REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

MARUBENI PHILIPPINES CORPORATION, Petitioner,	**C.T.A. E.B. NO. 319 (C.T.A. CASE NO. 6215)**
	Present:
- versus -	**ACOSTA,** *P.J.* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 2 3 2008 9:10 a.m.

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DECISION

UY, J.:

This is a Petition for Review filed before the Court of Tax Appeals *En Banc* on October 31, 2007 seeking a review of the Decision dated February 26, 2007 and Resolution dated September 25, 2007, rendered by the First Division of this Court[1] (Court in Division) in C. T. A. Case No. 6215 entitled **"Marubeni Philippines Corporation, petitioner, vs. Commissioner of Internal Revenue, respondent"** denying petitioner's claim for refund of its alleged unutilized excess input Value Added Taxes (VAT) for the fourth (4^{th}) quarter of 1998, in the total amount of **TWO MILLION FIVE HUNDRED**

[1] Ponencia of Associate Justice Lovell R. Bautista, and concurred by Associate Justice Caesar A. Casanova, with the Concurring and Dissenting Opinion by Presiding Justice Ernesto D. Acosta.

NINETY FIVE THOUSAND NINE HUNDRED SEVEN AND 70/100 PESOS (P2,595,907.90).

THE FACTS

The undisputed facts are as follows:

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with office address at 9th Floor, LV Locsin Building, Ayala Avenue corner Makati Avenue, Makati City. Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, with authority, among others, to decide, approve and grant tax credits and/or refunds of overpaid or erroneously paid internal revenue taxes, with office address at the 5th Floor, BIR National Office Building, Diliman, Quezon City.

Petitioner was organized primarily to engage in the business of buying, selling, distributing, marketing at wholesale insofar as may be permitted by law, all kinds of goods, commodities, wares and merchandise of every kind and description, and to enter into all kinds of contracts for the export, import, purchase, acquisition, sale at wholesale and other disposition for its own account as principal or in representative capacity as manufacturer's representative, merchandise broker, indentor, commission merchant, factors or agents, upon consignment or all kinds of goods, wares, merchandise or products whether natural or artificial. As such, petitioner is duly registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer, admittedly evidenced by a copy of its BIR Certificate of Registration.

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On January 25, 1999, petitioner filed with the BIR its VAT return for the fourth quarter of 1998, declaring an excess input VAT for the said quarter in the amount of P2,991,346.23, as shown below:

			Input VAT on		
Zero-Rated Sales	**Taxable Sales**	**Output VAT**	**Domestic Purchases**	**Importation of Goods**	**Excess Input VAT**
P41,233,493.65	P7,892,530.23	P789,253.44	P3,159,856.45	P620,743.22	P2,991,346.23

On December 28, 2000, petitioner filed a letter with the BIR requesting for the refund of its excess input VAT for the fourth quarter of 1998 but in the lower amount of P2,595,907.70 citing as legal bases Sections 106 (A) (2) (a) (1), 110 (B) and 112 (A) and (B) of the National Internal Revenue Code (NIRC) of 1997.

On the following day, December 29, 2000, petitioner filed a Petition for Review before the Court in Division, docketed as C.T.A. Case No. 6215, in order to toll the running of the two-year prescriptive period within which it may judicially file a claim for refund or tax credit of its subject input VAT, as provided under Section 229 in relation to Section 112 (D) of the NIRC of 1997.

In its Decision promulgated on February 26, 2007, the Court in Division found that of the total reported zero-rated sales for the fourth quarter of 1998 amounting to P41,233,493.65, the amount of P37,334,946.50 consisted of the following:

Nature of Reported Zero-Rated Sales	Amount
Direct Export Sales	P 23,671,573.98
Sales of Services:	
Commissions from PEZA entities	239,898.42
Commissions from Petitioner's Non-Resident Affiliates	7,733,215.03
Commissions from Marubeni - Tokyo	5,690,259.07
Total	P 37,334,946.50

The Court in Division found that petitioner's direct export sales amounting to P23,671,573.98, as substantiated by export sales invoices, bills of lading, export declarations, and Bank of the Philippine Islands (BPI) Certificate of Inward Remittances, show that these export sales of goods to Marubeni Corporation, Tokyo, Japan were paid for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), and may fall within those export sales transactions subject to zero percent (0%) VAT referred to under Section 106 (A) (2) (a) (1) of the NIRC of 1997.

