REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

APPLIED FOOD INGREDIENTS CO., INC., Petitioner,	**C.T.A. E.B. NO. 85** **(C.T.A. CASE NO. 6171)**
	Present:
- versus -	**ACOSTA,** *P.J.* **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** APR 2 6 2006 [signature]

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DECISION

UY, J.:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed on May 23, 2005 pursuant to Republic Act No. 9282, seeking a review of the Decision promulgated November 9, 2004 and Resolution of the Second Division of this Court, in C.T.A. Case No. 6171, entitled "*Applied Food Ingredients Co., Inc. vs. Commissioner of Internal Revenue*" denying petitioner's claim for issuance of a tax credit certificate in the amount of P3,909,501.83 allegedly representing excess or unutilized input Value-Added Tax (VAT) covering the period from September 1, 1998 up to March 31, 2000 for failure to present evidence in support of said claim; and the Resolution promulgated on April 15, 2005 denying petitioner's Motion for Reconsideration of the aforesaid decision.

The undisputed facts as found by the Second Division of this Court are as follows:

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines. It is registered with the Securities and Exchange Commission (SEC) under Certificate of Registration No. ASO91-198357 dated November 25, 1991, with the primary purpose of manufacturing, importing, exporting, buying, selling or otherwise dealing in, at wholesale and retail, such goods as food ingredients, and other goods of similar nature.

Petitioner was registered on February 26, 1997 with Regional District Office (RDO) No. 43 of the Bureau of Internal Revenue in Pasig City (BIR-Pasig), as a withholding agent and Value-Added Tax (VAT) taxpayer under the category of import and export business/industry, VAT Registration No. 001-006-962-V, and RDO Control No. 97-043-005590/001920. It duly filed its monthly VAT declaration and quarterly returns for the period from July 1998 to March 2000, the second quarter of year 2000, and July 2000.

Petitioner's first subject VAT return was filed on October 23, 1998, as indicated on its Quarterly VAT Return for the Third Quarter of 1998.

On July 05, 2000, petitioner filed its claim for the issuance of a Tax Credit Certificate for the subject input VAT credits with the Revenue District Office No. 43 of BIR-Pasig. The Petition for Review was filed before the Court on September 29, 2000.

After trial on the merits, the Second Division of this Court denied petitioner's claim for the issuance of a tax credit certificate for failure to present substantial and sufficient evidence in support of its claim for a tax credit. Its Motion for Reconsideration of the said Decision was denied in a Resolution promulgated on April 15, 2005.

Hence, this Petition for Review *En Banc.*

Petitioner submits the following assigned errors in support of the instant petition:

> "A. The Honorable Court of Tax Appeals erred in finding that petitioner failed to establish that the input VAT payments being claimed for tax credit are directly attributable to its zero-rated sales.
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> Corollarily, the Honorable Court erred in holding that Sections 113, 237 and 238 of the Tax Code and Section 4.108-1 of Revenue Regulations No. 7-95, as amended, otherwise known as the 'Consolidated Value-Added Tax Regulations', and not Section 106(A)(2) of the Tax Code, must be complied with in order to establish the export sales of petitioner.
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> B. The Honorable Court of Tax Appeals erred in not holding that the rules for claiming tax refund/credit are remedial in nature and that certain rules and requirements should be liberally construed in favor of the claimant in accordance with the constitutional mandate that procedural rules should not diminish substantive rights.
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> C. Even assuming, for the sake of argument, that compliance with Section 4.108-1 of Revenue Regulations No. 7-95, as amended, is essential to establish the export sales of petitioner, the Honorable Court erred in not holding that such provision in the Revenue Regulations is null and void since it provides for additional requirements not sanctioned by the Tax Code.
>
> D. The Honorable Court of Tax Appeals erred in finding that petitioner failed to prove the actual exportation of its products."

It is petitioner's primary contention that its claim for tax credit should be granted because the issue of whether or not a claim for tax refund/credit is valid does not depend on the compliance with invoicing requirements mandated by the National Internal Revenue Code (NIRC) of 1997 and existing revenue regulations. Accordingly, it insists that its failure to indicate the information required under Sections 113, 237 and 238 of the NIRC of 1997 and Section 4.108-1 of Revenue Regulations (RR) No. 7-95 should not result to the Second Division's findings that: (a) the invoices issued are not valid; (b) the input taxes being claimed are not attributable to its export sales; or (c) export sales covered by the invoices are not entitled to VAT zero-rating under Section 106(A)(2) of the NIRC of 1997, since these conclusions are not warranted by the provisions of the NIRC of 1997.

Likewise, petitioner argues that the Second Division of this Court made a mistake by relying on the additional requirements provided for under Section 4.108-1 of RR No. 7-95, as amended, which, as believed by petitioner, should be declared as an invalid administrative issuance for imposing additional requirements not sanctioned by the NIRC of 1997.

For failure of respondent to file his comment thereto within the prescribed period, the case was submitted for resolution on August 10, 2005.

We find no merit in the petition.

