REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PANASONIC COMMUNICATIONS IMAGING CORPORATION OF THE PHILIPPINES (*formerly* MATSUSHITA BUSINESS MACHINE CORPORATION OF THE PHILIPPINES), Petitioner,	**C.T.A. E.B. NO. 233** **(C.T.A. CASE NO. 6245)** Present: **ACOSTA,** *P.J.* **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** NOV 2 0 2007 CnSApolinario

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DECISION

UY, J.:

This is a petition for review before the Court of Tax Appeals *En Banc* filed on January 4, 2007 seeking a review of the Decision and Resolution dated June 2, 2006 and November 16, 2006, respectively, rendered by the First Division of this Court[1] (Court in Division) in C.T.A. Case No. 6245 entitled "Matsushita Business Machine Corporation of the Philippines, petitioner, vs. Commissioner of Internal Revenue, respondent", pursuant to Section 18 of

[1] Ponencia of Associate Justice Caesar A. Casanova and concurred by Associate Justice Lovell R. Bautista, with dissenting opinion by Presiding Justice Ernesto D. Acosta.

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Republic Act No. 1125, as amended by Republic Act No. 9282. The dispositive portions thereof read as follows:

> **Decision in C.T.A. Case No. 6245 promulgated on June 2, 2006:**
>
> "**IN VIEW OF THE FOREGOING**, the Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."
>
> **Resolution denying petitioner's Motion for Reconsideration promulgated on November 16, 2006:**
>
> "**WHEREFORE**, in view of the foregoing, petitioner's 'Motion for Reconsideration' is hereby **DENIED** for lack of merit and the pronouncement reached in the assailed DECISION is hereby ***REITERATED***.
>
> **SO ORDERED**."

THE FACTS

As found by the Court in Division, these are the facts of the case:

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at Bo. Mapandan, Ortigas Avenue Extension, Taytay, Rizal, while respondent is the duly appointed Commissioner of Internal Revenue, with authority, among others, to decide, approve and grant tax credits and/or refunds of overpaid or erroneously paid internal revenue taxes.

Petitioner was organized to principally engage in the business of manufacturing, importing, exporting, buying and selling or otherwise dealing in, at wholesale, all equipment, apparatus, appliances, instruments and devices concerned with information handling, including but not limited to copiers, scanners, and printers and other goods of similar nature, and any and all equipment, materials, supplies used or employed in or related to the manufacture of such finished products. It is registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer starting October 5, 1995 and with the Board of Investments (BOI) in accordance with the provisions of the Omnibus Investments Code of 1987 as a preferred pioneer enterprise for the production and export of plain paper copiers, sub-assemblies, parts and components.

For the period covering April 1, 1999 to March 31, 2000, petitioner duly filed with the BIR its Quarterly VAT Returns, including amendments thereto, reflecting, among others, the following:

Exh.		***Period***	***Excess Input VAT***
A	1999	2nd Qtr	4,149,486.92
C		3rd Qtr	1,009,776.88
D		4th Qtr	3,982,480.17
E	2000	1st Qtr	2,690,900.84
		Total	**11,832,644.81**

On February 8, 2000 and August 25, 2000, petitioner filed with the BIR two separate letters requesting for the refund of its reported unutilized input VAT payments for the periods of April 1, 1999 to September 30, 1999 and October 1, 1999 to March 31, 2000 in the amounts of P5,159,263.80 and P6,673,381.01, respectively, totaling to P11,832,644.81, and citing as legal bases, Sections 106(A)(2)(a)(1), 110(B) and 112 of the National Internal Revenue Code (NIRC) of 1997.

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On March 6, 2001, petitioner filed the Petition for Review before the Court in Division due to respondent's inaction on its claim but for a higher amount of P12,017,138.47.

