REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. EB No. 282
(C.T.A. Case Nos. 6790 & 6838)

-versus-

Members:

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

VISAYAS GEOTHERMAL POWER COMPANY, INC.,
Respondent.

Promulgated:
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D E C I S I O N

CASTAÑEDA, JR., J.:

This Petition for Review under Section 18 of Republic Act (R.A.) 1125, as amended by R.A. 9282 impugns the Decision dated January 18, 2007 ordering the Commissioner of Internal Revenue to refund or issue a tax credit certificate to VGPCI, in the amount of P16,355,749.74 representing unutilized input Value Added Taxes ("VAT") covering the

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period September 1, 2001 to December 31, 2002, issued by the Court in Division, in the consolidated cases of CTA Case Nos. 6790 and 6838, entitled, "Visayas Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue", as well as the Resolution dated May 17, 2007 denying his Motion for Partial Reconsideration.

The material antecedent facts:

Visayas Geothermal Power Company Inc. ("VGPCI"), a partnership duly organized and existing under and by virtue of the laws of the Republic of the Philippines is engaged in the business of generation and sale of electricity, with taxpayer identification number (TIN No.) 003-832-538-VAT; while the Commissioner of Internal Revenue ("Commissioner") is vested with authority to perform, *inter-alia*, decide disputed assessments, refund of internal revenue taxes, fees or other charges, penalties, or other matters arising under the 1997 National Internal Revenue Code ("NIRC"), as amended or other laws administered by the Bureau of Internal Revenue ("BIR").

On June 15, 1994, the Department of Energy ("DOE") authorized VGPCI to own and operate the power plant facility in Malibog, Leyte Province. In the course of its business operations, VGPCI allegedly incurred input value added tax ("VAT") of P 20,213,044.50 on its domestic purchases of goods and services and importation of goods used in the power generation activities for the third and fourth quarters of 2001 and the entire four quarters of 2002. Covering the third and fourth quarters of 2001, the partnership filed quarterly VAT returns on October 25, 2001 and January 10, 2002 declaring that:

	3rd Qtr-2001 *(Exhibit "F")*	4th Qtr-2001 *(Exhibit "G")*
Taxable Sales(Others-Power Generation)	P225,035,466.71	
Zero Rated Sales/Receipts	634,795,458.64	P999,383,002.87
Total Sales/Receipts	P859,830,925.35	P999,383,002.87
Output Tax	P 22,503,546.67	P -
Less: Input Tax		
Carried over from previous quarter		2,169,920.61
Domestic Purchases	1,717,928.52	1, 634,537.98
Importation of Goods	1,364,456.29	1,781,706.63
Total Available Input Tax	3,082,384.81	5,586,165.22
VAT Payable/(Excess Input Tax)	P 19,421,161.86	P (5,586,165.22)
Less: Tax Credits/Payments		
Monthly VAT Payments	7,061,700.17	
Creditable VAT Withheld-previous two months	13,502,128.01	-
Total	P 20,563,828.18	P -
Tax Payable/(Overpayment)	P(1,142,663.32)	P(5,586,165.22)

On March 18, 2003, VGPCI likewise filed amended quarterly VAT returns for each of the four quarters of 2002 showing the following:

	1st Qtr-2002 *(Exhibit "I")*	2nd Qtr-2002 *(Exhibit "K")*	3rd QTR-2002 *(Exhibit "M")*	4th Qtr -2002 *(Exhibit "O')*
Taxable Sales	P -	P -	P -	P -
Zero Rated Sales/Receipts	598,362,249.25	883,468,956.49	900,258,270.76	1,131,415,076.92
Total Sales/Receipts	P 598,362,249.25	883,468,956.49	900,258,270.76	1,131,415,076.92
Output Tax	P -	P -	P -	P -
Less: Input Tax				
Carried over from previous quarter	5,586,165.22	7,062,985.49	8,629,874.15	10,511,587.06
Domestic purchases	1,269,764.72	1,429,966.54	1,528,890.88	
Goods other than capital goods				665,608.00
Services				8,186,549.83

Services rendered by Non-resident				1,520,381.90
Importation of Goods	207,055.55	136,922.12	352,822.03	
Goods other than capital goods	-	-	-	356,172.00
Total Available Input Tax	P 7,062,985.49	P 8,629,874.15	P 10,511,587.06	P 21,240,298.79
(Excess Input Tax) and (Overpayment)	P (7,062,985.49)	P (8,629,874.15)	P (10,511,587.06)	P (21,240,298.79)

Convinced that it is entitled to recover unutilized input VAT payments for the last two quarters of 2001 and the four quarters of 2002 based on R.A. 9136, or otherwise known as the "Electric Power Industry Act of 2001" which treats sales of generated power subject to VAT at zero (0%) percent rate, VGPCI filed a claim for refund with the Bureau of Internal Revenue ("BIR") District Office No. 89, Ormoc City on September 26, 2003 involving the amount of P1,142,666.32 for the third quarter of 2001, and on December 18, 2003, the amount of P19,070,378.18 for the last quarter of 2001 and the four quarters of 2002.[1]

The BIR's inaction on its claim for refund prompted VGPCI to seek recourse before the Court in Division. It filed on September 30, 2003 and December 19, 2003, separate Petitions for Review docketed as CTA Case Nos. 6790 and 6838 praying for a refund or the issuance of a tax credit certificate in the cumulative amount of P20,213,044.50 covering the last two quarters of 2001 and the four quarters of 2002, broken down as follows:

[1] Exhibits D and E.

CTA Case No.	Period Covered	Amount of Claim	
6790	September 2001		P1,142,666.32
6838	Oct.-Dec. 2001	P3,416,244.61	
	January-March 2002	1,476,820.27	
	April-June 2002	1,566,888.66	
	July-Sept.2002	1,881,712.91	
	October-Dec. 2002	10,728,711.73	19,070,378.18
		Total:	**P20,213,044.50**

On January 30, 2004, the Court in Division ordered the consolidation of CTA Case Nos. 6790 and 6838.

In a Decision dated January 18, 2007, the Court in Division granted the refund or the issuance of tax credit certificate in the reduced amount of P16,355,749.74 representing unutilized input VAT covering the last two quarters of 2001 and all the four quarters of 2002, in favor of VGPCI.

Acting on the Commissioner's Motion for Partial Reconsideration, the Court in Division denied the same for lack of merit, in a Resolution dated May 17, 2007.

Unfazed, the Commissioner appealed before the Court En Banc by filing a Petition for Review interposing the sole error committed by the Court in Division, to wit: "WHETHER OR NOT RESPONDENT IS ENTITLED TO A REFUND IN THE AMOUNT OF P16,355,749.74 REPRESENTING

UNUTILIZED INPUT VALUE-ADDED TAXES COVERING THE PERIOD 1 SEPTEMBER 2001 TO 31 DECEMBER 2002."[2]

The Commissioner alleges that the Court in Division erroneously ordered the refund or issuance of a tax credit certificate to VGPCI in the amount of P16,355,749.74 representing its alleged unutilized input VAT covering the period September 1, 2001 to December 2002 because it failed to submit proof of compliance with the following requirements:

First, to be entitled to a refund of unutilized input VAT, a taxpayer must comply with the registration requirements specified under Sections 6(a) and (b) of Revenue Regulations (R.R) 6-97, in relation to Section 4.107-1(a) of R.R. 7-95, and Section 236 of the 1997 NIRC, as amended. The dearth of evidence of VGPCI's VAT registration compliance justifies the denial of the claimed refund.

Second, VGPCI's purchases of goods and services were not undertaken in the course of its trade and business, and the same purchases were not duly substantiated by VAT invoices and/or receipts and other documentary evidence such as entries made in its subsidiary purchase journal showing that it actually paid input VAT, pursuant to Sections 110(A)(2) and 113 of the 1997 NIRC, as amended, and Section 4.104-5(a) &(b) of R.R. 7-95.

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[2] Rollo, p. 17.

Third, due observance of Section 2(c)(1)(2)(4) of R.R. 3-88 requiring that the application for a VAT tax credit or refund shall be filed with the Revenue District Office of the city or municipality where the principal place of the business of the applicant is located or directly with the Commissioner, is wanting in this case.

Fourth, the Commissioner further asserts that VGPCI failed to observe the checklist requirements involving claims for VAT refund under Revenue Memorandum Order ("RMO") 53-98. Thus, it did not duly file its administrative claim for refund which is a condition sine qua non, prior to the filing of an appeal before the judicial level under Section 229 of the 1997 NIRC, as amended. Section 112(D) of the 1997 NIRC, as amended mandates the submission of all documents, in support of the VAT refund application filed with the BIR, in order for the 120-day audit period to be operative, and before the taxpayer could avail of judicial remedies.

Finally, VGPCI likewise failed to show proofs that the claimed input VAT payments are directly attributable to its zero-rated sales.

VGPCI counters that it was able to prove by material and relevant documentary evidence that the input VAT payments on its purchases were properly substantiated. The invoices, official receipts and other supporting documents were verified, and examined by the Court commissioned independent Certified Public Accountant who compared the invoicing requirements under the law, in relation to pertinent VAT regulations.

The requirements in the filing of administrative claim for refund were duly conformed to by VGPCI. The favorable recommendation of the BIR Revenue District Office No. 89-Ormoc City on its claim for refund of input VAT for the taxable year 2002, as evidenced by the letter dated August 19, 2004 belies the Commissioner's posture that VGPCI failed to submit all pertinent documents in establishing its claimed input VAT.

VGPCI maintains that the subject input VAT payments are directly attributable to its zero-rated sales. Undoubtedly, it is engaged in purely zero-rated sales. The incurred input taxes stem from the generated power it sold to its sole customer Philippine National Oil Company-Energy Development Corporation ("PNOC-EDC"). Since VGPCI is engaged in purely zero-rated sales, it is not necessary to allocate which of the input taxes are attributable to the VAT taxable transactions, there being no VAT exempt operations or operations subject to VAT. The entire amount of creditable input tax therefore incurred by an entity engaged in purely zero-rated transactions is the input VAT corresponding to the zero-rated sales of goods, properties or services.

The Petition is devoid of merit.

Due compliance with the list of documents stated in RMO 53-98 or also known as, "Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket", including the VAT registration requirements apparently pertains to the administrative level for purposes of establishing the authenticity of a taxpayer's claim for refund or tax credit; while the Courts, on the other hand, are governed by the Rules of Court.[3]

Since sales of power generation services are subject to VAT at zero percent rate, and as such are classified as zero-rated sales under R.A. 9136, the provision of Section 112 (A) of the 1997 NIRC, as amended on the refund or the issuance of tax credits certificate of unutilized input VAT payments attributable to zero-rated sales is applicable. Said provision reads:

> "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 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

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[3] *Jideco Manufacturing Philippines, Inc. vs. Commissioner of Internal Revenue*, C.T.A. Case No. 6552, September 16, 2004.

> 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.

Otherwise stated, a taxpayer seeking for a refund or the issuance of a tax credit certificate of unutilized input VAT payments directly attributable to zero-rated or effectively zero-rated sales must satisfy the following requisites:

1. there must be zero-rated or effectively zero-rated sales;
2. the input taxes were incurred or paid;
3. such input VAT payments are directly attributable to zero-rated or effectively zero-rated sales;
4. the input VAT payments were not applied against any output VAT liability; and
5. the claim for refund or tax credit was filed within the two year prescriptive period.[4]

Indubitably, the law does not require the taxpayer to submit the documents prescribed by RMO 53-98 and the VAT registration requirements under Revenue Regulations (R.R) 6-97, in relation to Section

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[4] *Hazama Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA EB No. 232, September 4, 2007, *Southern Philippines Power Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 214, July 31, 2007 and *American Express International, Inc.-Philippine Branch vs. Commissioner of Internal Revenue*, CTA EB No. 197, May 23, 2007.

4.107-1(a) of R.R. 7-95, and Section 236 of the 1997 NIRC, as amended, as a pre-condition to the claim for refund of unutilized input VAT payments.

Contrary to the Commissioner's assertion, VGCPI submitted VAT invoices and/or official receipts duly validating that the purchases of goods and services were incurred in the course of its trade and business, and that the claimed input VAT related thereto, in the amount of P16,355,749.74 is directly attributable to its zero-rated sales or sales of power generation services to PNOC-EDC. The Court in Division correctly observed that:

> Based on the Certificate of Accreditation issued by DOE, petitioner was able to prove that it is engaged in the sale of power generation services to PNOC-EDC by virtue of the Energy Conversion Agreement entered into between PNOC-EDC and petitioner's predecessor-in-interest, Magma Power Company. Likewise, for the same period covering September 1, 2001 to December 31, 2002, petitioner generated gross receipts from power generation services rendered to PNOC-EDC in the total amount of P4,711,992,658.82, which was properly declared in its VAT returns for the 3rd quarter of 2001 to the 4th quarter of 2002. Moreover, the gross receipts in the amount of P4,711,992,658.82 was duly supported by VAT invoices and official receipts except for the amount of P21,686,928.42, the covering official receipt of which was not stamped with the word "zero-rated".
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> Having shown that it is a generation company and that it derived sales from power generation for the period September 1,2001 to December 31, 2002, petitioner's alleged total unutilized input VAT in the amount of P20,213,044.50 may be a proper subject of a claim for refund under Sections 100(B) and 112(A) of the Tax Code
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> xxx xxx xxx
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> From the foregoing and relative to the second issue of whether petitioner incurred unutilized input VAT for the subject period in the aggregate amount of P20,213,044.50, the report of the commissioned auditing firm, SGV & Co. finds that only the input taxes in the amount of P16,431,375.08 was properly substantiated by the required documents for VAT purposes in accordance with Section 110 of the National Internal Code of 1997 in relation to Section 4.104-5 of Revenue Regulations No. 7-95, detailed as follows: gr

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Domestic Purchases of Goods Which are Properly Supported by VAT Invoices	P2,483,937.82
Domestic Purchases of Services Which are Properly Supported by VAT Ors	P10,166,613.68
Importation of Goods Which are Properly IEIRDs and BOC OR s	583,790.00
Purchases of Services from Non-Residents which are Properly Supported by Withholding VAT Certificates	3,197,033.58
TOTAL	P16,431,375.08

After a judicious review, this Court finds the above-mentioned report of the commissioned auditing firm to be in order. However, as discussed above, the gross receipts in the amount of P4,711,992,658.82 was duly supported by VAT invoices and official receipts except for the amount of P21,686,928.42, the covering official receipt of which was not stamped with the word "zero-rated." Consequently, out of the substantiated input VAT of P 16,431,375.08, this Court disallows the amount of input VAT of P75,625.34, which is attributable to the zero-rated sales of P21,686,928.42, the corresponding proceeds thereof is supported by an official receipt without the required pre-printed or stamped word "zero-rated." The disallowed input VAT of P75,625.34 is computed hereunder:

Substantiated Claim	P16,431,375.08
Multiply by the ratio of the zero-rated sales of P21,686,928.42, the corresponding proceeds thereof is supported by an official receipt without the required pre-printed or stamped word "zero-rated" to that of the total gross receipt of P4,711,992,658.82	.004602496224
Additional disallowance	P 75,625.34[5]

Deducting the additional allowance of P75,625.34 from the substantiated claim of P16,431,375.08 results to the refundable amount of P 16,355,749.74.

This Court points out that the taxpayer is not bound by the 120 day audit period requirement, but on the two year prescriptive period counted from the date of the filing of the return, and payment of the tax due which should be made within twenty days from the end of each quarter.[6] When the two year period is about to lapse, the taxpayer may appeal to this

5 Rollo, pp. 32-34.

6 *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. 141104 and 148763*, June 8, 2007, 524 SCRA 96. The filing of the quarterly VAT returns is now within twenty five days following the close of each taxable quarter. See Section 114 of the 1997 NIRC, as amended.

Court without awaiting the verdict of the Commissioner on its claim for refund, as enunciated in the case of *Insular Lumber Company vs. Court of Tax Appeals*[7] where the Supreme Court ruled that:

> We agree with the respondent court. This Court has consistently adhered to the rule that the claim for refund should first be filed with the Commissioner of Internal Revenue, and the subsequent appeal to the Court of Tax Appeals must be instituted, within the said two-year period. If, however, the Commissioner takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Commissioner.

There being no sufficient grounds to sustain the Commissioner's arguments for lack of factual and legal bases, the Court En Banc concurs with the findings of the Division in granting the refund or issuance of a tax credit certificate in the amount of P16,355,749.74 representing unutilized input VAT covering the period September 1, 2001 to December 31, 2002, in favor of VGPCI.

WHEREFORE, premises considered, the Petition is hereby **DISMISSED** for lack of merit. The assailed Decision dated January 18, 2007 and the Resolution dated May 17, 2007 are **AFFIRMED**.

SO ORDERED.

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

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7 G.R. Nos. L-31057 and L-31137, May 29, 1981, 104 SCRA 710.

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WE CONCUR:

(With concurring and dissenting opinion)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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

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.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

THE COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

VISAYAS GEOTHERMAL POWER COMPANY, INC.,
Respondent.

C.T.A. EB No. 282
(C.T.A. Case Nos. 6790 & 6838)

Present:
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Bautista,
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Palanca-Enriquez, *JJ.*

Promulgated:

NOV 2 0 2007

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CONCURRING AND DISSENTING OPINION

I, likewise share with the majority view of granting respondent's claim for refund or issuance of a tax credit certificate for its unapplied or unutilized input value-added tax (VAT) attributable to its zero-rated sales.

However, I reiterate my dissent to the majority's finding of disallowing the input VAT in the amount of P75,625.34 which is attributable to respondent's zero-rated sales supported by official receipts without the pre-printed or stamped word "zero-rated."

Contrary to the majority view, the failure to imprint the term "zero-rated" on duly registered Value Added Tax (VAT) official receipts/invoices should not result to the outright denial of respondent's claim.

The relevant provisions of the 1997 National Internal Revenue Code (NIRC), **Sections 113 and Section 237**, only require the following information to appear in an invoice or official receipt:

(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.

Further, **Section 112 (A)** of the 1997 NIRC grants to all VAT-registered enterprises engaged in zero-rated transactions the right 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.

Apparently, the applicable provisions of the 1997 NIRC does not require the word "zero-rated" to be imprinted in the invoice/official receipt. Requiring that the

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official receipts or sales invoices of the taxpayer should bear the word "zero-rated" would be adding a condition that is not plainly written under the law.

The lone provision requiring the imprinting of the term "zero-rated" on the VAT invoice is **Section 4.108-1 of Revenue Regulations No. 7-95** (*The Implementing Rules and Regulations of the VAT law*). However, the said provision is merely a regulation created for the sole and limited purpose of implementing a very exact law. In this regard, long-established is the legal principle that administrative rules and regulations cannot expand the letter and spirit of the law they seek to enforce. 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.[1]

Furthermore, the imprinting of the word "zero-rated" on official receipts and invoices is an additional requirement which cannot be allowed to be imposed by mere administrative regulation, being an amendment to the law which it can only implement.

In the case of **Commissioner of Internal Revenue vs. Seagate Technology (Philippines)**,[2] the Supreme Court clearly pointed out the need to focus only on the legally mandated requirements for claims for VAT refund and it was 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.*

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[1] *People vs. Lim, 108 Phil. 1091.*
[2] *G.R. No. 153866, February 11, 2005*

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Also, in the recent case of ***Intel Technology Philippines, Inc., vs. Commissioner of Internal Revenue,***[3] the Supreme Court held that only the following items are required to be indicated in the receipts or invoices: (1) a statement that the seller is a VAT-registered entity followed by its TIN-V; (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; (3) date of the transaction; (4) quantity of merchandise; (5) unit cost; (6) description of merchandise or nature of service; (7) the name, business style, if any, and address of the purchaser, customer or client in the case of sales, receipt or transfers in the amount of ₱100.00 or more, or regardless of the amount, where the sale or transfer is made by a person liable to VAT to another person also liable to VAT, or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees; and (8) the TIN of the purchaser where the purchaser is a VAT-registered person.

Though the issue in the *Intel* case is the outright invalidation of invoices or official receipts for the non-indication of the BIR authority to print, and the TIN-V, it applies to the present case by analogy. The applicable laws likewise do not provide for the absolute denial of a claim for tax credit/refund for failure to imprint the term "zero-rated" on invoices or official receipts.

Accordingly, the requisites to be entitled to the refund/tax credit of unapplied or unutilized input VAT are as follows:

1. There must be zero-rated or effectively zero-rated sales;
2. That input taxes were incurred or paid;
3. That the input taxes are attributable to such zero-rated or effectively zero-rated sales;
4. That the input taxes were not applied against any output VAT liability; and

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[3] *G.R. No. 166732, April 27, 2007.*

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

Since it was found by the Court in Division that respondent complied with the above-quoted requisites, then there is no reason for denying the refund of the input VAT in the amount of P75,625.34.

Likewise, it bears stressing at this point that it was only on November 1, 2005, with amendment introduced by Republic Act (RA) 9337,[4] that the writing or printing of the term "zero-rated sale" was introduced. Inasmuch as this claim involves the period covering the third and fourth quarters of 2001 and all the four quarters of 2002, the said Republic Act is not applicable.

R.A. 9337 cannot apply retroactively so as to prejudice petitioner given the well-entrenched principle that statutes, including administrative rules and regulations, **operate prospectively only**, unless the legislative intent to the contrary is manifest by express terms or by necessary implication.[5]

For all the foregoing, I manifest my stand that petitioner should be ordered to refund or issue a tax credit certificate to respondent in the amount of **P16,431,375.08**, which includes the disallowed amount of P75,625.34, representing the unutilized input VAT covering the period September 1, 2002 to December 31, 2002.

ERNESTO D. ACOSTA
Presiding Justice

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[4] *R.A. 9337 was supposed to take effect on July 1, 2005 but due to constitutionality issues, it became effective only on November 1, 2005 upon the finality of the Supreme Court's September 1, 2005 Decision upholding the said law's validity.*
[5] *BPI Leasing Corporation, vs. The Honorable Court of Appeals, et.al. G.R. No. 127624. November 18, 2003.*

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