Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

KEPCO PHILIPPINES CORP.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

EB CASE NO. 107
(CTA Case No. 6413)

Members:
ACOSTA, PJ,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

JUN 2 9 2007

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DECISION

CASANOVA, J.:

This is an appeal to the Court of Tax Appeals (CTA) *En Banc* by way of a verified Petition for Review, under Section 11 of R.A. 9282, praying that the Decision[1] (*Assailed Decision*) dated March 10, 2005 rendered by the Second Division of this Court (*CTA Second Division*) in CTA Case No. 6413 entitled, "***Kepco Philippines Corporation vs. Commissioner of Internal Revenue***" as well as the Resolution[2] (*Assailed Resolution*) dated June 17, 2005 of the said Division, be partially modified.

The facts of the case, as culled from the records, are as follows:

> "Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with its principal place of business located at Suite 2501-A, 25th Floor, Tektite Tower I, Exchange Road, Ortigas Center, City of Pasig. It is a value-added tax (VAT)

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[1] CTA Rollo., pp. 27-39.
[2] CTA Rollo., 41-48.

registered taxpayer engaged in the production and sale of electricity as an independent power producer. It sells electricity to National Power Corporation (NPC).

On December 15, 1999, petitioner filed an Application/Certificate for Zero- Rate with the Bureau of Internal Revenue. The said application was received by the Audit Information, Tax Exemption/Incentives Division of the BIR on January 17, 2000 and was subsequently approved by the then respondent Commissioner of Internal Revenue, Mr. Dakila B. Fonacier, through the Chief, Audit Information, Tax Exemption/Incentives Division, Ms. Nora C. Villanueva. The NPC was named as contractee therein.

For the four taxable quarters of 2000, petitioner purchased goods and services necessary in the production and sale of electricity to the NPC. The said expenses allegedly yielded an input VAT in the total amount of P5,928,498.26 reported by petitioner in the corresponding quarterly VAT returns as follows.

Period	Exhibit	Input VAT
1st Qtr. 2000	K, K-1	P 651,053.90
2nd Qtr. 2000	L, L-1	1,092,198.44
3rd Qtr. 2000	M, M-1	1,690,522.38
4th Qtr. 2000	N, N-1	2,494,723.54
Total		P5,928,498.26

Believing that its sales to NPC are subject to VAT at 0% in accordance with Section 108 (B)(3) of the National Internal Revenue Code (NIRC) of 1997 thereby entitling it to a refund of input VAT allegedly attributable to such zero-rated sales pursuant to Section 112 (A) of the same code, petitioner filed written claims for refund of its unutilized input VAT. The letter-applications for refund for the first, second and third quarters of 2000 were simultaneously filed on January 29, 2001, while the letter-request for refund for the fourth quarter of 2000 was filed on March 21, 2001.

Respondent has not acted on the subject claims for refund. Hence, on March 31, 2002, petitioner filed a Petition for Review with this Court in order to toll the running of the two-year prescriptive period under the law."[3]

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[3] As cited in the CTA Second Division Decision, CTA Rollo., pp. 27-29.

After trial on the merits, the *CTA Second Division* promulgated a Decision[4] on March 10, 2005, the dispositive portion of which reads as follows:

> "**WHEREFORE**, the instant Petition for Review is hereby ***PARTIALLY GRANTED***. Respondent is **ORDERED** to **REFUND** in favor of the petitioner the amount of P1,405,189.12 representing unutilized input value-added tax for taxable year 2000 attributable to proven zero-rated sales of electricity to NPC.
>
> No pronouncement as to cost.
>
> **SO ORDERED**."

Not satisfied with the above decision, petitioner filed a Motion for Partial Reconsideration[5] on April 5, 2005. On April 14, 2005, an Urgent Supplemental Motion for Partial Reconsideration[6] was filed by petitioner attaching therewith various documents allegedly evidencing payments for energy fees.

