Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

INTEL TECHNOLOGY PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB Case No. 24
(CTA Case No. 6170)

Present:

ACOSTA, *PJ.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

JAN 27 2006

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DECISION

CASANOVA, J:

This is a Petition for Review with the Honorable Court of Tax Appeals *En Banc* under Section 11, Republic Act No. 1125 as amended by Section 18 of Republic Act No. 9282. Petitioner respectfully prays that the Decision dated November 24, 2003 of the First Division of the Honorable Court in CTA Case No. 6039 entitled "*Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*", partially granting Petitioner's claim for tax refund / issuance of tax credit certificate in the amount of PHP 2,425,764.00 representing it's input VAT on importation of capital goods and denying the claim for refund of input VAT attributable to Petitioner's alleged zero-rated sales in the amount of PHP 23,105,548.83 for lack of merit, be reversed and set aside. Petitioner likewise prays that the Resolution dated August 10, 2004 of the First Division of the Honorable Court denying Petitioner's Motion for Partial Reconsideration of said Decision be reversed and set aside.

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

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office at 1321 Apolinario Street, Bangkal, Makati City, Metro Manila. It is primarily engaged in the business of designing, developing, manufacturing and exporting advance and large-scale integrated circuit components, commonly referred to in the industry as Integrated Circuits or "IC's".

Petitioner is registered with the Bureau of Internal Revenue as a VAT taxpayer with Certificate of Registration bearing RDO Control No. 94-048-02621 dated July 6, 1994 *(Exhibit "B"; originally with RDO Control No. 32A-3-002649 dated January 1, 1988, Exhibit "A")*. It is likewise registered with the Board of Investments as a preferred pioneer enterprise enjoying a six-year income tax holiday, in accordance with the provisions of the Omnibus Investments Code. *(par. 1, Stipulation of Facts, page 44, CTA records; Exhibit "C")*.

For the period July 1, 1998 to September 30, 1998, petitioner seasonably filed its third quarterly Value-Added Tax Return on October 26, 1998 reflecting, among others, output VAT in the amount of P66,084.56, input VAT on domestic and importation of goods in the respective amounts of P24,045,873.39 and P1,551,524.00, and zero-rated export sales in the sum of P1,822,253,889.33 *(Exhibits "D", inclusive of submarkings)*.

Petitioner alleges that the aforementioned zero-rated sales in the amount of P1,822,253,889.33 arose from its exportation of goods and were paid for in acceptable foreign currency inwardly remitted in accordance with the regulations of the Bangko Sentral ng Pilipinas. It further avers that the input taxes in the sum of P25,531,312.83 were directly attributable to such zero-rated export sales.

Believing that it is entitled to the refund of input taxes attributable to its recorded zero-rated export sales, petitioner filed on May 6, 1999 with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance an Application for Tax Credit/Refund of Value-Added Tax Paid covering the following input taxes for the third quarter of 1998: *(Exhibits J and K)*

	Amount
Tax Paid on Imported/Locally Purchased Capital Equipment	P 2,425,764.00
Total VAT Paid on Purchases per Invoices Received During the Period for which this Application is Filed	23,105,548.83
Amount of Tax Credit/Refund Applied For	P25,531,312.83

After the expiration of the one hundred twenty (120) days allowed under Section 112(D) of the Tax Code (*for the respondent to act on said application*) without an action from the respondent, petitioner on September 29, 2000 filed the instant petition for review in order to toll the running of the two-year prescriptive period provided in Section 229 of the Tax Code.

Unfortunately, after trial on the merits, Petitioner's claim for tax refund/issuance of tax credit certificate on its alleged zero-rated sales in the amount of PHP 23,105,548.83 was denied by the Court in a Decision dated November 24, 2003 and its Motion for Partial Reconsideration assailing said Decision was likewise denied for lack of merit.

Hence, this present Petition for Review *En Banc* and Petitioner anchors its Petition on the following assignment of errors:

I.

