REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PANASONIC COMMUNICATIONS IMAGING CORPORATION OF THE PHILIPPINES (*formerly*, MATSUSHITA BUSINESS MACHINE CORPORATION OF THE PHILIPPINES),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB NO. 239
(C.T.A. Case No. 5975)

Present:

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

Promulgated:
MAY 2 3 2007

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D E C I S I O N

BAUTISTA, J.:

The Case

This is an appeal under Section 4, Rule 8 of the Revised Rules of the Court of Tax Appeals in relation to Rule 43 of the Revised Rules of Civil Procedure, from the

Resolution and Decision of the First Division of the Court of Tax Appeals ("Court in Division") promulgated on November 27, 2006 and August 22, 2006, respectively, in CTA Case No. 5975, which denied petitioner's judicial claim for refund in the amount of ₱9,368,482.40 representing unutilized input value-added taxes ("VAT") attributable to zero-rated sales for the period covering April 1, 1998 to March 31, 1999.

Antecedent Facts

The facts of the case, as summarized in the decision of the Court in Division, are as follows:

> "Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office at Bo. Mapandan, Ortigas Avenue Extension, Taytay, Rizal. Meanwhile, respondent is the duly appointed Commissioner of Internal Revenue, vested under the appropriate laws with the authority to carry out all the functions, duties, and responsibilities of said Office, including, *inter alia*, the power to decide, approve, and grant claim for refunds and/or tax credits, with office address at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> Petitioner is duly registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) enterprise. It is likewise registered with the Board of Investments (BOI) in accordance with the provisions of the Omnibus Investments Code of 1987, as a preferred-pioneer enterprise for the production and export of plain paper copiers, sub-assemblies, parts and components.
>
> For the periods covering April 1, 1998 to September 30, 1998 and October 1, 1998 to March 31, 1999, petitioner allegedly generated export sales in the amounts of US$12,819,475.15 and US$11,859,489.78, respectively, or in the sum of US$24,678,964.93. The proceeds thereof were inwardly remitted and accounted for in accordance with existing regulations of the Bangko Sentral ng Pilipinas (BSP). Petitioner believes that the said export sales are zero-rated for VAT purposes pursuant to Sec. 106(A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997.
>
> For the same periods of April 1, 1998 to September 30, 1998 and October 1, 1998 to March 31, 1999, petitioner avers that it paid input VAT in the amounts of P4,980,254.26 and P4,388,228.14, respectively, or in the sum of P9,368,482.40 which were all attributable to its zero-rated sales.
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> Inasmuch as the accumulated input VAT for the periods of April 1, 1998 to September 30, 1998 and October 1, 1998 to March 31, 1999 had allegedly remained unutilized and/or unapplied, petitioner filed with the BIR on March 12, 1999 and July 20, 1999 two separate applications for the refund/tax credit of the input VAT payments of P4,980,254.26 and P4,388,228.14, respectively, totaling P9,368,482.40.

Due to respondent's inaction on petitioner's claims, petitioner filed the instant Petition for Review on December 16, 1999.

In his Answer filed on January 31, 2000, respondent interposed the following Special and Affirmative Defenses:

4. Petitioner's claim for refund/credit is still undergoing administrative routinary investigation/examination by the respondent's Bureau;

5. The alleged tax sought to be refunded was collected and paid pursuant to law and pertinent BIR implementing rules and regulations; hence, the same is not refundable. Petitioner must prove that the income sought to be refunded was paid and was declared in the gross income during the year under review;

6. Petitioner's allegation that it erroneously and excessively paid the tax during the year under review does not *ipso facto* warrant the refund/credit and it must prove that the alleged refundable/creditable tax was neither automatically applied as tax credit against the tax liability for the succeeding quarters of the succeeding year nor included as creditable tax declared and applied to the succeeding taxable years;