On June 2, 2006, the Court in Division rendered a decision denying petitioner's claim for refund or issuance of tax credit certificate representing unutilized input VAT attributable to its export sales for the period April 1, 1999 to March 31, 2000 on the ground that petitioner's reported export sales cannot qualify for VAT zero-rating for failure to comply with the invoicing requirements as provided in Section 113 and 237 of the NIRC of 1997 and Section 4.108-1 of Revenue Regulation No. 7-95. In particular, the subject VAT invoices or receipts of petitioner failed to show the word "zero-rated" imprinted on its face covering petitioner's alleged zero-rated sales. Consequently, the claimed input VAT attributable thereto cannot be granted.

A Dissenting Opinion was rendered by the Honorable Presiding Justice Ernesto D. Acosta, Chairperson of the Court in Division, stating his position that:

> "x x x petitioner has satisfied the foregoing requisites[2] and established its right to the tax refund through duly submitted material and documentary exhibits. The documents formally offered as evidence by the petitioner, particularly, the export sales invoices, delivery receipts, Bills of Lading, Schedule of Summary of Export Sales, and bank certifications of its inward remittances xxx sufficiently prove that the petitioner's export sales were actually made. The substantive and main requirement of the Tax Code, which is the actual sale and shipment of goods to be considered as zero-rated sales, was satisfactorily complied with and effectively proven before this Court (in Division) by the petitioner."[3]

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[2] Referring to the requisites provided under Section 112(A) of the NIRC of 1997 to be entitled to the refund/tax credit of unapplied or unutilized input VAT.
[3] Dissenting Opinion, CTA Case No. 6245; Docket, pp.44-45.

On June 28, 2006, petitioner filed its Motion for Reconsideration seeking reconsideration of the aforesaid Decision. Subsequently, the Court in Division denied the said motion for lack of merit in its Resolution dated November 16, 2006.[4]

Hence, this recourse before the Court *En Banc* assailing the Decision and Resolution of the Court in Division promulgated on June 2, 2006 and November 16, 2006, respectively, raising the following grounds in support thereof:

> "5.1. THE HONORABLE FIRST DIVISION OF THE COURT OF TAX APPEALS ERRED WHEN IT RULED THAT PETITIONER'S REPORTED EXPORT SALES CANNOT QUALIFY FOR VAT ZERO-RATING ON THE SOLE GROUND THAT THE WORD 'ZERO-RATED' WAS NOT IMPRINTED ON ITS VAT SALES INVOICES;
>
> 5.2. THE HONORABLE FIRST DIVISION OF THE COURT OF TAX APPEALS ERRED WHEN IT DENIED PETITIONER'S CLAIM FOR REFUND."

Moreover, petitioner prays that the assailed Decision and Resolution be reversed and set aside, and that a new judgment be rendered ordering respondent to refund or, in the alternative, issue a tax credit certificate in favor of petitioner in the total amount of P12,017,138.47 representing unutilized input VAT attributable to its zero-rated sales for the period covering April 1, 1999 to March 31, 2000.

Accordingly, for failure of both parties to file their memoranda within the period prescribed by this Court, the case was deemed submitted for decision on May 17, 2007.

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[4] Docket, pp. 59-62.

THE ISSUES

Based on the grounds relied upon in the instant petition, petitioner raised the following issues for the Court *En Banc*'s consideration:

A. Whether Section 4.108-1 of Revenue Regulations No. 7-95 merely interprets Section 113 and 237 of the NIRC of 1997 or it went beyond the terms of the law it seeks to implement in requiring the petitioner to imprint the words "zero-rated" in its sales invoices or official receipts; and

B. Whether or not the petitioner is entitled to refund or tax credit of its input VAT of P12,017,138.47.

THE COURT EN BANC'S RULING

The petition is bereft of merit.

At the outset, the Court in Division denied petitioner's instant claim for the reason that the word "zero-rated" was not imprinted on petitioner's sales invoices; hence, its reported export sales for the period April 1, 1999 to March 31, 2000 in the amount of P842,225,646.75 cannot qualify for VAT zero-rating. This prompted the Court in Division to rule that the claimed input VAT allegedly attributable thereto in the amount of P12,017,138.47 cannot be granted.

