REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NORTHERN MINDANAO POWER CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 312
(C.T.A. Case No. 6337)

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

Promulgated:
JUL 18 2008 G.Apolinario
2:10 p.m.

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DECISION

CASTAÑEDA, JR., J.:

This is a Petition for Review filed before the Court of Tax Appeals *en banc* assailing the Decision dated March 22, 2007 and the Resolution dated September 11, 2007 issued by the First Division of this Court in the case entitled, "*Northern Mindanao Power Corporation vs. Commissioner of Internal Revenue*", docketed as CTA Case No. 6337.

The assailed Decision DENIED the petition seeking the refund or issuance of tax credit certificate in the amount of P 6,411,892.84 allegedly

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representing unutilized input Value Added Tax (VAT) paid on its domestic purchases of goods and services attributable to zero-rated sales of electricity for the third and fourth quarters of taxable year 1999 and all the quarters of taxable year 2000.

THE FACTS

The facts of the case as found by the Court in Division are as follows:

> Petitioner is a domestic corporation duly organized and existing according to the laws of the Republic of the Philippines, with its principal place of business at Alsons Building, 2286 Pasong Tamo Ext., Makati City. Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue [BIR], vested by law with the power to duly act upon and approve claims for refund and tax credit as provided by law (*pars. 1 & 2, Facts Admitted*).
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> Petitioner is a value-added tax [VAT] registered taxpayer engaged in the production sale of electricity as an independent power producer and sells electricity to the National Power Corporation [NPC] (*Exhibits A, B, C & D; TSN, May 9, 2002, pages 9 – 11*).
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> For the last two quarters of 1999 and all the four quarters of 2000, petitioner averred that it incurred input VAT in the amounts of P2,490,960.29 and P3,920,932.55, respectively, totaling to P6,411,892.84 on its domestic purchases of goods and services that were used in its production and sale of electricity to NPC for the same period.
>
> In its VAT returns for the third and fourth quarters of 1999 and all the quarters of 2000 filed with the BIR within the legally prescribed periods, petitioner declared the aforesaid input VAT as follows:

		INPUT VAT		
Exhibit	1999	Carried-over from previous qtr	this quarter	Carried-over to the next quarter
E	3rd qtr	P 1,095,400.41	P 1,420,501.65	P 2,515,902.06
F	4th qtr	2,515,902.06	1,070,458.64	3,586,360.70
	Sub-total		P 2,490,960.29	
	2000			
G	1st qtr	3,583,360.23	P 733,273.82	4,316,634.05
H	2nd qtr	4,316,634.05	678,230.49	4,994,864.54
I	3rd qtr	4,994,864.54	1,843,893.56	6,838,758.10
J	4th qtr	6,838,758.10	665,534.68	7,504,292.78

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Sub-total	P 3,920,932.55
Total	P 6,411,892.84

Petitioner filed separate applications for refund for the taxable quarters concerned, one for calendar year 1999, covering the 3rd and 4th quarters, and another for the four quarters of 2000 with the BIR (*par. 8, Facts Admitted*) on June 20, 2000 and July 25, 2001 in the amounts of P3,586,360.70 and P3,917,932.08, respectively (*Exhibits K & L*).

Due to the respondent's inaction on its claims, petitioner filed the instant Petition for Review before this Court on September 28, 2001 seeking refund of the alleged unutilized input VAT payments for the third and fourth quarters of 1999 and four quarters of 2000 in the respective amounts of P2,490,960.29 and P3,920,932.55 or in the sum of P6,411,892.84.

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Acting on the Petition, the First Division of this Court issued a Decision on March 22, 2007 which is now the subject of appeal. The said Decision denied the petition for lack of merit.

The petitioner filed a Motion for Reconsideration of the Decision dated March 22, 2007 against the respondent. In a Resolution dated September 11, 2007, the First Division denied the Motion for lack of merit.

Hence, this Petition for Review *en banc.*

Petitioner seeks recourse to the Court *en banc* on the following grounds:

I.

