REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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APPLIED FOOD INGREDIENTS COMPANY, INC.,
Petitioner,

C.T.A. CASE NO. 6513

Members:

\- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JUN 13 2007; 2:30 pm

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DECISION

BAUTISTA, L., J.:

This Petition for Review seeks for the issuance of a tax credit certificate in the amount of P9,528,565.85 allegedly representing accumulated excess input taxes incurred from September 1, 1998 to December 31, 2000 which are attributable to zero-rated sales for the period April 1, 2000 to December 31, 2000.

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines. It is registered with the Securities and Exchange Commission (SEC) under Certificate of Registration No. AS091-198357 dated November 25, 1991, with principal office at 2505 West Tower, PSE Bldg., Exchange Road, Ortigas Center, Pasig City[1].

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[1] Par. 1.0, Joint Stipulation of Facts and Issues

Respondent is the duly appointed Commissioner of Internal Revenue, vested with power to decide, approve and grant refunds or tax credits of overpaid internal revenue taxes as provided by law, and holds office and may be served with summons, orders, pleadings and other processes at the Bureau of Internal Revenue (BIR) National Office, BIR Bldg., BIR Road, Diliman, Quezon City[2].

Petitioner is registered with Regional District Office (RDO) No. 43 of the BIR in Pasig City (BIR-Pasig) as, among others, a Value-Added Tax (VAT) taxpayer engaged in the importation and exportation business, as a pure buy-sell trader.[3]

For the period September 1, 1998 to December 31, 2000, petitioner allegedly imported food ingredients on which it paid input taxes in the amount of P9,528,565.85.

Subsequently, during the period April 1, 2000 to December 31, 2000, petitioner allegedly exported the purchased food ingredients and generated sales therefrom in the amount of P114,577,937.24. The proceeds thereof were paid for in US dollars inwardly remitted into petitioner's dollar accounts with Equitable Bank Corporation and with Australia-New Zealand Bank-Philippine Branch. Petitioner believes that the said export sales are zero-rated for VAT purposes pursuant to Section 106(A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997.

Inasmuch as the accumulated input VAT for the period September 1, 1998 to December 31, 2000 had allegedly remained unutilized or unapplied, petitioner filed with the BIR on March 26, 2002 and June 28, 2002, two separate applications for the issuance of tax credit certificates in the respective amounts of P5,385,208.32

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[2] Par. 2.0, Joint Stipulation of Facts and Issues
[3] Par. 3.0, Joint Stipulation of Facts and Issues

and P4,143,357.53 totaling P9,528,565.85[4]. Petitioner cited Section 112(A) of the NIRC of 1997 as legal basis of its claim.

Due to respondent's inaction on its claim, petitioner filed a Petition for Review before this Court on July 24, 2002.

In his Answer filed on August 28, 2002, respondent raised the following Special and Affirmative Defenses:

6. The request for tax credit certificate is still under examination by respondent's examiners;

7. Taxes paid and collected are presumed to have been made in accordance with laws and regulations, hence, not refundable. Claims for tax refund are construed in *strictissimi juris* against the claimant as they partake of the nature of an exemption from tax (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1979, 31 SCRA 95) and it is incumbent upon the petitioner to prove that it is entitled thereto under the law (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121) and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law;

8. Petitioner's allegation that it erroneously and excessively paid the tax during the year under review does not *ipso facto* warrant the refund/credit or the issuance of a certificate thereto;

9. Moreover, petitioner must prove that it has complied with the governing rules with reference to tax recovery or refund, which are found in Sections 204(C) and 229 of the Tax Code, as amended.

During the trial on the merits, petitioner presented documentary and testimonial evidence. Respondent, on the other hand, manifested that he is no longer presenting any evidence considering that there is no report of investigation and there are no BIR records of this case.

On February 26, 2007, the case was submitted for decision sans the memorandum of respondent.

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[4] Pages 28-33, CTA Records

The sole issue for this Court's resolution is: Whether or not petitioner is entitled to the issuance of a tax credit certificate in the amount of P9,528,565.85 representing accumulated excess input taxes incurred for the period September 1, 1998 to December 31, 2000 that are attributable to zero-rated sales for the period April 1, 2000 to December 31, 2000.

The petition has no merit.

Petitioner anchors its claim on Section 112(A) of the NIRC of 1997, which provides as follows:

> 'SEC. 112. *Refunds or Tax Credits of Input Tax.* —
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> "(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, to wit:

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.

