REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MIRANT(NAVOTAS II) CORPORATION (Formerly: Southern Energy Navotas II Power, Inc.),
Petitioner,

C.T.A. EB No. 226
(C.T.A. Case Nos. 6636 and 6728)

Members:

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

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 1 1 2007 *ArApolinario*

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D E C I S I O N

CASTAÑEDA, JR., J.:

For review are the Decision dated July 11, 2006 granting the refund or the issuance of a tax credit certificate in favor of Mirant (Navotas II) Corporation involving the amount of P493,020.88 representing unapplied input value-added taxes ("VAT") attributable to zero-rated sales of services for taxable year 2001, as well as the Resolution dated November 10, 2006 denying its motion for reconsideration.

The material antecedent facts:

Mirant (Navotas II) Corporation ("petitioner"), previously known as Southern Energy Navotas II Power, Inc. and Hopewell Tileman (Philippines) Corporation is a domestic corporation duly organized and existing by virtue of the Philippine laws. The petitioner is primarily engaged in the production and sale of electricity to the National Power Corporation ("NPC"), pursuant to a Build, Operate, Transfer ("BOT") Scheme. It is registered with the Bureau of Internal Revenue ("BIR") as a VAT taxpayer with Taxpayer Identification Number("TIN") 001-726-862-000.[1]

The Commissioner of Internal Revenue ("respondent"), on the other hand, is vested with authority to perform, *inter-alia*, decide disputed assessments, refund of internal revenue taxes, fees or other charges, penalties, or other matters arising under the 1997 National Internal Revenue Code ("NIRC"), as amended or other laws administered by the BIR.

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[1] Exhibit A.

For the period January to December 2001, the BIR approved petitioner's application for zero rating covering its sales of power generation services to NPC, under a BOT Scheme.[2] On its part, petitioner filed quarterly VAT Returns for the same period showing that it allegedly incurred unutilized input VAT payments on its domestic purchases of goods and services and importation of goods amounting to ₱850,046.76 attributed to effectively zero-rated sales to NPC, in the cumulative amount of P 343,752,915.06.

On March 18, 2003, petitioner filed an administrative claim with the BIR, Revenue District Office 51, Pasay City for the refund or the issuance of a tax credit certificate of P850,046.76 concerning the four quarters of taxable year 2001.[3]

The inaction of the BIR on its claim for refund prompted petitioner to file separate judicial claims on March 31, 2003 involving the amount of P 212,200.13 for the first quarter of 2001, docketed as CTA Case 6636, and on July 22, 2003 pertaining to the amount of P637,846.63 for the remaining quarters of 2001, docketed as CTA Case 6728.

On August 1, 2003, the Court granted petitioner's motion to consolidate CTA Cases 6636 and 6728.[4]

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2 Exhibit H.
3 Exhibit I.
4 See CTA Case 6636, p. 34.

In a Decision dated July 11, 2006, the Court in Division ordered the respondent, to refund or issue a tax credit certificate in favor of petitioner in the reduced amount of P493,020.88 representing unutilized input VAT paid attributable to zero-rated sales of services for taxable year 2001. The Court also ruled that under the law, petitioner's power generation services to NPC are subject to zero percent (0%) VAT. The pertinent excerpts of the assailed Decision read:

> x x x in order to be entitled to a refund or tax credit of input VAT directly attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:
>
> 1. there must be zero-rated or effectively zero-rated sales;
> 2. that input taxes were incurred or paid;
> 3. that such input taxes are directly attributable to zero-rated or effectively zero-rated sales;
> 4. that the input taxes were not applied against any output VAT liability; and
> 5. that the claim for refund was filed within the two-year prescriptive period.
>
> We now discuss the first requisite. xxx Petitioner is engaged in the business of power generation and the subsequent sale thereof to the NPC. Thus, the power generation services rendered by petitioner to NPC are subject to zero percent (0%) VAT pursuant to Section 108(B)(3) of the NIRC of 1997, x x x
>
> It is noteworthy that respondent recognized this when he approved petitioner's application for zero rate. Said approval provides that the same is valid only for sale of electricity from January 2, 2001 to December 31, 2001.
>
> A verification of petitioner's declared zero-rated sales/receipts showed that the amount of P343,752,915.06 reflected in its Quarterly Value-Added Tax Returns for the four quarters of 2001, represents energy and capacity fees paid by NPC. Petitioner's VAT invoices and/or official receipts supported said fees. However, as verified by the Court and by the commissioned independent CPA, a comparison of the total amount of zero-rated sales for the year 2001, as reflected in the quarterly VAT returns and Summary of Zero-Rated Sales, with the amount supported by petitioner's invoices and official receipts, disclosed the following difference:

VAT Returns/ Summary of Zero-Rated Sales	P343,752,915.06
Petitioner's Invoices & Official Receipts	343,532,062.93
Difference	**P 220,852.12**

Further, a perusal of the documents submitted revealed that P79,553,636.23 of the claimed zero-rated sales was supported by TIN-VAT official receipts without the word "zero-rated" imprinted thereon, in violation of the requirement set forth under Section 4.108-1 of Revenue Regulations No. 7-95: x x x

The required indication of the word "zero-rated" on petitioner's invoices/receipts was also noted by respondent when he approved petitioner's Application for VAT Zero-Rate. Thus, out of the reported 2001 zero-rated sales of P343,752,915.06, petitioner was able to substantiate only the amount of P263,978,426.70 arrived at by subtracting P79,553,636.23 from P343,532,062.93.

In compliance with the second requisite, petitioner submitted its summary lists of purchases and the corresponding suppliers' invoices/official receipts which were verified by the Court commissioned auditing firm, SGV & Co. However, as correctly noted by SGV & Co., in its final report dated January 14, 2004, the following input VAT payments totalling P200,139.92 failed to meet the substantiation requirements under Section 4.104-5 of Revenue Regulations No. 7-95 in relation to Sections 110 and 113 of the NIRC of 1997 and should, therefore, be disallowed from petitioner's claim:

Findings	*1st Quarter*	*2nd Quarter*	*3rd Quarter*	*4th Quarter*	*Total*
I. Input Taxes on Purchases of Services:					
1. Supported by a VAT OR Issued by the Insurance Agent on Insurance Premium	-	-	-	*P 426.97*	*P 426.97*
2. Supported by Documents Other than VAT ORs	*P 1,925.96*	*P 188.50*	*P 4,082.50*	*809.09*	*7,006.05*
3. Supported by a photocopied VAT OR	-	*1,662.28*	-	-	*1,662.28*
4. Erroneously Computed	*31.82*	*94.27*	-	-	*126.09*
II. Input Taxes on Purchases of Goods:					

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Findings	*1st Quarter*	*2nd Quarter*	*3rd Quarter*	*4th Quarter*	*Total*
I. Supported by Invoice Not Issued in the Company's Name	-	*2,161.38*	*3,563.64*	-	*5,725.02*
III. Input Taxes Without Supporting Documents	*9,201.01*	*9,555.00*	*17,550.00*	*148,887.50*	*185,193.51*
TOTAL	***P11,158.79***	***P13,661.43***	***P25,196.14***	***P150,123.56***	***P200,139.92***

The commissioned independent CPA correctly disallowed the input taxes of P185,193.51 for having no supporting documents (*See Item III above*). While petitioner subsequently submitted as evidence documents to support P99,090.91 of the disallowance, a perusal of the said documents showed that the same pertained to purchase of a vehicle (Hi-Ace Grandia) with an engine displacement of 2,985 cc. The said vehicle is considered an automobile, and any input VAT paid thereon is not creditable upon the petitioner as provided for under Section 4.104-1 of Revenue Regulations No. 7-95 x x x

Therefore, the disallowance of P99,090.91, included in the total findings of P200,139.92 of the commissioned independent CPA, should be sustained.

Likewise, the input taxes of P2,745.07 and P1,797.58 for which the dates of the related VAT invoices and official receipts (ORs) fall outside the subject period of claim *(see Observations 1 & 2, Exhibit S-5)* should also be deducted from the total claim of P850,046.76.

