REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

KEPCO PHILIPPINES CORPORATION,
Petitioner,

C.T.A. E.B. No. 174
(C.T.A. CASE No.6679)

-versus-

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

Promulgated:

MAY 0 9 2007

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DECISION

CASTAÑEDA, JR., J.:

STATEMENT OF THE CASE

Pursuant to Rule 43 of the Revised Rules of Court in relation to Rule 8, Section 4(b) of the Revised Rules of the Court of Tax Appeals, petitioner filed an appeal on April 11, 2006 assailing the resolution promulgated by the First Division of the Court of Tax Appeals ("Court in

Division" for brevity) on March 7, 2006 which modified its Decision dated October 26, 2005 in its petition for review docketed as C.T.A. CASE No. 6679 entitled *"Kepco Philippines Corporation vs. The Commissioner of Internal Revenue".*

The dispositive portion of the resolution under review provides, as follows:

> **IN VIEW OF THE FOREGOING**, the Motion for Partial Reconsideration is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED to REFUND** petitioner the amount of P140,786.97 in addition to the amount of P990,549.30 earlier granted in the October 26, 2005 Decision or for a *sum* of P1,131,336.27.
>
> **SO ORDERED**.

STATEMENT OF THE FACTS

The following are the parties of this case:

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal place of business at the 18th Floor Citibank Tower, 8741 Paseo de Roxas, Salcedo Village, Makati City. Petitioner is likewise a Value-added Tax (VAT) registered taxpayer engaged in the production and sale of electricity (as an independent power producer) and sells electricity solely to the National Power Corporation (NPC). Petitioner has been issued by the respondent the requisite registration certificate last 01 January 1997.[1]

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1 Petition for Review *En Banc*, p.2

Respondent is the duly appointed Commissioner of the Internal Revenue, vested under the appropriate laws with the authority to carry out all the functions, duties and responsibilities of the said Office, including *inter alia,* the power to decide, approve and grant refunds and or tax credits of erroneously paid or illegally collected internal revenue taxes and holds Office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[2]

As found by the Court in Division, the following are the facts of this case:

> Petitioner, on December 22, 2000, filed with the respondent its Application for Effective Zero-Rating for its sale of electricity to the NPC for the year 2001. This application was duly approved by the respondent.
>
> For the calendar year 2001, petitioner was a duly registered Value-Added Tax (VAT) taxpayer under the jurisdiction of Revenue District Office (RDO) No. 43 of Pasig City.
>
> During the four (4) quarters of 2001, petitioner allegedly incurred expenses representing domestic purchases of goods and services, for which it incurred an input VAT in the amount of P5,670,275.63. The aforementioned expenses allegedly represent costs attributable to its production and sale of electricity to the NPC.
>
> Thus, petitioner filed with the respondent, thru its RDO No.43, claims for refund of excess input VAT incurred for the four (4) quarters of calendar year 2001 in the total amount of P5,670,275.63 on October 1, 2001, for the first two quarters and on June 24, 2002, for the third and fourth quarters.
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> Due to respondent's inaction on its claims and to toll the running of the prescriptive period, the instant Petition for Review was filed on April 22, 2003.

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[2] supra p.3

The Court in Division promulgated its decision on October 26, 2005 and petitioner received a copy of which on November 8, 2005. The dispositive portion of the said decision reads, as follows:

> **WHEREFORE,** petitioner's claim for refund is **PARTIALLY GRANTED.** Respondent is hereby **ORDERED** to **REFUND** the petitioner the reduced amount of P990,549.30 representing unutilized input value-added tax for taxable year 2001.
>
> **SO ORDERED.**

Petitioner filed a "Motion for Partial Reconsideration" from the said decision on November 23, 2005.

On March 7, 2006, the Court in Division issued the assailed resolution mentioned at the outset which partially granted the above-mentioned motion.

Petitioner filed a "Motion for Additional Time to File Petition for Review" on March 31, 2006.