RESPONDENT FIRST DIVISION OF THE CTA ERRED IN PARTIALLY DENYING THE PETITIONER'S CLAIM

> DUE TO THE ABSENCE OF THE BIR'S PERMIT TO PRINT ON ITS EXPORT INVOICES.
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> II.
>
> RESPONDENT FIRST DIVISION OF THE CTA ERRED IN DENYING CERTAIN SALES INVOICES PRESENTED AND FORMALLY OFFERED BY THE PETITIONER DUE TO THE ABSENCE OF THE IMPRINTED WORD "ZERO-RATED" THEREON.
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> III.
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> RESPONDENT FIRST DIVISION OF THE CTA ERRED IN FINDING THAT THE PETITIONER FAILED TO COMPLY WITH THE SUBSTANTIATION REQUIREMENTS PROVIDED BY LAW IN PROVING ITS CLAIM FOR REFUND.
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> IV.
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> RESPONDENT FIRST DIVISION OF THE CTA ERRED IN REDUCING THE AMOUNT OF PETITIONER'S TAX CREDIT FOR INPUT VAT ON IMPORTATION OF CAPITAL GOODS.
>
> V.
>
> RESPONDENT FIRST DIVISION OF THE CTA ERRED IN DENYING PETITIONER'S CLAIM FOR REFUND OF INPUT VAT ATTRIBUTABLE TO PETITIONER'S ZERO-RATED SALES.

In the first assigned error, petitioner contends that the purported failure to reflect the TIN-V and the permit to print receipts and invoices on Petitioner's receipts and invoices does not automatically make petitioner's invoices and receipts invalid, incompetent, and irrelevant as evidence for petitioner in support of its claim for tax refund / issuance of tax credit certificate.

There is no law which requires that the permit to print should be reflected on petitioner's invoices.

In the second assigned error, petitioner argues that assuming, without admitting any violation of the Tax Code or regulations, that petitioner may have overlooked to strictly comply with the invoicing requirements, such an omission should not automatically invalidate the export sales invoices for purposes of proving export sales made by the petitioner covering the Third Quarter of 1998.

Despite the absence of authority to print or the imprint "zero-rated" on the face of the export sales invoices, the same is still admissible and cannot be disregarded without any legal basis.

The sales invoices presented by petitioner as evidence are relevant since they along with the other export documents presented as evidence for Petitioner, show actual exportation of petitioner's finished products, which in turn proves that all its sales are zero-rated transactions. Establishing the latter is essential to the petitioner's claim.

The sales invoices are also competent since they are not excluded by any existing evidentiary rule. Moreover, it must be stressed that the original sales invoices of petitioner were submitted to and actually examined by the duly commissioned independent certified public accountant.

Thus, if at all, the absence of the authority to print makes the Petitioner liable for the penalties under the Tax Code. Again, let it be stressed that neither the invalidation of the export sales invoices as evidence or the outright denial of the taxpayer's claim for refund or issuance of tax credit certificate is not one of the prescribed penalties.

In the third assigned error, petitioner claims that it is not required by law to secure an authority to print since its Export Sales Invoices were Computer Generated under an Approved Computerized Accounting System. That the purpose for Imprinting the words "zero-rated" on the Sales Invoices of the Seller is still achieved under the circumstances and the Sales Invoices not imprinted with the word Zero-rated were Provisional Receipts and were not intended to be considered in the determination of petitioner's Export Sales. Furthermore, petitioner insists that in a claim for refund / tax credit of Input Tax arising from Zero-Rated Sales, what is essential is that a taxpayer proves actual exportation.

In the fourth assigned error, petitioner claims that it is improper to set aside with haste the claimed input VAT on capital goods expended for training materials, office supplies, posters, banners, t-shirts, books and the like because Section 4.112-1 of Revenue Regulation No. 7-95 defines capital goods as to include even those which are indirectly used in the production or sale of taxable goods or services.

