

REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

MICROSOFT PHILIPPINES, INC.,
Petitioner,

C.T.A. CASE NO. 6681

Members:

-versus-

CASTAÑEDA, JR., Chairman
UY, and
PALANCA-ENRIQUEZ, JJ.

COMMISSIONER OF INTERNAL
REVENUE,

Promulgated:

Respondent.

AUG 3 1 2006



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DECISION

PALANCA-ENRIQUEZ, J.:

For a judicial claim for tax credit to prosper, the taxpayer must comply with the requirement of imprinting the word “zero-rated” on a VAT receipt or invoice for zero-rated sales. It is a mandatory provision that fulfills the intent of the law not only with respect to the proper implementation of the provisions of the National Internal Revenue Code on zero-rated transactions, but also to prevent the claim for tax credit of



non-existent input VAT. Strict compliance with said requirement must therefore be enforced.

THE CASE

This is a Petition For Review filed by Microsoft Philippines, Inc. (hereafter “petitioner”) praying for the issuance of tax credit certificate in the amount of P11,449,814.99 allegedly representing the excess input VAT paid on domestic purchases of goods and services attributable to its zero-rated sales of services during the taxable year 2001.

THE FACTS

In their “Joint Stipulation of Facts and Issues”, the parties agreed on the following facts:

“1. Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission, with principal office address at the 22/F Tower 2 The Enterprise Center, 6766 Ayala Avenue corner Paseo de Roxas, Makati City;

2. Respondent is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund or tax credit certificate;

3. Petitioner is a duly registered VAT taxpayer;

4. The administrative claim for tax credit certificate and the instant case have been filed within the periods required under Section 112 (A) and (D) of the



1997 National Internal Revenue Code (“NIRC”) and Section 4.106-2(c) of Revenue Regulations No.7-95;

5. Respondent has not resolved with finality Petitioner’s claim for tax credit certificate.”

In his Answer, respondent by way of special and affirmative defenses, averred:

“4. Petitioner has not shown proof that the input tax is attributable to its zero-rated sales;

5. Input VAT from zero-rated services cannot be refunded in the absence of zero-rated sales in VAT returns;

6. Petitioner failed to show compliance with the substantiation requirements under the provision of Section 16(c)(3) of Revenue Regulations No.5-87, as amended by Revenue Regulation No.3-88;

7. Petitioner failed to show that the alleged creditable VAT was not carried over and utilized against the value-added tax liability of the petitioner in the succeeding quarters or year;

8. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35);

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



10. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.”

Petitioner presented Mr. Benjamin Valdez, the duly commissioned Independent CPA, as witness, and submitted documentary evidence, marked as *Exhibits “A”* to “CCC-6-R”, inclusive of submarkings, which evidence were admitted by the Court.

On the other hand, respondent submitted the case for decision, without presenting any evidence.

Thereafter, both parties were ordered to file their respective memoranda, within thirty (30) days from notice. Considering that only petitioner filed its Memorandum on May 2, 2006, the case was deemed submitted for decision on May 22, 2006.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court’s consideration:

I

WHETHER THE INPUT TAXES SUBJECT OF THE CLAIM FOR TAX CREDIT CERTIFICATE WERE PAID ON PURCHASES OF DOMESTIC GOODS AND SERVICES ATTRIBUTABLE TO ZERO-RATED SALES.



II

WHETHER THE INPUT TAXES SUBJECT OF THE CLAIM FOR TAX CREDIT CERTIFICATE WERE NOT APPLIED AGAINST OUTPUT TAXES.

III

WHETHER THE INPUT TAXES SUBJECT OF THE CLAIM FOR TAX CREDIT CERTIFICATE WERE DULY SUPPORTED AND SUBSTANTIATED BY VAT INVOICES AND/OR VAT OFFICIAL RECEIPTS.

IV

WHETHER THE PETITIONER DECLARED ZERO-RATED SALES IN ITS VAT RETURNS.

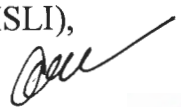
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WHETHER THE INPUT TAXES VAT SUBJECT OF THE CLAIM FOR TAX CREDIT CERTIFICATE WERE NOT UTILIZED IN THE SUCCEEDING QUARTERS.

THE COURT'S RULING

The Petition is devoid of merit.

Indubitably, petitioner is registered with the Bureau of Internal Revenue (hereafter "BIR") as a value-added tax (VAT) taxpayer in accordance with the *National Internal Revenue Code of 1997* (hereafter "*NIRC of 1997*"), as amended, as shown in petitioner's BIR Certificate of Registration (*Annex "A"*). It renders marketing services to Microsoft Operations Pte Ltd. (MOP) and Microsoft Licensing, Inc. (MSLI),



affiliated non-resident foreign corporations, where such services are paid for in acceptable foreign currency, inwardly remitted into the Philippines and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas. As such, the services rendered by petitioner in the Philippines to MOP and MSLI qualify as zero-rated sales for VAT purposes under *Section 108 (B)(2) of the NIRC of 1997, as amended*, which provides:

“SEC.108. (B) Transactions Subject to Zero Percent (0%) Rate- The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(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;

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(4) Services rendered to vessels engaged exclusively in international shipping; and

(5) Services performed by subcontractors and/or contractors in processing, converting, or manufacturing goods for an enterprise whose export sales exceed seventy percent (70%) of total annual production.”

