REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

MIRANT (NAVOTAS II) CORPORATION (formerly Southern Energy Navotas II, Inc.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NOS. 6636 and 6728

Members:

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

Promulgated:
JUL 11 2006

x - x

DECISION

CASANOVA, C., J.:

These consolidated cases both claim for the refund or the issuance of a Tax Credit Certificate in favor of the petitioner for the year 2001 in the total amount of P850,046.76 arising from alleged unutilized input VAT paid on petitioner's domestic purchases of goods and services and importation of goods attributable to effectively zero-rated sales to the National Power Corporation.

Petitioner is a domestic corporation organized and existing under and by virtue of Philippine laws, with principal office at the 5th Floor, CTC Building, 2232 Roxas Boulevard, Pasay City. It is principally engaged in the business of power generation and subsequent sale thereof to the National Power Corporation ("NPC") under a Build, Operate, Transfer ("BOT") scheme.

Petitioner is registered as a VAT taxpayer in accordance with Section 107 of the Tax Code (now Section 236 of the National Internal Revenue Code of 1997), with BIR Certificate of Registration bearing RDO Control No. 2001-00026 and Taxpayer Identification No. 001-726-862-000. It was originally registered with the Securities and Exchange Commission ("SEC") under the name "Hopewell Tileman Philippines Electric Corporation" which was subsequently changed to "Southern Energy Navotas II Power, Inc." on March 23, 1999, and then again changed to Mirant (Navotas II) Corporation on April 26, 2001.

On December 6, 2000, petitioner filed with the Bureau of Internal Revenue, Revenue District Office No. 51 at Pasay City, an Application for Effective Zero-Rate of its supply of electricity to National Power Corporation. This was subsequently approved by respondent.[1]

For the four quarters of 2001, petitioner filed its quarterly VAT returns within the legally prescribed periods, which returns reflected a total excess or unutilized input VAT credits amounting to PhP850,046.76, broken down as follows:

			INPUT VAT		
Exhibit	Year 2001	Zero-Rated Sales/Receipts	Domestic Purchases	Importation of Goods	Total
C	1st quarter	P 75,783,520.34	P 181,580.13	P 30,620.00	P 212,200.13
D	2nd quarter	103,000,014.09	160,649.45		160,649.45
F	3rd quarter (amended)	54,673,184.38	175,997.17	2,771.00	178,768.17
G	4th quarter	110,296,196.25	265,624.01	32,805.00	298,429.01
		P 343,752,915.06	P 783,850.76	P 66,196.00	P 850,046.76

Petitioner filed an administrative claim for refund of unutilized input VAT with the Bureau of Internal Revenue on March 18, 2003 in the total amount of PhP850,046.76 for the four quarters of the year 2001.

However, it filed two separate judicial claims for the same unutilized input VAT: One was for the amount of PhP212,200.13 covering the first quarter of 2001 which was filed

[1] Exhibit "H"

March 31, 2003 and docketed as CTA Case No. 6636 and the other was for the amount PhP637,846.63 covering the second, third and fourth quarters of 2001, filed on July 22, 2003 and docketed as CTA Case No. 6728.

On July 30, 2003 petitioner filed a "Motion for Consolidation" of both cases. The same was granted in open court on August 1, 2003.

On September 2, 2003 and September 25, 2003, petitioner and respondent filed their respective Consolidated Pre-Trial Briefs.

On October 14, 2003, the parties submitted their Joint Stipulation of Facts and Issues which was approved by the Court on October 16, 2003.

On September 9, 2005 petitioner filed its Memorandum and on September 27, 2005 the Court promulgated a Resolution submitting the case for decision, sans respondent's Memorandum.