Per *En Banc* Resolution No. 01-04-05-CTA dated April 5, 2006, petitioner was granted a final and non-extendible period of fifteen (15) days from March 31, 2006, or until April 15, 2006 within which to file its intended petition for review.

On April 11, 2006, petitioner filed the petition for review *en banc*.

In an *en banc* resolution promulgated on April 26, 2006, respondent is ordered to file his Comment within ten (10) days from receipt of the said resolution.

Respondent did not file his Comment. Hence, the petition shall be deemed submitted for resolution.

Therefore, this instant case.

STATEMENT OF THE ISSUE

THE HONORABLE COURT'S FIRST DIVISION ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION WHEN IT RULED THAT PETITIONER HAS NOT FULLY SUBSTANTIATED ITS CLAIM FOR INPUT VAT REFUND FOR FAILURE TO PRESENT OFFICIAL RECEIPTS AND VAT INVOICES OF ITS SALE OF ELECTRICITY TO NPC.

PETITIONER'S ARGUMENTS

Petitioner avers that it has substantially complied with the requisites for refund of input VAT on purchases of goods and services attributable to zero-rated sales as laid down in C.T.A. CASE No. 6417[3], to wit:

1. Both the administrative and judicial claims for refund were filed within the two year prescriptive period;
2. The claimed input VAT payments are directly attributable to zero-rated sales;

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3 *Mirant Pagbilao Corporation vs. Commissioner of Internal Revenue*, 31 August 2005

3. The claimed input VAT payments are duly supported by VAT invoices or official receipts and;
4. The claimed input VAT payments were not applied against any output tax carried over the succeeding months.

Applying the above-enumerated requisites, petitioner avers that it has substantially complied with the same, even with requirement number 3.

Petitioner argues that the official receipts issued by the petitioner to the NPC are only for output tax purposes and are not related to the unutilized input VAT taxes incurred and paid by the petitioner. Further, the presentation of official receipts issued by petitioner to NPC for its sale of electricity was merely for the purpose of proving that the NPC is its sole customer and which fact has already been admitted by the respondent in its Answer dated May 27, 2003.

Petitioner alleges that it has substantially proven that it is a single purpose entity established solely for the purpose of rehabilitating, operating and maintaining the NPC's Malaya Thermal Power Plant for a fixed cooperation period of fifteen (15) days during which it is obligated to sell electricity generated by its operations to the NPC as its only customer (Exhibits "K" and "K-1" of petitioner).

Moreover, petitioner avers that by the very nature of the goods and services it purchased for the taxable year 2001 and for which it incurred input VAT, which remained unutilized, it can readily be seen that these purchases are directly attributable to zero-rated sales which is the sale of electricity by petitioner to its sole customer, the NPC. The amount of these zero-rated sales are also reflected and declared in the audited financial documents of the petitioner for taxable year 2001 (Exhibit "N" of the petitioner).Therefore, petitioner argues that it has substantially complied with requirement number 2.

Petitioner avers that the Court in Division's apportionment of the amount of the input VAT it granted the petitioner with the zero-rated sales petitioner was able to support with official receipts it issued the NPC for its sale of electricity may find merit if the petitioner sold electricity to customers other than the NPC and which sales are not considered as zero-rated. However, in the case of the petitioner, all of its sales of electricity are only made to one single customer and that it is the NPC.

RELIEF

Petitioner prays that the assailed resolution of the Court in Division be set aside and a new one be issued granting petitioner the additional amount of P4,268,556.22 over and above the P1,131,336.27 already awarded to the petitioner for a total refundable amount of

P5,399,892.49 representing petitioner's unutilized input VAT for the taxable year 2001.

Petitioner further prays for such other relief and remedies as may be deemed just and equitable under the circumstances.

THIS COURT'S RULING

We deny the petition.

