REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TAGANITO MINING CORPORATION, Petitioner,	**C.T.A. EB NO. 7** (C.T.A. CASE NO. 6384)
-versus-	Present: Acosta, *Presiding Justice,* Castañeda, Jr., Bautista, Uy, Casanova, Palanca-Enriquez, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JAN 31 2006

x- -x

DECISION

CASTAÑEDA, *J.:*

For review is the Decision of a Division of the Court of Tax Appeals (the Court in Division) dated January 12, 2004, which partially granted petitioner's Petition for Review docketed as C.T.A. Case No. 6384. The Decision of the Court in Division was subsequently affirmed in all respects when the Court in Division denied petitioner's Motion for Reconsideration in a Resolution dated May 3, 2004. The Court in

Division ordered the respondent Commissioner to refund to petitioner the amount of P2,926,199.55 representing input VAT paid on capital goods purchased for the taxable year 2000 but denied the rest of petitioner's claim for refund representing input VAT paid on domestic purchases of goods directly attributable to its zero-rated sales.

The facts as found by the Court in Division are as follows:

> Petitioner is a VAT registered entity. From January 1, 2000 to December 31, 2000, petitioner had export sales amounting to Seven Hundred Eighty Two Million Five Hundred Twenty Thousand Six Hundred Thirty Four and 05/100 Pesos (P782,520,634.05) paid in acceptable foreign currency and accounted for in accordance with the rules of the Bangko Sentral ng Pilipinas (BSP), pursuant to Section 106(a)(2)(a)(1) of the Tax Code. Petitioner claimed that it had paid the amount of Thirteen Million Four Hundred Thirty Nine Thousand Three Hundred Ninety Three and 89/100 Pesos (P13,439,393.89) as VAT input taxes on its domestic purchases of taxable goods and services, and the amount of Two Million Seven Hundred Two Thousand Two Hundred Forty Nine Pesos (P2,702,249.00) on its importation of capital goods, totaling Sixteen Million One Hundred Forty One Thousand Six Hundred Forty Two and 89/100 Pesos (P16,141,642.89). Also, for taxable year 2000, petitioner actually paid input VAT amounting to P2,926,199.55 on purchases of computers, air conditioning units, hydraulic excavators, wheel loader and track type tractor. These purchases fall within the meaning of capital goods under Section 4.106-1(b) of Revenue Regulations No. 7-95 which defines the same as goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29 (f), used directly or indirectly in the production or sale of taxable goods or services. Moreover, these were duly covered by valid VAT invoices and/or official receipts in accordance with Section 4.104-5 of Revenue Regulations No. 7-95. Thus, petitioner filed a claim for refund in the total amount of P16,141,642.89 with the respondent representing excess input VAT for the year 2000. There was no action on the part of the respondent on petitioner's claim for refund.

After trial on the merits, the Court in Division ruled in a Decision dated January 12, 2004 as follows:

"The court noted that all the export sales invoices do not show the imprinted word "zero-rated". Moreover, some of the invoices do not have the "TIN-V" or "TIN-VAT" (Exhibits D-56, D-61, D-66, D-71, D-77, D-82, D-87, D-92 and D-97). Clearly, these invoices lack the necessary information required by law and regulations. In the case of Intel Philippines Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6040, October 24, 2003, this court had denied petitioner Intel's claim for refund, emphasizing that failure to present the required valid VAT export invoice is fatal to its claim for refund.

Additionally, although petitioner was able to present other documents, such as the Bills of Lading, Export Declarations/Permits, bank credit/debit advices and ore transport permits to prove actual exportation of its products (Exhibits D-1 to D-4, D-6, D-7, D-9 to D-12, D-14 to D-17, D-19 to D-22, D-24 to D-27, D-29 to D-32, D-34 to D-37, D-39 to D-42, D-44, D-45, D-47 to D-50, D-52 to D-55, 057 to D-60, D-62 to D-65, D-67 to D-70, D-72 to D-76, D-78 to D-81, D-83 to D-86, D-88 to D-91, D93 to D-96, D-98 to D-100), the court finds these documents insufficient. In the case of Commissioner of Internal Revenue vs. Philippine Bobbin Corporation, CA-G.R. SP No. 59452, February 19, 2001, the Court of Appeals ruled that these documents are not enough to be entitled to a claim of refund. Rather, these documents, together with the valid sales invoices, should be taken collectively as the best means to prove the exportation of goods, thus:

"By and large, export sales invoices alone are inadequate proofs that the subject goods were actually exported. 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. Yet, that is what the law requires. Section 100 (a)(2) of the National Internal Revenue Code (then in effect at the time of the alleged exportation) defines "Export Sales" as the sale and 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. In that case, it is imperative for any claimant of a tax refund or credit in relation to the Input VAT paid to prove not only the existence of the sale but also the actual shipment of the goods from the Philippines to a foreign country.

"Rather than limiting the documentary requirements to just the export invoices, the law specifically enjoined the production of "export documents" to affirm the authenticity of the export sales. In commercial practice, export documents include commercial invoices or receipts, bills of lading, airway bills, and export declarations or permits. These documents, taken collectively, are the best means to prove the exportation of goods." (Emphasis supplied)

Thus, this court holds that petitioner's export sales of P782,520,634.05 for taxable year 2000 cannot qualify for zero-rating and petitioner is not entitled to a refund of the input VAT attributable thereto. However, as regards petitioner's claim for refund of input VAT on capital goods purchased for the taxable year 2000, we rule that petitioner is entitled to a refund. xxx"

On February 10, 2004 petitioner filed a Motion for Reconsideration which the Court in Division denied in a Resolution promulgated on May 3, 2004. Hence, this appeal.

In its Petition for Review filed on June 7, 2004, petitioner presents the following issues for resolution:

(a) Whether Revenue Regulations 7-95, specifically, Section 4.108-1 thereof, is constitutional for being issued by the Respondent within the limits of its rule-making power;

(b) Whether the Petitioner complied with the invoicing requirements for a VAT-registered persons;

(c) Assuming the validity of Revenue Regulations 7-95, whether or not the regulations provide for the penalty of forfeiture, such that failure to comply with the invoicing requirements therein is fatal to valid claim for refund because non-compliance therein merits the penalty of forfeiture of a valid claim for input taxes;

(d) Whether or not the division of this Honorable Court acted beyond its constitutional powers and with grave abuse of discretion tantamount to excess or lack of jurisdiction, in ruling that Petitioner's failure to imprint the word "zero-rated" on its export sales invoices is fatal to its claim for refund, for being contrary to law;

(e) Whether or not the division of this Honorable Court acted within the limits of its constitutional powers in finding that Petitioner's export sales do not qualify as zero-rated sales/transactions due to its failure to imprint the word "zero-rated" therein, despite overwhelming evidence showing that Petitioner actually exported 100% of its sales, and thus, whether or not such finding is contrary to evidence presented;

(f) Whether or not Petitioner is entitled to the refund of its excess VAT input taxes of Sixteen Million One Hundred Forty One Thousand Six

Hundred Forty Two Pesos and 89/100 (PhP16,141,642.89) paid from January 1, 2000 to December 31, 2000.

Petitioner argues that Section 4.108-1 of Revenue Regulations No. 7-95 is unconstitutional for having been issued beyond the rule-making power of the respondent. That the requirement of imprinting the word "zero-rated" on the invoice covering zero-rated sales is not found in the Tax Code (Republic Act No. 8424) and it constitutes an imposition by the respondent of an additional requirement. According to the petitioner, such act amounts to administrative legislation which is prohibited by the Constitution because legislative power or the power to make laws is vested in Congress as a power delegated to it. Petitioner avers that as a general rule, legislative power cannot be delegated because delegated power cannot be further delegated.

Petitioner claims that except for the "questioned requirement of the imprinting of the word zero-rated", it's sales invoices fully comply with the invoicing requirements of the law as laid down in Section 113 (A) of the Tax Code in relation to Section 237 thereof which explicitly states the invoicing requirements for VAT-registered persons. Also, petitioner avers that assuming Rev. Reg. No. 7-95 is valid, "nowhere in the said regulations does it provide that such failure to comply with invoicing requirements is fatal to a claim for refund", at most, its non-compliance with the invoicing requirements would "merely make it liable for the penalties under the Tax Code, none of which states that a penalty of forfeiture is in order". Hence, petitioner avers that the Court's ruling that failure to imprint the word zero-rated on petitioner's export sales invoices is without legislative root and is therefore beyond its constitutional powers. The Courts or the Judiciary, where judicial power is vested has the application of the law as its first and fundamental duty. Petitioner avers that "[e]ffectively, the Court, in addition to the requirements imposed under the Tax Code, imposes an additional requirement before it will consider the sale of Petitioner as qualified for zero-rating, specifically, the requirement that the word zero-rated imprinted on export sales invoices. Thus, the said finding has the effect of writing into the law, requirement that has not been provided therein." Moreover, "[t]he Honorable Court should consider the whole body of evidence submitted and cannot place the entire weight of its finding on one insignificant aspect of an evidence which, at best is not even circumstantial, and worse is not even required to be part of the evidence, specifically, the imprinted word zero-rated of export sales invoices."

On the other hand, in his Comment to the Petition for Review, respondent argues that Revenue Regulations No. 7-95 was issued for the purpose of implementing the rules on refunds or tax credit of input tax to

VAT-registered person, whose sales are zero-rated or effectively zero-rated, in relation to Sections 113 and 237 of the Tax Code. That the issuance of Rev. Reg. No. 7-95 was not an act of tax legislation as what petitioner is claiming but rather an act of tax administration within the Commissioner's authority under the Tax Code. According to the respondent, "[t]he imposition of an additional requirement under the said regulation, particularly the imprinting of the word zero-rated on all export invoices, was designed primarily to identify that the subject sales of a VAT-registered entity like petitioner are zero-rated, and further to distinguish the sales which are subject to 10% output VAT from that of a zero-rated sale." Revenue Regulations No. 7-95 gives effect to Sections 113 and 237 of the Tax Code. It is an act of tax administration, hence, the non-delegability rule is not violated. According to the respondent:

> "Every system of taxation consists of two parts: (1) the elements that enter into the imposition of the tax; (2) the steps taken for its assessment and collection *(1 Cooley 193)*. One is legislation, the other tax administration.
>
> Non-delegable legislative powers, that is to say, those that cannot be delegated to administrative agencies, include the (a) selection of the property to be taxed; (b) determination of the purposes for which taxes shall be levied; (c) fixing the rate of taxation; and (d) rules of taxation in general *(1 Cooley 194)*.
>
> Delegable powers which are not legislative include, (a) the power to value property for taxation in pursuance of fixed rules; (b) the equalization of assessments by a central body; (c) collection of taxes *(1 Cooley 195)*. In short, assessment and collection are not legislative but only administrative matters. In brief, legislation is making the law, while tax administration is giving effect to the law *(1 Cooley 196)*."

The petition is not meritorious.

The Supreme Court discussed the invoicing requirements for VAT-registered persons in *Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue*[1]. It ruled that "[i]t is clear that a VAT invoice can be used only for the sale of goods or services that are subject to VAT". This means that the issuance of VAT invoices or official receipts are mandatory for sales that are subject to VAT either at 10% or 0% (zero-rated sales). The Supreme Court likewise expressed 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". This is a clear recognition 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 requires strict compliance, *i.e.* Revenue Regulations. As held by the Supreme Court in the above-cited 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

---

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

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."

In the case before Us, the Court in Division found that some of the sales invoices do not even contain petitioner's Taxpayer's Identification Number–VAT (TIN-V or TIN-VAT) namely: Exhibits D-56, D-61, D-66, D-71, D-77, D-82, D-87, D-92, and D-97, in blatant violation of Section 113 of the National Internal Revenue Code of 1997 (1997 NIRC). Moreover, all of petitioner's sales invoices offered in evidence are not imprinted with the word "zero-rated" in violation of Section 4.108-1 of Revenue Regulations No. 7-95. Section 4.108-1 of said Revenue Regulations provides:

"Sec. 4.108-1. Invoicing Reguirements. – 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 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)

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 sales invoices is fatal to petitioner's claim for refund/tax credit because the sales invoices issued by the petitioner did not comply with the mandatory invoicing requirements laid down in Section 113 of the 1997 NIRC in relation to Section 237 of the same Code. Section 113 requires that the invoice or receipt shall contain a "statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN)". Consequently, petitioner's sales invoices cannot qualify as VAT invoices because they failed to show that petitioner is a VAT-registered person. In addition, all of petitioner's sales invoices are likewise not imprinted with the word "zero-rated" as required by Revenue Regulations No. 7-95.

