REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SILICON PHILIPPINES, INC. (formerly INTEL PHILIPPINES MANUFACTURING, INC.),
Petitioner,

C.T.A. EB NO. 154
(C.T.A. Case No. 6338)

-versus-

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 0 6 2007

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D E C I S I O N

BAUTISTA, J.:

The Case

Petitioner elevates its case to the Court *En Banc* by filing on January 30, 2006, a Petition for Review pursuant to Section 11, Republic Act No. 1125 as amended by Section 18 of Republic Act No. 9282, seeking the reversal of the Decision dated July 18, 2005 and the Resolution dated December 16, 2005 of the Second Division of the Court ("Court in Division") in C.T.A. Case No. 6338, entitled "*Intel Philippines Manufacturing, Inc. v. Commissioner of Internal Revenue.*"

The Court in Division denied petitioner's claim for tax refund/issuance of tax credit certificate in the total amount of P27,383,274.98, representing petitioner's excess and unutilized input value-added taxes paid on (1) domestic purchases of goods/services in the amount of P17,865,709.98 and (2) importation of capital goods attributable to its zero-rated sales in the amount of P9,517,565.00, for the period July 1, 1999 to September 30, 1999 or the Third (3rd) Quarter of 1999.

Antecedent Facts

The material antecedents as aptly summarized by the Court in Division are as follows:

> "Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at No. 1321 Apolinario St., Bangkal, Makati City, Metro Manila, while respondent is the Commissioner of Internal Revenue vested by law to enforce and implement the provisions of the National Internal Revenue Code as well as the related statutes and their implementing rules and regulations, including, *inter alia*, the power to refund any internal revenue tax erroneously or illegally collected, holding office address at BIR National Office Building, Diliman, Quezon City *(pars. 1 & 2, Joint Stipulation of Facts and Simplification of Issues, Records, pp. 63-65)*.
>
> It appears that petitioner is registered with the Board of Investments as a preferred pioneer enterprise for the production/manufacture and export of tested and untested integrated circuits such as large scale integrated circuits and microprocessor with Certificate of Registration No. 85-1010 dated October 25, 1985 *(Exhibit "B", Records, p. 238)*. It is likewise duly registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer with Registration Certificate bearing Registration No. 32A-3-002649 dated January 1, 1988 *(Exhibit "A", Records, p. 237)*.
>
> For the period covering July 1, 1999 to September 30, 1999, petitioner allegedly generated export sales in the amount of P1,032,221,636.36, Philippine Currency, which were paid for in acceptable foreign currency inwardly remitted and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). Petitioner believes that as a VAT registered entity, it is subject to zero-percent VAT on the aforementioned export sales pursuant to Sections 106(A)(2)(a)(1) and 108(B)(1) of the National Internal Revenue Code (NIRC) of 1997 and VAT Ruling No. 102(a)(1) 402-88. For the same period of July 1, 1999 to September 30, 1999, petitioner allegedly paid input VAT amounting to P27,383,274.98 on its domestic purchases of goods/services and

importation of capital goods which were all attributable to its zero-rated export sales and which have not allegedly been applied against any output tax liability of petitioner for the said period or any succeeding quarter.

On October 25, 1999, petitioner filed its VAT return for the third quarter of 1999 reporting the alleged zero-rated export sales of P1,032,221,636.36 and unutilized input VAT payments of P27,383,274.98 *(Exhibit "E", Records, p. 241)*....

xxx xxx xxx

Relying on the provisions of Sections 112(A) and (B) of the NIRC of 1997 allowing the filing of claims for refund or tax credit of input tax, petitioner filed on October 25, 1999, an administrative claim with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance for the refund/tax credit corresponding to its alleged unutilized input VAT for the third quarter of 1999 in the amount of P27,383,274.98...

xxx xxx xxx"

Since the two-year prescriptive period for the filing of a judicial claim under Section 229 of the 1997 Tax Code was about to expire without action on the part of the respondent, petitioner filed a Petition for Review on October 1, 2001 before the Court in Division.