Petitioner submits that Section 4.108-1 of Revenue Regulations (RR) No. 7-95 is merely an interpretation of Sections 113 and 237 of the NIRC of 1997 and thus, it should not amend nor go beyond the tenor of the law it seeks to implement. It further asserts that nowhere in the aforesaid provisions did it mention of that imprinting requirement of the word "zero-rated" on the invoices or receipts issued by the petitioner. This additional requirement was merely inserted in Section 4.108-1 of RR No. 7-95.

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Lastly, it emphasizes that it is a settled rule in administrative law that rules and regulations cannot amend, alter, modify, supplant, enlarge, or limit the terms of legislative enactments. And since there is no dispute that there is a discrepancy between the basic law and the regulation, the basic law should prevail because the latter cannot go beyond the terms and provisions of the basic law, which is the NIRC of 1997.

Applying these arguments in the case before Us, this Court disagrees.

Pertinent herein is Section 112(B) of the NIRC of 1997 which reads, as follows:

> "**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 Plipinas* (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

Based on the foregoing, the requisites for refund/tax credit of unutilized input VAT on purchases of goods and services attributable to zero-rated sales or effectively zero-rated sales are as follows:

1. that there must be zero-rated of effectively zero-rated sales;
2. that input taxes were incurred or paid;

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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 during and in the succeeding quarters; and
5. that the claim for refund was filed within the two-year prescriptive period.

It is therefore clear that zero-rated or effectively zero-rated sales must be proven first before the claim for refund/tax credit will be granted. In tax refund cases, the burden of proof is on the taxpayer. This is in line with the well-settled principle that tax refunds are in the nature of tax exemptions and as such must be strictly construed against the claimant.[5] Thus, petitioner bears the burden of proving the zero-rated or effectively zero-rated transactions as the first requisite in the grant of a refund or issuance of a tax credit certificate of unutilized input VAT on purchases of goods and services attributable to zero-rated sales or effectively zero-rated sales.

To be more specific, this Court will now focus its discussion on the validity of the requirement of imprinting of the word "zero-rated" on the VAT official receipts or invoices representing zero-rated sales or effectively zero-rated sales, the very focal issue presented before Us.

Time and again, We have consistently ruled that the invoicing requirement of the imprinting of "zero-rated" on the VAT official receipts or invoices is mandatory,[6] pursuant to Section 4.108-1 of RR 7-95. In the

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[5] Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation and The Court of Tax Appeals, 204 SCRA 377 (1991); Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc. and Court of Appeals, 309 SCRA 87 (1999).

[6] See Mirant (Navotas II) Corporation (Formerly: Southern Energy Navotas II Power, Inc) vs. Commissioner of Internal Revenue, CTA EB No. 226, September 11, 2007; Southern Philippines Power Corporation vs. Commissioner of Internal Revenue, CTA EB No. 214, July 31, 2007; Panasonic Communications Imaging Corporation of the Philippines, (formerly, MATSUSHITA BUSINESS MACHINE CORPORATION OF THE PHILIPPINES) vs. Commissioner of Internal Revenue, CTA EB No. 239, May 23, 2007; Kepco Philippines Corporation vs. Commissioner of Internal Revenue,

absence of the wordings "zero-rated" imprinted on these VAT invoices and/or receipts, the claim for input VAT will be disallowed.[7]

In connection with the invoicing requirements, Sections 113 of the NIRC of 1997 and Section 4.108-1 of Revenue Regulations (RR) No. 7-95[8] read, as follows:

> "***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 obligated to pay to the seller with the indication that such amount includes the value-added tax." *(Underscoring and emphasis Ours)*

Particularly, Section 4-108-1 of RR 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**:

CTA EB No. 186, May 17, 2007; Kepco Philippines Corporation vs. Commissioner of Internal Revenue, CTA EB No. 174, May 9, 2007; Applied Food Ingredients Co., Inc. vs. Commissioner of Internal Revenue, CTA EB No. 220, May 7, 2007; Intel Technology Philippines Inc. vs. Commissioner of Internal Revenue, CTA EB No. 181, March 27, 2007; and J.R.A. Philippines Inc. vs. Commissioner of Internal Revenue, CTA EB No. 128, January 15, 2007.