A closer consideration of the allegations in the instant petition for review and its annexes would readily reveal that the grounds raised by petitioner had been exhaustively discussed by the Second Division of this Court when it rendered its assailed Decision and Resolution promulgated on

November 9, 2004 and April 15, 2005, respectively. To reiterate the Second Division's pronouncement on the matter:

> "It is decretal that a claim for the issuance of a tax credit partakes of the nature of tax exemption. The one claiming for the exemption has the burden of proof by presenting substantial supportive evidence. For failure of the petitioner to discharge its burden, the petition for review must be dismissed and the claim for a tax credit must fail."[1]

Time and again, this Court has consistently ruled that zero-rated taxpayers are 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, including Revenue Regulations No. 7-95 which was formulated pursuant to the respondent's duty of implementing the NIRC of 1997. 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 taxpayers.[2]

Thus, in the case of ***Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue***,[3] the Supreme Court had the occasion to elucidate that "[i]t is clear that a VAT invoice can be used only for the sale of goods and services that are subject to VAT. The corresponding taxes thereon shall be allowed as input tax credits for those subject to VAT. Section 108 expressly provides the invoicing and accounting entries required from VAT-registered persons". It further stressed that "[i]t is the duty of the seller to comply with the invoicing and accounting

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[1] Resolution, April 15, 2005, pp. 3-4
[2] Intel Philippines Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6040, October 24, 2003
[3] 318 SCRA 386 (1999)

requirements laid down in, among others, Section 108 of the Tax Code". From the foregoing ruling, this only 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). Moreover, the Highest Court of the land clearly recognizes the fact that there are other sources of VAT invoicing and accounting requirements aside from Section 108 of the Tax Code (now Section 113 of the NIRC of 1997), such as implementing rules and regulations issued by the administrative agencies of the government which also require strict compliance, *i.e.* Revenue Regulations.

Likewise, it held therein that:

> "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 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."[4]

After perusal of the records of the case under consideration and as correctly observed by the Second Division of this Court, We find that petitioner's export sales invoices do not contain (1) the imprinted words "zero-rated"; (2) petitioner's "TIN-V" or "TIN-VAT"; and (3) the Bureau of Internal Revenue (BIR) Permit Number, a clear violation of Sections 113, 237 and 238

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[4] Ibid, p. 404

of the NIRC of 1997 and Section 4.108-1 of Revenue Regulations (RR) No. 7-95.

In the light of the foregoing jurisprudence, it is worthy to restate herein that "the nature of the VAT system necessitates that invoices or receipts be issued. Since the VAT system is a multi-stage, multi-point tax where the tax is levied at all stages x x x, it is necessary and convenient that the seller issues an invoice or receipt in order to facilitate computation of the tax credits. Thus, a claim for tax credit which is not accompanied by the **required invoices or receipts** cannot be granted."[5]

Hence, applying the same principle in the case at bar, the Court *En Banc* upholds the validity and legality of the Second Division's ruling. Once again, it is stressed that tax refunds are in the nature of tax exemptions and should be construed *strictissimi juris* against the taxpayer.[6]

WHEREFORE, the instant petition is **DENIED DUE COURSE** and is hereby **DISMISSED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[5] Assailed Decision, November 9, 2004, pp. 16-17; citing Benguet Corporation vs. Commissioner of Internal Revenue, CA-GR SP Nos. 37205, 38958 and 39435, July 10, 1998

[6] Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc. and Court of Appeals, 309 SCRA 87(1999); Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332 (1995); Commissioner of Internal Revenue vs. Procter and Gamble Philippine Manufacturing Corporation and the Court of Tax Appeals, 204 SCRA 377 (1991)

WE CONCUR:

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

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 conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice

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

APPLIED FOOD INGREDIENTS CO., INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 85
(C.T.A. Case No. 6171)

Present:

Acosta, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ.*

Promulgated:

APR 2 6 2006

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Dissenting Opinion

I humbly express my dissent to the position of the majority concerning the view that petitioner's failure to reflect on its sales invoices its BIR authority to print, the word "TIN-V/TIN-VAT", and the term "zero-rated" will automatically make the same invalid, incompetent and irrelevant and to the consequent denial by the Court *En Banc* of petitioner's claim for issuance of a tax credit certificate representing its excess or unutilized creditable input Value-Added Tax (VAT).

Inasmuch as the crux of the controversy involves the proper interpretation of Sections 112, 113, and 237 of the 1997 Tax Code, the same are quoted hereunder for easy reference, to wit:

"**Section 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. xxx"

"**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".

A perusal of the afore-quoted provisions readily indicates that 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.

Save for the terms "TIN-V" or "TIN-VAT", 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. Thus, 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.

This view has been strengthened by the recent pronouncement of the Honorable Supreme Court in the case of **Commissioner of Internal Revenue vs. Seagate Technology (Philippines)**, *G.R. No. 153866, February 11, 2005*, where the High Tribunal emphasized the need to focus solely 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.*

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. And 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:

> "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.
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> "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 stressed that invalidation of the sales invoice and automatic denial of the claim for refund or issuance of a tax credit certificate are not among the prescribed penalties.

Equally, noteworthy is the fact 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.

In the case before Us, the petitioner has established its right to the tax refund or issuance of tax credit certificate through its formally offered material and documentary exhibits such as export invoices, official receipts, bills of lading, export declarations, and export remittances. It must be pointed out that this Court, in previous cases, had accepted other proof or evidence in lieu of VAT invoices to establish the existence of zero-rated transactions. Among these are the cases of **Nichimen Corporation (Manila Branch) vs. CIR**, *CTA Case No. 5746 dated January 4, 2001* and **Nichimen Corporation (Manila Branch) vs. CIR,** *CTA Case No. 5221 dated January 8, 1998,* where the petitioner therein completely failed to submit copies of its VAT invoices and this Court instead accepted the bank credit advices to prove the claimant's zero-rated sales. Despite such omission, this Court still held that other proofs or evidence might still be presented as a replacement for said VAT invoices.

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

To reiterate, the petitioner has established its right to the tax refund through material and documentary exhibits. The substantive and main condition of the Tax Code requiring the sale and actual shipment of goods in order to be considered as zero-rated sales was adequately complied with and sufficiently proven before this Court by the petitioner. 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. Accordingly, I manifest my dissent.

ERNESTO D. ACOSTA
Presiding Justice