It is undisputed that petitioner's sales of electricity to the National Power Corporation (NPC) is considered as effectively zero-rated sales under Section 108(B)(3) of the National Internal Revenue Code (NIRC). Thus, We quote with approval the Court in Division's decision:

> The governing law is Section 108 (B) (3) of the National Internal Revenue Code in relation to Section 13 of Republic Act No. 6395 (The Revised NPC Charter), as amended by Presidential Decree Nos. 380 and 938. To quote:
>
> **"Sec. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. —**
>
> "(A) Rate and base of tax.-
> 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:
> "(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.** *(Emphasis supplied)*
>
> **"Section 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

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devote all its returns from its capital investments, as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance of effective implementation of the policy enunciated in Section one of this Act, **the Corporation, including its subsidiaries, is hereby declared exempt from the payment of 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."** *(Emphasis supplied).*

Clearly from the foregoing, NPC is an entity with a special charter, which categorically makes it exempt from payment of all taxes, whether direct or indirect, including VAT. Hence, by virtue of the said charter, services rendered by a VAT registered entity, like herein petitioner, to NPC are effectively subject to zero percent (0%) VAT.

Moreover, in the case of **Maceda vs. Macaraig, Jr., 223 SCRA 217**, the Supreme Court affirmed the NPC's tax exemption, thus:

"A chronological review of the NPC laws will show that it has been the lawmaker's intention that the NPC was to be completely tax-exempt from all forms of taxes – direct or indirect.

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One common theme in all these laws is that the NPC must be enabled to pay its indebtedness which, as of P.D. No. 938 was P12 Billion in total domestic indebtedness, at any one time, and US$4 Billion in total foreign loans at any one time. The NPC must be and has to be exempt from all forms of taxes if this goal is to achieved."

Further, that petitioner filed and was granted by respondent an Application for Effective Zero-Rating for its sale of electricity to the NPC for the taxable year 2001, is among the stipulated facts by the parties.

Thus, petitioner's sale of electricity to NPC is subject to VAT at zero-percent (0%). xxx

Although not disputed, We likewise emphasize the Court in Division's decision that "before petitioner may be entitled to the claim for refund, it must substantiate its claim by compliance with the requisites laid down by law and its implementing rules and regulations:

(1) Section 112(B) of the 1997 National Internal Revenue Code which provides:

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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: 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 Plipinas* (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.

(2) Sections 4.106-1 of Revenue Regulations No. 7-95 which states:

"**SEC. 4.106-1. Refunds or tax credits of input tax**. – (a) Zero-rated sales of goods and properties or services – Only a VAT-registered person may be given a tax credit certificate or refund of VAT paid corresponding to the zero-rated sales of goods, properties or services, excluding the presumptive input tax and to the extent that such input tax has not been applied against the output tax. The application should be made within the two (2) years after the close of the taxable quarter when the sales were made.

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(3) Section 4.104-5 of Revenue Regulations No.7-95 quoted hereunder:

"**SEC. 4.104-5. Substantiation of claims for input tax credit**.- (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Section 108(a) and 238 of the Code xxx".

Based on the foregoing and as correctly alleged by petitioner, the requisites for refund of input VAT on purchases of goods and services attributable to zero-rated sales or effectively zero-rated sales are the following:

1. Both the administrative and judicial claims for refund were filed within the two year prescriptive period;

2. The claimed input VAT payments are directly attributable to zero-rated sales;

3. The claimed input VAT payments are duly supported by VAT invoices or official receipts and;

4. The claimed input VAT payments were not applied against any output tax carried over the succeeding month(s).

We will first discuss the first, third and fourth requisites. The second requisite will be tackled last because it is the reason for the denial of the claim.

As to the first requisite, We agree with the Court in Division that petitioner complied with the two year prescriptive period for filing the administrative and judicial claims for refund. The original 1st [4], 2nd , 3rd , and amended[5] 4th Quarterly VAT Returns[6] for taxable year 2001 was filed on April 25, July 25, October 25, 2001 and February 20, 2002, respectively. Petitioner's administrative claim[7] for refund was filed on October 1, 2001 for the 1st and 2nd quarters and June 24, 2002 for the 3rd and 4th quarters and the petitioner's judicial claim for refund thru the Petition for Review was filed on April 22, 2003. Hence, counting from the date of filing the corresponding original quarterly VAT return, the

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4 Court in Division Docket, p 544

5 the Court in Division dispensed with the presentation of the original 4th quarter VAT return because "even if petitioner filed its 4th quarterly VAT return earlier than the supposed date of filing, which is January 25, 2002, the same falls within the two-year period."