7. Claims for tax refund/credit are construed in *strictissimi juris* against the taxpayer as they partake *(of)* the nature of an exemption from tax and it is incumbent upon the petitioner to prove that it is entitled thereto under the law. Failure to prove the same is fatal to its claim for refund/credit; and

8. Petitioner must show that it has complied with the provisions of Section 204(C) and 229 of the 1997 Tax Code.

Petitioner and respondent submitted the following issues for resolution of this Court:

1. Whether or not petitioner's sales of goods are zero-rated for VAT purposes;

2. Whether or not petitioner's input VAT subject matter of the instant judicial claim for refund is attributable to its zero-rated sales;

3. Whether or not petitioner's input VAT was not utilized or applied against its output VAT liabilities for the subsequent quarters; and

4. Whether or not petitioner is entitled to the refund of the amount of P9,368,482.40 representing unutilized input VAT for the period April 1, 1998 to March 31, 1999." *(Citations omitted)*

The Ruling of the Court in Division

After trial on the merits, the majority of the Court in Division rendered its decision on August 22, 2006, denying the Petition for Review for lack of merit.

The Court in Division held that while petitioner's export sales may fall within the export sales transactions subject to zero percent (0%) VAT referred to under

Section 106(A)(2)(a)(1) of the National Internal Revenue Code ("NIRC") of 1997, the same cannot qualify for zero-rating since based on the evidence on record, the word "zero-rated" was not imprinted on petitioner's export invoices. This is in violation of the invoicing requirements under Section 4.108-1 of Revenue Regulations ("RR") No. 7-95. Consequently, the claimed unutilized input VAT attributable thereto in the amount of P9,368,482.40 was not granted.

In view of the foregoing pronouncement, the Court in Division no longer discussed the other issues raised by the parties.

The dispositive portion of the decision of the Court in Division reads as follows:

> "**WHEREFORE**, the Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

Undaunted, petitioner filed a Motion for Reconsideration of the aforementioned decision, which the Court in Division likewise denied in a Resolution dated November 27, 2006.

The Issues

Hence, the present recourse with petitioner ascribing to the Court in Division the following errors:

1. The Honorable First Division of the Court of Tax Appeals erred when it ruled that petitioner's reported export sales cannot qualify for VAT zero-rating on the sole ground that the word "zero-rated" was not imprinted on its VAT sales invoices; and

2. The Honorable First Division of the Court of Tax Appeals erred when it denied petitioner's claim for refund.

In support of the foregoing assigned errors, petitioner proffers the following arguments:

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Petitioner submits that Section 4.108-1 of RR No. 7-95, as amended, is merely an interpretation of Sections 113 and 237 of the NIRC and thus, should not amend nor go beyond the tenor of the law it seeks to implement. Nowhere in the codal provisions of Sections 113 and 237 of the NIRC is there a requirement for the imprinting of the word "zero-rated" on the invoices or receipts issued by a taxpayer-claimant like petitioner. Thus, the additional requirement inserted in Section 4.108-1 of RR No. 7-95 cannot prevail over the clear language of the basic tax law as it is a settled rule in administrative law that rules and regulations cannot amend, alter, modify, supplant, enlarge, or limit the terms of legislative enactments.

Petitioner also avers that it had substantially proven the requisites to entitle a claimant to the refund/tax credit of unapplied or unutilized input VAT. It points out that it had a similar judicial claim for refund which was favorably acted upon although in a reduced amount in a Decision promulgated on September 15, 2006 by the Second Division of the CTA in CTA Case No. 6580.

Petitioner finally asserts that *assuming arguendo* that the additional requirement of imprinting the phrase "zero-rated" is a valid implementation of the basic law, the danger sought to be avoided cannot possibly exist in the instant case since petitioner's products were sold and shipped abroad. Considering further that petitioner's buyers are all located abroad, "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" will never happen.

For failure of respondent to file his Comment within the prescribed period, the case was submitted for decision on March 12, 2007.