However, the Court in Division held that while petitioner's export invoices bear its TIN-VAT number and the printer's BIR permit number, nevertheless, the word "zero-rated" had not been imprinted thereon, in clear violation of the invoicing requirements mentioned under Section 4.108-1 of Revenue Regulation 7-95. Thus, it was found that petitioner's direct export sales for the fourth quarter of 1998 cannot qualify for VAT zero-rating.

Moreover, although the Court in Division found that based on the provisions of Section 108 (B) (3) of the NIRC of 1997, and as clarified under Revenue Memorandum Circular (RMC) No. 74-99, sales of services by the petitioner, a VAT-registered person, to PEZA entities are zero-rated for VAT purposes, the amount of P239,898.42 pertaining to sales of services to PEZA registered entities, nevertheless, cannot qualify for zero-rating because the covering official receipts do not have the imprinted words "zero-rated".

Similarly, petitioner's sales of services to its non-residents affiliates and Marubeni - Tokyo for the fourth quarter of 1998 which were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP may fall under the category of services subject to zero percent (0%) VAT under Section 108 (B) (2) of the NIRC of 1997. Nevertheless, since petitioner's reported sales of services to its non-resident affiliates and Marubeni-Tokyo in the respective amounts of P7,733,215.03 and P5,690,259.07 were not duly supported by VAT official receipts in accordance with Section 113 of the NIRC of 1997, the Court in Division likewise held that the same shall not qualify for VAT zero-rating.

Therefore, as there were no sales qualified for VAT zero-rating, petitioner's claim for refund of input VAT on domestic purchases amounting to P2,331,932.10, the same was correspondingly denied by the Court in Division. Likewise, petitioner's claim for refund pertaining to input VAT on importation and / or domestic purchase of capital goods for the fourth quarter of 1998, amounting to P263,975.60, was denied on the ground that petitioner failed to prove that the capital goods purchased were actually treated as depreciable assets in its book of accounts.

A Concurring and Dissenting Opinion[2] was rendered by the Honorable Presiding Justice Ernesto D. Acosta, Chairperson of the First Division of this Court, stating that he assents with the denial of petitioner's claim for refund or issuance of a tax credit certificate for its unutilized / excess input VAT paid on purchase of capital goods on the ground that petitioner failed to submit documents and other pieces of evidence to prove that the goods were capitalized in its book of accounts and subjected to depreciation. However, he differs with respect to the portion of the Decision that found the export sales receipts/invoices invalid, incompetent, and irrelevant for failure to imprint the term "zero-rated" and the consequent denial of petitioner's claim for tax refund.

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[2] Docket, pp. 52 - 57.

or issuance of tax credit certificate for its zero-rated sales. He maintains his position that:

> "Contrary to the view of the majority, (1) pertinent provisions of the 1997 Tax Code do not require imprinting of the word "zero-rated"; (2) the absence of the term "zero-rated" in the invoice or official 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 or official receipt, 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; and (4) the presence of 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.[3]"

On March 21, 2007, petitioner filed its Motion for Reconsideration seeking reconsideration of the aforesaid Decision but was denied in the Resolution dated September 25, 2007.[4]

Hence, petitioner filed the instant Petition for Review before the Court *En Banc* assailing the Decision and Resolution of the Court in Division promulgated on February 26, 2007 and September 25, 2007, respectively. Respondent failed to file Comment thereto as directed in the Resolution dated November 26. 2007 within the given period of ten (10) days from receipt thereof.[5]

Subsequently, the Court *En Banc* gave due course to the instant petition for review and directed both parties to file their respective Memoranda within a non-extendible period of thirty (30) days from receipt thereof In the

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[3] Concurring and Dissenting Opinion of the Hon. Ernesto D. Acosta to the Decision rendered in CTA Case No. 6215 on February 26, 2007, Docket pp. 52 - 57, at 52-53.
[4] Docket, pp. 58 - 65.
[5] Docket, pp. 86 – 87.