In the fifth assigned error, petitioner contends that the CTA's denial of its entire claim for tax credit / refund on the ground that it failed to substantiate its export sales is a denial based on a too strict application of technicalities.

Denying petitioner's claim for tax credit / refund on the ground that there was no indication of the BIR Permit to Print and/or "zero-rated" on its sales invoices is too harsh a punishment, as to amount to a denial of petitioner's clearly valid and legal claims. Under the circumstances, if ever the petitioner had been found wanting in compliance with some technical requirements, it should have been meted only with penalty commensurate to its shortcomings, and not by a denial of its substantially proven claim.

Respondent did not file his Comment on the said Petition for Review.

After a careful and thorough perusal, evaluation and consideration of the instant Petition for Review, the Court *En Banc* finds that the absence of the BIR's Permit to Print is fatal to petitioner's claim for refund/tax credit.

Section 113 of the Tax Code requires that every invoice or receipt issued by a VAT registered person should contain the following information:

> "**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."

Such invoice or receipt must be duly registered with the Bureau of Internal Revenue, as prescribed under Section 237 of the Tax Code, to wit:

> "**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 xxx." (Emphasis supplied)

A careful examination of all the sales invoices of petitioner reveals that the afore-said documents were not duly registered with the Bureau of Internal Revenue, as mandated under Section 237 of the Tax Code *(Exhibits HH-1 to HH-940)*. There was no authority to print or BIR permit number reflected on the said invoices. Basic is the rule that before a printer can print receipts or sales or commercial invoices an *authority to print* must be secured first from the Bureau of Internal Revenue, by all persons who are engaged in business, pursuant to Section 238 of the Tax Code. Pertinent portion of Section 238 provides:

> "**Section 238.** ***Printing of Receipts or Sales or Commercial Invoices.*** - All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same." (*Emphasis supplied*)

The above provision seeks to eliminate the use of unregistered and double or multiple sets of receipts by striking at the very root of the problem – the printer *(Hector S. De Leon, The National Internal Revenue Code Annotated, Seventh Edition, page 901)*. Since petitioner failed to show that it has secured BIR authority to print sales invoices, the court cannot consider the sales invoices offered as valid proof of export sales subject to VAT at 0%. While the invoices appear to be computer generated, this does not mean that the requirement of securing prior BIR authority to print can be dispensed with. Contrariwise, stringent monitoring should be effected because petitioner prints its invoice without the required authority. The authority to use computer-generated form of invoices issued by the BIR should have been produced as part of petitioner's evidence.

Aside from the above infirmity, the Court also finds that the sales invoices failed to indicate the word "zero-rated" for transactions covering zero-rated export sales. This violates Section 4.108-1 of Revenue Regulations No. 7-95, providing, thus:

> "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." *(Emphasis supplied)*

The requirement of imprinting the BIR permit in the sales invoices and official receipts is a control mechanism adopted by the Bureau of Internal Revenue to safeguard the interest of the government. This is required under

Section 19(C)(3) of Revenue Regulations No. 2-78, as amended, which regulates the printing of receipts or sales or commercial invoices under Section 238 of the Tax Code, to wit:

> "SEC. 19. Authentication and registration of book, register of record; authority to print receipts, sales or commercial invoices; and registration and stamping of receipts and invoices.
>
> xxx xxx xxx
>
> 3. Other requirements. –
>
> 1. Every copy of invoice or receipt approved for printing under these regulations shall bear on the original and every copy thereof on its lower left hand corner the name, business address and authority number of the printer." (Underlining supplied).

Petitioner argues that its sales invoices were computer generated and it was adopting a computerized accounting system hence, it is not required to show the BIR permit or authority to print on the said documents. Petitioner further contends that if there is one to be punished it would be the printer who is obliged to print the sales invoices or receipts pursuant to Section 238 of the Tax Code.

The Court finds the argument raised by the petitioner untenable.

