REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY
EN BANC

OVERSEAS OHSAKI CONSTRUCTION CORP.,
Petitioner,

-versus-

C.T.A. EB No. 43
(C.T.A. Case No. 6347)

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

COMMISSIONER OF INTERNAL REVENUE
Respondent.

Promulgated:
MAY 10 2005 apolinario

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DECISION

BAUTISTA, J.:

Pursuant to Section 11 of R.A. 9282, a Petition for Review was filed by petitioner before the Court *En Banc* on November 17, 2004, which seeks the reversal of the Decision rendered by the Division of the Court of Tax Appeals on May 25, 2004 and the Resolution dated June 11, 2004.

The following facts as culled from the records are relevant to the instant petition.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at 4/F Ferguson Park Tower, Plaza Ferguson, M.H. del Pilar St., Manila. It is engaged in the business of construction and as such it is registered with the Bureau of Internal Revenue (BIR) as a Value Added Tax (VAT) taxpayer pursuant to the requirements of then Section 107 of the National Internal Revenue Code, as shown by the Certificate of Registration No. IRC0000013395 wherein it has been issued Registration Number 000-135-006 VAT on its sale of goods and services effective February 2, 1998.

For the years 1998 and 1999, petitioner entered into separate agreements with PEZA registered enterprises, namely, Mitsumi Philippines, Inc., Dowa Hightech Philippines, Inc. and Katolec Philippines Corporation, to provide construction services as evidenced by their respective contracts.

Separate approved applications for zero-rating were obtained by petitioner from the Regulatory Operations Monitoring Division (ROMD) of the BIR for construction services rendered to Mitsumi Philippines, Inc. and Dowa Hightech Philippines, Inc. covering the period February 4 to December 31, 1999.

For the third and fourth quarters of 1999, petitioner's quarterly VAT returns were filed with the BIR reflecting a refundable excess input tax amounting to P5,827,801.48, representing input VAT paid on domestic purchases of goods and services for the said period which are allegedly attributable to its zero-rated sale of construction services to Mitsumi Philippines, Inc., Dowa Hightech Philippines, Inc. and Katolec Philippines Corporation.

On October 23, 2001, an administrative claim for refund/issuance of tax credit certificate of unutilized input VAT for the third and fourth quarters of 1999 was filed with the BIR. Due to respondent's failure to act on the claim and in order to toll the two-year prescriptive period, petitioner instituted an action with the Division of the Court of Tax Appeals on October 24, 2001.

On May 25, 2004, the Court's Division denied petitioner's claim for refund/issuance of a tax credit certificate of its unutilized input VAT covering the third and fourth quarters of 1999 amounting to P5,827,801.48, for failure on the part of petitioner to comply with the invoicing requirements under Section 4.108-1 of Revenue Regulations No. 7-95.

Thereafter, a Motion for Reconsideration was filed by petitioner on June 11, 2004 which was likewise denied by the Court's Division in a Resolution dated September 30, 2004.

On October 15, 2004, petitioner received a copy of the assailed Resolution. On November 2, 2004, petitioner filed an "Urgent Motion for Extension of Time to File Petition for Review" with the Court *En Banc* and requested for an extension of fifteen (15) days or until November 17, 2004 to file its Petition for Review. The said motion was granted by the Court *En Banc* in a Resolution dated November 17, 2004.

Hence, on November 17, 2004, petitioner filed through registered mail the instant Petition for Review based on the following assignment of errors:

I.

RESPONDENT CTA ERRED IN DENYING THE PETITIONER'S CLAIM DUE TO FAILURE TO PRESENT APPLICATION FOR ZERO-RATING FOR ITS SALE OF SERVICES TO KATOLEC PHILIPPINES, INC. SINCE REVENUE MEMORANDUM CIRCULAR NO. 74-99 EXPRESSLY PROVIDES THAT SALE OF SERVICES BY A VAT REGISTERED SUPPLIER FROM THE CUSTOMS TERRITORY TO A PEZA REGISTERED ENTERPRISE SHALL AUTOMATICALLY BE TREATED SUBJECT TO ZERO-RATE VAT WITHOUT THE NEED FOR AN APPLICATION FOR ZERO-RATING FROM THE BIR.

