Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

INTEL TECHNOLOGY PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB Case No. 28
(CTA Case No. 6039)

Present:

ACOSTA, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

SEP 14 2005

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DECISION

CASANOVA, J:

This is a Petition for Review with the Honorable Court of Tax Appeals *En Banc* under Section 11, Republic Act No. 1125 as amended by Section 18 of Republic Act No. 9282. Petitioner respectfully prays that the Decision dated December 17, 2003 of the First Division of the Honorable Court in CTA Case No. 6039 entitled "*Intel Technology Philippines, Inc. vs.*

Commissioner of Internal Revenue", denying Petitioner's claim for tax refund / issuance of tax credit certificate in the amount of PHP 16,926,296.84, representing Petitioner's unutilized creditable input taxes for the period January 1, 1998 to March 31, 1998 or the First Quarter of 1998, be reversed and set aside. Petitioner likewise prays that the Resolution dated August 20, 2004 of the First Division of the Honorable Court denying Petitioner's Motion for Reconsideration of said Decision be reversed and set aside.

The undisputed facts as culled from the records of the case are briefly narrated as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office at Gateway Business Park, Javalera, Gen. Trias, Cavite. It is engaged primarily in the business of designing, developing, manufacturing and exporting advance and large-scale integrated circuit components, commonly referred to in the industry as Integrated Circuits or ICs. As such, it has registered itself with the Bureau of Internal Revenue as value-added tax (VAT) entity, pursuant to Section 107 of the Tax Code effective January 30, 1996, as evidenced by the Certificate of Registration No. 96-540-000713 (*pars. 1 & 3, Joint Stipulation of Facts, CTA records, pp 47-48*). Being engaged in the aforesaid business, petitioner registered with the Philippine Economic Zone Authority (PEZA) as an export enterprise and was issued

Certificate of Registration No. 95-133 by the said agency (*par. 4, Joint Stipulation of Facts, CTA records, p. 48*).

For the period January 1, 1998 to March 31, 1998, petitioner filed its amended Quarterly Value Added Tax Return reflecting among others, output VAT in the amount of P711.82, input VAT on domestic purchases in the amount of P16,927,008.66, and zero-rated sales of P2,296,346,207.44 (*Exhibit "I"*).

Petitioner alleges that the aforementioned zero-rated sales in the amount of P2,296,346,207.44 were paid for in acceptable foreign currency and inwardly remitted in accordance with existing regulations of the Central Bank of the Philippines pursuant to Sec. 106(A)(2)(a)(1) of the Tax Code.

Claiming that its export sales are not subject to 10% value-added tax but are zero-rated, hence, will not result to any VAT output tax, petitioner filed, on May 18, 1999, a claim for tax credit of its input taxes for the first quarter of 1998 in the total amount of Php 16,926,296.84, with the One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance, per BIR Form No. 2552, or "Application for Tax Credit/Refund of Value-Added Tax Paid" (*Exhibit "K"*) and Claimant Information Sheet No. 34589 (*Exhibit "J"*).

With the failure on the part of the respondent to act on the claim for refund, petitioner deemed it proper to file a Petition for Review on March 31, 2000 before it could be barred by prescription.

Unfortunately, after trial on the merits, Petitioner's claim for tax refund/issuance of tax credit certificate was denied by the court and its Motion for Reconsideration assailing said Decision was likewise denied for lack of merit.

Hence, this present Petition for Review *En Banc* and Petitioner anchors its Petition for Review on the following assignment of errors:

I

RESPONDENT FIRST DIVISION OF THE CTA ERRED IN DENYING THE PETITIONER'S CLAIM DUE TO THE ABSENCE OF THE BIR'S PERMIT TO PRINT ON ITS EXPORT INVOICES.

II

RESPONDENT FIRST DIVISION OF THE CTA ERRED IN DENYING CERTAIN SALES INVOICES PRESENTED AND FORMALLY OFFERED BY THE PETITIONER DUE TO THE ABSENCE OF THE IMPRINTED WORD "ZERO-RATED" THEREON.

III

RESPONDENT FIRST DIVISION OF THE CTA ERRED IN FINDING THAT THE PETITIONER FAILED TO COMPLY WITH THE SUBSTANTIATION REQUIREMENTS PROVIDED BY LAW IN PROVING ITS CLAIM FOR REFUND.

IV

RESPONDENT FIRST DIVISION OF THE CTA ERRED IN DISMISSING PETITIONER'S CLAIM FOR

REFUND FOR UNUTILIZED INPUT VAT FOR THE PERIOD 01 JANUARY 1998 TO 31 MARCH 1998 IN THE AMOUNT Php 16,926,296.84.

