REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

MIRAMAR FISH COMPANY, INC.,	**C.T.A. CASE NO. 6905**
Petitioner,	Members:
-versus-	CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE,	**Promulgated:**
Respondent.	OCT 2 2 2007

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DECISION

PALANCA-ENRIQUEZ, J.:

Only VAT invoices can be used for the sale of goods that are subject to VAT. The corresponding taxes thereon shall be allowed as input tax credits for those subject to VAT. *Section 113 of the NIRC of 1997, as amended,* expressly provides for the invoicing and accounting requirements for VAT-registered persons. A VAT-registered status, as well as compliance with the invoicing requirements, is sufficient for the effective zero rating of the transactions of a taxpayer. Conversely, non-compliance with the invoicing requirements will not give rise to effective zero-rating of the transactions of a taxpayer.

THE CASE

This is a Petition for Review filed by Miramar Fish Company, Inc. (hereafter "petitioner") praying for the issuance of a tax credit certificate in the amount of P12,741,136.81, representing the VAT input taxes paid or incurred on its purchases of goods and services attributable to its zero-rated sales for the taxable years 2002 to 2003.

THE FACTS

In their "Joint Stipulation of Facts and Issues", the parties stipulated as follows:

> "1. Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at Brgy. Recodo, Zamboanga City.
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> 2. Petitioner is registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer in accordance with Section 236 of the National Internal Revenue Code of 1997, with VAT Registration No. 01-930-001570-V and Tax Identification No. ("TIN") 005-847-661.
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> 3. On June 4, 2002, petitioner was registered with the Board of Investments ("BOI") as a new export producer of canned tuna and canned pet food with non-pioneer status, with BOI Certificate of Registration No. EP 2002-077.
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> 4. Petitioner filed its Quarterly VAT Returns (BIR Form No. 2550Q) for CY 2002 with the BIR on the following dates:

Particular Quarter	Date of Filing of Quarterly VAT Return
First Quarter	April 25, 2002
Second Quarter	July 8, 2002
Third Quarter	October 22, 2002
Fourth Quarter	January 27, 2003

5. Petitioner's administrative claim for refund of its unutilized input VAT in the amount of P6,751,751.65 for taxable year 2002 was filed with the BIR on February 24, 2003.

6. Petitioner filed its Quarterly VAT Returns (BIR Form No. 2550Q) for CY 2003 with the BIR on the following dates:

Particular Quarter	Date of Filing of Quarterly VAT Return
First Quarter	April 10, 2003
Second Quarter	July 16, 2003
Third Quarter	October 17, 2003
Fourth Quarter	January 26, 2004

7. Petitioner's administrative claim for the refund of its unutilized input VAT in the amount of P5,895,912.39 for taxable year 2003 was filed on March 15, 2004.

8. Petitioner's administrative claim for the refund of its unutilized input VAT for taxable years 2002 and 2003, in the total amount of P12,741,136.81, was filed with the BIR, Revenue District Office No. 93, in Zamboanga City on March 25, 2004.

9. To this date, respondent has yet to act on petitioner's original and supplemental administrative claims for refund of unutilized input VAT for taxable years 2002 and 2003.

In his Answer, respondent, by way of special and affirmative defenses, alleged that it is imperative for petitioner to prove that it complied with the registration requirements of value-added taxpayer prescribed under *Section 6(a) and (b) of Revenue Regulations No. 6-97,* in relation to *Section 4.107-1 (a) of Revenue Regulations No. 7-95*, and *Section 236 of the NIRC of 1997, as amended*, the invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT as provided in *Sections 113 and 114 of the NIRC of 1997, as amended*, proof of compliance with the prescribed checklist of requirements to be submitted to the BIR involving claim for VAT refund pursuant to *Revenue Memorandum Order No. 53-98*; otherwise there would be no sufficient compliance with the filing of an administrative claim for refund which is a condition sine qua non prior to the filing of a judicial claim under *Section 229 of the NIRC of 1997, as amended*; that *Section 112 (D) of the NIRC of 1997, as amended,* requires the submission of complete documents in support of the application filed with the BIR before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies provided for by law. Also, it is imperative for petitioner to prove that the input taxes of P12,741,136.81 paid on its purchases of goods and services for the taxable years 2002 and 2003 were attributable to its export sales and have not been applied against its output VAT liability, that petitioner's administrative and judicial claims for tax credit or refund of unutilized input tax (VAT) were filed within the two (2) years after the close of the taxable quarters when the sales were made, and that petitioner's domestic purchases of goods and services were made in the course of its trade or business properly supported by VAT invoices and/or official receipts and other documents showing that it actually paid VAT, pursuant to *Sections 110(A) (2) and 113 of the NIRC of 1997, as amended* and *Section 4.104-5(a) and (b) of Revenue Regulations 7-95.*

Petitioner presented Sherman M. Biniza, its Senior Vice President and General Manager, and Fabian K. Delos Santos, Jr., the Court-commissioned Independent Certified Public Accountant, as witnesses, and documentary evidence, marked as Exhibits *"A"* to *"JJJJ"*, inclusive of their submarkings, which were all admitted by the Court, after petitioner filed a "Motion for Reconsideration" of the Resolution dated September 6, 2006, except for *Exhibits "VVV 3-163", "VVV 4-264", "VVV 4-473", "VVV 4-608", "XXX 1-374", "XXX 4-505", "YYY 1-297", "YYY 1-513" and "YYY 1-514"*, which were denied admission for their non-existence in the records.