Resolution dated January 17, 2008.[6] Only petitioner filed its Memorandum on February 20, 2008 while respondent failed to do so despite notice. Thus, this case was deemed submitted for decision in the Resolution dated March 13, 2008.[7]

Hence, this Decision.

THE ISSUES

Petitioner submits the following issues for the Court *En Banc*'s consideration:

" A. Whether petitioner's export sales and sales to PEZA-registered entities for the fourth quarter of 1998 are zero-rated despite the absence of the word "zero-rated" imprinted on its invoices; and

B. Whether petitioner's sales or services to its non-resident affiliates and to Marubeni – Tokyo are zero-rated."[8]

Petitioner's Arguments.

Petitioner puts forward the following grounds in support of its Petition for Review:

A. The absence of the word "zero-rated" from petitioner's export sales does not change the fact that they are subject to VAT at zero percent (0%) under the NIRC (of 1997);

B. As found by the Court in Division, petitioner was able to present sufficient evidence to prove the existence of its zero-rated sales;

C. The requirement that petitioner's invoices must bear the word "zero-rated" is not found in the NIRC (of 1997) but only in an administrative issuance; and

D. Petitioner's export buyers cannot claim input VAT on the zero-rated sales since they are not residents of the Philippines.

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[6] Docket p. 89.
[7] Docket, p. 121.
[8] Petition for Review, p.p. 6-7; Docket, pp. 12-13

It is petitioner's contention that while it is true that Section 113 of the NIRC of 1997 provides for stringent invoicing requirements that cannot be ignored, it submits that there is nothing in the NIRC of 1997, and even in Section 4.100-2 of Revenue Regulation 7-95, that requires export sales to be supported by invoices imprinted with the word "zero-rated" in order to qualify as zero-rated sales. In fact, based on the wordings of Section 106 (A) (2) (a) (1) of the NIRC of 1997 itself, export sales are subject to zero-percent VAT upon the existence of: (a) the sale and actual shipment of goods from the Philippines to a foreign country; (b) the sale must be paid for in acceptable foreign currency or its equivalent in goods or services; and (c) the payment in foreign currency must be accounted for in accordance with the rules and regulations of the BSP.

Petitioner thus maintains that the Court in Division cannot add another requirement in order for export sales to be considered zero-rated as there is no basis in arriving at the conclusion that export sales, which conforms to Section 106 (A) (2) (a) (1) of the NIRC of 1997, are disqualified for zero-rating for failure to fully comply with administrative invoicing requirements.

With regards to the requirement that the word "zero-rated" be imprinted in the sales invoice, petitioner posits that neither Section 4.108-1 of Revenue Regulation 7-95 nor Section 237 of the NIRC of 1997 call for the automatic denial of a claim for refund on the ground of non-compliance with invoicing requirements. Moreover, Revenue Regulation 7-95 adds a new requirement not found in Section 113 and 237 of the NIRC of 1997, namely, that the words "zero-rated" be indicated in VAT official receipts or invoices. It is allegedly clear, at the very least, that the failure to indicate the word "zero-rated" cannot be used as a basis to deny a claim for refund, since this requirement is not even stated in the NIRC of 1997. And at most, failure to comply therewith makes petitioner accountable only for the statutory penalties provided under Section 264 thereof, which falls under Title X[9] of the said code.

According to petitioner, if indeed Revenue Regulation 7-95 authorizes the denial of a claim for refund for violation of the invoicing requirements, such penalty allegedly goes beyond the scope of the NIRC of 1997 by adding a penalty not found in the latter. To this extent, Revenue Regulation 7-95 is void for violating the principle that implementing rules and regulations cannot amend an act of Congress and may only carry out, not supplant or modify the law. Moreover, petitioner argues that due to the fact that its export sales are made to residents of foreign countries – not covered by the Philippine VAT system – then such sale cannot result to any prejudice to the government, there being no instance where petitioner's export sales clients can, and will be entitled to claim refund or credits of any input tax that was passed on to it. Therefore, this allegedly provides a sufficient basis for the inapplicability of certain invoicing requirements.

Thus, petitioner prays that the assailed Decision and Resolution be reversed and set aside, and that a new judgment be rendered ordering respondent to refund or issue to petitioner a tax credit certificate in the aggregate amount of P2,595,907.70 representing unutilized input VAT for the fourth quarter of taxable year 1998.