II.

RESPONDENT CTA ERRED IN DENYING THE PETITIONER'S CLAIM ON THE GROUND THAT IT FAILED TO COMPLY WITH THE INVOICING REQUIREMENTS UNDER SECTION 4.108-1 OF

RR NO. 7-95 SPECIFICALLY THAT THE OFFICIAL RECEIPTS OF THE PETITIONER WAS NOT IMPRINTED WITH THE WORD "ZERO-RATED" AND AS SUCH, FAILED TO COMPLY WITH THE NECESSARY INVOICING REQUIREMENTS.

III.

RESPONDENT CTA ERRED IN UPHOLDING A BURDENSOME REGULATION WHICH HAS BEEN SIMPLIFIED BY THE 1997 TAX CODE.

IV.

RESPONDENT CTA ERRED IN DENYING THE CLAIM FOR REFUND BECAUSE OF VIOLATION OF THE INVOICING REQUIREMENTS.

Petitioner contends that pursuant to the provisions of Revenue Memorandum Circular (RMC) No. 74-99, the sale of services to a PEZA-registered enterprise is classified as automatically zero-rated. Hence, an approved application for zero-rating is no longer necessary for the sale of goods, property or services made to a PEZA-registered enterprise. Pertinent portion of which reads:

> "SECTION 3. Tax Treatment Of Sales Made By A VAT Registered Supplier From The Customs Territory, To a PEZA Registered Enterprise. –
>
> (1) If the Buyer is a PEZA registered enterprise which is subject to the 5% special tax regime, in lieu of all taxes, except real property tax, pursuant to R.A. No. 7916, as amended:
>
> (a) xxx xxx xxx
>
> (b) Sale of service.- This shall be treated subject to zero percent (0%) VAT under the "cross border doctrine" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998."
>
> (2) xxx xxx xxx
> (3) xxx xxx xxx
>
> This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE

> enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of the issuance of this Circular."

On the basis of the foregoing provisions which took effect on October 15, 1999, petitioner submits that its sale of services to Katolec Philippines Corporation on November 5, 1999 and December 27, 1999, automatically qualify as zero-rated sales and, therefore, an approved application for zero rating is no longer necessary.

A reading of the provisions of Revenue Memorandum Circular No. 74-99 reveals that effective October 15, 1999, sale of goods, property or services to PEZA-registered enterprises are deemed zero-rated without the need of an approved application for zero-rating. It can be inferred therefrom that petitioner's sale of services to Katolec Philippines Corporation on November 5, 1999 and December 27, 1999 qualify as zero-rated sales even without an approved application for zero-rating.

Furthermore, petitioner argues that the Court's Division erred in denying its claim for refund for failure to "imprint" the word "zero-rated" on the face of the official receipts issued, which is a violation of the invoicing requirements under Section 4.108-1 of Revenue Regulations (RR) No. 7-95. Here, instead of imprinting the word zero-rated, the petitioner merely "stamped" the same on the official receipts. Petitioner contends that the word "stamp" is included in the term "imprint". Hence, it has complied with the invoicing requirements of imprinting the required information mentioned in RR No. 7-95.

The Court *En Banc* agrees with petitioner's arguments that the words "stamp" and "imprint", in their ordinary meanings, can be used interchangeably. However, R.R.

No. 7-95, specifically provides for imprinting rather than mere stamping of the required information. Thus, the pertinent section of the same is quoted hereunder, thus:

> "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;
> 5. <u>the word "zero rated" imprinted on the invoice covering zero-rated sales</u>; and
> 6. the invoice value or consideration.
>
> xxx xxx xxx
>
> Only VAT-registered persons are required to <u>print their TIN followed by the word "VAT" in their invoices or receipts</u> and this shall be considered as a "VAT Invoice". All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax". (Underlining supplied)

From the foregoing, it is clear that the mere stamping of the word "zero-rate" on the invoice or receipt will not suffice since there is no guarantee that the same will appear on the original copy of the invoice issued to the buyer.

