REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

AMERICAN EXPRESS INTERNATIONAL INC. - PHILIPPINE BRANCH, ***Petitioner,***	**C.T.A. CASE NO. 6468**
	Members:
	CASTAÑEDA, JR., Chairman UY, and PALANCA-ENRIQUEZ, JJ.
-versus-	**Promulgated:**
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	FEB 0 9 2006

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DECISION

PALANCA-ENRIQUEZ, J.:

For a judicial claim for tax refund to prosper, the taxpayer must not only prove that it is a VAT registered entity and that he filed his claim within the prescriptive period. He must substantiate the input VAT paid by VAT purchase invoices or official receipts *(Commissioner of Internal Revenue vs Seagate Technology (Philippines), G.R. No. 153866, February 11, 2005).*

While the CTA is not governed strictly by technical rules of evidence, as rules of procedure are not ends in themselves but are primarily intended as tools in the administration of justice, the presentation of the purchase receipts and/or invoices is not a mere procedural technicality which may be disregarded considering that it is the only means by which the CTA may ascertain and verify the truth of taxpayer's claims (*Commissioner of Internal Revenue vs Manila Mining Corporation, G.R. No. 153204, August 31, 2005*).

THE CASE

This is a Petition For Review filed by AMERICAN EXPRESS INTERNATIONAL, INC. – PHILIPPINE BRANCH (hereafter "petitioner") seeking to refund its unapplied input value-added taxes paid on domestic purchases of taxable goods and services amounting to P4,369,864.20, which are attributable to petitioner's zero-rated revenues covering the period from January 1, 2000 to December 31, 2000.

THE FACTS

Petitioner is a duly registered Philippine Branch of American Express International, Inc. (hereafter "AMEX"), a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, United States of America. It is a servicing unit of American

Express International, Inc.–Hong Kong Branch (hereafter "AMEX-Hong Kong"), engaged primarily in facilitating the collection of AMEX-Hong Kong's receivables from AMEX cardholders residing or situated in the Philippines, as well as the payment by AMEX-Hong Kong to American Express accredited service establishments and merchants in the Philippines.

Petitioner is a registered VAT entity since March 1988 under *VAT Registration Certificate No. 088445*, pursuant to *Section 107 of the National Internal Revenue Code* (hereafter "NIRC") (*Exhibit "A"*).

On January 27, 1989, petitioner made a request in writing to the Bureau of Internal Revenue (hereafter "BIR") for qualification as a zero-rated VAT enterprise effective January 1, 1988, to which *VAT RULING No. 080-89* dated April 3, 1989 was issued, declaring that:

> *"In reply, please be informed that, as a VAT registered entity whose service is paid for in acceptable foreign currency which is remitted inwardly to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines, your service income is automatically zero rated effective January 1, 1988. [Section 102(a)(2) of the Tax Code, as amended]. For this, there is no need to file an application for zero-rate" (Exhibit B; par. g, Stipulated Facts).*"

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For the period covering January 1, 2000 to December 31, 2000, petitioner allegedly generated and recorded zero-rated revenues from its above described services amounting to P79,532,326.27. Said amount was paid to petitioner in acceptable foreign currency inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (hereafter "BSP"). As such, petitioner claims that said revenues qualified as zero-rated in accordance with *Section 108 (B) (2) of the NIRC of 1997* and *VAT Ruling No. 080-89*.

For the same period, petitioner likewise allegedly paid input VAT on its domestic purchases of taxable goods and services amounting to P4,369,864.20, which are all directly attributable to its zero-rated revenues of P79,532,362.27.

Petitioner filed its quarterly VAT returns for each of the four (4) quarters of the year 2000, but which returns were subsequently amended reflecting the foregoing input VAT payments and zero-rated revenues (*Exhibits "C", "E", "F" and "H"*). gvl

Since it was allegedly unable to utilize the input VAT payments of P4,369,864.20 and the same was not carried over to the succeeding first quarter of 2001, petitioner, on April 25, 2002, filed with the BIR a claim for refund of its 2000 input VAT payments.

Due to the inaction of the Commissioner of Internal Revenue (hereafter respondent) on its claim, on April 25, 2002, petitioner filed the present Petition For Review before this Court.

