REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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CBK POWER COMPANY LIMITED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6789

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

DEC 20 2006, 1:05 PM

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DECISION

CASANOVA, CAESAR., J.:

This is a Petition for Review seeking the issuance of a tax credit certificate in the amount of **FOUR MILLION THREE HUNDRED EIGHTY ONE THOUSAND SIXTY SEVEN and 49/100 PESOS (P4,381,067.49)** allegedly representing unutilized input value-added taxes paid by petitioner on its domestic purchases of goods and services attributable to its zero-rated sales of power generation to the National Power Corporation for the period July 1, 2001 to December 31, 2001.

Petitioner CBK Power Company Ltd. is a partnership duly organized and existing under and by virtue of the laws of the Philippines with principal office at the NPC Compound, Kalayaan, Laguna. Respondent, on the other hand, is the duly appointed Commissioner of

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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 address at the BIR National Office Building, Diliman, Quezon City.[1]

Petitioner was formed for the sole purpose of engaging in all aspects of (a) the design, financing, construction, testing, commissioning, operation, maintenance, management and ownership of Kalayaan II pumped-storage hydroelectric power plant, the new Caliraya Spillway, and other assets located in the Province of Laguna, and (b) the rehabilitation, upgrade, expansion, testing, commissioning, operation, maintenance, and management of the Caliraya, Botocan and Kalayaan I hydroelectric power plants and their related facilities located in the Province of Laguna. It is registered as a value-added tax (VAT) entity with TIN/VAT No. 205-760-474-000 and was issued the Certificate of Registration No. 1RC0000050243 dated April 10, 2000.[2]

On September 20, 2000, petitioner entered into a Second Accession Undertaking[3] with its affiliates; Industrias Metalurgicas Percarmona, S.A.,[4] and CBK Power Corporation,[5] and the National Power Corporation (NAPOCOR) wherein petitioner became a party to a Build-Rehabilitate-Operate-and-Transfer (BROT) Agreement dated November 6, 1998[6] and agreed to rehabilitate, construct, operate and maintain the four hydroelectric power plants known as the Caliraya, Botocan, Kalayaan I and Kalayaan II in the Province of Laguna. Under the BROT Agreement, petitioner shall generate and supply electricity to NAPOCOR and shall receive fees in consideration thereof.[7]

For the period July 1, 2001 to December 31, 2001, petitioner allegedly derived

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[1] Pars. 1 & 2, Facts Admitted, Records, pp. 98-99
[2] Pars. 3 & 4, Facts Admitted, Records, p. 99
[3] Exhibit E
[4] A private corporation duly organized and existing under the laws of Argentina with principal office at Carril Rodriguez Peña 2451, 5503, Godoy Cruz, Mendoza, Argentina
[5] A corporation organized and existing under the laws of the Republic of the Philippines with principal office at NPC Compound, Kalayaan, Laguna
[6] Exhibit D
[7] Exhibit D-6

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For the period July 1, 2001 to December 31, 2001, petitioner allegedly derived revenues in the amount of P695,949,007.68 relative to its sales of electricity to NAPOCOR under the BROT Agreement. Petitioner believes that such revenues qualify for zero percent (0%) VAT under Section 108(B)(3) of the National Internal Revenue Code (NIRC) of 1997.

For the same period, petitioner allegedly incurred input taxes in the amount of P4,381,067.49 which are attributable to its effectively zero-rated sales of electricity to NAPOCOR and which have not been applied to any output tax nor carried-over to the succeeding year. The said input taxes of P4,381,067.49 allegedly formed part of the total input taxes of P5,680,917.14 reflected in the amended VAT Returns for the third and fourth quarters of 2001 simultaneously filed by petitioner with the Bureau of Internal Revenue (BIR) on September 19, 2003, as shown below:

			INPUT VAT		
Exh.	2001	Zero-rated Sales	Domestic Purchases of Goods other than Capital Goods	Domestic Purchases of Services	Total
J	3rd qtr.	P 349,014,865.37	P 658,595.49	P 1,609,529.45	P 2,268,124.94
L	4th qtr	346,934,142.31	1,052,196.15	2,360,596.05	3,412,792.20
		P 695,949,007.68	P 1,710,791.64	P 3,970,125.50	P 5,680,917.14

Relying on the provisions of Section 112(A) of the NIRC of 1997 allowing the refund/tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales, petitioner filed with the BIR Revenue District Office No. 55 of Laguna on September 22, 2003, an administrative claim for the refund or issuance of a tax credit certificate in the amount of P4,381,067.49.[8]

Not wanting to be barred by prescription, petitioner then filed this instant Petition for Review on September 30, 2003, pursuant to Section 229 of the NIRC of 1997.

On November 17, 2003, respondent filed his Answer interposing the following Special and Affirmative Defenses:

4. Petitioner's claim for refund is subject to administrative investigation/examination by the respondent;

[8] Exhibit O

a. The registration requirements of a value-added taxpayer in compliance with Section 6 (a) and (b) of the Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations 7-95, and Section 236 of the Tax Code, as amended;

b. The invoicing and accounting requirements for VAT-registered persons as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition sine qua non to the filing of judicial claim in accordance with the provisions of Section 229 of the Tax Code, as amended. It is worthy of emphasis that Section 112 (D) of the Tax Code as amended, requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review;

d. That the input taxes of P4,381,067.49 allegedly paid by the petitioner on it purchase of goods and services for the period July 1, 2001 to December 31, 2001 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claim for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the Tax Code, as amended;

f. That petitioner's domestic purchases of goods and services made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal, showing that it actually paid VAT in accordance with Sections 110 (A)(2) and 113 of the Tax Code as amended, and in pursuance to Sections 4.104-5 (a) & (b) of Revenue Regulations 7-95 (Re: Substantiation of Claims for Input Tax Credit);

g. The requirements as enumerated under Section 4.104-2 of Revenue Regulations 7-95. (Re: Persons who can avail of the Input Tax Credits);

6. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must

be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications (Asiatic Petroleum Co., {P.I.} v. Llanes, 49 Phil 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc. 98 Phil 670); and

7. Claims for refund are construed strictly against the claimant for the same partake [of] the nature of exemption from taxation.

On May 26, 2006, this case was deemed submitted for decision sans the Memorandum of respondent.

The parties have jointly stipulated that the following are the issues for this Court to resolve:

1. Whether or not petitioner is entitled to a tax credit certificate in the amount of P4,381,067.49 representing unutilized input taxes paid or incurred on its local purchases or goods and services for the period July 1, 2001 to December 31, 2001;

2. Whether or not input taxes amounting to P4,381,067.49 paid or incurred by petitioner were attributable to its zero rated sales for the period July 1, 2001 to December 31, 2001;

3. Whether or not petitioner has duly substantiated input taxes amounting to P4,381,067.49 paid or incurred for the period July 1, 2001 to December 31, 2001;

4. Whether or not the input taxes paid or incurred by petitioner for the period July 1, 2001 to December 31, 2001 have not been carried over to the succeeding quarters and have not been utilized against any output tax.

It is undisputed that any sale of electricity to NAPOCOR is subject to VAT at zero-rate percent, as evidenced by a number of VAT and BIR Rulings[9] as well as in numerous cases decided by this Court and the Court of Appeals.[10]

In the case of **Maceda vs. Macaraig, Jr.,**[11] the Honorable Supreme Court had

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[9] VAT Ruling Nos. 015-99 (Feb. 12, 1999), 022-99 (March 11, 1999), 052-99 (May 13, 1999), 067-99 (July 14, 1999), 018-00 (March 18, 2000); BIR Ruling Nos. DA-247-04-19-99, DA-632-11-10-99 and DA- 209-04-04-00

