REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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MARUBENI PHILIPPINES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6297

Members:

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

Promulgated:
JUL 11 2006

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DECISION

BAUTISTA, L., J.:

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P3,651,766.26 allegedly representing unutilized/excess input VAT which are attributable to zero-rated sales of goods and services and capital goods purchases for the first quarter of 1999.

The antecedent facts of the case are as follows:

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with office address at 6th Floor, LV Locsin Building, Ayala Avenue corner Makati Avenue, Makati City.[1]

Respondent is the duly appointed Commissioner of Internal Revenue, with authority, among others, to decide, approve and grant tax credits and/or refunds of overpaid or erroneously paid internal revenue taxes, with office address at the 5th Floor , BIR National Office Building, Diliman, Quezon City.[2]

Petitioner was organized to principally engage in the business of buying, selling, distributing, marketing at wholesale insofar as may be permitted by law, all kinds of goods, commodities, wares and merchandise of every kind and description, and to enter into all kinds of contracts for the export, import, purchase, acquisition, sale at wholesale and other disposition for its own account as principal or in representative capacity as manufacturer's representative, merchandise broker, indentor, commission merchant, factors or agents, upon consignment or all kind of goods, wares, merchandise or products whether natural or artificial. As such, petitioner is duly registered with the Bureau of Internal Revenue (BIR) as a Value-added Tax (VAT) taxpayer, as evidenced by a copy of its BIR Certificate of Registration.[3]

For the first quarter ending March 31, 1999, petitioner filed with the BIR its Quarterly VAT Return on April 26, 1999 reflecting an excess input VAT for the said quarter in the amount of P3,094,668.05,[4] computed as follows:

			INPUT VAT		
ZERO-RATED SALES	TAXABLE SALES	OUTPUT VAT	DOMESTIC PURCHASES	IMPORTATION	EXCESS
		(a)	(b)	(c)	(b) + (c) – (a)
P29,181,490.18	P20,768,479.60	P2,076,856.17	P5,389,020.55	P(217,496.33)	P3,094,668.05

[1] Facts Admitted, par. 1, Records, page 78
[2] *ibid.,* par. 2, Records, page 78
[3] *Id.,* pars. 3 & 4, Records, pages 78 & 79
[4] Exhibit "A"

Petitioner, through its external auditor, filed on March 30, 2001 with the Bureau of Internal Revenue (BIR) within the period prescribed by law, a claim for refund and/or tax credit of its unutilized input VAT credits for the first quarter of 1999 in the amount of P3,312,164.38.[5]

On April 2, 2001, petitioner filed an amended VAT return for the first quarter of 1999 increasing its reported excess input VAT from P3,094,668.05 to P3,651,766.26,[6] computed as follows:

			INPUT VAT		
ZERO-RATED SALES	TAXABLE SALES	OUTPUT VAT (a)	DOMESTIC PURCHASES (b)	IMPORTATION (c)	EXCESS (b) + (c) – (a)
P115,135,882.34	P16,774,897.10	P 1,677,481.45	P 5,248,037.71	P 81,210.00	P3,651,766.26

In view of the filing of the amended return for the first quarter of 1999, petitioner filed on the same date of April 2, 2001, an amended claim for refund/tax credit of unutilized input tax credits in the amount of P3,651,766.26.[7]

Unable to find any response from the respondent and in order to stop the running of the two-year prescriptive period, petitioner elevated the case through a Petition for Review with this Court on April 25, 2001.

By way of an Answer filed through registered mail on June 1, 2001, respondent asserted the following Special and Affirmative Defenses:

> "4. Assuming without admitting that petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue.
>
> 5. Petitioner miserably failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.
>
> 6. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.

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[5] Exhibit "D"
[6] Exhibit "B"
[7] Exhibit "E"

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7. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.

8. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended, as well as the requirements provided for in Revenue Regulations No. 5-87 as amended by Revenue Regulations No. 3-88.

9. Claims for refund are construed strictly against the claimant for the same partakes (sic) the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95)* and as such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)*."

However, upon motion of respondent's counsel, the Court issued a Resolution on January 25, 2002 dismissing the case for failure of petitioner to prosecute. A Motion for Reconsideration on the aforesaid Resolution was filed by petitioner on February 7, 2002. Consequently, the Court in the Resolution dated March 25, 2002 granted said motion in the interest of substantial justice and fair play.