In their "Joint Stipulation of Facts and Issues", the parties agreed on the following facts:

> "(a) The existence, legal capacities and circumstances of the parties.
>
> (b) Petitioner's registration as a Value Added Tax ("VAT") entity pursuant to then Section 107 of the National Internal Revenue Code of 1997, as amended, since March 1988 and respondent's issuance to the petitioner of the corresponding VAT Registration Certificate No. 088445 (with Registration No. 32A-3-004868). And further, that Annex A of the petition is a faithful reproduction of petitioner's original VAT Registration Certificate.
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> (c) The petitioner duly filed with the BIR its VAT Return covering the period from January 1, 2000 to December 31, 2000, and that Annexes C to G of the petition are faithful reproductions of the said VAT Returns.

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(d) That on April 25, 2002, petitioner filed a claim for refund of the VAT input taxes subject of this case with the Revenue District Office No. 47 (East-Makati) in the amount of P4,369,864.20 for the period covering January 1, 2000 to December 31, 2000, and further, that Annex 1 of the petition (the request for refund, together with its supporting documents) is a faithful reproduction of petitioner's April 25, 2002 claim for refund.

(e) Petitioner's aforementioned claim for refund to date remains unresolved and is still under investigation by the Bureau of Internal Revenue.

(f) On April 13, 1989, the BIR issued VAT Ruling No. 080-89 addressed to petitioner stating, among other things, that:

'In reply, please be informed that, as a VAT registered entity whose service is paid for in acceptable foreign currency which is remitted inwardly to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines, your service income is automatically zero rated effective January 1, 1988, [Section 102 (a) (2) of the Tax Code as amended]. For this, there is no need to file an application for zero-rate.'

And that Annex B of the petition is a faithful reproduction of the aforementioned VAT Ruling."

In his answer, respondent alleged, by way of special and affirmative defenses, that:

"4. Petitioner's alleged claim for refund is still subject to administrative investigation/examination;

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5. Nonetheless, despite the documents attached to the petition in support of its claim, petitioner failed to establish the fact that the tax subject of the case at bar is refundable;

6. Petitioner must show proof that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code;

7. Lastly, time and again, the Honorable Supreme Court has consistently held that in tax refund, the claimant has the burden of proof to establish the factual basis of his or her claim for tax refund or credit. After all, tax refunds, like exemptions, are construed strictly against the taxpayer. Failure to prove the same is fatal to its claim for tax refund."

Petitioner presented Ana Maria Baldemeca and Angel Aguilar, Jr., the duly commissioned Independent CPA, as witnesses, and submitted documentary evidence, which evidence was admitted by the Court.

On the other hand, respondent submitted the case for decision without presenting any evidence.

Thereafter, both parties were ordered to file their respective memoranda within thirty (30) days from notice. Petitioner filed its memorandum on August 30, 2005, while respondent filed his memorandum on September 23, 2005. The case was deemed submitted for decision on November 11, 2005.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT AMEX HAS EXCESS INPUT VALUE-ADDED TAXES IN THE AMOUNT OF P4,369,721.35 FOR THE PERIOD COVERING JANUARY 1, 2000 TO DECEMBER 31, 2000.

II

WHETHER OR NOT AMEX'S EXCESS INPUT VALUE-ADDED TAXES ARE ATTRIBUTABLE TO ITS PURCHASES THAT ARE DIRECTLY RELATED TO THE PERFORMANCE OF ITS BUSINESS OR SERVICE.

III

WHETHER OR NOT AMEX'S EXCESS INPUT VALUE–ADDED TAXES WERE NOT CARRIED-OVER TO THE NEXT SUCCEEDING QUARTER, I.E., THE FIRST QUARTER OF 2001.

IV

WHETHER OR NOT VAT RULING NO. 080-89 (APRIL 13, 1989) IS APPLICABLE TO THE TRANSACTIONS INVOLVED IN THIS PETITION SO AS TO ENTITLE AMEX TO A REFUND OF ITS EXCESS 2000 INPUT VAT PAYMENTS AS A ZERO-RATED TAXPAYER.

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ASSUMING THAT VAT RULING NO. 080-89 IS NOT APPLICABLE, WHETHER OR NOT AMEX, BASED ON THE SERVICES IT RENDERS AND THE MANNER BY WHICH IT IS COMPENSATED FOR SUCH SERVICES AS DESCRIBED IN THE PETITION AND AS WOULD BE PROVEN DURING THE TRIAL, QUALIFIES AS ZERO-RATED VAT ENTITY PURSUANT TO SECTION 108 (B) (2) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997.

