REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

J.R.A. PHILIPPINES, INC.,
Petitioner,

C.T.A. EB NO. 128
(C.T.A. Case No. 6454)

Present:

-versus-

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 15 2007 WApolinario

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D E C I S I O N

BAUTISTA, J.:

This is a Petition for Review filed by J.R.A. Philippines, Inc. (hereafter "petitioner") under Section 18 of Republic Act ("R.A.") No. 1125, as amended by R.A. 9282, which seeks the reversal of the Decision dated June 30, 2005, issued by the Second

Division of this Court ("Court *a quo*") in C.T.A Case No. 6454. The assailed Decision was disposed as follows:

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

and the Resolution dated October 5, 2005 denying the Motion For Reconsideration, the dispositive portion of which reads as follows:

> "The Court has carefully examined the Motion for Reconsideration vis-à-vis the Opposition filed by the respondent, and for failure to adduce any valid or compelling reason to warrant the reconsideration sought, the Court after due deliberation resolved to **DENY** the same, the basic issues raised therein having been previously considered and passed upon by the Court in the Decision sought to be reconsidered.
>
> **SO ORDERED**."

The facts as culled from the records of the case are briefly narrated as follows:

Petitioner is a domestic corporation organized and existing under and by virtue of Philippine laws, with principal office at Blk. 18, Lot 13, Road E, Phase IV, Cavite Export Processing Zone, Rosario, Cavite.

Petitioner is duly licensed, among others, to engage in the business of manufacturing and selling, on wholesale basis, jackets, pants, trousers, overalls, shirts, polo shirts, ladies' wear, dresses and other wearing apparel of different fabrics.

Petitioner is also registered with the Bureau of Internal Revenue (BIR) as a Value Added Tax (VAT) taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC), as amended, and is duly registered with the Philippine Economic Zone Authority (PEZA).

For the taxable quarters covering January 1, 2000 to December 31, 2000, petitioner filed its 1st, 2nd, 3rd, and 4th quarterly VAT returns with the BIR, which reflected input VAT in the respective amounts of P2,369,060.97, P2,528,126.02, P1,918,015.38 and P1,413,073.97, or a total input VAT of P8,228,276.34, the amount being claimed for refund in the instant case, representing petitioner's domestic purchases of goods and services allegedly directly attributable to its zero-rated sales.

Petitioner filed separate applications for VAT tax credits/refund with the BIR of its unutilized input VAT payments for the four quarters of calendar year 2000.

Petitioner thereafter filed on April 16, 2002, a Petition for Review with the Court *a quo* in order to suspend the running of the prescriptive period and to preserve its right to judicially claim the tax refund or tax credit.

Respondent, in his Answer, by way of special and affirmative defenses, averred:

"4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

5. Being allegedly registered with the Philippine Economic Zone Authority as an export enterprise, petitioner's business is not subject to VAT pursuant to Section 24 of R.A. No. 7916 in relation to Section 109 (q) of the Tax Code. Hence, it is not entitled to tax credit of input taxes pursuant to Section 4.103-1 of Revenue Regulations No. 7-95;

6. The amount of P8,228,276.34 being claimed by petitioner as alleged unutilized VAT input taxes for the year 2000 was not properly documented;

7. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

8. Petitioner must show that it has complied with the provisions of Section 204 (c) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;

> 9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation."

Petitioner presented as witnesses its Financial Controller and the independent CPA commissioned by the Court and submitted documentary evidence. On the other hand, respondent submitted the case for decision, without presenting any evidence.

On June 30, 2005, the Court *a quo* rendered the assailed Decision denying petitioner's claim for refund or issuance of a tax credit certificate in the amount of P8,228,276.34 representing unutilized input VAT attributable to petitioner's zero-rated sales for the year 2000 on the ground that petitioner failed to substantiate its claim for refund with sufficient evidence. Specifically, the Court *a quo* ruled that petitioner's official receipts and invoices are in violation of the invoicing requirements since the receipts do not have the imprinted words: "zero-rated", the word "VAT" and petitioner's Taxpayer Identification Number (TIN). Petitioner's invoices also have no authority to print from the BIR. Hence, the Court *a quo* held that the said documents cannot be considered as valid proof of its zero-rated sales of goods for VAT purposes.

Undaunted, petitioner moved for a reconsideration of the same, which the Court *a quo* likewise denied in a Resolution dated October 5, 2005.