THE COURT EN BANC'S RULING

The petition is bereft of merit.

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[9] Statutory Offenses and Penalties.

Time and again, We have consistently ruled that the invoicing requirement regarding the imprinting of the word "zero-rated" on the VAT official receipts or invoices is mandatory,[10] pursuant to Section 4.108-1 of Revenue Regulation 7-95. In the absence of the word "zero-rated" imprinted on these VAT invoices and/or receipts, the claim for input VAT will be disallowed.[11]

As the word "shall" was used in Section 113 of the NIRC of 1997, and in the corresponding implementing Revenue Regulation No. 7-95, particularly Section 4.108-1 thereof, pertaining to VAT invoicing and accounting requirements, compliance therewith becomes mandatory considering that 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.[12]

And in determining whether a taxpayer-claimant is entitled to the refund or issuance of a tax credit certificate of input taxes attributable to zero-rated sales, the provisions of Section 106(A)(2)(a)(1) of the NIRC of 1997 should be read in conjunction, and not in isolation, with the other provisions of the said Code enumerating the invoicing requirements, specifically, Sections 113 (A)

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[10] See Mirant (Navotas II) Corporation (Formerly: Southern Energy Navotas II Power, Inc.) vs. Commissioner of Internal Revenue, CTA EB No. 226, September 11, 2007; Southern Philippines Power Corporation vs. Commissioner of Internal Revenue, CTA EB No. 214, July 31, 2007; Panasonic Communications Imaging Corporation of the Philippines, (formerly, MATSUSHITA BUSINESS MACHINE CORPORATION OF THE PHILIPPINES) vs. Commissioner of Internal Revenue, CTA EB No. 239, May 23, 2007; Kepco Philippines Corporation vs. Commissioner of Internal Revenue, CTA EB No. 186, May 17, 2007; Kepco Philippines Corporation vs. Commissioner of Internal Revenue, CTA EB No. 174, May 9, 2007; Applied Food Ingredients Co., Inc. vs. Commissioner of Internal Revenue, CTA EB No. 220, May 7, 2007; Intel Technology Philippines Inc. vs. Commissioner of Internal Revenue, CTA EB No. 181, March 27, 2007; and J.R.A. Philippines

[11] Mirant (Navotas II) Corporation (Formerly: Southern Energy Navotas II Power, Inc.) vs. Commissioner of Internal Revenue, CTA EB No. 226, September 11, 2007; Kepco Philippines Corporation vs. Commissioner of Internal Revenue, CTA EB No. 107, June 29, 2007; and Applied Food Ingredients Co., Inc. vs. Commissioner of Internal Revenue, CTA EB No. 220, May 7, 2007.

[12] Dizon vs. Encarnacion, 9 SCRA 714 (1963).

and 237 of said Code, as well as Section 4.108-1 of Revenue Regulations No. 7-95, the pertinent portions of which read as follows:

NIRC of 1997:

"Sec. 106. Value-added Tax on Sale of Goods and Properties. –

(A) Rate and Base of Tax. – x x x

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) Export Sales. – The term **'export sales'** means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

"***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." *(Underscoring and emphasis Ours)*

"***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

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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 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 the 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 cases, exempt any person subject to an internal revenue tax from compliance with the provisions of this Section."

<u>**Revenue Regulation No. 7-95**</u>

"***Section 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. <u>**the word "zero rated" imprinted on the invoice covering zero-rated sales**</u>; and
6. the invoice value or consideration.

xxx xxx xxx

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or receipts and this shall be considered as a "VAT Invoice". All purchases covered by invoices other than "VAT" Invoice" shall not give rise to any input tax." *(Underscoring and emphasis supplied)*

Applying the afore-cited provisions in the case at bench, it is evident that before a refund/tax credit of unutilized input VAT on purchases of goods and services attributable to zero-rated sales or effectively zero-rated sales may be allowed, it is necessary for the taxpayer-claimant to strictly comply with the above-enumerated invoicing requirements. We put much emphasis on the strict compliance with the mandatory requirements of invoicing in claims for refund or issuance of a tax credit certificate because for the same transactions, the output VAT of the seller becomes the input VAT of the purchaser. And in the case of zero-rated sales transactions, We adhere to the further requirement that the word "zero-rated" be imprinted on the face of the invoices or official receipts of the seller to prevent the buyer or purchaser from claiming any input VAT from such purchase.