VI

DEPENDING ON THE COURT'S RESOLUTION OF THE FOREGOING ISSUES, WHETHER OR NOT AMEX IS CONSEQUENTLY ENTITLED TO A REFUND OF THE VAT INPUT TAXES IT PAID FOR ITS DOMESTIC PURCHASES OF TAXABLE GOODS AND SERVICES FOR THE PERIOD BEGINNING JANUARY 1, 2000 TO DECEMBER 31, 2000, WHICH PURCHASES WERE DIRECTLY RELATED TO THE PERFORMANCE OF AMEX'S BUSINESS/SERVICE.

THE COURT'S RULING

The petition is unmeritorious.

VAT Ruling Nos.
040-98 & 080-89

Petitioner argues that *VAT Ruling No. 080-89* has not been revoked, amended nor modified. The facts as represented in said *VAT Ruling* being the same as those in the present case, the ruling is applicable

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to the transactions involved in this petition so as to entitle petitioner to a refund of its excess input VAT payments from January 1, 2000 to December 31, 2000 as a zero-rated taxpayer. It submits that the applicability of *VAT Ruling No. 080-89* to a subsequent claim for refund of excess input VAT by AMEX has recently been affirmed by the Supreme Court in *Commissioner of Internal Revenue vs. American Express International, Inc., G.R. No. 152609, June 29, 2005.*

Respondent counter argues that *VAT Ruling No. 080-89* making AMEX's service income automatically zero-rated effective January 1, 1988 is no longer applicable said ruling having been issued prior to the amendment introduced by *Revenue Regulations No. 5-96.* He maintains that since petitioner's services are not destined to be consumed abroad, they are not of the same class or of the same nature as "project studies, information services, engineering and architectural designs and other similar services destined to be consumed abroad" mentioned in *Section 4.102(b)(2) of Revenue Regulations No. 5-96.* Thus, they cannot be legally qualified for zero-rated VAT, but are instead subject to the regular 10% VAT rate.

We agree with petitioner.

In *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), G.R. No. 152609* dated *June 29, 2005*, the Supreme Court ruled in favor of petitioner AMEX in the following manner:

> "VAT Ruling No. 040-98 relied upon by petitioner is a less general interpretation at the administrative level, rendered by the BIR commissioner upon request of a taxpayer to clarify certain provisions of the VAT law. As correctly held by the CA, when this ruling states that the service must be "destined for consumption outside of the Philippines" in order to qualify for zero rating, it contravenes both the law and the regulations issued pursuant to it. This portion of VAT Ruling No. 040-98 is clearly *ultra vires* and invalid.
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> Although "[I]t is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts", this interpretation is not conclusive and will have to be "ignored if judicially found to be erroneous" and "clearly absurd x x x or improper". An administrative issuance that overrides the law it merely seeks to interpret, instead of remaining consistent and in harmony with it, will not be countenanced by this Court.
>
> In the present case, respondent has relied upon VAT Ruling No. 080-89, which clearly recognizes its zero rating. Changing this status will certainly deprive respondent of a refund of the substantial amount of excess input taxes to which it is entitled.

> Again, assuming *arguendo* that Ruling No. 040-98 revoked VAT Ruling No. 080-89, such revocation could not be given retroactive effect if the application of the latter ruling would only be prejudicial to respondent. Section 246 of the Tax Code categorically declares that "[a]ny revocation x x x of x x x any of the rulings x x x promulgated by the Commissioner shall not be given retroactive application if the revocation x x x will be prejudicial to the taxpayers".
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> It is also basic in law that "no x x x rule x x x shall be given retrospective effect unless explicitly stated". No indication of such retroactive application to respondent does the Court find in VAT Ruling No. 040-98. Neither do the exceptions enumerated in Section 246 of the Tax Code apply.
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> Though vested with the power to interpret the provisions of the Tax Code and not bound by predecessors' acts or rulings, the BIR commissioner may render a different construction to a statute *only if* the new interpretation is in congruence with the law. Otherwise, no amount of interpretation can ever revoke, repeal or modify what the law says."

From the above ruling, it is clear that petitioner qualified as a zero-rated entity under *Section 108 (B) (2) of the NIRC of 1997* and *VAT Ruling No. 080-89, as amended by Revenue Regulations No. 5-96.*

The issue for resolution then is whether or not petitioner, based on the evidence presented, is entitled to tax refund of the claimed input VAT payment in the amount of P4,369,721.35.