6 Supra, Note 4, Exhibits B (amended 1st Quarterly VAT Returns), C, D, & E, pp. 228-231

7 *ibid..*, Exhibits "G-1", "H-1", "I-1" & "J-1", pp 233, 239,246 & 253, respectively

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administrative and judicial claims for refund were filed within the two-year prescriptive period.

As to the third requisite, as found by the Court in Division, out of the total claimed input VAT payments of P5,670,275.63 (Decision p.2) only the amount of P5,387,315.54 were validly supported Input VAT. Details of which are the following:

Validly Supported Input VAT per Decision p. 12	P4,716,901.41
Validly Supported Input VAT per Resolution p. 3	670,414.13
	P5,387,315.54

As to the 4th requisite, We agree with the Court in Division that "petitioner was able to fully establish that the input taxes remained unapplied against any output tax" as proven by the Quarterly VAT returns.

Finally, the 2nd requisite is the crux of denial of this petition. Petitioner must prove that the claimed input VAT payments were directly attributable to effectively zero-rated sales to National Power Corporation (NPC).

Petitioner presented in evidence the Rehabilitation, Operation, Maintenance and Management Agreement[8] between the NPC and Korea Electric Power Corporation and the Accession Undertaking of petitioner. Petitioner also averred that the respondent even admitted in

[8] *ibid.*, Exhibit K, pp. 260- 415

its Answer dated May 27, 2003 that NPC is the sole customer of petitioner.

It is our opinion that VAT official receipts or VAT invoice issued by the seller (petitioner in this case) is the best evidence of proving the effectively zero-rated sales. This is in line with the Supreme Court case entitled ***"Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue***[9], which discussed the invoicing requirements for VAT-registered person by ruling 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 10% or 0% (zero-rated sales).[10] Necessarily, Petitioner should comply with this being a VAT registered entity with approved application for effectively zero-rated sales.

This is also in line with Sections 113 and 237 of the 1997 National Internal Revenue Code (NIRC) which read, 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:

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9 G.R. No. 134467, November 17, 1999 (318 SCRA 386)

10 *Hitachi Global Storage Technologies Philippines Corp. [formerly Hitachi Computer Products (Asia) Corp.] vs. Commissioner of Internal Revenue*, C.T.A. EB No. 54 (C.T.A. CASE NO. 6312), March 22, 2006

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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.**

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 of 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 internal revenue tax from compliance with the provisions of this Section." *(Emphasis supplied)*

Likewise, Section 4.108-1 of Revenue Regulations (RR) No. 7-95[11] reads, as follows:

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:

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11 The Consolidated Value-Added Tax Regulations

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.

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 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.

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 the 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. *(Emphasis supplied)*

In connection with the above-mentioned law and regulations, it is noteworthy to quote a portion of the *AMERICAN EXPRESS INTERNATIONAL, INC., PHILIPPINE BRANCH vs. COMMISSIONER OF INTERNAL REVENUE*[12] which reads:

The law is very clear. Section 113 provides that "a VAT registered person shall, for every sale, issue a duly registered VAT invoice or receipt for every sale transaction". Such VAT invoice or receipt must show the taxpayer identification number, followed by the word "VAT", the BIR Authority imprint or BIR permit marker and the word "zero-rated" imprinted on the invoice or receipt covering a zero-rated sale. Considering so, the sales of services referred to under Section 108 (B) (2) of the NIRC of 1997, as amended, as being subject to zero percent (0%) rate are those sales covered by duly registered VAT official receipts.

The VAT registered person must substantiate the input VAT paid by purchase invoices or official receipts. An official receipt issued by the

12 C.T.A. EB No. 103, March 3, 2006 (C.T.A. CASE No. 6294)

taxpayer is an essential requirement to prove the existence of sale and receipt of income and thereafter duly recorded in the accounting records.