In a Resolution[7] dated June 17, 2005, the *CTA Second Division* denied petitioner's Motion for Partial Reconsideration for lack of merit. Hence, this appeal by way of a Petition for Review filed, through registered mail, with the CTA *En Banc* on August 8, 2005.

The CTA *En Banc* promulgated a Resolution[8] on September 14, 2005, ordering the respondent to file a Comment on the said Petition for Review. On August 23, 2006, Atty. Nelson A. Clemente filed with the Court a Notice of Withdrawal of Appearance as Counsel.[9] On the same date, petitioner, through the Zambrano & Gruba Law Offices, filed an "Entry of Appearance with Motion for Leave of Court to File Amended Petition for Review."[10] Attached therewith is

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[4] Ibid.
[5] CTA Rollo., pp. 296-299.
[6] CTA Rollo., pp. 300-301.
[7] Ibid.
[8] CTA Rollo., p. 54.
[9] CTA Rollo., p. 60.
[10] CTA Rollo., pp. 63-188.

a Petition for Review[11] (amended) incorporating amendments therein and its Annexes.

On September 27, 2006, the CTA *En Banc* issued a Resolution[12] noting the "Entry of Appearance" filed by the petitioner's new counsels, and ordering the respondent to file a Comment on the Motion for Leave of Court to File Amended Petition for Review. No Comment was filed by the respondent.

Resolving the Motion for Leave of Court to File Amended Petition for Review, the CTA *En Banc* promulgated a Resolution[13] on November 30, 2006 granting it. Accordingly, the *amended* Petition for Review was admitted as part of the records of the case. In addition, the respondent was ordered to file a Comment on the *amended* Petition for Review. No Comment was filed by the respondent. Hence, the *amended* Petition for Review is deemed submitted for decision.

Petitioner raised its sole Assignment of Error in the *amended* Petition for Review, to wit:

> THE COURT OF TAX APPEALS SECOND DIVISION ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT PETITIONER HAS NOT FULLY SUBSTANTIATED ITS CLAIM FOR INPUT VAT REFUND FOR FAILURE TO PRESENT VAT OFFICIAL RECEIPTS OF ITS SALE OF ELECTRICITY TO NPC.

After a careful and thorough evaluation and consideration of the records of the case, the Court *En Banc* finds no new matters which have not yet been considered and passed upon by the *CTA Second Division* in its assailed Decision and Resolution.

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[11] CTA Rollo., pp. 196-314
[12] CTA Rollo., p. 317.
[13] CTA Rollo., p. 319-321.

At the outset, there is no question as to whether or not the sale of electricity by a VAT-registered entity to the National Power Corporation (NPC) is effectively zero-rated for VAT purposes.

The applicable law is Section 108(B)(3) [then Section 102(b)(3)] of the National Internal Revenue Code of 1997 in relation to Section 13 of Republic Act No. 6395 (the Revised NPC Charter), as amended by Presidential Decree Nos. 380 & 938, to wit:

> "SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. —
>
> (A) Rate and Base of Tax. —. . . .
>
> **(B) Transactions Subject to Zero Percent (0%) Rate**. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate;
>
> (1) . . .
>
> (2) . . .
>
> (3) Services rendered to persons or entities **whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate**. (*Emphasis supplied*).
>
> xxx xxx xxx
>
> **Section 13.** Non-profit Character of the Corporation: Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities. — The Corporation shall be non-profit and shall devote all its returns from its capital investment as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance of effective implementation of the policy enunciated in Section One of this Act, **the Corporation, including its subsidiaries is hereby declared exempt from the payment of all forms of taxes**, duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any, court or administrative proceedings." (*Emphasis supplied*).