The petitioner and respondent stipulated on the following issues for this Court's resolution:

1. Whether or not the power generation services rendered by petitioner to the NPC are subject to zero-percent (0%) VAT pursuant to Section 108(B)(3) of the National Internal Revenue Code of 1997 ("Tax Code");

2. Whether or not petitioner incurred and reported unutilized creditable input VAT for the four quarters of CY 2001 arising from its domestic purchases of goods and services and importation of goods amounting to PhP850,046.76, that can be a proper object of a claim for refund pursuant to Sections 108(B)(3) and Section 112(A) of the Tax Code;

3. Whether or not the unutilized creditable input taxes for the four quarters of CY 2001 are substantiated by proper invoices and official receipts;

4. Whether or not the unutilized creditable input VAT for the four quarters of CY 2001 were carried over to the succeeding taxable quarter(s) and applied against any of the output VAT liability of the Petitioner; and,

5. Whether or not petitioner is entitled to a refund and/or issuance of tax credit certificate for the unutilized input VAT payments in the amount of PhP850,046.76.

Being interrelated, the issues shall be discussed jointly.

Petitioner anchors its claim on Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, which states:

> **"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 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): *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."

From the foregoing, in order to be entitled to a refund or tax credit of input VAT 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 taxes are directly attributable to zero-rated or effectively zero-rated sales;

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

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

We now discuss the first requisite. The issue of whether or not the power generation services rendered by petitioner to the National Power Corporation are subject to 0% VAT is not one of first impression. In every opportunity given,[2] the Court in answer to

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[2] Such as Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 6133, March 18, 2003; Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 6041, March

the same issue as in the case at hand, relied on the well-established ruling in the case of *Maceda vs. Macaraig*[3] where the Supreme Court held that:

> "The NPC is a non-profit public corporation created for the general good and welfare, wholly owned by the government of the Republic of the Philippines. From the very beginning of its corporate existence, the NPC enjoyed preferential tax treatment, to enable the Corporation to pay the indebtedness and obligation and in furtherance and effective implementation of the policy enunciated in Section one of "Republic Act No. 6395. xxx
>
> xxx xxx xxx
>
> [P]residential Decree No. 938 amended the tax exemption by simplifying the same law in general terms. It succinctly exempts NPC from "*all forms of taxes*, duties, fees, imposts, as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings."
>
> The use of the phrase "all forms" of taxes demonstrate the intention of the law to give NPC all the tax exemptions it has been enjoying before. The rationale for this exemption is that being non-profit the NPC "shall devote all its returns from its capital investment as well as excess revenues of its operation, for expansion xxx
>
> xxx xxx xxx
>
> It is evident from the provisions of P.D. No. 938 that its purpose is to maintain the tax exemption of NPC from *all forms* of taxes including <u>indirect taxes</u> as provided for under R.A. No. 6395 and P.D. No. 380 if it is to attain its goals."

Further, the Secretary of Finance, in his Memorandum to the Commissioner of Internal Revenue dated January 26, 1998, upheld National Power Corporation's (NPC) exemption from both direct and indirect taxes, and said that purchases by NPC of electricity from independent power producers are subject to VAT at zero-rate.

Petitioner is engaged in the business of power generation and the subsequent sale thereof to the NPC.[4] Thus, the power generation services rendered by petitioner to NPC are subject to zero percent (0%) VAT pursuant to Section 108(B)(3) of the NIRC of 1997, which states:

Revenue, CTA Case No. 5933 & 5984, January 15, 2002 affirmed in CA-G.R. SP No. 69115 in Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation, April 29, 2004.

[3] 197 SCRA 771

[4] par.1, Joint Stipulation of Facts and Issues, CTA Records, p. 69

> "**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
>
> "(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." (Underlining supplied).

It is noteworthy that respondent recognized this when he approved petitioner's application for zero rate. Said approval provides that the same is valid only for sale of electricity from January 2, 2001 to December 31, 2001.[5]

A verification of petitioner's declared zero-rated sales/receipts showed that the amount of P343,752,915.06 reflected in its Quarterly Value-Added Tax Returns for the four quarters of 2001,[6] represents energy and capacity fees paid by NPC. Petitioner's VAT invoices and/or official receipts[7] supported said fees. However, as verified by the Court and by the commissioned independent CPA,[8] a comparison of the total amount of zero-rated sales for the year 2001, as reflected in the quarterly VAT returns[9] and Summary of Zero-Rated Sales,[10] with the amount supported by petitioner's invoices and official receipts, disclosed the following difference:

VAT Returns/ Summary of Zero-Rated Sales	P343,752,915.06
Petitioner's Invoices & Official Receipts	343,532,062.93
Difference	**P 220,852.12**

Further, a perusal of the documents submitted revealed that P79,553,636.23 of the claimed zero-rated sales was supported by TIN-VAT official receipts[11] without the word "zero-rated" imprinted thereon, in violation of the requirement set forth under Section

[5] Exhibit "H"
[6] Exhibits "C to F, inclusive of submarkings"
[7] Exhibits "BB-1 to BB-26"
[8] Exhibits "R-1 to R-4"
[9] Exhibits "C, D, F & G"
[10] Exhibits "AA-1 to AA-4"
[11] Exhibits "R-4 & BB-18 to BB-20"

4.108-1 of Revenue Regulations No. 7-95:

> "**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.
>
> xxx xxx xxx
>
> Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice 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.
>
> 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.
>
> 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."

The required indication of the word "zero-rated" on petitioner's invoices/receipts was also noted by respondent when he approved petitioner's Application for VAT Zero-Rate.[12] Thus, out of the reported 2001 zero-rated sales of P343,752,915.06, petitioner was able to substantiate only the amount of P263,978,426.70 arrived at by subtracting P79,553,636.23 from P343,532,062.93.

In compliance with the second requisite, petitioner submitted its summary lists of purchases and the corresponding suppliers' invoices/official receipts[13] which were verified by the Court commissioned auditing firm, SGV & Co. However, as correctly noted by SGV &

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[12] Exhibit "H"
[13] Exhibits "U-1 to U-9", "V-1 to V-106", "W-1 to W-96", "X-1 to X-116", "Y-1 to Y-144" & "Z-1 to Z-6"

Co., in its final report dated January 14, 2004,[14] the following input VAT payments totalling P200,139.92 failed to meet the substantiation requirements under Section 4.104-5 of Revenue Regulations No. 7-95 in relation to Sections 110 and 113 of the NIRC of 1997 and should, therefore, be disallowed from petitioner's claim:

Findings	*1st Quarter*	*2nd Quarter*	*3rd Quarter*	*4th Quarter*	*Total*
I. Input Taxes on Purchases of Services:					
1. Supported by a VAT OR Issued by the Insurance Agent on Insurance Premium	-	-	-	*P 426.97*	*P 426.97*
2. Supported by Documents Other than VAT ORs	*P 1,925.96*	*P 188.50*	*P 4,082.50*	*809.09*	*7,006.05*
3. Supported by a photocopied VAT OR	-	*1,662.28*	-	-	*1,662.28*
4. Erroneously Computed	*31.82*	*94.27*	-	-	*126.09*
II. Input Taxes on Purchases of Goods:					
1. Supported by Invoice Not Issued in the Company's Name	-	*2,161.38*	*3,563.64*	-	*5,725.02*
III. Input Taxes Without Supporting Documents	*9,201.01*	*9,555.00*	*17,550.00*	*148,887.50*	*185,193.51*
TOTAL	***P11,158.79***	***P13,661.43***	***P25,196.14***	***P150,123.56***	***P200,139.92***

The commissioned independent CPA correctly disallowed the input taxes of P185,193.51 for having no supporting documents (*See Item III above*). While petitioner

[14] Exhibits S-1 to S-18

subsequently submitted as evidence documents to support P99,090.91 of the disallowance,[15] a perusal of the said documents showed that the same pertained to purchase of a vehicle (Hi-Ace Grandia) with an engine displacement of 2,985 cc. The said vehicle is considered an automobile, and any input VAT paid thereon is not creditable upon the petitioner as provided for under Section 4.104-1 of Revenue Regulations No. 7-95:

> **SEC. 4.104-1. Credits for input tax.** —
>
> xxx xxx xxx
>
> Any input tax evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Section 108 of the Code, on the following transactions, shall be creditable against the output tax:
>
> (a) Purchase or importation of goods
>
> 1. xxx
>
> xxx xxx xxx
>
> 5. For use in trade or business for which deduction for depreciation or amortization is allowed under the Code, except automobiles, aircraft and yachts.
>
> ***"Automobile"*** *as contemplated in this section, shall mean a 4-wheeled luxury motor vehicle, which is used in the trade or business of the VAT taxpayer, propelled by any motive fuel with engine displacement of 2,000 cc or more, and specially designed for the transport of persons and not use primarily for the carrying of freight or merchandise; Provided, however, that the definition shall not apply to those required in the trade or business of the VAT taxpayer, such as hotel limousines, funeral hearse, ambulances and similar vehicles.*

Therefore, the disallowance of P99,090.91, included in the total findings of P200,139.92 of the commissioned independent CPA, should be sustained.

Likewise, the input taxes of P2,745.07 and P1,797.58 for which the dates of the related VAT invoices and official receipts (ORs) fall outside the subject period of claim *(see Observations 1 & 2, Exhibit S-5)* should also be deducted from the total claim of P850,046.76.

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[15] Exhibits "CC & DD"

Also, the Court found that an additional input tax in the amount of P3,352.01 should be disallowed, broken down as follows:

Invoice w/o BIR permit	P 988.37	Exhibit Y-2
Supported by NON-VAT invoice & OR	2,363.64	Exhibit Y-36
Total	**P3,352.01**	

Prescinding from the aforesaid disallowances, petitioner was able to substantiate by proper VAT invoices and/or official receipts only the input taxes of P642,012.18, computed as follows:

Claimed input taxes	P 850,046.76
Less: 1) Per SGV Report	
a) Input taxes without valid VAT invoices or official receipts	200,139.92
b) Input taxes on purchases of goods for which the dates of the related VAT invoices fall outside of the period of claim	2,745.07
c) Input taxes on purchases of services for which the dates of the related VAT ORs fall outside of the period of claim	1,797.58
2.) Per the Court's further verification – input taxes without valid VAT invoices/OR	3,352.01
Substantiated input taxes	P 642,012.18

As regards the third requisite, petitioner's VAT returns for the four quarters of 2001[16] disclosed that it had no other sales other than its effectively zero-rated sales of power generation services to NPC. This being so, all of the substantiated input VAT of P642,012.18 cannot but be entirely attributable to petitioner's effectively zero-rated sales for the four quarters of 2001.

With reference to the fourth requisite, records show that despite the carry-over of the 2001 claimed input taxes of P850,046.76 to the succeeding four quarters of 2002[17] and

[16] Exhibits "C, D, F & G"
[17] Exhibits "J to M"

first two quarters of 2003,[18] the same was not utilized since petitioner had no output VAT liability for the said periods. Moreover, petitioner deducted the claimed input taxes of P850,046.76 as "Any VAT Refund/TCC Claimed"[19] from the "Total Available Input Tax" of P3,134,110.87.[20] Hence, the resulting "Excess Input Tax" of P2,284,064.11[21] which was to be carried over to the succeeding third quarter of 2003 did not include the 2001 claimed input taxes of P850,046.76.

As to the fifth requisite, the two-year prescriptive period for the filing of claims for VAT refund/tax credit should be reckoned from the date of filing of the corresponding quarterly VAT returns.[22] The earliest quarter covered by the instant claim is the first quarter of 2001 for which petitioner filed its VAT return on April 23, 2001.[23] Counting from this date, both the administrative claim filed on March 18, 2003 and the Petition for Review filed on March 31, 2003 fall within the two-year prescriptive period.