As aptly found by the Court in Division, the invoicing requirements are clear and absolute, and petitioner is obligated to comply therewith, regardless of petitioner's claim that subject sales to its non-resident affiliates and to Marubeni-Tokyo for the fourth quarter of 1998, paid for in acceptable foreign currency, and accounted for in accordance with the rules and regulations of the BSP, may fall under the category of services subject to zero percent (0%) VAT under Section 108 (B) (2) of the NIRC of 1997. In other words, the need for strict compliance with the mandatory requirement of imprinting the word "zero-rated" on sales invoices or official receipts is without regard as to whether or not the business entity engages only in export sales since

Revenue Regulation No. 7-95 did not make any distinction on the different kinds of zero-rated sales.

It should be noted that Revenue Regulations No. 7-95, was promulgated by the Secretary of Finance pursuant to the authority granted by Section 245 of the NIRC of 1977, which provides:

> "SEC. 245. Authority of Secretary of Finance to promulgate Rules and Regulations. — The Secretary of Finance, upon the recommendation of the Commissioner, shall promulgate **all needful rules and regulations for the effective enforcement of the provisions of this Code**." (*Emphasis supplied*)

The foregoing provision was re-enacted in *toto* under Section 244 of the NIRC of 1997. Moreover, to enforce the rule-making power of the Secretary of Finance in coordination with the BIR, a new provision (SEC. 245) was incorporated defining the extent of such rule making power, pertinent part of which provides:

> "**SEC. 245. Specific provisions to be contained in rules and regulations.** — The rules and regulations of the Bureau of Internal Revenue shall, among others things, contain provisions specifying, prescribing or defining:
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> xxx xxx xxx
>
> (g) The manner in which revenue shall be collected and paid, the instrument, document or object to which revenue stamps shall be affixed, the mode of cancellation of the same, **the manner in which the proper books, records, invoices and other papers shall be kept and entries therein made by the person subject to the tax**, as well as the manner in which licenses and stamps shall be gathered up and returned after serving their purposes;" (*Emphasis/italics supplied*)

Considering the legislative grant of authority to the Secretary of Finance to promulgate all needful rules and regulations for the effective enforcement of the provisions of the NIRC of 1997, Section 4.108-1 of

Revenue Regulation 7-95 requiring the imprinting of the words "zero-rated" on sales invoices or official receipts is valid. Moreover, it is both reasonable and necessary for the effective implementation of the provisions of the NIRC of 1997 concerning zero-rated sales. Thus, the requirement that sales invoices shall be imprinted with the word "zero-rated" is deemed to only implement the provisions of the NIRC of 1997 on sales that are subject to VAT, zero-rated sales (0% VAT) and exempt sales. And it is necessary to distinguish sales subject to VAT, those that are subject to 0% VAT (zero-rated) and exempt sales, to enable the BIR to properly implement and enforce the other provisions of the NIRC of 1997 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][13].

Likewise, the Supreme Court has ruled in **COMPANIA GENERAL DE TABACOS DE FILIPINAS vs. HONORABLE COURT OF APPEALS AND THE COMMISSIONER OF INTERNAL REVENUE**[14] that regulations issued by the Department of Finance / Bureau of Internal Revenue that would give effect to the law are valid regulations, thus:

> "Petitioner's arguments impugning the validity of Revenue Regulations V-39 and 17-67 deserve scant consideration. First, both regulations were issued pursuant to Section 245 (now Section 244) of the Tax Code. **The authority of the Secretary of Finance, in conjunction with the**

[13] Kepco Philippines Corporation vs. Commissioner of Internal Revenue, C.T.A. EB Case No. 107, June 29, 2007. Also cited in Mirant (Navotas II) Corporation (Formerly: Southern Navotas II Power, Inc.) vs. Commissioner of Internal Revenue, supra and in Marubeni Philippines Corp. vs. Commissioner of Internal Revenue, C.T.A. EB Case No. 231, November 20, 2007.
[14] G.R. No. 147361, March 23, 2004 (426 SCRA 203).