In the First assignment of error, Petitioner contends that the purported failure to reflect the TIN-V and the permit to print receipts and invoices on Petitioner's receipts and invoices do not automatically make Petitioner's invoices and receipts invalid, incompetent, and irrelevant as evidence for Petitioner in support of its claim for tax refund / issuance of tax credit certificate.

There is no law which requires the permit to print should be reflected on Petitioner's invoices.

In the Second assignment of error, Petitioner argues that assuming, without admitting any violation of the Tax Code or of the regulations, that Petitioner may have overlooked to strictly comply with invoicing requirements, such an omission should not automatically invalidate the export sales invoices for purposes of proving export sales made by the Petitioner covering the period 01 January 1998 to 31 March 1998.

Despite the absence of authority to print or the imprint "zero-rated" on the face of the export sales invoices, the same are still admissible and cannot be disregarded without any legal basis.

The sales invoices presented by Petitioner as evidence are relevant since they, along with the other export documents presented as evidence for Petitioner, show actual exportation of the Petitioner's finished products, which in turn proves that all its sales are zero-rated transactions. Establishing the latter is essential to the Petitioner's claim.

The sales invoices are also competent since they are not excluded by any existing evidentiary rule. Moreover, it must be kept in mind that the original sales invoices of the Petitioner were submitted to and actually examined by the duly commissioned independent certified public accountant.

Thus, if at all, the absence of the authority to print makes the Petitioner liable for the penalties under the Tax Code. Again, it is worth noting that neither the invalidation of the export sales invoices as evidence or the outright denial of the taxpayer's claim for refund or issuance of tax credit certificate is not one of the prescribed penalties.

In the Third assignment of error, Petitioner claims 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. That the purpose for Imprinting the words "zero-rated" on the Sales Invoices of the Seller is still achieved under the circumstances and the Sales Invoices not imprinted with the word Zero-rated were Provisional Receipts and were not intended to be considered in the determination of Petitioner's Export Sales. Furthermore, Petitioner says 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.

In the Fourth assignment of error, Petitioner states that the Honorable 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 too strict an application of technicalities.

Denying the Petitioner's claim for tax credit / refund on the ground that there was no indication of the BIR Permit to Print and/or "zero-rated" on its sales invoices is too harsh a punishment, as to amount to a denial of the 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 charged only with penalty which is commensurate to its shortcomings, and not by any means with a denial of its substantially proven claim.

From the above assignment of errors, the respondent also filed its comment stating among other things that the absence of BIR permit to print and the Taxpayer's Identification Number-VAT in the export sales invoices is fatal to the claim for refund because it violates the provisions of Section 113 of the 1997 Tax Code in relation to Sections 237 and 238 of the same code. That petitioner's claim that the export sales invoices without the TIN-VAT stamped on the face are temporary and initial export sales invoices issued for shipping purposes were then subsequently substituted with the final and corrected export sales invoices. That the requirement in the above-mentioned provision on the issuance of VAT invoices does not distinguish whether the invoices are temporary or final. In fact, petitioner offered those alleged temporary and initial export sales in evidence. In addition, petitioner alleges that its export sales invoices for the first quarter of 1998 were computer-generated pursuant to a permit it secured from the BIR, however, it failed to prove during the trial of this case its authority to utilize computerized sales invoices. Hence, it is incorrect for petitioner to say that it has clearly established its right to the refund of the amount claimed.

After a careful and thorough perusal, evaluation and consideration of the instant Petition for Review, the Court *En Banc* finds that the absence of the Bureau of Internal Revenue's Permit to Print is fatal to petitioner's claim for refund / tax credit. In the case of *Intel Philippines Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6040, promulgated on October 24, 2003*, this court had ruled and we quote:

> *"It bears to emphasize that the export documents needed to substantiate the claim for refund must comply with the requirements as stated in Sections 113(A) and 238 of the Tax Code. Petitioner must show proof and convince this court that it has complied with the substantiation requirements imposed before the documents presented may be considered as valid evidence to prove its zero-rated sales of goods for VAT purposes under the provisions of Section 113 of the Tax Code in relation to Section 238 of the same code as well as Section 4.108-1 of Revenue Regulations No. 7-95. Pertinent provisions 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 in Section 237, the following information shall be indicated in the invoice or the 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.

Sec. 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.

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

x x x

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 of commercial invoices which must show:

1. the name, TIN, and address of seller;
2. date of transaction;
3. quantity, unit cost and description or merchandise or nature of services;
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.

