REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AMERICAN EXPRESS INTERNATIONAL, INC. - PHILIPPINE BRANCH,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB NO. 197
(C.T.A. Case No. 6468)

Present:

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

Promulgated:
MAY 2 3 2007

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D E C I S I O N

BAUTISTA, J.:

The Case

Petitioner, in this Petition for Review to the Court of Tax Appeals *En Banc*, seeks a review and rectification of the Resolution dated July 6, 2006 issued by the

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Second Division of the Court ("Court in Division") in C.T.A. Case No. 6468, which denied petitioner's Motion for Reconsideration and reiterated the Court in Division's Decision dated February 9, 2006.

In the said Decision, the Court in Division denied petitioner's claim for refund of its unapplied input value-added taxes ("VAT") paid on domestic purchases of taxable goods and services amounting to P4,369,721.35, which are attributable to petitioner's zero-rated revenues covering the period from January 1, 2000 to December 31, 2000.

Antecedent Facts

The material antecedents are narrated by the Court in Division in this wise:

> "Petitioner is a duly registered Philippine Branch of American Express International, Inc. (hereafter "AMEX"), a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, United States of America. It is a servicing unit of American Express International, Inc. — Hong Kong Branch (hereafter "AMEX-Hong Kong"), engaged primarily in facilitating the collection of AMEX-Hong Kong's receivables from AMEX cardholders residing or situated in the Philippines, as well as the payment by AMEX-Hong Kong to American Express accredited service establishments and merchants in the Philippines.
>
> Petitioner is a registered VAT entity since March 1988 under *VAT Registration Certificate No. 088445*, pursuant to *Section 107 of the National Internal Revenue Code* (hereafter "NIRC") (*Exhibit "A"*).
>
> On January 27, 1989, petitioner made a request in writing to the Bureau of Internal Revenue (hereafter "BIR") for qualification as a zero-rated VAT enterprise effective January 1, 1988, to which *VAT RULING No. 080-89 dated April 3, 1989* was issued, declaring that:
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>> *"In reply, please be informed that, as a VAT registered entity whose service is paid for in acceptable foreign currency which is remitted inwardly to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines, your service income is automatically zero rated effective January 1, 1988. [Section 102(a)(2) of the Tax Code, as amended]. For this, there is no need to file an application for zero-rate" (Exhibit B; par. g, Stipulated Facts)."*
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> For the period covering January 1, 2000 to December 31, 2000, petitioner allegedly generated and recorded zero-rated revenues from its above described services amounting to P79,532,326.27. Said amount was paid to petitioner in acceptable foreign currency inwardly remitted to the

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Philippines and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (hereafter "BSP"). As such, petitioner claims that said revenues qualified as zero-rated in accordance with *Section 108 (B) (2) of the NIRC of 1997* and *VAT Ruling No. 080-89*.

For the same period, petitioner likewise allegedly paid input VAT on its domestic purchases of taxable goods and services amounting to P4,369,864.20, which are all directly attributable to its zero-rated revenues of P79,532,362.27.

Petitioner filed its quarterly VAT returns for each of the four (4) quarters of the year 2000, but which returns were subsequently amended reflecting the foregoing input VAT payments and zero-rated revenues (*Exhibits "C", "E", "F" and "H"*).

Since it was allegedly unable to utilize the input VAT payments of P4,369,864.20 and the same was not carried over to the succeeding first quarter of 2001, petitioner, on April 25, 2002, filed with the BIR a claim for refund of its 2000 input VAT payments.

Due to the inaction of the Commissioner of Internal Revenue (hereafter respondent) on its claim, on April 25, 2002, petitioner filed the present Petition For Review before this Court.

In their 'Joint Stipulation of Facts and Issues', the parties agreed on the following facts:

'(a) The existence, legal capacities and circumstances of the parties.

(b) Petitioner's registration as a Value Added Tax ("VAT") entity pursuant to then Section 107 of the National Internal Revenue Code of 1997, as amended, since March 1988 and respondent's issuance to the petitioner of the corresponding VAT Registration Certificate No. 088445 (with Registration No. 32A-3-004868). And further, that Annex A of the petition is a faithful reproduction of petitioner's original VAT Registration Certificate.