The wordings of Section 13 of Republic Act No. 6395, as amended, are clear. NPC is a non-profit corporation declared as exempt from the payment of *all forms of taxes*. This exemption includes the value-added tax. Hence, by virtue of the said revised charter, the services rendered by a VAT registered entity to NPC are effectively subject to zero percent (0%) VAT pursuant to Section 108(B)(3) of the National Internal Revenue Code of 1997[14]. No less than the Supreme Court affirmed NPC's tax exemption from *all kinds of taxes* in the case of ***Maceda vs. Macaraig, Jr., G.R. No. 88291, May 31, 1991, 197 SCRA 771***, where the High Court ruled in this wise:

> [P]residential Decree No. 938 amended the tax exemption by simplifying the same law in general terms. It succinctly exempts NPC from "all forms of taxes, duties, fees, imposts, as well as costs and services including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings.
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> *The use of the phrase "all forms" of taxes demonstrate the intention of the law to give NPC all the tax exemptions it has been enjoying before. The rationale for this exemption is that being non-profit the NPC shall devote all its returns from its capital investment as well as excess revenues from its operation, for expansion. . .*
>
> xxx xxx xxx
>
> It is evident from the provisions of P.D. No. 938 that its purpose is to maintain the tax exemption of NPC from all forms of taxes including indirect taxes as provided for under R.A. No. 6395 and P.D. No. 380 if it is to attain its goals.
> *(Italics supplied)*

Notwithstanding the above pronouncements, petitioner must still prove that it actually sells electricity to NPC in order for such sales to be qualified as effectively zero-rated under Section 108(B)(3). To prove this fact, petitioner presented its service contract with NPC[15] and several official receipts[16]. After a careful perusal thereof, the CTA *En Banc* agrees with the CTA *Second Division* that not all of petitioner's declared zero-rated sales in the 2000 Quarterly VAT Returns were duly substantiated.

Petitioner submits that the Second Division erred when it pro-rated the award of the refund with the amount of sales that petitioner was able to support

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[14] Mirant Navotas Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6044, October I6, 2002.
[15] Ehxibits P and Q, inclusive of submarkings
[16] Exhibits R and R-1 to R-11.

with VAT official receipts and that all of petitioner's sale of electricity were only made to a single customer, and that is the NPC. It further claimed that the Second Division's apportionment of the amount of the input VAT it granted the petitioner may only find merit if the petitioner sold the electricity to customers other than the NPC and which sales are taxable.

We do not agree.

In the respective 2000 quarterly VAT returns, the following were declared by petitioner as zero rated sales:

1st Qtr. Exh. K	2nd Qtr. Exh. L	3rd Qtr. Exh. M	4th Qtr. Exh. N	Total
P 559,061,502.50	P 735,857,511.71	P 582,517,204.48	P 876,865,786.63	P 2,754,302,005.32

However, based on the official receipts likewise formally offered by petitioner as exhibits, only the following 2000 zero-rated sales to NPC[17] were established, to wit:

Date	Exh	O.R. No.	1 Qtr.	2nd	3rd	4th	Total
3/6/2000	R	151	P 74,666,735.62				P 74,666,735.62
4/3/2000	R-1	154		P 74,679,090.12			74,679,090.12
5/9/2000	R-2	157		69,764,211.54			69,764,211.54
6/5/2000	R-3	159		74,724,067.62			74,724,067.62
7/--/2000	R-4	160			P 72,250,997.18		72,250,997.18
8/7/2000	R-5	162			74,649,209.79		74,649,209.79
9/5/2000	R-6	166			72,271,487.22		72,271,487.22
10/5/2000	R-7	169				P 64,549,345.47	64,549,345.47
11/7/2000	R-8	171				54,722,259.90	54,722,259.90
12/7/2000	R-9	173				57,305,471.81	57,305,471.81
Total			74,666,735.62	219,167,369.28	219,171,694.19	176,577,077.18	689,582,876.27

Considering the above findings, the *CTA Second Division* correctly allocated the (valid) input VAT against the supported zero-rated sales because the input taxes sought to be refunded in the total amount of P5,928,498.26 is attributable to total declared zero-rated sales of P2,754,302,005.32. Inasmuch as only the sum of P689,582,876.27 was proven as zero-rated sales of electricity to NPC, it is but proper to apportion the input taxes equivalent thereto. The rate to