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

Considering the legislative grant of authority to the Secretary of Finance to promulgate all needful rules and regulations for the effective enforcement of the provisions of the 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 shall 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 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.

---

[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).

In a recent case[3] 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: x x x." **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)

The absurd situation referred to above can be explained in monetary terms by a simple illustration. Let us assume that a zero-rated taxpayer bought raw materials from a local supplier in the total amount of P1,100,000.00 inclusive of 10% VAT. The refundable input VAT to the *zero-rated taxpayer* is only P100,000.00 (1,100,00.00 x 1/11).

Assume further that the zero-rated taxpayer then sells its product for P2,200,000.00 and issues a sales invoice that is not imprinted with the word "zero-rated" contrary to the mandatory requirement of Revenue

---

[3] J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue, C.T.A. CASE NO. 6454, June 30, 2005.

Regulations No. 7-95. Since the sale is a zero-rated sale, no output VAT is due on the transaction. Stated differently, the buyer did not pay any input VAT. The above situation could be taken advantage of by the *buyer who did not pay any input tax*, by filing a claim for refund of the inexistent input VAT in the amount of P200,000.00.

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 another case, the Second Division of this Court explained that pursuant to Section 4.108-1 of Revenue Regulations No. 7-95, the requirement of imprinting the word "zero-rated" on official receipts and sales invoices is mandatory, thus:

> "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."[4]

---

[4] Tropitek International, Inc. vs. Commissioner of Internal Revenue, C.T.A. CASE NOS. 6422 and 6499, July 13, 2005.

In the same vein, 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;
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.

xxx xxx xxx

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 shall show the name, business style, if any, and address of the purchaser, customer or client. xxx

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.
>
> 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."[5] (Emphasis supplied)

---

[5] Littlegiant Steel Pipe Corporation vs. Commissioner of Internal Revenue, C.T.A. CASE NO. 6203, July 19, 2005.

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. xxx xxx xxx
>
> xxx xxx xxx
>
> From the foregoing, therefore, it is clear that it is not only the export sales that should be proven but also compliance with the requirements set forth under the aforestated sections of the NIRC.
>
> Moreover, Revenue Regulations No. 7-95, as amended, states that:
>
> > SEC. 4.108-1. Invoicing Requirements. — All VAT registered persons shall for every sale or lease of goods or properties or services, issue *duly registered* receipts or sales or commercial invoices which must show:
> >
> > 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. xxx xxx xxx."[6] (Emphasis supplied)

Revenue Memorandum Circular No. 42-03 dated July 15, 2003, captioned *"Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters"*, in part, provides:

> "If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g. failure to indicate the TIN), **its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales.**" (Emphasis supplied)

As aptly 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 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)

---

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

In fine, since the sales invoices issued by petitioner to its customers do not depict 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".

Taxpayers have the burden of proving compliance with the mandatory provisions of the National Internal Revenue Code and its implementing rules and regulations. This principle shall be complied with 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[7]. Otherwise, the intention of the lawmakers in enacting the VAT-law as a revenue

---

[7]Commissioner of Internal Revenue vs. 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 vs. S.C. Johnson and Son, Inc. and Court of Appeals, G.R. No. 127105, June 25, 1999 (309 SCRA 87).

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.

WHEREFORE, the petition for review is **DENIED** for lack of merit. The Decision dated January 12, 2004 and Resolution dated May 3, 2004 of the Division of the Court of Tax Appeals in C.T.A. CASE NO. 6384 are hereby **AFFIRMED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
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 Resolution 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