(c) The petitioner duly filed with the BIR its VAT Return covering the period from January 1, 2000 to December 31, 2000, and that Annexes C to G of the petition are faithful reproductions of the said VAT Returns.

(d) That on April 25, 2002, petitioner filed a claim for refund of the VAT input taxes subject of this case with the Revenue District Office No. 47 (East-Makati) in the amount of P4,369,864.20 for the period covering January 1, 2000 to December 31, 2000, and further, that Annex 1 of the petition (the request for refund, together with its supporting documents) is a faithful reproduction of petitioner's April 25, 2002 claim for refund.

(e) Petitioner's aforementioned claim for refund to date remains unresolved and is still under investigation by the Bureau of Internal Revenue.

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(f) On April 13, 1989, the BIR issued VAT Ruling No. 080-89 addressed to petitioner stating, among other things, that:

> *"In reply, please be informed that, as a VAT registered entity whose service is paid for in acceptable foreign currency which is remitted inwardly to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines, your service income is automatically zero rated effective January 1, 1988, [Section 102 (a) (2) of the Tax Code as amended]. For this, there is no need to file an application for zero-rate."*
>
> And that Annex B of the petition is a faithful reproduction of the aforementioned VAT Ruling.'

In his answer *(sic)*, respondent alleged, by way of special and affirmative defenses, that:

> '4. Petitioner's alleged claim for refund is still subject to administrative investigation/examination;
>
> 5. Nonetheless, despite the documents attached to the petition in support of its claim, petitioner failed to establish the fact that the tax subject of the case at bar is refundable;
>
> 6. Petitioner must show proof that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code;
>
> 7. Lastly, time and again, the Honorable Supreme Court has consistently held that in tax refund, the claimant has the burden of proof to establish the factual basis of his or her claim for tax refund or credit. After all, tax refunds, like exemptions, are construed strictly against the taxpayer. Failure to prove the same is fatal to its claim for tax refund.'

Petitioner presented Ana Maria Baldemeca and Angel Aguilar, Jr., the duly commissioned Independent CPA, as witnesses, and submitted documentary evidence, which evidence was admitted by the Court.

On the other hand, respondent submitted the case for decision without presenting any evidence.

Thereafter, both parties were ordered to file their respective memoranda within thirty (30) days from notice. Petitioner filed its memorandum on August 30, 2005, while respondent filed his memorandum on September 23, 2005. The case was deemed submitted for decision on November 11, 2005."

The Ruling of the Court in Division

On February 9, 2006, the Court in Division rendered its decision denying petitioner's claim for refund of its unapplied input value-added taxes ("VAT") paid on domestic purchases of taxable goods and services amounting to

P4,369,721.35, which are attributable to petitioner's zero-rated revenues covering the period from January 1, 2000 to December 31, 2000.

According to the Court in Division, the documents presented by petitioner only showed that it rendered services to AMEX-Hongkong Branch, and in consideration thereof, it received foreign currency payments that were accounted for in accordance with the rules and regulations of the BSP. Under Section 108 (B) (2) of the 1997 Tax Code, as amended, such sales of services cannot qualify for zero rating without the corresponding duly registered VAT official receipts. Petitioner failed to present the official receipts it issued to AMEX-Hongkong Branch establishing zero-rated sales. Without the VAT receipts evidencing its reported zero-rated revenues, the input VAT payments, which are allegedly directly attributable thereto, cannot be refunded. Thus, if the taxpayer's claim for refund/issuance of tax credit certificate is based on the existence of zero-rated sales, but such taxpayer fails to comply with the invoicing requirements in the issuance of sales invoices, such claim shall be denied, pursuant to Revenue Memorandum Circular ("RMC") No. 42-2003.[1]

The dispositive portion of the said Decision reads as follows:

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

Aggrieved, petitioner moved for a reconsideration of the aforementioned Decision which was denied by the Court in Division for lack of merit in its Resolution dated July 6, 2006.

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[1]entitled "Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters" dated July 15, 2003.

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Hence, the present recourse.

The Issue

The sole issue submitted for resolution in this petition is whether or not the Court in Division erred in dismissing the claim for refund on the ground that petitioner failed to establish its zero-rated sales because it did not present in evidence its sales receipts (as opposed to purchase receipts) to AMEX-Hongkong Branch.

Petitioner's Arguments

Petitioner contends that the applicable provision of law relating to the documentary requirements to substantiate a claim for refund is Section 112 (D) of the Tax Code. This is implemented by Revenue Regulations (RR) No. 3-88, or the RR amending Sections 16 and 23 of RR No. 5-87 which does not specifically require the submission of sales invoices or official receipts pertaining to zero-rated sales of services. RR No. 3-88 only requires the submission of "document evidencing actual payments" for zero-rated sales of services.

Petitioner also avers that the authorities cited in the assailed Decision of the Court in Division are either not applicable to the present case or even support petitioner's position. Some of the authorities cited require the submission of purchase invoices or receipts – not sales invoices or receipts – supporting the input tax payments which petitioner has done. The other authorities cited on invoicing requirements *per se* do not support the conclusion that sales invoices or receipts should be presented in a claim for refund.

Finally, petitioner posits that in *American Express International, Inc. – Philippine Branch vs. CIR, C.T.A. Case No. 5813 dated January 2, 2001* and affirmed by the Supreme Court in *CIR vs. American Express International, Inc. – Philippine Branch*, *G.R. No. 152609 dated June 29, 2005*, the same set of evidence, *mutatis mutandis*, involving the same set of issues and the same parties has resulted in the grant of claim for refund. No sales invoices or receipts by AMEX were submitted by AMEX in that case as it is now in the present case. The principle of *stare decisis* mandates that the claim for refund here should likewise be granted.

Respondent's Counter-Arguments

Respondent, in his Comment, opines that contrary to petitioner's contention, RR No. 7-95, and not RR No. 3-88, is the implementing regulation of Section 112 of the Tax Code. Hence, the invoicing requirement provided therein is applicable to the instant case, in relation to Sections 113 and 237 of the 1997 Tax Code.

Respondent also asserts that RMC No. 42-2003 is a clarificatory revenue issuance and not a revocation, modification or reversal of any ruling. The said RMC is based on the 1997 Tax Code and its efficacy is founded therefrom.

Lastly, respondent argues that the invoicing requirements in Section 4.108-1 of RR No. 7-95 are applicable to all VAT-registered persons. It does not distinguish whether the sales are export, effectively zero-rated or zero-rated.

The Ruling of the Court En Banc

The petition is bereft of merit.

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As correctly ruled by the Court in Division,[2] petitioner qualifies as a zero-rated entity under Section 108 (B) (2) of the 1997 Tax Code and VAT Ruling No. 080-89. As such, petitioner is not liable to pay output tax on its sales of services and can claim a tax credit or refund of the input VAT it paid on purchases of goods, properties or services which are directly attributable to such zero-rated sales. This is in accordance with Section 4.102-2 of RR No. 7-95 in relation to Sections 110(B) and 112(A) of the 1997 Tax Code, *to wit*:

> "**Section 4.102-2.** ***Zero-Rating.* — (a) *In general.*** — A zero-rated sale by a VAT registered person, which is a taxable transaction for VAT purposes, shall not result in any output tax. However, the input tax on his purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these regulations."
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> xxx xxx xxx
>
> "**Section 110.** ***Tax Credits*.** —
>
> **(B)** ***Excess Output or Input Tax*.** — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.
>
> xxx xxx xxx
>
> "**Section 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

[2] Pages 11 to 12, Decision, C.T.A. Case No. 6468, February 9, 2006.

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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." *(Emphasis supplied)*

Thus, the issue at hand is to determine whether or not petitioner is entitled to a refund of its excess input taxes amounting to P4,369,721.35 as declared by petitioner in its 2000 amended quarterly VAT returns, which are directly attributable to its zero-rated sales.

Based on Section 112 (A) of the 1997 Tax Code, which was quoted earlier, the following requisites must be met in order to be entitled to a refund or tax credit of input VAT payments directly attributable to zero-rated sales or effectively zero-rated sales:

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 or effectively zero-rated sales;
4) that the input VAT payments were not applied against any output VAT liability; and
5) the claim for refund/tax credit was filed within the two year prescriptive period.

To establish zero-rated sales, the corresponding duly registered official receipts must be presented pursuant to Sections 113 and 237 of the 1997 Tax Code *to wit*:

"**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."

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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 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 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, 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.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to internal revenue tax from compliance with the provisions of this Section." *(Emphasis supplied)*

It is clear from the foregoing 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.

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Thus, the sales of services referred to under Section 108 (B) (2) of the 1997 Tax Code as being subject to zero percent (0%) rate are those sales covered by duly registered VAT official receipts.

Moreover, as correctly pointed out by Respondent in his Comment, RR No. 7-95 *("The Consolidated Value-Added Tax Regulations")*, and not RR No. 3-88, is the implementing regulation of Section 112 of the Tax Code. Hence, the invoicing requirement provided therein is applicable to the instant case, in relation to Sections 113 and 237 of the 1997 Tax Code. In particular, 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 or services by all VAT registered persons, *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 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 invoices or receipts and this shall be considered as 'VAT Invoice'. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax.
>
> 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.

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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." *(Emphasis supplied)*

It bears emphasis that the requirements under Section 4.108-1 of RR No. 7-95 are mandatory as the word "shall" is used. The use of the word "shall" connotes a mandatory order. Its use in a statute denotes an imperative obligation and is inconsistent with the idea of discretion.[3] Indubitably, it is the duty of a seller-taxpayer to be compliant with the invoicing requirements laid down in the Tax Code and related Revenue Regulations.

The Honorable Court of Appeals has also ruled that the failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax of the taxpayer-claimant as provided under RMC No. 42-2003.[4] In this regard, the Court *En Banc* agrees with respondent's contention that RMC No. 42-2003 is a clarificatory revenue issuance. It has been held by the Supreme Court that an administrative rule which is interpretative of a pre-existing statute and not declarative of certain rights with obligations thereunder is given retroactive effect as of the date of the effectivity of the statute.[5] RMC No. 42-2003 was promulgated to implement certain provisions of the 1997 Tax Code, which was already in effect at the time of the sale of the subject services.

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[3] THE PROVINCE OF BATANGAS, represented by its Governor, HERMILANDO I. MANDANAS v. HON. ALBERTO G. ROMULO, Executive Secretary and Chairman of the Oversight Committee on Devolution; HON. EMILIA BONCODIN, Secretary, Department of Budget and Management; HON. JOSE D. LINA, JR., Secretary, Department of Interior and Local Government, G.R. No. 152774, May 27, 2004, 429 SCRA 736.

[4] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, CA-G.R. SP No. 79327, August 12, 2004.

[5] Adamson Ozanam Educational Institution, Inc. also known as Adamson University v. Adamson University Faculty and Employees Association and Conrado Maglaya, Commissioner of the National Labor Relations Commission, G.R. No. 86819, November 9, 1989, 179 SCRA 279.

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More importantly, in the case of *American Express International, Inc., Philippine Branch v. Commissioner of Internal Revenue*, the Court *En Banc* ruled that the non-presentation of VAT official receipts to establish zero-rated sales is fatal to a taxpayer's claim for refund of its unapplied input VAT payment which are directly attributable to such zero-rated sales.[6] In the said case, the taxpayer failed to present VAT official receipts to support its alleged zero-rated sales of services.

In the same vein, the Court in Division found in the case at bar that petitioner failed to present the VAT official receipts it issued to AMEX Hongkong branch, *viz*:

> "**To prove its reported 2000 zero-rated revenues from sales of services, petitioner presented photocopies of the following:**
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> 1) Telex advices for the months of January 2000 to December 2000 (*Exhibits "X-1" to "X-51"*);
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> 2) Statements of Demand Deposit Accounts for the months of January 2000 to December 2000 (*Exhibits "X-52" to "X-103"*);
>
> 3) Certificates of Inward Remittance issued by the Bank of the Philippine Islands for the following periods: February 2000 to March 2000; June 2000 to December 2000; June 2000 to November 2000; and the whole year of January 2000 to December 2000 (*Exhibits "FF", "GG", "HH" and "II"*).
>
> **This Court finds the above documents insufficient.** The documents presented by the petitioner only showed that it rendered services to AMEX-Hong Kong Branch, and in consideration thereof, it received foreign currency payments that were accounted for in accordance with the rules and regulations of the BSP. **Under *Section 108 (B) (2) of the NIRC of 1997, as amended*, such sales of services cannot qualify for zero rating without the corresponding duly registered official receipts....**
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> **xxx xxx xxx**
>
> **In this case, petitioner was unsuccessful to substantiate its claim for input VAT refund covering the period from January 2000 to December 2000 having failed to present the official receipts it issued to AMEX Hong Kong Branch establishing zero-rated sales or that petitioner's sales are all zero-rated.** Without the VAT invoices and official receipts evidencing its

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[6] C.T.A. E.B. No. 103 (C.T.A. Case No. 6294), March 3, 2006.

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reported zero-rated revenues, the input VAT payments, which are allegedly directly attributable thereto, cannot be refunded."[7] *(Emphasis supplied)*

The Court *En Banc* finds no cogent reason to disturb the afore-quoted findings made by the Court in Division whose findings of facts are generally entitled to the highest respect and are conclusive upon the Court *En Banc*, absent any showing of gross error or abuse on its part.

Well-entrenched is the principle that tax refunds, like tax exemptions, are construed strictly against the taxpayer and liberally in favor of the taxing authority.[8] In the case at bar, petitioner has not met its burden of proof in establishing the factual basis for its claim for refund.

WHEREFORE, premises considered, the instant petition is hereby **DISMISSED.** Accordingly, the assailed Decision promulgated on February 2, 2006 and the Resolution dated July 6, 2006 are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

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

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[7] Pages 14 to 20, Decision, C.T.A. Case No. 6468, February 9, 2006.
[8] Far East Bank and Trust Company v. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue, G.R. No. 129130, December 9, 2005, 477 SCRA 49.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
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 above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AMERICAN EXPRESS INTERNATIONAL, INC. – PHILIPPINE BRANCH, *Petitioner,*	**C.T.A. EB No. 197** (C.T.A. CASE NO. 6468)
	Present:
-versus-	**Acosta,** ***P.J.*** **Castañeda, Jr., Bautista, Uy, Casanova, and Palanca-Enriquez,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	***Promulgated:*** MAY 2 3 2007

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CONCURRING AND DISSENTING OPINION

I agree with the majority that petitioner's claim should be denied for its failure to submit the documents required by law to substantiate such claim. As correctly found by the Second Division and upheld by the majority, petitioner's failure to present the official receipts it issued to American Express-Hongkong Branch to establish its zero-rated sales is fatal to its claim. However, it is with due respect that I manifest my dissent anent the portion of the Decision that found the necessity of imprinting the word "zero-rated" as well as the BIR authority to print or BIR Permit marker on duly registered Value Added Tax (VAT) official receipts/invoices.

Contrary to the view of the majority the relevant provisions of the 1997 Tax Code, namely, **Sections 113** and **237**, do not require such information. The lone provision where the "requirement" of imprinting the term "zero-rated" is found in **Section 4.108-1 of Revenue Regulations No. 7-95** (*The Implementing Rules and Regulations of the VAT law*). However, the said provision is merely a regulation created for the sole and limited purpose of implementing the VAT law and cannot expand the letter and spirit thereof.

It is also noteworthy that this is a case seeking for the refund or issuance of tax credit certificate of petitioner's unutilized taxes for the year **2000** and it was only on November 1, 2005 with the effectivity of Republic Act No. 9337[1] that the requirement of writing or printing the term "zero-rated sale" was introduced, following the amendment of Section 113[2] 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.[3]

Accordingly, although I agree that the claim should be denied for petitioner's failure to adduce sufficient evidence in support of its claim, I manifest my dissent to the majority opinion insofar as it finds that the imprinting of the term "zero-rated" as well as the BIR authority to print or BIR Permit marker on

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[1] *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.*
[2] *(B)(2)(c) of Section 113*
[3] *BPI Leasing Corporation, vs. The Honorable Court of Appeals, et.al. G.R. No. 127624. November 18, 2003*

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sales invoice/receipt necessary for it to be a valid evidence in claiming for refund of or issuance of tax credit certificate for excess input taxes.

ERNESTO D. ACOSTA
Presiding Justice