REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

WESTERN MINDANAO POWER CORPORATION,
Petitioner,

C.T.A. EB NO. 272
(C.T.A. Case No. 6335)

Present:

-versus-

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 1 5 2007

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review under Section 18 of Republic Act 9282, seeking the reversal and setting aside of:

1. the Decision dated September 1, 2006 rendered by the Second Division of the Court ("Court in Division") in CTA Case No. 6335, which denied petitioner's claim for tax refund or issuance of a tax credit certificate in the aggregate amount of ₱9,324,283.30, representing the unutilized input value-added taxes ("VAT") paid by petitioner on domestic purchases of goods and services attributable to its zero-rated sales of power generation to the National Power Corporation ("NPC") for the 3rd and 4th quarters of taxable year 1999 and the four quarters of taxable year 2000; and
2. the Resolution of the Court in Division promulgated on January 30, 2007, which denied the Motion for Reconsideration of petitioner.

Antecedent Facts

Based on the Decision[1] of the Court in Division, the factual backdrop of this case is as follows.

Petitioner is a domestic corporation organized and existing under and by virtue of Philippine laws, with principal address at Alsons Building, 2286 Pasong Tamo Ext., Makati City.

Respondent is the Commissioner of the Bureau of Internal Revenue ("BIR") and is the officer authorized by law to perform the duties of the said office, including the power to refund overpaid, as well as erroneously or illegally collected internal revenue taxes.

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[1] Pages 2 to 7, Decision, C.T.A. Case No. 6335.

Petitioner is engaged in the production and sale of electricity and sells electricity to NPC. It is registered with the BIR as a VAT taxpayer.

For the calendar years 1999 and 2000, petitioner filed with the BIR, separate applications for zero-rating of its sales of electricity to NPC, which were approved by the BIR.

On October 25, 1999 and January 25, 2000, petitioner filed its 3rd and 4th Quarterly VAT Returns for calendar year 1999, respectively, reflecting the following amounts as its input taxes paid on its domestic purchases of goods and services:

Quarter	Input VAT
3rd	₱1,749,995.92
4th	1,925,030.75
	₱3,675,026.67

Likewise, for taxable year 2000, petitioner filed its Quarterly VAT Returns, reflecting the following input taxes:

Quarter	Date Filed	Input VAT
1st	April 25, 2000	₱1,176,382.70
2nd	July 25, 2000	1,531,208.07
3rd	October 25, 2000	610,322.35
4th	January 25, 2001	2,331,343.69
		₱5,649,256.81

Petitioner claims that the amount of ₱5,649,256.81 represents the input VAT it paid on domestic purchases of goods and services during the calendar year 2000 that were attributable to its zero-rated sales of power generation services to NPC.

The input VAT paid by petitioner on its domestic purchases of goods and services for the 3rd and 4th quarters of taxable year 1999 and all the taxable quarters of calendar year 2000 amounting to ₱9,324,283.48 allegedly remains unutilized considering that petitioner has not engaged in any business activity or transaction for which it may be liable for output VAT, other than its zero-rated sales of power generation services to NPC which does not produce any output VAT liability.

Hence, on June 20, 2000, petitioner filed an administrative claim for refund or application for tax credit certificate of its alleged unutilized input VAT in the amount of ₱3,675,026.67 with the BIR, covering the 3rd and 4th quarters of 1999. For taxable year 2000, petitioner filed on June 13, 2001, a separate administrative claim for refund or application for tax credit certificate of alleged unutilized input VAT in the aggregate amount of ₱5,649,256.81.

Without waiting for the decision of the respondent and before it could be barred by prescription, petitioner filed a Petition for Review with the Court in Division on September 28, 2001. On November 21, 2001, respondent filed his Answer interposing the usual Special and Affirmative Defenses.

Petitioner presented as witnesses Teresita Lozano, its Chief Accountant, Feliza Peralta, the Court-commissioned independent CPA, and Estelita Alcaraz, also petitioner's Accountant. Petitioner submitted its Formal Offer of

Evidence and Supplemental Offer of Evidence, which were admitted by the Court in Division.

On the other hand, respondent presented as witness Aniceto Luna, BIR Revenue Officer II, and documentary evidence, which was admitted by the Court in Division.