To support its claim, petitioner submitted numerous documents and likewise presented its witnesses, Ms. Rosalyn Peret, petitioner's Accounting Staff II, and Mrs. Lydia Salvador, petitioner's Finance and Administration Manager, to identify the same. Respondent, on the other hand, submitted the case for decision based on the pleadings after manifesting in the July 7, 2005 hearing that this case has no report of investigation. Hence, the Court issued a resolution dated December 13, 2005 and considered the case submitted for decision sans memorandum of respondent.

In their Joint Stipulation of Facts and Issues filed on June 4, 2002, the parties submitted the following issues for this Court's resolution:

1. Whether or not the amount of P3,619,351.76, out of the total excess input VAT of P3,651,766.26, represents input VAT paid on local purchases and importation of taxable goods that are directly attributable to Petitioner's zero-rated export sales of goods;

2. Whether or not the amount of P35,227.91 represents input VAT paid on local purchases of capital goods;

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3. Whether or not Petitioner incurred input VAT which are not directly attributable to either its export sales of goods and services or its taxable sale of goods and services;

4. Whether or not Petitioner's input VAT which are not directly attributable to either its zero-rated or taxable sales should be allocated to either operation;

5. Whether or not Petitioner's excess input VAT for the first quarter of taxable year 1999 in the amount of P3,651,766.26, was applied or utilized against its output VAT in the succeeding taxable quarters;

6. Whether or not the excess input VAT of P3,651,766.26 arising from Petitioner's purchases of goods and services for the period covering January 1, 1999 to March 31, 1999, which purchases of goods are attributable to its zero-rated export sales and purchases of capital goods, are duly supported by pertinent documents, such as VAT invoices and receipts;

7. Whether or not Petitioner is entitled to the claim for refund in the amount of P3,651,766.26 representing unutilized and/or unapplied input VAT attributable to the excess of its accumulated input VAT payments over the output VAT due on domestic sales for the first quarter of 1999.

All of the above issues boils down to the focal issue of: Whether or not, petitioner, based on the evidence presented, is entitled to a refund or issuance of a tax credit certificate in the amount of P35,227.91 on capital goods purchases and unutilized excess input VAT of P3,616,538.35 which are attributable to zero-rated sales of goods and services covering the first quarter of 1999. But to resolve such central issue, We need to tackle the first issue of whether or not petitioner is entitled to the claimed input VAT of P3,616,538.35 which are directly attributable to zero-rated sales of goods and services for the first quarter of 1999.

Section 112(A) of the National Internal Revenue Code (NIRC) of 1997 provides as follows:

"**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 where 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

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> 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): *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."

Based on the foregoing, in order to be entitled to a refund/tax credit of unutilized input VAT, the following requisites must be complied with:

1) that 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 during and in the succeeding quarters; and
5) that the claim for refund was filed within the two-year prescriptive period.

Anent the first requisite, petitioner maintains that the bulk of its sales for the first quarter of 1999 are subject to zero percent VAT pursuant to Sections 106(A)(2)(a)(1) and 108(B)(2) and (3) of the NIRC of 1997. These sales allegedly pertain to petitioner's export sales of goods as well as its sales of indenting and related services to non-resident entities, the consideration for which was paid for in acceptable foreign currency and duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). Petitioner allegedly generated also zero-rated sales of services to entities that are registered with the Philippine Economic Zone Authority (PEZA).

As indicated in its summary schedules, petitioner's alleged zero-rated sales for the first quarter of 1999 consisted of the following:

	Nature of Reported Zero-rated Sales		Amount	Exhibit
1.)	Direct Export Sales		P 36,721,285.11	XXX
2.)	Sales of Services to PEZA Entities		1,204,792.89	AAAA
3.)	Sales of Services to Non-resident Affiliates	9,462,364.88		L7
4.)	Marubeni Tokyo	63,005,402.74	72,467,767.62	M7
			P110,393,845.62	

To substantiate its direct export sales of P36,721,285.11, petitioner presented various sales invoices *(Exhibits "N-1, O-1, P-1, R-1, S-1, T-1, V-1, W-1, Y-1, Z-1, AA-1 and CC-1")*, export declarations *(Exhibits "N-2, O-2, P-2, R-2, S-2, T-2, V-2, W-2, Y-2, Z-2, ZZ-2 and CC-2")*, bills of lading *(Exhibits "FF, GG, HH, II, JJ, KK, LL, MM, NN, OO and PP")* and BPI Certificate of Inward Remittance *(Exhibit "P")* which showed that for the first quarter of 1999 petitioner exported goods to Marubeni Corporation, Tokyo, Japan in the amount of P36,721,285.11 which were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP. These direct export sales fall within those export sales transactions subject to zero percent (0%) VAT referred to under Section 106(A)(2)(a)(1) of the NIRC of 1997, which states:

> "**SEC. 106.** ***Value-Added Tax on Sale of Goods or Properties.*** –
>
> (A) *Rate and Base of Tax.* – 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)."