Here, petitioner failed. Close scrutiny of the documents presented showed that ***all of petitioner's export sales invoices (included as part of export sales documents marked as Exhibits RR-1 to RR-712) did not have any Bureau of Internal Revenue Permit to Print,*** *which contravened Section 113 and 238 of the 1997 Tax Code,* ***nor did most of its sales invoices bear the imprinted word "zero-rated"****, as required under Section 4.108-1 of Revenue Regulations 7-95. Violation of these mandatory and specific requirements is tantamount to denying such evidence to prove the zero-rated sales of goods for VAT purposes of the petitioner, pursuant to Section 3 of Rule 128 of the 1997 Rules of Court. Evidently, petitioner failed to substantiate its demand for refund or issuance of a tax credit certificate."* (Emphasis supplied)

Rules and regulations with regard to procedures are implemented not to be ignored nor taken for granted, but are to be strictly adhered to for they are developed from the law itself. Though we agree with the Honorable Supreme Court when it said that "rules of procedure are mere tools to facilitate the attainment of justice and that strict and rigid application of rules which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided", we believe that this does not apply to the instant case. It has always been the procedure and a requirement that before any printing of invoices or receipts is considered, the Bureau of Internal Revenue Permit to Print should have first been obtained. As an exporter, petitioner is, or should be, aware of this. Section 238 of the Tax Code requires that all persons who are engaged in business should secure from the Bureau of Internal Revenue an "authority to print" receipts or sales invoices or commercial invoices before a printer can print the same. Consequently, the only proof to show that such a mandatory requirement has been complied with is by clearly imprinting the said permit number on the invoices itself. In addition, Revenue Regulation No. 2-90 restored the requirement of registering and stamping the newly printed receipts or invoices prior to their use. To quote the pertinent provision:

> "Sec. 19. Authentication and registration of books, register, or records, authority to print receipts, sales and commercial invoices, and registration and stamping of receipts and invoices:
>
> xxx xxx xxx
>
> (d) 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 (30) 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."

Blunders and inaccuracies of petitioner cannot be tolerated since the law is very clear with its mandatory requirements. Thus, petitioner cannot just bury itself under the Honorable Supreme Court's decision on the relaxation of the rules of procedure.

Petitioner further contends that the sales invoices without the TIN-V stamped on its face were temporary and initial export sales invoices which were then subsequently validated by the issuance of the substitute, final and corrected export invoices.

We are not convinced.

Clearly, the law does not distinguish as to whether the invoices are temporary or not when it required that such invoices issued shall show among other things, the taxpayer's identification number. Receipts, sales invoices or commercial invoices, they be temporary or not, must have the TIN-V imprinted or stamped on its face. This requirement is essential so as to properly identify the taxpayer issuing the receipts, sales invoices or commercial invoices. Beside, if indeed these alleged temporary and initial export invoices were subsequently validated by the issuance of the substitute, final and corrected invoices, then petitioner should have submitted and offered the latter as proof of their export sales, considering that the subject exportation and issuance of export invoices transpired as early as the first quarter of the taxable year 1998 and petitioner's formal offer of evidence was only made on December 9, 2002.

Finally, there is no question that respondent may issue or grant a taxpayer the authority to use computer generated invoices, however, such an authority to use computer generated invoices is still subject to certain requirements and further conditions which must be complied with by the taxpayer. For one, aside from the requirement that the taxpayer using computer generated invoices register with either the Collection Agent of the Revenue District Office concerned a book bound registry book for recording, it is specifically required that each loose leaf be serially numbered and stamped with the word "approved" by the approving authority. Consequently, even with the use of computer generated sales invoices, it would be inconceivable to assume that the requirement of securing prior BIR authority to print can be dispensed with. Contrariwise, a more stringent monitoring should be effected considering the fact that it is the petitioner which prints its sales invoices.

In brief, the Court finds no cogent justification to disturb its previous conclusion as spelled out in the Decision promulgated on December 17, 2003 and the Resolution dated August 20, 2004. What the instant petition asks is for the Court En Banc to view and appreciate the evidences in their perspective of things, which unfortunately has been considered and passed upon.

WHEREFORE, the instant Petition is hereby **DENIED** due course and **DISMISSED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

(With Separate Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ON LEAVE
ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY
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INTEL TECHNOLOGY PHILIPPINES, INC.,
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-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 28
(C.T.A. Case No. 6039)

Present:

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

Promulgated:

SEP 14 2005 [signature]

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Dissenting Opinion

The Court *En Banc* denies petitioner's claim for issuance of a tax credit certificate representing input value-added tax (VAT) on its domestic purchases of goods and services attributable to its zero-rated sales on the ground that the petitioner failed to comply with the substantiation requirements imposed by Sections 113 and 238 of the 1997 Tax Code and applicable regulations. Specifically, petitioner's VAT invoices are defective inasmuch as (1) there is no authority to print or BIR permit number reflected on the said invoices and (2) some of the said invoices do not have the Taxpayer's Identification Number-VAT (TIN-V).