Anent the first requisite, petitioner maintains that its export sales which were paid for in US dollars, inwardly remitted and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas are subject to zero percent (0%) VAT pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, which states:

> "SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
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> "(A) *Rate and Base of Tax.* –There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.
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> x x x
>
> "(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
> "(a) Export Sales. – The term 'export sales" means:
> "(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)."

To substantiate its export sales for the period April 1, 2000 to December 31, 2000 and the foreign currency proceeds thereof, petitioner submitted before this Court the following documents:

DOCUMENT	**EXHIBIT NO.**
Export Documents Bank Credit Advices Export Declarations Export Invoices Bills of Lading	B to B-9
VAT Returns for the 2nd to the 4th quarters of 2000	C to C-4
CPA Report	D
Summary of Sales and Corresponding Excess Input Taxes per VAT Return	E
Supplemental CPA Report	H
Official Receipts	I to I-5

A perusal of the aforementioned documents reveals that petitioner's products were actually sold and shipped abroad and in consideration thereof, petitioner received foreign currency payments, which were inwardly remitted in accordance with the BSP rules and regulations. These export sales may fall within the export sales transactions subject to zero percent (0%) VAT referred to under Section 106(A)(2)(a)(1) of the NIRC of 1997.

However, Section 106(A)(2)(a)(1) of the NIRC of 1997 should not be read in isolation but in conjunction with Section 113 of the same Code, which prescribes that a VAT registered person like petitioner, shall for every sale, issue an invoice or receipt which must contain the following information:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT Registered Persons.* —
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> (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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> (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."

Corollary thereto, Section 4.108 –1 of Revenue Regulations No.7-95, reads as follows:

> "**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:
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> 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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Only VAT-registered persons are required to print their **TIN followed by the word "VAT" in their invoices** or receipts and this shall be considered as a "VAT Invoice". All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax." (*Emphasis supplied*)

Such invoice or receipt must be duly registered with the Bureau of Internal Revenue as prescribed under Section 237 of the NIRC of 1997, to wit:

"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 x x x." (*Emphasis supplied*)

A scrutiny of petitioner's sales invoices (included in *Exhibits B to B-9)* shows that petitioner's TIN-VAT number and the word "zero-rated" were not imprinted thereon in violation of Section 4.108-1 of Revenue Regulations No. 7-95, implementing Section 113 of the NIRC of 1997. Likewise, the said invoices were not duly registered with the BIR as mandated under Section 237 of the NIRC of 1997. There was no authority to print or BIR permit number reflected on the said invoices. Basic is the rule that before a printer can print receipts or sales or commercial invoices an authority to print must be secured first from the BIR by all persons who are engaged in business pursuant to Section 238 of the Tax Code. Pertinent portion of Section 238 is quoted hereunder for easy reference:

> "SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* - All persons who are engaged in business shall secure from the Bureau of Internal Revenue an **authority to print** receipts or **sales or commercial invoices** before a printer can print the same. xxx"(*Emphasis supplied*)

The above provision seeks to eliminate the use of unregistered and double or multiple sets of receipts by striking at the very root of the problem — the printer (***Intel Philippines Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6338, July 18, 2005***).

The law and 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 word "zero-rated" be imprinted on the face of the covering invoices or official receipts (***AMERICAN EXPRESS INTERNATIONAL, INC., PHILIPPINE BRANCH vs. COMMISSIONER OF INTERNAL REVENUE, CTA EB No. 103, March 3, 2006***). The rationale for the imprinting of the word "zero-rated" 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. The same was comprehensively elucidated by the Court *En Banc* in the case of ***J.R.A. PHILIPPINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE, C.T.A. CASE EB No. 128, January 15, 2007,*** to wit:

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." **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 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.** (*Emphasis supplied*)

In the case of ***TAGANITO MINING CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE, CTA EB No. 7, January 31, 2006,*** the Court *En Banc* likewise explained the basis for the issuance of Revenue Regulations No. 7-95, which was made pursuant to the respondent's duty of implementing the VAT provisions of the NIRC, thus:

> "Revenue Regulations No. 7-95, otherwise known as the Consolidated Value-Added Tax Regulations, was promulgated by the Secretary of Finance pursuant to the authority granted by Section 245 of the National Internal Revenue Code of 1977, which provides:
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> > SEC. 245. ***Authority of Secretary of Finance to promulgate Rules and Regulations.*** – The Secretary of Finance, upon the recommendation of the Commissioner, shall promulgate **all needful rules and regulations for the effective enforcement of the provisions of this Code.** (*Emphasis supplied*)
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> The above provision was re-enacted in *toto* under Section 244 of the 1997 NIRC. Moreover, to further strengthen the rule making power of the Secretary of Finance in coordination with the Bureau of Internal Revenue, an additional section (SEC. 245) was incorporated

defining the extent of such rule making power. Section 245, in pertinent part, provides:

> SEC. 245. **Specific provisions to be contained in rules and regulations.** – The rules and regulations of the Bureau of Internal Revenue shall, among other things, contain provisions specifying, prescribing or defining:
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> xxx xxx xxx
>
> (g) The manner in which revenue shall be collected and paid, the instrument, document or object to which revenue stamps shall be affixed, the mode of cancellation of the same, **the manner in which the** proper books, records, **invoices** and other papers **shall be kept and entries therein made** by the person subject to the tax, as well as the manner in which licenses and stamps shall be gathered up and returned after serving their purposes; (*Emphasis/italics supplied*)

Considering the legislative grant of authority to the Secretary of Finance to promulgate all needful rules and regulations for the effective enforcement of the provisions of the NIRC, Section 4.108-1 of Revenue Regulations No. 7-95 requiring the imprinting of the words "zero-rated" on sales invoices or official receipts cannot be said as having no valid basis or legislative root. On the contrary, it is both reasonable and necessary for the effective implementation of the provisions of the NIRC concerning zero-rated sales. Hence, the requirement that sales invoices be imprinted with the word "zero-rated" cannot be taken as an enlargement or expansion of the law for the reason that it merely implements the provisions of the 1997 NIRC on sales that are subject to 10% VAT, zero-rated sales (0% VAT) and exempt sales. The imprinting of "zero-rated' is necessary to distinguish sales subject to 10% VAT, those that are subject to 0% VAT (zero-rated) and exempt sales, to enable the Bureau of Internal Revenue to properly implement and enforce the other provisions of the 1997 NIRC 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]; and
4. Refunds or tax credits of input tax [Sec. 112].

The rule is that as long as the administrative regulation is not in conflict with the law it seeks to implement, the same should be taken as part of the law taking into consideration the underlying purpose of the rule or regulation.

In a recent decision, the Supreme Court held that regulations issued by the Department of Finance/Bureau of Internal Revenue that would give effect to the law are valid regulations, thus:

> "Petitioner's arguments impugning the validity of Revenue Regulations V-39 and 17-67 deserve scant consideration. First, both regulations were issued pursuant to Section 245 (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 tax 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. 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."[2] (*Emphasis supplied; citations omitted*)

We agree with the respondent that the issuance of Revenue Regulations No. 7-95 was made pursuant to the respondent's duty of implementing the 1977 NIRC, as amended. The requirement of imprinting the word "zero-rated" fulfills the intent of the law. It is useful, practical and necessary not only with respect to the proper implementation of the provisions of the 1997 NIRC on zero-rated transactions but more importantly, to prevent the granting of refund or tax credit of non-existent input VAT. It is an act of tax administration which is not violative of the rule on non-delegation of delegated powers.

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Hence, the need for strict compliance with the mandatory requirement of imprinting the word "zero-rated" on sales invoices or official receipts regardless of whether or not the business entity engages only in export sales since Revenue Regulations No. 7-95 did not make any distinction on the different kinds of zero-rated sales."

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[2] Compania General de Tabacos de Filipinas vs. Hon. Court of Appeals and The Commissioner of Internal Revenue, G.R. No. 147361, March 23, 2004 (426 SCRA 203).

To emphasize, it is explicit from the provisions of Section 113 of the NIRC of 1997, in relation to Section 237 of the same Code and Section 4.108-1 of Revenue Regulations No. 7-95 that a VAT registered person like herein petitioner must issue a duly registered VAT invoice or receipt ***for every sale transaction***. Such VAT invoice or receipt must show the taxpayer's identification number (TIN) followed by the word VAT, printer's BIR permit number and the word "zero-rated" imprinted on the invoice or receipt covering a zero-rated sale. Considering so, the export sales referred to under Section 106(A)(2)(1)(a) of the NIRC of 1997 as subject to zero percent (0%) VAT are those covered by duly registered VAT invoices bearing all the required information. Without valid VAT invoices, petitioner's reported export sales for the period April 1, 2000 to December 31, 2000 cannot qualify for VAT zero-rating. Consequently, the claimed unutilized input VAT attributable thereto in the amount of P9,528,565.85 cannot be granted. It is clear from the provisions of Section 112(A) of the NIRC of 1997 that there must be zero-rated or effectively zero-rated sales in order that a refund of input VAT could prosper.

Accordingly, this Court finds it unnecessary to delve on the other requisites.

IN VIEW OF THE FOREGOING, the instant Petition for Review is hereby **DENIED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
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 before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division