Petitioner recalled and presented Estelita Alcaraz, as rebuttal witness, and submitted Formal Offer of Evidence (Rebuttal Evidence), which the Court in Division admitted.

Respondent having manifested that he will not present sur-rebuttal evidence, both parties were granted thirty (30) days from notice to file their simultaneous memoranda, after which the case would be deemed submitted for decision.

Since only the petitioner filed its memorandum, the case was deemed submitted for decision on June 1, 2006.

The Ruling of the Court in Division

On September 1, 2006, the Court in Division rendered its Decision dismissing the Petition for Review for the failure of petitioner to fully substantiate the existence of its effectively zero-rated sales to NPC for the 3rd and 4th quarters of 1999 and the four quarters of 2000. According to the Court in Division, the Quarterly VAT returns filed by petitioner do not reflect any zero-rated or effectively zero-rated sales allegedly incurred during the said quarters.

The Court in Division also found that petitioner's VAT invoices and official receipts which were used to support the alleged sales, do not bear the word "zero-rated" on the faces thereof, as required by Section 4.108-1 of Revenue Regulations No. 7-95 ("RR 7-95"). Consequently, the Court in Division ruled that pursuant to Revenue Memorandum Circular No. 42-2003 ("RMC 42-2003"), petitioner's claim must be denied.

The dispositive portion of the Court in Division's Decision reads as follows:

> "**WHEREFORE**, premises considered, the present Petition For Review is hereby **DENIED DUE COURSE**, and accordingly **DISMISSED**.
>
> SO ORDERED."

Undaunted, petitioner moved for reconsideration of the Decision which was denied by the Court in Division in its Resolution promulgated on January 30, 2007.

Hence, the present recourse.

The Issue

The grounds raised by petitioner in the present Petition for Review can be synthesized into the issue of whether or not the Court in Division erred in denying its claim for refund of excess and unutilized input VAT paid on its domestic purchases and importations of goods and services attributable to zero-rated sales of power generation services to NPC for the 3rd and 4th quarters of 1999 and the four quarters of 2000.

Petitioner's Arguments

Petitioner submits that since the right to claim a refund of excess and unutilized input VAT under Section 112 of the 1997 National Internal Revenue Code ("NIRC") is predicated on the existence of zero-rated sales and considering that petitioner's sale of service in the form of generated electricity to NPC was supported by official receipts in the amount of ₱219,892,938.17, the Court in Division committed reversible error by denying the entire claim for refund.

Petitioner also contends that the invoicing and accounting requirements for VAT-registered persons under Section 113 of the 1997 NIRC and implemented by Section 4.108-1 of RR 7-95 state that for every sale it can issue an invoice or official receipt. RR 7-95 requires that the term "zero-rated" be printed only in the invoice and printing such term in the official receipt is not required. Since petitioner is a seller of services, it is not required to issue sales invoices bearing the phrase "zero-rated sales".

Petitioner further avers that RMC 42-2003 which applies only to direct exporters and thus, does not apply to petitioner, cannot be applied retroactively to the prejudice of petitioner who has acquired vested rights prior to the effectivity of the said RMC.

Lastly, petitioner posits that its Motion for Reconsideration was denied based not on the legal defenses raised by the respondent, but on matters independently raised by the Court in Division.

Respondent's Counter-arguments

Respondent, in his Comment, maintains that petitioner did not comply with the indispensable requirement of invoicing to be entitled to a tax refund of its alleged input VAT on its zero-rated sales. As pointed out by the independent CPA, all the VAT invoices and receipts issued by petitioner are not imprinted or stamped with the term "zero-rated".

Respondent also points out that the VAT returns filed by petitioner for the subject period do not reflect zero-rated sales as, in fact, the spaces provided for the amount of such sales were left blank by petitioner.

The Ruling of the Court En Banc

The Petition for Review has no merit.

Under Republic Act 6395 as amended, or otherwise known as the NPC Charter, the NPC is declared exempt from the payment of all forms of taxes, duties, fees and imposts. Section 13 of the said law states that:

> "**Section 13. Non-profit Character of the Corporation:**
>
> Exemption from All Taxes, Duties, Imposts and Other Charges by the Government and Government Instrumentalities. — The Corporation shall be non-profit and shall devote all its returns from its capital investment as well as excess revenues from its operations, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance of effective implementation of the policy enunciated in Section one of this

> Act, **the Corporation, including its subsidiaries, is hereby declared exempt from the payment of all forms of taxes,** duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings." *(Emphasis ours)*

Because of such exemption, petitioner's sale of power generation services (electricity) to NPC is indeed zero-rated under Section 108 (B) (3) of the 1997 NIRC. It reads:

> "**SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –**
>
> xxx xxx xxx
>
> (B) **Transactions Subject to Zero Percent (0%) Rate.** – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (1) xxx
>
> (2) xxx
>
> (3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate; xxx" *(Emphasis ours)*

Thus, petitioner may claim a refund or tax credit pursuant to Section 112 (a) of the 1997 NIRC, which provides:

> "**SEC. 112. Refunds or Tax Credits of Input Tax. –**
>
> (A) **Zero rated or Effectively Zero-rated Sales.** – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a **tax credit certificate** or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1)

> and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP) xxx" *(Emphasis ours)*

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

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

To establish zero-rated sales of services, the corresponding duly registered official receipts must be presented pursuant to Sections 113 and 237 of the 1997 NIRC[3], which provide:

> **"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:**

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[2] Section 112 (a) of the 1997 NIRC.
[3] American Express International, Inc. – Philippine Branch v. Commissioner of the Internal Revenue, C.T.A. E.B. No. 197 (C.T.A. Case No. 6468), May 23, 2007.

(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" *(Emphasis ours)*

"**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) 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, receipt or 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) 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, receipt or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer, or client: Provided, further, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number of the purchaser.

xxx xxx xxx" *(Emphasis ours)*

The foregoing provisions should not be taken in isolation but in conjunction with Section 4.108-1 of RR 7-95 which enumerates the information which must appear on the face of receipts or invoices issued for the sale of goods or services by all VAT-registered persons. Section 4.108-1 of RR 7-95 reads:

> "**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 service;
> 5. **the word 'zero-rated' imprinted on the invoice covering zero-rated sales;** and
> 6. the invoice value or consideration." *(Emphasis ours)*

Since petitioner is engaged in the sale of power generation services to NPC, it must present VAT official receipts, pursuant to Section 108 of the 1997 NIRC, which provides:

> "**SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. —**
>
> (A) Rate and Base of Tax. — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.
>
> xxx xxx xxx
>
> (C) Determination of the Tax. — The tax shall be computed by multiplying the total amount indicated in the **official receipt** by one-eleventh (1/11)." *(Emphasis supplied)*

In the recent case of ***Mirant (Navotas II) Corporation (formerly: Southern Energy Navotas II Power, Inc.) v. Commissioner of Internal Revenue, C.T.A. EB No. 226 (C.T.A. Case Nos. 6636 and 6728) dated September***

11, 2007, where the petitioner is also engaged in the sale of power generation services to NPC, We reiterated Our ruling that the imprinting of "zero-rated sales" on VAT official receipts or invoices is mandatory, pursuant to the afore-quoted Section 4.108-1 of RR 7-95.[4] In the absence of the term "zero-rated sales" imprinted on these VAT invoices and/or receipts, the claim for input VAT will be disallowed.[5] In the *Mirant* case, We ratiocinated as follows:

> "**The imprinting of zero-rated sales primarily seeks to avert the incidence of fictitious claims for refund** or the issuance of tax credit certificate of input VAT actually unpaid on the sale of goods or services rendered by the taxpayer, simply because the transaction involved is zero-rated. Thus, Section 4.108-1 of R.R. 7-95 does not in any way amplify the context of Sections 113 and 237 of the 1997 NIRC, but should be treated as a preventive measure to ensure the effective implementation of the Tax Code.
>
> **The provisions of R.R. 7-95, particularly Section 4. 108-1 issued by the Department of Finance have the force and effect of the law,** as affirmed by the Supreme Court in the case of *Victorias Milling Co., Inc. v. Social Security Commission*[6]...."[7] *(Emphasis supplied)*

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[4] Decision, pages 13 to 15, *citing Southern Philippines Power Corporation v. Commissioner of Internal Revenue, C.T.A. EB No. 214, July 31, 2007, Kepco Philippines Corporation v. Commissioner of Internal Revenue, C.T.A. EB No. 186, May 17, 2007, Kepco Philippines Corporation v. Commissioner of Internal Revenue, C.T.A. EB No. 174, May 9, 2007, Applied Food Ingredients Co., Inc. v. Commissioner of Internal Revenue, C.T.A. EB No. 220, May 7, 2007, Intel Technology Philippines Inc. v. Commissioner of Internal Revenue, C.T.A. EN No. 181, March 27, 2007, Panasonic Communications Imaging Corporation of the Philippines (formerly, Matsushista Business Machine Corporation of the Philippines) v. Commissioner of Internal Revenue, C.T.A. EB No. 239, May 23, 2007 and J.R.A. Philippines Inc. v. Commissioner of Internal Revenue, C.T.A. EB No. 128, January 15, 2007.*

[5] Mirant (Navotas II) Corporation *(formerly: Southern Energy Navotas II Power, Inc.)* v. Commissioner of Internal Revenue, C.T.A. EB No. 226 (C.T.A. Case Nos. 6636 and 6728), Decision dated September 11, 2007, page 14, *citing Kepco Philippines Corporation v. Commissioner of Internal Revenue, C.T.A. EB No. 107, June 29, 2007, Applied Food Ingredients Co., Inc v. Commissioner of Internal Revenue, C.T.A. EB No. 220, May 7, 2007.*

[6] 114 Phil. 555,558 (1962) cited in *CEMCO Holdings Inc. v. National Life Insurance Company of the Philippines, Inc., G.R. No. 171815, August 7, 2007.*

[7] Mirant (Navotas II) Corporation *(formerly: Southern Energy Navotas II Power, Inc.)* v. Commissioner of Internal Revenue, C.T.A. EB No. 226 (C.T.A. Case Nos. 6636 and 6728), Decision dated September 11, 2007, page 15.

Based on the foregoing discussion and after a careful re-examination of the records of this case, We concur with the following findings of the Court in Division:

"A careful perusal of the receipts and evidence presented shows that petitioner failed to fully substantiate the existence of its effectively zero-rated sales to NPC for the taxable periods covering the 3rd and 4th quarters of 1999 and the four quarters of 2000.

Petitioner submitted in evidence its Quarterly Value Added Tax Returns for the 3rd and 4th quarters of 1999 and the four quarters of 2000 to prove that it had duly reported the input taxes paid on its domestic purchases of goods and services *(Exhibits 'E' to 'J')*. However, a closer examination of the returns clearly shows that the same do not reflect any zero-rated or effectively zero-rated sales allegedly incurred during the said periods. The spaces provided for such amounts were left blank, which only shows that there existed no zero-rated or effectively zero-rated sales for the 3rd and 4th quarters of 1999 and the four quarters of 2000.

Even assuming arguendo that petitioner indeed incurred the claimed zero-rated or effectively zero-rated sales, still petitioner is not entitled to a refund.

According to the Commissioned Independent CPA, Ms. Feliza Peralta, petitioner's VAT invoices and official receipts which were used to support the alleged sales failed to have the word "zero-rated" imprinted or stamped on its face, as required by *Section 4-108-1 of Revenue Regulations No. 7-95*. The CPA Report, in pertinent part, reads:

'Findings and Observations:

Based on our review, the sales amounting to P1,477,427,242.68 indicated in the Sales Summary are supported by the following documents:

	Exhibit Reference	Total
Original Company copies of the VAT invoices and Ors issued to NPC for its peso denominated sale of electricity to the latter.	U-A	219,892,938.17
Original Company copies of the Vat invoices issued to NPC for its foreign currency denominated sale of electricity to the latter.		

Collections of these billings are supported by photocopies or faxed copies of the remittance advices/ certificates from NPC and the original copies of the bankbook which show the credits made to the company's bank accounts	U-A	1,257,534,306.26
Difference between the sum of the amounts verified by SGV and those indicated in the sales summary	U	-1.75
Total		1,477,427,242,68

We noted that all the VAT invoices and Ors issued by the Company which supports the foregoing sales, are not imprinted/stamped with the word "zero-rated" *(Exhibit "S").'*

Moreover, one of the requirements of the BIR in petitioner's approved applications for Zero-Rate *(Exhibits 'M' and 'N')*, is that 'zero-rated sales must be indicated in the invoice/receipt'. It must be emphasized that the approval of the applications for zero-rate depends on petitioner's compliance with the conditions as set forth in the said applications which evidently was not complied with by petitioner."[8] *(Underscoring supplied)*

Therefore, the Court in Division committed no error in denying petitioner's claim for refund.

We need not belabor that tax refunds, like tax exemptions, are construed strictly against the taxpayer and liberally in favor of the taxing authority.[9]

WHEREFORE, the instant petition is hereby **DISMISSED.** Accordingly, the assailed Decision dated September 1, 2006 and Resolution dated January 30, 2007 are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[8] Pages 14 to 16, Decision, C.T.A. Case No. 6335.
[9] Paseo Realty & Development Corporation v. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue, G.R. No. 119286, October 13, 2004, 440 SCRA 235.

WE CONCUR:

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

Juanito C. Castañeda, Jr.
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

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Bautista,
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Palanca-Enriquez, *JJ.*

Promulgated:

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CONCURRING AND DISSENTING OPINION

As held by the Second Division, the decisive legal issue in this case is whether the sale of electricity by petitioner to the National Power Corporation (NPC) is subject to Value-Added Tax at zero-percent as provided under Section 108 (B)(3) of the National Internal Revenue Code (NIRC); Which legal issue has been put to rest in ***Maceda vs. Macaraig*** (197 SCRA 771), where the Supreme Court ruled that the NPC has been granted tax exemption privileges for both direct and indirect taxes under P.D. 938 and R. A. 6395, the NPC Charter. Given this special charter of NPC, any sale of services thereto is effectively subject to zero-percent rate.

Corollary thereto, Section 112 (A) of the NIRC grants VAT-registered persons, whose sales are zero-rated, the right to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, subject only to the limitation that such application be made within two years after the close of the taxable quarter when the sales were made.

Despite the above, the claim was denied due to the supposed failure of petitioner to comply with certain invoicing requirements and because after scrutiny of the Quarterly Value Added Tax Returns[1] it submitted as evidence (to prove that it had duly reported the input taxes paid on its domestic purchases of goods and services), it was found that these returns do not reflect any zero-rated or effectively zero-rated sales allegedly incurred during the period. "The spaces provided for such amounts were left blank, which only shows that there existed no zero-rated or effectively zero-rated sales for the 3rd and 4th quarters of 1999 and the four quarters of 2000."[2]

The Court En Banc found no error in this denial and affirmed *in toto* the decision of the Second Division. While I agree with the decision to deny the claim due to petitioner's failure to prove the input taxes it paid on its domestic purchases of goods and services during the period involved, it is with due respect that I manifest my disagreement to their view regarding the supposed mandatory requirement of imprinting the term "zero-rated" on official receipts or invoices.

The significant provisions of the NIRC, namely, Section 113[3] in relation to Section 237[4] only require the following information to appear in an invoice or official

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[1] *Exhibits "E' to "J"*
[2] *Second Division Decision, CTA Case No. 6335, page 15*
[3] *"**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."
[4] *"**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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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 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 is clear, 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

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> 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."

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 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),***[5] 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,***[6] the Supreme Court declared that only the following items are

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

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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 sake of argument that there is, the penalties provided under ***Section 264 of the NIRC***,[7] do not include the invalidation of the sales invoice/receipt and the outright rejection of the refund claim.

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[7] ***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.

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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***[8] **and** ***4.111-1***[9], exclude such harsh punishment of automatic denial of the claim for refund.

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 3rd and 4th quarters of 1999 and all the quarters of 2000 and it was only on November 1, 2005 with the effectivity of

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[8] "***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)

[9] "***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.

(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)

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Republic Act No. 9337[10] that the requirement of writing or printing the term "zero-rated sale" was introduced, following the amendment of Section 113[11] 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.[12]

In sum, while I agree that the claim cannot be granted for petitioner's failure to prove that it duly reported the input taxes paid on its domestic purchases of goods and services, since the spaces provided in the returns for such amounts were left blank, I find the holding that the failure to imprint the term "zero-rated" on official receipts or invoices is sufficient to deny the instant claim, erroneous.

ERNESTO D. ACOSTA
Presiding Justice

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[10] *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.*
[11] *(B)(2)(c) of Section 113.*
[12] *BPI Leasing Corporation, vs. The Honorable Court of Appeals, et.al. G.R. No. 127624. November 18, 2003*