REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NORTHWIND POWER DEVELOPMENT CORPORATION, Petitioner,	**CTA EB Case No. 1132** (CTA Case No. 8260)
-versus-	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB Case No. 1141** (CTA Case No. 8260)
	Members:
-versus-	Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, *JJ.*
NORTHWIND POWER DEVELOPMENT CORPORATION, Respondent.	Promulgated: JAN 29 2015 11:25 a.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

For review are: a) the Decision dated July 16, 2013 partially granting the claim for refund or the issuance of tax credit certificate of P3,156,466.93 representing unutilized input value added tax ("VAT") attributable to Northwind Power Development Corporation's zero-rated sales for the third and fourth quarters of taxable year 2008; and b) the Resolution dated February 14, 2014 denying both the Motion for Partial Reconsideration and Motion for Reconsideration filed by Northwind Power Development Corporation and Commissioner of Internal Revenue, respectively.

THE FACTS

Northwind Power Development Corporation ("NPDC") is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with taxpayer identification number ("TIN") 208-101-373-000.[1] It is also a VAT-registered entity as shown by its Certificate of Registration OCN No. 9RC0000270238 issued by the Bureau of Internal Revenue ("BIR").[2]

Commissioner of Internal Revenue ("CIR") is a public official authorized to decide disputed assessments, collection, refund of erroneously or excessively paid internal revenue taxes, fees or other charges, penalties, or other matters under the 1997 National Internal Revenue Code ("NIRC"), as amended, or other laws administered by the BIR.[3]

On July 19, 2002, NPDC executed an Electricity Sales Agreement with Ilocos Norte Electric Cooperative ("INEC"). The parties stipulated among others that NPDC shall finance, design, construct, operate and maintain a 25 MV wind turbine project in

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[1] Joint Stipulation of Facts and Issues, Docket, CTA Case No. 8260, p. 230. See Exhibit "A".
[2] Joint Stipulation of Facts and Issues, Docket, CTA Case No. 8260, p. 231.
[3] Joint Stipulation of Facts and Issues, Docket, CTA Case No. 8260, p. 230.

Bangui Bay, Ilocos Norte; while INEC agreed to accept all electricity generated subject to the conditions stated in the agreement.[4]

For the third and fourth quarters of 2008, NPDC filed quarterly value added tax ("VAT") returns showing overpayments of P3,249,335.03 and P7,567,936.82, respectively.[5] However, it later filed an amended VAT return reflecting an overpayment of P7,567,936.83 for the fourth quarter of year 2008.[6]

Asserting its right over tax overpayments, on August 23, 2010, NPDC filed a claim for refund or the issuance of a tax credit certificate of P6,751,004.51 representing unutilized input VAT covering the 3rd and 4th quarters of taxable year 2008 before the BIR.[7]

The BIR's inaction on the refund claim prompted NPDC to appeal before the Court of Tax Appeals Special First Division ("Court in Division") on April 1, 2011. The Petition for Review docketed as CTA Case No. 8260 seeks the refund or the issuance of tax credit certificate of P6,751,004.51 representing unutilized input value added tax ("VAT") attributable to zero-rated sales for the 3rd and 4th quarters of taxable year 2008.

On July 16, 2013, the Court in Division issued a Decision partially granting NPDC's refund claim for the covered period, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED to REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of Three Million One Hundred Fifty Six Thousand Four Hundred Sixty Six Pesos and Ninety Three Centavos (P3,156,466.93),

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[4] Exhibits "D" and "D-1".
[5] Exhibits "G" and "J".
[6] Exhibit "K".
[7] Joint Stipulation of Facts and Issues, Docket, CTA Case No. 8260, p. 231.

representing unutilized input VAT attributable to its zero-rated sales for the 3rd and 4th quarters of taxable year 2008.