The disallowance of petitioner's claim for refund was based on Revenue Regulations (RR) No. 7-95 and Section 4.108-1 of such RR expanded the requirement on the issuance of official receipts and invoices found in Sections 113 and 237 of the 1997 Tax Code. It was error on the part of the Honorable First Division of the Court of Tax Appeals to deny the petition for review by imposing a sanction due petitioner's failure to comply with the invoicing requirement of said RR. Such additional requirements imposed by the RR and the sanction imposed by the Honorable Court of Tax Appeals find no basis in the tax code and is beyond the express intent of legislature. Such an interpretation if pursued would result on the violation of the constitutional mandate of separation of powers.

II.

The High Court in *Atlas Consolidated Mining & Development Corporation* [1] made the pronouncement that it is the duty of the seller to comply with the invoicing and accounting requirements in Section 108 of the Tax Code and in the said case Supreme Court likewise made the significant ruling that an approved zero-rating issued by Bureau of Internal Revenue signifies that petitioner had already complied with the requirements, invoicing or otherwise, necessary for the zero-rating of its sales.

III.

The First Division erred when it denied petitioner's claim for refund on the basis of the ruling of the Court of Tax Appeals En Banc *in Eastern Telecommunications Phils., Inc. vs. Commissioner of Internal Revenue.*[2] The denial of the claim for refund in said case is based on a sanction provided under Revenue Memorandum Order No. 42-2003 which cannot be applied retroactively against the 1999 and 2000 claim for refund of petitioner Northern Mindanao Power Corporation.

THE ISSUES

Petitioner submits, for consideration of the Court *en banc*, the following issues:

(1) Whether or not petitioner's sale of electricity qualifies as effectively zero-rated sale under Section 108B of the Tax Code?

(2) Whether or not petitioner is entitled to the claim for refund.

PETITIONER'S ARGUMENTS

Petitioner contends that the disallowance of its claim for refund was based on Section 4.108-1 of Revenue Regulation (RR) No. 7-95 issued by

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[1] G.R. No. 134467, November 17, 1999, 318 SCRA 387.
[2] C.T.A. Case EB No. 11, April 19, 2004.

Bureau of Internal Revenue (BIR) which requires the imprinting of the word "zero-rated" on the invoice covering zero-rated sales. Such additional requirement is not found in the express provisions of Section 113 or 237 of the 1997 Tax Code and has no statutory basis, therefore, violative of the principles of separation of powers. Further, RR 7-95 requires the imprinting of the phrase "zero-rated sales" on <u>sales invoice</u> only but not on <u>official receipts</u>.

In addition, petitioner argues that the Rules on Evidence do not exclude petitioner's official receipts/invoices on the basis of failure to comply with administrative regulations. The First Division committed reversible error by limiting proof of zero-rated sales to official receipts.

According to petitioner, Section 113 and 237 of the Tax Code provide that invoices and official receipts can be used interchangeably. Section 237 as well as Section 110 of the same Code likewise shows the intention to allow the use of either invoices and official receipts to substantiate claims for VAT refund.[3]

The word "zero-rated" was integrated to the Tax Code only on November 1, 2005 by virtue of Republic Act (RA) No. 9337.[4] The integration into the tax code by RA 9337 of the provision of Section 4.108-1 of RR 7-95 is a recognition of the fact that the Tax Reform Act of 1997 prior to such amendment by RA 9337 did not impose the requirement of imprinting the term "zero-rated sales" in official receipts and sales invoices and this clearly shows that such requirement imposed by the aforecited RR 7-95 has no basis in law and therefore void. [5]

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[3] Rollo, page 160.
[4] "AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES"
[5] Rollo, page 21.

RESPONDENT'S COMMENT

Respondent reiterates its stand that the claim of petitioner for refund or issuance of tax credit certificate in the amount of P 6,411,892.84 should be denied for not being established and substantiated by appropriate and sufficient evidence.

For a judicial claim for refund or issuance of a tax credit certificate attributable to zero-rated sales to prosper, petitioner must substantiate the input VAT paid on domestic purchases of goods and services attributable to such sales. As such, it is necessary to scrutinize the purchase invoices or official receipts to prove the input VAT paid and to examine whether the invoices or receipts are indeed VAT invoices or VAT receipts.