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The pertinent portion of *Section 112 of the NIRC of 1997, as amended*, provides:

> "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 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): x x x x x ".

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

1) there must be zero-rated or effectively zero-rated sales;

2) that input taxes were incurred or paid;

3) that such input VAT payments are directly attributable to zero-rated sales or effectively zero-rated sales;

4) that the input VAT payments were not applied against any output VAT liability; and

5) that the claim for refund was filed within the two-year prescriptive period.

To prove its reported 2000 zero-rated revenues from sales of services, petitioner presented photocopies of the following:

1) Telex advices for the months of January 2000 to December 2000 (*Exhibits "X-1" to "X-51"*);

2) Statements of Demand Deposit Accounts for the months of January 2000 to December 2000 (*Exhibits "X-52" to "X-103"*);

3) Certificates of Inward Remittance issued by the Bank of the Philippine Islands for the following periods: February 2000 to March 2000; June 2000 to December 2000; June 2000 to November 2000; and the whole year of January 2000 to December 2000 (*Exhibits "FF", "GG", "HH" and "II"*).

This Court finds the above documents insufficient. The documents presented by the petitioner only showed that it rendered services to AMEX-Hong Kong Branch, and in consideration thereof, it received foreign currency payments that were accounted for in accordance with the rules and regulations of the BSP. Under *Section 108 (B) (2) of the NIRC of 1997, as amended*, such sales of services cannot qualify for zero rating without the corresponding duly registered official receipts.

Invoicing Requirements

Section 112 of the NIRC of 1997, as amended, allows tax refund or credit of the input tax of zero-rated sales only upon compliance with certain invoicing requirements provided for under *Sections 113 and 237 of the NIRC of 1997*, to wit:

> "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. x x x x x"

"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: Provided, however, That 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, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: Provided further; That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer's Identification Number (TIN) of the purchaser.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to internal revenue tax from compliance with the provisions of this Section."

In relation to these requirements, *Section 4-108-1 of Revenue Regulations No. 7-95 (The Consolidated Value-Added Tax Regulations)* enumerates the information that must appear on the face of the receipts or invoices issued for sales of goods or services by all VAT-registered persons, to wit:

"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.

In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.

> Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoices or receipts and this shall be considered as "VAT Invoice". All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax.
>
> If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A "VAT Invoice' shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the code.
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> The invoice or receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records."

Section 113, in relation to *Section 237 of the NIRC of 1997,* and *Section 4.108-1 of Revenue Regulations No. 7-95* expressly mandate a VAT registered person, like herein petitioner, to 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, BIR Authority Imprint or BIR permit marker and the word "zero-rated" imprinted on the invoice or receipt covering a zero-rated sale. Considering so, the sales of services referred to under *Section 108 (B) (2) of the NIRC of 1997, as amended,* as subject to zero-percent

(0%) rate are those covered by duly registered VAT official receipts. The VAT registered person must substantiate the input VAT paid by purchase invoices or official receipts. No distinction was made by *Section 113* as to whether or not a VAT-registered person renders service only to a single entity or to the general public in order for the requirement of the issuance of an official receipt should apply. An official receipt issued by the taxpayer is an essential requirement to prove the existence of sale and receipt of income and thereafter duly recorded in the accounting records.

The consistent use of the word "shall" in the afore-quoted *NIRC* provisions on VAT denotes a mandatory character. Even the rules and regulations issued to implement the VAT invoicing requirement in the NIRC repeatedly used the word "shall". As a general rule, the word "may" when used in a statute is permissive and operates to confer discretion; while the word "shall" is imperative, operating to impose a duty which may be enforced *(Pioneer Texturing Corp vs NLRC, 280 SCRA 806)*. The seller-taxpayer is duty-bound to comply with the invoicing requirements laid down in the said *NIRC* provisions and *Revenue Regulations*.

The nature of the VAT system necessitates that invoices or receipts be issued. Since the VAT system is a multi-stage, multi-point tax where the tax is levied at all stages (although the total value is subject to tax only once), it is necessary and convenient that the seller issues an invoice or receipt in order to facilitate computation of the tax credits *(Commissioner of Internal Revenue vs Benguet Corporation, 463 SCRA 49)*.

Failure to Comply with the Invoicing Requirements: Effect thereof

In this case, petitioner was unsuccessful to substantiate its claim for input VAT refund covering the period from January 2000 to December 2000 having failed to present the official receipts it issued to AMEX Hong Kong Branch establishing zero-rated sales or that petitioner's sales are all zero-rated. Without the VAT invoices and official receipts evidencing its reported zero-rated revenues, the input VAT payments, which are allegedly directly attributable thereto, cannot be refunded.