The Ruling of the Court in Division

After trial on the merits, the Court in Division denied petitioner's claim for refund in its Decision promulgated on July 18, 2005, for the following reasons:

1. Petitioner failed to prove that the input taxes claimed were paid on capital goods and duly supported by VAT invoices and official receipts. More particularly, it failed to submit in evidence, duly machine-validated Import Entry Revenue Declarations or Bureau of Customs official receipts or any other document proving actual payment of VAT on imported goods pursuant to Section 4.104-5 of Revenue Regulations (RR) No. 7-95. Neither did

petitioner submit documents proving that the subject importations qualify as capital goods pursuant to Section 4.106-1(b) of RR 7-95.

2. Petitioner's export sales for the subject period cannot qualify for zero-rating under Section 106(A)(2)(1) of the 1997 Tax Code for failure of the corresponding export sales invoices to comply with the invoicing requirements under Section 113(A) in relation to Sections 237 and 238 of the same Code.

3. Petitioner's export sales invoices: (a) do not have pre-printed taxpayer's identification number (TIN) followed by the word VAT; (b) do not bear the imprinted word "zero-rated"; and (c) were not duly registered with the Bureau of Internal Revenue (BIR).

The dispositive portion of the said Decision is quoted hereunder:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** and this case is hereby **DISMISSED** for lack of merit."

Not satisfied, petitioner filed through registered mail, a Motion for Reconsideration on August 5, 2005, which was denied for lack of merit by the Court in Division in its Resolution dated December 16, 2005.

The Issues

Hence, petitioner initiated this petition for review, arguing that the Court in Division committed the following errors:

"I.

RESPONDENT SECOND DIVISION OF THE CTA ERRED IN DENYING PETITIONER'S CLAIM FOR ALLEGED FAILURE TO SUBMIT PROOF THAT THE INPUT TAXES BEING CLAIMED FOR ITS IMPORTATIONS WERE PAID ON CAPITAL GOODS AND DULY SUPPORTED BY VAT INVOICES AND OFFICIAL RECEIPTS.

II.

RESPONDENT SECOND DIVISION OF THE CTA ERRED IN DENYING PETITIONER'S CLAIM FOR ITS DOMESTIC PURCHASES OF GOODS FOR ALLEGED FAILURE TO COMPLY WITH INVOICING REQUIREMENTS UNDER THE NIRC."

The Ruling of the Court En Banc

The petition is not impressed with merit.

Petitioner failed to comply with the mandatory invoicing requirements under the 1997 Tax Code and related Revenue Regulations (RR) as correctly determined by the Court in Division whose findings of facts are generally entitled to the highest respect and are conclusive upon Us, absent any showing of gross error or abuse on its part.

The absence of the BIR's Authority to Print is fatal to a taxpayer's claim for refund/tax credit

Anent the first assigned error, petitioner argues that the purported failure to reflect the permit to print receipts and invoices on petitioner's receipts and invoices does not automatically make petitioner's invoices and receipts invalid, incompetent and irrelevant as evidence in support of its claim for tax refund/issuance of tax credit certificate. If at all, the absence of authority to print only makes petitioner liable for penalties under the Tax Code. It also contends that there is no law or regulation which requires that the BIR's Permit or Authority to Print receipts and invoices must be printed on the face of the export sales invoices of petitioner. It further avers that *assuming arguendo* that there is an existing administrative rule or regulation on such a requirement, the same would be invalid pursuant to the rule in administrative law that rules which subvert the statute it implements cannot be sanctioned. Lastly, it posits that it is not required by law to secure an Authority to Print since its export sales invoices were computer-generated under an Approved Computerized Accounting System.

We are not persuaded by petitioner's assertions.

In a number of cases,[1] We have consistently ruled that the absence of the BIR's Authority to Print is fatal to a taxpayer's claim for refund/tax credit for it is tantamount to non-compliance with mandatory invoicing requirements on documents supporting the sale of goods and services.

Section 113 of the 1997 Tax Code clearly sets forth the invoicing and accounting requirements for VAT-Registered Persons, to wit:

> "**SEC. 113.** ***Invoicing and Accounting Requirements for VAT-Registered Persons —***
>
> (A) Invoicing Requirements. — A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
>
> 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."

