

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

**CBK POWER COMPANY
LIMITED,**

Petitioner,

- versus -

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

C.T.A. CASE NO. 7220

Members:

CASTAÑEDA, JR., *Chairperson*
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

FEB 08 2010

✓ 4:28 p.m.

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AMENDED DECISION

UY, J.:

For resolution are: petitioner's "**Motion for Partial Reconsideration**" filed on February 24, 2009¹, and respondent's "**Motion for Partial Reconsideration**" filed on February 25, 2009², both seeking the partial reconsideration of this Court's Decision promulgated on February 6, 2009, the dispositive portion of which states:

"WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **TWO HUNDRED FIFTEEN MILLION NINE HUNDRED NINETY EIGHT THOUSAND TWO HUNDRED SIXTY THREE PESOS and 13/100 (P215,998,263.13),** representing unutilized input value-added tax on local purchases of goods and services attributable to

¹ Docket, pp. 1079-1097

² Docket, pp. 1098-1105

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zero-rated sales for the period covering January 1, 2003 to December 31, 2003.

SO ORDERED.³

In the instant motion, petitioner prays for a reconsideration of the denied portion of its total claim of ₱ 295,994,518.00 amounting to ₱ 74,049,089.00 on the ground that it had sufficiently proven and established, through testimonial and documentary evidence, by stipulation of the parties and admissions by the respondent; and that it is entitled to the issuance of a tax credit certificate in the total amount of ₱ 290,047,352.13, representing validly supported unutilized input taxes for the period January 1, 2003 to December 31, 2003, pursuant to Sections 112(A) and 112(B) of the National Internal Revenue Code (NIRC) of 1997. Petitioner further moves that it be allowed to recall its witnesses who will present and identify in open court the certain pages of the General Ledgers for its Property, Plant and Equipment Accounts for 2003.

On the other hand, respondent prays for the denial of petitioner's claim for refund in its entirety on the ground that this Court has no jurisdiction over the petition, since petitioner failed to observe the period for appeal under Section 112(D) of the NIRC of 1997.

At the hearing held on March 26, 2009, upon motion of the counsel of petitioner, the Court allowed petitioner to recall its witness on May 6, 2009.⁴ On said date, petitioner presented its Accounting Manager, Joey L. Polintan who identified material documents in support of its motion. As no cross-examination was conducted by respondent's counsel during the hearing held on June 3, 2009, and directed by the Court, to file his Supplemental Formal Offer of Evidence on June 9,

³ Decision dated 1047-1078, at p. 1067

⁴ Minutes on the hearing held on March 26, 2009, Docket, p. 1107

AMENDED DECISION

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2009⁵ and was resolved in the Resolution dated August 12, 2009⁶ admitting petitioner's general ledger only⁷ and submitting the parties' Motions for Partial Reconsideration for resolution.

Thereafter, on August 28, 2009, Petitioner filed a Manifestation and Motion⁸ pertaining to the exhibits which were formally offered as evidence but were inadvertently not included among the exhibits admitted by the Court. In the Resolution dated November 10, 2009⁹, the said exhibits were admitted and petitioner's Motion for Partial Reconsideration filed on February 24, 2009 and respondent's Motion for Partial Reconsideration filed on February 25, 2009 were submitted for resolution, while the Court's earlier Resolution dated August 12, 2009 was correspondingly lifted and set aside.

Hence, this Amended Decision.

Petitioner's claim consists of the following:

Domestic purchases-Capital Goods	P 278,669,281.17
Domestic purchases-Other	
Goods/Services	17,325,236.83
TOTAL	<u>P 295,994,518.00</u>

In the assailed Decision, it was ruled that while petitioner's payments to its contractors qualify as capital goods and were properly recorded in its books as assets, the Court could not ascertain whether such payments were indeed reported in the financial statements. Moreover, the Court held that petitioner failed to provide a detailed schedule of each account under "Property, Plant and Equipment" (PPE) so that the corresponding payments to and/or billings by its contractors and/or

⁵ Docket, pp. 1169-1196

⁶ Docket, pp. 1514-1515

⁷ Marked as Exhibit "XXXXXX", including sub-markings.

⁸ Docket, pp. 1516-1521

⁹ Docket, pp. 1523-1524

suppliers of capital goods could be accounted for and reconciled.¹⁰ Thus, for these reasons, petitioner's claim of input taxes on purchase of capital goods was denied. Nevertheless, the Court found that petitioner may still claim the substantiated input taxes on purchases of capital goods under Section 112(A) of the NIRC of 1997, since the said input taxes are also attributable to petitioner's zero-rated sales for the year 2003.