[10] (*Mirant [Phils.] Mobile Corporation [formerly Southern Energy Mobile, Inc.] vs. Commissioner of Internal Revenue, CTA Case Nos. 5935 & 5969, January 15, 2002, with CTA Entry of Judgment dated March 21, 2002; Mirant [Navotas II] Corporation vs. Commissioner of Internal Revenue, CA-G.R. SP No. 64811, October 9, 2002; Magellan Cogeneration, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5765, February 26, 2002, with CTA Entry of Judgment dated April 25, 2002; Kepco Philippines Corporation vs Commissioner of Internal Revenue, CTA Case No. 5675 & 5704, March 18, 2003; Kepco Philippines Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6100, February 9, 2005*)

[11] G.R. No. 88291, May 31, 1991

pronounced that:

"The NPC is a non-profit public corporation created for the general good and welfare, wholly owned by the government of the Republic of the Philippines. From the very beginning of its corporate existence, the NPC enjoyed preferential tax treatment, to enable the Corporation to pay the indebtedness and obligation and in furtherance and effective implementation of the policy enunciated in Section one of "Republic Act No. 6395" which provides:

> **Section 1. Declaration of Policy**. - Congress hereby declares that (1) the comprehensive development, utilization and conservation of Philippine water resources for all beneficial uses, including power generation, and (2) the total electrification of the Philippines through the development of power from all sources to heed the need of rural electrification are primary objectives of the nation which shall be pursued coordinately and supported by all instrumentalities and agencies of the government including its financial institutions.

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*It is noted that in the earlier law, R.A. No. 358 the exemption was worded in general terms, as to cover "**all** taxes, duties, fees, imposts, charges, etc. x x x" However, the amendment under Republic Act No.6395 enumerated the details covered by the exemptions. Subsequently, P.D. No. 380, made ever more specific the details of the exemption of NPC to cover, among others, both direct and indirect taxes on all petroleum products used in its operation. Presidential Decree No. 938 amended the tax exemption by simplifying the same law in general terms. It succinctly exempts NPC from "**all forms of taxes**, duties, fees, imposts, as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings."*

The use of the phrase "all forms" of taxes demonstrate the intention of the law to give NPC all the tax exemptions it has been enjoying before. The rationale for this exemption is that being non-profit the NPC "shall devote all its returns from its capital investment as well as excess revenues of its operations, for expansion. x x x

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*It is evident from the provisions of P.D. No. 938 that its purpose is to maintain the tax exemption of NPC from **all forms** of taxes including indirect taxes as provided for under R.A. No. 6395 and P.D. No. 380 if it is to attain its goals."*

In relation thereto, Republic Act No. 6395, or the National Power Corporation Charter, categorically exempts the NPC from the payment of all forms of taxes, duties, fees and imposts. Section 13 of R.A. 6395 provides that:

> **Sec. 13. Non-profit Character of the Corporation: Exemption from all Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities**. - The Corporation shall be non-profit and shall devote all its returns from its capital investment

as well as excess revenues from its operations, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section one of this Act, the Corporation including its subsidiaries , is hereby declared exempt:

a. From the payment of all forms of taxes, duties, fees, imposts, charges, costs and service fees in any court and administrative proceedings, in which it may be a party, restrictions and duties to the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities;

b. From all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities, and other government agencies and instrumentalities;

c. From all import duties, compensating taxes and advanced sales tax, and wharfage fees on import of foreign goods required for its operations and projects; and

d. From all taxes, duties, fees, imposts, and all other charges imposed by the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities, on all petroleum products used by the Corporation in the generation, transmission, utilization, and sale of electric power."

Clearly from the foregoing, NAPOCOR is a corporation with a special charter which categorically exempts it from the payment of all taxes, whether direct or indirect, which necessarily includes the value-added tax. In this regard, Section 108 (B)(3) of the National Internal Revenue Code applies. To quote:

"SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties.

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

(1) xxx
(2) xxx
(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate."

