REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

NORTHERN MINDANAO POWER CORPORATION,
Petitioner,

C.T.A. CASE NO. 6337

Members:

- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 22 2007; 9:01AM

x - x

DECISION

BAUTISTA, L., J.:

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P6,411,892.84 allegedly representing unutilized input value-added tax paid on domestic purchases of goods and services attributable to zero-rated sales for the third and fourth quarters of taxable year 1999 and all the four quarters of taxable year 2000.

Petitioner is a domestic corporation duly organized and existing according to the laws of the Republic of the Philippines, with its principal place of business at Alsons Building, 2286 Pasong Tamo Ext., Makati City. Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue [BIR], vested by law with the power to duly act upon and approve claims for refund and tax credit as provided by law (*pars. 1 & 2, Facts Admitted*).

Petitioner is a value-added tax [VAT] registered taxpayer engaged in the production and sale of electricity as an independent power producer and sells electricity to the National Power Corporation [NPC] (*Exhibits A, B, C & D; TSN, May 9, 2002, pages 9 – 11*).

For the last two quarters of 1999 and all the four quarters of 2000, petitioner averred that it incurred input VAT in the amounts of P2,490,960.29 and P3,920,932.55, respectively, totaling to P6,411,892.84 on its domestic purchases of goods and services that were used in its production and sale of electricity to NPC for the same period.

In its VAT returns for the third and fourth quarters of 1999 and all the quarters of 2000 filed with the BIR within the legally prescribed periods, petitioner declared the aforesaid input VAT as follows:

		INPUT VAT		
Exhibit	1999	Carried-over from previous qtr	this quarter	Carried-over to next quarter
E	3rd qtr	P 1,095,400.41	P 1,420,501.65	P 2,515,902.06
F	4th qtr	2,515,902.06	1,070,458.64	3,586,360.70
	Sub-total		P 2,490,960.29	
	2000			
G	1st qtr	3,583,360.23	P 733,273.82	4,316,634.05
H	2nd qtr	4,316.634.05	678,230.49	4,994,864.54
I	3rd qtr	4,994,864.54	1,843,893.56	6,838,758.10
J	4th qtr	6,838,758.10	665,534.68	7,504,292.78
	Sub-total		P 3,920,932.55	
	Total		P 6,411,892.84	

Petitioner filed separate applications for refund for the taxable quarters concerned, one for calendar year 1999, covering the 3rd and 4th quarters, and another for the four quarters of 2000 with the BIR (*par. 8, Facts Admitted*) on June 20, 2000 and July 25, 2001 in the amounts of P3,586,360.70 and P3,917,932.08, respectively (*Exhibits K & L*).

Due to the respondent's inaction on its claims, petitioner filed the instant Petition for Review before this Court on September 28, 2001 seeking refund of the alleged unutilized input VAT payments for the third and fourth quarters of 1999 and four quarters of 2000 in the respective amounts of P2,490,960.29 and P3,920,932.55 or in the sum of P6,411,892.84.

Respondent, in his Answer to the Petition for Review filed on November 21, 2001, raised the following Special and Affirmative Defenses:

> 6. Petitioner's claim for refund/tax credit is still subject to administrative routinary investigation/examination by the respondent's Bureau;
>
> 7. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;
>
> 8. Petitioner's claim for refund/tax credit for the 3rd and 4th quarters of 1999 and for the four quarters of 2000 representing the alleged unutilized input VAT paid on its domestic purchases of goods and services were not fully substantiated;
>
> 9. Petitioner's right to claim for refund/tax credit for the first and second quarters of 1999 have already prescribed;
>
> 10. It is incumbent upon petitioner to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code, as amended, as well as the requirements provided under Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88. 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***).

The parties presented the following issues for this Court's resolution:

1. Whether or not petitioner has unutilized input taxes for the 3rd and 4th quarters of 1999; and the four quarters of 2000 in the total amount of P6,411,892.84 pertaining to domestic purchases of goods and services, which is a proper subject of a claim for refund pursuant to Section 112 of the Tax Code, as amended;

2. Whether or not the said unutilized input VAT of the petitioner for the 3rd and 4th quarters of 1999, and the four quarters of 2000 had been carried forward to the succeeding quarter and applied against any of petitioner's output VAT for the said period;

3. Whether or not petitioner generated zero-rated sales to NPC, its lone business activity, for the 3rd and 4th quarters of 1999, and the four quarters of 2000;

4. Whether or not petitioner's sale of electricity to NPC are zero-rated for VAT purposes;

5. Whether or not petitioner is entitled to a refund in the amount of P2,490,960.29 as unutilized input VAT for the 3rd and 4th quarters of 1999; and in the amount of P3,920,932.55 as unutilized input VAT covering the four quarters of 2000; and

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

We find it appropriate to first discuss Issues Nos. 3 and 4 as the resolution of the same determines the necessity of resolving other issues.