In fine, petitioner has sufficiently established its entitlement to the refund or issuance of a tax credit certificate representing unutilized input taxes attributable to zero-rated sales for the taxable year 2001 in the reduced amount of P493,020.88, computed as follows:

Zero-Rated Receipts Substantiated by VAT Official Receipts	P263,978,426.70
Divided by Total Zero-Rated Receipts per VAT Returns	÷ 343,752,915.06
Multiplied by Substantiated Input Taxes	x 642,012.18
Refundable Input Taxes	P 493,020.88

WHEREFORE, petitioner's claim for refund or issuance of a tax credit certificate representing unapplied or unutilized input taxes attributable to zero-rated sales of services for taxable year 2001 is hereby **GRANTED** in the reduced amount of P493,020.88.

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[18] Exhibits "N & O"
[19] Exhibit "O-3"
[20] Line item #24 Exhibit "O"
[21] Line item #27 of Exhibit "O"
[22] JIDECO MANUFACTURING PHILIPPINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE, CTA CASE NO. 6552, September 16, 2004
[23] Exhibit "C-11"

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division

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COURT OF TAX APPEALS
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Members:

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

Promulgated:
JUL 11 2006

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Concurring and Dissenting Opinion

I manifest my agreement with the majority as regards its decision to grant petitioner's claim for refund or issuance of a tax credit certificate for its unapplied or unutilized input taxes attributable to zero-rated sales of services for taxable year 2001, in a reduced amount for failure to satisfy some of the evidentiary requirements, such as: (1) some of the VAT invoices and official receipts fall outside the subject period of claim; (2) some of the claimed input taxes have no supporting documents or supported by documents other than VAT official receipts; (3) some of the official receipts are mere photocopies; (4) some of the claimed input taxes on purchases of goods are supported by invoice not issued in the company's name. However, with due respect to my distinguished colleagues, I wish to express my dissent with respect to the portion of the Decision that invalidated some of the submitted invoices and/or receipts for failure to imprint the term "zero-rated."

Contrary to the view of the majority, (1) pertinent provisions of the 1997 Tax Code do not require imprinting of the word "zero-rated"; (2) the absence of the term "zero-rated" in the invoice or receipt does not affect the admissibility and competency of the same as evidence in support of its refund claim; (3) assuming the propriety of imposing the alleged requirement to imprint the word "zero-rated" in the invoice, the invalidation of the same and the denial of the refund claim are not the legally imposable penalties for failure to meet such alleged requirement.

The relevant provisions of the 1997 Tax Code, namely, **Sections 113** and **237**, provide as follows:

> "**Section 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:
>
> 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.
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> xxx
>
> "**Section 237. Issuance of Receipts or Sales of 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 case of sales, receipts or transfers in the amount of One Hundred Pesos (P100.00) or more, 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. xxx".

Clearly from the foregoing, the only information required to be indicated in an invoice or official receipt, as a precondition for its validity and for claiming a refund claim of input VAT paid, are as follows:

(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.

Likewise, the tenor of **Section 112 (A) of the Tax Code** permits all VAT-registered enterprises engaged in zero-rated transactions 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. And nowhere is it shown that failure to imprint the word "zero-rated" in the invoice or receipt will automatically cause their invalidation and/or the rejection of the refund claim.

The lone provision where the supposed "requirement" of imprinting the term "zero-rated" on the VAT invoice or receipt can claim to get its authority from 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 exclusive and limited purpose of implementing a very exact law. Well-settled is the legal principle that administrative rules and regulations cannot expand the letter and spirit of the law they seek to implement. And in case of disagreement between the law and a rule or regulation issued to execute said law, the law prevails because said rule or regulation cannot go beyond the terms and provisions of the basic law (**People vs. Lim**, *108 Phil. 1091*).

The Honorable Supreme Court in the recently promulgated case of **Commissioner of Internal Revenue vs. Seagate Technology (Philippines)**, *G.R. No. 153866, February 11, 2005*, stressed the need to focus only on the legally mandated requirements for claims for VAT refund and 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.*

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

As found by the majority in the present CTA First Division Decision, save for some parts of the claim, the petitioner has satisfied the foregoing requisites and established its right to the tax refund through duly submitted material and documentary exhibits.

Accordingly, I manifest my dissent to the majority opinion insofar as it finds that the term "zero-rated" must be imprinted in the sales invoice and/or receipt to be valid evidence in claiming for refund of or issuance of tax credit certificate for excess input taxes, notwithstanding the requirement stated in the abovementioned BIR Regulation. However, I concur with the majority opinion regarding the reduction of the refundable amount to petitioner for failure to satisfy some of the substantiation and evidentiary requirements for VAT refund claim.

ERNESTO D. ACOSTA
Presiding Justice

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Concurring and Dissenting Opinion

I manifest my agreement with the majority as regards its decision to grant petitioner's claim for refund or issuance of a tax credit certificate for its unapplied or unutilized input taxes attributable to zero-rated sales of services for taxable year 2001, in a reduced amount for failure to satisfy some of the evidentiary requirements, such as: (1) some of the VAT invoices and official receipts fall outside the subject period of claim; (2) some of the claimed input taxes have no supporting documents or supported by documents other than VAT official receipts; (3) some of the official receipts are mere photocopies; (4) some of the claimed input taxes on purchases of goods are supported by invoice not issued in the company's name. However, with due respect to my distinguished colleagues, I wish to express my dissent with respect to the portion of the Decision that invalidated some of the submitted invoices and/or receipts for failure to imprint the term "zero-rated."

Contrary to the view of the majority, (1) pertinent provisions of the 1997 Tax Code do not require imprinting of the word "zero-rated"; (2) the absence of the term "zero-rated" in the invoice or receipt does not affect the admissibility and competency of the same as evidence in support of its refund claim; (3) assuming the propriety of imposing the alleged requirement to imprint the word "zero-rated" in the invoice, the invalidation of the same and the denial of the refund claim are not the legally imposable penalties for failure to meet such alleged requirement.

The relevant provisions of the 1997 Tax Code, namely, **Sections 113** and **237,** provide as follows:

> "**Section 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:
>
> 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.
>
> xxx
>
> "**Section 237. Issuance of Receipts or Sales of 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 case of sales, receipts or transfers in the amount of One Hundred Pesos (P100.00) or more, 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. xxx".

Clearly from the foregoing, the only information required to be indicated in an invoice or official receipt, as a precondition for its validity and for claiming a refund claim of input VAT paid, are as follows:

(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.

Likewise, the tenor of **Section 112 (A) of the Tax Code** permits all VAT-registered enterprises engaged in zero-rated transactions 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. And nowhere is it shown that failure to imprint the word "zero-rated" in the invoice or receipt will automatically cause their invalidation and/or the rejection of the refund claim.

The lone provision where the supposed "requirement" of imprinting the term "zero-rated" on the VAT invoice or receipt can claim to get its authority from 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 exclusive and limited purpose of implementing a very exact law. Well-settled is the legal principle that administrative rules and regulations cannot expand the letter and spirit of the law they seek to implement. And in case of disagreement between the law and a rule or regulation issued to execute said law, the law prevails because said rule or regulation cannot go beyond the terms and provisions of the basic law (**People vs. Lim,** *108 Phil. 1091*).

The Honorable Supreme Court in the recently promulgated case of **Commissioner of Internal Revenue vs. Seagate Technology (Philippines),** *G.R. No. 153866, February 11, 2005*, stressed the need to focus only on the legally mandated requirements for claims for VAT refund and 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.*

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

As found by the majority in the present CTA First Division Decision, save for some parts of the claim, the petitioner has satisfied the foregoing requisites and established its right to the tax refund through duly submitted material and documentary exhibits.

Accordingly, I manifest my dissent to the majority opinion insofar as it finds that the term "zero-rated" must be imprinted in the sales invoice and/or receipt to be valid evidence in claiming for refund of or issuance of tax credit certificate for excess input taxes, notwithstanding the requirement stated in the abovementioned BIR Regulation. However, I concur with the majority opinion regarding the reduction of the refundable amount to petitioner for failure to satisfy some of the substantiation and evidentiary requirements for VAT refund claim.

ERNESTO D. ACOSTA
Presiding Justice