[17] Exhibits R-10 and R-11 were not considered because the sales pertained to taxable year 2001.

be applied will be based on the total volume of declared sales, computed as follows:

Supported zero-rated sales to NPC	P 689,582,876.27
Divided by the total declared zero-rated sales	P2,754,302,005.32
Rate of supported zero-rated sales	0.25

Proceeding to the determination of validly supported input VAT, petitioner avers that it has unutilized input VAT in the aggregate amount of P5,928,498.26 for the year 2000 derived from its various purchases of goods and services. To support such claim, petitioner engaged the services of an independent certified public accountant (CPA) pursuant to CTA Circular 1-95, as amended, to verify the accuracy of its supporting documents for the summary of input taxes for 2000.

Consequently, the *CTA Second Division* commissioned an independent CPA from Joaquin Cunanan & Co., in the person of Mr. Rodelio Acosta. Based on his report[18], input VAT in the total amount of P3,891.82 failed to comply with VAT invoicing requirement, detailed as follows:

•	Supplier's invoices or Statements of Account or official receipts are not available	P309.03
•	Supported by NON-VAT invoices and/or Statements of accounts and/or official receipts	735.01
•	Erroneous amounts indicated in the Schedule of Input VAT as compared to related invoices or statements of account or official receipts resulting to net overstatement of the Input VAT Claim	2,487.78
•	Supported by official receipt without VAT Identification number	360.00
	T o t a l	P3,891.82

As found by the *CTA Second Division*, the above report was in order. However, after a further perusal of the pre-marked exhibits supporting the input

[18] Exhibits A to I, inclusive of submarkings.

taxes claimed, the *CTA Second Division* also found that input taxes in the sum of P303,849.95 cannot be allowed for the following reasons:

• Purchases of goods and services supported only by statement of account, provisional receipt, acknowledgement slip, cash voucher or check	P22,650.39[19]
• Purchases or goods supported by invoices Without BIR permit	68.18[20]
• Purchases of services not supported by official receipts	49,783.65[21]
• Purchases of goods and services without Supporting documents	222,737.61[22]
• Overstatement of input VAT claimed	8,610.12[23]
T o t a l	P303,849.95

The above disallowances were not included in the exception of the commissioned auditor. Therefore, only the input taxes in the sum of P5,620,756.49 are validly supported by VAT invoices and/or official receipts, to wit:

Total Input VAT Claimed		P5,928,498.26
Less: Disallowances		
a. Per commissioned independent CPA	P 3,891.82	
b. Per Court's further verification	303,849.95	307,741.77
Validly Supported Input VAT		P5,620,756.49

[19] Exhibits 2-25, 3-54, 8-7, 12-9, 12-10, 12-118, 12-140, 12-147, 12-147, 12-148, 12-151, 12-154 and 12-456.
[20] Exhibits 12-76 and 12-77.
[21] Exhibits 12-160 and 12-161.
[22] Exhibits 10-121 and 12-20 to 12-24.
[23] Exhibits 3-37, 4-72, 7-07, 7-31, 8-73 and 12-12, 12-25 and 12-36.

Finally, the Court has to determine if the validly supported input taxes can be refunded, based on Section 112(A) [then Section 106(b)] of the National Internal Revenue Code of 1997 provides:

> "SEC. 112. Refunds or Tax Credits of Input Tax. —
> (A) Zero-rated or Effectively Zero-rated Sales. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply 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."

Prescinding from the above provision, petitioner must comply, insofar as applicable, with the following requisites:

(1) that it is a VAT registered person;
(2) that its sales are zero rated;
(3) that its administrative claim for refund was seasonably filed;
(4) that the input taxes claimed were attributable to zero-rated sales; and
(5) that the input taxes were not applied against the output tax liability.

Applying the foregoing requisites in the case at bar, it is already undisputed that petitioner is a VAT registered person. This was already admitted by the respondent in paragraph 2 of the Joint Stipulation of Facts. In addition, the Court has ruled earlier that petitioner's sales to NPC are subject to VAT at 0%. Records also show that the claims for refund, both in the administrative and judicial levels, were filed within the two-year period reckoned from the respective dates of filing of the quarterly VAT returns since petitioner filed its claim for refund with the Bureau of Internal Revenue on January 29, 2001 and March 21, 2001 and the Petition for Review on March 31, 2002. As to the last requirement, the subject input taxes of P5,928,498.26 were not applied against output VAT and was finally deducted from the total available input tax as of March 21, 2001 as part of "Any VAT Refund/TCC Claimed" in the amount of P107,468,940.30.[24] In addition, the claimed input taxes were attributable to petitioner's declared zero-rated sales as evidenced by the 2000 quarterly VAT returns wherein petitioner had no taxable or exempt sales. It should be emphasized, however, that out of the total declared zero-rated sales of P2,754,302,005.32, petitioner was able to substantiate only the amount of P689,582,876.27 as zero-rated sales of services to NPC as discussed earlier.

Therefore, petitioner is entitled to the refund of input taxes attributable to proven zero-rated sales of services to NPC in the amount of P1,405,189.12, computed as follows:

Validly supported input VAT	P5,620,756.49
Multiply by the Rate of Zero-rated Sales to NPC	0.25
Amount Refundable	P1,405,189.12

Petitioner also argued that the reason for the requirement of issuing VAT official receipts for zero-rated transactions is to prevent the claim of non-existent input tax by purchases of a zero-rated taxpayer. The intent of the law is against the purchaser and not the seller because the danger sought to be avoided by the law does not exist on the seller's side in zero-rated transactions. Clearly, the requirement of issuing VAT official receipts for sales is to prove the purchaser's input VAT; however, for the seller, it can prove its zero-rated sales and output VAT by documents other than VAT official receipts.

The arguments raised by the petitioner deserve scant consideration.

[24] Exhibit O or S.

As correctly found by the CTA Second Division, the documents attached by the petitioner to the records of this case fall short of the requirement provided for by the VAT Law. The law requires that for every sale of service, a VAT taxpayer is required to issue duly registered VAT official receipts. This is clear pursuant to Section 108 (A) and (C), in relation to Sections 113 (A) and 237 of the 1997 NIRC, to wit:

"*SEC. 108. Value –Added Tax on Sale of Services and Use or Lease of Properties.-*

(A) *Rate and Base of Tax.-* There shall be levied, assessed and collected a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

(B) Xxx xxx 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).

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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 obliged to pay to the seller with the indication that such amount includes the value-added tax.

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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 (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 (100.00) or more, or regardless of amount, where the sale or transfer is made by a person liable to a value-added tax to another person 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 Identification Number (TIN) of the purchaser.
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> Xxx xxx xxx
> (*Emphasis and Underscoring supplied*)

As borne by the records of this case, a perusal of the documents attached by the petitioner in its "Urgent Supplement Motion for Partial Reconsideration"[25] shows that the same are mere advices for payment of energy fees and are not duly registered VAT official receipts required by law. Neither can the documents be used as proofs of actual payment of NAPOCOR because they are mere advices of the latter for the payments made.

Furthermore, the Court cannot verify if petitioner complied with the requirement of imprinting the word "zero-rated" on the duly registered VAT official receipts, as mandated by Section 4.108-1 of Revenue Regulations No. 7-95, to wit:

> "**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 much show:
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> 1. the name, TIN and address of seller;
> 2. date of transaction;

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[25] Ibid.

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. <u>the word "zero-rated" imprinted on the invoice covering zero-rated sales</u>; and
6. the invoice value or consideration."

(*Emphasis and Underscoring supplied*)

Zero-rated sales of services can be proven by other documents. However, the requirement of issuing a duly registered VAT official receipt with the imprinted word "zero-rated" is mandatory under the law and cannot be substituted especially for input VAT refund purposes. Thus, for failure of petitioner to comply with the requirements provided for by VAT Law and its implementing rules and regulations, the claim for refund of input VAT allegedly attributable to zero-rated sales cannot be refunded.

It is noteworthy to state that 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 Revenue Regulations No. 7-95 requiring the imprinting of the words "zero-rated" on sales invoices or official receipts cannot be said as having no valid basis or legislative root. On the contrary, it is both reasonable and necessary for the effective implementation of the provisions of the NIRC concerning zero-rated sales. Hence, the requirement that sales invoices shall be imprinted with the word "zero-rated" cannot be taken as an enlargement or expansion of the law for the reason that it merely implements the provisions of the 1997 NIRC on sales that are subject to 10% VAT, zero-rated sales (0% VAT) and exempt sales. The imprinting of "zero-rated" is necessary to distinguish sales subject to 10% VAT, those that are subject to 0% VAT (zero-rated) and exempt sales, 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].

In a recent case[26], 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: . . . ." 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*)

Hence, the need for strict compliance with the mandatory requirement of imprinting the word "zero-rated" on sales invoices or official receipts regardless of whether or not the business entity engages only in selling electricity to zero-rated entities, such as the NPC in this case, since Revenue Regulations No. 7-95 does not make any distinction on the different kinds of zero-rated sales.

In another case, the Second Division of this Court explained that pursuant to Section 4.108-1 of Revenue Regulations No. 7-95, the requirement of

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[26] J.R.A Philippines Inc., vs. Commissioner of Internal Revenue, CTA Case No. 6454, June 30, 2005.

imprinting the word "zero-rated" on official receipts and sales invoices 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."[27]

The Court would like to stress that such a denial is not a harsh penalty. After all, the aforementioned invoicing requirements are not hard to comply with and if complied, would entail the benefit of VAT zero-rating and the privilege to refund the input tax attributable thereto. Corollarily, with the failure of petitioner to conform to the requirements provided by law, there can be no logical conclusion than the partial denial of the benefit to claim refund of input tax.

Taxpayers have the burden of proving compliance with the mandatory provisions of the National Internal Revenue Code and its implementing rules and regulations. This principle shall be complied with in all actions involving taxation, more particularly, 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[28]. 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

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[27] Tropitek International, Inc. vs. Commissioner of Internal Revenue, C.T.A. CASE NOS. 6422 and 6499, July 13, 2005.

[28] Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation and The Court of Tax Appeals, G.R. No. 66838, December 2, 1991 (204 SCRA 377); Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc. and Court of Appeals, G.R. No. 127105, June 25, 1999 (309 SCRA 87)

limited financial resources that are available to the government in performing its functions.

In sum, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed March 10, 2005 Decision and June 17, 2005 Resolution of the *CTA Second Division*. What the instant petition seeks is for the Court *En Banc* to view and appreciate the evidence in their own perspective of things, which unfortunately had already been considered and passed upon.

WHEREFORE, the instant Petition for Review is hereby **DENIED DUE COURSE** and **DISMISSED** for lack of merit. Accordingly, the March 10, 2005 Decision and June 17, 2005 Resolution of the *CTA Second Division* are hereby **AFFIRMED *in toto***.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

C E R T I F I C A T I O N

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

EN BANC

KEPCO PHILIPPINES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 107
(C.T.A. CASE NO. 6413)

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

Promulgated:
JUN 2 9 2007

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CONCURRING AND DISSENTING OPINION

I concur that Section 13 of Republic Act No. 6395, the charter of the National Power Corporation (NPC), as amended by Presidential Decree No. 938, provides for the exemption of the NPC, including its subsidiaries is from the payment of all forms of taxes, duties, fees, imposts. This has long been settled in *Maceda vs. Macaraig, Jr.*,[1] where the Supreme Court affirmed the NPC's tax exemption. Corollary thereto, Section 108(B)(3) provides that services rendered by a VAT-registered person to a tax-exempt entity is subject to VAT at zero percent (0%).

In view of the above, services rendered by a VAT - registered entity to the NPC, an entity exempt from the payment of all forms of taxes, whether direct or indirect, including VAT, are effectively zero-rated.

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[1] *G.R. No. 88291, May 31, 1991*

I likewise agree with the majority that despite the above, petitioner's claim cannot be granted in full for lack of substantiation. As correctly explained in the assailed Decision, records show that only the input taxes in the amount of P5,620,756.49 are validly supported by VAT invoices and/or official receipts. Moreover, the documents which petitioner attached in its "Urgent Supplemental Motion for Partial Reconsideration" were mere advices for payment of energy fees. These advices cannot be used as proof of actual payments of the National Power Corporation.

However, I dissent to the majority's finding that the failure to imprint the term "zero-rated" on duly registered Value Added Tax (VAT) official receipts/invoices would result to the outright denial of petitioner's claim.

The significant provisions of the 1997 Tax Code, namely, Section 113 in relation to Section 237, only require the following information to appear in an invoice or official receipt:

(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.

Section 112 (A) of the 1997 Tax Code lends corroboration to the above view. It grants to all VAT-registered enterprises engaged in zero-rated transactions the right to claim a refund of their creditable input tax due or paid to the extent that such input tax has not been applied against output tax within a period of two (2) years after the close of the taxable quarter.

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Clearly, the applicable provisions of the Tax Code does not require the word "zero-rated" to be imprinted in the invoice/official receipt. The "requirement" of imprinting the questioned information on the VAT invoice or receipt can be found in **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.

Moreover, granting for the sake argument that the Revenue Regulations above-cited may validly impose such requirements, no provision allows the outright rejection of a refund claim, as penalty for a taxpayer's failure to abide by the requirements laid down in the said regulations. The absence of the word "zero-rated," if at all, only makes petitioner liable for penalties, such as fine and imprisonment, provided under Section 264 of the NIRC.

The penal provisions of Revenue Regulations No. 7-95, as further amended by Revenue Regulations No. 08-02, particularly, Sections 4.110-5[2] and 4.111-1,[3] exclude such harsh

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[2] *"SECTION 4.110-5. Penalty Provision. – In accordance with the provisions of the Tax Code of 1997, a person who fails to file, keep or supply a statement, list, or information required herein on the date prescribed therefor shall pay, upon notice and demand by the Commissioner of Internal Revenue, an* ***administrative penalty of One thousand pesos*** *(P1,000) for each such failure, unless it is shown that such failure is due to reasonable cause and not to willful neglect. For this purpose, the failure to supply the required information for each buyer or seller of goods and services shall constitute a single act or omission punishable hereof. However, the aggregate amount to be imposed for all such failures during a taxable year shall not exceed Twenty-five thousand pesos (P25,000).*

In addition to the imposition of the administrative penalty, willful failure by such person to keep any record and to supply the correct and accurate information at the time or times as required herein, shall be subject to the ***criminal penalty*** *under the relevant provisions of the Tax Code of 1997 (e.g., Sec. 255, Sec. 256, etc.,) upon conviction of the offender.*

The imposition of any of the penalties under the Tax Code of 1997 and the compromise of the criminal penalty on such violations, notwithstanding, shall not in any manner relieve the violating taxpayer from the obligation to submit the required documents.

Finally, the administrative penalty shall be imposed at all times, upon due notice and demand by the Commissioner of Internal Revenue. A subpoena duces tecum for the submission of the required documents shall be issued on the second offense. A third offense shall set the motion for a criminal prosecution of the offender." (Emphasis supplied)

[3] *"SECTION 4.111-1. Administrative and penal provisions.*

(a) ***Suspension of business operations****. – In addition to other administrative and penal sanctions provided for in the Code and implementing regulations, the Commissioner or his duly authorized representative may order suspension or closure of a business establishment for a period of not less than five (5) days for any of the following violations:*

(1) Failure to issue receipts and invoices.
(2) Failure to file value-added tax return as required under the provisions of Section 110.
(3) Understatement of taxable sales or receipts by 30% or more of his correct taxable sales or receipts for the taxable quarter.
(4) Failure of any person to register as required under the provisions of Sec. 107.

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punishment. Under these issuances, the only penalties legally imposable are: administrative penalty of One Thousand Pesos (P1,000), criminal penalty under the relevant provisions of the Tax Code of 1997, suspension of business operations and surcharge, interest unpaid amount of tax, as well as, civil penalties.

The above lend credence to my opinion that there is no basis for the automatic invalidation of a claim for refund in case there is a non-complying taxpayer. These penalties are harsh enough and any addition thereto is not construction or interpretation, but legislation, which is beyond any court's province.

The Revenue Bureau, itself, in **BIR Ruling DA-375-03** confirms this opinion, 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.
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> "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)*

Moreover, the High Tribunal in **Commissioner of Internal Revenue vs. Seagate Technology (Philippines),**[4] ruled that the BIR regulations additionally requiring an approved prior application for effective zero-rating cannot prevail over the clear VAT nature of therein respondent's transactions. According to the Supreme Court, the scope of such regulations is not within the statutory authority granted by the legislature. It was likewise held that other than the general registration of a taxpayer the VAT status of which is aptly determined, no provision under the VAT law requires an additional application to be made for such taxpayer's

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(b) ***Surcharge, interest and other penalties.*** *– The interest on unpaid amount of tax, civil penalties and criminal penalties imposed in Title XI of the Tax Code shall also apply to violations of the provisions of Title IV of the Code." (Emphasis supplied)*

[4] *G.R. No. 153866, February 11, 2005*

transactions to be effectively zero-rated. And to allow the additional requirement is to give unfettered discretion to those official or agents who, without fluid consideration, are bent on delaying a valid application. Thus, the need to focus only on the legally mandated requirements for claims for VAT refund was likewise pointed out and it was 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.*

In the same vein, the imprinting of the word "zero-rated" on official receipts and invoices is an additional requirement which cannot be allowed to be imposed by mere administrative regulation, being an amendment to the law which it can only implement. As held in the Seagate case above-quoted, the BIR cannot require an additional application to be made for a taxpayer's transactions to be zero-rated, with more reason that the BIR cannot impose the requirement of imprinting the word "zero-rated" on each and every receipt or invoice it issues, the same being more tedious than a one-time registration.

Consequently, the requisites to be entitled to the refund/tax credit of unapplied or unutilized input VAT are as follows:

1. There must be zero-rated or effectively zero-rated sales;
2. That input taxes were incurred or paid;
3. That the input taxes are attributable to such zero-rated or effectively zero-rated sales;
4. That the input taxes were not applied against any output VAT liability; and
5. The claim for refund was filed within the two-year prescriptive period.

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It is also noteworthy that it was only on November 1, 2005, with the effectivity of Republic Act No. 9337,[5] that the requirement of writing or printing the term "zero-rated sale" was introduced, following the amendment of Section 113[6] of the National Internal Revenue Code.

R.A. 9337 cannot apply retroactively so as to prejudice petitioner given the well-entrenched principle that statutes, including administrative rules and regulations, **operate prospectively only**, unless the legislative intent to the contrary is manifest by express terms or by necessary implication.[7]

Accordingly, I concur with the partial denial of petitioner's claim for refund of input VAT on the purchases of goods and services absent proper substantiation, however, I dissent to the finding that the failure to print the word "zero-rated" on invoices and official receipts renders them invalid supporting documents for a claim.

ERNESTO D. ACOSTA
Presiding Justice

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[5] *R.A. 9337 was supposed to take effect on July 1, 2005 but due to constitutionality issues, it became effective only on November 1, 2005 upon the finality of the Supreme Court's September 1, 2005 Decision upholding the said law's validity.*
[6] *(B)(2)(c) of Section 113.*
[7] *BPI Leasing Corporation, vs. The Honorable Court of Appeals, et.al. G.R. No. 127624. November 18, 2003.*