REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

EASTERN TELECOMMUNICATIONS PHILIPPINES, INC., ***Petitioner,***	**C.T.A. EB NO. 327 (C.T.A. CASE NO. 6019)**
	Present:
-versus-	ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	**Promulgated:** APR 30 2008 Apolinario 1:20 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

This is a Petition For Review filed on April 30, 2004 with the Court of Appeals by Eastern Telecommunications Philippines, Inc. (hereafter petitioner) under *Rule 43 of the 1997 Rules of Civil Procedure, as amended,* docketed as CA-G.R. SP No. 83288, which seeks the annulment and setting aside of the Decision dated November 19, 2003 dismissing the Petition For Review for lack of merit and the Resolution dated March 19, 2004 denying petitioner's Motion For Reconsideration, issued by the old Court of Tax Appeals in C.T.A. Case No. 6019. The respective dispositive portions of the Decision and Resolution read as follows:

> "WHEREFORE, in view of the foregoing, the petition for review is hereby DENIED for lack of merit.
>
> SO ORDERED."
>
> "ACCORDINGLY, petitioner's motion for reconsideration is hereby DENIED for lack of merit.
>
> SO ORDERED."

<u>Proceedings in CA-G.R. SP No. 83288</u>

On June 2, 2004, the Court of Appeals directed respondents to file his comment on the petition, within 10 days from notice.

On January 11, 2005, respondent filed a "Manifestation and Motion To Admit Respondent's Comment", which the Court of Appeals admitted in its Resolution dated January 21, 2005.

On March 21, 2005, the parties were directed to file their simultaneous memoranda, within 15 days from notice.

On May 10, 2005, petitioner filed its "Memorandum".

On June 16, 2005, the case was considered submitted for decision without respondent's memorandum.

In a Resolution dated October 26, 2007, the Court of Appeals forwarded the records of the case to this Court *En Banc*, in view of the passage of *RA 9282*, which took effect on April 23, 2004, thereby divesting the Court of Appeals of its power and authority to review all cases decided by the Court of Tax Appeals.

ISSUES

Hence, this Petition For Review assigning the following issues:

I

WHETHER THE HONORABLE CTA ERRED WHEN IT DISREGARDED THE EVIDENCE PRESENTED BY PETITIONER WHICH CLEARLY AND UNEQUIVOCALLY PROVES THE EXISTENCE OF ITS ZERO-RATED SALES.

II

WHETHER THE HONORABLE CTA ERRED WHEN IT DENIED THE CLAIM FOR REFUND DUE TO ALLEGED DISCREPANCY IN THE TAXABLE AND EXEMPT SALES REPORTED BY PETITIONER FOR

THE PERIOD OF JANUARY 1998 UP TO DECEMBER 1998.

III

WHETHER THE HONORABLE CTA ERRED WHEN IT FAILED TO GIVE DUE WEIGHT AND CREDENCE TO THE REPORT OF THE COURT-APPOINTED CPA.

THIS COURT *EN BANC's* RULING

The petition is without merit.

First Issue

Petitioner contends that nowhere does it appear in *Section 112(A) of the Tax Code,* much less in *Section 4.108-1 of Revenue Regulations No. 7-95* that failure to issue invoices with the imprint "zero-rated" would inevitably result in the denial of the claim for refund. *Revenue Memorandum Circular No. 42-03* dated July 15, 2003 which clarifies certain issues regarding the processing of claims for VAT credit/refund, belies the conclusion reached by the Court of Tax Appeals.

Petitioner further contends that even considering that petitioner failed to indicate in its invoices the word "zero-rated" the same would not automatically foreclose the admission into evidence of other equally persuasive proof, like the (a) telecommunication contracts or agreements showing that the services were rendered to non-resident entities; and (b) the bank certificates supporting foreign currency inward remittances.

Petitioner's contentions are devoid of merit.

While *Section 112 of the NIRC of 1997, as amended,* allows tax refund or credit on input tax of zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, however, certain invoicing requirements must be faithfully complied with before such claim for refund or credit can be granted.

Sections 113(A) and 237 of the NIRC of 1997, as amended, lay down the invoicing requirements for VAT registered persons. More specifically, *Section 4-108-1 of Revenue Regulations No. 7-95* enumerates the information that must appear on the face of the receipts or invoices issued for sales of goods by all VAT-registered persons. The pertinent portion thereof is quoted hereunder:

> "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:

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> 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
>
> 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 'VAT Invoice'. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax."

The aforequoted revenue regulation issued to implement the NIRC provision on VAT invoicing and accounting requirements is mandatory as the word "shall" is used. It is a settled doctrine in statutory construction that the word "may" when used in a statute, is permissive and operates to confer discretion; it cannot be construed as having a mandatory effect (*Republic Planters Bank vs. Agana, Sr., 269 SCRA 1*). 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 (*Filipino vs. Macabuhay, 508 SCRA 50*). Indeed, it is the duty of a seller-taxpayer to comply with the invoicing requirements laid down in the said memorandum circular.