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.*** —
>
> (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." *(Emphasis Ours)*

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:

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 Ours)*

A scrutiny of petitioner's sales invoices *(Exhibits "N-1, O-1, P-1, R-1, S-1, T-1, V-1, W-1, Y-1, Z-1, AA-1 and CC-1")* shows that the word "zero-rated" was not imprinted thereon in violation of Section 4.108-1 of Revenue Regulations No.7-95, in relation to Section 113 of the NIRC of 1997.

In the case of ***Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 11, April 19, 2005***, the Court *En Banc* held that:

"We disagree with petitioner's allegation of the Division's erroneous denial of its claim for tax refund on the ground that petitioner's invoices do not bear the imprint 'zero-rated'.

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While Section 112 of the NIRC of 1997, as amended, allows tax refund or credit on input tax of zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, however, certain invoicing requirements must be faithfully complied with before such claim for refund or credit can be granted.

Sections 113(A) and 237 of the NIRC lay down the invoicing requirements for VAT registered persons. More specifically, Section 4-108-1 of Revenue Regulations No. 7-95 enumerates the information that must appear on the face of the receipts or invoices issued for sales of goods by all VAT-registered persons. xxx

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The aforequoted revenue regulation issued to implement the NIRC provision on VAT invoicing and accounting requirements is mandatory as the word 'shall' is used. It is a settled doctrine in statutory construction that the word 'may' when used in a statute, is permissive and operates to confer discretion; it cannot be construed as having a mandatory effect (Republic Planters Bank vs. Agana, Sr., 269 SCRA 1). 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.

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A careful perusal of petitioner's VAT official receipts reveals that the same do not bear the imprinted words 'zero-rated' on the face thereof, in violation of Section 4.108-1 of Revenue Regulations No. 7-95.

xxx xxx xxx

In conjunction thereto, Revenue Memorandum Circular No. 42-2003 has clarified the issue relative to the failure of a taxpayer claiming for tax refund/credit to comply with the invoicing requirements. The pertinent portion of the said circular provides:

> 'A-13. Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.
>
> If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g., failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-

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> rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer.'

> 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 of the taxpayer 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, such as the failure of a claimant-taxpayer to imprint the word 'zero-rated' on the sale invoices or receipts, the claim for tax credit/refund of VAT on its sales shall be denied."

Moreover, in the same case, the Court *En Banc* had the opportunity to explain the rationale behind the required imprinting of the word "zero-rated" on sales invoices/official receipts, 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: . . .' **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 mere stamping of the invoice or receipt would not suffice since there is no guarantee that the words 'zero-rated' would appear in the original copy of the invoice provided the buyer. 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 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 Ours)*

More emphatically, in ***Taganito Mining Corporation vs. Commissioner of Internal Revenue, CTA EB No. 7, January 31, 2006***, the Court *En Banc* illustrated a situation to explain further the reason behind the required imprinting of the word "zero-rated" on the sales invoices or official receipts. To quote:

> "The absurd situation referred to above can be explained in monetary terms by a simple illustration. Let us assume that a zero-rated taxpayer bought raw materials from a local supplier in the total amount of P1,100,000.00 inclusive of 10% VAT. The refundable input VAT to the *zero-rated taxpayer* is only P100,000.00 (1,100,00.00 x 1/11).
>
> Assume further that the zero-rated taxpayer then sells its product for P2,200,000.00 and issues a sales invoice that is not imprinted with the word 'zero-rated' contrary to the mandatory requirement of Revenue Regulations No. 7-95. Since the sale is a zero-rated sale, no output VAT is due on the transaction. Stated differently, the buyer did not pay any input VAT. The above situation could be taken advantage of by the *buyer who did not pay any input tax*, by filing a claim for refund of the inexistent input VAT in the amount of P200,000.00.
>
> 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."

Guided by the principles of law and rationale behind the statutory pre-requisites as above stressed, the inevitable conclusion is that without VAT sales invoices with the word "zero-rated" imprinted thereon, petitioner's direct export sales for the first quarter of 1999 in the amount of P36,721,285.11 cannot qualify for VAT zero-rating.

