REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

WESTERN MINDANAO POWER CORPORATION, *Petitioner,*	**C.T.A. CASE NO. 6335**
	Members:
-versus-	CASTAÑEDA, JR., Chairman UY, and PALANCA-ENRIQUEZ, JJ.
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	SEP 0 1 2006

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DECISION

PALANCA-ENRIQUEZ, J.:

For a judicial claim for tax credit to prosper, the taxpayer must comply with the requirement of imprinting the word "zero-rated" on a VAT receipt or invoice for zero-rated sales. It is a mandatory provision that fulfills the intent of the law not only with respect to the proper implementation of the provisions of the *National Internal Revenue Code* on zero-rated transactions, but also to prevent the claim for tax credit of non-existent input VAT. Strict compliance with said requirement must therefore be enforced. Failure to show proof of proper documentations is fatal to one's claim for refund or credit.

THE CASE

This is a Petition for Review filed by Western Mindanao Power Corporation (hereafter "petitioner") praying for a refund or tax credit in the aggregate amount of P9,324,283.30 representing the unutilized input VAT paid by petitioner on domestic purchases of goods and services attributable to its zero rated sales of power generation to the National Power Corporation (hereafter "NPC") for the 3rd and 4th quarters of the taxable year 1999 and the four quarters of the taxable year 2000.

THE FACTS

The facts are undisputed.

Petitioner is a domestic corporation duly organized and existing under and by virtue of Philippine laws, with principal address at Alsons Building, 2286 Pasong Tamo Ext., Makati City.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (hereafter "BIR") and is the duly designated officer authorized by law to perform the duties of the said office, including inter alia, the power to refund overpaid, as well as erroneously or illegally collected internal revenue taxes.

Petitioner is engaged in the production and sale of electricity and sells electricity to NPC. It is registered with the BIR as a value-added tax taxpayer as evidenced by BIR Certificate of Registration No. 96-048-03899 *(Exhibit "B")*.

For the calendar years 1999 and 2000, petitioner filed with the BIR separate applications for zero-rating of its sales of electricity to NPC, which applications were duly approved by the BIR *(Exhibits "M" and "N")*.

On October 25, 1999 and January 25, 2000, petitioner filed its 3rd and 4th Quarterly Value-Added Tax Returns for calendar year 1999, respectively, reflecting the following amounts as its input taxes paid on its domestic purchases of goods and services, to wit:

Quarter	**Input VAT**
3rd	P 1,749,995.92
4th	1,925,030.75
	P3,675,026.67

(Exhibits "E" and "F")

Likewise, for the taxable year 2000, petitioner filed its Quarterly Value-Added Tax Returns, reflecting the following input taxes:

Quarter	**Date Filed**	**Input VAT**
1st	April 25, 2000	P1,176,382.70
2nd	July 25, 2000	1,531,208.07
3rd	October 25, 2000	610,322.35
4th	January 25, 2001	2,331,343.69
		P5,649,256.81

(Exhibits "G", "H", "I" and "J")

Petitioner claims that the amount of P5,649,256.81 represents the input VAT it paid on domestic purchases of goods and services during the calendar year 2000 that were attributable to its zero rated sale of power generation services to NPC.

Petitioner maintains that under *Republic Act No. 6395*, otherwise known as the *National Power Corporation Charter*, particularly Section 13 thereof, NPC is declared exempt from payment of all forms of taxes, duties, fees and imposts. Petitioner further claims that such charter provides for NPC's tax exemption from both direct and indirect taxes which interpretation was affirmed by the Supreme Court in the case of Ernesto M. Maceda vs. Hon. Catalino Macaraig (G.R. No. 88291), dated May 31, 1991.

The input VAT paid by petitioner on its domestic purchases of goods and services for the 3rd and 4th quarters of the taxable year 1999 and all the taxable quarters of calendar year 2000 amounting to P9,324,283.48 allegedly remains unutilized considering that petitioner until now has not engaged in any business activity or transaction for which it may be liable for output VAT, other than its zero-rated sale of power generation services to NPC which does not produce any output VAT liability.

Thus, on June 20, 2000, petitioner filed an administrative claim for refund/application for tax credit certificate of its alleged unutilized input VAT in the amount of P3,675,026.67 with the BIR covering the taxable 3rd and 4th quarters of 1999.

Subsequently, for the taxable year 2000, petitioner filed on June 13, 2001 a separate administrative claim for refund/application for tax credit certificate of alleged unutilized input VAT in the aggregate amount of P5,649,256.81 (*Exhibit "L"*).

Not wanting to be barred by prescription, on September 28, 2001 petitioner filed the instant Petition for Review.