Thus, the present recourse by petitioner on the following grounds:

> "A. The invoicing requirements under the 1997 Tax Code do not require that invoices and/or receipts issued by a VAT-registered taxpayer, such as the petitioner, should be imprinted with the word "zero-rated."
>
> B. The invoicing requirements prescribed by the 1997 Tax Code and the requirement that the words "zero-rated" be imprinted on the sales invoices/official receipts under Revenue Regulations No. 7-95 are not evidentiary rules and the absence thereof is not fatal to a taxpayer's claim for refund.

> C. No prejudice can result to the government by reason of the failure of petitioner to imprint the word "zero-rated" on its invoices. Petitioner's clients for its zero-rated transactions cannot unduly benefit from its "omission" considering that they are non-resident foreign corporations who are not covered by the Philippine VAT System.
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> D. Petitioner presented substantial evidence that unequivocally proved petitioner's zero-rated transactions for the year 2000.
>
> E. In civil cases, such as claims for refund, strict compliance with technical rules of evidence is not required. Moreover, a mere preponderance of evidence will suffice to justify the grant of a claim."

The issues raised in this petition boil down to the principal issue of whether petitioner is entitled to the refund sought.

As a rule, all VAT-registered enterprises engaged in zero-rated transactions are allowed to claim a refund of their creditable input tax due, 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 pursuant to Section 112 (A) of the 1997 Tax Code, to wit:

> "Sec. 112. *Refunds of Tax Credits or Input Taxes.* —
>
> 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 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 attributable to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

Petitioner argues that "nowhere does it appear in Section 112 (A) in relation to Section 106 (A)(2)(a)(1) of the 1997 Tax Code that the failure to issue invoices with the imprint "zero-rated" and non-compliance with invoicing requirements under Section 113 and 237 will automatically result in the denial of an otherwise valid and well-substantiated claim for refund." It insists that the same is not a condition *sine qua non* to the claiming of a refund under the law.

Petitioner also posits that under the 1997 Tax Code, a taxpayer's failure to comply with the invoicing requirements stated in Section 113 and 237 thereof, at most, renders such taxpayer accountable only for the statutory penalties provided under Section 264 thereof, which falls under Title X ("Statutory Offenses and Penalties"). Thus, only such penalties should be imposed in case of failure to comply strictly with the terms of a mere regulation issued by the respondent.

Petitioner further avers that Revenue Regulations No. 7-95 and Revenue Memorandum Circular No. 42-2003 conflict with the provisions of the 1997 Tax Code since the latter does not call for automatic denial of a valid claim for refund on the ground that invoicing requirements were not complied with. Being inconsistent with the law they are designed to implement, the said regulations are invalid and cannot be sustained nor used as basis to deny petitioner's claim for refund.

Likewise, petitioner contends that even assuming *arguendo* that it is in fact required to imprint the word "zero-rated" in its invoices, the omission to do so did not and cannot, in fact result in any prejudice to the government. In no instance can petitioner's non-resident foreign clients be entitled to claim refund or credits of any input tax that may be passed on to it.

Lastly, petitioner proffers the view that the failure to comply with invoicing requirements does not automatically foreclose the admission into evidence of other equally persuasive proof. It claims that it has presented more than a mere preponderance of evidence to prove that the transactions to which the questioned invoices pertain, are all zero-rated transactions duly paid for in acceptable foreign currency.

On the other hand, in his Comment to the Petition for Review, respondent argues that in order for export sales to be considered zero-rated for VAT purposes, petitioner must establish that it has complied with the substantiation requirements provided for under Section 113(A) of the 1997 Tax Code in relation to Section 237 of the same Code as well as Section 4.108-1 of Revenue Regulations No. 7-95. Failure to do so is fatal to the claim for refund.

Respondent further submits that petitioner's allegation that no prejudice can result to the government by reason of failure to imprint the words "zero-rated" on its receipts, does not excuse the petitioner from complying with the invoicing requirements under the law and the pertinent regulations.

Lastly, respondent posits that petitioner failed to present substantial evidence to prove its zero-rated transactions since airway bills, export declarations and bank certifications of foreign currency remittances alone are not sufficient to prove export sales. Such documents, together with duly-registered VAT invoices and receipts, taken collectively, are the best evidence to prove the exportation of goods.

We agree with the respondent. The petition is devoid of merit.