In cases where the sale is zero-rated and the invoice or official receipt issued by the seller does not bear the imprinted word "zero-rate", 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 seller of the goods or services, as the case may be, notwithstanding the fact that no VAT was actually paid on such goods or services since the seller is a zero-rated taxpayer. 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 is entitled to a tax credit/refund on input taxes paid on its purchase of goods or services subject to the mandatory compliance of the invoicing requirements under the regulations. Otherwise, an absurd situation may arise where the government would be crediting/refunding non-existent input tax to purchasers of goods or services of such zero-rated taxpayer.

Thus, the requirement of imprinting the word "zero-rated" fulfills the intent of the law to prevent the claim of non-existent input tax by purchases of a zero-rated taxpayer. As correctly found by the Court's Division, the word "zero-rated" was merely stamped on petitioner's official receipts instead of the same being imprinted in violation of the invoicing requirements of RR No. 7-95, hence, the official receipts submitted by petitioner cannot be considered as valid proof of its zero-rated sales.

Furthermore, while petitioner's claim for refund was denied for failure to imprint the word "zero-rated" on the face of the official receipts, it was nevertheless, not the only ground for denying such claim.

The claim for refund was likewise denied for failure to comply with the invoicing requirements set forth under Section 4.108-1 of Revenue Regulations No. 7-95. Particularly, petitioner's official receipts do not bear the word "VAT" after the imprinted TIN: 321-000-135-0006 and the official receipts bear BIR Authority to Print dated April 23, 1992, which are clear violations of the Transitory Provisions of Revenue Regulations No. 7-95 which allowed the use of unused invoices/official receipts by taxpayers who changed status from NON-VAT to VAT or from VAT to NON-VAT only up to June 30, 1996. Therefore, as clearly pointed out in the assailed Decision, upon registration of petitioner with the BIR as a VAT taxpayer on February 2, 1998, it should have registered another set of booklets of official receipts containing all the required information under Section 4.108-1 of Revenue Regulations No. 7-95. And failure to comply with these requirements renders the official receipts submitted in evidence invalid.

It must be stressed at this point that contrary to petitioner's allegations that the 1997 National Internal Revenue Code (NIRC) does not provide for the requirements stated in Revenue Regulations No. 7-95, the aforementioned infirmities in petitioner's official receipts likewise violated Section 113 of the 1997 NIRC, which reads:

> "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 shall be indicated in the invoice or receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.
>
> xxx xxx xxx"

Moreover, in the case of ***Compania General de Tabacos de Filipinas vs. Citibank, N.A., et al., G.R. No. 147361, March 23, 2004***, the Supreme Court held that regulations issued by the BIR that would give effect to the law are valid regulations, ruling as follows:

> "We agree with petitioner that both Sections 137 and 141 of the former Tax Code allowed the sale of stemmed leaf tobacco without any prepayment of tax. We must stress, however, that a careful reading of the aforementioned provisions show that such sale is qualified by and is

subject to "such conditions as may be prescribed in the regulations of the Department of Finance". Said conditions were provided for in Revenue Regulations Nos. V-39 and 17-67, which were issued to clarify and implement the foregoing provisions of the Tax Code. Hence, said provisions of the Tax Code must be read and interpreted in accordance with said regulations.

xxx xxx xxx

Petitioner's arguments impugning the validity of Revenue Regulations Nos. V-39 and 17-67 deserve scant consideration. First, both regulations were issued pursuant to Section 245[16] (now Section 244) of the Tax Code. The authority of the Secretary of Finance, in conjunction with the Commissioner of Internal Revenue, to promulgate needful rules and regulations for the effective enforcement of internal revenue laws cannot be controverted. Such rules and regulations, as well as administrative opinions and rulings, ordinarily deserve to be given weight and respect by the courts.[17] Second, our scrutiny of Revenue Regulations Nos. V-39 and 17-67 show that said regulations did not modify or deviate from the text of Sections 137 and 141 but merely implemented and clarified said two provisions by providing certain conditions under which stemmed leaf tobacco may be exempted from prepayment of specific tax."

Premises considered, the Court *En Banc* finds no reversible error in the assailed Decision dated May 25, 2004 and the Resolution dated June 11, 2004.

