Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

ENERGY DEVELOPMENT CORPORATION("EDC", formerly known as "PNOC Energy Development Corporation"), Petitioner,	**CTA EB CASE NO. 1067** (CTA Case No. 8019)
-versus-	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR. BAUTISTA UY CASANOVA FABON-VICTORINO MINDARO-GRULLA COTANGCO-MANALASTAS RINGPIS-LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 10 2015 3:28 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

This resolves petitioner's "Motion for Reconsideration" of the Decision dated November 3, 2014 of this Court En Banc, the dispositive portion of which states:

> ***"WHEREFORE,*** *premises considered, the Petition for Review is DENIED. The Decision of the Special First Division of this Court in CTA Case No. 8019, promulgated on April 29, 2013 and its Resolution, promulgated on August 14, 2013, are hereby* ***AFFIRMED****. No pronouncement as to cost.*
>
> ***SO ORDERED****."*

In assailing this Court's Decision, petitioner recycles and rephrases its arguments previously raised before the Special First Division of this Court and the Court En Banc. Petitioner seeks reconsideration on the following grounds:

"I.

THE FINDINGS OF THE HONORABLE COURT'S DULY COMMISSIONED INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT ("ICPA") SHOULD HAVE BEEN GIVEN WEIGHT IN THE ABSENCE OF ANY FINDING OF IRREGULARITY THEREIN.

II.

MERE FAILURE TO SEPARATELY INDICATE THE VAT AND THE WORD "TIN-VAT" ON THE VAT RECEIPTS AND INVOICES IS NOT A VALID BASIS FOR DISALLOWING INPUT VAT IN THE AMOUNT OF P 77,102,918.12.

III.

MERE FAILURE OF THE VAT RECEIPTS AND INVOICES TO SEPARATELY INDICATE THE VAT AND THE WORD "TIN-VAT" DOES NOT CHANGE THE FACT THAT PETITIONER INCURRED AND ACTUALLY PAID VAT ON SUCH PURCHASES.

IV.

PREPONDERANCE OF EVIDENCE SHOWS PETITIONER IS ENTITLED TO THE DISALLOWED INPUT VAT REFUND.

V.

PETITIONER HAS BEEN DEPRIVED OF ITS PROPERTY RIGHTS WITHOUT DUE PROCESS OF LAW.

On February 6, 2015, the Court received respondent's Comment on the Motion for Reconsideration. Respondent claims that the motion is just rehashed of what was already tried and resolved by both the Court's Division and En Banc.

We resolve to deny the motion.

After a careful examination of petitioner's "Motion for Reconsideration", the Court finds that the issues and arguments raised in said motion had already been sufficiently passed upon and fully discussed not only by the Special First Division's Decision dated April 29, 2013 and Resolution dated August 14, 2013 but also by this Court En Banc's Decision dated November 3, 2014. To reiterate, the Court in Division found merit on the findings and report of the ICPA and in addition thereto conducts its own review and findings which We found to be correct. To wit:

> *"xxx, this Court in division found merit on the findings and report of the ICPA and in addition thereto conducted its own review and findings. The amount of Php77,102,918.12 alleged as refundable input VAT from receipts or invoices was further disallowed by the Court.*
>
> *Thus, petitioner asserts that non-compliance with the invoicing requirements are directed to the issuer and petitioner as recipient, has no control and should not be made to suffer the consequence. Likewise, petitioner maintains that Section 4.113-1 of Revenue Regulations No. 16-05, which provides purchases not covered by VAT invoice or VAT receipt shall not give rise to any input tax, is void and/or not applicable being merely an administrative issuance. However, We find the arguments unmeritorious and find that this Court division correctly ruled as follows:*
>
> > *'On the invoicing and accounting requirements for VAT registered person, Section 113 of the NIRC of 1997, as amended, pertinently provides, thus:*
> >
> > > *SEC. 113. Invoicing and Accounting Requirements for VAT-registered Persons. —*
> > >
> > > *xxx xxx xxx*
> > >
> > > *(B) Information Contained in the VAT Invoice or VAT Official Receipt. —* ***The following information shall be indicated in the VAT invoice or VAT official receipt:***

(1) ***A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);***

(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: Provided, That:

(a) ***The amount of the tax shall be shown as a separate item in the invoice or receipt****; (Boldfacing supplied)*

xxx xxx xxx

More, in the case of Kepco Philippines Corporation vs. Commissioner of Internal Revenue, the Supreme Court enjoins strict compliance with the invoicing and substantiation requirement as provided by law in claims for refund or credit, thus:

Although it is true that the CTA is not strictly governed by technical rules of evidence, the invoicing and substantiation requirements must, nevertheless, be followed because it is the only way to determine the veracity of Kepco's claims. Verily, the CTA En Banc correctly disallowed the input VAT that did not meet the required standard of substantiation. (Boldfacing supplied)

In other words, failure on the part of the taxpayer to prove that all the requirements for entitlement have been met will merit the denial of the claim in whole or in part. Such is what occurred in the case at bar.'