Petitioner posits that its sale of electricity to NPC is zero-rated for VAT purposes pursuant to Section 108(B)(3) of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Section 13 of Republic Act No. 6395, otherwise known as the NPC Charter, which are all quoted hereunder for easy reference:

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

> **"Sec. 13. Non-profit Character of the Corporation, Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities.** — The corporation shall be non-profit and shall devote all its returns from its capital investments, as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance of effective implementation of the policy enunciated in Section One of this Act, the Corporation, including its subsidiaries, is hereby declared exempt from the

> payment of all forms of taxes, duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings." *(Emphasis supplied)*

We agree with petitioner. This Court has consistently held that NPC is an entity with a special charter, which categorically makes it exempt from payment of all taxes, whether direct or indirect, including VAT. Hence, by virtue of the said charter, services rendered by a VAT-registered entity like herein petitioner to NPC are effectively subject to zero percent (0%) VAT in accordance with Section 108(B)(3) of the NIRC of 1997.

Moreover, the Supreme Court, in its Resolution dated June 8, 1993, affirmed NPC's tax exemption in the case of ***Maceda vs. Macaraig, Jr., 223 SCRA 217,*** thus:

> "A chronological review of the NPC laws will show that it has been the lawmaker's intention that the NPC was to be completely tax-exempt from all forms of taxes — direct or indirect.
>
> xxx xxx xxx
>
> One common theme in all these laws is that the NPC must be enabled to pay its indebtedness which, as of P.D. No. 938 was P12 Billion in total domestic indebtedness, at any one time, and US$4 Billion in total foreign loans at any one time. The NPC must be and has to be exempt from all forms of taxes if this goal is to be achieved."

Further, both parties have explicitly admitted the following in paragraph 5 of their Joint Stipulation of Facts:

> "5. Respondent issued BIR Ruling No. DA 632-99, dated November 10, 1999 in favor of Petitioner, stating that the sale of electricity by Northern Mindanao Power Corporation to NPC is subject to zero percent (0%) VAT pursuant to Section 108(B)(3) of the Tax Code of 1997."

However, Section 108(B)(3) of the NIRC of 1997 must not be read in isolation but in conjunction with Section 113 of the same Code, as implemented by Section 4.108-1 of Revenue Regulations No. 7-95, as amended, to wit:

> "**SEC. 113.** ***Invoicing and Accounting Requirements for VAT-Registered Persons.*** —

/

"(A) *Invoicing Requirements.* — A VAT-registered person shall issue:

"(1). A VAT invoice for every sale, barter or exchange of goods or properties; and

"(2). A VAT official receipt for every lease of goods or properties and for every sale, barter or exchange of services.

"(B) Information contained in the VAT invoice or VAT Official Receipt. - The following information shall be indicated in the VAT invoice or VAT official 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. x x x"

"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; 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 invoice 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 operations. A "VAT Invoice" shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the Code.

The invoice or receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records." (*Emphasis supplied*)

Likewise, in the approved Application for VAT Zero Rate issued by the respondent to petitioner covering the period January 2, 2000 to December 31, 2000, the following was indicated:

> Valid only for sale of services from January 2, 2000 up to December 31, 2000 unless sooner revoked.
> Note: Zero-Rated Sales must be indicated in the invoice/receipt.
> *(Underlining supplied)*

It is explicit from the provisions of Section 113 of the NIRC of 1997 in relation to Section 237 of the same Code and Section 4.108-1 of Revenue Regulations No. 7-95 that a VAT-registered person like herein petitioner must issue a duly registered VAT invoice or receipt ***for every sale transaction***. Such VAT invoice or receipt must show the taxpayer's identification number (TIN) followed by the word VAT, printer's BIR permit number and **the word "zero-rated" imprinted on the** invoice or **receipt covering a zero-rated sale**. Considering so, the zero-rated sales of services referred to under Section 108(B)(3) of the NIRC of 1997 as subject to zero percent (0%) VAT are those covered by duly registered VAT official receipts bearing all the required information.

As to the documentation of petitioner's sales to NPC for the subject period of claim, the commissioned auditing firm, SGV & Co., in its report dated March 5, 2002 (*Exhibit T*), summarized its findings as follows:

> *Based on our review, the sales amounting to P1,419,006,215.28 indicated in the Schedule of Sales Revenue are supported by the following documents:*

	Exhibit Reference	***TOTAL***
1 Original Company copies of the VAT invoices and ORs issued to NPC for its peso denominated sale of electricity to the latter.	*Exhibit Y-4*	*P 62,132,457.52*
2 Original Company copies of the VAT invoices issued to NPC for its foreign currency denominated sale of electricity to the latter. Collections of these billings are supported by photocopies or faxed copies of the remittance advices/certificates from NPC and the	*Exhibit Y-4*	*1,357,381,512.07*

photocopies of the bank statements/ and original copies of the bankbook which show the credits made to the Company's bank accounts.		
3 Others (Include items without supporting documents and other unaccounted differences)	*Exhibit Y*	*(507,754.31)*
Total		***P1,419,006,215.28***

We noted that all the VAT invoices and ORs issued by the Company, which support the foregoing sales, are not imprinted/stamped with the word "zero-rated".