Also, the Court found that an additional input tax in the amount of P3,352.01 should be disallowed, broken down as follows:

Invoice w/o BIR permit	P 988.37	Exhibit Y-2
Supported by NON-VAT invoice & OR	2,363.64	Exhibit Y-36
Total	**P3,352.01**	

Prescinding from the aforesaid disallowances, petitioner was able to substantiate by proper VAT invoices and/or official receipts only the input taxes of P642,012.18, computed as follows:

Claimed input taxes	P 850,046.76
Less: 1) Per SGV Report	
a) Input taxes without valid VAT invoices or official receipts	200,139.92
b) Input taxes on purchases of goods for which the dates of the related VAT invoices fall outside of the period of claim	2,745.07
c) Input taxes on purchases of services	

for which the dates of the related VAT ORs fall outside of the period of claim	1,797.58
2.) Per the Court's further verification – input taxes without valid VAT invoices/OR	3,352.01
Substantiated input taxes	P 642,012.18

As regards the third requisite, petitioner's VAT returns for the four quarters of 2001 disclosed that it had no other sales other than its effectively zero-rated sales of power generation services to NPC. This being so, all of the substantiated input VAT of P642,012.18 cannot but be entirely attributable to petitioner's effectively zero-rated sales for the four quarters of 2001.

With reference to the fourth requisite, records show that despite the carry-over of the 2001 claimed input taxes of P850,046.76 to the succeeding four quarters of 2002 and first two quarters of 2003, the same was not utilized since petitioner had no output VAT liability for the said periods. Moreover, petitioner deducted the claimed input taxes of P850,046.76 as "Any VAT Refund/TCC Claimed" from the "Total Available Input Tax" of P3,134,110.87. Hence, the resulting "Excess Input Tax" of P2,284,064.11 which was to be carried over to the succeeding third quarter of 2003 did not include the 2001 claimed input taxes of P850,046.76.

As to the fifth requisite, the two-year prescriptive period for the filing of claims for VAT refund/tax credit should be reckoned from the date of filing of the corresponding quarterly VAT returns. The earliest quarter covered by the instant claim is the first quarter of 2001 for which petitioner filed its VAT return on April 23, 2001. Counting from this date, both the administrative claim filed on March 18, 2003 and the Petition for Review filed on March 31, 2003 fall within the two-year prescriptive period.

In fine, petitioner has sufficiently established its entitlement to the refund or issuance of a tax credit certificate representing unutilized input taxes attributable to zero-rated sales for the taxable year 2001 in the reduced amount of P493,020.88, computed as follows:

Zero-Rated Receipts Substantiated by VAT Official Receipts	P263,978,426.70
Divided by Total Zero-Rated Receipts per VAT Returns	÷ 343,752,915.06
Multiplied by Substantiated Input Taxes	x 642,012.18
Refundable Input Taxes	P 493,020.88

WHEREFORE, petitioner's claim for refund or issuance of a tax credit certificate representing unapplied or unutilized input taxes attributable to zero-rated sales of services for taxable year 2001 is hereby **GRANTED** in the reduced amount of P493,020.88.

SO ORDERED.[5]

[5] Rollo, pp. 15-23.

Dissatisfied, on August 3, 2006, the petitioner filed a motion for reconsideration insisting that the VAT official receipts and/or invoices issued to NPC conformed to Section 4.108-1 of Revenue Regulations (R.R.) 7-95.

Acting on petitioner's motion for reconsideration, the Court denied the motion for lack of merit, per Resolution dated November 10, 2006. Hence, this petition for review with the Court En Banc, under Section 18 of Republic Act 1125, as amended by Republic Act 9282 ascribing the lone error committed by the Court in Division:

> WHETHER OR NOT THE VAT OFFICAL RECEIPTS OR INVOICES PRESENTED BY PETITIONER VIOLATE SEC. 4.108-1 OF REVENUE REGULATIONS NO. 7-95.[6]

According to the petitioner, the Court in Division erroneously concluded that it was not able to substantiate the amount of P79,553,636.23 representing zero-rated transactions for failure to submit the VAT official receipts and invoices imprinted with the wordings, "zero-rated", in violation of Section 4.108-1 of R.R. 7-95.[7]

In the Report dated April 24, 2003, the commissioned certified public accountant Mr. Henry Tan attested that petitioner's zero-rated transactions with NPC are evidenced by the wordings, "zero-rated" stamped on the VAT invoices and/or official receipts.

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[6] Rollo, p. 51.
[7] Ibid.

The wordings, "zero-rated" stamped on the VAT invoices and/or official receipts satisfy the requirement that the same be "imprinted on the invoices covering zero-rated sales", pursuant to Section 4.108-1 of R.R. 7-95. "Stamping" is within the purview of the definition of "imprinting".

The stamping of the wordings "zero-rated" on the VAT invoices and/or official receipts substantially complies with the invoicing requirements, and duly establishes that zero-rated sales are not subject to VAT.

In VAT Ruling 026-04 dated October 4, 2004, BIR Ruling DA-456-04 dated August 27, 2004, BIR Ruling DA-140-05 dated April 11, 2005, Revenue Memorandum Order 9-00 and Revenue Memorandum Order 22-04, the BIR generally recognized the sufficiency of stamping the wordings, "zero-rated" on the VAT invoices or official receipts.

It bears stressing that the imprinting of the wordings, "zero-rated" on VAT invoices and/or official receipts is not required under the 1997 NIRC, as amended. Therefore, the absence of the term, "zero-rated" on these documents does not affect the admissibility and competency of the evidence. Section 4.108-1 of R.R. 7-95 cannot expand the scope of the law by imposing the additional requirement of imprinting the wordings, "zero-rated sales" on VAT invoices and/or official receipts.

Meanwhile, the respondent failed to file his comment to the petition within the prescribed period.

The petition is devoid of merit.

A refund of input VAT is conditioned on the existence of zero-rated sales or effectively zero-rated sales, in accordance with Section 112(A) of the 1997 NIRC, as amended, stating:

> 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 (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

Effectively zero-rated sales refer to services rendered by VAT registered persons to entities granted tax exemption, under special laws or international agreements, pursuant to Section 108(B)(3) of the 1997 NIRC, as amended, such as petitioner's sale of power generation services to NPC whose charter exempts it from payment of all taxes, whether direct or indirect.[8] Section 108(B)(3) of the 1997 NIRC, as amended, provides: Je

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[8] See Section 13 of Republic Act 6395, or also known as "An Act Revising the Charter of the National Power Corporation" and *Maceda vs. Macaraig*, G.R. 88291, June 8, 1993, 223 SCRA 217.

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(0%) percent 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;

The existence of zero-rated or effectively zero-rated sales must be duly substantiated by VAT official receipts and/or invoices, under Sections 113 and 237 of the 1997 National Internal Revenue Code ("NIRC"), reading:

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

(A) *Invoicing Requirements.* – A VAT registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

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

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

xxx xxx xxx

SEC. 237. **Issuance of Receipts or Sales or Commercial Invoices.** – All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales of 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 the case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of amount , where the sale or transfer is made by a person liable to value-added tax to another person is 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 of the purchaser.

Both Sections 113 and 237 of the 1997 NIRC, as amended are correlated with Section 4.108-1 of R.R. 7-95, stating:

> Sec. 4.108-1 Invoicing Requirements. – All VAT-registered persons shall, 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.

Section 4.108-1 of R.R. 7-95 specifically enumerates the contents required to be specified on the VAT invoices and/or official receipts, and these include the imprinting of the wordings, "zero-rated sales" thereon.

Considering that petitioner is engaged in the sale of power generation services to NPC, it must proffer VAT official receipts, pursuant to Section 108 of the 1997 NIRC, as amended which provides:

> SEC. 108. **Value-added Tax on Sale of Services and Use or Lease of Properties.** –
>
> (A) *Rate and Base of Tax.* – There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.
>
> xxx xxx xxx

> (c) *Determination of the Tax.* – The tax shall be computed by multiplying the total amount indicated in the official receipt by one-eleventh (1/11). (Underscoring Ours for emphasis.)

After a careful re-examination of the records of the case, and contrary to the assertions of the petitioner, the Court is convinced that the VAT official receipts identified as Exhibits BB-18, BB-19 and BB-20 do not bear the imprinted nor the stamped wordings, "zero-rated sales", to support the zero-rated sales of P79,553,636.23 .[9] In the Decision dated July 11, 2006, the Court in Division aptly observed the following:

> Further, a perusal of the documents submitted revealed that P79,553,636.23 of the claimed zero-rated sales was supported by TIN-VAT official receipts without the word "zero-rated" imprinted thereon, in violation of the requirement set forth under Section 4.108-1 of Revenue Regulations No. 7-95.[10] (Underscoring Ours for emphasis).

Thus, the Court in Division correctly denied the claimed zero-rated sales of P79,553,636.23 corresponding to the VAT official receipts devoid of the wordings, "zero-rated sales".

In a litany of cases, the Court En Banc has consistently ruled that the imprinting of "zero-rated sales" on the VAT official receipts or invoices is mandatory, pursuant to Section 4.108-1 of R.R. 7-95[11]. In the absence *Je*

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9 See Schedule of Reconciliation of Zero-Rated Sales (OR vs. Summary List) marked as Exhibit R-4.

10 Rollo, pp. 65-66.

11 See *Southern Philippines Power Corporation vs. Commissioner of Internal Revenue*, C.T. A. EB No. 214, July 31, 2007, *Kepco Philippines Corp. vs. Commissioner of Internal Revenue*, C.T.A. EB No. 186, May 17, 2007, *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, C.T. A EB No. 174, May 9, 2007, *Applied Food Ingredients Co., Inc. vs. Commissioner of Internal Revenue*, C.T.A. E.B. No. 220, May 7, 2007, *Intel Technology Philippines Inc. vs. Commissioner of Internal Revenue*, C.T. A. EB No. 181, March 27, 2007, *Panasonic Communications Imaging*

of the wordings, "zero-rated sales" imprinted on these VAT invoices and/or receipts, the claim for input VAT will be disallowed.[12] The relevance of imprinting the wordings, "zero-rated sales" on these documents was discussed in the case of *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*[13], where the Court En Banc reasoned that:

> 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].
>
> xxx xxx xxx
>
> 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

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Corporation of the Philippines, (formerly, MATSUSHITA BUSINESS MACHINE CORPORATION OF THE PHILIPPINES) vs. Commissioner of Internal Revenue, C.T.A. EB No. 239, May 23, 2007, and *J.R.A. Philippines Inc. vs. Commissioner of Internal Revenue*, C.T.A. EB No. 128, January 15, 2007.

[12] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, E.B. No. 107, June 29, 2007, *Commissioner of Internal Revenue and Applied Food Ingredients Co., Inc. vs. Commissioner of Internal Revenue*, C.T.A. E.B. No. 220, May 7, 2007.

[13] C.T.A. EB Case No. 107, June 29, 2007 citing the case of *J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue*, C.T.A Case No. 6454, June 30, 2005.

> crediting/refunding non-existent input tax to purchasers of goods or services of such zero-rated taxpayer. [14]

The imprinting of zero-rated sales primarily seeks to avert the incidence of fictitious claims for refund or the issuance of tax credit certificate of input VAT actually unpaid on the sale of goods or services rendered by the taxpayer, simply because the transaction involved is zero-rated. Thus, Section 4.108-1 of R.R. 7-95 does not in any way amplify the context of Sections 113 and 237 of the 1997 NIRC, but should be treated as a preventive measure to ensure the effective implementation of the Tax Code.

The provisions of R.R. 7-95, particularly Section 4.108-1 issued by the Department of Finance have the force and effect of the law, as affirmed by the Supreme Court in the case of *Victorias Milling Co., Inc. v. Social Security Commission*[15], where it ruled that:

> Rules and regulations when promulgated in pursuance of the procedure or authority conferred upon the administrative agency by law, partake of the nature of a statute, and compliance therewith may be enforced by a penal sanction provided in the law. This is so because statutes are usually couched in general terms, after expressing the policy, purposes, objectives, remedies and sanctions intended by the legislature. The details and the manner of carrying out the law are often times left to the administrative agency entrusted with its enforcement. In this sense, it has been said that rules and regulations are the product of a delegated power to create new or additional legal provisions that have the effect of law.

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14 Also cited in the case of *Applied Food Ingredients Co., Inc. vs. Commissioner of Internal Revenue*, supra.

15 114 Phil. 555,558 (1962) cited in *CEMCO Holdings Inc. vs. National Life Insurance Company of the Philippines, Inc.*, G.R. No. 171815, August 7, 2007.

WHEREFORE, premises considered, the petition for review is hereby **DENIED**. Accordingly, the assailed Decision dated July 11, 2006 and the Resolution dated November 10, 2006 are **AFFIRMED**.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(With Concurring and 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 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.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MIRANT (NAVOTAS II) CORPORATION (Formerly Southern Energy Navotas II Power, Inc.),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 226
(C.T.A. Case Nos. 6636 & 6728)

Present:

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

Promulgated:

SEP 1 1 2007 MAApolinario

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Concurring and Dissenting Opinion

I agree with the majority as regards its decision to uphold the grant of petitioner's claim for refund or issuance of a tax credit certificate for its unapplied or unutilized input taxes attributable to zero-rated sales of services for taxable year 2001, in a reduced amount, for failure to satisfy some of the evidentiary requirements, such as:

- those substantiated by VAT invoices and official receipts which fall outside the subject period of claim;
- those claimed input taxes have no supporting documents or supported by documents other than VAT official receipts;
- those supported by mere photocopies of official receipts; and,
- those claimed input taxes on purchases of goods which are supported by invoice not issued in the company's name.