In its Supplemental Formal Offer of Evidence, petitioner offered in evidence the general ledger of its Property, Plant and Equipment account and the sworn statement of its Accounting Manager, Mr. Joey L. Polintan. In the said sworn statement, the balances of the PPE per general ledger (GL) were reconciled with the balances per audited financial statements (AFS) as follows:¹¹

	<u>Per GL</u>	<u>Per AFS</u>
Total Property, Plant & Equipment	₱ 23,299,848,898.67	₱ 23,299,996,036.00
Total Accumulated Depreciation	571,981,381.43	572,128,520.00
Net Property, Plant & Equipment	₱ 22,727,867,517.24	₱ 22,727,867,516.00

In line with the foregoing submissions, the Court finds that petitioner has sufficiently proven that payments to contractors/suppliers of capital goods were recorded in its books as depreciable assets and likewise reported in its audited financial statements. The difference of ₱ 1.24 is due to the rounding off of amounts.

However, as correctly found by the Court-commissioned independent Certified Public Accountant, the amount of ₱ 1,407,094.56¹² representing petitioner's input VAT claim on purchases of capital goods should be disallowed for petitioner's failure to present VAT official receipts as supporting documents.

¹⁰ Decision, page 13, Docket, p.1059.

¹¹ Exhibit "YYYYYY", page 15.

¹² Exhibit "DDDDDD".

As regards petitioner's assertion that it has complied with the provisions of Section 113 in relation to Section 237 of the NIRC of 1997, it argues that the applicable provisions of the NIRC of 1997 does not require the word "zero-rated" to be imprinted in the invoice/official receipt; and that requiring that the 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. Petitioner also invokes the ruling of the Supreme Court in *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*¹³, which, in part, states:

"In a claim for refund or issuance of a tax credit certificate attributable to zero-rated sales, what is to be closely scrutinized is the documentary substantiation of the input VAT paid, as may be proven by other export documents, rather than the supporting documents for the zero-rated export sales. xxx"

We find the foregoing contentions untenable.

There is no argument that Sections 113¹⁴ and 237¹⁵ of the NIRC of 1997 do not require the imprinting of the word "zero-rated" on the invoices or official receipts,

¹³ G.R. No. 166732, April 27, 2007.

¹⁴ SEC. 113. *Invoicing 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:

(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.

(B) *Accounting Requirements.*— Notwithstanding the provisions of Section 233, all persons subject to value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance.

¹⁵ 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) 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 Identification Number (TIN) of the purchaser.

and that it is only in Section 4.108-1 of Revenue Regulations No. 7-95¹⁶ that it has been required to wit:

“SECTION 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 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.

xxx xxx xxx.” (*Emphasis supplied*)

However, the requirement of imprinting the word “zero-rated” on the invoice or official receipts for zero-rated transactions is *not* unreasonable, and was promulgated “*for the effective enforcement of the provisions of*” the NIRC of 1997,¹⁷ pursuant to the rule-making power of the Secretary of Finance, wherein he is authorized, *inter alia*, to prescribe the manner in which the proper invoices shall be kept and entries therein made by the person subject to the tax.¹⁸ The purpose of the said requirement is to distinguish one invoice or official receipt covering a transaction that was subjected to the ten percent (10%) VAT rate, to that which was subjected to the zero percent (0%) VAT rate.¹⁹

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 an internal revenue tax from compliance with the provisions of this Section.

¹⁶ SUBJECT: Consolidated Value-Added Tax Regulations.

¹⁷ Section 244, Tax Code of 1997; Read also Section 19, Republic Act No. 7716.

¹⁸ Section 245, Tax Code of 1997.

¹⁹ *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA EB Case No. 181, March 27, 2007 (CTA Case No. 6309).

The rule is that as long as administrative issuances relate solely to carrying into effect the provisions of the law, they are valid and have the force of law.²⁰

It must be borne in mind that the NIRC of 1997 has these provisions:

“SEC. 106. Value-added Tax on Sale of Goods or Properties.—

xxx xxx xxx

(D) *Determination of the Tax.*—

- (1) The tax shall be computed by multiplying the total amount indicated in the invoice by one-eleventh (1/11).”

“SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties.—

xxx xxx xxx

(C) *Determination of the Tax.* — The tax shall be computed by multiplying the total amount indicated in the official receipt by one-eleventh (1/11).”

In determining, therefore, the VAT component in an invoice or official receipt, it would be simply done by multiplying the total amount indicated therein by 1/11. This will hold true, however, only if the subject transaction is subject to the ten percent (10%) VAT rate. Especially so, that the prevailing rule then was that all VAT-registered taxpayers are not allowed to separately bill the VAT, since the amount appearing in the sales invoices/receipts is deemed inclusive already of the VAT due, pursuant to RR 8-99²¹. Thus, the imprinting the word “zero-rated” on the invoice or official receipt covering zero-rated transactions becomes necessary.