WHEREFORE, the Petition for Review is hereby **DENIED** for lack of merit and ordered **DISMISSED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

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

JUANITO C. CASTAÑEDA, JR.
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 Resolution 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 this Court.

ERNESTO D. ACOSTA
Presiding Justice

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Casanova, and
Palanca-Enriquez, ***JJ.***

Promulgated:

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Concurring and Dissenting Opinion

ACOSTA, PJ.:

The Court of Tax Appeals Division's Decision dated May 25, 2004 and the subsequent Resolution dated September 30, 2004 of the Motion for Reconsideration filed on June 11, 2004, denied petitioner's claim for refund or issuance of tax credit certificate representing unutilized input VAT for the third and fourth quarters of 1999, on grounds that the petitioner failed to comply with the invoicing requirements under Section 4.108-1 of Revenue Regulations No.7-95 and that it did not present an approved application for zero-rating for the sale of goods, property or services made to PEZA-registered enterprise.

In concur in part, in the majority opinion insofar as it finds petitioner's use of official receipts bearing BIR Authority to Print dated April 23, 1992, in violation of the Transitory Provisions of Revenue Regulations No. 7-95 which only allowed the use of unused invoices/official receipts by taxpayers that changed status from "non-VAT to VAT" or from "VAT to non-VAT" up to June 30, 1996; when despite its registration with the BIR as a VAT taxpayer on February 2, 1998, it did not register another set of booklets of official receipts containing all the information required. I likewise, subscribe to the view that imprinting the word "VAT" or any indication to that effect in the invoice or official receipt is an essential requirement to its validity.

However, I wish to express my disagreement with the position of the majority concerning the notion that failure to reflect on its official receipts the word "zero-rated" will automatically make the same invalid, incompetent and irrelevant. I also manifest my dissent regarding the denial of petitioner's claim for refund on the ground that it failed to present application for "zero-rating" for its sales of services to Katolec Philippines Incorporated when Revenue Memorandum Circular No. 74-99 expressly provides that sale of services to a PEZA-registered enterprise shall automatically be treated subject to zero-rate without the need for an application for "zero-rating" from the BIR; which is supported by the recent decision of the Honorable Supreme Court in the case entitled **Commissioner of Internal Revenue vs. Seagate Technology (Philippines)**, *G.R. No. 153866.*

I will first explain my position on the validity of the official receipts that failed to imprint the words "zero-rated".

Based on the relevant provisions of the 1997 Tax Code, particularly, **Sections 113, 237 and 112**, it is only mandatory to show the following information in a VAT invoice or official receipt, to wit:

(1) A statement that the seller is a VAT-registered person;
(2) The taxpayers identification number (TIN);
(3) The total amount which the purchaser pays or is obligated to pay to the seller indicating the inclusion of the value-added tax;
(4) Transaction date;
(5) Quantity of merchandise;
(6) Description of merchandise or nature of service;
(7) Unit cost;
(8) The name, business style, if any, and address of the purchaser, customer or client in the case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees; and
(9) The TIN of the VAT-registered purchaser.

Noticeably, the term "zero-rated" is not among the information that must appear on sales invoices or official receipts as a prerequisite for claiming a refund of input VAT paid. In fact, the tenor of the law apparently permits all VAT-registered enterprises engaged in zero-rated transactions to claim a refund of their creditable input tax due or paid to the extent that such input tax has not been applied against output tax within a period of two (2) years after the close of the taxable quarter.

The sole provision where the requirement of imprinting the word "zero-rated" on the VAT invoice or receipt can claim to get its authority is **Section 4.108-1 of Revenue Regulations No. 7-95** (The Implementing Rules and Regulations of the VAT law). Then again, the said provision is merely a regulation created for the sole and limited purpose of implementing an otherwise very exact law.

It is a legal principle of long-standing that administrative rules and regulations cannot expand the letter and spirit of the law they seek to enforce. Such rules and regulations should be confined and limited by the power conferred by the legislature (**Commissioner of Internal Revenue vs. Court of Appeals**, *240 SCRA 368 (1995)*. And in case of conflict between the basic law and a rule or regulation issued to implement said law, the law prevails because said rule or regulation cannot go beyond the terms and provisions of the basic law (**People vs. Lim**, *108 Phil. 1091*).

In the recently promulgated case of **Commissioner of Internal Revenue vs. Seagate Technology (Philippines)**, *G.R. No. 153866, February 11, 2005*, the Honorable Supreme Court emphasized the need to focus only on the legally mandated requirements for claims for VAT refund and explained that, *A VAT-registered status, as well as compliance with the invoicing requirements (Section 113 (A) of the Tax Code), is sufficient for the effective zero rating of the transactions of a taxpayer. The nature of its business and transactions can easily be perused from, as already clearly indicated in, its VAT registration papers and photocopied documents attached thereto. xxx. Administrative convenience cannot thwart legislative mandate.*

Assuming *arguendo* that there was a violation of the so-called requirement to indicate the word "zero-rated" in the invoice or receipt, such omission does not automatically nullify the official receipts for purposes of proving the transactions made by the petitioner. The official receipts are still material, relevant and competent since they still directly prove the fact and the amount of sales made by the petitioner. It must be pointed out that "admissibility" refers to the question whether or not the evidence is to be considered, while "competency" refers to whether or not the evidence is expressly excluded by law or the rules. Needless to say, the said official receipts comply with the above criterion in both counts.

A denial of petitioner's claim for tax credit/refund on the ground that there was no indication of the word "zero-rated" in its official receipts is a punishment too harsh, amounting to a denial of the petitioner's clearly legal and valid claims.

Anent petitioner's opinion that an approved application for zero-rating is no longer necessary for the sale of goods, property or services made to a PEZA-registered enterprise pursuant to the provisions of RMC 74-99, I believe that the same is valid.

The provisions of RMC No. 74-99 reveal that effective October 15, 1999, sale of goods, property or services to PEZA-registered enterprises is deemed zero-rated without the need for an approved application for zero-rating. And inasmuch as the proper interpretation of the said RMC is the focal point of this issue, the pertinent portions of the same are hereunder quoted for easy reference, to wit:

> "**Section 3. Tax Treatment of Sales Made by a VAT registered Supplier from the Customs Territory to a PEZA registered Enterprise.** –
>
> (1) If the Buyer is a PEZA registered enterprise which is subject to the 5% special tax regime, in lieu of all taxes, except real property tax, pursuant to R.A. No. 7916, as amended:
>
> (a) xxx
>
> (b) Sale of service – This shall be treated subject to zero percent (0%) VAT under the "cross border doctrine" of the VAT System, pursuant to VAT Ruling No. 032-98 dated November 5, 1998.
>
> (2) xxx
>
> (3) xxx
>
> **This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of the issuance of this Circular."** *(Emphasis supplied)*

Similarly, again in the case of **Commissioner of Internal Revenue vs. Seagate Technology (Philippines)** the High Tribunal explained thus:

> **"Other than the general registration of a taxpayer the VAT status of which is aptly determined, no provision under our VAT law requires an additional application to be made for such taxpayer's transactions to be considered effectively zero-rated.** An effectively zero-rated transaction does not and cannot become exempt

> simply because an application therefor was not made or, if made, was denied. **To allow the additional requirement is to give unfettered discretion to those officials or agents who, without fluid consideration, are bent on denying a valid application.** x x x" *(Emphasis supplied)*

On the basis of the foregoing, the sale of services to Katolec Philippines Corporation on November 5, 1999 and December 27, 1999, automatically qualify as "zero-rated" sale inasmuch as these transactions took place after October 15, 1999, which is the effectivity date of RMC 74-99. Accordingly, an approved application for "zero-rating" is no longer necessary.

In the case at bar, the petitioner failed to submit an approved application for "zero-rating" because it never filed one, inasmuch as RMC 74-99 no longer required such approved application to be entitled to such "zero-rating". Apparently, this Court's order requiring the petitioner to present an approved application when one is no longer necessary was uncalled for. Hence, this Court's Division's Decision denying petitioner's refund claim based on petitioner's failure to present an approved VAT zero-rating and its "failure" to imprint the word "zero-rated" in its invoice was incorrect.

ERNESTO D. ACOSTA
Presiding Justice