I concur in part, in the majority opinion insofar as it finds the imprinting of the word "TIN-V" 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 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 reckon it proper 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 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".

Based on the afore-quoted provisions, the information required to be indicated in an invoice or official receipt 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.

Unmistakably, the petitioner's authority to print is not among the information needed to appear on its sales invoice or official receipt as a condition for claiming refund of input VAT paid.

This view has been strengthened by the recent pronouncement of the Honorable High Tribunal in the 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.*

Section 112 (A) of the Tax Code likewise lends statutory support to this opinion, which 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 (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."

Based on the foregoing, the undersigned humbly repeats that contrary to the decision of the Original Division and the Court *En Banc*, the petitioner did not violate any of the said provisions of law or regulations since none of the same requires the petitioner to indicate the BIR Authority to Print in its invoices.

Assuming *arguendo* that there was a violation of the supposed requirements to indicate the Authority to Print/BIR permit number, such omission does not automatically invalidate the invoices for purposes of proving the fact of the transactions. The invoices are still material, relevant and competent. It must be pointed out that "admissibility" refers to the question of whether or not the evidence is to be considered at all, while "competency" refers to whether or not the evidence is expressly excluded by law or the rules.

A denial of petitioner's claim for tax refund on the ground that there was no indication of the BIR Permit to Print in its invoices is a penalty too severe to be even considered by this Court. The absence of the authority to print, if at all, makes the petitioner only liable for penalties under the Tax Code, particularly, Section 264.

The Revenue Bureau made a corroborative finding in **BIR Ruling DA-375-03** which states 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 noteworthy that invalidation of the sales invoice and automatic denial of the refund claim are not among the prescribed penalties.

The majority opinion manifests that this court placed too much importance on the sales invoice which are not accurate confirmations that goods were actually shipped out of the country (**CIR vs. Philippine Bobbin Corporation,** *C.A.G.R. SP No. 59452, February 19, 2001*). It is merely a written account 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*). The export sales invoices alone are insufficient evidence that the subject goods were actually exported.

It worth emphasizing that the applicable statutes rather than limiting the documentary requirements to just the export invoices, recognize and specifically instruct the production of "export documents" to prove the fact of export sales. 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.

The CTA has rendered decisions supporting this view. 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. The aforementioned CTA decisions reinforce the contention that the court is willing to accept other proofs or evidence in lieu of VAT invoices to establish the existence of zero-rated transactions.

Revenue Memorandum Circular No. 42-03 dated July 15, 2003, is quoted hereunder inasmuch as it acknowledges the evidentiary importance of other export-oriented documents such as audited financial statement, books of accounts, export invoices, bills of lading or airway bills. The relevant portion states that:

> **"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)*

The court should be reminded of the basic principle that when the statute is clear and explicit, there is no need for any extended court ratiocination on the law - there is no room for interpretation, vacillation or equivocation, only application (**Caguioa vs. Laviña,** *345 SCRA 49*). After all, the function of all judicial instrumentalities is to apply the law as they find it, not to reinvent or second-guess it (**Del Mar vs. Philippine Amusement and Gaming Corporation,** *358 SCRA 768*). *Maledicta expositio quo corrupti textum.* It is dangerous construction which is against the text of the statute. To determine otherwise will amount to inappropriate judicial interpretation.

Consequently, there should be no distinction as to the evidentiary value of an invoice, an official receipt and other documentary evidence to prove the fact of export sales. After all, these laws and regulations made no pronouncement as to the use only of a VAT invoice to the exclusion of all other equally relevant and competent evidence. The elementary rule in statutory construction is that where the law does not distinguish, the courts should make no distinction. *Ubi lex non distinguit nec nos distinguire debemos* (**Mendoza, et. al. vs. COMELEC, et. al.**, *G. R. No. 149736, December 17, 2002).*

Lastly, it must be noted that tax cases involved herein are civil in nature. And in civil cases, the quantum of evidence required to sustain the proponent of an issue is preponderance of evidence *(Section 1, Rule 133, Rules of Court)*. In the case of **Municipality vs. Moncada vs. Cajuigan**, *21 Phil. 184*, the High Court explained that the term "preponderance of evidence" refers to the weight, credit and value of the aggregate on either side. It means that the testimony adduced by one side is more credible and conclusive than that of the other.

To reiterate, the petitioner has clearly established its right to the tax credit or refund by way of substantial evidence in the form of material and documentary exhibits. Even assuming that export invoices have evidentiary value, the sales invoices are only among the many "export documents" that may be used to prove exportation of goods. Taken collectively, the documents formally offered as evidence by the petitioner such as sales invoices, official receipts, export declaration, airway bills and bank certification of inward remittance to the petitioner of the proceeds from export sales clearly prove that petitioner's finished products were actually exported. Accordingly, the petitioner's claim for the issuance of a tax credit certificate must be granted.

ERNESTO D. ACOSTA
Presiding Justice

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Respondent.

Promulgated:

SEP 14 2005

x - x

SEPARATE CONCURRING OPINION

I concur with the majority opinion that there is no cogent justification to disturb the Court's previous conclusion as spelled out in the Decision promulgated on December 17, 2003 and the Resolution dated August 20, 2004. However, I would like to discuss a few points relative to the issue of substantiation.

In ***ATLAS CONSOLIDATED MINING & DEVELOPMENT CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE,***

G.R. No. 134467, November 17, 1999, the Supreme Court discussed the invoicing requirements for VAT-registered persons.

The Supreme Court ruled that "[i]t is clear that a VAT invoice can be used only for the sale of goods or services that are subject to VAT". This means that the issuance of VAT invoices or official receipts are mandatory for sales that are subject to VAT either at 10% or 0% (zero-rated sales). The Supreme Court likewise expressed that "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". 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 NIRC of 1997), such as implementing rules and regulations issued by the administrative agencies of the government which shall also be strictly complied with, *i.e.* Revenue Regulations. As held by the Supreme Court in the above-cited case:

> "A careful perusal of the violations specifically listed down in Sections 111 and 263 of the Tax Code shows that they do not encompass all possible types of violations of Section 108. Certainly, there are other ways of noncompliance with the requirements the latter has laid down, and these too must have their corresponding consequences. Section 21 of the Revenue Regulation 5-87 is not invalid, as it simply prescribes the penalty for failure to comply with the accounting and invoicing requirements laid down in Section 108, a penalty similar to that found in Sections 111 and 263. In short, Section 108 provides the guidelines and necessary requirements for VAT invoices; Sections 111 and 263 of the Tax Code provide penalties for different types of violations of Section 108; and Section 21 of Revenue Regulation 5-87 specifies the penalty for a specific violation of Section 108."

In the case before Us, the then Court of Tax Appeals found that all of petitioner's export sales invoices (Exhibits "Z-1" to "Z-210") offered in evidence do not reflect any BIR Permit to Print and some of the invoices do not even have the Taxpayer's Identification Number – VAT (TIN-V) [Exhibits Z-9, Z-11, Z-14, Z-16, Z-26, Z-28, Z-33, Z-42, Z-44, Z-54, Z-56, Z-62, Z-64, Z-73, Z-75, Z-81, Z-90, Z-92, Z-94, Z-100, Z-102, Z-104, Z-113, Z-115, Z-117, Z-121, Z-123, Z-125, Z-203, Z-207], in blatant violation of Section 113 of the 1997 NIRC.

Applying the ruling in the afore-cited ***Atlas** case*, the absence of the Bureau of Internal Revenue's Permit to Print is fatal to petitioner's claim for refund/tax credit because the sales invoices issued by the petitioner did not comply with the mandatory invoicing requirements laid down in Section 113 of the 1997 NIRC. Said invoices cannot qualify as VAT sales invoices because of failure to comply with the mandatory requirements of Section 113 in relation to Section 237 of the same Code. Section 237, quoted hereunder, requires the issuance of duly registered receipts or sales invoices:

> **SEC. 237. Issuance of receipts or sales or commercial invoices.** - All persons subject to 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*, xxx xxx xxx. (Emphasis supplied)

In fact, this was clearly expressed by the then Court of Tax Appeals in its Resolution dated August 20, 2004. The Court said:

> "It has always been the procedure and a requirement that before any printing of invoices or receipts is considered, the Bureau of Internal Revenue Permit to Print should have first been obtained. As an exporter, petitioner is, or should be, aware of this. Section 238 of the Tax Code requires that all persons who are engaged in business should secure from the Bureau of Internal Revenue an authority to print receipts or sales invoices or commercial invoices before a printer can print the same. Consequently, the only proof to show that such a mandatory requirement has been complied with is by clearly imprinting the said permit number on the invoices itself."

