REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

SPL WORLDGROUP (PHILIPPINES), INC.	**C.T.A. CASE NO. 6802**
Petitioner,	Members:
-versus-	CASTAÑEDA, JR., Chairman UY, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE,	**Promulgated:**
Respondent.	AUG 3 1 2006

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D E C I S I O N

PALANCA-ENRIQUEZ, J.:

Pursuant to *Section 112 (A) of the National Internal Revenue Code of 1997* (hereafter "NIRC of 1997")*, as amended*, petitioner filed a claim for refund of its creditable input VAT attributable to its zero-rated sales. To do so, however, petitioner must be able to show that its input VAT paid and output VAT transactions are properly substantiated. 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 SPL Worldgroup (Philippines), Inc. (hereafter "petitioner") praying for a refund or tax credit certificate in the aggregate amount of P696,879.05 representing the unutilized input taxes paid or incurred on its importation of goods and local purchases of goods and services attributable to its zero rated sales for the period July 1, 2001 to September 30, 2001.

THE FACTS

In their "Joint Stipulation of Facts", the parties stipulated as follows:

> "1. Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at Suite 2301, Yuchengco Tower, RCBC Plaza, 6819 Ayala Avenue, Makati City;
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> 2. Respondent is the duly appointed Commissioner of Internal Revenue vested with authority to act as such, including *inter alia*, the power to decide, approve and grant refunds or tax credit of erroneously or illegally collected internal revenue taxes as provided by law, with office at the BIR National Office Building, Diliman, Quezon City, where he may be served with summons and other court processes.
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> 3. Petitioner is registered as a value-added tax (VAT) entity in accordance with the Tax Code and was

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issued by the BIR Revenue District Office No. 50, South Makati, BIR Certificate of Registration 9RC0000058796 dated June 27, 1994.

4. For the period July 1, 2001 to September 30, 2001, Petitioner filed its Quarterly Value Added Tax Return on October 22, 2001.

5. Subsequently, Petitioner amended its Quarterly VAT Return for the Third Quarter of 2001 on October 21, 2003, which reflected unutilized/excess input taxes amounting to P2,712,541.24, wherein P696,890.18, pertains to unutilized input taxes on importation of goods and local purchases of goods and services for the third quarter of 2001."

6. The instant Petition is being filed to toll the running of the two-year period for judicially claiming a tax refund/credit as provided for in Section 229 of the Tax Code, as amended, to wit:

> 'SEC. 229. Property of Tax Erroneously or Illegally collected. – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
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> 'In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even

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> without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.'"

In his Answer, respondent alleged by way of special and affirmative defenses:

> "4. Assuming without admitting that petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue;
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> 5. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;
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> 6. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;
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> 7. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit;
>
> 8. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended;
>
> 9. Claims for refund are construed strictly against the claimant for the same partakes of the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95)** and as such, they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).**"

Petitioner presented Ms. Jessana Y. Hilay, as witness, and submitted documentary evidence, marked as Exhibits "*A*" to "*RRRR-1*", inclusive of submarkings, which were all admitted by the Court.

On the other hand, respondent submitted the case for decision, without presenting any evidence.

Thereafter, both parties having filed their respective memoranda within the prescribed period, the case was deemed submitted for decision on April 24, 2006.

ISSUES

As stipulated upon by the parties, the following are the issues for the consideration of this Court:

I

WHETHER OR NOT PETITIONER IS ENTITLED TO THE ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE AMOUNT OF P696,879.05 REPRESENTING UNUTILIZED INPUT TAXES PAID OR INCURRED ON ITS IMPORTATION OF GOODS AND LOCAL PURCHASES OF GOODS AND SERVICES ATTRIBUTABLE TO ITS ZERO RATED SALES FOR THE PERIOD JULY 1, 2001 TO SEPTEMBER 30, 2001.

II

WHETHER OR NOT PETITIONER'S SALE OF SERVICES FOR THE PERIOD JULY 1, 2001 TO SEPTEMBER 30, 2001 QUALIFY AS ZERO RATED SALES.

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III

WHETHER OR NOT INPUT TAXES AMOUNTING TO P696,879.05 PAID OR INCURRED BY PETITIONER WERE ATTRIBUTABLE TO ITS ZERO RATED SALES FOR THE PERIOD JULY 1, 2001 TO SEPTEMBER 30, 2001.

IV

WHETHER OR NOT PETITIONER HAS DULY SUBSTANTIATED INPUT TAXES AMOUNTING TO P696,879.05 PAID OR INCURRED FOR THE PERIOD JULY 1, 2001 TO SEPTEMBER 30, 2001.

V

WHETHER OR NOT THE INPUT TAXES PAID OR INCURRED BY PETITIONER FOR THE PERIOD JULY 1, 2001 TO SEPTEMBER 30, 2001 HAVE NOT BEEN CARRIED OVER TO THE SUCCEEDING QUARTERS AND HAVE NOT BEEN UTILIZED AGAINST ANY OUTPUT TAX.

VI

WHETHER OR NOT PETITIONER'S RIGHT TO FILE THE ADMINISTRATIVE CLAIM FOR TAX REFUND OR THE ISSUANCE OF A TAX CREDIT CERTIFICATE FOR UNUTILIZED INPUT TAXES PAID OR INCURRED ON ITS IMPORTATION OF GOODS AND LOCAL PURCHASES OF GOODS AND SERVICES ATTRIBUTABLE TO ITS ZERO RATED SALES FOR THE PERIOD JULY 1, 2001 TO SEPTEMBER 30, 2001 HAD PRESCRIBED PURSUANT TO SECTIONS 112 (A) AND 229 OF THE TAX CODE OF 1997.