The afore-quoted revenue regulation issued to implement the NIRC provision on VAT invoicing and accounting requirements is mandatory as the word "shall" is used. 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 (Pioneer Texturing Corp. vs. NLRC, 280 SCRA 806). Indeed, it is the duty of a seller-taxpayer to comply with the invoicing requirements laid down in the said NIRC provisions and Revenue Regulations.

It has been repeatedly declared by the courts that where the law speaks in clear and categorical language, there is no room for interpretation or construction; there is only room for application.[13] Applying the law and the regulations mentioned above in this case, it is clear that the **issuance** of invoice covering zero-rated sales with the imprint of "zero rated" is mandatory.

In the C.T.A. *en banc* case "*Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*"[14], this Court ruled, to quote:

" Moreover, Revenue Memorandum Circular No. 42-2003 has already clarified the issue relative to the failure of a claimant to comply with certain invoicing requirements. Under 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 indicate that he is a VAT-registered taxpayer whose sales are classified as zero-**

13 Samson S. Alcantara, *Statutes*, 1997 Ed., p.32 citing *Cebu Portland Cement Co. vs. Mun. of Naga*, G.R. Nos. 24116-17, August 22, 1968 ; *Gonzaga vs. Court of Appeals*, G.R. No. 27455, June 28, 1973

14 C.T.A. E B No. 154 (C.T.A. CASE No. 6338), February 6, 2007 citing *Intel Technology Philippines, Inc., vs. Commissioner of Internal Revenue*, CA-G.R. SP No. 79327, August 12, 2004 (for first par.) and *Hitachi Global Storage Technologies Philippines Corp.[formerly Hitachi Computer Products (Asia) Corp.], vs. Commissioner of Internal Rcvenue*, C.T.A. EB NO. 54 (C.T.A. Case No. 6312), March 22, 2006 (for second par.)

> **rated sales.** This treatment, however, 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.
>
> **In fine, only transactions evidenced by VAT official receipts/sales invoices will be considered as VAT transactions for purposes of input/output tax.** Hence, petitioner's export sales invoices cannot be considered as valid evidence of zero-rated sales for VAT purposes." *(Emphasis supplied)*

Based on the foregoing, it is clear that petitioner's contention that in a claim for refund only the input VAT payments must be duly supported by invoices and official receipts and that there is no substantiation requirement with regards to output VAT is bereft of merit.

To give credence to the admission made by respondent that petitioner is engaged solely in zero-rated sales will render naught the invoicing requirements for VAT taxpayers. The Rationale of Strict Compliance with invoicing requirements was discussed in the case of *AMERICAN EXPRESS INTERNATIONAL, INC., PHILIPPINE BRANCH vs. COMMISSIONER OF INTERNAL REVENUE (supra)*, as follows:

> The law and revenue regulations are explicit in emphasizing strict compliance with the invoicing requirements because for the same transactions, the output VAT of the seller becomes the input VAT of the purchaser. Pursuant to Sections 106(D)(1) and 108(C), in relation to Section 110 of the NIRC of 1997, as amended, the output or input tax on the sale or purchase of goods is determined by the total amount indicated in the invoice, while the output or input tax on the sale or purchase of services is determined by the total amount indicated in the official receipt. **In the case of zero-rated sales transactions,** the regulations further require that the words "zero-rated" be imprinted on the face of the covering invoices or official receipts. The rationale for the imprinting of words "zero-rated" be imprinted on the face of the covering invoice or official receipt of the seller is for the buyer or purchaser not to claim any input VAT from such purchase

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and **for the purpose of segregating those sales that are subject to 10% VAT from those sales that are zero-rated.** *(Emphasis supplied)*

We agree with the Court in Division that petitioner failed to substantiate all its declared zero-rated sales because out of the total P3,430,991,402.16 (Decision p.3) petitioner's declared zero-rated sales in its Quarterly VAT Returns, only P730,864,209.27 (Decision p.8) were duly supported by VAT official receipts issued by petitioner to the National Power Corporation.