Moreover, some of the sales invoices offered in evidence do not contain any indication that the petitioner is a VAT-registered taxpayer. Section 113 requires that the invoice or receipt shall contain a "statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN)". An indication of petitioner's TIN and "V" would suffice. Petitioner's failure to comply with "TIN-V" requirement pursuant to Section 113 of the 1997 NIRC is also fatal to its claim for refund. Even Presiding Justice Acosta, in his Dissenting Opinion recognizes that "the imprinting of TIN-V or any indication to that effect in the invoice as an essential requirement for its validity" (2^{nd} par., p. 1).

In addition to the foregoing, petitioner's sales invoices are likewise not imprinted with the word "zero-rated" as required by Revenue Regulations No. 7-95. It should be noted that Revenue Regulations No.

7-95, the Consolidated Value-Added Tax Regulations, was promulgated by the Secretary of Finance pursuant to the authority granted by Section 245 of the National Internal Revenue Code of 1977.

> SEC. 245. ***Authority of Secretary of Finance to promulgate Rules and Regulations***. – The Secretary of Finance, upon the recommendation of the Commissioner, shall promulgate **all needful rules and regulations** for the effective enforcement of the provisions of this Code.

The above provision was re-enacted *in toto* under Section 244 of the 1997 NIRC. To further strengthen the rule making power of the Secretary of Finance in coordination with the Bureau of Internal Revenue, an additional section (SEC. 245) was incorporated defining the extent of such rule making power. Section 245, in pertinent part, provides:

> SEC. 245. **Specific provisions to be contained in rules and regulations.** – The rules and regulations of the Bureau of Internal Revenue shall, among others things, contain provisions specifying, prescribing or defining:
>
> xxx xxx xxx
>
> (g) The manner in which revenue shall be collected and paid, the instrument, document or object to which revenue stamps shall be affixed, the mode of cancellation of the same, **the manner in which the** proper books, records, **invoices** and other papers **shall be kept and *entries therein made*** by the person subject to the tax, as well as the manner in which licenses and stamps shall be gathered up and returned after serving their purposes; (Emphasis/italics supplied)

Considering the legislative grant of authority to the Secretary of Finance to promulgate all needful rules and regulations for the effective enforcement of the provisions of the NIRC, Section 4.108-1 of RR 7-95 requiring the imprinting of the words "zero-rated" on sales invoices or official receipts cannot be said as having no valid basis. On the contrary, it is both reasonable and necessary for the effective implementation of the provisions of the NIRC concerning zero-rated sales. Moreover, the requirement cannot be taken as an enlargement or expansion of the law for the reason that it merely implements the provisions on zero-rated sales vis-à-vis VAT taxable and exempt sales. The imprinting of "zero-rated" is necessary to distinguish sales subject to 10% VAT, exempt, and those that are zero-rated. The distinction is necessary to enable the Bureau of Internal Revenue to properly implement and enforce the other provisions of the 1997 NIRC on VAT, namely:

1. Zero-rated sales [Sec. 106 (A) 2 and Sec. 108 (B)];
2. Exempt transactions [Sec. 109] in relation to Sec. 112 (A);
3. Tax credits [Sec. 110]; and
4. Refunds or tax credits of input tax [Sec. 112].

The rule is that as long as the administrative regulation is not in conflict with the law it seeks to implement, the same should be taken as part of the law taking into consideration the underlying purpose of the rule or regulation. In ***Nestle Philippines, Inc. vs. Court of Appeals, G.R. No. 86738, November 13, 1991 (203 SCRA 511)***, it was held that the construction given to a statute by an administrative agency charged with the interpretation and application of that statute is entitled to great respect and should be accorded great weight by the courts. The Supreme Court explained this policy in the following manner:

> The courts give much weight to contemporaneous construction because of the respect due the government agency or officials charged with the implementation of the law, their competence, expertness, experience and informed judgment, and ***the fact that they frequently are the drafters of the law they interpret***. (Emphasis/italics Supplied)

In a more recent decision, the Supreme Court held that regulations issued by the Department of Finance/Bureau of Internal Revenue that would give effect to the law are valid regulations, thus:

> Petitioner's arguments impugning the validity of Revenue Regulations V-39 and 17-67 deserve scant consideration. First, both regulations were issued pursuant to Section 245 (now Section 244) of the Tax Code. **The authority of the Secretary of Finance, in conjunction with the Commissioner of Internal Revenue, to promulgate needful rules and regulations for the effective enforcement of internal revenue laws cannot be controverted.** Such rules and regulations, as well as administrative opinions and rulings, ordinarily deserve to be given weight and respect by the courts. Second, our scrutiny of Revenue Regulations Nos. V-39 and 17-67 show that said regulations did not modify or deviate from the text of Sections 137 and 141 but merely implemented and clarified said two provisions by providing certain conditions under which stemmed leaf tobacco may be exempted from prepayment of specific tax. (Emphasis supplied; *citations omitted)* ***(Compania General de Tabacos de Filipinas vs. Citibank, N. A. , et al., G.R. No. 147361, March 23, 2004)***

The requirement of imprinting the word "zero-rated" fulfills the intent of the law not only with respect to the proper implementation of the provisions of the NIRC on zero-rated transactions but more importantly, to prevent the granting of refund or tax credit of non-existent input VAT. In a recent case entitled ***J.R.A. PHILIPPINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE, CTA CASE NO. 6454, June 30, 2005***, the Second Division of this Court explained the rationale behind the requirement of imprinting the word "zero-rated" on sales invoices/official receipts, as follows:

> Furthermore, *Section 110 of the NIRC of 1997, as amended,* provides that: "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: x x x." **If the invoice or official receipt was not imprinted with "zero-rated", there is a danger that the purchaser of the goods or services may be able to claim input tax on the sale to it by the taxpayer of the goods or services, as the case may be, notwithstanding the fact that no VAT was actually paid on such goods or services since the taxpayer is zero-rated.** This is the rationale for the mandatory requirement in Revenue Regulations No. 7-95 that the words "zero-rated" be imprinted in the invoice or receipt, as the case may be. **The zero-rated taxpayer should be entitled to a tax credit/refund on input taxes paid on its purchase of goods or services subject to the mandatory compliance with the invoicing requirements under the regulations. 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**. (Emphasis supplied)

The absurd situation referred to above can be explained in monetary terms by a simple illustration. Let us assume that a zero-rated taxpayer bought raw materials from a local supplier in the total amount of P1,100,000.00 inclusive of 10% VAT. The refundable input VAT paid is therefore P100,000.00 only (1,100,00.00 x 1/11).

Assume further that the zero-rated taxpayer then sells its product for P2,200,000.00 and issues a sales invoice that is not imprinted with the word "zero-rated" contrary to the mandatory requirement of Rev. Reg. No. 7-95. Since the sale is a zero-rated sale, no output VAT is due on the transaction. Stated differently, the buyer did not pay any input VAT. The above situation could be taken advantage of by the buyer who did not pay any input tax, by filing a claim for refund of the inexistent input VAT in the amount of P200,000.00.

Hence, the importance of strict compliance with the mandatory requirement of imprinting the word "zero-rated" on sales invoices or official receipts. In ***TROPITEK INTERNATIONAL, INC. VS. COMMISSIONER OF INTERNAL REVENUE, C.T.A. CASE NOS. 6422 & 6499, July 13, 2005***, the Second Division of this Court explained that the requirement of imprinting the word "zero-rated" on official receipts and sales invoices pursuant to Section 4.108-1 of Revenue Regulations No. 7-95 is mandatory, thus:

> "The afore-quoted revenue regulation issued to implement the NIRC provision on VAT invoicing and accounting requirements is mandatory as the word "shall" is used. The word "shall" is imperative, commonly operating to impose an obligation or duty which may be enforced; it is a word of command that must be given a compulsory meaning (*Pimentel vs. Aguirre, Jr., citing Ruben A. Agpalo, Statutory Construction, 1990 Ed., p. 239*). Indeed, it is the duty of a seller-taxpayer to comply with the invoicing requirements laid down in the said memorandum circular."

In the same vein, in ***LITTLEGIANT STEEL PIPE CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE, C.T.A. CASE NO. 6203, JULY 19, 2005***, the First Division of this Court ruled in this wise:

> "After a careful perusal of the documents presented by petitioner to prove that the amount of P1,727,504.38 represents export sales, We have noted that the commercial invoices of petitioner failed to comply with invoicing requirements under Section 4.108-1 of Revenue Regulations No. 7-95 in relation to Sections 8 and 238 of the National Internal Revenue Code of 1993.
>
> > Section 4.108-1. – *Invoicing Requirements.* – All VAT-registered persons shall, for every sale or lease of goods or properties or service, 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
> >
> > SEC. 108. *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 238, 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 xxx xxx
>
> SEC. 238. *Issuance of receipts 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 P25.00 or more, issue 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*, That in the case of sales, receipts or transfers in the amount of 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, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client. xxx