[7] Mirant (Navotas II) Corporation (Formerly: Southern Energy Navotas II Power, Inc) vs. Commissioner of Internal Revenue, CTA EB No. 226, September 11, 2007; Kepco Philippines Corporation vs. Commissioner of Internal Revenue, CTA EB No. 107, June 29, 2007; and Applied Food Ingredients Co., Inc. vs. Commissioner of Internal Revenue, CTA EB No. 220, May 7, 2007.

[8] The Consolidated Value-Added Tax Regulations.

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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. **<u>the word 'zero-rated' imprinted on the invoice covering zero-rated sales</u>**; and
6. the invoice value or consideration. xxx" *(Underscoring and emphasis Ours)*

Applying the afore-cited provisions in the case at bench, it is evident that before a refund/tax credit of unutilized input VAT on purchases of goods and services attributable to zero-rated sales or effectively zero-rated sales may be allowed, it is necessary for the claimant to strictly comply with above-enumerated invoicing requirements. Specifically, the issuance of VAT invoice/official receipt with the word "zero-rated" imprinted thereon is required for VAT transactions.

It should be noted that Section 113 of the NIRC of 1997, as well as the corresponding implementing RR No. 7-95, particularly Section 4.108-1 thereof, pertaining to VAT invoicing and accounting requirements, are mandatory in nature as the word "shall" was 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.[9] Section 113 is clear in requiring that for every sale, a VAT invoice or official receipt should be issued. Although Section 4.102-2 does not specifically state the invoicing requirements, this does not mean that petitioner is exempted from it since Section 113 of the

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[9] Dizon vs. Encarnacion, 9 SCRA 714 (1963).

NIRC of 1997 made no distinction as to whether the sale is for zero-rated, exempt or not.

It is a well-known maxim in statutory construction that where the law does not distinguish, we should not distinguish.[10] Furthermore, We believe that in claims for refund, the law mandates the court to observe a higher standard of caution in appreciating and evaluating evidence. If indeed a claim for refund is wanting in pertinent and supporting evidence, then the granting thereof could prove to be improper, if not difficult.[11]

In the case of ***Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue***,[12] the Highest Court discussed the invoicing requirements for VAT-registered persons. It ruled that a VAT invoice can be used only for the sale of goods or services that are subject to VAT. This means that the issuance of VAT invoices or official receipts are mandatory for sales that are subject to VAT either at 10% or 0% (zero-rated sales). It likewise expressed, in the same case, 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".

Clearly, this is a recognition that there are other sources of VAT invoicing and accounting requirements aside from Section 108 of the Tax Code (now Sec. 113 of the NIRC of 1997), such as implementing rules and regulations issued by the administrative agencies of the government that require strict compliance, i.e. Revenue Regulations.

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[10] Robles vs. Zambales Chromite Mining Company, 104 Phil. 688 (1958).
[11] ECW Joint Venture, Inc., vs. Commissioner of Internal Revenue, CTA EB No. 14, March 22, 2006.
[12] 318 SCRA 386 (1999).

As a matter of fact, in the most recent ruling of the Supreme Court in ***Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 141104 & 148763, June 8, 2007***, it has clearly recognized that applications for refund/credit of input VAT with the BIR must comply with the appropriate revenue regulations. The Supreme Court, in citing the case of ***Commissioner of Internal Revenue vs. Manila Mining Corporation***,[13] emphasized the importance of complying with the substantiation requirements for claiming refund/credit of input VAT on zero-rated sales in accordance with the appropriate revenue regulations, in this manner:

> "Although the foregoing decision (Commissioner of Internal Revenue vs. Manila Mining Corporation) focused only on the proof required for the applicant for refund/credit to establish the input VAT payments it had made on its *purchases* from suppliers, **Revenue Regulations No. 3-88 also required it to present evidence proving actual zero-rated VAT sales to qualified buyers, such as (1) photocopy of the approved application for zero-rate if filing for the first time; (2) sales invoice or receipt showing the name of the person or entity to whom the goods or services were delivered, date of delivery, amount of consideration, and description of goods or services delivered; and (3) the evidence of actual receipt of goods or services.**" *(Emphasis Ours)*

Hence, by analogy, in order for petitioner to be entitled to its claim for refund/issuance of tax credit certificate representing unutilized input VAT attributable to its export sales for the period April 1, 1999 to March 31, 2000, it is therefore necessary to first comply with the substantiation requirements set forth under the appropriate revenue regulation, i.e. RR No. 7-95.

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[13] 468 SCRA 571 (2005).

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Pursuant to settled jurisprudence, petitioner in claiming for tax refund has the burden of proof to establish the factual basis of its claim. Having failed to discharge the burden in this regard, petitioner's claim must therefore fall.

To further stress this point, We highlight the rationale of strict compliance with the invoicing requirements, as discussed in the case of ***American Express International, Inc., Philippine Branch vs. Commissioner of Internal Revenue***,[14] quoted hereunder as follows:

> "The law is very clear. Section 113 provides that 'a VAT registered person shall, for every sale, issue a duly registered VAT invoice or receipt for every sale transaction'. **Such VAT invoice or receipt must show** the taxpayer identification number, followed by the word 'VAT', the BIR Authority imprint or BIR permit marker and **the word 'zero-rated' imprinted on the invoice or receipt covering a zero-rated sale**. Considering so, the sales of services referred to under Section 108 (B) (2) of the NIRC of 1997, as amended, as being subject to zero percent (0%) rate are those sales covered by duly registered VAT official receipts.
>
> **The VAT registered person must substantiate the input VAT paid by purchase invoices or official receipts. An official receipt issued by the taxpayer is an essential requirement to prove the existence of sale and receipt of income and thereafter duly recorded in the accounting records**.
>
> The aforequoted 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 (Pioneer Texturing Corp. vs. NLRC, 280 SCRA 806). Indeed, it is the duty of a seller-taxpayer to comply with the invoicing requirements laid down in the said NIRC provisions and Revenue Regulations." *(Emphasis Ours)*

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[14] CTA EB No. 103, March 3, 2006.

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Moreover, in ***Kepco Philippines Corp. vs. Commissioner of Internal Revenue***,[15] this Court elucidated:

> "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]" *(Emphasis Ours).*

In view of the foregoing discussion, this Court concludes that there are three reasons why the word "zero-rated" is mandated by law to be imprinted on the VAT invoice/ official receipt, to wit: (1) for the buyer or purchaser not to claim any input VAT from such purchase; (2) the purpose of segregating/distinguishing those sales subject to 0% VAT (zero-rated) from those sales that are subject to 10% VAT and from exempt sales; and (3) to

[15] CTA EB No. 107, June 29, 2007.

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enable the BIR to properly implement and enforce the other provisions of the NIRC of 1997 on VAT, namely: (a) Zero-rated sales [Sec. 106 (A) 2 and Sec. 108 (B)]; (b) Exempt transactions [Sec. 109] in relation to Sec. 112 (A); (c) Tax Credits [Sec. 110]; and (d) Refunds or tax credits of input tax [Sec. 112].

Thus, We rule that strict compliance with Section 4.108-1 of RR No. 7-95 requiring the imprinting of the word "zero-rated" on sales invoices or official receipts is mandatory. It must be kept in mind that prejudice will result to the government when the word "zero-rated" is not imprinted on said invoices/official receipts because the smooth implementation of the VAT system will be interrupted.

Clearly, the Court in Division correctly denied petitioner's instant claim for refund when it explained that:

> "x x x the export sales referred to under Section 106(A)(2)(1)(a) of the NIRC of 1997 as subject to zero percent (0%) VAT are those covered by duly registered VAT invoices bearing all the required information. **Since the word 'zero-rated' was not imprinted on its sales invoices, petitioner's reported export sales for the period April 1, 1999 to March 31, 2000 in the amount of P842,225,646.75 cannot qualify for VAT zero-rating. Consequently, the claimed input VAT (allegedly) attributable thereto in the amount of P12,017,138.47 cannot be granted**. xxx"[16] *(Emphasis Ours)*

To reiterate, the rule in this jurisdiction is that "[t]ax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person claiming the exemption".[17]

[16] Decision, CTA Case No. 6245; Docket, p.39.
[17] Commissioner of Internal Revenue vs. Procter and Gamble Philippine Manufacturing Corporation, supra., and Commissioner of Internal Revenue vs. S. C. Johnson & Son, Inc., supra.

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In the light of the foregoing discussions, the Court *En Banc* finds no reversible error committed by the Court in Division that would merit a reversal of its assailed Decision and Resolution dated June 2, 2006 and November 16, 2006, respectively.

WHEREFORE, premises considered, the instant petition is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(*With Dissenting Opinion)*
ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>EN BANC</u>

PANASONIC COMMUNICATIONS IMAGING CORPORATION OF THE PHILIPPINES (formerly MATSUSHITA BUSINESS MACHINE CORPORATION OF THE PHILIPPINES),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 233
(CTA CASE No. 6245)

Present:

ACOSTA, *Chairman*,
CASTAÑEDA,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ, *JJ*.

Promulgated:
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Dissenting Opinion

The majority upheld the First Division's denial of the instant claim for petitioner's failure to imprint the word "zero-rated" on the VAT invoices it presented in support of its claim, supposedly in violation of the requirement laid down by Revenue Regulations No. 7-95, otherwise known as the *Consolidated Value-Added Tax Regulations*.

I dissent to reiterate my stand that contrary to the conclusion above, pertinent provisions of the 1997 National Internal Revenue Code (NIRC) do not require imprinting of the word "zero-rated." Likewise, the absence of the word "zero-rated" in an invoice does not affect the admissibility and competency of the same as evidence in support of a refund claim, and the presence of other equally valid pieces of

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evidence presented and formally offered are sufficient to justify the grant of the VAT refund claim attributable to its zero-rated transactions.

Section 113 and 237 of the 1997 NIRC, partly reads:

> "**Section 113. Invoicing and Accounting Requirements for VAT registered persons – (A) Invoicing Requirements** – A VAT-registered person, shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
>
> 1. A statement that the seller is a VAT-registered person followed by his taxpayer's identification number (TIN); and
>
> 2. The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.
>
> xxx xxx xxx
>
> "**Section 237. Issuance of Receipts or Sales of Commercial Invoices.** – All persons subject to an internal revenue tax shall, for each sale, or transfer of merchandise or for services rendered valued at Twenty five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service; Provided however, That in case of sales, receipts or transfers in the amount of One Hundred Pesos (P100.00) or more, regardless of amount where the sale or transfer is made by a person liable to value added tax to another person also liable to value added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations, or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser; customer or client: Provided further, That where the purchaser is a VAT registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer's Identification Number (TIN) of the purchaser. xxx".

Based on the foregoing, the following are the information required 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.

In corroboration, **Section 112 (A)** of the 1997 NIRC states:

"(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."

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A perusal of the above-mentioned laws would clearly reveal that the imprinting of the word "zero-rated" on invoice and receipts is not required.

The "requirement" of imprinting the word "zero-rated" on the VAT invoice, can be found in **Section 4.108-1 of Revenue Regulations No. 7-95.**[1] However, the said provision is merely a regulation created for the sole and limited purpose of implementing an otherwise very exact law. In this regard, long-established is the legal principle that administrative rules and regulations cannot expand the letter and spirit of the law they seek to enforce. And in case of conflict between the basic law and a rule or regulation issued to implement said law, the law prevails because said rule or regulation cannot go beyond the terms and provisions of the basic law.[2]

In the case of **Commissioner of Internal Revenue vs. Seagate Technology (Philippines),**[3] the Supreme Court clearly pointed out the need to focus only on the legally mandated requirements for claims for VAT refund 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.*

Also, in the recent case of ***Intel Technology Philippines, Inc., vs. Commissioner of Internal Revenue,***[4] the Supreme Court held that only the following items are required to be indicated in the receipts or invoices: (1) a statement that the seller is a VAT-registered entity followed by its TIN-V; (2) the total amount which the purchaser pays or is obligated to pay to the seller with the indication that such

[1] *The Implementing Rules and Regulations of the VAT law*
[2] *People vs. Lim, 108 Phil. 1091.*
[3] *G.R. No. 153866, February 11, 2005*
[4] *G.R. No. 166732, April 27, 2007.*

amount includes the value-added tax; (3) date of the transaction; (4) quantity of merchandise; (5) unit cost; (6) description of merchandise or nature of service; (7) the name, business style, if any, and address of the purchaser, customer or client in the case of sales, receipt or transfers in the amount of ₱100.00 or more, or regardless of the amount, where the sale or transfer is made by a person liable to VAT to another person also liable to VAT, or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees; and (8) the TIN of the purchaser where the purchaser is a VAT-registered person.

While the issue in the *Intel* case is the outright invalidation of invoices or official receipts for the non-indication of the BIR authority to print, and the TIN-V, it applies to the present case by analogy. The applicable laws likewise do not provide for the absolute denial of a claim for tax credit/refund for failure to imprint the term "zero-rated" on invoices or official receipts.

Accordingly, 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.

Petitioner has established its right to the right to refund through material and documentary exhibits. The documents it formally offered as evidence, particularly the export documents, such as the export sales invoices, delivery receipts, Bills of

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Lading, Schedule of Summary of Export Sales, and bank certification of its inward remittances *(Exhibits "T" to "T-1648", "LL-1" to "LL-27", "P" to "P-26", "F"F to "F-1", "G" to "G-1", and "U" to "U-3")*, clearly prove that petitioner's products were actually sold and shipped abroad, and in consideration thereof, it received foreign currency payments, inwardly remitted in accordance with Bangko Sentral rules and regulations.

This was in fact confirmed by the First Division, when it stated in its Decision that petitioner's export sales may fall within the export sales transactions subject to zero percent (0%) VAT referred to under Section 106(A)(2)(a)(1) of the 1997 NIRC.

Clearly, the substantive and main requirement of the 1997 NIRC requiring the sale and actual shipment of goods, in order to be considered as zero-rated sales was satisfactorily complied with and sufficiently proven before this Court. So even assuming that export invoices have no evidentiary value, as far as proving the fact of exportation of goods, the other export documents presented are likewise significant and appropriate instruments to prove the fact of the transaction.

It is noteworthy too that the First Division in its Resolution disposing petitioner's Motion for Reconsideration admitted that the dangers sought to be avoided by the requirement of imprinting the word "zero-rated" is not present in the case. Considering so, then there is no further reason why petitioner's claim should be denied on that ground alone.

Finally, the majority failed consider that tax cases are civil in nature. And under **Section 1, Rule 133, Rules of Court**, in civil cases, the quantum of evidence required to sustain the proponent of an issue is by mere preponderance of evidence.

Thus, in ***Municipality of Moncada vs. Cajuigan***[5], it was explained that the phrase "preponderance of evidence" denotes the weight, credit and value of the aggregate on either side. This means that the testimony adduced by one side is more credible and conclusive than that of the other.

Accordingly, I manifest my position that petitioner's denial should not de denied solely on its failure to imprint the word "zero-rated" on its export invoices to support its export sales subject to zero percent(%) VAT.

ERNESTO D. ACOSTA
Presiding Justice

[5] *21 Phil. 184*

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