The Ruling of the Court En Banc

The Petition for Review is not impressed with merit.

A review of the allegations in the instant petition and its annexes will reveal that the grounds raised by petitioner had been thoroughly discussed by the Court in Division when it rendered its assailed Decision and Resolution on August 22, 2006 and November 27, 2006, respectively. We quote with approval the Court in Division's disquisition on the matter:

> "Thus, the invoicing requirements provided for by the law and regulations are clear and absolute. Petitioner is obligated to comply therewith even if its sales are 100% exports. It bears stressing that although the present claim for refund is a right available to a VAT taxpayer like herein petitioner pursuant to Section 112(A) of the NIRC of 1997, the said privilege however is not without conditions or requirements, which must be complied with in order that the refund shall be granted.
>
> **Therefore, for failure to substantiate its export sales with proper VAT invoices, petitioner's claim must fail. Nevertheless, petitioner may charge its claimed input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable as clarified in RMC 42-2003**: xxx"[1] *(Emphasis supplied)*

The VAT Law is clear. Only transactions evidenced by proper VAT official receipts/sales invoices will be considered as VAT transactions for purposes of input/output tax. We cannot overemphasize the rule that the invoicing requirements under Sections 113(A) and 237 of the 1997 NIRC in relation to Section 4.108-1 of RR No. 7-95 are absolutely mandatory.

In a number of cases, the majority of the Court *En Banc* has consistently ruled that the failure to comply with the requirement under Section 4.108-1 of RR No. 7-95 that sales invoices be imprinted with the word "zero-rated" shall result in the denial of a claim for refund of input VAT and that RR No. 7-95 did not expand the invoicing requirements under Sections 113(A) and 237 of the 1997 NIRC.[2]

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[1] Resolution, November 27, 2006, page 3.
[2] Taganito Mining Corporation v. Commissioner of Internal Revenue, C.T.A. EB No. 7 (C.T.A. Case No. 6384), January 31, 2006; Hitachi Global Storage Technologies Philippines Corp. [formerly Hitachi Computer Products (Asia) Corp.] v. Commissioner of Internal Revenue, C.T.A. EB No. 54 (C.T.A. Case No. 6312), March 22, 2006; Applied Food Ingredients Co., Inc. v. Commissioner of Internal Revenue, C.T.A. E.B. No. 85 (C.T.A. Case No. 6171), April 26, 2006; J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. EB No. 128 (C.T.A. Case No. 6454), January 15, 2007.

In this case, We find no cogent reason to deviate from Our abovementioned rulings considering that indeed, as determined by the Court in Division, petitioner's invoices are not imprinted with the word "zero-rated" as required by RR No. 7-95, otherwise known as the Consolidated Value-Added Tax Regulations. RR No. 7-95 is explicit in its requirements, thus:

> ***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;
> 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 *(Emphasis supplied)*"

At this juncture, We maintain Our position that Section 4.108-1 of RR 7-95 requiring the imprinting of the words "zero-rated" on sales invoices or official receipts is valid.

In ***Atlas Consolidated Mining & Development Corporation v. Commissioner of Internal Revenue***[3], the Supreme Court had the occasion to discuss the invoicing requirements for VAT-registered persons. It 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 ten percent (10%) or zero percent (0%). The High Tribunal likewise declared 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". The Supreme Court recognizes that there are other sources of VAT invoicing and accounting requirements aside from Section 108 of the

[3] G.R. No. 134467, November 17, 1999 (318 SCRA 386).

Tax Code (now Sec. 113 of the 1997 NIRC), such as implementing rules and regulations issued by the administrative agencies of the government which also require strict compliance, i.e. Revenue Regulations. As held by the Supreme Court in the afore-quoted 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."