On the other hand, for the repeated failure of counsel for respondent to appear despite notice, upon motion of counsel for petitioner, respondent was deemed to have waived his right to present evidence and to have rested his case.

Thereafter, petitioner was granted thirty days from May 7, 2007 to file its memorandum, while respondent was granted twenty days from notice.

Petitioner having filed its memorandum, without respondent filing the same, the case was deemed submitted for decision.

Hence, this decision.

ISSUES

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

I

WHETHER OR NOT PETITIONER'S EXPORT SALES FOR TAXABLE YEARS 2002 AND 2003 QUALIFY AS ZERO-RATED SALES.

II

WHETHER OR NOT THE CLAIMED INPUT VAT PAYMENTS ARE DULY SUPPORTED BY VAT INVOICES OR OFFICIAL RECEIPTS.

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III

WHETHER OR NOT THE CLAIMED INPUT VAT PAYMENTS ARE DIRECTLY ATTRIBUTABLE TO PETITIONER'S ZERO-RATED SALES.

IV

WHETHER OR NOT THE INPUT VAT CLAIMED BY PETITIONER WAS APPLIED AGAINST ANY OUTPUT TAX OR CARRIED OVER TO SUCCEEDING MONTH(S)/QUARTERS.

V

WHETHER OR NOT BOTH THE ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND WERE FILED WITHIN THE TWO-YEAR PRESCIPTIVE PERIOD

Principal Issue

The foregoing issues boil down to the principal issue of whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P12,741,136.81, representing the VAT input taxes paid or incurred on its purchases of goods and services attributable to its zero-rated sales for the taxable years 2002 to 2003.

Petitioner's Arguments

Petitioner contends that its claim for refund or issuance of TCC for its excess and unutilized input VAT on purchases of goods and services attributable to zero-rated sales finds legal basis in *Section 112*

(A) of the NIRC of 1997, as amended; petitioner had zero-rated export sales of goods in CYs 2002 and 2003; petitioner's input VAT for CYs 2002 and 2003 are duly supported by VAT invoices and/or official receipts; the input taxes being claimed for refund are directly attributable to petitioner's zero-rated sales for CYs 2002 and 2003; petitioner's excess input VAT for CYs 2002 and 2003 remain unutilized and unapplied against any output VAT liability; and petitioner's administrative and judicial claims for refund were filed within the two year prescriptive period, provided in *Sections 112(A) and 229 of the NIRC of 1997, as amended.*

THE COURT'S RULING

The petition is bereft of merit.

To be entitled to a refund or issuance of a tax credit certificate, *Sections 110 and 112 of the NIRC of 1997, as amended*, lay down the general rules. *Section 110* provides:

> "SEC. 110. Tax Credits. –
>
> (A) Creditable Input Tax. –
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
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(b) Purchase of services on which a value-added tax has been actually paid.

(2) The input tax on domestic purchase of goods or properties shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

However, in the case of purchase of services, lease or use or properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

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(B) Excess Output or Input Tax. – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

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While *Section 112 of the NIRC of 1997, as amended,* provides:

"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

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> 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.
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> xxx xxx."

Pursuant to the foregoing provisions, an unutilized input tax arising from purchases of good and services evidenced by a VAT invoice or official receipt issued in accordance with *Section 113 of the NIRC of 1997, as amended*, which is attributable to zero-rated sales or effectively zero-rated sales under *Sections 106 and 108 of the same Code,* may be refunded or credited against other internal revenue taxes of the claimant.

However, *Sections 106, 108, 110, and 112 of the NIRC of 1997, as amended*, should be read in conjunction with *Section 113 of the same Code*, which provides for the invoicing and accounting requirements for VAT-registered persons, as follows: *awl*

"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:

(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 the 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."

Corollary thereto, *Section 237 of the NIRC of 1997, as amended*, provides:

"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,

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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, compensation 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 of the purchaser.

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From the aforecited provisions, it is expressly provided that a VAT-registered person, like petitioner, should issue a duly registered VAT invoice or official receipt, which must contain the following information:

1) A statement that the seller is a VAT-registered person;

2) The taxpayer 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;

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7) Unit cost;

8) The name, business style, if any, and address of the purchaser, customer or client in case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of the 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.

In addition thereto, *Section 4.108-1 of Revenue Regulations No. 7-95* requires that the word "zero-rated" be imprinted on the invoice covering zero-rated sales. Also, *Section 4.108-1 of Revenue Regulations No. 7-95* provides that only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoices or receipts, which will be considered as a "VAT Invoice", such that all purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax.

In *Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue, 318 SCRA 403*, the Supreme Court categorically pronounced, to wit:

> "We disagree. It is clear that a VAT invoice can be used only for the sale of goods and services that are subject to VAT. The corresponding taxes thereon shall be allowed as input tax credits for those subject to VAT. Section 108 expressly provides the invoicing and accounting entries required from VAT-registered persons. On the other hand, Section 111 of the Tax Code empowers the commissioner to suspend the business operations of VAT-registered persons for the specific violations listed therein. We quote below the latter provision:
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> xxx xxx."

Said invoicing and accounting requirements are now provided in *Section 113 of the NIRC of 1997, as amended.*

A perusal of petitioner's Sales Invoices shows that the Sales Invoices did not comply with the invoicing requirements provided in *Section 113 of the NIRC of 1997, as amended*, and *Section 4.108-1 of Revenue Regulations No. 7-95.* The Sales Invoices do not show that petitioner is a VAT-registered person. What is only indicated therein is petitioner's Tax Identification Number, without stating that the same is a VAT registered entity, in violation of *Section 113 of the NIRC of 1997, as amended.* A further perusal of said Sales Invoices shows that the aforesaid invoices do not bear the word "zero-rated", as required by *Revenue Regulations No. 7-95.*

It bears stressing that the law and regulations are explicit in emphasizing strict compliance with the invoicing requirements because for the same transactions the output VAT of the seller becomes the input VAT of the purchaser. 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. Since petitioner is engaged in the sale of goods, specifically, canned tuna and canned pet food *(Joint Stipulation of Facts and Issues, par. 3)*, its output tax, if any, will be determined by the total amount indicated in the invoices. Thus, as required by *Section 113 of the NIRC of 1997, as amended*, petitioner's sales invoices must indicate that it is a VAT-registered person, which in this case was not complied with by petitioner.

In case of zero-rated sales transactions, the rules and regulations further requires that the word zero-rated be imprinted on the face of the covering invoices or official receipts. The rationale of the requirement for imprinting of the word "zero-rated" on the face of the covering invoices or official receipts of the seller is to prevent the situation that the purchaser of the goods or services may be able to claim input tax from the said purchases, notwithstanding the fact that no VAT was actually paid on such goods or services since the taxpayer is zero-rated. Otherwise, there may result the absurd situation where the government would be crediting/refunding non-existent input tax to purchasers of goods or services of such zero-rated taxpayer.

Effects of Failure to Comply With the Invoicing Requirements

In *Commissioner of Internal Revenue vs. Seagate Technology (Philippines), 451 SCRA 159*, the Supreme Court enunciated that "A VAT-registered status, as well as compliance with the invoicing requirements, is sufficient for the effective zero rating of the transactions of a taxpayer." Conversely, non-compliance with the invoicing requirements will not give rise to effective zero-rating of the transactions of a taxpayer.

For petitioner's failure to comply with the invoicing requirements provided by law and revenue regulations, the sales invoices issued by

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petitioner cannot be considered as VAT Invoices. Hence, the said invoices cannot qualify for VAT zero-rating.

In conjunction thereto, Revenue Memorandum Circular No. 42-2003 [Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters] expressly provides in clear and unequivocal words that the failure of a taxpayer claiming for tax refund/credit to comply with the invoicing requirements will result to the disallowance of the claim for input tax. The pertinent portion of said Memorandum 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 customer 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

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to the concerned BIR office for verification of other tax liabilities of the taxpayer."

Pursuant to said Memorandum Circular, if the claim for refund/issuance of tax credit certificate is based on the existence of zero-rated sales by the taxpayer, but fails to comply with the invoicing requirements in the issuance of sales invoices, such as the failure of the claimant-taxpayer to indicate that it is a VAT-registered entity and/or to imprint the word "zero-rated" on the sales invoices or receipts, the claim for tax credit/refund of VAT on its sales shall be denied. Considering that herein petitioner failed to indicate in its sales invoices that it is a VAT registered entity and considering further that petitioner failed to imprint the word "zero-rated" on said sales invoices, We are left with no recourse but to deny the claim for tax credit certificate.

Finally, as found by the Court-commissioned independent CPA, upon verification of petitioner's export documents for the year 2002, out of the aggregate amount of P1,717,793,513.40 declared as export sales by petitioner in its amended quarterly VAT returns *(Exhibits "VV", "YY", "BBB",* and *"EEE")*, only the amount of P653,348,195.01 is supported by complete export documents *(Exhibit "SSS")*. While for the year 2003, out of the aggregate amount of P1,602,812,550.60 declared as export sales by petitioner in its amended quarterly VAT returns *(Exhibits "HHH", "KKK",*

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"NNN", and *"QQQ")*, only the amount of P823,058,860.03 is supported by complete export documents *(Exhibit "SSS")*. Petitioner, therefore, failed to substantiate its declared export sales for calendar years 2002 and 2003. Accordingly, the refund of the input tax in the amount of P12,741,136.81, allegedly attributable thereto, cannot be granted, pursuant to *Section 112 (A) of the NIRC of 1997, as amended.*

Having definitively disposed of the case through the resolution of the principal issue, We find no need to pass upon the other incidental issues raised, for being moot and academic.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED.**

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 case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, 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 Chairperson's Attestation, 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