On November 21, 2001, respondent filed his Answer interposing the following Special and Affirmative Defenses:

> "6. Petitioner's claim for refund/tax credit is still subject to administrative routinary investigation/examination by the respondent's Bureau;
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> 7. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;
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> 8. Petitioner's claim for refund/tax credit for the 3rd and 4th quarters of 1999 and for the four quarters of 2000 representing the alleged unutilized input VAT paid on its domestic purchases of goods and services were not fully substantiated;
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> 9. Petitioner's right to claim for refund/tax credit for

> the first and second quarters of 1999 have already prescribed;
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> 10. It is incumbent upon petitioner to show that is has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code, as amended, as well as the requirements provided under Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88. Otherwise, its failure to prove the same is fatal to its claim for refund; and
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> 11. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such; they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)."

Petitioner presented Teresita Lozano, Feliza Peralta and Estelita Alcaraz, as witnesses, and submitted its Formal Offer of Evidence and Supplemental Offer of Evidence, which were admitted by the Court.

On the other hand, respondent presented Aniceto Luna, as witness, and documentary evidence, which was admitted by the Court.

Petitioner recalled and presented Estelita Alcaraz, as rebuttal witness, and submitted Formal Offer of Evidence (Rebuttal Evidence), which the Court admitted.

Respondent having manifested that he will not present sur-rebuttal evidence, both parties were granted thirty (30) days from notice to file

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their simultaneous memoranda, afterwhich the case shall be deemed submitted for decision.

Only the petitioner having complied thereto, the case was deemed submitted for decision on June 1, 2006.

ISSUES

As agreed upon by the parties in their Joint Stipulation of Facts and Issues, the following are the issues for this Court's consideration:

I

WHETHER OR NOT PETITIONER HAS UNUTILIZED INPUT TAXES FOR THE TAXABLE QUARTERS COVERING THE 3rd AND 4th QUARTERS OF 1999, AND THE FOUR QUARTERS OF 2000 IN THE TOTAL AMOUNT OF P9,324,283.30 PERTAINING TO DOMESTIC PURCHASES OF GOODS AND SERVICES, WHICH IS THE PROPER OBJECT OF THE CLAIM FOR REFUND PURSUANT TO SECTION 112 OF THE TAX CODE, AS AMENDED.

II

WHETHER OR NOT THE SAID UNUTILIZED INPUT VAT OF THE PETITIONER FOR THE TAXABLE QUARTERS COVERING THE 3rd AND 4th QUARTERS OF 1999, AND THE FOUR (4) QUARTERS OF 2000 HAD BEEN CARRIED FORWARD TO THE SUCCEEDING QUARTER AND APPLIED AGAINST ANY OF PETITIONER'S OUTPUT VAT FOR THE SAID PERIOD.

III

WHETHER OR NOT PETITIONER GENERATED ZERO-RATED SALES TO NPC, ITS LONE BUSINESS ACTIVITY, FOR THE 3rd AND 4th QUARTERS OF 1999, AND THE FOUR QUARTERS OF 2000.

IV

WHETHER OR NOT PETITIONER'S SALE OF ELECTRICITY TO NPC ARE ZERO-RATED FOR VAT PURPOSES

V

WHETHER OR NOT PETITIONER IS ENTITLED TO REFUND IN THE AMOUNT OF P3,675,026.49 AS UNUTILIZED INPUT VAT FOR THE 3rd AND 4th QUARTERS OF 1999 AND IN THE AMOUNT OF P5,649,256.81 AS UNUTILIZED INPUT VAT COVERING THE FOUR QUARTERS OF 2000.

VI

WHETHER OR NOT PETITIONER HAS COMPLIED WITH THE REQUIREMENTS UNDER SECTION 204 (C) IN RELATION TO SECTION 229 OF THE TAX CODE.

The foregoing issues raised by both parties boil down to the principal issue of whether or not petitioner is entitled to the issuance of a tax credit certificate or refund in the total amount of P9,324,283.30 attributable to zero rated sales.

THE COURT'S RULING

The Petition is without merit.

Decisive Legal Issue

The decisive legal issue to be resolved is whether the sale of electricity to NPC is subject to VAT at zero-rate percent.

There is nothing novel in this case, as the legal issue raised herein had, in a long line of cases, been previously ruled by the Supreme Court in the affirmative. In the case of *Maceda vs. Macaraig (197 SCRA 771)*, the Supreme Court ruled that the NPC had been granted tax exemption privileges for both direct and indirect taxes under *P.D. No. 938*, as follows:

> "The NPC is a non-profit public corporation created for the general good and welfare, wholly owned by the government of the Republic of the Philippines. From the very beginning of its corporate existence, the NPC enjoyed preferential tax treatment, to enable the Corporation to pay the indebtedness and obligation and in furtherance and effective implementation of the policy enunciated in Section One of "Republic Act No. 6395" which provides:
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> > **Section 1. Declaration of Policy**. - Congress hereby declares that (1) the comprehensive development, utilization and conservation of Philippine water resources for all beneficial uses, including power generation, and (2) the total electrification of the Philippines through the development of power from all sources to

