in the following manner:

> The courts give much weight to contemporaneous construction because of the respect due the government agency or officials charged with the implementation of the law, their competence, expertness, experience and informed judgment, and ***the fact that they frequently are the drafters of the law they interpret***. (Emphasis/italics Supplied)

In a more recent decision, the Supreme Court held that regulations issued by the Department of Finance/Bureau of Internal Revenue that would give effect to the law are valid regulations, thus:

> Petitioner's arguments impugning the validity of Revenue Regulations V-39 and 17-67 deserve scant consideration. First, both regulations were issued pursuant to Section 245 (now Section 244) of the Tax Code. **The authority of the Secretary of Finance, in conjunction with the Commissioner of Internal Revenue, to promulgate needful rules and regulations for the effective enforcement of internal revenue laws cannot be controverted.** Such rules and regulations, as well as administrative opinions and rulings, ordinarily deserve to be given weight and respect by the courts. Second, our scrutiny of Revenue Regulations Nos. V-39 and 17-67 show that said regulations did not modify or deviate from the text of Sections 137 and 141 but merely implemented and clarified said two provisions by providing certain conditions under which stemmed leaf tobacco may be exempted from prepayment of specific tax. (Emphasis supplied; *citations omitted)* ***(Compania***

201

General de Tabacos de Filipinas vs. Citibank, N. A. , et al., G.R. No. 147361, March 23, 2004)

The requirement of imprinting the word "zero-rated" fulfills the intent of the law not only with respect to the proper implementation of the provisions of the NIRC on zero-rated transactions but more importantly, to prevent the granting of refund or tax credit of non-existent input VAT. In a recent case entitled ***J.R.A. PHILIPPINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE, CTA CASE NO. 6454, June 30, 2005***, the Second Division of this Court explained the rationale behind the requirement of imprinting the word "zero-rated" on sales invoices/official receipts, as follows:

> Furthermore, *Section 110 of the NIRC of 1997, as amended*, provides that: "Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: x x x." **If the invoice or official receipt was not imprinted with "zero-rated", there is a danger that the purchaser of the goods or services may be able to claim input tax on the sale to it by the taxpayer of the goods or services, as the case may be, notwithstanding the fact that no VAT was actually paid on such goods or services since the taxpayer is zero-rated.** This is the rationale for the mandatory requirement in Revenue Regulations No. 7-95 that the words "zero-rated" be imprinted in the invoice or receipt, as the case may be. **The zero-rated taxpayer should be entitled to a tax credit/refund on input taxes paid on its purchase of goods or services subject to the mandatory compliance with the invoicing requirements under the regulations. Otherwise, there may result the absurd situation where the government would be crediting/refunding non-existent input tax to purchasers of goods or services of such zero-rated taxpayer**. (Emphasis supplied)

202

The absurd situation referred to above can be shown in monetary terms by a simple illustration. Let us assume that a taxpayer who engages in zero-rated sales bought raw materials from a local supplier in the total amount of P1,100,000.00 inclusive of 10% VAT. The refundable input VAT paid is therefore P100,000.00 only (1,100,00.00 x 1/11).

Assume further that a zero-rated sale was made by the taxpayer in the amount of P2,200,000.00 and issues a sales invoice that is not imprinted with the word "zero-rated" contrary to the mandatory requirement of Rev. Reg. No. 7-95. Since the sale is a zero-rated sale, no output VAT is due on the transaction. Stated differently, the buyer did not pay any input VAT. The above situation could be taken advantage of by the buyer who did not pay any input tax by filing a claim for refund of the inexistent input VAT in the amount of P200,000.00 because the sales invoice does not depict that the sale was a "zero-rated" sale.

Hence, the importance of strict compliance with the mandatory requirement of imprinting the word "zero-rated" on sales invoices or official receipts. In ***TROPITEK INTERNATIONAL, INC. VS. COMMISSIONER OF INTERNAL REVENUE, C.T.A. CASE NOS. 6422 & 6499, July 13, 2005***, the Second Division of this Court explained that the requirement of imprinting the word "zero-rated" on official receipts and sales invoices pursuant to Section 4.108-1 of Revenue Regulations No. 7-95 is mandatory, thus:

> "The afore-quoted revenue regulation issued to implement the NIRC provision on VAT invoicing and accounting requirements is mandatory as the word "shall" is used. The word "shall" is imperative, commonly operating to impose an obligation or duty which may be enforced; it is a word of command that must be given a compulsory meaning (*Pimentel vs. Aguirre, Jr., citing Ruben A. Agpalo, Statutory Construction, 1990 Ed., p. 239*). Indeed, it is the duty of a seller-taxpayer to comply with the invoicing requirements laid down in the said memorandum circular."

In the same vein, in ***LITTLEGIANT STEEL PIPE CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE, C.T.A. CASE NO. 6203, JULY 19, 2005***, the First Division of this Court ruled in this wise:

> "After a careful perusal of the documents presented by petitioner to prove that the amount of P1,727,504.38 represents export sales, We have noted that the commercial invoices of petitioner failed to comply with invoicing requirements under Section 4.108-1 of Revenue Regulations No. 7-95 in relation to Sections 8 and 238 of the National Internal Revenue Code of 1993.
>
> > Section 4.108-1. – *Invoicing Requirements.* – All VAT-registered persons shall, for every sale or lease of goods or properties or service, issue duly registered receipts or sales or commercial invoices which must show:
> >
> > 1. the name, TIN, and address of seller;
> > 2. date of transaction;
> > 3. quantity, unit cost and description of merchandise or nature of service;
> > 4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
> > 5. the word "zero-rated" imprinted on the invoice covering zero-rated sales; and
> > 6. the invoice value or consideration.

204

xxx xxx xxx

SEC. 108. *Invoicing and accounting requirements for VAT-registered persons.* – (a) Invoicing Requirements. – A VAT-registered person, shall for every sale, issue an invoice or receipt. In addition to the information required under Section 238, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

xxx xxx xxx

SEC. 238. *Issuance of receipts or commercial invoices.* - All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at P25.00 or more, issue receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided*, That in the case of sales, receipts or transfers in the amount of P100.00 or more, or regardless of amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or, where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client. xxx

The commercial invoices issued by petitioner to support its export sales failed to meet the above standard. Petitioner failed to indicate that it is a VAT-registered person, followed by his taxpayer's identification number. The word "zero-rated" is also not imprinted in the invoices. In addition, there was no indication that the commercial invoices were authorized to be printed by the Bureau of Internal Revenue as required in Section 239 of the National Internal Revenue Code of 1993 which provides:

SEC. 239. *Printing of receipts or sales or commercial invoices.* – All persons who print receipts or sales or commercial invoices shall for every job order, secure from the Bureau of Internal Revenue an authority to print said receipts or invoices before printing the same.

20v

> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, taxpayer account number and business address of the person or entity to use the same.
>
> xxx xxx xxx

Corollarily, for failure of petitioner to comply with the requisites under the law, the export sales in the amount of P1,727,504.38 cannot be qualified as zero-rated for VAT purposes. Moreover, the commissioned Independent CPA noted the said export sales have either no export declaration/permits or supported by photocopied export declarations/permits. Hence, respondent's assessment for 10% value-added tax is sustained."

The Court of Appeals likewise ruled in ***INTEL TECHNOLOGY PHILIPPINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE, CA-G.R. SP No. 79327, AUGUST 12, 2004*** , as follows:

"While it may be true that under Section 106 (a)(2)(a)(1) of the NIRC, VAT registered persons are entitled to claim VAT refunds on their input taxes while their export sales are zero-rated, nevertheless, it is subject to compliance with certain requirements.

Section 113 of the NIRC explicitly sets forth the Invoicing and Accounting Requirements for VAT-Registered Persons. xxx xxx xxx

xxx xxx xxx

From the foregoing, therefore, **it is clear that it is not only the export sales that should be proven but also compliance with the requirements set forth under the aforestated sections of the NIRC.**

Moreover, Revenue Regulations No. 7-95, as amended, states that:

> 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:
>
> 1. The name, *TIN* and address of seller;
> 2. Date of transaction;

204

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

xxx xxx xxx

xxx xxx xxx

In resume, VAT registered persons are directed to issue duly registered invoice or receipt for every sale or lease of goods, properties or services under Section 237, containing the required information in Section 113 of the NIRC. For, a sales invoice is not merely an evidence of payment. From the provision of Section 237, the issuance of an invoice is required from the moment there is already a sale or transfer of merchandise or services rendered. In other words, a sales invoice is ordinarily issued to a purchaser only upon payment by the latter of the price of the goods purchased. **Verily, under Section 237, only registered receipts or sales or commercial invoices are considered as "VAT invoices"**.

Besides, Revenue Memorandum Circular No. 42-2003 has already clarified the issue relative to the failure of a claimant to comply with certain invoicing requirements. Under said memorandum, failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax by the purchaser-claimant. Thus, if the claim for refund/issuance of tax credit certificate is based on the existence of zero-rated sales by the taxpayer but fails to comply with the invoicing requirements in the issuance of sales invoices (e.g. failure to indicate the TIN), **the claim for tax credit/refund of VAT on its purchases shall be denied since the invoice issued to the customers failed to depict that he is a VAT-registered taxpayer whose sales are classified as zero-rated sales**. xxx xxx xxx." (Emphasis supplied)

In view of all the foregoing, petitioner's failure to indicate the word "zero-rated" on its sales invoices constitutes another ground for the denial of petitioner's claim for the issuance of tax credit certificate. The law and regulations require mandatory compliance with the invoicing requirements. Taxpayers have the burden of proving compliance with the mandatory provisions of the National Internal Revenue Code and its implementing rules and regulations. More so, when claim for refunds or tax credits are involved as in petitioner's case before this Court. After all, it is well-settled that tax refunds are in the nature of tax exemptions and as such must be strictly construed against the claimant ***(Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corp., 204 SCRA 377; Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., 309 SCRA 87)***.

Finally, the ruling in the case of ***COMMISSIONER OF INTERNAL REVENUE vs. SEAGATE TECHNOLOGY (PHILIPPINES), G.R. No. 153866, FEBRUARY 11, 2005,*** is not applicable because the issue of imprinting the word "zero-rated" on sales invoices and officials receipts required by Sec. 4.108-1 of Rev. Reg. No. 7-95 was not even raised therein. It must be noted that the Supreme Court did not invalidate the entirety of Rev. Reg. No. 7-95 and the statement that leniency in implementation of VAT in ecozones is imperative is only an *obiter dictum.*

What was passed upon is the validity of Sec. 4.107-1 (d) requiring an approved prior application for effective zero-rating which the Supreme Court held as "not within the statutory authority xxx granted by the legislature". It is because the law already enumerated the zero-rated

208

transactions. Indeed, Sec. 4.107-1 (d) cannot change the nature of a transaction that has already been defined by the law itself. Sec. 4.108-1 is an altogether different provision of Rev. Reg. 7-95, totally distinct from Sec. 4.107-1.

I maintain that the applicable jurisprudence to the facts of this case is the aforementioned Atlas Consolidated Mining & Development Corporation case, supra, upholding strict compliance with the mandatory invoicing and accounting requirements stated in the law and implementing rules and regulations. Otherwise, the intention of the lawmakers in enacting the VAT-law as a revenue generating mechanism would be negated and the same law could in fact become a convenient and effective scheme of bleeding the already limited financial resources that are available to the government in performing its functions.

Accordingly, in view of the foregoing considerations, I concur with the **DISMISSAL** of the Petition for Review for lack of merit.

Juanito C. Castañeda, Jr.
JUANITO C. CASTANEDA, JR.
Associate Justice

209