SO ORDERED.[8]

The Court arrived at the refundable amount of P3,156,466.93 by multiplying the substantiated excess input tax of P4,960,251.97 at the rate of 63.6352134 which is the ratio of substantiated zero-rated sales to declared zero-rated sales.[9]

Acting on NPDC's Motion for Partial Reconsideration and the CIR's Motion for Reconsideration, the Court denied both Motions for lack of merit as shown in the Resolution dated February 14, 2014.[10]

THE ISSUES

NPDC and the CIR sought redress before the Court *en banc* by filing Petitions for Review docketed as CTA EB Case No. 1132 and 1141 on March 27, 2014, respectively. The parties raised the following grounds:

CTA Case No. 1132

1. THE SPECIAL FIRST DIVISION OF THIS HONORABLE COURT GRAVELY ERRED IN RULING THAT ONLY THE AMORTIZED PORTION OF THE INPUT VAT AMOUNT OF PHP1,797,810.08 INVOLVING PURCHASES OF CAPITAL GOODS EXCEEDING P1,000,000.00 FOR THE 3RD QUARTER OF THE YEAR 2008 IS ALLOWED TO BE REFUNDED. ge

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[8] Docket, CTA EB Case No. 1132, Vol. I, Rollo, pp. 41-70.
[9] Docket, CTA EB Case No. 1132, Vol. I, Rollo, p. 68.
[10] Docket, CTA EB Case No. 1132, Vol. I, Rollo, pp. 72-89.

2. THE SPECIAL FIRST DIVISION OF THIS HONORABLE COURT ERRED IN EXCLUDING THE AMOUNT OF P7,775,084.14 FROM THE ZERO-RATED SALES OF PETITIONER FOR THE 3RD AND 4TH QUARTER OF 2008 AND THE AMOUNT OF P30,634,465.59 FROM THE ZERO-RATED SALES OF PETITIONER FOR THE 4TH QUARTER OF 2008.

3. THE SPECIAL FIRST DIVISION OF THIS HONORABLE COURT ERRED IN RULING THAT PETITIONER'S SUBSTANTIATED INPUT TAXES SHOULD BE APPORTIONED/PRO-RATED BETWEEN THE SUBSTANTIATED AND ALLEGEDLY UNSUBSTANTIATED ZERO-RATED SALES AND TO LIMITING THE REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE TO 63.6352134% OF THE SUBSTANTIATED INPUT TAXES.[11]

CTA Case No. 1141

(1) THE SPECIAL FIRST DIVISION OF THE HONORABLE TAX COURT ERRED IN ORDERING THE REFUND IN FAVOR OF RESPONDENT ON ITS ALLEGED UNUTILIZED INPUT VAT FOR THE 3RD AND 4TH QUARTERS OF TAXABLE YEAR 2008 DESPITE RESPONDENT'S FAILURE TO COMPLY WITH THE INVOICING REQUIREMENTS.

(2) THE SPECIAL FIRST DIVISION OF THE HONORABLE TAX COURT ERRED IN GRANTING THE REFUND IN FAVOR OF RESPONDENT FOR ITS FAILURE TO ADEQUATELY SHOW THAT ITS OFFICIAL RECEIPTS ARE DULY REGISTERED WITH THE BIR DISTRICT OFFICE WHERE IT IS REGISTERED.

(3) THE SPECIAL FIRST DIVISION OF THIS HONORABLE COURT ERRED IN GRANTING THE REFUND INASMUCH AS THE INPUT TAXES ARE

[11] Docket, CTA EB Case No. 1132, Vol. I, Rollo, pp.16-17.

NOT DIRECTLY ATTRIBUTABLE TO ITS ZERO-RATED SALES.

(4) THE SPECIAL FIRST DIVISION OF THE HONORABLE TAX COURT ERRED IN NOT APPLYING THE RULE THAT TAX REFUNDS BEING IN THE NATURE OF TAX EXEMPTION ARE CONSTRUED STRICTISSIMI JURIS AGAINST THE PERSON OR ENTITY CLAIMING THE EXEMPTION; THUS, ENTITLEMENT TO A TAX REFUND IS FOR THE TAXPAYER TO PROVE AND NOT FOR THE GOVERNMENT TO DISPROVE.[12]

On May 19, 2014, the Court *en banc* resolved to consolidate CTA EB Case No.1141 with CTA EB Case No. 1132.[13]

In the Resolution dated August 4, 2014, the Court *en banc* gave due course to the consolidated Petitions for Review, and directed the parties to file their Memoranda within a non-extendible period of thirty (30) days from receipt thereof.[14]

The consolidated cases were eventually submitted for decision it appearing that only NPDC filed its Memorandum.

THE COURT'S RULING

OUT OF THE P1,797,810.08 INPUT VAT INCURRED BY NPDC ON CAPITAL GOODS FOR THE 3RD QUARTER OF 2008, ONLY P167,600.73 IS CREDITABLE FOR THE 3RD AND 4TH QUARTERS OF TAXABLE YEAR 2008.