Petitioner overlooks the fact that since it is adopting a computerized accounting system, the printer is the petitioner itself. Therefore, petitioner is the one to be punished for failure to comply with the law.

Likewise, the Court *En Banc* notes that petitioner's request for *Permit to Adopt Computerized Accounting Documents such as Sales Invoice and Official Receipt* was approved on August 31, 2001 while the period involved in this case covers July 1, 1998 to September 30, 1998 *(Permit No. LTS-1-AR-0801-0037 dated September 4, 2001, pages 237-239, CTA Records).* Petitioner argues that a permit was previously issued by the BIR Makati Branch, however, such permit was only limited to the use of computerized books of account *(Sworn Statement of Lost of Permit to Use Computerized Books of Accounts, page 236, CTA Records; Annex A of Reply to Respondent's Comment/Opposition, page 272, CTA Records).* It was only on August 31, 2001 that petitioner was permitted to generate computerized sales invoices and official receipts which under the said permit, petitioner is even **required** to have the BIR Permit Number imprinted on the header of the document, to wit:

> "In reply, please be informed that your request for a *Permit to Use Computerized Accounting Documents such as Sales Invoice and Official Receipt* is hereby approved, subject to compliance with the following requirements set forth under this Permit:
>
> xxx xxx xxx
>
> 6. System-generated accounting documents shall have a header containing the ff. data:
> a.) Name of the Company
> b.) Principal Address
> c.) A Statement that Taxpayer Corporation is a VAT-registered entity Followed by the Taxpayer Identification Number (TIN); and
> **d.) <u>BIR Permit Number</u>**
>
> Moreover, the system must have the capability to indicate the purchaser's Name, business style, if any, address and TIN pursuant to Sec. 237 of the NIRC of 1997." (Underlining supplied).

Thus, petitioner's contention that it is not required to show its BIR permit number on the sales invoices is contrary to the prescribed requirements under the said "Permit". More, petitioner was not even allowed to issue computer generated sales invoices during the period July 1, 1998 to September 30, 1998 because it did not have an authority to print or BIR permit. Therefore, We are convinced that such documents lack probative value and are therefore inadmissible, incompetent and immaterial to prove petitioner's export sales transaction.

With the violations set forth above, the input VAT credits attributable to petitioner's export sales in the amount of P23,105,548.83 cannot be refunded.

As to the other evidence presented by petitioner to prove actual exportation of goods such as certification of inward remittance, export declarations and airway bills, the Court finds these documents insufficient. It should be noted that all of the aforementioned documents, together with the duly registered VAT invoices or receipts, *taken collectively,* are the best means to prove the exportation of goods. ***(The Commissioner of Internal Revenue vs. Philippine Bobbin Corporation, CA-G.R. SP No. 59452, February 19, 2001)***.

With regard to the allegation of petitioner that the Court erred in reducing the amount of its claim for refund of input VAT on importation of capital goods, the Court *En Banc* notes that the items (training materials, office supplies, posters, banners, t-shirts, books and the like) purchased by petitioner were not clearly proven to have been used, directly or indirectly in the production or sale of goods, as defined above, the same may not be claimed as such.

Well entrenched in our jurisprudence is that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption ***(Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., 309 SCRA 87 [1999])***. Accordingly, the claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund ***(Citibank N.A. vs. Court of Appeals, 280 SCRA 459 [1997])***.

In sum, the Court *En Banc* finds no cogent justification to disturb the previous conclusion spelled out in the assailed Decision promulgated on November 24, 2003 and Resolution dated August 10, 2004. What the instant petition seeks is for the Court *En Banc* to view and appreciate the evidences in their perspective of things, which unfortunately had already been considered and passed upon.