In *Compania General de Tabacos de Filipinas vs. Hon. Court of Appeals, et al., 426 SCRA 203*, the Supreme Court held that regulations issued by the BIR that would give effect to the law are valid regulations and ruled as follows:

> "We agree with petitioner that both Sections 137 and 141 of the former Tax Code allowed the sale of stemmed leaf tobacco without any prepayment of tax. We must stress, however, that a careful reading of the aforementioned provisions show that such sale is qualified by and is subject to "such conditions as may be prescribed in the regulations of the Department of Finance." Said conditions were provided for in Revenue Regulations Nos. V-39 and 17-67, which were issued to clarify and implement the foregoing provisions of the Tax Code. Hence, said provisions of the Tax Code must be read and interpreted in accordance with said regulations.
>
> xxx xxx.
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> Petitioner's arguments impugning the validity of Revenue Regulations Nos. 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."

A careful perusal of petitioner's VAT official receipts reveals that the same do not bear the imprinted words "zero-rated' on the face thereof, in violation of *Section 4.108-1 of Revenue Regulations No. 7-95.*

In conjunction thereto, *Revenue Memorandum Circular No. 42-2003* has clarified the issue relative to the failure of a taxpayer claiming for tax refund/credit to comply with the invoicing requirements. The pertinent portion of the said circular provides:

"A-13. Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.

If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (*e.g.*, failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied

> considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer."

Under said *Revenue Memorandum Circular No. 42-2003,* 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 of the taxpayer 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, such as the failure of a claimant-taxpayer to imprint the word "zero-rated" on the sale invoices or receipts, the claim for tax credit/refund of VAT on its sales shall be denied.

As aptly ruled by the old Court of Tax Appeals:

> "After a meticulous scrutiny of the VAT official receipts presented to support the alleged zero-rated sales, the court noted that petitioner failed to imprint the word "zero-rated" on the face of the said documents. This act clearly violates Section 4.108-1 of Revenue Regulations No. 7-95

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which implemented the VAT law. For such failure, this court believes that in the absence of other documents to show zero-rated sales, the transactions covered by the VAT invoices are subject to VAT at 10% pursuant to Section 108(C) of the Tax Code which provides:

> SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.*
>
> (A) xxx
>
> (B) xxx
>
> (C) *Determination of the Tax.* – The tax shall be computed by multiplying the total amount indicated in the official receipt by one-eleventh (1/11).

The bank certificates supporting foreign currency inward remittances and telecommunication agreements, together with the VAT official receipts, are the best means to prove foreign currency denominated sales and should be taken collectively."

Second and Third Issues

As regards the second and third issues, the old Court of Tax Appeals correctly ruled that even assuming that the VAT official receipts which failed to indicate the word "zero-rated" are accepted because of the corroborating evidence, still petitioner's claim for refund cannot be granted. The Court likewise noted that the amount of sales appearing on the 1998 quarterly returns differ from those of the amounts used by the

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Commissioned Independent CPA as bases for the allocation of verified input taxes. Thus, We agree with the following ratiocination of the old Court of Tax Appeals:

> "But even assuming that the VAT official receipts which failed to indicate the word "zero-rated" are accepted because of the corroborating evidence, still we cannot grant petitioner's claim for refund. This court noted that the amounts of sales appearing on the 1998 quarterly returns differ from those of the amounts used by the commissioned independent CPA as bases for the allocation of verified input taxes, to wit:

Type of Income	Per Amended Quarterly VAT Returns (A)	Per Allocation Provided by the Company (B)	Discrepancy Over/(Under) (A)-(B)
Taxable Sales	P 8,594,177.20	P 59,584,311.25	P(50,990,134.05)
Zero-rated Sales	1,388,297,621.52	1,388,297,621.52	-
Exempt Sales	855,372,356.09	562,282,775.64	293,089,580.45
Total	P2,252,264,154.81	P2,010,164,708.41	P242,099,446.40

> The above table shows that petitioner adjusted its taxable sales by reducing the same to P8,594,177.20 or a reduction of P50,990,134.05 while the amount of exempt sales was overstated by P293,089,580.45. The adjustments, according to petitioner's Assistant Vice-President - Finance Controllership Regina E. De Leon, were due to write-off of accounts. Such being the case, the court believes that petitioner should have presented additional documents to prove the accuracy of the adjustments made. Earlier, we have noted that petitioner failed to present its VAT official receipts for taxable sales and non-VAT official receipts for

its exempt sales. These documents are necessary to verify the amounts of taxable and exempt sales and for the court to properly allocate the verified input taxes among the taxable, zero-rated and exempt sales. It is pertinent to state that while a decrease in taxable sales will not affect petitioner's claim for refund, the increase in the exempt sales has the effect of a proportionate reduction on its claimed input VAT credits. Thus, in the absence of the aforementioned documents, the court has no basis in the computation of the allowable refund that may be granted to petitioner.

The disparity between the amounts declared as taxable or exempt sales by petitioner in its amended 1998 quarterly VAT returns and the revenue allocation provided by petitioner has further created a doubt as to the accuracy of petitioner's claim, considering further that the 1998 audited financial statements, which were the basis of the revenue allocation, were already available as early as February 22, 1999 while petitioner filed its amended 1998 quarterly VAT returns on February 22, 2001."

Petitioner has the burden of proof to establish the factual basis of its claim for tax refund (*Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332*). This is a fundamental concept in taxation. Petitioner failed in this regard. The denial of the tax refund was the petitioner's fault, having failed to substantiate its claim for tax refund with sufficient evidence.

Finding no reversible error, We affirm the assailed Decision dated November 19, 2003 and Resolution dated March 19, 2004.

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and, accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

On Official Business)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

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 the Court.

ERNESTO D. ACOSTA
Presiding Justice