Furthermore, Congress, which is presumed to have full knowledge of a contemporaneous or practical construction of a statute by an administrative or executive officer charged with its enforcement, recently gave its seal of approval to the requirement of indicating the word “zero-rated” on the invoice or official receipt

²⁰ *US vs. Tupasi Molina*, 29 Phil. 119 (1914); *Teoxon vs. Members of the Board of Administrators*, 144 Phil. 592(1970); *Cena vs. Civil Service Commission*, 211 SCRA 179 (1992)

²¹ SUBJECT: Providing Penalties for Violation of the Requirement of the Requirement that Output Tax on the Sale of Goods and Services Should Not Be Separately Indicated in the Sales Invoice or Official Receipt.

covering zero-rated transactions, when it amended Section 113 of the NIRC of 1997, through the enactment of Republic Act 9337²², to include such requirement, thereby raising it to the level from a mere contemporaneous construction to being a part of the statute itself.

Moreover, the evil sought to be avoided with the requirement of imprinting of the word "zero-rated" is to prevent the VAT-registered purchaser or entity exempt from indirect taxation to be able to claim the passed-on input VAT, either as a credit from the output VAT or as refund.

In this connection, this Court cannot apply the ruling in the *Intel* case in resolving the instant issue. This is so because the factual milieu in that case is quite different in the case at bar. In the *Intel* case, the purchasers of goods of petitioner therein are foreign entities which are, logically, not VAT-registered in our country nor liable to pay VAT in our jurisdiction, while in this case, the purchaser of petitioner's sale is a local entity, the National Power Corporation (NPC), which may be reimbursed of the indirect taxes it paid on its purchases, on the assumption that NPC's claim had been made seasonably, and that the amounts covered had actually been paid previously to the BIR.²³

Thus, in the *Intel* case, the evil sought to be avoided, as identified earlier, in requiring the imprinting the word "zero-rated" on the invoice or official receipt covering zero-rated transactions is NOT at all present. Herein lies the difference between the *Intel* case and the case at bar.

In fine, petitioner's total valid input VAT amounts to ₱ 286,783,847.37, computed as follows:

²² AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

²³ *Maceda vs. Macaraig, Jr., et al.*, G.R. No. 88291, June 8, 1993, 223 SCRA 217, at 256 and 260.

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to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: 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.** (Emphasis supplied)

In appreciating the afore-mentioned provisions, this Court *En Banc* in the case of *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.*²⁵, held:

"A careful reading of the above-quoted provision reveals that although the submission of the complete supporting documents is necessary for the granting of refund or tax credit certificate, the non-submission of the same with the petitioner does not make the administrative claim for refund or tax credit certificate invalid or *pro forma*, the effect of which makes the judicial appeal dismissible for lack of jurisdiction. What is clearly required is that the taxpayer must elevate its claim before the Court within 30 days from receipt of the denial of its claim for refund or tax credit or after the expiration of the 120-day period of the respondent to decide on the taxpayer's, which must all be done within two years from payment of the tax or penalty."

Accordingly, as long as an administrative claim is filed prior to the filing of a judicial case, and both within the two-year prescriptive period, this Court has jurisdiction to take cognizance of the claim.

Moreover, it is also 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.²⁶ Consequently, petitioner in this case may have the option to wait for the ruling of the Commissioner of Internal Revenue in its administrative claim as long as it files its judicial claim within the two-year prescriptive period.

²⁵ C.T.A. EB No. 474 (C.T.A. Case Nos. 6792 and 6837) September 1, 2009.

²⁶ *La Bugal-B'laan Tribal Association, Inc., et al. vs. Victor O. Ramos, et al.*, G.R. No. 127882, December 1, 2004.

Clearly, there is no merit in respondent's contention that the instant Petition should be dismissed for petitioner's failure to file the same within the 30-day period stated in the above-quoted provision and for its failure to submit the required documents in the administrative level. Thus, respondent's Motion for Partial Reconsideration must be denied.

WHEREFORE, in view of the foregoing considerations, respondent's Motion for Partial Reconsideration is hereby **DENIED** for lack of merit, while petitioner's Motion for Partial Reconsideration is **PARTIALLY GRANTED**. Accordingly, the dispositive portion of the Decision promulgated on February 6, 2009 is hereby **MODIFIED** as follows:

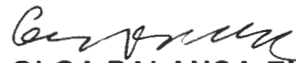
"**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **TWO HUNDRED EIGHTY SIX MILLION SEVEN HUNDRED EIGHTY THREE THOUSAND EIGHT HUNDRED FORTY SEVEN PESOS AND THRITY SEVEN CENTAVOS (₱ 286,783,847.37)**, representing unutilized input value-added tax attributable to zero-rated sales for the period covering January 1, 2003 to December 31, 2003.²⁷"

SO ORDERED.


ERLINDA P. UY
Associate Justice

WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

²⁷ Decision dated 1047-1078, at p. 1067

ATTESTATION

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


JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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


ERNESTO D. ACOSTA
Presiding Justice