[12] Docket, CTA EB Case No. 1141, Rollo, p. 9.
[13] Docket, CTA EB Case No. 1132, Vol. II, Rollo, p.432.
[14] Docket, CTA EB Case No. 1132, Vol. II, Rollo, p.437.

NPDC alleges that the Court in Division erred in allowing refund of only P167,600.73 pertaining to the amortized portion of the input VAT of P1,797,810.08 involving purchased capital goods exceeding P1,000,000.00 for the 3rd and 4th quarters of taxable year 2008.

The Court's explanation that only the amortized portion of the capital goods purchased is allowed to be refunded creates a conflict between the amortization of input tax credit over the useful life of the capital goods purchased as provided under Section 4.110-3 of Revenue Regulations No. 16-2005, and the two-year period to claim refund of input VAT counted from the close of the taxable quarter on which input VAT on capital goods was paid under Section 112(A) and (C) of the NIRC, as amended.

The amortization of input VAT over the useful life of capital goods imported or purchased whose aggregate value exceeds P1,000,000.00 under Section 4.110-3 of RR 16-2005 should apply only if the input VAT thereon is credited against the output VAT. It does not apply to refund claims of input VAT paid on purchases or importation on capital goods which are directly attributable to zero-rated sales. To rule that Section 4.110-3 applies also to purchases or importation of goods directly attributable to zero-rated sales will violate the 2-year rule on the filing of a claim for refund under Section 112 of the 1997 NIRC, as amended.

The rule on the 2-year prescriptive period for refund of unutilized input tax attributable to zero-rated and effectively zero-rated sales does not in any way make an exception on the amortized input taxes. As such, the two year prescriptive period should be reckoned from the close of the 3rd quarter of the taxable year 2008.

NPDC insists that with its payment of the input VAT of P1,797,810.08 on its purchases of capital goods which are directly attributable to its zero-rated sales in the 3rd Quarter of 2008, substantiation of such input VAT payments is confirmed by the Court in Division, and in the absence of any output tax liability in the subject taxable quarters and in the subsequent quarters, it is entitled to refund of the entire amount of P1,797,810.08 as input VAT arising from its purchase of capital goods for the 3rd quarter of 2008.

NPDC's arguments are unmeritorious.

Section 110 of the 1997 NIRC covers transactions when input VAT is creditable to output VAT as follows:

> "SEC. 110. Tax Credits. –
>
> "(A) Creditable Input Tax. –
>
> "(1) 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:
>
> "(a) Purchase or importation of goods:
>
> xxx xxx xxx
>
> "(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.
>
> xxx xxx xxx
>
> "(2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:
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> "(a) To the purchaser upon consummation of sale and on importation of goods or properties; and
>
> "(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.
>
> ***Provided,* That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and**

> **the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods excluding the VAT component thereof, exceeds One million pesos (P1,000,000);** ***Provided, however,*** **That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period. xxx".** (Emphasis supplied.)

Input VAT on domestic purchase or importation of goods or properties of a VAT-registered person shall be creditable to the output VAT of the purchaser and importer upon consummation of sale and on importation of goods or properties and upon payment of VAT prior to the release of the goods upon customs custody, respectively. However, the input VAT on goods purchased or imported, for use in trade or business for which deduction for depreciation is allowed under the 1997 NIRC, and the aggregate acquisition cost of which exceeds P1,000,000.00, excluding the VAT component thereof, the claim of input tax shall be spread evenly and creditable over a period of 60 months starting from the month of acquisition or the estimated useful life of the capital goods, whichever is shorter.[15]

Section 4.110-3 of Revenue Regulations No. 16-2005, as amended, further states:

> SEC. 4.110-3. **<u>Claim for Input Tax on Depreciable Goods.</u>** – Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million Pesos (P1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:
>
> (a) If the estimated useful life of a capital good is five years or more – The input tax shall be spread evenly over a period of sixty (60) months and the claim for input tax credit will commence in the

[15] *Taganito Mining Corporation v. Commissioner of Internal Revenue* and *Commissioner of Internal Revenue v. Taganito Mining Corporation,* CTA EB Case Nos. 935 & 936, December 16, 2014. *Taganito Mining Corporation v. Commissioner of Internal Revenue,* CTA Case No. 8090, Resolution dated August 30, 2012.

calendar month when the capital good is acquired. The total input taxes on purchases or importations of this type of capital goods shall be divided by 60 and the quotient will be the amount to be claimed monthly.

(b) If the estimated useful life of a capital good is less than five (5) years – The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of the capital good. The claim for input tax credit shall commence in the calendar month the capital goods were acquired. xxx

We concur with the Court in Division that out of the P1,797,810.08 input VAT incurred by NPDC on capital goods for the third quarter of 2008, only the amount of P167,600.73 is creditable for the third and fourth quarters of taxable year 2008 computed as follows:

Month Capital Asset Acquired	Corresponding Input Tax (total)	Maximum life of asset (months)	Monthly Input tax credit	Allowable Input tax credit for 3rd and 4th quarters of 2008
July 2008	P 385,714.29	60	P6,428.57	P38,571.43
July 2008	670,747.83	60	11,179.13	67,074.78
July 2008	375,939.66	60	6,265.66	37,593.97
September 2008	365,408.30	60	6,090.14	24,360.55
	P1,797,810.08		**P29,963.50**	**P167,600.73**

VAT IS IMPOSABLE ON GROSS RECEIPTS WHEN THE AMOUNT OF MONEY OR ITS EQUIVALENT FOR SERVICE RENDERED, IS ACTUALLY OR CONSTRUCTIVELY RECEIVED BY THE TAXPAYER.

NPDC likewise argues that the Court in Division gravely erred in excluding from zero-rated sales of NPDC the amounts of P7,775,084.14 for the third and fourth quarters of 2008 and P30,634,465.59 for the 4th quarter of 2008.

It should be noted that the difference of P7,775,084.14 represents collectible sales from INEC, which sales the Court in Division already confirmed as zero-rated sales.

According to the independent certified public accountant ("CPA"), NPDC should be granted full credit of zero-rated sales of P7,775,084.14 provided it has proof of the pending collection suit against INEC.

The independent CPA also explained that the official receipt of P30,634,465.59 pertaining to the billing period November 26, 2008 to December 25, 2008, is a valid document supporting the refund claim even if it was issued when the amount of sale was actually collected on January 16, 2009.

The Court disagrees with NPDC's posture.

Sale of services and use or lease of properties subject to VAT are covered by Section 108 of the 1997 NIRC, as amended, stating:

> "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
>
> The phrase **'sale or exchange of services'** means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, *Jc*

customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land relative to their transport of goods or cargoes; common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines, **sales of electricity by generation companies, transmission, and distribution companies**, services of other franchise grantees of electric utilities, telephone and telegraph, radio and television broadcasting and all franchise grantees except those under Section 119 of this Code and nonlife insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; **and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties.** xxx xxx xxx (Emphasis supplied.)

"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.

(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: *Jr* xxx xxx xxx

> (7) **Sale of power or fuel generated through renewable sources of energy such as, but not limited to**, biomass, solar, **wind**, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels." (Emphasis supplied.)

VAT at 12% or 0% is due on gross receipts of sale or exchange of services. Gross receipts include not only cash or its equivalent actually received, but also those constructively received.[16]

In this case, the Court in Division aptly disallowed the amounts of P7,775,084.14 and P30,634,465.59 not forming part of NPDC's zero-rated sales, in this manner:

> Based on the foregoing, in case of the sale or exchange of service, VAT is imposable on the gross receipts (whether at the present rate of 12% VAT or 0%) only when the total amount of money or its equivalent for the service is actually or constructively received by the taxpayer.
>
> **Correspondingly, as long as the amount of P7,775,084.14 is uncollected, the same cannot form part of petitioner's zero-rated sales.** In other words, such amount will only be considered as part of petitioner's zero-rated sales at the time the same is actually or constructively received.
>
> In the same vein, the amount of P30,634,465.59 was correctly disallowed for being made outside the period of the claim. **It is here noted that while it may be true that the same is billed during the last quarter of 2008, it was only collected in the first quarter of 2009. Thus, such amount should form part of petitioner's zero-rated sales in the 1st**

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[16] De Leon, Hector S. and De Leon, Jr., Hector M., The National Internal Revenue Code Annotated, Vol. 2, 2003 Edition, p.52.

> **quarter of 2009, not in the 4th quarter of 2008.**[17] (Emphasis supplied.)

ON THE REFUNDABLE INPUT VAT AT THE RATE OF 63.6352134%.

NPDC also asserts that the Court in Division erroneously restricted the refundable input VAT at the rate of 63.6352134% which is arrived at by dividing properly substantiated zero-rated sales of P67,213,371.01 with the total zero-rated sales per VAT returns of P105,622,920.74.

NPDC points out that the apportionment mechanism under Section 112(A) of the NIRC and implemented by Section 4.110-4 of RR No. 16-2005, as amended, only applies to situations where the taxpayer is involved in mixed transactions, i.e. VAT and non-VAT transactions. Even then, the apportionment is only allowed if input tax cannot be clearly attributed to either a VAT taxable or VAT-exempt transaction.

NPDC relies on records showing the following: a) For the 3rd and 4th quarters of taxable year 2008, NPDC sold electricity generated from renewable energy; b) goods and services purchased gave rise to input VAT incurred in direct relation to its sale of electricity generated from renewable energy; and c) during the same period, all of NPDC's sales were made to its sole client, INEC which the Court in Division has treated as zero-rated sales. Thus, NPDC's purchases were used only to generate zero-rated sale of renewable wind energy, and should be allowed full refund.

We are not persuaded.

The rate of 63.6352134% is based on Section 112 of the 1997 NIRC, as amended, requiring that the input VAT must be attributable to zero-rated sales as follows:

SEC. 112. Refunds or Tax Credits of Input Tax. – *ge*

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[17] Docket, CTA EB Case No. 1132, Vol. I, Rollo, p. 76.

> "(A) Zero-rated or Effectively Zero-rated Sales. – Any VAT-registered person whose sales are zero-rated or effectively zero-rated sales 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; 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. xxx (Emphasis supplied.)

As previously reiterated, the Court subscribes with NPDC's stance that when a direct attribution of input VAT arising from mixed transactions involving zero-rated, taxable or exempt sales cannot be ascertained, a proportionate allocation on the basis of the volume of sales must be made. However, in this case, limiting the refundable amount to 63.6352134% is proper considering that only this portion of the declared zero-rated sales is properly substantiated. Consequently, only the input VAT attributable thereto is refundable in consonance with Section 112 of the 1997 NIRC, as amended.

Tax refunds are strictly construed against the taxpayer.[18] NPDC as the claimant has the burden of proof to establish and substantiate its zero-rated sales. It is not sufficient that NPDC proves that its sale of renewable energy to INEC is zero-rated. It is likewise required to substantiate the same pursuant to Section 113(A)(B) of the 1997 NIRC, as amended. Thus, the Court in Division correctly considered a portion of NPDC's declared zero-rated sales and denied the rest, specifically Official Receipt No. 57[19] pertaining to the amount of P30,634,465.59 for being outside the period of claim as shown below: Jr

[18] *Kepco Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011, 641 SCRA 70.
[19] Exhibit "HHH-469".

Except for Official Receipt No. 57, with the corresponding amount of P30,634,465.59 for being outside the period of claim, this Court finds the official receipts in order. Consequently, petitioner's substantiated zero-rated sales amount to P67,213,371.01 (P97,847,836.60 less P30,634,465.59).

Considering that only a portion of the declared zero-rated sales was properly substantiated, only a portion of the substantiated input tax attributable thereto shall be granted based on the following rate:

Properly substantiated zero-rated sales	P67,213,371.01
Divided by total zero-rated sales per VAT Returns	P105,622,920.74
Rate	63.6352134 %[20]

MANDATORY COMPLIANCE WITH INVOICING AND ACCOUNTING REQUIREMENTS.

The CIR on the other hand, raises the following infirmities on some of the receipts or sales invoices:

a) VAT was not separately indicated in the sales invoices or official receipts;

b) failure to specify the quantity, unit cost and description of the goods or properties or nature of the service;

c) TIN and address were not indicated on the invoices/official receipts submitted by Northwind to support its claimed input taxes; and

[20] Docket, CTA EB Case No. 1132, Rollo, p. 63.

d) only the name "Northwind" was mentioned.

It is the Court's posture that for every consummated sale, a VAT-registered person must issue invoice or receipt reflecting the following information under Section 113, and comply with the accounting requirements in Section 237 of the 1997 NIRC, as amended, as follows:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>
> "(A) Invoicing Requirements. – A VAT-registered person shall issue:
>
> "(1) A VAT invoice for every sale, barter or exchange of goods or properties; and
>
> "(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> "(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* – The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> "(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> "(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: Provided, That:
>
> "(a) The amount of the tax shall be shown as a separate item in the invoice or receipt; *fe*

"(b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

"(c) If the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated' shall be written or printed prominently on the invoice or receipt;

"(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt; Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

"(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

'(4) In the case of sales in the amount of One Thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.

"(C) Accounting Requirements. – Notwithstanding the provisions of Section 233, all persons subject to value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain information as may be required by the Secretary of Finance. *gr* 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 and transfer of merchandise or for services rendered valued at Twenty-Five pesos (P25.00) or more, issued duly registered receipts or sale 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 where the receipt is issued to cover payment made as rentals, commissions, compensation or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchase, customer or client.

In the case of *Western Mindanao Power Corporation v. Commissioner of Internal Revenue*[21], the Supreme Court emphasized the relevance of due observance of invoicing and accounting requirements specified under the law and implementing rules relative to the refund claim as follows:

> In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law. **It must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit. Hence, the mere fact that petitioner's application for zero-rating has been approved by the CIR does not, by itself, justify the grant of a refund or tax credit. The taxpayer claiming the refund must further comply with the invoicing and accounting requirements mandated by the NIRC, as well as by revenue regulations implementing them.**
>
> Under the NIRC, a creditable input tax should be evidenced by a VAT invoice or official receipt, which may only be considered as such when it complies with the

[21] G.R. No. 181136, June 13, 2012, 672 SCRA 350.

requirements of RR 7-95, particularly Section 4.108-1. This section requires, among others, that "(i)f the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt."

We are not persuaded by petitioner's argument that RR 7-95 constitutes undue expansion of the scope of the legislation it seeks to implement on the ground that the statutory requirement for imprinting the phrase "zero-rated" on VAT official receipts appears only in Republic Act No. 9337. This law took effect on 1 July 2005, or long after petitioner had filed its claim for a refund.

RR 7-95, which took effect on 1 January 1996, proceeds from the rule-making authority granted to the Secretary of Finance by the NIRC for the efficient enforcement of the same Tax Code and its amendments. In *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue*[22], we ruled that this provision is "reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services." Moreover, we have held in *Kepco Philippines Corporation v. Commissioner of Internal Revenue*[23] that the subsequent incorporation of Section 4.108-1 of RR 7-95 in Section 113 (B) (2) (c) of R.A. 9337 actually confirmed the validity of the imprinting requirement on VAT invoices or official receipts – a case falling under the principle of legislative approval of administrative interpretation by reenactment.

In fact, this Court has consistently held as fatal the failure to print the word "zero-rated" on the VAT invoices or official receipts in claims for a refund or credit of input VAT on zero-rated sales, even if the claims were made prior to the effectivity of R.A. 9337. Clearly then, the present Petition must be denied. (Emphasis supplied.)

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[22] G.R. No. 178090, February 8, 2010, 612 SCRA 28.

[23] G.R. No. 179961, January 31, 2011, 641 SCRA 70.

Adhering to jurisprudence, the Court in Division correctly disallowed the following:

For the remaining amount of petitioner's claim, the Independent CPA found the following:

Exhibit	Reference	Particulars	Amount
DDD	Schedule 6	Input VAT without supporting VAT invoices and ORs/Documents for retrieval	P68,617.35
EEE	Schedule 7	Supporting documents other than VAT ORs/VAT invoices	23,825.07
FFF	Schedule 8	VAT amount not specified in OR/invoices	10,549.11
GGG	Schedule 9	VAT ORs issued outside period of claim	1,928.46
		Unaccounted item/s	390.31
		TOTAL	**P105,310.30**

The foregoing should be disallowed for the reasons stated. In addition, the substantiated input tax found by the Independent CPA should be further reduced by P55,232.45 for the following reasons:

Findings	Input Tax
Purchase of services which were supported by "TIN-V" ORs, instead of "TIN-VAT" ORs as	P 2,796.86

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required by Section 4.113-1 of Revenue Regulations No. 16-2005 and pursuant to the case of *Kepco Philippines Corporation v. Commissioner of Internal Revenue.*[24]	
Purchase of goods which were supported by "TIN-V" invoices, instead of "TIN-VAT invoices required by Section 4.113-1 of Revenue Regulations No. 16-2005 and pursuant to the case of Kepco *Philippines Corporation v. Commissioner of Internal Revenue.*	13,120.25
Purchase of goods which were supported by cash register machine tapes without information required by Section 4.110-8 (a) (2) and (4) of Revenue Regulations No. 16-2005 and Sections 113 and 237 of the 1997 NIRC, as amended by R.A. 9337.	586.49
Purchase of goods which were supported by VAT ORs instead of VAT invoices as required by Section 113 of the 1997 NIRC, as amended by R.A. 9337.	38,514.56
Purchase of goods which were supported by non-VAT invoices.	214.29
Total	**P 55,232.45**[25]

Concerning the input VAT of P38,514.56 on the purchase of goods supported by VAT official receipts instead of sales invoice, the Court in Division correctly disallowed the same in accordance with the case of *Kepco Philippines Corporation v. Commissioner of Internal Revenue*[26] where the Supreme Court ruled that:

[24] G.R. No. 181858, November 24, 2010, 636 SCRA 166.
[25] Docket, CTA EB Case No. 1132, Vol. I, Rollo, pp.64-65.
[26] G.R. No. 181858, November 24, 2010, 636 SCRA 166.

Under the law, **a VAT invoice is necessary for every sale, barter or exchange of goods or properties while a VAT official receipt properly pertains to every lease of goods or properties, and for every sale, barter or exchange of services.** In *Commissioner of Internal Revenue v. Manila Mining Corporation*[27], the Court distinguished an invoice from a receipt, thus:

A "sales or commercial invoice" is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services.

A "receipt" on the other hand is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer.

In other words, the VAT invoice is the seller's best proof of the sale of the goods or services to the buyer while the VAT receipt is the buyer's best evidence of the payment of goods or services received from the seller. Even though VAT invoices and receipts are normally issued by the supplier/seller alone, the said invoices and receipts, taken collectively, are necessary to substantiate the actual amount or quantity of goods sold and their selling price (proof of transaction), and the best means to prove the input VAT payments (proof of payment). Hence, VAT invoice and VAT receipt should not be confused as referring to one and the same thing. Certainly, neither does the law intend the two to be used alternatively.

Thus, there is a distinction between sales invoices and official receipts.

[27] 468 SCRA 571.

THE AUTHORITY TO PRINT RECEIPTS/INVOICES SECURED FROM THE BIR, IS VALID.

CIR alleges that NPDC's official receipts marked as Exhibits HHH-463 to HHH-469 were printed under Authority to Print ("ATP") receipts and invoices in violation of RMO No. 83-99 in relation to RR 18-2012; hence, cannot be considered as valid official receipts.

RMO No. 83-99 requires that the ATP shall be filed with the Revenue District Office ("RDO") having jurisdiction over business establishments which will be using the invoices or receipts. Here, NPDC's authority to print ("ATP") was not issued by the concerned RDO where it is a registered taxpayer.

NPDC maintains that the official receipts issued for the covered period are pursuant to a valid ATP.

The Court agrees with NPDC's assertion.

Revenue Regulations 18-2012, is inapplicable to the instant case. The covered period in this case involves taxable year 2008, and RR 18-2012 cannot be applied retroactively against NPDC. RMO 83-99 covers the case at bar which reads:

> II. POLICIES AND GUIDELINES:
>
> 1. All applications for issuance of Authority to Print Invoices and Receipts shall be filed with the RDO having jurisdiction over the business establishment which will be using the invoices or receipts. **Thus, ATP for invoices to be used by a head office shall be approved by the RDO having jurisdiction over the head office whereas ATP for invoices and receipts to be used by a branch shall be approved by the RDO having jurisdiction over the branch**; (Emphasis supplied.)

Thus, the authority to print the receipts pertaining to taxable year 2008 was duly obtained before the Revenue District Office 01, Loag, Ilocos Norte having jurisdiction over its branch office pursuant to Revenue Memorandum Order No. 83-99.

Finding no reversible error committed by the Court of Tax Appeals Special First Division, We sustain the partial granting of the claim for refund or the issuance of tax credit certificate of P3,156,466.93 representing unutilized input value added tax ("VAT") attributable to NPDC's zero-rated sales for the third and fourth quarters of taxable year 2008.

WHEREFORE, premises considered, the Court hereby **AFFIRMS** the Decision dated July 16, 2013 and the Resolution dated February 14, 2014. The Petitions for Review filed by NPDC and CIR, are hereby **DISMISSED**.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON- VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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 among the members of the Court *en banc* before the case was assigned to the writer for the opinion of the Court *en banc*.

ROMAN G. DEL ROSARIO
Presiding Justice