Corollarily, such invoice or receipt must be registered with the BIR pursuant to Section 237 of the same Code, to wit:

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[1]Intel Technology Philippines, Inc., v. Commissioner of Internal Revenue, C.T.A. EB CASE NO. 24 (CTA Case No. 6170), January 27, 2006; Intel Philippines Manufacturing, Inc. v. Commissioner of Internal Revenue, C.T.A. EB NO. 23 (C.T.A. Case No. 6212), September 30, 2005; J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. EB NO. 35 (C.T.A. Case No. 6249), September 20, 2005; Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, CTA EB Case No. 28 (CTA Case No. 6039, September 14, 2005.

> "**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 xxx" (Emphasis supplied)

Incidentally, Revenue Regulation No. 2-90, in fact, restored the requirement to register and stamp receipts and invoices prior to their use, as follows:

> "*SEC. 19. Authentication and registration of books, registers, or records; authority to print receipts, sales or commercial invoices; and registration and stamping of receipts and in voices.*
>
> *Registration and stamping of receipts and invoices.* — Before being used, the printed receipts, sales or commercial invoices shall be registered with the revenue district officer where the principal place of business of the taxpayer is located within thirty days from the date of printing the same. The registration of the printed receipts or invoices shall be evidenced by an appropriate stamp on the face of the taxpayer's copy of the authority to print as well as on the front cover, on the back of the middle invoice or receipt and on the back of the last invoice or receipt of the registered booklet or pad, authenticated by the signature of the officer authorized to place the stamp thereon."

In conjunction thereto, Section 238 of the 1997 Tax Code requires:

> "**Section 238.** ***Printing of Receipts or Sales or Commercial Invoices***. — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.
>
> xxx xxx xxx"
> (Emphasis supplied)

Based on the foregoing, it is patent that it is not only the export sales that need to be proven but also strict compliance with the requirements set forth under the aforequoted sections of the Tax Code.[2]

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[2]Intel Technology Philippines, Inc., v. Commissioner of Internal Revenue, CA-G.R. SP No. 79327, August 12, 2004.

In the case before Us, the Court in Division, upon examination of petitioner's sales invoices, found that, among others, there was no authority to print or BIR permit number reflected on the said invoices,[3] in violation of Section 238 of the Tax Code. Absence of authority to print in the invoices only leads Us to the conclusion that the said invoices are not registered, as the said invoices do not comply with the invoicing requirements under Section 113 and also the requirements of issuance of receipts or sales or commercial invoices under Sec. 237. Surely, an unregistered receipt cannot be used as supporting document for input tax.[4]

As correctly explained by the Court in Division, Section 238 aims to eliminate the use of unregistered and double or multiple sets of receipts by striking at the very root of the problem --- the printer.[5] Also, contrary to petitioner's argument, the obligation to secure from the BIR a permit to print receipts and invoices is now within the person who is engaged in business.[6] Prior to the 1997 Tax Code, it was the printer who was tasked to secure the permit. Since petitioner failed to show that it secured a BIR Authority to Print sales invoices, the Court in Division did not err in not considering the sales invoices offered by petitioner as valid proof of export sales subject to VAT at 0%. Moreover, while petitioner's invoices appear to be computer-generated, this does not mean that the requirement of securing prior BIR Authority to Print can be dispensed with. Furthermore, petitioner's claim that it is not required by law to secure an Authority to Print since its export sales invoices were computer-

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[3] Page 11, assailed Decision.
[4] Intel Technology Philippines, Inc., v. Commissioner of Internal Revenue, CA-G.R. SP No. 79327, August 12, 2004.
[5] Hector S. De Leon, The National Internal Revenue Code Annotated, Seventh Edition, page 901.
[6] Rodelio T. Dascil, The New National Internal Revenue Code (NIRC) 1998 First Edition, page 233; Intel Philippines Manufacturing, Inc., v. Commissioner of Internal Revenue and Court of Tax Appeals, CA-G.R. SP NO. 80886, September 16, 2005.

generated under an Approved Computerized Accounting System deserves scant consideration in view of the following findings of the Court in Division:

> "Petitioner alleges that it was authorized by the BIR to issue such computerized sales invoices as evidenced by the permit to use computerized accounting records dated May 27, 1998 issued by the BIR in its favor *(Exhibit W)*.
>
> We do not agree.
>
> **The said permit was only limited to the use of pre-numbered loose leaf computerized books of accounts such as the General Ledger, Accounts Receivable Subsidiary Ledger, Purchase Register, Export Sales Register and Import Register and did not include the issuance of computerized sales invoices**." (Emphasis supplied)

It bears emphasis that the requirement of imprinting the BIR Authority to Print in the sales invoices and official receipts is a control mechanism adopted by the BIR to safeguard the interest of the government. This is required under Section 19(C)(3) RR No. 2-78, as amended, which regulates the printing of receipts or sales or commercial invoices under Section 238 of the Tax Code[7], to wit:

> "SEC. 19. Authentication and registration of book, register of record; authority to print receipts, sales or commercial invoices; and registration and stamping of receipts and invoices.
>
> xxx xxx xxx
>
> 3. Other requirements. —
>
> 1. Every copy of invoice or receipt approved for printing under these regulations shall bear on the original and every copy thereof on its lower left hand corner the name, business address and **authority number of the printer."** (Emphasis supplied)

[7]Intel Technology Philippines, Inc., v. Commissioner of Internal Revenue, C.T.A. EB Case No. 24 (CTA Case No. 6170), January 27, 2006.

Based on the foregoing discussion, We are convinced that petitioner's invoices lack probative value and are consequently inadmissible, incompetent and immaterial to prove petitioner's export sales transaction.

Failure to comply with invoicing requirements on documents supporting the sale of goods and services will result in the disallowance of the claim for input tax by the claimant

As to the second assigned error, petitioner opines that since the purpose of the law which requires the imprinting of the words "zero-rated" in the sales invoice is in order for the buyer or purchaser not to claim any input VAT from such purchase, such purpose is still achieved considering that petitioner exports its finished products to its parent company abroad which cannot claim any input tax. It also alleges that in a claim for refund/tax credit of input tax arising from zero-rated sales, what is essential is that a taxpayer proves actual exportation and that the documents petitioner formally offered i.e. sales invoices, official receipts, export declaration, airway bills and bank certification of inward remittances, clearly prove that its finished products were actually exported. It also contends that the CTA's denial of its entire claim for tax credit/refund on the ground that it failed to substantiate its export sales is a denial based on a too strict application of technicalities. Lastly, according to petitioner, denying it's claim for tax credit/refund on the ground that there was no indication of the BIR Permit to Print and/or of "zero-rated" and/or TIN-VAT on its sales invoices is too harsh a punishment, as to amount to a denial of petitioner's clearly valid and legal claims. Under the circumstances, if ever the petitioner had been found wanting in compliance with some technical requirements, it should have been meted only with penalty commensurate to its shortcomings, and not by a denial of its substantially proven claim.

Petitioner's contentions are untenable.

As aptly stated by the Court in Division in its Assailed Resolution, the invoicing requirements are clear and absolute and petitioner is obligated to comply therewith even if its sales are 100% exports.

According to the Supreme Court, "it is the duty of the seller to comply with the invoicing and accounting requirements laid down in, among others, Section 108 of the Tax Code".[8] This is a clear recognition that there are other sources of VAT invoicing and accounting requirements aside from Section 108 of the Tax Code (now Sec. 113 of the 1997 Tax Code), such as implementing rules and regulations issued by the administrative agencies of the government which also requires strict compliance, i.e. Revenue Regulations.

We note that as found by the Court in Division, petitioner's sales invoices are not imprinted with the word "zero-rated" as required by RR 7-95, otherwise known as the Consolidated Value-Added Tax Regulations. RR 7-95 is explicit in its requirements, thus:

> "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. the 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;

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[8] Atlas Consolidated Mining & Development Corporation v. Commissioner of Internal Revenue, G.R. No. 134467, November 17, 1999.

> 5. the word "zero-rated" imprinted on the invoice covering zero-rated sales; and
> 6. the invoice value or consideration.
>
> In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.
>
> Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoices or receipts and this shall be considered as 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 this 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."

According to the Court of Appeals, VAT-registered persons are directed to issue duly registered invoice or receipt for every sale or lease of goods, properties or services under Section 237, containing the required information in Section 113 of the National Internal Revenue Code. For, a sales invoice is not merely an evidence of payment. From the provision of Section 237, the issuance of an invoice is required the moment there is already a sale or transfer of merchandise or services rendered. In other words, a sales invoice is ordinarily issued to a purchaser only upon payment by the latter of the price of the goods purchased. Verily, under Section 237, only registered receipts or sales or commercial invoices are considered as "VAT invoices."[9]

Moreover, Revenue Memorandum Circular No. 42-2003 has already clarified the issue relative to the failure of a claimant to comply with certain invoicing

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[9] Intel Technology Philippines, Inc., v. Commissioner of Internal Revenue, CA-G.R. SP No. 79327, August 12, 2004.

requirements. Under said memorandum, failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax by the purchaser-claimant. Thus, if the claim for refund/issuance of tax credit certificate is based on the existence of zero-rated sales by the taxpayer but fails to comply with the invoicing requirements in the issuance of sales invoices (e.g. failure to indicate the TIN), the claim for tax credit/refund of VAT on its purchases shall be denied since the invoice issued to the customers failed to indicate that he is a VAT-registered taxpayer whose sales are classified as zero-rated sales. This treatment, however, 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.[10]

In fine, only transactions evidenced by VAT official receipts/sales invoices will be considered as VAT transactions for purposes of input/output tax. Hence, petitioner's export sales invoices cannot be considered as valid evidence of zero-rated sales for VAT purposes.[11]

With regard to the other pieces of evidence proffered by petitioner to prove actual exportation of goods such as certifications of inward remittance, export declarations and airway bills, We find these documents insufficient. It should be noted that all of the aforementioned documents, together with duly registered VAT

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[10] Ibid.
[11] Hitachi Global Storage Technologies Philippines Corp. [formerly Hitachi Computer Products (Asia) Corp.], v. Commissioner of Internal Revenue, C.T.A. EB NO. 54 (C.T.A. Case No. 6312), March 22, 2006.

invoices or receipts, taken collectively, are the best means to prove the exportation of goods.[12]

At this juncture, it is worth reiterating that the Court in Division denied petitioner's claim for refund not only because petitioner's sales invoices are not imprinted with the word "zero-rated" and the BIR's Authority to Print was not indicated therein, but more importantly due to the following:

1. Petitioner failed to submit in evidence, duly machine-validated Import Entry Revenue Declarations or Bureau of Customs official receipts or any other document proving actual payment of VAT on imported goods pursuant to Section 4.104-5 of Revenue Regulations (RR) No. 7-95. Neither did petitioner submit documents proving that the subject importations qualify as capital goods pursuant to Section 4.106-1(b) of RR 7-95; and
2. Petitioner's export sales invoices do not have pre-printed taxpayer's identification number (TIN) followed by the word VAT.

Moreover, well-settled is the rule that claimants of tax refunds bear the burden of proving the factual basis of their claims. This is because tax refunds are in the nature of tax exemptions, the statutes of which are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[13]

WHEREFORE, finding no cogent reason to reverse the assailed Decision promulgated on July 18, 2005 and the Resolution dated December 16, 2005, the

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[12] The Commissioner of Internal Revenue vs. Philippine Bobbin Corporation, CA-G.R. SP No. 59452, February 19, 2001.
[13] Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue, G. R. No. 141973, June 28, 2005.

instant petition for review is hereby **DISMISSED.** Accordingly, the assailed Decision and Resolution are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

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

JUANITO C. CASTAÑEDA, JR.
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 Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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En Banc

SILICON PHILIPPINES, INC. (formerly INTEL PHILIPPINES MANUFACTURING, INC.), *Petitioner,*	**C.T.A. EB No. 154** **(C.T.A. Case No. 6338)**
	Present:
-versus-	**Acosta,** ***P.J.*** **Castañeda, Jr., Bautista, Uy, Casanova, and Palanca-Enriquez,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 06 2007

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Concurring and Dissenting Opinion

The Court's Second Division's Decision dated July 18, 2005 and Resolution dated December 16, 2005, denied petitioner's claim for refund or issuance of tax credit certificate representing its excess and unutilized input value-added taxes (VAT) paid on domestic purchases of goods and services and importation of capital goods attributable to its zero-rated sales on the ground that the petitioner failed to comply with the substantiation requirements provided in the National Internal Revenue Code and applicable regulations. Particularly, the VAT invoices and/or official receipts presented to support the claim were allegedly defective inasmuch as (1) there was no authority to print or BIR permit number reflected on the said invoices/official receipts, (2) the word "zero-rated," and (3) the Taxpayer's Identification Number-VAT (TIN-VAT) were not imprinted.

I concur in part, in the majority opinion insofar as it finds the imprinting of the word "TIN-VAT" or any indication to that effect in the invoice as an essential requirement.

However, I humbly express my disagreement with the view that petitioner's failure to reflect on its sales invoices/receipts its authority to print will automatically make the same invalid, incompetent and irrelevant and merit the denial of petitioner's claim. At this juncture, I consider it appropriate to quote the applicable provisions of the 1997 Tax Code, namely, Section 113, in relation to Section 237, to wit:

> "**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

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> 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".

The above-quoted provisions provide that the following information must appear in an invoice or official receipt, thus:

(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.

Except for the TIN-VAT, the authority to print and the word "zero-rated" are not among the information needed to appear on the face of the sales invoice or official receipt as a prerequisite for claiming refund of input VAT.

Section 112 (A) of the 1997 Tax Code lends statutory support to this opinion that failure to imprint the BIR permit and/or the term "zero-rated" in an invoice will not cause the outright denial of the claim for refund. **Section 112 (A)** states, thus:

> "(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

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> (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."

The language of the afore-mentioned law clearly confirms that all VAT-registered enterprises engaged in zero-rated transactions are permitted to demand a refund of their creditable input tax due or paid to the extent that such input tax remains unapplied against output tax.

The only provision that perhaps requires imprinting the word "zero-rated" on the VAT invoice or receipt is **Section 4.108-1 of Revenue Regulations No. 7-95** (*The Implementing Rules and Regulations of the VAT law*). Then again, the said provision is merely a regulation created for the sole and limited purpose of implementing an otherwise very exact law. Long-settled is the rule that administrative rules and regulations cannot expand the letter and spirit of the law they seek to enforce. Such rules and regulations should be confined and limited by the power conferred by the legislature (**Commissioner of Internal Revenue vs. Court of Appeals**, *240 SCRA 368 (1995)*. 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 (**People vs. Lim**, *108 Phil. 1091*). Consequently, the Court must not give its blessings on such invalid condition that stems from an administrative issuance that overstepped the boundaries of its mandate. Rules that subvert the statute cannot be sanctioned (**University of Sto. Tomas vs. Board of Tax Appeals**, *93 Phil. 376*; **Del Mar vs. Phil. Veterans Administration**, *51 SCRA 340*). And to deny the petitioner's claim for tax refund based on a requirement imposed by an invalid administrative regulation is a very harsh punishment, amounting most certainly to a denial of petitioner's valid and legal claims.

This view has been strengthened by the pronouncement of the Honorable High Tribunal in the landmark case of **Commissioner of Internal Revenue vs. Seagate Technology (Philippines)**, *G.R. No. 153866, February 11, 2005*, where the Supreme Court emphasized 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.*

As correctly pointed out by petitioner, the absence of the authority to print and/or the word "zero-rated, if at all, makes the petitioner merely liable for penalties under the Tax Code, particularly, **Section 264**. And the invalidation of the export sales invoices and outright rejection of the refund claim are not among the imposable penalties.

The Revenue Bureau in **BIR Ruling DA-375-03** attests to this view, thus:

> "xxx The fact that the official receipts issued by DITFI do not bear the information that DITFI is a VAT-registered taxpayer as required under Section 4.108-1 of Rev. Regs. No. 7-95, **does not *motu propio* invalidate the claim for input tax credit** of Stanfilco xxx.
>
> "Finally, **the Revenue District Officer (RDO) concerned is hereby ordered to impose the corresponding penalty against DITFI as prescribed in Revenue Memorandum Order No. 56-2000, in relation to Section 264 of the Tax Code of 1997, for failure to issue the prescribed receipts."** *(Emphasis supplied)*

It is worthy of emphasis that the non-appearance of the BIR permit number or authority to print in the invoice or official receipt does not necessarily or automatically mean non-registration or failure of the company to register. The law merely requires registration, but silent on the "duty" to actually print the same in the invoice or receipt. The company must not be faulted for the "omission" of the printer.