We now delve on petitioner's alleged zero-rating of sale of services to PEZA registered companies in the amount of P1,204,792.89 and sale of services to non-resident affiliates/Marubeni Tokyo in the amount of P72,467,767.62. On this particular claim, petitioner relies on Sections 108(B)(2) and (3) of the NIRC of 1997 which provide:

> **"SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.*-**
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate;
>
> xxx xxx xxx

(2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(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."

Moreover, with respect to petitioner's sale of services to PEZA-registered companies, petitioner likewise cites relevant portions of Revenue Memorandum Circular (RMC) No. 74-99, thus:

"**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:

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(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) If Buyer is a PEZA registered enterprise which is not embraced by the 5% special tax regime, hence, subject to taxes under the NIRC, e.g., Service Establishments which are subject to taxes under the NIRC rather than the 5% special tax regime:

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.

3. In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5) , NIRC , in relation to Art. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered supplies from the Customs Territory, shall be treated effectively subject to 0% VAT, pursuant to

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> Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the 'Cross Border Doctrine' of the VAT system.
>
> 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 issuance of this Circular."

Clearly, from the foregoing provisions of Section 108(B)(3) and as clarified under RMC No. 74-99, sales of services to PEZA registered entities by a VAT registered entity, like herein petitioner, are subject to zero percent (0%) VAT. However, petitioner's reported sales in the amount of P1,204,792.89 cannot qualify for VAT zero rating because petitioner failed to substantiate the same with valid VAT official receipts. Although petitioner was able to submit some official receipts *(Exhibits "WWWWW to ZZZZZ" and "AAAAAA to EEEEEE")*, still, the sales amounts reflected in the said documents cannot qualify for VAT zero-rating. The word "zero-rated" was not imprinted on the corresponding official receipts in violation of Section 4.108-1 of Revenue Regulations No. 7-95.

We observed that petitioner's sales of services to its non-resident affiliates and Marubeni Tokyo, Japan for the first quarter of 1999 which were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP fall under the category of services subject to zero percent (0%) VAT under Section 108(B)(2) of the NIRC of 1997. However, since petitioner's reported sales of services in the amount of P72,467,767.62 was not duly supported by VAT official receipts in accordance with Section 113 of the NIRC of 1997, the same shall not qualify for VAT zero-rating.

In light of the foregoing considerations and considering that petitioner failed to prove that it had zero-rated or effectively zero-rated sales for the first quarter of 1999, petitioner's claimed input taxes which are directly attributable thereto in the amount of P3,616,538.35 cannot be granted.

What is now left to be determined is whether or not petitioner is entitled to the amount of P35,227.91 representing unutilized excess input VAT on capital goods purchases for the first quarter of 1999.

Section 112(B) of the NIRC of 1997 provides as follows:

> "**SEC. 112.** ***Refunds or Tax Credits of Input Tax.*** —
>
> (A) xxx xxx xxx
>
> (B) *Capital Goods.* — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made."

Relative to the above provision is Section 4.106-1 of Revenue Regulations No. 7-95 which defines "capital goods or properties" as follows:

> "'*Capital goods or properties*' refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29(f), used directly or indirectly in the production or sale of taxable goods or services." *(Underscoring Ours).*

Thus, in order that the items purchased can be classified as capital goods or properties, petitioner must show that: (1) the goods or properties have economic useful life of more than one year; (2) such goods or properties are treated as depreciable assets under Section 29(f) [now 34F of the NIRC of 1997]; and (3) they are used directly or indirectly in the production or sale of taxable goods or services.

Evidence forwarded to this Court, such as VAT sales invoices/official receipts from petitioner's supplier SNBC Trading *(Exhibits "F-1, G-1, J, K, L and UUU")*, prove that the claimed input VAT of P35,227.91 relates to petitioner's purchases of computers. While these computers have estimated useful life of more than one year and used directly or indirectly by petitioner in its business, petitioner failed to submit documents such as detailed general ledger and audited financial statements to prove that these were capitalized in its books of accounts and subjected to depreciation. Therefore, for petitioner's failure to prove that the subject computer purchases were treated as depreciable assets in its books of accounts, the related input VAT of P35,227.91 cannot be granted.

IN VIEW OF ALL THE FOREGOING, the instant petition is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

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

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

I attest 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.

LOVELL R. BAUTISTA
Acting Division Chairman

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the attestation of the Acting Division Chairman, 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