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> heed the need of rural electrification are primary objectives of the nation which shall be pursued coordinately and supported by all instrumentalities and agencies of the government including its financial institutions.
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> xxx xxx
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> It is noted that in the earlier law, R.A. No. 358 the exemption was worded in general terms, as to cover "all taxes, duties, fees, imposts, charges, etc. x x x" However, the amendment under Republic Act No.6395 enumerated the details covered by the exemptions. Subsequently, P.D. No. 380, made ever more specific the details of the exemption of NPC to cover, among others, both direct and indirect taxes on all petroleum products used in its operation. Presidential Decree No. 938 emended the tax exemption by simplifying the same law in general terms. It succinctly exempts NPC from 'all forms of taxes, duties, fees, imposts, as well as costs and service fees filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings'.
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> The use of the phrase "all forms" of taxes demonstrate the intention of the law to give NPC all the tax exemptions it has been enjoying before. The rationale for this exemption is that being non-profit the NPC "shall devote all its returns from its capital investment as well as excess revenues of its operations, for expansion x x x.
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> It is evident from the provisions of P.D. No. 938 that its purpose is to maintain the tax exemption of NPC from all form of taxes including indirect taxes as provided for under R.A. No. 6395 and P.D. No. 380 if it is to attain its goals xxx."

Under *Republic Act No. 6395,* or the *National Power Corporation*

Charter, NPC's exemption from the payment of all forms of taxes, duties, fees and imposts is provided as follows:

> "**SEC. 13. Non-profit Character of the Corporation: Exemption from all Taxes, Duties, Imposts and Other Charges by the Government and Government Instrumentalities**. - The Corporation shall be non-profit and shall devote all its returns from its capital investment as well as excess revenues from its operations, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section one of this Act, the Corporation including its subsidiaries, is hereby declared exempt:
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> (a.) from the payment of all forms of taxes, duties, fees, imposts, charges, costs and service fees in any court and administrative proceedings, in which it may be a party, restrictions and duties to the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities;
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> (b.) from all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities, and other government agencies and instrumentalities;
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> xxx xxx."

Corollary thereto, *Section 108 (B)(3)* of the *National Internal Revenue Code* (hereafter *"NIRC"*) *of 1997, as amended,* provides:

"SEC. 108. Value-added Tax on Sale of Services and

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Use or Lease of Properties.

(A) Rate and Base of Tax xxx

(B) Transactions Subject to Zero Percent (0%) Rate. – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

(1) xxx

(2) xxx

(3) **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 percent (0%) rate.**

xxx xxx."

It is clear from the above provision that NPC is a corporation with a special charter which categorically exempts it from the payment of all taxes, whether direct or indirect, and necessarily includes the value-added tax. Accordingly, pursuant to the above provisions, any sale of services to NPC is effectively subject to zero-percent (0%).

Invoicing Requirements

We now proceed to the issue of whether or not petitioner's claim for refund or tax credit is properly substantiated by receipts and invoices as required by law.

Petitioner anchors its claim on *Section 112 (A)* of the *NIRC of 1997, as amended*, which provides:

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> "**SEC. 112. Refunds or Tax Credits of Input Tax**. –
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> (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.
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> xxx xxx."

Although *Section 112* of the *NIRC of 1997*, *as amended*, allows tax refund or credit of input taxes on zero-rated or effectively zero-rated sales, however, certain invoicing requirements prescribed in *Sections 113 (A) and 237* of the same Code must be faithfully complied with before such claim may be granted.

In correlation thereto, *Section 4-108-1* of *Revenue Regulations No. 7-95* enumerates the information which must appear on the face of the receipts or invoices issued by VAT-registered entities, to wit:

> "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:
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> 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."

A careful perusal of the receipts and evidence presented shows that petitioner failed to fully substantiate the existence of its effectively zero-rated sales to NPC for the taxable periods covering the 3rd and 4th quarters of 1999 and the four quarters of 2000.

Petitioner submitted in evidence its Quarterly Value Added Tax Returns for the 3rd and 4th quarters of 1999 and the four quarters of 2000 to prove that it had duly reported the input taxes paid on its domestic purchases of goods and services *(Exhibits "E" to "J")*. However, a closer examination of the returns clearly shows that the same do not reflect any zero-rated or effectively zero-rated sales allegedly incurred during the

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said periods. The spaces provided for such amounts were left blank, which only shows that there existed no zero-rated or effectively zero-rated sales for the 3rd and 4th quarters of 1999 and the four quarters of 2000.