Equally noticeable is that this Court bestowed too much importance on export sales invoices which by the way are not accurate confirmations that goods are actually shipped out of the country (**CIR vs. Philippine Bobbin Corporation,** *C.A.G.R. SP No. 59452, February 19, 2001*). Such invoices, in fact, are merely written accounts of the particulars of merchandise shipped or sent to a purchaser or consignee with the value or prices and charges annexed (**Philippine Law Dictionary**, *3rd Ed., p. 495*). In fact, in commercial practice, export documents include commercial invoices or receipts, bills of lading, airway bills and export declarations or permits. These documents, taken collectively, are the best means to prove the exportation of goods. And the applicable statutes and several CTA decisions instead of restricting the permissible documentary proof to just the export invoice, admit and expressly direct the presentation of "export documents" to establish the fact of export sales.

In the case of **Nichimen Corporation (Manila Branch) vs. CIR**, *CTA Case No. 5746 dated January 4, 2001*, this Court resolved to accept bank credit advices to prove the claimant's zero-rated sales without requiring the production of official receipts. Similarly, in **Nichimen Corporation (Manila Branch) vs. CIR,** *CTA Case No. 5221 dated January 8, 1998*, in support of the petitioner's claim that its sales were zero-rated, it only submitted the statements from RCBC to the effect that the acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations. Although the respondent objected to the refund claim for alleged failure to submit substantial proof that the sales were really zero-rated, this Court still held that, "Respondent's demand for additional requirements is unnecessary considering that the documentary and testimonial evidence adduced by the petitioner are uncontroverted. The same evidence has clearly substantiated petitioner's claim to the satisfaction of the Court." In the above-cited case of Nichimen Corporation, the petitioner therein completely failed to submit copies of its VAT invoices to support its claim for refund. Despite such omission, this court nonetheless held that other proofs or evidence might still be presented as a replacement for said VAT invoices.

Moreover, **Revenue Memorandum Circular No. 42-03** dated July 15, 2003, acknowledges the evidentiary importance of other export-oriented documents such as audited financial statements, books of accounts, export invoices, bills of lading or airway bills, which is in part quoted hereunder, thus:

> "**If the taxpayer did not reflect zero-rated sales in the VAT returns but it is claiming for tax credit or refund based on zero-rated sales, the Revenue Officer should mandatorily establish the existence of zero-rated sales from the audited financial statements, books of accounts, export invoices, bills of lading or airway bills and by comparing the reported sales against output tax reflected in the VAT return.** When zero-rated sales have been determined despite the fact that specific amounts were not categorically reflected in the VAT return, the claim may be processed upon sufficient proof of its existence xxx." *(Emphasis supplied)*

So even assuming *arguendo* that there was a violation of the supposed requirements to indicate the Authority to Print/BIR permit number or to include the words "TIN-VAT" and "zero-rated", such oversight does not automatically invalidate the exports sales invoices for purposes of proving export sales made by the petitioner. The sales invoices are still material, relevant and competent inasmuch as they still directly prove the amount of export sales made by the petitioner. The terms

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"admissibility" refers to the question of whether or not the evidence is to be considered, while "competency" refers to whether or not the evidence is expressly excluded by law or the rules. Apparently, the subject invoices satisfy the above standards in both counts.

Based on the foregoing, the documents formally offered as evidence by the petitioner such as sales invoices, official receipts, export declaration and airway bills, and bank certification of inward remittances satisfactorily prove that the petitioner's export sales were actually made. The substantive and main condition of the Tax Code requiring the sale and actual shipment of goods in order to be considered as zero-rated sales was effectively complied with and adequately proven before this Court by the petitioner. Accordingly, the granting of petitioner's claim for tax refund or issuance of tax credit certificate is in order.

ERNESTO D. ACOSTA
Presiding Justice