In the recent case of ***Taganito Mining Corporation v. Commissioner of Internal Revenue***[1], We 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 its input VAT.

In this case, We find no cogent reason to deviate from Our abovementioned ruling in the *Taganito* case. The Court *a quo* found that petitioner's official sales receipts *(Exhibits "U-123" to "V-52")* 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.
>
> If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt

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[1] C.T.A. E.B. No. 7 (C.T.A. Case No. 6384), January 31, 2006.

> 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)

The Court's Divisions have consistently ruled that the requirement of imprinting the word "zero-rated" on official receipts and sales invoices is mandatory. The Second Division has ruled as follows:

> "The afore-quoted revenue regulation issued to implement the NIRC provision on VAT invoicing and accounting requirements is mandatory as the word "shall" is used. The word "shall" is imperative, commonly operating to impose an obligation or duty which may be enforced; it is a word of command that must be given a compulsory meaning *(Pimentel vs. Aguirre, Jr., citing Ruben A. Agpalo, Statutory Construction, 1990 Ed., p. 239)*. Indeed, it is the duty of a seller-taxpayer to comply with the invoicing requirements laid down in the said memorandum circular."[2]

In the same manner, the First Division of this Court ruled in this wise:

> "After a careful perusal of the documents presented by petitioner to prove that the amount of P1,727,504.38 represents export sales, We have noted that the commercial invoices of petitioner failed to comply with invoicing requirements under Section 4.108-1 of Revenue Regulations No. 7-95 in relation to Sections 108 and 238 of the National Internal Revenue Code of 1993.
>
> > Section 4.108-1. *Invoicing Requirements.* — All VAT-registered persons shall, for every sale or lease of goods or properties or service, 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;

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[2] Tropitek International, Inc. v. Commissioner of Internal Revenue, C.T.A. Case Nos. 6422 and 6499, July 13, 2005.

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

SEC. 108. *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 238, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

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SEC. 238. *Issuance of receipts 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 P25.00 or more, issue 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, That* in the case of sales, receipts or transfers in the amount of P100.00 or more, or regardless of amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or, where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which show the name, business style, if any, and address of the purchaser, customer or client. . . .

The commercial invoices issued by petitioner to support its export sales failed to meet the above standard. **Petitioner failed to indicate that it is a VAT-registered person, followed by his taxpayer's identification**

number. The word "zero-rated" is also not imprinted in the invoices. In addition, there was no indication that the commercial invoices were authorized to be printed by the Bureau of Internal Revenue as required in Section 239 of the National Internal Revenue Code of 1993 which provides:

> SEC. 239. *Printing of receipts or sales or commercial invoices.* — All persons who print receipts or sales or commercial invoices shall for every job order, secure from the Bureau of Internal Revenue an authority to print said receipts or invoices before printing the same.
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, taxpayer account number and business address of the person or entity use the same.
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> xxx xxx xxx

Corollarily, for failure of petitioner to comply with the requisites under the law, the export sales in the amount of P1,727,504.38 cannot be qualified as zero-rated for VAT purposes. Moreover, the commissioned Independent CPA noted the said export sales have either no export declaration/permits or supported by photocopied export declarations/permits. Hence, respondent's assessment for 10% value-added tax is sustained."[3] (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***[4]**,** 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

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[3] Littlegiant Steel Pipe Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 6203, July 19, 2005.
[4] G.R. No. 134467, November 17, 1999 (318 SCRA 386).

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:

> "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:
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> 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. On the contrary, 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." [5] (Emphasis supplied; *citations omitted*)

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[5] 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).

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.[6] In a recent case[7], the Second Division of this Court explained the rationale behind the requirement of imprinting the word "zero-rated" on sales invoices/official receipts, as follows:

> "Furthermore, **Section 110 of the NIRC of 1997, as amended,** provides that: "Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: . . . ." **If the invoice or official receipt was not imprinted with "zero-rated", there is a danger that the purchaser of the goods or services may be able to claim input tax on the sale to it by the taxpayer of the goods or services, as the case may be, notwithstanding the fact that no VAT was actually paid on such goods or services since the taxpayer is zero-rated.** This is the rationale for the mandatory requirement in Revenue Regulations No. 7-95 that the words "zero-rated" be imprinted in the invoice or receipt, as the case may be. **The zero-rated taxpayer should be entitled to a tax credit/refund on input taxes paid on its purchase of goods or services subject to the mandatory compliance with the invoicing requirements under the regulations. Otherwise, there may result the absurd situation where the government would be crediting/refunding non-existent input tax to purchasers of goods or services of such zero-rated taxpayer**." (Emphasis supplied)