WHEREFORE, the instant Petition is hereby **DENIED DUE COURSE** and **DISMISSED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

C E R T I F I C A T I O N

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

INTEL TECHNOLOGY PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 24
(C.T.A. Case No. 6170)

Present:

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

Promulgated:

JAN 27 2006

x--x

Concurring and Dissenting Opinion

I humbly reiterate my disagreement with the position of the majority, as stated in the Court *En Banc* Decision, only with regard to the view that petitioner's failure to reflect on its sales invoices its BIR authority to print and/or the word "zero-rated" will automatically make the same invalid, incompetent and irrelevant and the consequent denial of petitioner's claim for refund representing its unutilized creditable input VAT attributable to its zero-rated transactions. This contrary opinion is based on the following grounds: (1) pertinent provisions of the 1997 Tax Code do not require the indication or imprinting of the word "zero-rated" and the authority to print; (2) the absence of the authority to print and/or the term zero-rated in the invoice 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 indicate the authority to print and/or the word "zero-rated", the invalidation of the invoice and the denial of the refund claim are not the legally imposable penalties; and (4) the other equally valid pieces of evidence presented and formally offered are sufficient proof to justify the grant of the VAT refund claim attributable to its zero-rated transactions.

Based on the same Tax Code provisions cited in the Court's *En Banc* Decision, the undersigned points out that contrary to the majority opinion the only information required to be indicated in an invoice or official receipt are as follows:

(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.

For easy reference, the same are again hereunder quoted, to wit:

Section 112. Refunds or Tax Credits of Input Tax.

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

"**Section 113. Invoicing and Accounting Requirements for VAT registered persons – (A) Invoicing Requirements** – A VAT-registered person, shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

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

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

xxx

"**Section 237. Issuance of Receipts or Sales of Commercial Invoices.** – All persons subject to an internal revenue tax shall, for each sale, or transfer of merchandise or for services rendered valued at Twenty five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service; Provided however, That in case of sales, receipts or transfers in the amount of One Hundred Pesos (P100.00) or more, regardless of amount where the sale or transfer is made by a person liable to value added tax to another person also liable to value added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations, or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser; customer or client: Provided further, That where the purchaser is a VAT registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer's Identification Number (TIN) of the purchaser. xxx".

Unmistakably, the petitioner's authority to print and the word "zero-rated" are not among the information needed to appear on its sales invoice or official receipt as a condition for validity or for claiming refund of input VAT paid.

This view is corroborated by the recent pronouncement of the Honorable High Tribunal in the case of **Commissioner of Internal Revenue vs. Seagate Technology**

(Philippines), *G.R. No. 153866, February 11, 2005*, where the Supreme Court emphasized 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. Clearly, a separate zero-rating registration is no longer necessary. And the petitioner did not violate any of the said provisions of law or regulations since none of the same requires the petitioner to indicate the BIR Authority to Print or the word "zero-rated" in its invoices.

Regarding the second point, assuming *arguendo* that there was a violation of the supposed requirements to indicate the Authority to Print/BIR permit number or the term "zero-rated", such omissions do not automatically invalidate the invoices for purposes of proving the fact of the transactions. The invoices are still material, relevant and competent. It must be pointed out that "admissibility" refers to the question of whether or not the evidence is to be considered at all, while "competency" refers to whether or not the evidence is expressly excluded by law or the rules.

Anent the third ground, it must be emphasized that invalidation of the sales invoice and automatic denial of the refund claim are not among the prescribed penalties for "violating" the questionable invoicing requirements. Given the factual and legal backdrop of the case before this Court, the denial of petitioner's claim for tax refund on the ground that there was no indication of the BIR Permit to Print and/or the word "zero-rated" in its invoices is a penalty too harsh to be even considered by this Court. The absence of the authority to print, if at all, makes the petitioner only liable for penalties under the Tax Code, particularly, Section 264.