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However, with due respect to my distinguished colleagues, I wish to express my dissent with respect to the portion of the Decision which upheld the invalidation of some of the submitted invoices and/or receipts for failure to imprint the term "zero-rated".

As I have already explained, contrary to the view of the majority, (1) the applicable provisions of the National Internal Revenue Code (NIRC) do not require imprinting of the word "zero-rated"; (2) the absence of the term "zero-rated" in the invoice or receipt does not affect the admissibility and competency of the same as evidence in support of its refund claim; (3) assuming the propriety of imposing the alleged requirement to imprint the word "zero-rated" in the invoice, the invalidation of the same and the denial of the refund claim are not the legally imposable penalties for failure to meet such alleged requirement.

Sections 113 and **237** of the NIRC provide as follows:

> **Section 113. Invoicing and Accounting Requirements for VAT registered persons – (A) Invoicing Requirements** – A VAT-registered person, shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
>
> 1. A statement that the seller is a VAT-registered person followed by his taxpayer's identification number (TIN); and
>
> 2. The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.
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> xxx
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> **Section 237. Issuance of Receipts or Sales of Commercial Invoices.** – All persons subject to an internal revenue tax shall, for each sale, or transfer of merchandise or for services rendered valued at Twenty five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service; Provided however, That in case of sales, receipts or transfers in the amount of One Hundred Pesos (P100.00) or more, regardless of amount where the sale or transfer is made by a person liable to value added tax to another person also liable to value added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations, or fees, receipts or invoices shall be issued which shall

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> 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 foregoing, the only information required to be indicated in an invoice or official receipt, as a precondition for its validity and for claiming a refund claim of input VAT paid are:

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

Likewise, the tenor of **Section 112 (A) of the Tax Code** permits all VAT-registered enterprises engaged in zero-rated transactions to claim a refund of their creditable input tax due or paid to the extent that such input tax has not been applied against output tax within a period of two (2) years after the close of the taxable quarter. And nowhere is it shown that failure to imprint the word "zero-rated" in the invoice or receipt will automatically cause their invalidation and/or the rejection of the refund claim.

Further, administrative rules and regulations cannot expand the letter and the spirit of the law they seek to enforce. And in case of conflict, the law prevails because the said rule or regulation cannot go beyond the terms and provisions of the basic law.[1] In this case, the NIRC does not require the imprinting of the term "zero-rated", this so-

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[1] *People vs. Lim, 108 Phil. 1091*

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called "requirement" can only be found only in Section 4.108-1 of Revenue Regulations No. 7-95 (*The Implementing Rules and Regulations of the Value-Added Tax).* Consequently, the denial of a claim for tax refund based on a requirement imposed by an invalid administrative regulation is an excessive and an unwarranted penalty.

In **Commissioner of Internal Revenue vs. Seagate Technology (Philippines)**, *G.R. No. 153866, February 11, 2005*, the Supreme Court 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.*

Consequently, the requisites to be entitled to the refund/tax credit of unapplied or unutilized input VAT are as follows:

1. There must be zero-rated or effectively zero-rated sales;
2. That input taxes were incurred or paid;
3. That the input taxes are attributable to such zero-rated or effectively zero-rated sales;
4. That the input taxes were not applied against any output VAT liability; and
5. The claim for refund was filed within the two-year prescriptive period.

As found by the First Division, save for some parts of the claim, the petitioner has satisfied the foregoing requisites and established its right to the tax refund through duly submitted material and documentary exhibits.

Accordingly, while I concur with the majority opinion regarding the reduction of the refundable amount to petitioner for failure to satisfy some of the substantiation and evidentiary requirements for VAT refund claim, I manifest my dissent to the majority insofar as it finds that the term "zero-rated" must be imprinted in the sales invoice and/or receipt to be valid evidence in claiming for refund of or issuance of tax credit certificate for excess input taxes, notwithstanding the requirement stated in the abovementioned BIR Regulation. More so in this case, where beyond the legally mandated requirements, part of the claim which was disallowed were supported by sales invoices/receipts, stamped with the term "zero-rated".

ERNESTO D. ACOSTA
Presiding Justice