For failure of the petitioner to substantiate all of its alleged zero-rated sales as found by the Court in Division, We agree that the claimed input taxes should be apportioned based on the ratio[15] of substantiated sales to total declared sales, computed as follows:

Substantiated Zero-rated Sales	P 730,864,209.27
Divided by Total Declared Zero-rated Sales	P3,430,991,402.16
Ratio of Substantiated Sales to Total Declared Sales	21%

However, it is our opinion that the bases of apportionment should be Section 112 of NIRC and Section 4.106-1 of RR No. 7-95 and not Section 12 of RR No.5-87 as held by the Court in Division.

Section 12 of RR No. 5-87 reads, as follows:

SECTION 12. *Apportionment of input taxes between taxable and exempt operations.* — **If a VAT-registered person is also engaged in other activities**, the input taxes paid for purchases of goods and services **which cannot be directly attributed to either operation shall be allocated between the VAT taxable operation and the other exempt operation**. For this purpose, the amount of VAT taxable sales or receipts over the total sales/receipts multiplied by the total input tax paid during the

15 Decision, p.9; Court *en banc* Docket p.31

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quarter that cannot be directly attributed to either operation shall be the creditable input tax. *(Emphasis supplied)*

Section 112 of NIRC is quoted, as follows:

SEC.112. *Refunds or Tax Credits of Input Tax.-*

(A) Zero-rated or Effectively Zero-rated Sales.- xxx 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.** *(Emphasis supplied)*

Pertinent portion of Section 4.106-1 of RR No. 7-95 reads, as follows:

SECTION 4.106-1. *Refunds or tax credits of input tax.* — (a) Zero-rated sales of goods or properties or services — xxx
However, where **the taxpayer is engaged in both zero-rated or effectively zero-rated sales and in taxable** or exempt **sales** of goods, properties or services, and where the **amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transaction, only the proportionate share of input taxes allocated to zero-rated or effectively zero-rated sales can be refunded or issued a tax credit certificate.** *(Emphasis supplied)*

As gleaned from the above-mentioned provisions of law and the revenue regulation, it is better to use Section 112 of the NIRC and Section 4.106-1 of RR No. 7-95 than Section 12 of RR No. 5-87 as basis of the apportionment of the input tax between taxable and zero-rated sales or effectively zero-rated sales because Section 12 of RR 5-87 applies only if the activities of the VAT-registered person are taxable and exempt operations whereas Section 112 of NIRC and Section 4.106-1 of RR No. 7-95 apply to zero-rated sales and also in taxable or exempt sale. In this case, Petitioner is not engaged in exempt operation and,therefore, Section 12 of RR No. 5-87 does not apply.

In this case, since some of the effectively zero-rated sales were not duly supported and in line with the Rationale for Strict Compliance with the invoicing requirements, it is just proper for this Court to apportion the input VAT because it is impossible to specifically pin-point what input VAT is directly attributed to such substantiated effectively zero-rated sales.

Although the basis of apportionment of input VAT is modified, the amount of the allowed refund is not changed, computed as follows:

Total Validly Supported Input VAT	P5,387,315.54
Multiply by Ratio of Substantiated Sales to Total Declared Sales	21%
Input VAT for Zero-rated sales	P1,131,336.27

WHEREFORE, premises considered, We **DENY** petitioner's petition and **AFFIRM** the assailed Resolution **with MODIFICATION** on the basis of the apportionment of the input taxes. Respondent is hereby **ORDERED to REFUND** to petitioner the sum of **ONE MILLION ONE HUNDRED THIRTY ONE THOUSAND THREE HUNDRED THIRTY SIX PESOS AND TWENTY SEVEN CENTAVOS (P1,131,336.27)** only out of the total input VAT claims in the total amount of P5,670,275.63 for taxable year 2001.

SO ORDERED.

JUANITO C. CASTANEDA, JR.
Associate Justice

We concur:

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

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 the Court.

ERNESTO D. ACOSTA
Presiding Justice