The *Report* dated April 14, 2003 prepared by the commissioned auditing firm, SGV & Co. and submitted by petitioner revealed a discrepancy amounting to P4,856,729.16 between the amount claimed by petitioner and the SGV verification representing input VAT on purchases of goods and services. Moreover, the said *Report* was not certified by the said auditing firm as required in CTA Circular No. 1-95, as amended by CTA Circular No. 1-97.

Respondent further argues that it is clear from the provisions of Section 112 (A) of the NIRC of 1997 that there must be zero-rated or effectively zero-rated sales in order that a refund of unutilized input VAT could prosper. Accordingly, without the valid VAT official receipt in support of zero-rated sales of electricity to NPC, the said subject sales cannot qualify for VAT zero-rating under Section 108 (B) (3) of the NIRC of 1997.

COURT'S RULING

The petition is without merit.

<u>The sale of electricity to National Power Corporation (NPC) is zero-rated for VAT purposes.</u>

There can be no dispute that the taxpayer-petitioner has the burden of proving the legal and factual bases of its claim for tax credit or refund. Thus, the petitioner has to establish first that its sales qualify for VAT zero-rating under the existing laws (legal basis), and then to present sufficient evidence that said sales were actually made and resulted in refundable or creditable input VAT in the amount being claimed (factual basis). [6]

As correctly discussed by the Court in Division, the sale of electricity to NPC by petitioner are effectively subject to zero percent (0%) VAT pursuant to Section 108(B)(3) of the National Internal Revenue Code (NIRC) of 1997 which provides:

> SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx 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;
>
> xxx xxx xxx 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;
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> xxx xxx xxx xxx

Furthermore, the zero-rating of sales of electricity to NPC was already affirmed by the Supreme Court in the case of *Maceda vs.*

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[6] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 105.

Macaraig, Jr. [7] Thus, there is no dispute that the petitioner's sale of electricity qualifies as effectively zero-rated sale.

Petitioner failed to comply with the substantiation and/or invoicing requirements under the NIRC of 1997 in relation to the Revenue Regulation No. (RR)7-95.

Now comes the second question of whether petitioner has sufficiently established the factual bases for its claim for refund/credit of input VAT. On this aspect, petitioner fails.

To fortify petitioner's claim, a Report of the commissioned auditing firm, SGV & Co. dated March 5, 2002 was submitted. However, as correctly found by the Court in division, petitioner still failed to substantiate its sales by the appropriate supporting documents. It observed:

> A scrutiny of the said report and petitioner's supporting documents show that out of the claimed total sales of P1, 419,006,215.28, the amount of P1,356,873,757.76 (P1,357,381,512.07 less P507,754.31) was not supported by official receipts. While there were official receipts covering the remaining sales amount of P62,132,457.52, the same cannot be considered as valid because the word "zero-rated" was not imprinted thereon in violation of Section 4.108-1 of Revenue Regulations No. 7-95 quoted earlier.

This Court has consistently ruled that in order for sales to be considered zero-rated for purposes of refund or tax credits of input tax, taxpayer must establish that it has complied with the substantiation requirements provided under Section 113(A) in relation to Section 237 of the NIRC of 1997 and Section 4.108-1 of RR No. 7-95.

The pertinent provisions provide as follows:

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[7] G.R. No. 88291, June 8, 1993, 223 SCRA 217.

> 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.
> xxx xxx xxx xxx
>
> 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 the 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 Identification Number (TIN) of the purchaser.
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Likewise, Section 4.108.1 of RR No. 7-95 provides:

> "Section 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; and
6. the invoice value or consideration.

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Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or receipts and this shall be considered as a "VAT Invoice". All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax. "(underlining ours)

xxx xxx xxx xxx

Based on the foregoing, a VAT-registered person shall issue an invoice or a receipt for every sale transaction. The invoice or receipt shall contain the information required under Sections 113 and 237 of the NIRC of 1997 including the imprinting of the word "zero-rated" on official receipts/invoices pursuant to RR No. 7-95 issued by the BIR.

The invoice under requirement no. 5 of RR No. 7-95 refers to VAT invoice which covers both official receipts and sales invoices for purposes of imprinting the word "zero-rated". Thus, it cannot be said that the requirement of imprinting the word "zero-rated" applies only to sales invoice and not to official receipts.

Petitioner also argues that the imprinting of the word "zero-rated" is found only in an implementing rule not in law and it is without statutory basis, therefore, violative of the principles of separation of powers.

The Court *en banc* disagrees. **Rules and regulations** issued by administrative or executive officers pursuant to the procedure or authority conferred by law upon the administrative agency **have the force and effect, or partake of the nature, of a statute.**[8] In addition, the Supreme Court ruled in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[9] that **applications for refund/credit of input VAT with the BIR must comply with the appropriate revenue regulations**. Thus, the issuance of appropriate invoice or receipt to establish zero-rated sale transaction is a requirement set by law itself.

On the other hand, the Court *en banc* cannot sustain petitioner's argument that invoices and official receipts can be used interchangeably to substantiate sale of services. Since petitioner is engaged in the sale of electricity, classified as sale of services, it must present appropriate VAT official receipts. The applicable law is Section 108 of the NIRC of 1997 which provides:

> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties. –*
>
> A) *Rate and Base of Tax.* - There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.
> xxx xxx xxx xxx
>
> The term *"gross receipts"* means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.
> xxx xxx xxx xxx

[8] *Commissioner of Internal Revenue vs. Solidbank Corporation.,* G.R. No. 148191, November 25, 2003, 416 SCRA 436 citing the case of *Victorias Milling Co., Inc. v. Social Security Commission,* 114 Phil. 555, 558, March 17, 1962.

[9] *Supra* note 6.

> (C) *Determination of the Tax.* - The tax shall be computed by multiplying the total amount indicated in the official receipt by one-eleventh (1/11).

The law is clear. For every sale of services, **VAT shall be computed on the basis of gross receipts indicated in the official receipt**. While the use of official receipt as proof of sale of services has already been recognized in NIRC of 1997, it was even clarified during the Senate deliberation of RA No. 9337, which we quote:

> The President: Mr. Sponsor, is it not better if we delegate these matters of strict implementation to the BIR rather than define it here in the law which might be difficult to change later on should there be a need to change it? These are matters of implementation and administration. If we provide appropriate standards, maybe we can delegate these implementation provisions to the Bureau Internal Revenue. Would that be an acceptable idea to the sponsor?
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> Senator Recto: To improve the system, Mr. President, I think that we are better off putting it in the law insofar as a VAT invoice is for goods; a receipt is for services. And then it should be clear in the law that if one is selling an exempt product, it should be exempt; if one is selling a zero-rated product, it should be zero-rated; if one is selling at 10%, it should be 10% so that it is clear to the consumer, to the taxpayer, how much taxes he paid. That is found in Europe. (underlining ours)

Clearly, official receipt cannot be interchanged with sales invoice. Accordingly, the requirement of issuing a duly registered VAT official receipt with the imprinted word "zero-rated" is mandatory under the law and cannot be substituted especially for input VAT refund purposes. [10]

Meanwhile, petitioner's reliance in the case of *Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal*

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[10] *Southern Philippines Corporation vs. Commissioner of Internal Revenue*, C.T.A. EB No. 214, July 31, 2007 citing the case of *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, C.T.A. Case EB No. 107, June 29, 2007.

Revenue[11] cannot be sustained. In the said case the Supreme Court ruled that an approved zero-rating issued by BIR signifies that petitioner had already complied with the requirements, invoicing or otherwise, necessary for the zero-rating of its sales. The Supreme Court made the said ruling on the assumption that petitioner **had already complied with the requirements, invoicing** etc. In this case, petitioner failed to show compliance with the requirements set by law and implementing rules.