Thus, any sale of services to NAPOCOR is effectively subject to zero-percent (0%).

Since the legal issue of this case has already been settled, this Court now will determine whether petitioner's claim for refund or tax credit is properly substantiated by

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receipts and invoices, as required under the provisions of law.

To fully bolster its claim, petitioner presented in evidence its Quarterly VAT Returns and Monthly VAT Declarations for the period covering the taxable year 2001;[12] its 2001 Annual Income Tax Return with its 2001 Audited Financial Statements;[13] supplier's VAT sales invoices and official receipts;[14] and its General ledgers[15] among other documents. Petitioner contends that it generated only zero-rated sales amounting to P695,949,007.68 from its sales of electricity to NAPOCOR,[16] thus, it is entitled to a tax credit certificate for its unutilized input taxes in accordance with Section 112 (A) of the National Internal Revenue Code of 1997 which provides that:

> "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 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."

A meticulous evaluation of the evidence presented shows that petitioner's claim deserves a denial. Material to the resolution of the factual issues submitted is the determination of whether petitioner's sales of electricity to NAPOCOR indeed qualify as zero-rated.

Section 4.108-1 of Revenue Regulations No. 7-95, and Sections 113 (A) and 237 of the National Internal Revenue Code of 1997 provide:

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[12] Exhibits G to L, R to Z, AA to CC, inclusive
[13] Exhibits QQ, RR, inclusive
[14] AAB to AAK inclusive of all sub-markings, AAL to AAM inclusive of all sub-markings
[15] SS, SS-1 to SS-2
[16] TSN, April 28, 2004, pp. 9-11

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 service;
5. **the word "zero-rated" imprinted on the invoice covering zero-rated sales;** and
6. the invoice value or consideration.

In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.

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 a "VAT Invoice". All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax.

If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A "VAT Invoice" shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of this Code.

The invoice or receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

SEC. 113. Invoicing and Accounting Requirements of 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 obliged to pay to the seller with the indication that such amount includes the value-added tax.

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) 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, receipt or 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) 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, receipt 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 of the purchaser.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place or business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to an internal revenue tax from compliance with the provisions of this Section."

After a careful scrutiny of the documents presented in evidence by petitioner in this case, this Court finds that its invoices[17] and official receipts[18] issued to NAPOCOR do not bear the word "zero-rated" as required to be imprinted, which is clearly a violation of the requirements of the afore-mentioned provisions of law. Hence, they cannot be considered as valid proofs of petitioner's alleged zero-rated sales for VAT purposes. Moreover, petitioner even failed to present some of the official receipts for its sales of electricity in blatant contravention of Section 113 of the NIRC of 1997.

In the case of **Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue,**[19] this Court En Banc discussed the importance of a mandatory compliance with the requirements of invoicing, as well as, the consequences of failing to do so, to quote:

"[W]e disagree with petitioner's allegations of the Division's erroneous denial of its claim for tax refund on the ground that petitioner's invoices do not bear the

[17] Exhibits AAL-1 to AAL-22
[18] Exhibits AAM-1 to AAM-11
[19] CTA EB No. 11 (CTA Case No. 6255), April 19, 2005

requirements must be faithfully complied with before such claim for refund or credit can be granted.

Sections 113 (A) and 237 of the NIRC of 1997 lay down the invoicing requirements for VAT registered persons. More specifically, Section 4.108-1 of Revenue Regulations No. 7-95 enumerates the information that must appear on the face of the receipts and invoices issued for sales of goods by all VAT-registered persons. xxx

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The aforequoted revenue regulation issued to implement the NIRC provision on VAT invoicing and accounting requirements is mandatory as the word "shall" is used. It is a settled doctrine in statutory construction that the word "may" when used in a statute, is permissive and operates to confer discretion; it cannot be construed as having a mandatory effect (Republic Planters Bank vs. Agana, Sr., 269 SCRA 1). The word "shall" is imperative, commonly operating to impose an obligation or duty which may be enforced; it is a word of command that must be given a compulsory meaning (Pimentel vs. Aguirre, Jr., citing Ruben A. Agpalo, Statutory Construction, 1990 Ed., p. 239). Indeed, it is the duty of a seller-taxpayer to comply with the invoicing requirements laid down in the said memorandum circular.