THE RULING OF THE COURT

The Petition is without merit.

Principal Issue

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 amount of P696,879.05, attributable to zero rated sales.

Petitioner's Arguments

The prime basis of petitioner's claim for refund is anchored on *Section 112 (A) of the NIRC of 1997, as amended*, which provides:

> "SEC. 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;
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> xxx xxx xxx."

Petitioner asserts that as a registered value-added tax entity and being engaged in providing system software design and development as well as information services to its non-resident foreign clients, in which the consideration is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), its sales of services qualify as zero-rated under *Section 108 (B)(2)* of the *NIRC of 1997*, *as amended.* As such, it now claims the refund of unutilized input taxes incurred on its importation of goods and local purchases of goods and services for the period July 1, 2001 to September 30, 2001 since it is not liable for any output tax in the said period.

Invoicing Requirements

While *Section 112 of the NIRC of 1997, as amended*, allows tax refund or credit of the input tax of zero-rated sales of VAT registered persons, nonetheless, certain invoicing requirements must be faithfully complied with before such claim for refund or credit can be granted.

Invoicing and accounting requirements for VAT-registered persons are provided for under *Sections 113 and 237 of the NIRC of 1997*, *as amended,* which provide as follows:

> "SEC. 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.

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"SEC. 237. Issuance of Receipts or Sales or Commercial Invoices. - All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at 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 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, 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.

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It is clear from the aforecited provisions that the law requires the issuance of invoice or receipts for every sale of a VAT registered person. Such requirement is mandatory in nature and consequently, non-compliance regarding the issuance of such important documents is fatal to one's claim for tax credit or refund of its input taxes. The relevance of such requirement is obvious: the presentation of invoices and/or receipts will prove the existence and nature of transactions and will be a basis for computation of taxes. The law does not only demand the substantiation of invoices or receipts for input taxes, but more importantly for output taxes especially for those claiming zero-rated sales and exemptions, as this will determine the creditable or unutilized input taxes that are available for refund. To sum, the invoicing requirements do not only pertain to documents required to prove input taxes, but rather it also requires the presentation of proper documents to prove existence and non-existence of output taxes.

A careful examination of petitioner's evidence shows that the same are deficient to prove that there are unutilized input taxes as against the output tax.

Petitioner offered invoices as evidence of its alleged sales of services to its affiliates, SPL Worldgroup, Inc. (Main Branch) and SPL

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Worldgroup Pty. Ltd. (Australia), with SAP Invoice Nos. 094 and 095 *(Exhibits "HHHH" and "IIII")* in the total amounts of $420,256.62 and $42,025.66 respectively, both with a description "Intercompany transfer pricing for Quarter Ending September 30, 2001". Petitioner also attached certifications from its affiliates which state that they recognize the invoice and that they no longer require the issuance of an official receipt in view of the offsetting of advanced cash remittances *(Exhibits "KKKK" and "LLLL")*.

There is no question that the invoices conform to the requirements prescribed by *Section 4-108-1 of Revenue Regulations No. 7-95 (The Consolidated Value-Added Tax Regulations)* which enumerates the information that must appear on the face of the receipts or invoices issued for sales by all VAT-registered entities, pertinent portion of which states:

> "**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;

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> 5. the word "zero-rated" imprinted on the invoice covering zero-rated sales; and
> 6. the invoice value or consideration.
>
> xxx xxx
>
> Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoices or receipts and this shall be considered as 'VAT Invoice'. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax.
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> xxx xxx."

The question now is whether the sales invoices petitioner issued to its foreign clients and the certification from the said clients are sufficient to prove the alleged zero-rated sales which in turn would entitle it to a refund of input taxes for the said period.

Our answer is in the negative.

Petitioner's claim for refund is founded on its zero-rated sales of services, the applicable law therefore is *Section 108 (B)(2) and (C) of the NIRC of 1997, as amended,* which requires the issuance of official receipts. Petitioner should produce official receipts to prove the alleged zero-rated sales of services to its foreign clients.

Petitioner is engaged in sale of services to its affiliate companies, as supported by their Services Agreements *(Exhibits "ZZ" and "AAA")*. Nevertheless, petitioner's stand that the sales invoices it issued and the

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certification from its affiliates are sufficient to meet the invoicing requirements has no basis in law, consequently, it cannot be sustained. The law itself prescribes that an official receipt should cover sales of services. It does not provide for any other document which can be used as an alternative to or in lieu of an official receipt.

While petitioner submitted the sales invoices issued to its affiliates which contained all the necessary informations required under the aforequoted provisions of law, the same cannot be considered as valid proof that petitioner is not liable for any output tax which will entitle it to claim the refund of its input taxes. Further, the certification from its foreign affiliates cannot take the place of an official receipt because the law is explicit on the substantiation requirements for claims for refund.

Failure to Comply with the Invoicing Requirements: Effects thereof

On the other hand, *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 reads:

> "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.
>
> 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.

Without proper VAT official receipts issued to its clients, the payments received by petitioner for providing system software design and development, as well as information services to its non-resident foreign clients for the period July 1, 2001 to September 30, 2001, cannot qualify for zero-rating for VAT purposes. Hence, it cannot claim such sales as zero-rated VAT not subject to output tax.

Having definitively disposed of the case through the resolution of the principal issue, We find no need to pass upon the other incidental issues raised 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

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified 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.

ERNESTO D. ACOSTA
Presiding Justice

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