We agree with respondent's contention that the requirement of imprinting the word "zero-rated" on sales invoices or official receipts is mandatory and must be strictly

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[6] Taganito Mining Corporation v. Commissioner of Internal Revenue, C.T.A. E.B. No. 7, January 31, 2006.
[7] J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 6454, June 30, 2005.

complied with, regardless of whether or not the business entity engages only in export sales since Revenue Regulations No. 7-95 did not make any distinction on the different kinds of zero-rated sales.

Furthermore, the 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. . . .
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> xxx xxx xxx
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> 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.
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> Moreover, Revenue Regulations No. 7-95, as amended, states that:
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> > SEC. 4.108-1. *Invoicing Requirements.* — All VAT registered persons shall for every sale or lease of goods or properties or services, issue **duly registered** receipts or sales or commercial invoices which must show:
> >
> > 1. The name, TIN and address of seller;
> > 2. Date of transaction;
> > 3. Quantity, unit cost and description of merchandise or nature of service;
> > 4. The name, TIN, business style, if any, and address of the VAT registered purchaser, customer or client;
> > 5. The word "zero-rated" imprinted on the invoice covering zero-rated sales;
> > 6. The invoice value or consideration.
> >
> > 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**. . . . ."[8] (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)

As correctly ruled by the 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**

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

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> **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, petitioner's claim for refund must be denied.

Moreover, as correctly found by the Court *a quo*, petitioner failed to indicate in its official receipts the word "VAT" and its taxpayer's identification number (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". It is noteworthy that petitioner's claim for refund of input VAT on domestic purchases of goods and services is based on Sec. 112 (A) of the 1997 NIRC which entitles a VAT-registered person to file a claim for refund or tax credit certificate for input VAT premised on the existence of "zero-rated sales".

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 well-settled that tax refunds are in the nature of tax exemptions and as such must be strictly construed against the claimant."[9] 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." [10]

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[9] 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).

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

WHEREFORE, the petition for review is **DENIED** for lack of merit. **ACCORDINGLY**, the Decision dated June 30, 2005 and Resolution dated October 5, 2005 of the Second Division of the Court of Tax Appeals in C.T.A. Case No. 6454 are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

J.R.A. PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 128
(C.T.A. Case No. 6454)

Present:

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

Promulgated:

JAN 15 2007 [signature]

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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 authority to print and/or 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 issuance of tax credit certificate.

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

[initials]

"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 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

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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.

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

The foregoing is further corroborated by the pronouncement of the Supreme Court in the case of **Commissioner of Internal Revenue vs. Seagate Technology (Philippines),** *G.R. No. 153866, February 11, 2005*, penned by no less than the Honorable Chief Justice Artemio V. Panganiban, where the High Tribunal 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 (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.* Evidently, an indication of the petitioner's authority to print and a separate zero-rating registration are no longer necessary.

The only provision that perhaps "requires" imprinting the word "zero-rated" and or authority to print 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 sole and limited purpose of implementing a very clear and specific law. It is a long-established legal principle that administrative

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rules and regulations must not expand the letter and spirit of the law they aim to enforce. And in case of contradiction, 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.

The petitioner correctly pointed out that the absence of the authority to print and/or 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. 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)*

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. 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).*

So even assuming *arguendo* that there was a violation of the supposed requirements to indicate the authority to print or to include the terms "TIN", VAT, and "zero-rated," such oversight does not automatically invalidate the sales invoice 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. The term "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. Apparently, the subject invoices and/or receipts satisfy the above standards in both counts.

In the case at bar, the petitioner has established its right to the tax refund or issuance of tax credit certificate through duly submitted material and documentary exhibits. The documents presented such as, export invoices, airway bills/bills of lading, export declarations/permits (*Exhibits "U-1" to "U-331-d"*) prove petitioner's export sales, while the various bank certifications, statements of account, cash receipt vouchers, and passbook entries (*Exhibits "V-1" to "V-52"*) establish that petitioner's products were 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 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" and petitioner's authority to print must be imprinted in the sales invoice/receipt to be a valid evidence in claiming for refund of or issuance of tax credit certificate 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 and VAT status.

ERNESTO D. ACOSTA
Presiding Justice