REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ABB POWER GENERATION LTD.,
Petitioner,

- versus -

C.T.A. CASE NO. 5270

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 03 1999

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DECISION

The issue which is presented for our consideration is whether or not petitioner's sales of services to the National Power Corporation (NPC) are subject to VAT at zero percent (0%) under Section 102 (a)(2) of the Tax Code, thus, petitioner is entitled to the refund of the input VAT it paid during the period June, 1993 to August, 1994 totalling P3,098,569.51.

Petitioner is a corporation organized and existing under the laws of Switzerland, duly licensed by the Securities and Exchange Commission (SEC) to do business in the Philippines as a branch office under SEC Certificate No. AF 0093-000013 dated March 25, 1993, to fulfill its contractual obligations with the National Power Corporation (NPC). It is registered with the BIR as a VAT enterprise under VAT Registration Certificate No. 170-000-272-159.

On November 23, 1994, petitioner filed with the Land Bank-Balanga, Bataan Branch its Value-Added Tax (VAT) Returns for the months of June, 1993 up to August, 1994.

On same date, November 23, 1994, petitioner filed an application for tax refund/credit of the amount of P3,098,569.51 with the BIR Revenue District in Bataan, allegedly representing its input VAT payments for the period June, 1993 to August, 1994.

The same was not acted upon by respondent, hence, on July 20, 1995, petitioner filed with this Court the instant petition for review.

Petitioner presents the proposition as reason of the petition for review that the services it rendered to the National Power Corporation (NPC) are subject to 0% under Section 102 (a)(2) of the Tax Code, stated hereunder, therefore not subject to any output tax, hence, it is entitled to the refund of the input taxes it paid during the period June, 1993 to August, 1994.

> SEC. 102. ***Value-added tax on sale of services***- (a) ***Rate and base of tax.*** - There shall be levied, assessed and collected, a value-added tax equivalent to 10% percent of gross receipts derived by any person engaged in the sale of services. The phrase "sale of services" means the performance of all kinds of services for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of personal property; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties: *Provided* That the following services performed in the

Philippines by VAT-registered persons shall be subject to 0%:

> (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, inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines.
>
> (2) <u>Services other than those mentioned in the preceding sub-paragraph, the consideration for which is paid for in acceptable foreign currency which is remitted inwardly to the Philippines and accounted for in accordance with the rules and regulations of the Central of the Philippines</u>.
>
> (3) <u>Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero rate</u>. (Underscoring supplied)

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On the other hand, respondent demurs and maintains that petitioner's sale of services to the NPC are subject to 10% VAT under said Section 100 (a) of the Tax Code, *supra*. It reasoned out, *inter alia*, that petitioner failed to show that it falls within the ambit of Section 102 (a)(2) of the Tax Code; that the contracting services with NPC is not qualified for zero rating and that petitioner failed to present its approved application for zero-rating as required by Section 8 (d) of Revenue Regulation 5-87, thus, respondent stressed that the instant claim for refund must be denied.

As earlier adverted to at the outset, the issue to be resolved by the Court is whether or not petitioner's sales of services to the NPC are considered zero-rated under Section 102 (a)(2) of the Tax Code, therefore not subject to any output tax, hence, petitioner is entitled to the refund of the input VAT it paid during the period June, 1993 to August, 1994, in the total amount of P3,098,569.51.

We rule against the petitioner.

There is nothing cryptic or abstract in the wordings of Section 102 (a)(2) of the Tax Code that would pose an ambiguity or obscurity in their application. The provision itself furnishes the best means of its own exposition that services performed in the Philippines by a VAT registered person other than those mentioned in paragraph (a)(1) of said Section 102, *supra*, shall be considered zero-rated services, provided it is paid-for in acceptable foreign currency <u>inwardly remitted to the Philippines</u>. Understood to mean what it plainly expressed there must be a payment of an acceptable foreign currency from a foreign payor to a Philippine based payee, for the services the latter has rendered in the Philippines, for the benefit of the foreign payor.

It appears quite evident in the case at bar that there was no inward remittance to the Philippines of an acceptable foreign currency, duly accounted for in accordance with the rules and regulations of the Central Bank of the Philippines (now Bangko Sentral ng Pilipinas), for the payment of the services rendered by the herein petitioner to the NPC, as the latter is not a foreign company (payor) but a domestic corporation, thus, we agree with respondent that petitioner does not fall within the ambit of Section 102 (a)(2) of the Tax Code.

Moreover, granting *arguendo*, that petitioner's sale of services to the NPC are considered effectively zero-rated sales under Section 102 (a)(3) of the Tax Code, *supra*, nevertheless, this Court has to deny the instant claim for refund as petitioner failed to comply with Section 8(d) of Revenue Regulations No. 5-87 which requires that any person claiming that its sales of goods or services are effectively zero-rated under Sections 100 and 102 shall file an application with the Commissioner of Internal Revenue justifying the imposition of zero-rate on said transactions. Quoted hereunder is Section 8 (d) of Revenue Regulations No. 5-87, thus :

> (d) Application for zero rate. - Any person claiming that its sales of goods or services are effectively zero-rated ubder Sections 100 and 102 shall file an application in a form prescibed therefor with the Commissioner of Internal Revenue justifying the imposition of zero-rate on

> the said transactions. Upon approval, his status as a zero-rated taxpayer shall remain valid until revoked.

Petitioner in the instant case did not adduce in evidence its approved application for zero-rating in the face of the allegation made by respondent that petitioner failed to obtain the approval of the Commissioner of Internal Revenue pursuant to the aforecited section 8 (d) of Revenue Regulations No. 5-87 (see respondent's Answer, page 7, CTA records) Failure to get an approval from the Commissioner for a zero-rating classification will make the said sale of services by petitioner to NPC an EXEMPT transaction under paragraph (u) of Art. 103 of the Tax Code, thus, petitioner shall not be entitled to the refund of any input tax it paid on its purchase of goods and services during the period in question. Sec. 9 of Rev. Reg. No. 5-87 provides as follows :

> Section 9. Exemptions.- (a) In general.- An exemption means that the sale of goods or services is not subject to value-added tax (output tax). The seller is not allowed any tax credit on VAT (input tax) previously paid.

A VAT entity who failed to present an approved application for zero-rating as required by Sec. 8(d) of Revenue Regulations No. 5-87 will not be considered a zero-rated enterprise, hence, not entitled to the refund of its input taxes (see **Kumagai-Gumi Co., Ltd. (Phil. Branch) vs. The Commissioner of Internal Revenue, CTA Case No. 4670, July 29, 1997**).

IN THE LIGHT OF ALL THE FOREGOING, the instant petition for review is **DISMISSED**, for lack of merit, without pronouncement as to cost.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this 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
Court of Tax Appeals