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In conjunction thereto, Revenue Memorandum Circular No. 42-2003 has clarified the issue relative to the failure of a taxpayer claiming for tax refund/credit to comply with the invoicing requirements. The pertinent portion of the said circular provides:

> A-13. Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.
>
> *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 requirement 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 do 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.*

Under said memorandum, failure to comply with the invoicing requirements on the documents supporting the sale of goods and services shall result in the disallowance of the claim for input tax of the taxpayer 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, such as the failure of the claimant-taxpayer to imprint the word "zero-rated" on the sales invoice or receipt, the claim for tax credit/refund of

VAT on its sales shall be denied."

Moreover, in the same case of **Eastern**, this Court *En Banc* had the opportunity to explain the rationale[20] behind the requirement of imprinting the word "zero-rated" on petitioner's sales invoices and official receipts, as follows:

> *"Furthermore, Section 110 of the NIRC of 1997, as amended, provides that: 'Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: xxx.' If the invoice or official receipt was not imprinted with "zero-rated", there is a danger that the purchaser of goods or services may be able to claim input tax on the sale to it by the taxpayer of goods and services, as the case may be, notwithstanding the fact that no VAT was actually paid on such goods or services since the taxpayer is zero-rated. This is the rationale for the mandatory requirement in Revenue Regulations No. 7-95 that the words "zero-rated" be imprinted on the invoice or receipt as the case may be. The mere stamping of the invoice or receipt would not suffice since there is no guarantee that the words "zero-rated" would appear in the original copy of the invoice provided the buyer. The zero-rated taxpayer should be entitled to a tax credit/refund on input taxes paid on its purchase of goods or services subject to the mandatory compliance with invoicing requirements under the regulations. Otherwise, there may result an absurd situation where the government would be crediting/refunding non-existing input tax to purchasers of goods or services of such zero-rated taxpayer."*

It must be emphasized that a strict compliance with the mandatory requirements of invoicing, more particularly, the imprinting of the word "zero-rated" on the face of the invoices and receipts is required so as to be entitled to the claim for refund or issuance of a tax credit certificate. As categorically expressed by the Honorable Supreme Court in the case of **Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue,** [21] *"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."* Evidently, besides the recognition that Section 108 of the Tax Code (now Section 113 of the NIRC of 1997), provides for the mandatory compliance of invoicing, there are other provisions which likewise require the compliance of proper invoicing, such as, revenue regulations implemented by the office of the respondent. And one such implementing rules is Revenue Regulations No. 7-95, which was issued in pursuance of the respondent's duty of

[20] Also partly quoted in the case of *Taganito Mining Corporation v. Commissioner of Internal Revenue, CTA En Banc No. 7, January 31, 2006*
[21] G.R. No. 134467, November 17, 1999

implementing the NIRC of 1997, as amended.[22]

Petitioner has the burden of proving compliance with the requirements of the NIRC of 1997 and its implementing rules and regulations. This shall be complied with in all actions involving taxation, more particularly, those involving the claims for refund or issuance of a tax credit certificate, considering that tax refunds are in the nature of tax exemptions and as such, must be strictly construed against the claimant. It cannot be allowed that the true intentions of the lawmakers in enacting the VAT law as an additional revenue generating system be brushed aside by doing away with all the requirements of law, for to do so would result in the continued dwindling of the financial resources of this government.

IN VIEW OF THE FOREGOING, this instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

LOVELL R. BAUTISTA
Associate Justice

[22] See Taganito Mining Corporation vs. Commissioner of Internal Revenue, CTA EB No. 7, January 31, 2006

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CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division