REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

INTEL TECHNOLOGY PHILIPPINES INC.,
Petitioner,

C.T.A. EB NO. 181
(C.T.A. Case No. 6309)

Present:

-versus-

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 27 2007 [signature]

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review seeking the reversal of the January 24, 2006 Decision and April 18, 2006 Resolution of the Second Division of

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this Court ("Court in Division") in C.T.A. Case No. 6309, entitled *"Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue,"* denying the whole of petitioner's claim for refund or tax credit of its excess and unutilized input taxes for the second ("2nd") quarter of 1999 in the amount of P8,757,424.63 arising from its domestic purchase of service or lease of property.

Antecedent Facts

Antecedent facts to set Us on a proper perspective are those lucidly set out by the Court in Division, to wit:

> "Petitioner is a duly incorporated entity with the primary purpose 'to design, manufacture, process, install, service, import, export, distribute, market, sell on wholesale, handle, store, promote, including ancillary activities, or deal in and with goods, commodities, wares and merchandise of every kind, class, nature and description including without limitation, integrated circuit component, systems board, and other computer, or computer-related, electronic and electronic-related products' *(BIR Records, p. 6)*.
>
> As such, petitioner is a duly registered Ecozone Export Enterprise (Pioneer status) with Certificate of Registration No. 95-133 with the Philippine Economic Zone Authority since 1995 (*Exhibit "B"*). It is also registered with the Bureau of Internal Revenue as a value-added tax (hereafter "VAT") entity with business address at Javalera, General Trias, Cavite (Gateway Business Park) (*Exhibit "A"*).
>
> For the period April 1, 1999 to June 30, 1999, petitioner duly filed its VAT Returns and Monthly Declarations with the Bureau of Internal Revenue (hereafter "BIR"). In its amended VAT return for the second quarter of 1999 filed with the BIR on July 22, 1999, petitioner declared its alleged zero-rated sales of P3,365,221,687.02 and input VAT payment of P8,757,424.63, as follows:

	Amount	VAT Output Tax
Zero-Rated Sales	P3,365,221,687.02	-
	Amount	VAT Input Tax
Input Tax Carried Over from Previous Quarter		(P47,881,624.30)
Domestic Purchases		(8,757,424.63)
Total Available Input Tax		(P56,639,048.93)
Less: Any VAT Refund/TCC Claimed		41,891,086.26

Net Creditable Input Tax	(P14,747,962.67)
VAT Payable/(Excess Input Tax)	(14,747,962.67)
Less: Tax Credits/Payments	-
Total Amount Payable/(Overpayment)	(P14,747,962.67)
	============
	(*Exhibit "E"*)

On August 26, 1999, petitioner filed an application for tax credit/refund of VAT paid in the amount of P8,757,424.63 for its domestic purchases of taxable goods and services for the period April 1, 1999 to June 30, 1999 with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (*Exhibits "H" and "I"*). Its VAT Administration Officer Pablo V. Pablo claims that petitioner is 'a 100% exporter of goods and/or services and that the ending inventory of goods as of June 1999 from which input tax credit had been claimed has been used directly or indirectly in the exportation of goods and services for the subsequent period.' (*BIR Records, p. 88*).

On June 29, 2001, before the lapse of the prescriptive period to file a suit for the recovery of tax erroneously or illegally collected under *Section 229 of the NIRC*, petitioner filed before this Court a Petition for Review.

While the case was pending trial, petitioner received a Tax Credit Certificate, dated January 21, 2002, on January 24, 2002 issued by the BIR in the amount of P4,378,712.01 covering the period April 1, 1999 to June 30, 1999, which is part of the input VAT amount of P8,757,424.63, subject of the instant claim. The Court then ordered petitioner to file an amended petition for review reducing the present amount claimed by 50%. In a Manifestation filed by the petitioner on October 2, 2002, petitioner manifested that the grant of the 50% Advance Tax Credit in the amount of P4,378,712.01 which formed part of the total claim of P8,757,424.63, was prior to the completion of the evaluation by the Duty Drawback Center of the entire claim for input VAT refund filed by petitioner for the period April 1, 1999 to June 30, 1999. Thus, it could not be possibly pointed out as to which of the particular documents supporting the input VAT transactions of the petitioner for the subject period said 50% Advance Tax Credit pertains. Therefore, by virtue of the non-finality of the Tax Credit Certificate, petitioner manifested that it is only but proper that it be allowed to present evidence to prove its entitlement to a refund of the total amount of P8,757,424.63, subject matter of this case (Original CTA Docket, pp. 80-83).

However, Group Head Elenita V. Balonzo and Evaluators Ma. Cleofe T. Tasarra, Ruby A. Panagdato and Estela G. Buenviaje submitted a Memorandum dated November 6, 2002 (*Exhibit "1"; BIR Records, pp. 101-102*) to OIC Deputy Executive Director Ernesto Q. Hiansen of the DOF-Center, recommending that petitioner's claim be denied for its failure to completely substantiate its claim and for the reason that the amount involved was paid outside the taxable period covered by the claim and petitioner be required to pay back the 50% Advance Tax Credit amounting to P4,378,712.01 under TCC No. 003976.

In their Joint Stipulation of Facts and Simplification of Issues, the parties stipulated as follows:

'**Stipulation of Facts**

Petitioner and Respondent hereby jointly stipulate on the following facts:

1. The export sales of the Petitioner are not subject to 10% Value Added Tax but are zero-rated. Hence, such zero-rated sales will not result to any VAT output tax pursuant to Sec. 106 (A)(2)(a)(i) and Sec. 108 (B)(1) of the Tax Code;

2. The Petitioner reported said input taxes incurred from April 1, 1999 to June 30, 1999 in its Quarterly VAT Return and Monthly Declaration for the second taxable quarter of 1999 duly filed and stamped received by the BIR or its agent;

3. For the period covering from April 1, 1999 to June 30, 1999, Petitioner duly filed with the BIR or its agent Value Added Tax Return and Monthly Declarations and the same were accordingly stamped received by the latter;

4. No final action has been taken by the Respondent on the Petitioner's claim for refund and the two (2) years prescriptive period is about to lapse;

5. The petition was filed within the two years prescriptive period for the filing of a claim with the court.'

In his Answer, respondent alleged by way of special and affirmative defenses:

'4. Petitioner being allegedly registered with the Philippine Economic Zone Authority, is exempt from all taxes, including value-added tax, pursuant to Section 24 of R.A. No. 7916 in relation to Section 109 of the Tax Code. Since its sales are not zero-rated but are exempt from VAT, petitioner is not entitled to refund of input tax pursuant to Section 4.103-1 of Revenue Regulations No. 7-95. Its registration as a VAT taxpayer was, therefore, erroneous.

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

6. Petitioner failed miserably to show that the total amount of P8,757,424.63 representing VAT input taxes for the second quarter of 1999 was erroneously or illegally collected, or that the same was properly documented;

7. The amount of P8,757,424.63 representing VAT input taxes during the period from April 1, 1999 to June 30, 1999 was not properly documented;

8. In an action for tax refund/credit, the taxpayer has the burden to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

9. It is incumbent upon petitioner to show that it has complied with the provisions of Section 204(c) in relation to Section 229 of the Tax Code.

10. Well-established is the rule that refunds/tax credits are construed strictly against the taxpayer as they partake the nature of exemption from tax.'

Petitioner presented Eliseo Aurellado, the commissioned Independent CPA, Pablo V. Pablo and Atty. Marc Paul Tan, as witnesses, and submitted its 'Formal Offer of Evidence' and 'Supplement To Petitioner's Formal Offer of Evidence', which were all admitted by the Court.

On the other hand, respondent formally offered in evidence Exhibits "1" and "1-a", and thereafter submitted the case for decision.

Both parties were ordered to file their respective memoranda. Only petitioner filed its Memorandum on September 8, 2005. Thereafter, the case was deemed submitted for decision.

The Ruling of the Court in Division

On January 24, 2006, the Court in Division rendered the assailed Decision denying petitioner's claim for refund for failure to comply with the mandatory invoicing requirements under Section 113 (A) and 237 of the 1997 Tax Code, as well as Section 4.108-1 of Revenue Regulations ("RR") No. 7-95 and Revenue Memorandum Circular ("RMC") No. 42-2003. According to the Court in Division, petitioner's sales invoices do not bear the imprinted words "zero-rated" on the face thereof and some of the invoices do not have Taxpayer's Identification Number ("TIN") followed by the word "VAT".

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The Court in Division also denied petitioner's claim for refund for violating Section 110 (A) of the 1997 Tax Code. The input VAT of P8,757,424.63 subject of the claim pertains to petitioner's rental payment on March 17, 1999 of the land owned by Silicon Properties, Inc. Such payment should have been recognized and declared by petitioner in its VAT return for the first quarter of 1999. Thus, the said payment, supported by an official receipt dated earlier than the subject period of claim (2nd Quarter of 1999) cannot be refunded.

The dispositive portion of the said Decision is quoted hereunder:

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

Undaunted, petitioner moved for a reconsideration of the aforementioned Decision, which the Court in Division likewise denied in a Resolution dated April 18, 2006.

The Issues

Aggrieved by the assailed Decision and Resolution of the Court in Division, petitioner now elevates the matter to the Court *En Banc*, arguing that the Court in Division committed the following errors:

"I

THE COURT *A QUO* ERRED IN DENYING PETITIONER'S CLAIM FOR REFUND DUE TO THE ABSENCE OF THE WORDS "TIN-V" ON ITS SALES INVOICES THAT WERE PRESENTED AND FORMALLY OFFERED

II

THE COURT *A QUO* ERRED IN DENYING PETITIONER'S CLAIM FOR REFUND DUE TO THE ABSENCE OF THE WORDS "ZERO-RATED" ON ITS SALES INVOICES THAT WERE PRESENTED AND FORMALLY OFFERED

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III

THE COURT *A QUO* ERRED IN FINDING THAT THE PETITIONER FAILED TO COMPLY WITH THE SUBSTANTIATION REQUIREMENTS PROVIDED BY LAW IN PROVING ITS CLAIM FOR REFUND

IV

THE COURT *A QUO* ERRED IN DISMISSING PETITIONER'S CLAIM FOR REFUND OF ITS EXCESS AND UNUTILIZED INPUT VAT FOR THE PERIOD APRIL 1, 1999 TO JUNE 30, 1999 IN THE AMOUNT PhP8,757,424.63"

The main issue the Court *En Banc* has to resolve despite the many issues raised above is whether or not the petitioner is entitled to the refund sought.

Petitioner's Arguments

Petitioner contends that the failure to state the "TIN-V" in petitioner's invoices does not invalidate petitioner's claim. It submits that the invoicing requirement of imprinting the words "TIN-V" applies only to domestic or local sales considering that the seller's output tax, which is input tax on the part of the local purchaser, may be claimed by the latter as credit against its own output VAT. Petitioner alleges that it exports all of its finished products to a non-resident foreign purchaser which is a non-VAT registered entity in the Philippines. As a non-resident foreign purchaser and non-VAT registered entity, said purchaser cannot claim an input tax credit or claim for refund of input VAT on its purchases from petitioner. Thus, the imprinting of "TIN-V" on the export sales invoices is not applicable in the instant case considering that no input VAT may be claimed in connection with petitioner's export sales.

Petitioner also avers that imprinting the words "zero-rated" on the export sales receipts or invoices is not an invoicing requirement of Sections 113 (A) and

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237 of the 1997 Tax Code. Such additional requirement under Section 4.108-1 of RR 7-95 is void since it is beyond the requirements of the law. Rules that subvert the statute cannot be sanctioned.

Lastly, petitioner asseverates that out-of period claims are allowed provided they comply with all the requirements of RMC 42-2003, *viz*:

1. The VAT invoices/receipts are issued within the taxable year that the claim was made;
2. The VAT invoices/receipts cover transactions for the same taxable year;
3. They have not been claimed in any other quarter of the same or different taxable year;
4. The invoices/receipts are not claimed in any period ahead of the actual date of the said invoices/receipts.

Petitioner claims that it complied with all the foregoing requirements.

For failure of respondent to file his Comment and Memorandum, the case was submitted for decision on October 26, 2006.

The Ruling of the Court En Banc

The petition is not impressed with merit.

Petitioner failed to comply with the mandatory invoicing requirements under the 1997 Tax Code and related Revenue Regulations (RR) as correctly determined by the Court in Division whose findings of facts are generally entitled to the highest respect and are conclusive upon Us, absent any showing of gross error or abuse on its part.

Time and again, the Court *En Banc* has consistently ruled that the failure to issue invoices with the imprint "zero-rated" pursuant to Section 4.108-1 of Revenue Regulations (RR) No. 7-95 and non-compliance with invoicing requirements under Section 113 and 237 of the 1997 Tax Code will necessarily result in the denial of a claim for refund of unutilized input VAT.[1]

In this case, We find no cogent reason to deviate from Our abovementioned ruling in other similar cases. The Court in Division found that petitioner's sales invoices[2] do not bear the imprinted words "zero-rated" on the face thereof, in violation of Section 4.108-1 of RR 7-95 which provides:

> "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. the 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 a "VAT Invoice". All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax.

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[1] Taganito Mining Corporation v. Commissioner of Internal Revenue, C.T.A. E.B. No. 7 (C.T.A. Case No. 6384), January 31, 2006; Hitachi Global Storage Technologies Philippines Corp. *[formerly Hitachi Computer Products (Asia) Corp.]*, v. Commissioner of Internal Revenue, C.T.A. E.B. No. 54 (C.T.A. Case No. 6312), March 22, 2006; Applied Food Ingredients Co. Inc. v. Commissioner of Internal Revenue, C.T.A. E.B. No. 85 (C.T.A. Case No. 6171), April 26, 2006.

[2] Exhibits "P-19" to "P-910"

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> 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 this 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." (Emphasis supplied)

At this juncture, We maintain Our position that Section 4.108-1 of RR 7-95 requiring the imprinting of the words "zero-rated" on sales invoices or official receipts is valid.

In ***Atlas Consolidated Mining & Development Corporation v. Commissioner of Internal Revenue***[3]**,** the Supreme Court had the occasion to discuss the invoicing requirements for VAT-registered persons. It ruled that "[i]t is clear that a VAT invoice can be used only for the sale of goods or services that are subject to VAT". This means that the issuance of VAT invoices or official receipts are mandatory for sales that are subject to VAT either at 10% or 0% (zero-rated sales). The High Tribunal likewise declared that "it is the duty of the seller to comply with the invoicing and accounting requirements laid down in, among others, Section 108 of the Tax Code". The Supreme Court clearly recognizes 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 which also require strict compliance, i.e. Revenue Regulations. As held by the Supreme Court in the afore-quoted case:

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[3] G.R. No. 134467, November 17, 1999 (318 SCRA 386).

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> "A careful perusal of the violations specifically listed down in Sections 111 and 263 of the Tax Code shows that they do not encompass all possible types of violations of Section 108. Certainly, there are other ways of noncompliance with the requirements the latter has laid down, and these too must have their corresponding consequences. Section 21 of the Revenue Regulation 5-87 is not invalid, as it simply prescribes the penalty for failure to comply with the accounting and invoicing requirements laid down in Section 108, a penalty similar to that found in Sections 111 and 263. In short, Section 108 provides the guidelines and necessary requirements for VAT invoices; Sections 111 and 263 of the Tax Code provide penalties for different types of violations of Section 108; and Section 21 of Revenue Regulation 5-87 specifies the penalty for a specific violation of Section 108."

Revenue Regulations No. 7-95, otherwise known as the Consolidated Value-Added Tax Regulations, was promulgated by the Secretary of Finance pursuant to the authority granted by Section 245 of the National Internal Revenue Code of 1977, which provides:

> "SEC. 245. *Authority of Secretary of Finance to promulgate Rules and Regulations.* — The Secretary of Finance, upon the recommendation of the Commissioner, shall promulgate **all needful rules and regulations for the effective enforcement of the provisions of this Code**." (Emphasis supplied)

The foregoing provision was re-enacted *in toto* under Section 244 of the 1997 NIRC. Moreover, to enforce the rule-making power of the Secretary of Finance in coordination with the BIR, a new provision (SEC. 245) was incorporated defining the extent of such rule making power. Section 245, in pertinent part, provides:

> "SEC. 245. *Specific provisions to be contained in rules and regulations.* — The rules and regulations of the Bureau of Internal Revenue shall, among others things, contain provisions specifying, prescribing or defining:
>
> xxx xxx xxx
>
> (g) The manner in which revenue shall be collected and paid, the instrument, document or object to which revenue stamps shall be affixed, the mode of cancellation of the same, **the manner in which the proper** books, records, **invoices** and other papers **shall be kept and entries therein made** by the person subject to the tax, as well as the manner in which licenses and stamps shall be gathered up and returned after serving their purposes;" (Emphasis/italics supplied)

Considering the legislative grant of authority to the Secretary of Finance to promulgate all needful rules and regulations for the effective enforcement of the provisions of the Tax Code, Section 4.108-1 of RR 7-95 requiring the imprinting of the words "zero-rated" on sales invoices or official receipts is valid. It is both reasonable and necessary for the effective implementation of the provisions of the Tax Code concerning zero-rated sales. Thus, the requirement that sales invoices shall be imprinted with the word "zero-rated" cannot be taken as an enlargement or expansion of the law for the reason that it only implements the provisions of the 1997 Tax Code on sales that are subject to 10% VAT, zero-rated sales (0% VAT) and exempt sales. The imprinting of the word "zero-rated" is necessary to distinguish sales subject to 10% VAT, those that are subject to 0% VAT (zero-rated) and exempt sales, and to enable the BIR to properly implement and enforce the other provisions of the 1997 Tax Code on VAT, namely:

1. Zero-rated sales [Sec. 106 (A) 2 and Sec. 108 (B)];
2. Exempt transactions [Sec. 109] in relation to Sec. 112 (A);
3. Tax credits [Sec. 110]; and
4. Refunds or tax credits of input tax [Sec. 112].

The rule is that as long as the administrative regulation is not in conflict with the law it seeks to implement, the same should be taken as part of the law taking into consideration the underlying purpose of the rule or regulation.

The Supreme Court has ruled that regulations issued by the Department of Finance/Bureau of Internal Revenue that would give effect to the law are valid regulations, thus:

> "Petitioner's arguments impugning the validity of Revenue Regulations V-39 and 17-67 deserve scant consideration. First, both regulations were issued pursuant to Section 245 (now Section 244) of the Tax Code. **The authority of the Secretary of Finance, in conjunction with the Commissioner of Internal Revenue, to promulgate needful rules and regulations for the effective enforcement of internal revenue laws cannot be controverted.** Such rules and regulations, as well as administrative opinions and rulings, ordinarily deserve to be given weight and respect by the courts. Second, our scrutiny of Revenue Regulations Nos. V-39 and 17-67 show that said regulations did not modify or deviate from the text of Sections 137 and 141 but merely implemented and clarified said two provisions by providing certain conditions under which stemmed leaf tobacco may be exempted from prepayment of specific tax." [4] (Emphasis supplied; *citations omitted*)

The issuance of Revenue Regulations No. 7-95 was made pursuant to the respondent's duty of implementing the 1977 NIRC, as amended. The requirement of imprinting the word "zero-rated" fulfills the intent of the law. It is useful, practical and necessary not only with respect to the proper implementation of the provisions of the 1997 NIRC on zero-rated transactions but more importantly, to prevent the granting of refund or tax credit of non-existent input VAT. It is an act of tax administration which is not violative of the rule on non-delegation of delegated powers.[5]

Furthermore, the Honorable Court of Appeals has likewise ruled that non-compliance with invoicing requirements is fatal to a claim for tax credit/refund, thus:

> "While it may be true that under Section 106 (a)(2)(a)(1) of the NIRC, VAT registered persons are entitled to claim VAT refunds on their input taxes while their export sales are zero-rated, **nevertheless, it is subject to compliance with certain requirements.**
>
> Section 113 of the NIRC explicitly sets forth the Invoicing and Accounting Requirements for VAT-Registered Persons. . . .
>
> xxx xxx xxx

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[4] Compania General de Tabacos de Filipinas v. Hon. Court of Appeals and The Commissioner of Internal Revenue, G.R. No. 147361, March 23, 2004 (426 SCRA 203).
[5] Taganito Mining Corporation v. Commissioner of Internal Revenue, supra.

From the foregoing, therefore, it is clear that it is not only the export sales that should be proven but also compliance with the requirements set forth under the aforestated sections of the NIRC.

Moreover, Revenue Regulations No. 7-95, as amended, states that:

> 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:
>
> xxx xxx xxx

Besides, Revenue Memorandum Circular No. 42-2003 has already clarified the issue relative to the failure of a claimant to comply with certain invoicing requirements. Under said memorandum, 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 by the purchaser-claimant. Thus, 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 (e.g. failure to indicate the TIN), **the claim for tax credit/refund of VAT on its purchases shall be denied since the invoice issued to the customers failed to depict that he is a VAT-registered taxpayer whose sales are classified as zero-rated sales**. . . . ." [6] (Emphasis supplied)

Revenue Memorandum Circular No. 42-03 dated July 15, 2003, captioned *"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"*, in part, provides:

> "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 customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales."** (Emphasis supplied)

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

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As correctly ruled by the Honorable Court of Appeals in the above-cited *Intel Technology Philippines, Inc.* case:

> "Under the said memorandum, 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 by the purchaser-claimant. Thus, 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 (e.g. failure to indicate the TIN), **the claim for tax credit/refund of VAT on its purchases shall be denied since the invoice issued to the customers failed to depict that he is a VAT-registered taxpayer whose sales are classified as zero-rated sales.**" (Emphasis supplied)

Based on the foregoing discussion, petitioner's claim for refund was correctly denied by the Court in Division.

In addition, as correctly found by the Court in Division, petitioner failed to indicate in some of its official receipts the word "VAT" and its TIN, which are clear violations of Section 113 of the Tax Code which reads:

> "Section 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* —
>
> (A) Invoicing Requirements — A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following **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);**
>
> xxx xxx xxx"
> (Emphasis supplied)

Applying the ruling in the *Atlas* case, *supra*, the absence of the indication that petitioner is a VAT-registered taxpayer through the imprinting of the TIN-VAT or TIN-V on the face of the invoices is fatal to petitioner's claim for refund/tax credit because the invoices issued by the petitioner failed to comply with the mandatory invoicing requirements laid down in Section 113 of the 1997 Tax Code in relation to

Section 237 of the same Code. Section 113 clearly requires that the invoice or receipt must contain a "statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN)." As a consequence, petitioner's sales invoices cannot qualify as VAT invoices because they failed to show that petitioner is a VAT-registered person.

Since the sales invoices issued by petitioner to its customers do not show its being a VAT-registered taxpayer (absence of TIN-V on some invoices) whose sales are classified as zero-rated sales (lack of "zero-rated" imprint on all invoices), its claim for refund of input VAT attributable to its alleged zero-rated sales cannot be granted because of petitioner's failure to prove that its export sales are indeed "zero-rated sales."

Petitioner's contention that its out-of-period claim for refund should be allowed pursuant to RMC No. 42-2003, is untenable. The requirements for the allowance of out-of-period claims under RMC No. 42-2003 presupposes that the VAT invoices/receipts evidencing the sources of input tax credits are compliant with the mandatory invoicing requirements of the NIRC and related regulations. As previously discussed, petitioner's invoices failed to comply with the said requirements.

We cannot overemphasize the fact that taxpayers have the burden of proving compliance with the mandatory provisions of the National Internal Revenue Code and its implementing rules and regulations. This well-entrenched principle must be applied in all actions involving taxation, more particularly, when claim for refunds or tax credits are involved as in petitioner's case before this Court. After all, it is wellsettled that tax refunds are in the nature of tax exemptions and as such must be strictly construed against the claimant."[7] Otherwise, the intention of the lawmakers in enacting the VAT law as a revenue generating mechanism would be negated and the same law could in fact become a convenient and effective scheme of bleeding the already limited financial resources that are available to the government in performing its functions."[8]

WHEREFORE, the petition for review is **DENIED** for lack of merit. **ACCORDINGLY**, the Decision dated January 24, 2006 and the Resolution dated April 18, 2006 of the Court in Division in C.T.A. Case No. 6309 are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

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

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[7] Commissioner of Internal Revenue v. Procter and Gamble Philippines Manufacturing Corporation and The Court of Tax Appeals, G.R. No. 66838, December 2, 1991 (204 SCRA 377); Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc. and Court of Appeals, G.R. No. 127105, June 25, 1999 (309 SCRA 87).

[8] Taganito Mining Corporation v. Commissioner of Internal Revenue, C.T.A. E.B. No. 7 (C.T.A. Case No. 6384), January 31, 2006.

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

C E R T I F I C A T I O N

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

INTEL TECHNOLOGY PHILIPPINES, INC.
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 181
(C.T.A. Case No. 6309)

Present:

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

Promulgated:

MAR 27 2007 Apolinario

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Concurring and Dissenting Opinion

With due respect to my distinguished colleagues, although I partly assent with the majority opinion to the extent that it finds the imprinting of the words "TIN" and "VAT" or any indication to that effect in the invoice and/or receipt as significant for their validity, nevertheless, I am expressing my disagreement with this Court's view that neglect to indicate on sales invoices/receipts the word "zero-rated" will outright render the same invalid, incompetent and irrelevant and cause the denial of petitioner's valid claim for refund or tax credit.

The relevant provisions of the 1997 Tax Code, namely, **Section 113** in relation to **Section 237**, are hereunder quoted for ready reference, to wit:

> "**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.

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"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".

From the clear wordings of the above-quoted provisions, the following are the only information that must be indicated in an invoice or official receipt:

(1) A statement that the seller is a VAT-registered person;
(2) The taxpayers identification number (TIN);
(3) The total amount which the purchaser pays or is obligated to pay to the seller indicating the inclusion of the value-added tax;
(4) Transaction date;
(5) Quantity of merchandise;
(6) Description of merchandise or nature of service;
(7) Unit cost;
(8) The name, business style, if any, and address of the purchaser, customer or client in the case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to

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cover payment made as rentals, commissions, compensations or fees; and

(9) The TIN of the VAT-registered purchaser.

Save for the TIN and VAT, nowhere is the word "zero-rated" required to appear on the face of the sales invoice or official receipt as a precondition for claiming refund of input VAT.

The foregoing is further corroborated by the statement of the Supreme Court in the landmark case of **Commissioner of Internal Revenue vs. Seagate Technology (Philippines),** *G.R. No. 153866, February 11, 2005*, penned by no less than the former Chief Justice Artemio V. Panganiban, where the High Tribunal accentuated 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.*

The solitary provision that perhaps "requires" imprinting the word "zero-rated" 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*), which is a mere regulation created for the singular and limited purpose of enforcing a very clear and specific law. Well-established is the legal principle that administrative rules and regulations must not expand the letter and spirit of the law they seek to implement. And in case of disagreement, the law prevails (**People vs. Lim**, *108 Phil. 1091*). Hence, the Court must not grant its blessings on such invalid condition that stems from an administrative issuance that exceeded the boundaries of its mandate.

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The petitioner correctly pointed out that the absence of the word "zero-rated," if at all, makes the petitioner merely liable for penalties provided under **Section 264 of the Tax Code**, which 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 and 4.111-1**, exclude such harsh punishment of automatic denial of the claim for refund. These sections state:

> "**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*)

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> **"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*)

The Revenue Bureau, itself, in **BIR Ruling DA-375-03** confirms this opinion, thus:

> "xxx The fact that the official receipts issued by DITFI do not bear the information that DITFI is a VAT-registered taxpayer as required under Section 4.108-1 of Rev. Regs. No. 7-95, **does not *motu propio* invalidate the claim for input tax credit** of Stanfilco xxx.
>
> "Finally, **the Revenue District Officer (RDO) concerned is hereby ordered to impose the corresponding penalty against DITFI as prescribed in Revenue Memorandum Order No. 56-2000, in relation to Section 264 of the Tax Code of 1997, for failure to issue the prescribed receipts."** *(Emphasis supplied)*

The Court must be reminded that sales invoices or receipts are not the sole evidentiary requirement for a claim for refund to be granted or given a judicial stamp of approval. In fact, applicable statutes and several CTA decisions instead of restricting the permissible documentary proof to sales invoice, admit and expressly direct the presentation of other documents to establish the fact of the transaction.

In the case of **Nichimen Corporation (Manila Branch) vs. CIR**, *CTA Case No. 5746, dated January 4, 2001*, this Court resolved that bank credit advices are admissible to prove the claimant's zero-rated sales without requiring the production of official receipts. Likewise, in **Nichimen Corporation (Manila Branch) vs. CIR,** *CTA Case No. 5221, dated January 8, 1998*, although the respondent objected to the refund claim for supposed failure to submit substantial proof that the sales were really zero-rated, this Court still held that, "Respondent's demand for additional requirements is unnecessary considering that the documentary and testimonial evidence adduced by the petitioner are uncontroverted. The same evidence has clearly substantiated petitioner's claim to the satisfaction of the Court." The petitioner therein in support of its claim that its sales were zero-rated, only submitted the statements from RCBC to the effect that the acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations.

Equally persuasive is the BIR's acknowledgment of the evidentiary significance of documents such as audited financial statements, books of accounts, export invoices, bills of lading or airway bills, as expressed in **Revenue Memorandum Circular No. 42-03** dated July 15, 2003. The same is hereunder quoted, thus:

> **"If the taxpayer did not reflect zero-rated sales in the VAT returns but it is claiming for tax credit or refund based on zero-rated sales, the Revenue Officer should mandatorily establish the existence of zero-rated sales from the audited financial statements, books of accounts, export invoices, bills of lading or airway bills and by comparing the reported sales against output tax reflected in the VAT return.** When zero-rated sales have been determined despite the fact that specific amounts were not categorically reflected in the VAT return, the claim may be processed upon sufficient proof of its existence xxx." *(Emphasis supplied)*

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For that reason, the Court must not differentiate between the evidentiary value of an invoice, an official receipt and other documentary evidence to prove the fact of the zero-rated sales. After all, these decisions, laws and regulations made no pronouncement as to the use of a VAT invoice and/or receipt as the exclusive and sole determinative piece of evidence to the exclusion of all other proofs equally relevant and competent. Basic is the rule in statutory construction that where the law does not distinguish, the courts should make no distinction. *Ubi lex non distinguit nec nos distinguire debemos* (**Mendoza, et. al. vs. COMELEC**, **et. al.**, *G. R. No. 149736, December 17, 2002).*

So even assuming *arguendo* that there was a violation of the supposed requirements to indicate the terms "TIN," "VAT," and "zero-rated," such oversight does not automatically invalidate the sales invoice/official receipt for purposes of proving the sales transactions made by the petitioner. The sales invoices and/or receipts are still material, relevant and competent inasmuch as they still directly prove the amount of sales made by the petitioner.

In the case at bar, the petitioner has established its right to the tax refund or tax credit through duly submitted material and documentary exhibits. The documents presented such as, Export Sales Summary, Bank Certifications of Inward Remittances, sales invoices, export declarations and airway bills (*Exhibits "P-1" to "P-910"*) and Report of the Commissioned Independent CPA dated January 7, 2003 (*Exhibit "Q"*) prove that petitioner's products were actually sold and shipped abroad and in consideration thereof, petitioner received foreign currency payments, which were inwardly remitted in accordance with the BSP rules and regulations. The Court's Second Division in its Decision dated January 24, 2006, even acknowledged that in view of the foregoing pieces of evidence, *it appears that petitioner's export sales in*

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the amount of P3,365,221,687.02 for the period April 1, 1999 to June 30,1999 fall under the category of export sales transactions, subject to zero percent (0%) VAT, pursuant to the above-quoted provisions. The substantive and main requirements of the Tax Code in order to be considered as zero-rated sales were satisfactorily complied with and effectively proven before this Court by the petitioner.

Accordingly, I manifest my dissent to the majority opinion insofar as it finds that the term "zero-rated" must be imprinted in the sales invoice/receipt to be a valid evidence in claiming for refund or tax credit and that failure to do so will not cause the automatic rejection of petitioner's claim especially if there are other pieces of evidence proving petitioner's transactions.

ERNESTO D. ACOSTA
Presiding Justice

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