The commercial invoices issued by petitioner to support its export sales failed to meet the above standard. Petitioner failed to indicate that it is a VAT-registered person, followed by his taxpayer's identification number. The word "zero-rated" is also not imprinted in the invoices. In addition, there was no indication that the commercial invoices were authorized to be printed by the Bureau of Internal Revenue as required in Section 239 of the National Internal Revenue Code of 1993 which provides:

> SEC. 239. *Printing of receipts or sales or commercial invoices.* – All persons who print receipts or sales or commercial invoices shall for every job order, secure from the Bureau of Internal Revenue an authority to print said receipts or invoices before printing the same.
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, taxpayer account number and business address of the person or entity use the same.
>
> xxx xxx xxx

Corollarily, for failure of petitioner to comply with the requisites under the law, the export sales in the amount of P1,727,504.38 cannot be qualified as zero-rated for VAT purposes. Moreover, the commissioned Independent CPA noted the said export sales have either no export declaration/permits or supported by photocopied export declarations/permits. Hence, respondent's assessment for 10% value-added tax is sustained."

The Court of Appeals likewise ruled in ***INTEL TECHNOLOGY PHILIPPINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE, CA-G.R. SP No. 79327, AUGUST 12, 2004***, as follows:

> "While it may be true that under Section 106 (a)(2)(a)(1) of the NIRC, VAT registered persons are entitled to claim VAT refunds on their input taxes while their export sales are zero-rated, nevertheless, it is subject to compliance with certain requirements.
>
> Section 113 of the NIRC explicitly sets forth the Invoicing and Accounting Requirements for VAT-Registered Persons. xxx xxx xxx
>
> xxx xxx xxx
>
> From the foregoing, therefore, it is clear that it is not only the export sales that should be proven but also compliance with the requirements set forth under the aforestated sections of the NIRC.
>
> Moreover, Revenue Regulations No. 7-95, as amended, states that:
>
>> 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;
>> 6. The invoice value or consideration.
>>
>> xxx xxx xxx
>>
>> xxx xxx xxx
>
> Besides, Revenue Memorandum Circular No. 42-2003 has already clarified the issue relative to the failure of a claimant to comply with certain invoicing 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 depict that he is a VAT-registered taxpayer whose sales are classified as zero-rated sales.** xxx xxx xxx." (Emphasis supplied)

In view of all the foregoing, petitioner's failure to indicate the word "zero-rated" on its sales invoices constitutes another ground for the denial of petitioner's claim for refund. The law and regulations require mandatory compliance with the invoicing requirements. Taxpayers have the burden of proving compliance with the mandatory provisions of the National Internal Revenue Code and its implementing rules and regulations. More so, when claim for refunds or tax credits are involved as in petitioner's case before this Court. After all, it is well-settled that tax refunds are in the nature of tax exemptions and as such must be strictly construed against the claimant ***(Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corp., 204 SCRA 377; Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., 309 SCRA 87)***.

Finally, the ruling in the case of ***COMMISSIONER OF INTERNAL REVENUE vs. SEAGATE TECHNOLOGY (PHILIPPINES), G.R. No. 153866, FEBRUARY 11, 2005,*** is not applicable because the issue of imprinting the word "zero-rated" on sales invoices and officials receipts required by Sec. 4.108-1 of Rev. Reg. No. 7-95 was not even raised therein. It must be noted that the Supreme Court did not invalidate the entirety of Rev. Reg. No. 7-95 and the statement that leniency in implementation of VAT in ecozones is imperative is only an *obiter dictum*.

What was passed upon is the validity of Sec. 4.107-1 (d) requiring an approved prior application for effective zero-rating which the Supreme Court held as "not within the statutory authority xxx granted by the legislature". It is because the law already enumerated the zero-rated transactions. Indeed, Sec. 4.107-1 (d) cannot change the nature of a transaction that has already been defined by the law itself. Sec. 4.108-1 is an altogether different provision of Rev. Reg. 7-95, totally distinct from Sec. 4.107-1.

I maintain that the applicable jurisprudence to the facts of this case is the aforementioned Atlas Consolidated Mining & Development Corporation case, supra, upholding strict compliance with the mandatory invoicing and accounting requirements stated in the law and implementing rules and regulations. Otherwise, the intention of the lawmakers in enacting the VAT-law as a revenue generating mechanism would be negated and the same law could in fact become a convenient and effective scheme of bleeding the already limited financial resources that are available to the government in performing its functions.

Accordingly, in view of the foregoing considerations, I concur with the **DISMISSAL** of the petition for lack of merit.

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