Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

KEPCO PHILIPPINES CORPORATION, Petitioner,	**C.T.A. CASE NO. 6287**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairman* **UY,** and **PALANCA-ENRIQUEZ,** *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 3 1 2005

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DECISION

CASTAÑEDA, JR., *J*.:

This case involves a claim for refund in the amount of P10,527,202.54 allegedly representing unutilized input value-added tax incurred on domestic purchases of goods and services which are attributable to effectively zero-rated sales for the taxable year 1999.

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 located at Suite 2501-A, 25th Floor, Tektite Tower I, Exchange Road, Ortigas Centre, City of Pasig. It is a value-added tax (VAT) registered taxpayer engaged in the

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production and sale of electricity as an independent power producer and sells electricity to the National Power Corporation [NPC].[1]

For the calendar year 1999, petitioner avers that it incurred input VAT in the amount of P10,527,202.54 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 1999 quarterly VAT returns simultaneously filed with the Bureau of Internal Revenue on March 30, 2000, petitioner declared the said input VAT as follows:

		INPUT VAT		
Exhibit	1999	Carried-over from previous qtr	this quarter	Carried-over to next quarter
A	1st qtr	P 100,564,209.14	P 4,804,974.70	P 105,369,183.84
B	2nd qtr	105,369,183.84	1,461,960.38	106,831,144.22
C	3rd qtr	106,831,144.22	2,563,288.00	109,394,432.22
D	4th qtr	109,394,432.22	1,696,979.46	111,091,411.68
		Total:	P10,527,202.54	

On January 29, 2001, petitioner filed an administrative claim for refund corresponding to its reported unutilized input VAT for the four quarters of 1999 in the amount of P10,527,202.54.[2]

Due to respondent's inaction on its claim, petitioner filed the instant Petition for Review before this Court on April 24, 2001.

Respondent, in his Answer, raised the following Special and Affirmative Defenses:

5. That the herein petitioner is not entitled to the refund of the amounts prayed for in the instant petition for review;

6. That the instant petition for review was prematurely filed as petitioner has not exhausted the administrative remedies required by law and jurisprudence on

[1] Exhibit O; page 9, TSN, January 18, 2002
[2] Exhibit E

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the actions of this nature as no decision has as yet been rendered by the respondent;

7. In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action;

8. Claims for tax refund are strictly construed against the taxpayer. Petitioner has no cause of action.

THE ISSUES

The issued to be resolved in this case are:

1. Whether or not the petitioner incurred accumulated input VAT from the purchase of goods and services for the calendar year 1999, which purchases are attributable to the sale by petitioner of electricity to NPC;

2. Whether or not the sale by petitioner of electricity to NPC for calendar year 1999 is subject to VAT at zero rate;

3. Whether or not the alleged accumulated input VAT are duly supported by VAT invoices and/or official receipts; and

4. Whether or not the accumulated input VAT for the calendar year 1999 were utilized or applied by the petitioner to the succeeding taxable year; and

5. Whether or not the petitioner is entitled to the refund of the amount of P10,527,202.54 as alleged unutilized accumulated input VAT for the year 1999.

The issues being interrelated and all relate to whether or not petitioner based on the evidence presented, is entitled to the refund of the amount of P10,527,202.54 allegedly representing unutilized input VAT on domestic purchases of goods and services which are directly attributable to effectively zero-rated sales for the taxable year 1999, shall be discussed jointly.

Petitioner anchors its claim on Section 112 of the National Internal Revenue Code (NIRC) of 1997, which states:

> "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 Pilipinas (BSP). xxx"

From the foregoing, in order to be entitled to a refund or tax credit of input VAT payments directly attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1) there must be zero-rated or effectively zero-rated sales;
2) that input taxes were incurred or paid;
3) that such input VAT payments are directly attributable to zero-rated sales or effectively zero-rated sales;
4) that the input VAT payments were not applied against any output VAT liability; and
5) that the claim for refund was filed within the two-year prescriptive period (***AMERICAN EXPRESS INTERNATIONAL, INC.-PHILIPPINE BRANCH vs. COMMISSIONER OF INTERNAL REVENUE, CTA CASE NO. 6294, December 28, 2004***).

We now discuss the first requisite. The issue of whether or not petitioner's sale of electricity to NPC is effectively zero-rated for VAT purposes is not one of first impression as We have already ruled in the affirmative in a number of similar cases, the more recent of which is ***KEPCO ILIJAN CORPORATION vs. THE COMMISSIONER OF INTERNAL REVENUE, CTA CASE NO. 6324, June 7, 2005.*** As in the previous cases, the governing law is Section 108(B)(3) of the NIRC of 1997 in relation to Section 13 of Republic Act No. 6395 (The Revised NPC Charter), as amended by Presidential Decree Nos. 380 and 938, which We all quote herein below for easy reference:

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> "**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**; (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 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, the Supreme Court in its Resolution dated June 8, 1993, affirmed NPC's tax exemption in the case of ***Maceda vs. Macaraig, Jr., 223 SCRA 217,*** 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.