Corollary thereto, *Section 4.102-2 (b)(2) of Revenue Regulations No. 7-95 (The Consolidated Value-Added Tax Regulations)* clarifies *Section 108 (B)(2) of the NIRC of 1997, as amended*, to wit:

“**SEC. 4.102-2 (b)(2)** Services other than processing, manufacturing or repacking for other persons doing business outside the Philippines for goods which are subsequently exported, as well as services by a resident to a non-resident foreign client, such as project studies, information services, engineering and architectural designs and other similar services, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.”

Petitioner filed an administrative claim for tax credit of input VAT in the amount of P11,449,814.99 attributable to its zero-rated sales of services for the taxable year 2001. Allegedly, these input VAT have not been applied against any output tax.

Petitioner anchors its claim on *Section 112(a) of the NIRC of 1997, as amended*, which provides:

“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 xxx.”

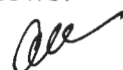
Principal Issue

The principal issue to resolve is whether petitioner, in relation to its zero-rated sales, has complied with the invoicing requirements of the *NIRC of 1997, as amended*. The resolution of this issue must take precedence over the others since a negative ruling to such effect renders the rest of the issues moot and academic.

While *Section 112* of the *NIRC of 1997, as amended*, allows tax refund or credit of the input tax of any VAT-registered person whose sales are zero-rated or effectively zero-rated, nevertheless, certain invoicing requirements must be faithfully complied with in order for a claim for tax refund or credit can be granted.

Invoicing Requirements

Sections 113 and 237 of the *NIRC of 1997, as amended*, lay down the invoicing requirements for VAT registered persons, as follows:



“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.”

“SEC. 237. Issuance of Receipts or Sales or Commercial Invoices.- All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: 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 also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: Provided, further, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice



or receipt shall further show the Taxpayer's Identification Number (TIN) of the purchaser.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious case, exempt any person subject to internal revenue tax from compliance with the provisions of this Section."

In relation to these requirements, *Section 4-108-1 of Revenue Regulations No. 7-95* enumerates the information that must appear on the face of receipts or invoices issued for the sale of goods by all VAT-registered persons. The pertinent portion thereof is quoted hereunder:

"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 invoices or receipts and this shall be considered as "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."

The law is very clear and concise. *Section 113* provides that "a VAT registered person shall, for every sale, issue a duly registered VAT invoice or receipt for every sale transaction". Such VAT invoice or receipt must show the taxpayer's identification number, followed by the word "VAT", the BIR Authority imprint or BIR permit marker and the word "zero-rated" imprinted on the invoice receipt covering a zero-rated sale.



The above-quoted Revenue Regulations implementing the *NIRC of 1997* 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. This is a settled rule in this jurisdiction (*Francisco vs. Court of Appeals*, 234 SCRA 392). The seller-taxpayer is duty-bound to comply with the invoicing requirements laid down in the said provisions of the *NIRC of 1997, as amended*, and the implementing *Revenue Regulations*.

After a careful scrutiny of the documents presented in evidence, the Court finds that petitioner’s official receipts (*Exhibits “CC” to “ZZ”*) do not bear the imprinted words “zero-rated” on the face thereof, in violation of the requirements of the aforequoted Revenue Regulations. Hence, said receipts cannot be considered as valid evidence to prove zero-rated sales for VAT purposes.

**Effects of Failure to Comply with the
Invoicing Requirements**

In conjunction thereto, *Revenue Memorandum Circular No. 42-2003 [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] expressly provides in a clear and unequivocal words that the failure of a taxpayer claiming for tax refund/credit to comply with the invoicing requirements will result to the disallowance of the claim for input tax. The pertinent portion of said Memorandum Circular provides:

“A-13. Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.

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 customer does not depict its being a Vat-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer.”

Pursuant to said Memorandum Circular, 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, such as the failure of the claimant-taxpayer to imprint the word “zero-rated” on the sales invoices or receipts, the claim for tax credit/refund of VAT on its sales shall be denied. Considering that herein petitioner failed to imprint the word “zero-rated” on its sales invoices or receipts, We are left with no recourse but to deny the claim for tax credit certificate.

Rationale of Strict Compliance

The law and revenue regulations are explicit in emphasizing strict compliance with the invoicing requirements. Pursuant to *Section 110 of the NIRC of 1997, as amended*: “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: xxx”. VAT invoices and receipts, in relation to the instant case, are used as evidence for purposes of determining whether there is an excess in either the input or output taxes.

If the invoice or official receipt is not imprinted with “zero-rated”, there is a danger that the purchaser of the goods or services may be able to claim the 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 of the mandatory requirement in *Revenue Regulations No. 7-95* that the word “zero-rated” be imprinted in the invoice or receipt. 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 to such zero-rated taxpayer.

For all the foregoing, We conclude that petitioner’s failure to indicate the word “zero-rated” on its official receipts is fatal to its claim.

**Laws granting tax exemption
are construed strictissimi juris
against the taxpayer and liberally
in favor of the taxing authority**

It is a doctrinal rule that laws granting tax exemption are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. It is worthy to emphasize that a claim for tax refunds are in the nature of tax exemptions. As such, these are regarded as in derogation of sovereign authority and are strictly construed against the person or entity claiming it. Taxation is the rule and exemption is the exception. The law does not look with favor tax exemptions and he who thus seek to be

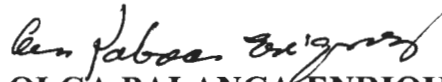


privileged must justify it by words too plain too be mistaken and too categorical to be misinterpreted (*Sea-Land Services, Inc. vs. Court of Appeals, 359 SCRA 441*).

With the conclusion thus reached, We find no need to discuss the other issues raised in this petition for being moot and academic.

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

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


ERLINDA P. UY
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.


JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman, Second Division



CERTIFICATION

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


ERNESTO D. ACOSTA
Presiding Justice