On the other hand, petitioner contends that it has no other business but the sale of electricity to NPC which in turn is totally exempt from VAT, thus, the absurd situation that the law seeks to avoid where the government would be crediting/refunding non-existent input tax is not present in this case. The Court disagrees. The law makes no exemption on the invoicing requirement. It does not state that if the entity whose only sale pertains to zero-rated sales it is exempt from complying with the requirements. There is also no showing that the petitioner is organized to sell its services to NPC alone and prohibited from selling with other entities. Therefore, petitioner is required to comply with the invoicing requirements.

The Court in division did not err in citing the case of *Eastern Telecommunications Phils., Inc.,*[12] it merely reiterates the importance of compliance with the mandatory requirements of invoicing. The Court's denial of the present claim for refund is anchored on the provisions of law discussed above. *gr*

[11] *Supra* note 1.
[12] *Supra* note 2.

WHEREFORE, in light of the foregoing laws and jurisprudence, the Petition for Review *en banc* is **DISMISSED** for lack of merit. Accordingly, the Decision dated March 22, 2007 and Resolution dated September 11, 2007 are **AFFIRMED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTANEDA, JR.
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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Concurring and Dissenting Opinion

With due respect to my esteemed colleagues, I would like to reiterate my stand that the denial of the portion of the instant claim, representing those substantiated by sales invoices/receipts which do not bear the term "zero-rated", is erroneous. In my Concurring and Dissenting Opinion to the majority opinion of the First Division I have already explained that the failure to imprint the term "zero-rated" on invoices/official receipts is not a valid cause for the denial of a claim for refund.

I agree that petitioner's sale of electricity to National Power Corporation (NAPOCOR) is subject to Value Added Tax (VAT) at zero-percent (0%) rate, this is undisputed. Further, petitioner has established its right to the issuance of a tax credit certificate through material testimonial and documentary evidence. These were the findings of the First Division which were upheld by the majority. Despite these, the majority of the En Banc likewise affirmed the finding of the First Division as to the denial of a portion of petitioner's claim based on the finding that the invoices and official receipts it issued to NAPOCOR do not bear the word "zero-rated" and allegedly cannot be considered as valid proofs of the zero-rated sales.

Foremost, Section 112 (A) of the National Internal Revenue Code (NIRC) grants to all VAT-registered enterprises engaged in zero-rated transactions, the right to claim a refund of their creditable input tax due or paid to the extent that such input tax has not been applied against output tax within a period of two (2) years after the close of the taxable quarter. And nowhere is it shown that failure to imprint the word "zero-rated" in the invoice will cause the outright rejection of the refund claim.

Also, I would like to reiterate that there is no requirement under the NIRC that the word "zero-rated" must be imprinted on official receipts or invoices. The pertinent provisions, namely, Section 113 in relation to Section 237, require only the following information 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 supposed "requirement" of imprinting the questioned information on the VAT invoice or receipt can only be found in **Section 4.108-1 of Revenue Regulations No. 7-95** (*The Implementing Rules and Regulations of the VAT law*). Then again, as I have explained, the said provision is merely a regulation created for the sole and limited purpose of implementing an otherwise very exact law. Long-settled is the rule that administrative rules and regulations cannot expand the letter and spirit of the law they seek to enforce.

Further, in *Intel Technology Philippines, Inc., vs. Commissioner of Internal Revenue,*[1] the Supreme Court declared that only the following items are required to be indicated on receipts or invoices: (1) a statement that the seller is a VAT-registered entity followed by its TIN-V; (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; (3) date of the transaction; (4) quantity of merchandise; (5) unit cost; (6) description of merchandise or nature of service; (7) the name, business style, if any, and address of the purchaser, customer or client in the case of sales, receipt or transfers in the amount of ₱100.00 or more, or regardless of the amount, where the sale or transfer is made by a person liable to VAT to another person also liable to VAT, or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees; and (8) the TIN of the purchaser where the purchaser is a VAT-registered person.

While the controversy in the *Intel* case involved the outright invalidation of invoices or official receipts for the non-indication of the BIR authority to print, and the TIN-V, it applies to the present case by analogy. Here, there is also nothing in the law which provides for the outright denial of a claim for tax credit/refund for failure to imprint the term "zero-rated" in the invoice or official receipt. And even granting for the sake of argument that there is, Section 264 of the NIRC only imposes the penalty of fine and imprisonment for, among others, invoices or receipts that do not reflect or contain all the "required" information. The penalties provided by law do not include invalidating the sales invoice/receipt, so as to provide basis for the outright rejection of the refund claim.

In addition, this is a case seeking for the issuance of tax credit certificate of unutilized input Value Added Taxes for the period 1999 to 2000 and it was only on

[1] *G.R. No. 166732, April 27, 2007.*

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]

Even the penal provisions of Revenue Regulations No. 7-95, as further amended by Revenue Regulations No. 08-02, particularly, Sections 4.110-5 and 4.111-1[5], exclude such harsh punishment.

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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*

[5] *"SECTION 4.110-5. Penalty Provision. – In accordance with the provisions of the Tax Code of 1997, a person who fails to file, keep or supply a statement, list, or information required herein on the date prescribed therefor shall pay, upon notice and demand by the Commissioner of Internal Revenue, an **administrative penalty of One thousand pesos** (P1,000) for each such failure, unless it is shown that such failure is due to reasonable cause and not to willful neglect. For this purpose, the failure to supply the required information for each buyer or seller of goods and services shall constitute a single act or omission punishable hereof. However, the aggregate amount to be imposed for all such failures during a taxable year shall not exceed Twenty-five thousand pesos (P25,000).*

*In addition to the imposition of the administrative penalty, willful failure by such person to keep any record and to supply the correct and accurate information at the time or times as required herein, shall be subject to the **criminal penalty** under the relevant provisions of the Tax Code of 1997 (e.g., Sec. 255, Sec. 256, etc.,) upon conviction of the offender.*

The imposition of any of the penalties under the Tax Code of 1997 and the compromise of the criminal penalty on such violations, notwithstanding, shall not in any manner relieve the violating taxpayer from the obligation to submit the required documents.

Finally, the administrative penalty shall be imposed at all times, upon due notice and demand by the Commissioner of Internal Revenue. A subpoena duces tecum for the submission of the required documents shall be issued on the second offense. A third offense shall set the motion for a criminal prosecution of the offender." (Emphasis supplied)

"SECTION 4.111-1. Administrative and penal provisions.
*(a) **Suspension of business operations**. – In addition to other administrative and penal sanctions provided for in the Code and implementing regulations, the Commissioner or his duly authorized representative may order suspension or closure of a business establishment for a period of not less than five (5) days for any of the following violations:*
(1) Failure to issue receipts and invoices.
(2) Failure to file value-added tax return as required under the provisions of Section 110.

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Thus, the only penalties legally imposable are: administrative penalty of One Thousand Pesos (P1,000), criminal penalty under the relevant provisions of the Tax Code of 1997, suspension of business operations and surcharge, interest unpaid amount of tax, as well as, civil penalties.

Clearly, there is no basis for the automatic invalidation of a claim for refund in case there is a non-complying taxpayer. These penalties are harsh enough and any addition thereto is not construction or interpretation, but legislation, which is beyond any court's province.

In fine, contrary to the view of the majority, (1) the applicable provisions of the National Internal Revenue Code (NIRC) do not require imprinting of the word "zero-rated"; (2) the absence of the term "zero-rated" in the invoice or receipt does not affect the admissibility and competency of the same as evidence in support of a refund claim; (3) 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.

Accordingly, I vote for the partial grant of the instant Petition for Review and hold that it is erroneous to deny petitioner's claim on the sole ground that the word "zero-rated" was not imprinted thereon .

ERNESTO D. ACOSTA
Presiding Justice

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(3) Understatement of taxable sales or receipts by 30% or more of his correct taxable sales or receipts for the taxable quarter.
(4) Failure of any person to register as required under the provisions of Sec. 107.
(b) ***Surcharge, interest and other penalties.*** *– The interest on unpaid amount of tax, civil penalties and criminal penalties imposed in Title XI of the Tax Code shall also apply to violations of the provisions of Title IV of the Code." (Emphasis supplied)*

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