> *xxx* *xxx* *xxx*
>
> 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 be achieved."

Likewise, no less than the respondent himself approved petitioner's application for the zero-rating of its sales to NPC from January 19, 1999 to December 31, 1999.[3]

However, Section 108(B)(3) of the NIRC of 1997 must not be read in isolation but in conjunction with Section 113 of the same Code as implemented by Section 4.108-1 of Revenue Regulations No. 7-95, thus:

> "**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. (*Underscoring supplied*)
>
> **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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[3] Exhibit F

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> 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.

Further, in the approved Application/Certificate for Zero Rate issued by the respondent to petitioner on January 19, 1999[4], the following was indicated:

> Valid only for sale of services from
> Jan. 19, 1999 up to December 31, 1999 unless sooner revoked.
> Note: Zero-Rated Sales must be indicated in the invoice/receipt. *(Underlining supplied)*

Thus, based on all of the foregoing law and regulations as well as petitioner's approved Application/Certificate for Zero Rate, it is imperative that petitioner must issue VAT official receipts which contain all the necessary information such as petitioner's TIN-VAT number, the printer's BIR permit number and the imprinted words "zero-rated" in order that its sales of electricity to NPC shall qualify for zero-rating.

To prove its effectively zero-rated sales for taxable year 1999, petitioner presented various official receipts showing the following amounts:

[4] Exhibit F-2

Exhibit	Official Receipt Number	Date	Amount
S	120	3/3/99	P 69,649,336.72
S-1	121	4/7/99	74,678,459.78
S-2	128	5/7/99	64,521,805.14
S-3	131	6/9/99	72,609,745.73
S-4	132	7/9/99	66,933,113.22
S-5	136	8/9/99	74,527,701.53
S-6	137	9/6/99	72,011,106.57
S-7	139	10/4/99	73,184,494.22
S-8	142	11/9/99	73,084,087.23
S-9	144	12/17/99	72,253,417.68
S-10	145	1/6/00	74,684,393.92
S-11	149	2/10/00	72,202,827.22
			P 860,340,488.96

The Supreme Court in ***ATLAS CONSOLIDATED MINING & DEVELOPMENT CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 134467, November 17, 1999,*** discussed the invoicing requirements for VAT-registered persons. The Supreme Court said 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" which means that the issuance of VAT invoices or official receipts are mandatory for sales that are subject to value-added tax either at 10% or 0% (zero-rated sales). More importantly, the Supreme Court ruled that "[i]ndeed 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". A clear recognition that there are other sources of VAT invoicing and accounting requirements aside from Section 108 of the Tax Code (now Sec. 113 of the NIRC of 1997) such as implementing rules and regulations issued by the administrative agencies of the government, *i.e.* Revenue Regulations, which shall also be strictly complied with. As held by the Supreme Court in the above-cited case:

> "A careful perusal of the violations specifically listed down in Sections 111 and 263 of the Tax Code shows that they do not encompass

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> all possible types of violations of Section 108. Certainly, there are other ways of noncompliance with the requirements the latter has laid down, and these too must have their corresponding consequences. Section 21 of the Revenue Regulation 5-87 is not invalid, as it simply prescribes the penalty for failure to comply with the accounting and invoicing requirements laid down in Section 108, a penalty similar to that found in Sections 111 and 263. In short, Section 108 provides the guidelines and necessary requirements for VAT invoices; Sections 111 and 263 of the Tax Code provide penalties for different types of violations of Section 108; and Section 21 of Revenue Regulation 5-87 specifies the penalty for a specific violation of Section 108."

The law and regulations require strict compliance with the invoicing requirements. In ***TROPITEK INTERNATIONAL, INC. VS. COMMISSIONER OF INTERNAL REVENUE, CTA CASE NOS. 6422 & 6499, July 13, 2005***, We ruled that Section 4.108-1 of Revenue Regulations No. 7-95 is mandatory, thus:

> "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 (*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."

And in a recent case entitled ***J.R.A. PHILIPPINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE, CTA CASE NO. 6454, June 30, 2005***, this Court discussed the rationale behind the requirement of imprinting the words "zero-rated" on VAT 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: x x x." <u>If the invoice or official receipt was not imprinted with "zero-rated", there is a danger that the purchaser of the goods or services may be able to claim input tax on the sale to it by the taxpayer of the goods or services, as the</u>

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> 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 in the invoice or receipt, as the case may be. 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 the invoicing requirements under the regulations. Otherwise, there may result the absurd situation where the government would be crediting/refunding non-existent input tax to purchasers of goods or services of such zero-rated taxpayer." *(Underscoring supplied)*

Applying the foregoing rulings to the case before Us, the Court finds that petitioner failed to comply with the requirement of imprinting the words "zero-rated" on its official receipts. Although the official receipts presented in evidence bear the TIN-VAT number of the petitioner and the printer's BIR Permit number, the words "zero-rated" are not imprinted thereon in clear violation of Section 4.108.1-1 of Revenue Regulations No. 7-95 and the conditions imposed under petitioner's approved Application/Certificate for Zero-rate.

Furthermore, the serial numbers of the official receipts submitted by petitioner are not in consecutive order, indicating the possibility that petitioner may have sold its electricity to entities other than NPC. In which case, the amount of creditable input tax shall be allocated proportionately among its zero-rated, exempt and taxable sales based on the volume of such sales [Sec. 112 (A)]. This brings to the fore another reason why the imprinting of the words "zero-rated" on VAT invoices or official receipts is necessary, that is, to properly implement and enforce the other provisions of the NIRC of 1997 on VAT, namely:

1. Zero-rated sales [Sec. 106 (A) 2 and Sec. 108 (B)];
2. Exempt transactions [Sec. 109] in relation to Sec. 112 (A);
3. Tax credits [Sec. 110];

4. Refunds or tax credits of input tax [Sec. 112].

Considering the foregoing reasons, petitioner's failure to indicate the words "zero-rated" on its official receipts is fatal to its claim.

The above ruling is in accordance with the pronouncement of the Court of Appeals in ***INTEL TECHNOLOGY PHILIPPINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE, CA-G.R. SP No. 79327, AUGUST 12, 2004*** affirming the Decision of the then Court of Tax Appeals in CTA Case No. 6128. The Court of Appeals ruled:

> "While it may be true that under Section 106 (a)(2)(a)(1) of the NIRC, VAT registered persons are entitled to claim VAT refunds on their input taxes while their export sales are zero-rated, nevertheless, it is subject to compliance with certain requirements.
>
> Section 113 of the NIRC explicitly sets forth the Invoicing and Accounting Requirements for VAT-Registered Persons. xxx xxx xxx
>
> xxx xxx xxx
>
> From the foregoing, therefore, it is clear that it is not only the export sales that should be proven but also compliance with the requirements set forth under the aforestated sections of the NIRC.
>
> Moreover, Revenue Regulations No. 7-95, as amended, states that:
>
>> SEC. 4.108-1. Invoicing Requirements. — All VAT registered persons shall for every sale or lease of goods or properties or services, issue *duly registered* receipts or sales or commercial invoices which must show:
>>
>> 1. The name, *TIN* and address of seller;
>> 2. Date of transaction;
>> 3. Quantity, unit cost and description of merchandise or nature of service;
>> 4. The name, *TIN*, business style, if any, and address of the VAT registered purchaser, customer or client;

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> 5. The word "zero-rated" imprinted on the invoice covering zero-rated sales;
> 6. The invoice value or consideration.
>
> xxx xxx xxx
>
> xxx xxx xxx
>
> Besides, 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 depict that he is a VAT-registered taxpayer whose sales are classified as zero-rated sales**. xxx xxx xxx." (Emphasis supplied)

Parenthetically, it is noteworthy that in proving the deductibility of ordinary and necessary business expenses, the Supreme Court ruled in ***ATLAS CONSOLIDATED MINING & DEVELOPMENT CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. L-26911, January 27, 1981,*** that:

> "not only must the taxpayer meet the business test, he must substantially prove by evidence or records the deductions claimed under the law, otherwise, the same will be disallowed. The mere allegation of the taxpayer that an item of expense is ordinary and necessary does not justify its deduction".

If ordinary and necessary business expenses, claimed merely as deductions from gross income, are required to be substantiated by sufficient evidence, with more reason then that claims for outright refund of alleged excess tax payments must be substantiated by evidence that comply with the requirements of the law and its implementing rules and regulations.

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Again, the law and regulations are clear and absolute and petitioner must comply with them even if it claims that it renders services exclusively to NPC, a tax exempt entity. For it cannot be overemphasized that tax refunds are in the nature of tax exemptions and as such must be strictly construed against the claimant (*Commissioner of Internal Revenue vs. Procter & Gamble Philippine Manufacturing Corporation, 204 SCRA 377; Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., 309 SCRA 87*).

For petitioner's failure to properly substantiate its effectively zero-rated sales for taxable year 1999 in the total amount of P860,340,488.96, the alleged input VAT of P10,527,202.54 directly attributable thereto cannot be refunded. Having determined the non-entitlement of the petitioner to its claim for refund, a discussion on the other issues raised in this petition is no longer necessary.

WHEREFORE, premises considered, petitioner's claim for refund is hereby **DENIED** for lack of substantiation.

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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CERTIFICATION

I hereby certify that this Decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Chairman

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