RR No. 7-95 was promulgated by the Secretary of Finance pursuant to the authority granted by Section 245 of the NIRC of 1977, which provides:

> "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**." *(Emphasis supplied)*

The foregoing provision was re-enacted *in toto* under Section 244 of the 1997 NIRC. Moreover, to enforce the rule-making power of the Secretary of Finance in coordination with the BIR, a new provision (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:
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> 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 as the manner in which licenses and stamps shall be gathered up and returned after serving their purposes;" *(Emphasis/italics supplied)*

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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 No. 7-95 requiring the imprinting of the words "zero-rated" on sales invoices or official receipts is valid. It is both reasonable and necessary for the effective implementation of the provisions of the NIRC concerning zero-rated sales. Thus, the requirement that sales invoices shall be imprinted with the word "zero-rated" cannot be taken as an enlargement or expansion of the law for the reason that it only implements the provisions of the 1997 NIRC on sales that are subject to 10% VAT, zero-rated sales (0% VAT) and exempt sales. The imprinting of the word "zero-rated" is necessary to distinguish sales subject to 10% VAT, those that are subject to 0% VAT (zero-rated) and exempt sales, and to enable the BIR 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 part of the law taking into consideration the underlying purpose of the rule or regulation.

The Supreme Court has ruled 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**

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> **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." [4] *(Emphasis supplied; citations omitted)*

The issuance of RR No. 7-95 was made pursuant to the respondent's duty of implementing the 1977 NIRC, as amended. The requirement of imprinting the word "zero-rated" fulfills the intent of the law. It is useful, practical and necessary not only with respect to the proper implementation of the provisions of the 1997 NIRC on zero-rated transactions but more importantly, to prevent the granting of refund or tax credit of non-existent input VAT. It is an act of tax administration which is not violative of the rule on non-delegation of delegated powers.[5]

It bears emphasis that the requirement of imprinting the word "zero-rated" on sales invoices or official receipts is mandatory and must be strictly complied with, regardless of whether or not the business entity engages only in export sales since RR No. 7-95 did not make any distinction on the different kinds of zero-rated sales.

Furthermore, the Honorable Court of Appeals has likewise ruled that non-compliance with invoicing requirements is fatal to a claim for tax credit/refund, thus:

> "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.**
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> Section 113 of the NIRC explicitly sets forth the Invoicing and Accounting Requirements for VAT-Registered Persons. . . .
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> xxx xxx xxx
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> 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.
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> Moreover, Revenue Regulations No. 7-95, as amended, states that:

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[4] Compania General de Tabacos de Filipinas v. Hon. Court of Appeals and The Commissioner of Internal Revenue, G.R. No. 147361, March 23, 2004 (426 SCRA 203).
[5] Taganito Mining Corporation v. Commissioner of Internal Revenue, C.T.A. E.B. No. 7, January 31, 2006.

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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;
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."[6] *(Emphasis supplied)*

Revenue Memorandum Circular No. 42-03 dated July 15, 2003, captioned *"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"*, in part, provides:

> "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."** *(Emphasis supplied)*

As correctly ruled by the Honorable Court of Appeals in the above-cited *Intel Technology Philippines, Inc.* case:

> "Under the 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**

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[6] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, CA-G.R. SP No. 79327, August 12, 2004.

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depict that he is a VAT-registered taxpayer whose sales are classified as zero-rated sales." *(Emphasis supplied)*

Lastly, petitioner's reliance on the case of *Matsushita Business Machine Corporation of the Philippines vs. Commissioner of Internal Revenue,*[7] which involved a claim for refund or tax credit of unutilized and/or unapplied input VAT paid on purchases of goods and services attributable to zero-rated sales for the period from October 1, 2000 to March 31, 2001, is misplaced. A perusal of the records of that case shows that the words "zero-rated" were indicated on the invoices of petitioner therein, hence the claim was partially granted. To reiterate, herein petitioner's invoices do not bear the word "zero-rated."

Based on the foregoing discussion, petitioner's claim for refund was correctly denied by the Court in Division and We find no compelling reason to reverse the assailed Decision promulgated on August 22, 2006 and the Resolution dated November 27, 2006.