It is a settled rule that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in strictissimi juris against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is strictissimi scrutinized and must be duly proven. Stated differently, a taxpayer claimant must not only establish that he is entitled to the claim, he must also show proof of compliance with the substantiation requirements as mandated by the law and regulations.

Essential to these documentation requirements are the invoices and official receipts. Thus, a VAT-registered person is required to issue a receipt or invoice with a TIN for every consummated sale. The receipt or invoice must be duly registered with the BIR, and should contain the information *required by Sections 113 and 237 of the 1997 Tax Code, as amended. The use of the word "shall" in the law implies mandatory compliance. This mandates the strict observance of the invoicing/substantiation requirements as provided by the VAT law and Revenue Regulation 16-2005 in claiming refund regardless of whether the taxpayer is the issuer or recipient of the receipt or invoice. Consequently, receipt or invoice which does not comply with the invoicing requirements, among others are the showing of the amount of tax as a separate item and printing of TIN-VAT in the invoice or receipt, the shall not be considered as an official "VAT Invoice" or "VAT official receipt" and shall not give rise to any input tax.*

The requirement of showing the amount of tax as a separate item in the invoice or receipt as provided by the VAT law and printing of TIN-VAT as provided by Revenue Regulation 16-2005 proceeds from the rule-making authority granted to the Secretary of Finance by the NIRC for the efficient enforcement of the Tax Code and its amendments. The Supreme Court in the case of Wertern Mindanao held as follows:

> *'In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law. It must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit. Hence, the mere fact that petitioner's application for zero-rating has been approved by the CIR does not, by itself, justify the grant of a refund or tax credit. The taxpayer claiming the refund must further comply with the invoicing and accounting requirements mandated by the NIRC, as well as by revenue regulations implementing them.*
>
> *Under the NIRC, a creditable input tax should be evidenced by a VAT invoice or official receipt, which may only be considered as such when it complies with the requirements of RR 7-95, particularly Section 4.108-1. This section requires, among others, that "(i)f the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt."*
>
> *We are not persuaded by petitioner's argument that RR 7-95 constitutes undue expansion of the scope of the legislation it seeks to implement on the ground that the statutory requirement for imprinting the phrase "zero-rated" on VAT official receipts appears only in Republic Act No. 9337. This law took effect on 1 July 2005, or long after petitioner had filed its claim for a refund.*

> *RR 7-95, which took effect on 1 January 1996, proceeds from the rule-making authority granted to the Secretary of Finance by the NIRC for the efficient enforcement of the same Tax Code and its amendments. In Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue,[18] we ruled that this provision is "reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services." Moreover, we have held in Kepco Philippines Corporation v. Commissioner of Internal Revenue that the subsequent incorporation of Section 4.108-1 of RR 7-95 in Section 113 (B) (2) (c) of R.A. 9337 actually confirmed the validity of the imprinting requirement on VAT invoices or official receipts – a case falling under the principle of legislative approval of administrative interpretation by reenactment.*
>
> *In fact, this Court has consistently held as fatal the failure to print the word "zero-rated" on the VAT invoices or official receipts in claims for a refund or credit of input VAT on zero-rated sales, even if the claims were made prior to the effectivity of R.A. 9337. Clearly then, the present Petition must be denied.'*

In sum, receipt or invoice which does not comply with the invoicing requirements as mandated by the law and regulations shall not be considered as a "VAT Invoice" or "VAT official receipt" and shall not give rise to any input tax. We find that this Court's division correctly disallow the claimed input VAT based on the following reasons:

1. Input taxes claimed on purchases of goods with invoices dated were outside the period of claim;
2. Input taxes claimed on purchases of goods or services supported by invoice or receipts but VAT not separately shown;
3. Input taxes claimed on purchases of goods supported by "TIN-V" instead of "TIN-VAT" invoice;
4. Input taxes claimed on purchases of goods not supported by invoice;
5. Input taxes claimed on purchases of goods supported by invoice but no date was indicated;
6. Input taxes claimed on purchases of goods wherein the amount per claim exceeds the input VAT per supporting invoice."

In sum, We found no substantial argument was raised to merit reconsideration of our Decision promulgated on November 3, 2014.

WHEREFORE, premises considered, petitioner's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen M. Ri
MA. BELEN M. RINGPIS-LIBAN
Associate Justice