Even assuming arguendo that petitioner indeed incurred the claimed zero-rated or effectively zero-rated sales, still petitioner is not entitled to a refund.

According to the Commissioned Independent CPA, Ms. Feliza Peralta, petitioner's VAT invoices and official receipts which were used to support the alleged sales failed to have the word "zero-rated" imprinted or stamped on its face, as required by *Section 4-108-1* of *Revenue Regulations No. 7-95*. The CPA Report, in pertinent part, reads:

> "Findings and Observations:
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> Based on our review, the sales amounting to P1,477,427,242.68 indicated in the Sales Summary are supported by the following documents:

	Exhibit Ref	Total
Original Company copies of the VAT invoices and Ors issued to NPC for its peso denominated sale of electricity to the latter.	U-A	219,892,938.17

Original Company copies of the Vat invoices issued to NPC for its foreign currency denominated sale of electricity to the latter. Collections of these billings are supported by photocopies or faxed copies of the remittance advices/certificates from NPC and the original copies of he bankbook which show the credits made to the company's bank accounts	U-A	1,257,534,306.26
Difference between the sum of the amounts verified by SGV and those indicated in the sales summary	U	-1.75
Total		**1,477,427,242,68**

We noted that **all the VAT invoices and Ors issued by the Company** which supports the foregoing sales, **are not imprinted/stamped with the word "zero-rated"** (*Exhibit "S"*).

Moreover, one of the requirements of the BIR in petitioner's approved applications for Zero-Rate *(Exhibits "M" and "N")*, is that "zero-rated sales must be indicated in the invoice/receipt". It must be emphasized that the approval of the applications for zero-rate depends on petitioner's compliance with the conditions as set forth in the said applications which evidently was not complied with by petitioner.

It is noteworthy to stress that strict compliance with the mandatory requirements of invoicing, more particularly, the imprinting of the word

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"zero-rated" on the face of the invoices and receipts is necessary so as to be entitled to the claim for refund or issuance of a tax credit certificate.

Thus, in the case of *Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue* (*318 SCRA 386*), the Supreme Court held:

> "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." Clearly, besides the recognition that Section 108 of the Tax Code (now Section 113 of the NIRC of 1997), provides for the mandatory compliance of invoicing, there are other provisions which likewise require the compliance of invoicing, such as, revenue regulations implemented by the office of the respondent. And one such implementing rule is Revenue Regulation No. 7-95, which was issued in pursuance of the respondent's duty of implementing the NIRC of 1997, as amended."

Pursuant to settled jurisprudence, petitioner as claimant, has the burden of proof to establish the factual basis of its claim for tax credit or refund. Having failed to discharge the burden in this regard, petitioner's claim must perforce be denied.

Failure to Comply with the Invoicing Requirements: Effects Thereof

Corollary thereto, *Revenue Memorandum Circular No. 42-2003* (*Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue*

Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters) expressly provides that the failure of a taxpayer claiming for tax refund/credit to comply with the invoicing requirements will result to the disallowance of the claim for input tax. The pertinent portion of said Revenue Memorandum Circular provides:

> "A-13. Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.
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> If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (*e.g.,* failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer."

The aforequoted provision clearly mandates that 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 the claim for tax credit/refund of input VAT shall be denied. Considering that herein petitioner failed to imprint the word "zero-rated" on its sales invoices or receipts, We are left with no recourse but to deny the claim.

Rationale of Strict Compliance

The law and revenue regulations are explicit in emphasizing strict compliance with the invoicing requirements. Pursuant to *Section 110 of the NIRC of 1997, as amended*: "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: xxx". VAT invoices and receipts, in relation to the instant case, are used as evidence for purposes of determining whether there is an excess in either the input or output taxes.

If the invoice or official receipt is not imprinted with the word "zero-rated", there is a danger that the purchaser of the goods or services may be able to claim the 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 of the mandatory requirement in *Revenue Regulations No. 7-95* that the word "zero-rated" be imprinted in the invoice or receipt. 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 to such zero-rated taxpayer.

Laws Granting Tax Exemption Are Construed Strictissimi Juris Against the Taxpayer and Liberally in Favor of the Taxing Authority

It is a doctrinal rule that laws granting tax exemption are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. It is worthy to emphasize that a claim for tax refunds is in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and are strictly construed against the person or entity claiming it. Taxation is the rule and exemption is the exception. The law does not look with favor tax exemptions and he who thus seek to be privileged must justify it by words too plain too be mistaken and to categorical to be misinterpreted *(Sea-Land Services, Inc. vs. Court of Appeals, 359 SCRA 441).*

With the conclusion thus reached, We find no need to discuss the other issues raised in this petition for being moot and academic.

WHEREFORE, premises considered, the present Petition For Review is hereby **DENIED DUE COURSE,** and accordingly **DISMISSED.**

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman, Second Division

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice