REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

INTEL PHILIPPINES MANUFACTURING, INC.
Petitioner,

C.T.A. CASE NO. 6493

Members:

\- versus -

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 14 2006

x - x

DECISION

CASANOVA, C., J.:

This a Petition for Review seeking the refund or issuance of a tax credit certificate in the amount of P20,411,419.07 allegedly representing unutilized input value-added taxes paid on purchases of goods and services attributable to zero-rated sales for the period April 1, 2000 to June 30, 2000.

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at No. 1321 Apolinario St., Bangkal, Makati City. It is registered as a Value-Added Tax (VAT) taxpayer pursuant to Section 107 of the Tax Code effective January 30, 1996 and was issued Certificate of Registration No. 32A-3-002649 and

322

BIR Form No. 1556 – Certificate of Registration No. 94-048-02621.[1] It is also registered with the Board of Investments (BOI) per Certificate of Registration No. 85-1010 dated October 25, 1985 as a preferred pioneer enterprise for the production/manufacture and export of tested and untested integrated circuits such as large scale integrated circuits and microprocessor.[2]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue vested with the authority to exercise the functions of said office, including the power to refund any internal revenue tax erroneously or illegally assessed or collected and holding office at the BIR National Office Building, Diliman, Quezon City.

During the second quarter of 2000, petitioner allegedly generated and recorded zero-rated export sales in the amount of P458,707,670.09 which was paid for in US Dollars, inwardly remitted and/or offset against inter-company payable in accordance with existing regulations of the Bangko Sentral ng Pilipinas. Petitioner contends that as confirmed by the respondent per VAT Ruling No. 102(a)(1)-402-88, the said export sales are zero-rated for VAT purposes pursuant to Sec. 106(A)(2)(a)(1) and Sec. 108(B)(1) of the NIRC of 1997.

Petitioner allegedly paid for the same period input VAT on domestic purchases and importations of goods in the sum of P20,443,952.93, which are all attributable to its alleged zero-rated sales. These input taxes of P20,443,952.93 were declared in petitioner's Quarterly VAT Return for the second quarter of 2000, however, the zero-rated sales reflected in the return amounted to P468,707,670.09 instead of P458,707,670.09.

On August 10, 2000, petitioner filed with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance, an administrative claim for the refund/tax credit of its alleged input VAT payment of P20,411,419.07 per BIR Form No.

[1] Pars. 1 & 3, Stipulation of Facts, Records, pages 66 & 67
[2] Exhibit C

323

2552 entitled "APPLICATION FOR TAX CREDIT/REFUND OF VALUE-ADDED TAX PAID" and Claimant Information Sheet No. 36230.[3]

Petitioner maintains that it only filed a lesser amount because it has misplaced the other invoices/official receipts issued by its other suppliers. And since the input taxes of P20,411,419.07 were allegedly attributable to zero-rated sales and have not been applied against any output VAT, petitioner claims that it is entitled to the refund/tax credit thereof pursuant to Section 4.100-2(a) of Revenue Regulations No. 7-95 and Section 112 of the NIRC of 1997.

There being no action on the part of respondent and in order to toll the running of the two-year prescriptive period, petitioner filed the instant Petition for Review on June 28, 2002.

On August 20, 2002, respondent filed his Answer, averring the following Special and Affirmative Defenses:

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

6. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;

7. Petitioner's claim for refund/tax credit in the amount of **P20,411,419.07** as alleged input VAT paid on its domestic purchases of goods and services and importation of goods /capital equipments for the period covering April 1, 2000 to June 30, 2000 were not duly substantiated;

8. Petitioner's instant claim for refund/tax credit representing the alleged input VAT paid for the period covering April 1, 2000 to June 30, 2000 is not subject to zero-percent (0%) rate of VAT under Sections 106 (A)(2)(1) and 108 (B)(1) of the 1997 Tax Code;

9. Petitioner's claim for refund/credit of the alleged input VAT paid on its domestic purchases of goods and services and importation of goods/capital equipments for the period covering April 1, 2000 to June 30, 2000 has already prescribed pursuant to Section 112 (A)(B) of the 1997 Tax Code;

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[3] Exhibits I & J

324

10. It is incumbent upon the latter to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund; and

11. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation ***(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and as such, they are looked upon with disfavor ***(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)***.

On December 9, 2002, the parties filed their *Joint Stipulation of Facts and Simplification of Issues*, thereby submitting the following issues to the Court for resolution:

a) Whether or not petitioner's export sales are zero-rated for VAT purposes;

b) Whether or not petitioner incurred VAT input taxes in the amount of P20,411,419.07 for the period covering from April 1, 2000 to June 30, 2000;

c) Whether or not the alleged VAT input taxes paid by petitioner for the period covering from April 1, 2000 to June 30, 2000 are duly substantiated;

d) Whether or not petitioner has carried over to the succeeding taxable year(s)/quarter the alleged VAT input taxes paid for the period covering from April 1, 2000 to June 30, 2000;

e) Whether or not petitioner has complied with the requirements under Section 204 (C) in relation to Section 229 of the Tax Code;

f) Whether or not petitioner is entitled to the refund or tax credit in the sum of P20,411,419.07 for the period covering from April 1, 2000 to June 30, 2000; and

g) Whether or not VAT Ruling No. 102(a)(1) 402-88 is applicable in this instant case.

The above issues being interrelated, they shall be discussed jointly.

Petitioner posits that its export sales are subject to zero percent (0%) VAT pursuant to Section 106(A)(2)(a)(1) and 108(B)(1) of the National Internal Revenue Code of 1997, quoted below for easy reference:

325

"SEC. 106. *Value Added Tax on Sale of Goods or Properties.* —

(A) *Rate and Base of Tax.* — x x x

xxx xxx xxx

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* — The term **'export sales'** means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas."

"SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —

(A) *Rate and Base of Tax.* — 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) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)."

Petitioner further avers that respondent confirmed the zero-rating of its export sales per VAT Ruling No. 102(a)(1)-402-88,[4] the pertinent portion of which reads as follows:

'This refers to your letter dated May 19, 1988 stating that your company is a BOI-registered company on a pioneer status as export producer (per BOI Registration Certificate No. 851010); that your production of manufactured integrated circuits is exported 100% to your parent company, Intel Corporation, California, U.S.A. and that the services are paid for in acceptable foreign currency.

xxx

[4] Exhibit K

326

In reply, please be informed that services rendered by VAT-registered persons in connection with the processing, manufacturing or repacking of goods for persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency inwardly remitted to the Philippines and duly accounted for under the regulations of the Central Bank of the Philippines, shall be subject to zero rate (0%) pursuant to Section 102(a)(1) of the Tax Code, as amended by E.O. 273."

To substantiate its export sales and the foreign currency proceeds thereof for the second quarter of 2000, petitioner presented the following documents:

	DOCUMENT	**EXHIBIT NO.**
1.)	Amended Quarterly VAT Return for the 2nd quarter of 2000	D
2.)	Partial & Final Reports of the commissioned independent CPA	P & S, inclusive of sub-markings
3.)	Various export documents (sales invoices, air waybills, export declarations)	T-1 to T-570; U-1 to U-555
4.)	Table of Value & Volume of Intel's Exports by Commodity and by Country of Destination for the 2nd quarter of 2000	Y
5.)	Certification of Receipt of Foreign Currency Inward Remittances	G, H, V, V-1 to V-10, W, W-1 to W-8

An examination of petitioner's amended Quarterly VAT Return for the second quarter of 2000[5] shows that its declared zero-rated sales amounted to P1,047,898,222.91. However, since the amended return was not duly stamped received by the Bureau of Internal Revenue, the Court cannot give credence to the figures stated therein. Thus, this Court shall consider only the amount of P468,707,670.09 zero-rated sales reflected in petitioner's original Quarterly VAT Return.[6]

The other documents submitted by petitioner such as the final report of the commissioned independent CPA;[7] export documents like sales invoices, air waybills, export

[5] Exhibit D
[6] Annex F, Petition for Review
[7] Exhibit S

327

declarations;[8] and certification of foreign currency inward remittances,[9] sufficiently established that its products were actually sold and shipped abroad and in consideration thereof petitioner received foreign currency payments, which were inwardly remitted in accordance with the rules and regulations of the BSP. Hence, these export sales may properly fall within the export sales transactions subject to zero percent (0%) VAT referred to under Section 106(A)(2)(a)(1) of the National Internal Revenue Code of 1997 and not under Section 108(B)(1) of the same Code, which pertains to sales of services. Further, as per its VAT Registration Certificate,[10] petitioner's registered business activity is sale of goods, not sale of services.

However, Section 106(A)(2)(a)(1) of the NIRC of 1997 must be read in relation to Section 113 of the same Code as implemented by Section 4.108-1 of Revenue Regulations No. 7-95 which prescribes that a VAT-registered person like petitioner, shall, for every sale, issue an invoice or receipt. To quote:

> "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."

> "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;

[8] Exhibits T-1 to T-570; U-1 to U-555
[9] Exhibits G, H, V, V-1 to V-10, W, W-1 to W-8
[10] Exhibit A

328

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.

xxx xxx xxx

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." (*Emphasis supplied*)

Moreover, such invoice or receipt must be duly registered with the Bureau of Internal Revenue as prescribed under Section 237 of the NIRC of 1997:

"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: x x x" *(Emphasis supplied)*

A scrutiny of petitioner's sales invoices[11] reveals that they were merely pro-forma invoices. These invoices were not duly registered with the BIR as mandated under Section 237 of the NIRC of 1997. There was likewise no BIR permit number showing petitioner's authority to print reflected on the said invoices in flagrant violation of Section 238 of the National Internal Revenue Code, which reads:

"SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* - All persons who are engaged in business shall secure from the Bureau of Internal Revenue an **authority to print** receipts or **sales or commercial invoices** before a printer can print the same." *(Emphasis supplied)*

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[11] Exhibits T4, T11, T14, T17, T23, T26, T29, T35, T41, T44, T46, T49, T52, T55, T61, T67, T74, T80, T81, T87, T93, T99, T105, T111, T117, T123, T126, T129, T135, T140, T142, T147, T152, T158, T164, T170, T173, T176, T179, T185, T188, T191, T197, T203, T209, T212, T215, T221, T227, T230, T236, T239, T245, T251, T254, T260, T266, T274, T280, T281, T284, T290, T293, T296, T299, T302, T308, T314, T317, T320, T331, T337, T343, T349, T355, T356, T362, T368, T374, T380, T383, T386, T392, T398, T401, T404, T407, T412, T415, T421, T427, T434, T440, T443, T446 to T448, T454 to T458, T461, T466, T472, T475, T481, T484, T487, T493, T499, T505, T508, T511, T512, T518, T524 to T526, T532, T538, T544, T550, T553, T556, T562, T565) save for the three invoices marked as Exhibits T-1 to T-3

329

Basic is the rule that before a printer can print receipts or sales or commercial invoices, an authority to print must be secured first from the BIR by all persons who are engaged in business pursuant to the above provision. The rationale behind this mandate is to eliminate the use of unregistered and double or multiple sets of receipts by striking at the very root of the problem — the printer.[12]

Petitioner however alleges that it was authorized by the BIR to issue such computerized sales invoices as evidenced by the permit to use computerized accounting records dated May 27, 1998 issued by the BIR in its favor marked as Exhibit X.[13]

The Court does not subscribe to this argument.

The said permit was only limited to the use of pre-numbered loose leaf computerized books of accounts such as the General Ledger, Accounts Receivable Subsidiary Ledger, Purchase Register, Export Sales Register and Import Register and did not include the issuance of computerized sales invoices.

In the case of ***Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, CTA EB Case No. 28 (CTA Case No. 6039), September 14, 2005***, the Court *En Banc* ruled:

> "After a careful and thorough perusal, evaluation and consideration of the instant Petition for Review, the Court *En Banc* finds that the ***absence of the Bureau of Internal Revenue's Permit to Print is fatal to petitioner's claim for refund/tax credit***. In the case of *Intel Philippines Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6040, promulgated on October 24, 2003*, this court had ruled and we quote:
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> > *'It bears to emphasize that the export documents needed to substantiate the claim for refund must comply with the requirements as stated in Sections 113(A) and 238 of the Tax Code.* ***Petitioner must show proof and convince this court that it has complied with the substantiation requirements imposed before the documents presented may be considered as valid evidence to prove its zero-***

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[12] Intel Philippines Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6338, July 18, 2005 citing Intel Philippines Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6170, November 24, 2003

[13] TSN, June 22, 2004, pages 48-50

330

> ***rated sales of goods for VAT purposes under the provisions of Section 113 of the Tax Code in relation to Section 238 of the same code as well as Section 4.108-1 of Revenue Regulations No. 7-95.*** *xxx*
>
> *xxx xxx xxx*
>
> *Here, petitioner failed. Close scrutiny of the documents presented showed that* ***all of petitioner's export sales invoices (included as part of export sales documents marked as Exhibits RR-1 to RR-712) did not have any Bureau of Internal Revenue Permit to Print****, which contravened Section 113 and 238 of the 1997 Tax Code, nor did most of its sales invoices bear the imprinted word "zero-rated", as required under Section 4.108-1 of Revenue Regulations 7-95.* ***Violation of these mandatory and specific requirements is tantamount to denying such evidence to prove the zero-rated sales of goods for VAT purposes*** *of the petitioner, pursuant to Section 3 of Rule 128 of the 1997 Rules of Court. Evidently, petitioner failed to substantiate its demand for refund or issuance of a tax credit certificate.'*

Rules and regulations with regard to procedures are implemented not to be ignored nor taken for granted, but are to be strictly adhered to for they are developed from the law itself. Though we agree with the Honorable Supreme Court when it said that "rules of procedure are mere tools to facilitate the attainment of justice and that strict and rigid application of rules which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided", we believe that this does not apply to the instant case. It has always been the procedure and a requirement that before any printing of invoices or receipts is considered, the Bureau of Internal Revenue Permit to Print should have first been obtained. As an exporter, petitioner is, or should be, aware of this. Section 238 of the Tax Code requires that all persons who are engaged in business should secure from the Bureau of Internal Revenue an "authority to print" receipts or sales invoices or commercial invoices before a printer can print the same. ***Consequently, the only proof to show that such a mandatory requirement has been complied with is by clearly imprinting the said permit number on the invoices itself. In addition, Revenue Regulation No. 2-90 restored the requirement of registering and stamping the newly printed receipts or invoices prior to their use.*** To quote the pertinent provision:

> 'Sec. 19. Authentication and registration of books, register, or records, authority to print receipts, sales and commercial invoices, and registration and stamping of receipts and invoices:
>
> xxx xxx xxx

331

> (d) Registration and stamping of receipts and invoices.
>
> Before being used, the printed receipts, sales or commercial invoices shall be registered with the revenue district officer where the principal place of business of the taxpayer is located within thirty (30) days from the date of printing the same. The registration of the printed receipts or invoices shall be evidenced by an appropriate stamp on the face of the taxpayer's copy of the authority to print as well as on the front cover, on the back of the middle invoice or receipt and on the back of the last invoice or receipt of the registered booklet or pad, authenticated by the signature of the officer authorized to place the stamp thereon.'

> ***Blunders and inaccuracies of petitioner cannot be tolerated since the law is very clear with its mandatory requirements.*** Thus, petitioner cannot just bury itself under the Honorable Supreme Court's decision on the relaxation of the rules of procedure." *(Emphasis supplied)*

Thus, without **duly registered VAT sales invoices** containing the required information, particularly the **BIR authority to print**, petitioner's TIN-VAT number and the imprinted word "zero-rated", petitioner's reported export sales of P468,707,670.09 for the second quarter of 2000 cannot qualify for zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997. Consequently, petitioner's claimed input VAT payment allegedly attributable thereto in the amount of P20,411,419.07 cannot be granted.

WHEREFORE, the Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(On Leave – With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

332

ATTESTATION

I attest 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's Division.

Juanito

LOVELL R. BAUTISTA
Acting Division Chairman

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Acting Division Chairman's Attestation, 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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

333

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-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE No. 6493

Members:

ACOSTA, *Chairman,*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
JUN 14 2006

x---x

Dissenting Opinion

This Court's First Division in its Decision denies petitioner's claim for refund or issuance of a tax credit certificate representing its unutilized input value-added tax (VAT) paid on purchases of goods and services attributable to its zero-rated sales for the period covering April 1, 2000 to June 30, 2000, on the ground that the petitioner failed to comply with the substantiation requirements imposed by the 1997 Tax Code and applicable regulations. Particularly, this Court found that the VAT invoices presented to support its claim were tainted with several defects namely:

1) The Bureau of Internal Revenue (BIR) Permit to Print is not indicated;

2) The word "zero-rated" is not imprinted on the face of invoices; and

3) The subject invoices do not bear petitioner's TIN-VAT number.

I subscribe, in part, to the majority opinion to the extent that it finds the imprinting of the TIN-VAT number or any indication to that effect as important

334

information to appear in an invoice. However, I am inclined to disagree with the majority based on the reason that the pronouncement of "defects" in the said invoices has no valid basis and this Court must give the other pieces of evidence submitted an equally persuasive weight as the supposedly technically defective VAT invoices in deciding whether to grant petitioner's claim.

Inasmuch as the focal point of the controversy involves the proper interpretation of the significant provisions of the 1997 Tax Code, namely, **Section 113** in relation to **Section 237**, I reckon it appropriate to quote the same hereunder, 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.
>
> xxx
>
> "**Section 237. Issuance of Receipts or Sales of Commercial Invoices.** – All persons subject to an internal revenue tax shall, for each sale, or transfer of merchandise or for services rendered valued at Twenty five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service; Provided however, That in case of sales, receipts or transfers in the amount of One Hundred Pesos (P100.00) or more, regardless of amount where the sale or transfer is made by a person liable to value added tax to another person also liable to value added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations, or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser; customer or client: Provided further, That where the purchaser is a VAT registered person, in addition to the information herein required, the invoice or receipt shall

335

further show the Taxpayer's Identification Number (TIN) of the purchaser. xxx".

Based on the foregoing, the only information required 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 are as follows:

(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.

Section 112 (A) of the 1997 Tax Code, which supports the above view, states as follows:

> "(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

336

the transactions, it shall be allocated proportionately on the basis of the volume of sales."

The tenor of **Section 112 (A) of the Tax Code** apparently permits all VAT-registered enterprises engaged in zero-rated transactions 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 will cause the outright rejection of the refund claim.

The only provision where the so-called "requirement" of imprinting the questioned information on the VAT invoice or receipt can perhaps claim to get its authority from is **Section 4.108-1 of Revenue Regulations No. 7-95** (*The Implementing Rules and Regulations of the VAT law*). However, the said provision is merely a regulation designed for the sole and limited objective of implementing a very exact law. Long-established 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)*. And in case of conflict between the basic law and a rule or regulation issued to implement said law, the law prevails because said rule or regulation cannot go beyond the terms and provisions of the basic law (**People vs. Lim**, *108 Phil. 1091*).

The Honorable Supreme Court, in the recently promulgated case of **Commissioner of Internal Revenue vs. Seagate Technology (Philippines)**, *G.R. No. 153866, February 11, 2005*, stressed 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*

337

(A) of the Tax Code), is sufficient for the effective zero rating of the transactions of a taxpayer. The nature of its business and transactions can easily be perused from, as already clearly indicated in, its VAT registration papers and photocopied documents attached thereto. xxx. Administrative convenience cannot thwart legislative mandate.

Even assuming that there was a violation of the questioned requirements to indicate the word "zero-rated" and BIR Permit to Print, such omission does not automatically invalidate the invoices for purposes of proving export sales made by the petitioner. The sales invoices are still material, relevant and competent since they still directly prove the amount of export sales made by the petitioner. It must be pointed out that "admissibility" refers to the question of whether or not the evidence is to be considered, while "competency" refers to whether or not the evidence is expressly excluded by law or the rules. Clearly, the said invoices comply with the above standards in both counts.

Moreover, the absence of the authority to print renders the petitioner accountable only for penalties under the Tax Code, particularly, Section 264. And it must be pointed out that invalidation of the invoice and outright denial of the claim for refund or issuance of a tax credit certificate are not two of the prescribed penalties. In fact, **BIR Ruling DA-375-03** supports this finding, where the Bureau of Internal Revenue held 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)*

338

Revenue Memorandum Circular No. 42-03 dated July 15, 2003, explains this issue further. The pertinent portion states that:

> "**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)*

It must be emphasized that the applicable statutes rather than limiting the documentary requirements to just the export invoices, acknowledge and specifically enjoin the production of "export documents" such as commercial invoices or receipts, bills of lading, airway bills, and export declarations or permits to prove the fact of export sales. These documents, taken collectively are the best means to prove the exportation of goods.

The CTA has rendered decisions supporting this contention. In the case of **Nichimen Corporation (Manila Branch) vs. CIR**, *CTA Case No. 5746 dated January 4, 2001*, this Court resolved to accept bank credit advices to prove the claimant's zero-rated sales without requiring the presentation of official receipts.

Moreover, in **Nichimen Corporation (Manila Branch) vs. CIR,** *CTA Case No. 5221 dated January 8, 1998,* in support of the petitioner's claim that its sales were zero-rated, it 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. Although the respondent objected to the refund claim for alleged failure to submit substantial proof that the sales were really zero-rated, this Court still held that, "Respondent's demand for additional

339

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 above-mentioned CTA decisions reinforce the argument that this Court is willing to accept other proofs or evidence in lieu of VAT invoices to establish the existence of zero-rated transactions.

The 1997 Tax Code and BIR Regulations have gamut of provisions proving further the intention to accept other evidence to substantiate claims for VAT refund, particularly, the use of either a VAT invoice or receipt; foremost of which are **Sections 110, 113 of the 1997 Tax Code, Section 4.106-5 of Revenue Regulations No. 7-95** and **Section 2 of Revenue Regulations No. 3-88**.

The use of the disjunctive term "or" in the afore-cited provisions connotes that either act qualifies as two different evidences of input VAT. It is indicative of the BIR's objective to use the same interchangeably in sale of goods, viz., the claimant may present either an invoice or a receipt and it will not have any negative repercussion on its claim. In fact, the word "or" has been defined as *a disjunctive particle used to express an alternative or to give a choice of one among two or more things (**Black's Law Dictionary**, 6th Edition, 1990, page 1095).* Hence, the obvious intention to include the word "or" must be interpreted as providing an alternative rather than a limitation.

In all of these, never was it shown that the objective of the lawmakers and the BIR in issuing the numerous regulations, orders and interpretative memoranda, is to make the VAT invoice as the sole evidence of input tax. In fact, the contrary is

840

provided. Their manifest intention is to establish the use of VAT invoice and other relevant evidence as equally valid.

Hence, there should be no distinction as to the evidentiary value of an invoice, an official receipt and other documentary evidence to prove the fact of export sales. After all, these laws and regulations made no pronouncement as to the use only of a VAT invoice to the exclusion of all other equally relevant and competent evidence. The elementary rule in statutory construction is 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).*

The decision in question only manifests that this Court placed too much weight on the export sales invoices. However, such invoices are merely written accounts of the particulars of merchandise shipped or sent to a purchaser or consignee with the value or prices and charges annexed (**Philippine Law Dictionary**, *3rd Ed., p. 495*). By no means are they accurate confirmations that goods were actually shipped out of the country (**CIR vs. Philippine Bobbin Corporation,** *C.A. G.R. SP No. 59452, February 19, 2001*). The export sales invoices alone are insufficient evidence that the subject goods were actually exported.

Here, petitioner has established its right to the tax refund or issuance of a tax credit certificate through material and documentary exhibits. The documents formally offered as evidence by the petitioner, particularly, the export documents, such as, export sales invoices, airway bills, export declarations, Table of Value and Volume of Intel's Exports by Commodity and by Country of Destination for the 2nd quarter of 2000, and Certification of Receipt of Foreign Currency Inward Remittances (*Exhibits*

341

"T-1" to "T-570", "U-1" to "U-555", "Y", "G", "H", "V", "V-1" to "V-10", "W" and, "W-1" to "W-8") clearly prove that the petitioner's export sales were actually made. The substantive and main requirement of the Tax Code requiring the sale and actual shipment of goods in order to be considered as zero-rated sales was satisfactorily complied with and sufficiently proven before this Court by the petitioner. So even assuming that export invoices have evidentiary value as far as proving the fact of exportation of goods, the other export documents presented, such as the above-mentioned export sales invoices, airway bills, export declarations, Table of Value and Volume of Intel's Exports, and Certification of Receipt of Foreign Currency Inward Remittances are far more significant and appropriate instruments to prove the fact of the transaction.

Accordingly, I manifest my position that petitioner should be entitled to the tax refund or tax credit of the amount of its unutilized input VAT attributable to its zero-rated sales.

ERNESTO D. ACOSTA
Presiding Justice

342