A scrutiny of the said report and petitioner's supporting documents shows that out of the claimed total sales of P1,419,006,215.28, the amount of P1,356,873,757.76 (P1,357,381,512.07 less P507,754.31) was not supported by official receipts. While there were official receipts covering the remaining sales amount of P62,132,457.52, the same cannot be considered as valid because the word "zero-rated" was not imprinted thereon in violation of Section 4.108-1 of Revenue Regulations No. 7-95 quoted earlier.

The law and regulations are explicit in emphasizing strict compliance with the invoicing requirements because for the same transactions the output VAT of the seller becomes the input VAT of the purchaser. Pursuant to Sections 106(D)(1) and 108(C) in relation to Section 110 of the NIRC of 1997, as amended, the output or input tax on the sale or purchase of goods is determined by the total amount indicated in the invoice, while the output or input tax on the sale or purchase of services is determined by the total amount indicated in the official receipt. In the case of zero-rated sales transactions, the regulations further require that the word "zero-rated" be imprinted on the face of the covering invoices or official receipts (***AMERICAN EXPRESS INTERNATIONAL, INC., PHILIPPINE BRANCH vs. COMMISSIONER OF INTERNAL REVENUE, CTA EB No. 103, March 3, 2006***). The rationale for the imprinting of the word "zero-rated" on the face of the covering invoice or official receipt of the seller is for the buyer or purchaser not to claim any input VAT from such purchase as elucidated by the Court *En Banc* in the case of ***J.R.A. PHILPPINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE, C.T.A. EB No. 128, January 15, 2007,*** *viz:*

> 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)*

In the case of ***TAGANITO MINING CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE, CTA EB No. 7, January 31, 2006,*** the Court *En Banc* held that the issuance of Revenue Regulations No. 7-95 was made pursuant to the respondent's duty of implementing the VAT provisions of the NIRC. To quote:

> 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 above provision was re-enacted *in toto* under Section 244 of the 1997 NIRC. Moreover, to further strengthen the rule making power of the Secretary of Finance in coordination with the Bureau of Internal Revenue, an additional section (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 other 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 NIRC, Section 4.108-1 of Revenue Regulations No. 7-95 requiring the imprinting of the words "zero-rated" on sales invoices or official receipts cannot be said as having no valid basis or legislative root. On the contrary, it is both reasonable and necessary for the effective implementation of the provisions of the NIRC concerning zero-rated sales. Hence, the requirement that sales invoices be imprinted with the word "zero-rated" cannot be taken as an enlargement or expansion of the law for the reason that it merely implements the provisions of the 1997 NIRC on sales that are subject to 10% VAT, zero-rated sales (0% VAT) and exempt sales. The imprinting of "zero-rated' is necessary to distinguish sales subject to 10% VAT, those that are subject to 0% VAT (zero-rated) and exempt sales, to enable the Bureau of Internal Revenue to properly implement and enforce the other provisions of the 1997 NIRC 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.

In a recent decision, the Supreme Court held 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 tax 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.[2] (Emphasis supplied; *citations omitted*)

We agree with the respondent that the issuance of Revenue Regulation 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.

xxx xxx xxx

Hence, the need for strict compliance with the mandatory requirement of imprinting the word "zero-rated" on sales invoices or official receipts 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.

In fine, without valid VAT official receipts, petitioner's alleged sales of electricity to NPC for the third and fourth quarters of 1999 and four quarters of 2000 in the amount of

[2] Compania General de Tabacos de Filipinas vs. Hon. Court of Appeals and The Commissioner of Internal Revenue, G.R. No. 147361, March 23, 2004 (426 SCRA 203).

P1,419,006,215.28 cannot qualify for VAT zero-rating under Section 108(B)(3) of the NIRC of 1997. Consequently, the claimed unutilized input VAT attributable thereto in the amount of P6,411,892.84 cannot be granted. It is clear from the provisions of Section 112(A) of the NIRC of 1997 that there must be zero-rated or effectively zero-rated sales in order that a refund of input VAT could prosper, to wit:

> 'SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> "(A) *Zero rated or Effectively Zero-rated Sales.* — Any VAT registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): xxx"

Based on the above discussion, We find it unnecessary to delve on the other issues raised.

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

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

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

CAESAR A. CASANOVA
Associate Justice

CE TIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Acting Chairperson, First Division