WHEREFORE, the instant petition is hereby **DISMISSED.** Accordingly, the assailed Decision and Resolution are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

[7] C.T.A. Case No. 6580, September 14, 2006.

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JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
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 *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice

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CTA EB No. 239
(CTA CASE No. 5975)

Present:

ACOSTA, *Chairman,*
CASTAÑEDA,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
MAY 2 3 2007

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Dissenting Opinion

It is with due respect that I again manifest my Dissent, this time to the decision of the majority of the Court En Banc to the deny petitioner's claim for refund or issuance of a tax credit certificate of its excess or unutilized input value-added tax (VAT) attributable to its export sales for the period covering April 1, 1998 to March 31, 1999.

The majority upheld the First Division's denial of the instant claim for petitioner's failure to imprint the word "zero-rated" on the VAT invoices it presented in support of its claim, supposedly in violation of the requirement laid down by Revenue Regulations No. 7-95, otherwise known as the Consolidated Value-Added Tax Regulations.

I dissent to the above-conclusion reached by the majority for the following reasons, first, pertinent provisions of the 1997 National Internal Revenue Code (NIRC) do not require imprinting of the word "zero-rated"; second, the absence of the term "zero-rated"

Based on the foregoing, the following are the information required to appear in an invoice or official receipt:

(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.

The law made no mention of the requirement to imprint the word "zero-rated".

Section 112 (A) of the 1997 Tax Code, corroborates this view, it states:

> "(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."

The above provision explicitly grants to VAT-registered enterprises, engaged in zero-rated transactions, to right to apply or claim for a refund of their creditable input tax due or paid, to the extent that such input tax has not been applied against output tax, in an invoice does not affect the admissibility and competency of the same as evidence in support of a refund claim; third, assuming the propriety of imposing the alleged requirement to imprint the word "zero-rated" in the invoice, the invalidation of the same and the denial of the refund claim are not the legally imposable penalties for failure to meet such alleged requirement; and fourth, the presence of other equally valid pieces of evidence presented and formally offered are sufficient to justify the grant of the VAT refund claim attributable to its zero-rated transactions.

Section 113, in relation to Section 237 of the NIRC finds application:

> "**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:
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> 1. A statement that the seller is a VAT-registered person followed by his taxpayer's identification number (TIN); and
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> 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.
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> xxx xxx 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".

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within a period of two (2) years after the close of the taxable quarter. Again, nowhere in the provision makes the failure to imprint the word "zero-rated" in the invoice, a basis for the outright rejection of the refund claim.

The supposed "requirement" of imprinting the word "zero-rated" on the VAT invoice, can be found in **Section 4.108-1 of Revenue Regulations No. 7-95.**[1] Then again, the said provision is merely a regulation created for the sole and limited purpose of implementing an otherwise very exact law. And long-settled is the rule that administrative rules and regulations cannot expand the letter and spirit of the law they seek to enforce.

Consequently, assuming *arguendo* that there was a violation of RR 7-95, such oversight should not automatically invalidate the invoices for purposes of proving export sales made by the petitioner.

It must be pointed out that "admissibility" refers to the question of whether or not the evidence is to be considered, while "competency" refers to whether or not the evidence is expressly excluded by law or the rules. Needless to say, the said invoices comply with the above standards in both counts.

Revenue Memorandum Circular No. 42-03 dated July 15, 2003, clarifies this issue further. The pertinent 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)*

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[1] *The Implementing Rules and Regulations of the VAT law*

Note under this RMO, Revenue Officials are mandated to establish the existence of zero-rated sales from other evidence such as audited financial statements, books of accounts, export invoices, bills of lading, airway bills, among others.

Thus, the applicable statutes rather than limiting the documentary requirements to just the export invoices, acknowledge and specifically enjoin the production of "export documents" to prove the fact of export sales. These documents, taken collectively are the best means to prove the exportation of goods.