Under *Revenue Memorandum Circular No. 42-2003*, 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, the claim for tax credit/refund of VAT on its sales shall be denied. Pertinently, 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-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."

In a long line of cases, this Court denied the claims for refund/issuance of tax credit certificate of input VAT attributable to zero-rated sales for failure to present the invoices and official receipts to support the alleged zero-rated sales in accordance with the invoicing

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requirements under *Sections 113 and 237 of the NIRC of 1997, as amended, and Section 4.108-1 of Revenue Regulations No. 7-95*. As herein petitioner failed to present VAT official receipts to support its alleged zero-rated sales of services, We are left with no recourse but to deny the claim for tax refund.

In another case of *American Express International, Inc. – Philippine Branch vs Commissioner of Internal Revenue, C.T.A. Case No. 6294,* dated December 28, 2004, involving the same parties and issue but on a different taxable year, this Court denied petitioner AMEX's claim for tax refund having failed to present the VAT official receipts to support its zero-rated sales of services.

Finally, in *American Express International, Inc. – Philippine Branch vs. CIR, C.T.A. Case No. 5813, January 2, 2001*, this Court granted AMEX's claim for refund in the reduced amount of P3,352,406.59, as the same was properly supported by VAT invoices/official receipts, and ruled as follows:

> "We proceed to the last issue. To determine whether or not excess input taxes of P3,763,060.43 as declared by petitioner in its 1997 amended quarterly VAT returns are all directly attributable to its zero-rated sales, it is first

> necessary to determine whether or not the same were actually incurred by petitioner and are duly substantiated by VAT invoices/official receipts.
>
> The commissioned auditing firm, Punongbayan and Araullo, in its report (Exh. N) recommended that amount of P3,658,720.27 as shown in the Schedule of Input Taxes Paid (Exhs. O to O-29, inclusive) was properly supported by VAT invoices and official receipts. Thus, petitioner, in order to be consistent with the report of Punongbayan and Araullo, prayed for the refund of the recommended amount of P3,658,720.27 in its memorandum instead of the amount of P3,751,067.04 originally prayed for in the petition for review.
>
> Nonetheless, further verification by the Court of the Punongbayan and Araullo Report together with the Schedule of Input Taxes Paid suppliers' invoices and official receipts disclosed that the amount of P282,393.47 detailed per Annex A failed to meet the substantiation requirements under Section 4.104-5 of Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code and should be disallowed from the recommended amount of P3,658,720.27. Only the amount of P3,376,326.80 was properly supported by VAT invoices/official receipts."

The CTA's decision was affirmed in *toto* by the Court of Appeals in CA-G.R. SP No. 62727 in the decision dated February 28, 2002. When brought before the Supreme Court in *Commissioner of Internal Revenue vs. American Express International, Inc. - Philippine Branch,* *G.R. No. 152609, dated June 29, 2005,* said decision of the Court of Appeals was likewise affirmed by the Supreme Court.

Rationale of
Strict Compliance

Because for the same transactions, the output VAT of the seller becomes the input VAT of the purchaser, the law requires strict compliance with the invoicing requirements. Pursuant to *Sections 106(D)(1) and (108)(C) of the NIRC of 1997, as amended*, in relation to *Section 110 of the same Code*, 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 words "zero-rated" be imprinted on the face of the covering invoices or official receipts. The rationale for imprinting the words "zero-rated" in the sales invoice or official receipt of the seller is for the buyer or purchaser not to claim any input VAT from such purchase and for the purpose of segregating those sales that are subject to 10% VAT from those sales that are zero-rated.

Petitioner has burden of proof

The burden of proof is on petitioner, as taxpayer-claimant, to establish the factual basis of its claim for tax refund (*Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332*). Failure to establish the factual basis of the claim for refund is a sufficient ground for this Court to deny the claim for tax refund.

Laws granting tax exemption are construed strictissimi juris against the taxpayer and liberally in favor of the taxing authority.

A claim for refund is in the nature of a claim for exemption. Laws granting exemption from tax are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted (*Sea-Land Service, Inc. vs. Court of Appeals, 357 SCRA 444*).

WHEREFORE, premises considered, the petition is hereby **DENIED DUE COURSE** and accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman, Second Division

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice