REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

SOUTHERN PHILIPPINES POWER CORPORATION
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6336

Members:

CASTAÑEDA, JR., *Chairman*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
APR 2 6 2006

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DECISION

CASTAÑEDA, JR., J.:

This is a judicial claim for refund or issuance of a tax credit certificate in the amount of P8,636,126.75 allegedly representing unutilized input tax paid on domestic purchases of goods and services which are attributable to zero-rated sales for the period July 1, 1999 up to December 31, 2000.

Petitioner is a domestic corporation duly organized and existing according to the laws of the Republic of the Philippines, with principal place of business at Alsons Building, 2286 Pasong Tamo Ext., Makati City. It is engaged in the generation and sale of electricity to the National Power Corporation (NPC)[1] by virtue of an Accession Undertaking it entered into on January 31, 1997 with NPC and the consortium of Alsons Power Holdings Corporation and Tomen Corporation.[2]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested by law with the power to duly act upon and approve claims for refund and/or tax credit.

Petitioner is registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer with Certificate of Registration No. 96-048-03900. Its applications for the VAT zero-rating of sales of electricity to NPC for the taxable years 1999 and 2000 were duly approved by the BIR.[3]

For the third and fourth quarters of 1999 and four quarters of 2000, petitioner filed its VAT returns declaring unutilized input taxes in the total amount of P8,636,126.75, detailed as follows:

Exhibit	Quarter Involved	Date Return Filed w/ the BIR	Zero-Rated Sales	Domestic Purchases	Input VAT
	1999				
E	3rd Qtr.	10/25/1999	-	P 9,020,299.70	P 902,029.97
F	4th Qtr.	1/25/2000	-	15,127,183.40	1,512,718.34
		Subtotal		**P24,147,483.10**	**P2,414,748.31**
	2000				
G	1st Qtr.	4/25/2000	-	P12,434,870.00	P1,243,487.00
H	2nd Qtr.	7/25/2000	-	14,268,203.42	1,426,820.34
I	3rd Qtr.	10/20/2000	-	20,753,927.40	2,075,392.74
J	4th Qtr.	1/25/2001	-	14,756,783.60	1,475,678.36
		Subtotal		**P62,213,784.42**	**P6,221,378.44**
		Total		**P86,361,267.52**	**P8,636,126.75**

[1] TSN, March 9, 2002, page 11
[2] Exhibit AA
[3] Exhibits M & N

On June 20, 2000 and July 13, 2001, petitioner filed two separate applications for tax credit/refund of unutilized input VAT in the amounts of P5,083,371.57 and P6,221,078.44, covering the periods of January 1, 1999 to December 31, 1999 and January 1, 2000 to December 31, 2000, respectively (*Exhibits K & L*).

Not wanting to be barred by prescription, petitioner filed the instant Petition for Review before this Court on September 28, 2001, praying for the refund or issuance of a tax credit certificate in the amount of P8,636,126.75 representing the sum of its reported unutilized input VAT payments for the third and fourth quarters of 1999 in the amount of P2,414,748.31 and for the four quarters of 2000 in the amount of P6,221,378.44.

On December 14, 2001, the Court admitted respondent's Answer raising the following Special and Affirmative Defenses:

"xxx xxx xxx

6. Petitioner's claim for refund/tax credit is still subject to administrative routinary investigation/examination by the respondent's Bureau;

7. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;

8. Petitioner's claim for refund/tax credit for the 3rd, and 4th quarters of 1999 and for the four quarters of 2000 representing the alleged unutilized input VAT paid on its domestic purchases of goods and services were not fully substantiated;

9. Petitioner's right to claim for refund/tax credit first and second quarters of 1999 have already prescribed;

10. It is incumbent upon petitioner to show that it has complied with the provisions under Section 204(c) in relation to Section 229 of the Tax Code, as amended, as well as the requirements provided under Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88. Otherwise, its failure to prove the same is fatal to its claim for refund; and

11. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation ***(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and as such, they are looked upon with disfavor ***(Western Minolco Corp vs. Commissioner of Internal Revenue, 124 SCRA 1211).***"

On February 27, 2002, the parties filed their Joint Stipulation of Facts and Issues and agreed on the following issues to be resolved by this Court:

1. Whether or not petitioner has unutilized input taxes for the 3rd and 4th quarters of 1999, and the four quarters of (2000) in the total amount of P8,636,126.75, pertaining to domestic purchases of goods and services, which is a proper object of a claim for refund pursuant to Section 112 of the Tax Code, as amended;

2. Whether or not the said unutilized input VAT of the petitioner for the 3rd and 4th quarters of 1999, and the four quarters of 2000, had been carried forward to the succeeding quarter and applied against any of petitioner's output VAT for the said period;

3. Whether or not petitioner generated zero-rated sales to NPC, its lone business activity, for the 3rd and 4th quarters of 1999 and the four quarters of 2000;

4. Whether or not petitioner's sale of electricity to NPC are zero-rated for VAT purposes;

5. Whether or not petitioner is entitled to refund in the amount of P2,414,748.31 as unutilized input VAT for the 3rd and 4th quarters of 1999; and in the amount of P6,221,378.44 as unutilized input VAT covering the four quarters of 2000; and

6. Whether or not petitioner has complied with the requirements under Section 204 (C) in relation to Section 229 of the Tax Code.

The above issues may be summed up into one issue: *whether or not, based on the evidence presented, petitioner is entitled to the refund or issuance of a tax credit certificate representing unutilized input VAT attributable to zero-rated sales for the third and fourth quarters of 1999 in the amount of P2,414,748.31 and for the four quarters of 2000 in the amount of P6,221,378.44 or in the sum of P8,636,126.75.*

At the outset, it is to be noted that petitioner's claim for taxable year 2000 as per Petition for Review is P6,221,378.44. It is P300.00 more than the amount claimed in the administrative level which is P6,221,078.44. Thus, the amount of P300.00 not covered by the administrative claim should be denied outright for petitioner's failure to exhaust administrative remedies.

Moving on to the issue at hand, petitioner anchors its claim on Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, which states:

> "**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). xxx"

From the foregoing, in order to be entitled to a refund or tax credit of input VAT payments directly attributable to zero-rated or effectively zero-rated sales, petitioner must comply with the following requisites:

1) there must be zero-rated or effectively zero-rated sales;
2) that input taxes were incurred or paid;
3) that such input VAT payments are directly attributable to zero-rated sales or effectively zero-rated sales;
4) that the input VAT payments were not applied against any output VAT liability; and
5) that the claim for refund was filed within the two-year prescriptive period (***AMERICAN EXPRESS INTERNATIONAL, INC.-PHILIPPINE BRANCH vs. COMMISSIONER OF INTERNAL REVENUE, C.T.A. E.B. NO. 103 [CTA Case No. 6294], MARCH 3, 2006***).

Anent the first requisite, We shall resolve first the corollary issue of whether or not petitioner's sale of electricity to NPC is zero-rated or effectively zero-rated for VAT purposes. Section 108(B)(3) of the National Internal Revenue Code of 1997 and Section 13 of Republic Act No. 6395 (National Power Corporation Charter), as amended, provide:

> **"Section 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.*** –
>
> xxx xxx xxx
>
> **(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) x x x
> (2) x x x
> (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. xxx" *(Underscoring supplied)*

> **"Section 13. *Non-profit Character of the Corporation: Exemption from All Taxes, Duties, 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 operations, 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." *(Underscoring supplied)*

It is clear from the foregoing that the National Power Corporation is an entity with a special charter, which categorically makes it exempt from payment of all taxes, whether direct or indirect, including VAT. Hence, the services rendered by petitioner to NPC are effectively subject to zero percent (0%) VAT.

In ***Maceda vs. Macaraig, Jr., 223 SCRA 217,*** the Supreme Court affirmed the NPC's tax exemption, thus:

> "A chronological review of the NPC laws will show that it has been the lawmaker's intention that the NPC was to be completely tax-exempt from all forms of taxes — direct or indirect.
>
> xxx xxx xxx
>
> One common theme in all these laws is that the NPC must be enabled to pay its indebtedness which, as of P.D. No. 938 was P12 Billion in total domestic indebtedness, at any one time, and US$4 Billion in total foreign loans at any one time. The NPC must be and has to be exempt from all forms of taxes if this goal is to be achieved."

Moreover, records show that no less than respondent himself approved petitioner's applications for the VAT zero-rating of its sales of electricity to NPC for the taxable years 1999 and 2000 (*Exhibits M & N*).

However, Section 108(B)(3) of the NIRC of 1997 must not be read in isolation but in conjunction with Section 113 of the same Code as implemented by Section 4.108-1 of Revenue Regulations No. 7-95, to wit:

> "**SEC. 113.** ***Invoicing and Accounting Requirements for VAT-Registered Persons —***
>
> (A) *Invoicing Requirements.* — A VAT-registered person <u>shall, for every sale, issue an invoice or receipt</u>. 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." (*Emphasis supplied*)

"**SECTION 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; and
6. the invoice value or consideration.

In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or receipts and this shall be considered as a "VAT Invoice". All purchases covered by invoices other than "VAT" Invoice" shall not give rise to any input tax.

If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A "VAT Invoice" shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the Code.

The invoice or receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records."

Further, in the two separate approved applications for VAT zero-rating issued by the respondent to petitioner covering the taxable years 1999 and 2000, the following was clearly indicated:

"Valid only for sale of services (electricity)
Jan. 01, 1999 up to Dec. 31, 1999 unless sooner revoked.

Note: Zero-Rated Sales must be indicated in the invoice/receipt. (Underlining supplied) [*As shown in Exhibit M*]

Valid only for sale of services from January 2, 2000 up to December 31, 2000 unless sooner revoked.
Note: Zero-Rated Sales must be indicated in the invoice/receipt. (Underlining supplied) [*As shown in Exhibit N*]"

Thus, considering that petitioner is involved in the sales of services, it is imperative that petitioner issue VAT official receipts. These official receipts must contain all the necessary information such as petitioner's TIN-VAT number, the printer's BIR permit number and the imprinted word "zero-rated" in order that its sales of electricity to NPC shall qualify for zero-rating for VAT purposes.

In this case, to prove that it generated zero-rated sales to NPC for the third and fourth quarters of 1999 and four quarters of 2000, petitioner submitted various documents such as:

1) "Zero-Rated Sales Summary for the 3rd and 4th Quarters of Calendar Year (CY) 1999 and all the Quarters of CY 2000, VAT returns for the 3rd and 4th quarters of 1999 and for the four quarters of 2000, Approved Applications for VAT Zero Rate (*Exhibits Y, Y-1 to Y-12*); and
2) Power Sales Invoices, remittance advices from NPC, MetroBank Credit Memos, petitioner's passbook with Metrobank showing that NPC's payments were credited to the petitioner's bank account (*Exhibits W-1-1 to W-1-150*).

The Court commissioned auditing firm SGV & Co., verified the aforesaid documents and made the following findings and observations:[4]

Based on our review, the sales amounting P800,107,956.61 indicated in the Sales Summary are supported by the following documents:

	Exhibit Reference	**TOTAL**
1 Original Company copies of the VAT invoices and ORs issued to NPC for its peso denominated sale of electricity to the latter.	*Exhibit U-A*	*P118,945,643.88*

[4] *Exhibit S*

2	*Original Company copies of the VAT invoices issued to NPC for its foreign currency denominated sale of electricity to the latter. Collections of these billings are supported by photocopies or faxed copies of the remittance advices/certificates from NPC and the original copies of the bankbook which show the credits made to the Company's bank accounts.*	*Exhibit U-A*	*681,162,312.73*
	Total		***P800,107,956.61***

*We noted that all the VAT invoices and ORs issued by the Company, which support the foregoing sales, **are not imprinted/stamped with the word 'zero-rated'**. However, we noted that the phrase "BIR-VAT Zero-Rate Application Number 419.2000" was printed on all invoices issued from March 2000 and onwards. The sales supported by invoices bearing this notation amount to P467,092,311.97 (Exhibit U-B).*

A perusal of the SGV & Co. report and petitioner's supporting documents reveals that the alleged zero-rated receipts in the amount of P800,107,956.61 was not declared by petitioner in its VAT returns for the subject period of claim. More importantly, as can be seen from the SGV & Co. report, out of petitioner's alleged zero-rated receipts totalling P800,107,956.61, only the amount of P118,945,643.88 was supported by official receipts. Further, while these official receipts bear the TIN-VAT number of petitioner and the printer's BIR Permit number, the word "zero-rated" was not imprinted on the face thereof in clear violation of Section 4.108-1 of Revenue Regulations No. 7-95 and the conditions imposed under petitioner's approved applications for VAT zero-rate.

The law and regulations require strict compliance with the invoicing requirements and petitioner must comply therewith even if it renders services exclusively to NPC, a tax-exempt entity.

In the case of ***Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue, 318 SCRA 386,*** the Supreme Court ruled 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 (now Sec. 113 of the NIRC of 1997). This is a clear recognition of no less than the Highest Tribunal, 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). These other sources of invoicing requirements include implementing rules and regulations issued by the administrative agencies of the government which also require strict compliance ***(Taganito Mining Corporation vs. Commissioner of Internal Revenue, CTA EB No. 7 [CTA CASE No. 6384], January 31, 2006).***

Further, pursuant to ***Revenue Memorandum Circular No. 42-2003,*** 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, the claim 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.

In the case ***AMERICAN EXPRESS INTERNATIONAL, INC., PHILIPPINE BRANCH vs. COMMISSIONER OF INTERNAL REVENUE, CTA EB NO. 103, MARCH 3, 2006***, this Court discussed the rationale behind the required imprinting of the word "zero-rated" on the VAT invoices and official receipts as follows:

> "The law and revenue regulations are explicit in emphasizing strict compliance with the invoicing requirements because for the same transactions, the output VAT of the seller becomes the input VAT of the purchaser. Pursuant to *Sections 106(D)(1) and 108(C), in relation to Section 110 of the NIRC of 1997, as amended,* the output or input tax on the sale or purchase of goods is determined by the total amount indicated in the invoice, while the output or input tax on the sale or purchase of services is determined by the total amount indicated in the official receipt. In the case of zero-rated sales transactions, the regulations further require that the words "zero-rated" be imprinted on the face of the covering invoices or official receipts. The rationale for the imprinting of words "zero-rated" be imprinted *[sic]* on the face of the covering invoice or official receipt of the seller is for the buyer or purchaser not to claim any input VAT from such purchase and for the purpose of segregating those sales that are subject to 10% VAT from those sales that are zero-rated."

Without proper VAT official receipts, the payments received by petitioner from rendering power generation services or sale of electricity to NPC for the third and fourth quarters of 1999 and four quarters of 2000 in the sum of P800,107,956.61, cannot qualify for zero-rating for VAT purposes. Therefore, the first requirement that there must be zero-rated or effectively zero-rated sales has not been complied with by the petitioner. Accordingly, the claimed input VAT payments of P8,636,126.75 allegedly attributable thereto cannot be refunded.

IN VIEW OF THE FOREGOING, the Petition for Review is **DENIED.**

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest 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's Division.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, 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's Division.

ERNESTO D. ACOSTA
Presiding Justice