Never was it shown that the objective of the lawmakers and the Bureau of Internal Revenue (BIR) in issuing the numerous regulations, orders and interpretative memoranda, is to make the VAT invoice, the sole evidence of input tax. In fact, the contrary is provided, their manifest intention is to establish the use of VAT invoice and other relevant evidence, as equally valid.

There should be no distinction as to the evidentiary value of an invoice and other documentary evidence to prove the fact of export sales. After all, the pertinent 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.

Here, petitioner has established its right to the issuance of a tax credit certificate through material and documentary exhibits. The documents it formally offered as evidence, such as, Quarterly VAT Returns, bank certifications (issued by Security Bank, attesting that it received inward remittances credited to the account of petitioner), various bills of ladings, Report of the Court Commissioned Independent Certified Pubic Accountant, among others, clearly prove that petitioner's products were actually sold and shipped abroad, and in consideration thereof, it received foreign currency payments, inwardly remitted in accordance with Bangko Sentral rules and regulations.

This was in fact confirmed by the First Division, when it stated in its Decision that petitioner's export sales may fall within the export sales transactions subject to zero percent (0%) VAT referred to under Section 106(A)(2)(a)(1) of the NIRC.

Clearly, the substantive and main requirement of the Tax Code requiring the sale and actual shipment of goods, in order to be considered as zero-rated sales was satisfactorily complied with and sufficiently proven before this Court. So even assuming that export invoices have no evidentiary value, as far as proving the fact of exportation of goods, the other export documents presented are likewise significant and appropriate instruments to prove the fact of the transaction.

It is also noteworthy that this is a case seeking for the refund or issuance of tax credit certificate of petitioner's unutilized taxes for the period April 1, 1998 to March 31, 1999, and it was only on November 1, 2005 with the effectivity of Republic Act No. 9337[2] that the requirement of writing or printing the term "zero-rated sale" was introduced, following the amendment of Section 113[3] of the National Internal Revenue Code.

R.A. 9337 cannot apply retroactively so as to prejudice petitioner, given the well-entrenched principle that statutes, including administrative rules and regulations, **operate prospectively only**, unless the legislative intent to the contrary is manifest by express terms or by necessary implication.[4]

Lastly, the majority failed consider that tax cases are civil in nature. And under **Section 1, Rule 133, Rules of Court**, in civil cases, the quantum of evidence required to sustain the proponent of an issue is by mere preponderance of evidence. Thus, in

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[2] *R.A. 9337 was supposed to take effect on July 1, 2005 but due to constitutionality issues, it became effective only on November 1, 2005 upon the finality of the Supreme Court's September 1, 2005 Decision upholding the said law's validity.*
[3] *(B)(2)(c) of Section 113*
[4] *BPI Leasing Corporation, vs. The Honorable Court of Appeals, et.al. G.R. No. 127624. November 18, 2003*

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Municipality of Moncada vs. Cajuigan[5], it was explained that the phrase "preponderance of evidence" denotes the weight, credit and value of the aggregate on either side. This means that the testimony adduced by one side is more credible and conclusive than that of the other.

To recapitulate, the facts and the applicable laws and jurisprudence justify the reversal of the subject decision. The government has no right to hold money that does not belong to it, especially given the unmistakable bias of our tax laws in severely penalizing delinquent taxpayers with surcharges, interests and at times fines or imprisonment. Hence, while taxes are the lifeblood of the government, the Court must likewise sensitive of its responsibility to apply the principles of justice, equity and fairness as its guide in its delicate tasks of weighing the evidence and of deciding tax cases.

Accordingly, I manifest my position that petitioner should be entitled to the tax credit of the amount of its unutilized input VAT attributable to its zero-rated sales.

ERNESTO D. ACOSTA
Presiding Justice

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[5] *21 Phil. 184*