Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

MICROSOFT PHILIPPINES, INC.,
Petitioner,

E.B. CASE NO. 258
(CTA Case No. 6681)

- versus -

Present:

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

OCT 24 2007

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DECISION

CASANOVA, J.:

THE CASE

This is an appeal filed by herein petitioner, Microsoft Philippines, Inc. ("MPI"), to the Court of Tax Appeals *En Banc* by way of a verified Petition for Review, under Section 18 of Republic Act (R.A.) No. 1125, as amended by R.A. 9282, praying that the Decision dated August 31, 2006 rendered by the *Second Division* of this Court in CTA Case No. 6681 entitled "*Microsoft Philippines, Inc., vs. Commissioner of Internal Revenue*" as well as the Resolution dated January 8, 2007 of the said Division be reversed and set aside by ordering respondent to refund or to issue a tax credit certificate amounting to PhP6,401,259.88 in favor of MPI.

THE FACTS

The facts of the case as culled from the records, are as follows[1]:

Petitioner MPI is a domestic corporation duly registered with the Securities and Exchange Commission, with principal office address at the 22/F Tower 2 The Enterprise Center, 6766 Ayala Avenue corner Paseo de Roxas, Makati City. MPI is a duly registered VAT taxpayer.

Respondent Commissioner of Internal Revenue ("CIR") is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund or tax credit certificate.

On December 27, 2002, MPI filed before the Bureau of Internal Revenue a claim for refund[2] or for the issuance of a tax credit certificate in the amount of P11,449,814.99 allegedly representing unutilized input Value Added Tax ("VAT") which were attributable to its zero-rated sales of services for the taxable year 2001.

Due to respondent's inaction on its claim, MPI filed a Petition for Review with the Court of Tax Appeals on April 23, 2003. The case was raffled and assigned to this Court's *Second Division* for resolution.

The Court in Division commissioned Mr. Benjamin P. Valdez as the independent Certified Public Accountant ("CPA") who will examine the voluminous documents relating to MPI's claim for refund pursuant to CTA Circular 1-95 as amended by CTA Cir. 10-97. According to the report of the

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[1] *Joint Stipulation of Facts ("JSF"), Division Rollo, pp. 97-99, duly approved by the Court in Division in a Resolution dated January 28, 2004, Division Rollo, p. 101.*
[2] *Exhibit A-1.*

independent CPA, of the total amount being claimed for refund of Php11,449,814.99, after disallowing and allocating various items, the net input VAT claimable for tax credit was reduced to PhP6,401,259.88.

After trial on the merits, the CTA *Second Division* promulgated a Decision on August 31, 2006 denying petitioner's claim for refund for failure to properly substantiate its effectively zero-rated sales for the taxable year 2001. Specifically, the Court in Division ruled that petitioner failed to comply with the *invoicing requirements* under Section 108(B)(2) of the NIRC of 1997 in conjunction with Sections 113 and 237 of the same Code as implemented by Section 4.108-1 of Revenue Regulations No. 7-95. The dispositive portion of the Decision reads as follows:

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

On September 26, 2006, MPI filed a Motion for Reconsideration[3] of the abovementioned Decision. The Motion for Reconsideration, although no Comment was filed by respondent, was denied by the *Second Division* in a Resolution dated January 8, 2007 for lack of merit.

Hence, this appeal by way of Petition for Review filed with the CTA *En Banc*.

<u>THE ASSIGNED ERRORS</u>

"I

THE NATIONAL INTERNAL REVENUE CODE ("NIRC") OF 1997 DOES NOT REQUIRE THE PRINTING OF THE WORD "ZERO-RATED" ON THE VAT RECEIPTS OR INVOICES FOR ZERO RATED

[3] *Division Rollo. pp. 191-207.*

SALES MADE BY THE CLAIMANT, AS A CONDITION FOR THE GRANT OF A CLAIM FOR REFUND OR TAX CREDIT CERTIFICATE OF EXCESS INPUT VAT ON PURCHASES OF GOODS OR SERVICES ATTRIBUTABLE TO ZERO-RATED SALES.

II

REVENUE REGULATIONS ("RR") NO. 7-95 DATED 9 DECEMBER 1995 DOES NOT PROVIDE THAT FAILURE TO PRINT THE WORD "ZERO-RATED" ON THE VAT RECEIPTS OR INVOICES ISSUED BY THE CLAIMANT WILL RESULT IN THE DISALLOWANCE OF A CLAIM FOR REFUND OR TAX CREDIT CERTIFICATE OF EXCESS INPUT VAT ON PURCHASES OF GOODS OR SERVICES ATTRIBUTABLE TO ZERO-RATED SALES.

III

REVENUE MEMORANDUM CIRCULAR ("RMC") NO. 42-2003 DATED 15 JULY 2003 DOES NOT APPLY TO THE INSTANT CLAIM FOR TAX CREDIT CERTIFICATE PERTAINING TO TAXABLE YEAR 2001. THE ADMINISTRATIVE CLAIM AND THE INSTANT PETITION HAVE BEEN FILED ON 22 DECEMBER 2002 AND 23 APRIL 2003. ASSUMING *ARGUENDO* THAT RMC NO. 42-2003 APPLIES, IT EQUALLY ACKNOWLEDGES THE EVIDENTIARY IMPORTANCE OF OTHER DOCUMENTS THAT PROVE ZERO-RATED SALES AND ALLOWS THE PROCESSING OF A CLAIM FOR REFUND OR TAX CREDIT CERTIFICATE UPON SUFFICIENT PROOF OF THE EXISTENCE OF ZERO-RATED SALES.

IV

THE "DANGER" THAT IS PURPORTEDLY SOUGHT TO BE PREVENTED BY THE ALLEGED REQUIREMENT TO PRINT THE WORD "ZERO-RATED" ON VAT RECEIPTS OR INVOICES DOES NOT EXIST IN THE INSTANT CASE. THE PURCHASERS OF PETITIONER'S ZERO-RATED SALE OF SERVICES ARE NON-RESIDENT FOREIGN CORPORATIONS NOT ENGAGED IN TRADE OR BUSINESS IN THE PHILIPPINES. AS SUCH, THERE IS ABSOLUTELY NO WAY THAT THE SAID PURCHASERS CAN CLAIM ANY INPUT VAT ON PETITIONER'S VAT ZERO-RATED SALE OF SERVICES.

V

CLEAR AND EXPLICIT PROVISION OF LAW GRANTS THE RIGHT TO A REFUND OR TAX CREDIT CERTIFICATE OF INPUT VAT ATTRIBUTABLE TO ZERO-RATED SALES. A MERE INFERENCE THAT THE LAW REQUIRES A CONDITION BEFORE SUCH RIGHT

MAY BE GRANTED, OR A MERE ADMINISTRATIVE REGULATION THAT AT BEST ONLY SUGGESTS A CONDITION FOR THE GRANT OF SUCH RIGHT, CANNOT SUPPLANT THE CLEAR AND EXPLICIT PROVISION OF LAW GRANTING SUCH RIGHT.

THE COURT EN BANC'S RULING

The Petition is not meritorious.

After a careful and thorough evaluation and consideration of the records of the case, the Court *En Banc* finds no new matters which have not yet been considered and passed upon by the CTA *Second Division* in its assailed Decision and Resolution. The discussion proffered by the petitioner in the instant petition is a mere rehash of the arguments raised in its Motion for Reconsideration filed with the CTA *Second Division*.

Thus, this Court is constrained to reiterate the governing laws and jurisprudence that has already been discussed profoundly by the *Second Division* in this case, particularly on invoicing requirements, accordingly:

Sections 113 and 237 of the NIRC of 1997, as amended, lay down the invoicing requirements for VAT registered persons, 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.
>
> xxx xxx xxx."

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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 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 case, exempt any person subject to internal revenue tax from compliance with the provisions of this Section."

The abovementioned provisions should not be taken in isolation but in conjunction with Section 4-108-1 of Revenue Regulations No. 7-95 which enumerates the information that must appear on the face of receipts or invoices issued for the sale of goods by all VAT-registered persons. The pertinent portion thereof is quoted hereunder:

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> "**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:
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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. 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.
>
> 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."

The rule is crystal 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's identification number, followed by the word "VAT", the BIR Authority imprint or

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BIR permit marker and the word "zero-rated" imprinted on the invoice receipt covering a zero-rated sale.

The above-quoted Revenue Regulations implementing the NIRC of 1997 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. This is a settled rule in this jurisdiction[4]. The seller-taxpayer is duty-bound to comply with the invoicing requirements laid down in the said provisions of the NIRC of 1997, as amended, and the implementing Revenue Regulations.

As correctly found by the *Second Division*, after a careful scrutiny of the documents presented in evidence, the Court *En Banc* finds that petitioner's official receipts[5] do not bear the imprinted words "zero-rated" on the face thereof, in violation of the requirements of the aforequoted Revenue Regulations. Hence, said receipts cannot be considered as valid evidence to prove zero-rated sales for VAT purposes.

<u>Effects of Failure to Comply with the Invoicing Requirements</u>

The *Second Division* correctly related in this point, Revenue Memorandum Circular No. 42-2003 [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] which expressly provides in a clear and unequivocal words, that the failure of a taxpayer claiming for tax refund/credit to comply with the invoicing

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[4] *Francisco vs. Court of Appeals, 234 SCRA 392.*
[5] *Exhibits "CC" to "ZZ".*

requirements will result to the disallowance of the claim for input tax. The pertinent portion of said Memorandum Circular provides:

> "A-13. Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.
>
> If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g., failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customer does not depict its being a Vat-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer."

Pursuant to said Memorandum Circular, 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, such as the failure of the claimant-taxpayer to imprint the word "zero-rated" on the sales invoices or receipts, the claim for tax credit/refund of VAT on its sales shall be denied. Considering that herein petitioner failed to imprint the word "zero-rated" on its sales invoices or receipts, *We* are left with no recourse but to deny the claim for tax credit certificate.

As early as the year 1999, the Supreme Court, in *Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue*[6], discussed the invoicing requirements for VAT-registered persons. The Supreme Court said that, "*[i]t is clear that a VAT invoice can be used only for the sale of*

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[6] *G.R. No. 134467, November 17, 1999.*

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goods or services that are subject to VAT", which means that the issuance of VAT invoices or official receipts are mandatory for sales that are subject to value-added tax either at 10% or 0% (zero-rated sales). More importantly, the Supreme Court ruled that, "*[i]ndeed 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*". A clear 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, i.e. Revenue Regulations, which shall also be strictly complied with.

Rationale of Strict Compliance

The law and revenue regulations are explicit in emphasizing strict compliance with the invoicing requirements. Pursuant to Section 110 of the NIRC of 1997, as amended: "*Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: . . .*". VAT invoices and receipts, in relation to the instant case, are used as evidence for purposes of determining whether there is an excess in either the input or output taxes.

If the invoice or official receipt is not imprinted with "zero-rated", there is a danger that the purchaser of the goods or services may be able to claim the input tax on the sale to it by the taxpayer of the goods or services, as the case may be, notwithstanding the fact that no VAT was actually paid on such goods or services since the taxpayer is zero-rated. This is the rationale of the mandatory requirement in Revenue Regulations No. 7-95 that the word "zero-rated" be imprinted in the invoice or receipt. The zero-rated taxpayer should be entitled to a tax credit/refund on input taxes paid on its purchase of goods or services subject to the mandatory compliance with the invoicing requirements.

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under the regulations. Otherwise, there may result the absurd situation where the government would be crediting/refunding non-existent input tax to purchasers of goods or services to such zero-rated taxpayer. We do not agree with petitioner in claiming that this "danger" does not exist in the instant case for it failed to substantiate and present convincing proof regarding the same.

If ordinary and necessary business expenses, claimed merely as deductions from gross income, are required to be substantiated by sufficient evidence, with more reason then that claims for outright refund of alleged excess tax payments must be substantiated by evidence that comply with the requirements of the law and its implementing rules and regulations.

Zero-rated sales of services can be proven by other documents. However, the requirement of issuing a duly registered VAT official receipt with the imprinted word *"zero-rated"* is very clear under the law and cannot be substituted especially for input VAT refund purposes.

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

Laws granting tax exemption
are construed strictissimi juris
against the taxpayer and liberally
in favor of the taxing authority

Well entrenched in our jurisprudence is that tax 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 or entity claiming the exemption.[7] Accordingly, the claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[8]

In sum, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed August 31, 2006 Decision and January 8, 2007 Resolution of the CTA *Second Division*. What the instant petition seeks is for the Court *En Banc* to view and appreciate the evidence in its own perspective of things, which unfortunately had already been considered and passed upon.

WHEREFORE, the instant Petition for Review is hereby **DENIED DUE COURSE** and **DISMISSED** for lack of merit. Accordingly, the August 31, 2006 Decision and January 8, 2007 Resolution of the CTA *Second Division* are hereby **AFFIRMED *in toto*.**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

[7] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., 309 SCRA 87 [1999].*
[8] *Citibank N.A. vs. Court of Appeals, 280 SCRA 459 [1997]*

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JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
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

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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MICROSOFT PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 258
(C.T.A. CASE NO. 6681)

Present:

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

Promulgated:

OCT 24 2007 Apolinario

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DISSENTING OPINION

As found by the Second Division, petitioner is a value-added taxpayer in accordance with the National Internal Revenue (NIRC). It renders marketing services to Microsoft Operations Pte. Ltd. (MOP) and Microsoft Licensing, Inc. (MSLI), affiliated non-resident foreign corporations, where such services are paid for in acceptable foreign currency, inwardly remitted into the Philippines and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas. As such, the services rendered by petitioner in the Philippines to MOP and MSLI qualify as zero-rated sales for VAT purposes under Section 108 (B)(2) of the NIRC.

Despite the above, the claim was denied due to the supposed failure of petitioner to comply with certain invoicing requirements. The Court En Banc found no error in this denial and affirmed *in toto* the decision of the Second Division.

Thus, it is with due respect that I manifest my disagreement to their view. The significant provisions of the NIRC, namely, Section 113[1] in relation to Section 237[2] only require the following information to appear in an invoice or official receipt, as a precondition for its validity and for claiming a refund or issuance of a tax credit certificate:

(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.

I maintain that (1) the pertinent provisions of the NIRC do not require imprinting of the word "zero-rated"; (2) the absence of the term "zero-rated" in the invoice or official receipt does not affect its admissibility and competency as evidence in

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[1] *"**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."

[2] *"**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".*

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support of a refund claim; (3) assuming the propriety of imposing the alleged requirement, the invalidation of the invoices and official receipts and the denial of the refund claim are not the legally imposable penalties for failure to meet such alleged requirement; and (4) the presence of other equally valid pieces of evidence presented and formally offered are sufficient proof to justify the grant of the VAT refund claim attributable to its zero-rated transactions.

Section 112 (A) of the NIRC, lends corroboration to the above view, it 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."

Under Section 112 (A) all VAT-registered enterprises engaged in zero-rated transactions have the right to claim a refund of their creditable input tax due or paid to the extent that such input tax has not been applied against output tax within a period of two (2) years after the close of the taxable quarter. And nowhere is it shown that failure to imprint the word "zero-rated" in the invoice/official receipt will cause the outright rejection of the refund claim.

The lone provision requiring the imprinting the questioned information on the VAT invoice or receipt is **Section 4.108-1 of Revenue Regulations No. 7-95** (*The Implementing Rules and Regulations of the VAT law*). Then again, the said provision is merely a regulation created for the sole and limited purpose of implementing an otherwise very exact law. Long-settled is the rule that administrative rules and regulations cannot

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expand the letter and spirit of the law they seek to enforce. Such rules and regulations should be confined and limited by the power conferred by the legislature (**Commissioner of Internal Revenue vs. Court of Appeals**, *240 SCRA 368 (1995).*

The Supreme Court, in ***Commissioner of Internal Revenue vs. Seagate Technology (Philippines),***[3] pointed out the need to focus only on the legally mandated requirements for claims for VAT refund and 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. Administrative convenience cannot thwart legislative mandate.*

Moreover, in ***Intel Technology Philippines, Inc., vs. Commissioner of Internal Revenue,***[4] the Supreme Court declared 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 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 controversy in the *Intel* case involved 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. Here, there is also nothing in the law which provides for the outright denial of a claim for tax credit/refund for failure to imprint the term "zero-rated" on invoices or official receipts. And even granting for the

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[3] *G.R. No. 153866, February 11, 2005.*
[4] *G.R. No. 166732, April 27, 2007.*

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sake of argument that there is, the penalties provided under **Section 264 of the NIRC**,[5] do not include the invalidation of the sales invoice/receipt and the outright rejection of the refund claim.

In fact, even the penal provisions of **Revenue Regulations No. 7-95**, as further amended by **Revenue Regulations No. 08-02**, particularly, **Sections 4.110-5[6] and 4.111-1[7]**, exclude such harsh punishment of automatic denial of the claim for refund.

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[5] ***Section 264. Failure or Refusal to Issue Receipts or Sales or Commercial Invoices, Violations Related to the Printing of such Receipts or Invoices or Other Violations. –***

(a) Any person who, being required under Section 237 to issue receipts or sales or commercial invoices, fails or refuses to issue such receipts or invoices, issues receipts or invoices that do not truly reflect and/or contain all the information required to be shown therein or uses multiple or double receipts or invoices, shall, upon conviction for each act or omission, be punished by a fine of not less than One thousand pesos (P1,000) but not more than Fifty thousand pesos (P50,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years.

(b) Any person who commits any of the acts enumerated hereunder shall be penalized in the same manner and to the same extent as provided for in this Section:

(1) Printing of receipts or sales or commercial invoices without authority from the Bureau of Internal Revenue; or

(2) Printing of double or multiple sets of invoices or receipts;

(3) Printing of unnumbered receipts or sales or commercial invoices, not bearing the name, business style, Taxpayer Identification Number, and business address of the person or entity.

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

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

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

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

[7] ***"SECTION 4.111-1. Administrative and penal provisions. (a) Suspension of business operations. – In addition to other administrative and penal sanctions provided for in the Code and implementing regulations, the Commissioner or his duly authorized representative may order suspension or closure of a business establishment for a period of not less than five (5) days for any of the following violations:***

(1) Failure to issue receipts and invoices.

(2) Failure to file value-added tax return as required under the provisions of Section 110.

(3) Understatement of taxable sales or receipts by 30% or more of his correct taxable sales or receipts for the taxable quarter.

(4) Failure of any person to register as required under the provisions of Sec. 107.

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In other words, since there is no requirement of imprinting the term "zero-rated" on official receipts or invoices, its absence should not render such official receipts or invoices invalid for purposes of substantiating claims for refund or issuance of tax credit certificate of unutilized input VAT.

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 2001 and it was only on November 1, 2005 with the effectivity of Republic Act No. 9337[8] that the requirement of writing or printing the term "zero-rated sale" was introduced, following the amendment of Section 113[9] 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.[10]

Lastly, 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 mere preponderance of evidence. In ***Municipality of Moncada vs. Cajuigan***[11], 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.

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

[8] *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.*

[9] *(B)(2)(c) of Section 113.*

[10] *BPI Leasing Corporation, vs. The Honorable Court of Appeals, et.al. G.R. No. 127624. November 18, 2003*

[11] *21 Phil. 184.*

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The facts and the applicable laws and jurisprudence justify the reversal of the subject decision. As aptly stated by the Supreme Court[12]:

> "[S]ubstantial justice, equity and fair play are on the side of petitioner. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness."

The government has no right to hold money that does not belong to it, especially given the unmistakable bias of our tax laws in severely penalizing delinquent taxpayers with surcharges, interests, fines and at times, even imprisonment. Hence, while taxes are the lifeblood of the government, the Court must likewise be sensitive of its responsibility to apply the principles of justice, equity and fairness as its guide in its delicate tasks of weighing the evidence and of deciding tax cases.

In view of the above, I vote for the grant of the instant Petition for Review.

ERNESTO D. ACOSTA
Presiding Justice

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[12] *BPI-Family Savings Bank, Inc., vs. Court of Appeals, Court of Tax Appeals, and the Commissioner of Internal Revenue, 330 SCRA 507.*