The Revenue Bureau made a corroborative finding in **BIR Ruling DA-375-03** which states thus:

> "xxx The fact that the official receipts issued by DITFI do not bear the information that DITFI is a VAT-registered taxpayer as required under Section 4.108-1 of Rev. Regs. No. 7-95, **does not *motu propio* invalidate the claim for input tax credit** of Stanfilco xxx.
>
> "Finally, **the Revenue District Officer (RDO) concerned is hereby ordered to impose the corresponding penalty against DITFI as prescribed in Revenue Memorandum Order No. 56-2000, in relation to Section 264 of the Tax Code of 1997, for failure to issue the prescribed receipts."** *(Emphasis supplied)*

It is noteworthy that the applicable statutes rather than limiting the documentary requirements to just the export invoices, recognize and specifically instruct the production of "export documents" to prove the fact of 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. And previous decisions of the CTA confirm this statement.

In the case of **Nichimen Corporation (Manila Branch) vs. CIR**, *CTA Case No. 5746 dated January 4, 2001*, this Court resolved to accept bank credit advices to prove the claimant's zero-rated sales without requiring the production of official receipts. Similarly, in **Nichimen Corporation (Manila Branch) vs. CIR,** *CTA Case No. 5221 dated January 8, 1998*, in support of the petitioner's claim that its sales were zero-rated, it only submitted the statements from RCBC to the effect that the acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations. Although the respondent objected to the refund claim for alleged failure to submit substantial proof that the sales were really zero-rated, this court still held that, "Respondent's demand for additional requirements is unnecessary considering that the documentary and testimonial evidence adduced by the petitioner are uncontroverted. The same evidence has clearly substantiated petitioner's claim to the satisfaction of the Court."

In the above-cited case of Nichimen Corporation, the petitioner therein completely failed to submit copies of its VAT invoices to support its claim for refund. Despite such omission, this Court nonetheless held that other proofs or evidence might still be presented as a replacement for said VAT invoices.

Equally persuasive is the opinion of the Revenue Bureau as stated in **Revenue Memorandum Circular No. 42-03** dated July 15, 2003, on the evidentiary importance of other export-oriented documents such as audited financial statement, books of accounts, export invoices, bills of lading or airway bills. The relevant portion states that:

> **"If the taxpayer did not reflect zero-rated sales in the VAT returns but it is claiming for tax credit or refund based on zero-rated sales, the Revenue Officer should mandatorily establish the existence of zero-rated sales from the audited financial statements, books of accounts, export invoices, bills of lading or airway bills and by comparing the reported sales against output tax reflected in the VAT return.** When zero-rated sales have been determined despite the fact that specific amounts were not categorically reflected in the VAT return, the claim may be processed upon sufficient proof of its existence xxx." *(Emphasis supplied)*

Consequently, there should be no distinction as to the evidentiary value of an invoice, an official receipt and other documentary evidence to prove the fact of export sales. After all, these laws and regulations made no pronouncement as to the use only of a VAT invoice to the exclusion of all other equally relevant and competent evidence. The elementary rule in statutory construction is that where the law does not distinguish, the courts should make no distinction. *Ubi lex non distinguit nec nos* *distinguire debemos* (**Mendoza, et. al. vs. COMELEC**, **et. al.**, *G. R. No. 149736, December 17, 2002).*

Finally, in the case before Us, the petitioner has established its right to the tax refund through its formally offered material and documentary exhibits such as sales invoices, official receipts, export declarations, airway bills and bank certification of inward remittance to petitioner of the proceeds from its zero-rated transactions, which as explained above are sufficient evidence to establish the existence of zero-rated transactions in lieu of VAT invoices.

In view of the foregoing, I manifest my opposition as regards the invalidation of the invoices and the denial of the refund claim attributable to its zero-rated transactions. However, I concur with the majority opinion regarding the reduction of the amount of petitioner's claim for refund of input VAT on importation of capital goods inasmuch as the Court *En Banc* upon investigation found that the subject items, specifically, training materials, office supplies, posters, banners, t-shirts, books and the like, purchased by petitioner do not fall within the definition of capital goods.

ERNESTO D. ACOSTA
Presiding Justice