> **Commissioner of Internal Revenue, to promulgate needful rules and regulations for the effective enforcement of internal revenue laws cannot be controverted.** Such rules and regulations, as well as administrative opinions and rulings, ordinarily deserve to be given weight and respect by the courts. Second, our scrutiny of Revenue Regulations Nos. V-39 and 17-67 show that said regulations did not modify or deviate from the text of Sections 137 and 141 but merely implemented and clarified said two provisions by providing certain conditions under which stemmed leaf tobacco may be exempted from prepayment of specific tax." (*Emphasis supplied; citations omitted*)

The issuance of Revenue Regulations No. 7-95 was made pursuant to the respondent's duty of implementing the provisions of the law. The requirement of imprinting the word "zero-rated" fulfills the intent of the law and it is useful, practical and necessary not only with respect to the proper implementation of the provisions of the law on zero-rated transactions but more importantly, to prevent the granting of refund or tax credit of non-existent input VAT. It is an act of tax administration which is not violative of the rule on non-delegation of delegated powers.[15]

To further fortify the significance of Revenue Regulation No. 7-95, the Supreme Court in ***Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,***[16] clearly recognized that applications for refund / credit of input VAT with the BIR must comply with the appropriate revenue regulations. The Supreme Court, in citing the case of ***Commissioner of Internal Revenue vs. Manila Mining Corporation,***[17] emphasized the importance of complying with the substantiation requirements

[15] Taganito Mining Corporation v. Commissioner of Internal Revenue, Supra.
[16] G.R. Nos. 141104 & 148763, June 8, 2007,
[17] G.R. No. 153204, August 31, 2005, 468 SCRA 571.

for claiming refund/credit of input VAT on zero-rated sales in accordance with the appropriate revenue regulations, in this manner:

> "Although the foregoing decision (Commissioner of Internal Revenue vs. Manila Mining Corporation) focused only on the proof required for the applicant for refund/credit to establish the input VAT payments it had made on its purchases from suppliers, **Revenue Regulations No. 3-88 also required it to present evidence proving actual zero-rated VAT sales to qualified buyers, such as (1) photocopy of the approved application for zero-rate if filing for the first time; (2) sales invoice or receipt showing the name of the person or entity to whom the goods or services were delivered, date of delivery, amount of consideration, and description of goods or services delivered; and (3) the evidence of actual receipt of goods or services.**" *(Emphasis Ours)*

Hence, by analogy, in order for petitioner to be entitled to its claim for refund / issuance of tax credit certificate representing unutilized input VAT attributable to its sales for the fourth quarter of 1998, it is therefore necessary to first comply with the substantiation requirements set forth under the appropriate revenue regulation, i.e. RR No. 7-95.

We cannot overemphasize the fact that taxpayers have the burden of proving compliance with the mandatory provisions of the NIRC of 1997 as well as the corresponding implementing rules and regulations issued thereof. This well-entrenched principle must be applied in all actions involving taxation, more particularly, when claim for refunds or tax credits are involved as in petitioner's case before this Court. Moreover, it bears stressing that tax refunds are in the nature of tax exemption and as such, it is regarded as derogation of sovereign authority and should be construed *strictissimi juris* against the person or entity claiming the exemption.[18]

In claims for refund, the law mandates the court to observe a higher standard of caution in appreciating and evaluating evidence. If indeed a claim for refund is wanting in pertinent and supporting evidence, then the granting thereof could prove to be improper, if not difficult.[19] Therefore, having failed to discharge the burden in this regard, petitioner's claim must therefore fail.

In view of the foregoing, the denial by the Court in Division of petitioner's claim for refund / issuance of tax credit certificate of input VAT attributable to zero-rated sales for failure to present the invoices and official receipts to support the alleged zero-rated sales in accordance with the invoicing requirements under Sections 113 and 237 of the NIRC of 1997, and Section 4.108-1 of Revenue Regulations No. 7-95 is definitely not without any legal basis.

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

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

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

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[18] Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc. and Court of Appeals, G.R. No. 127105, June 25, 1999. Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation and The Court of Tax Appeals, G.R. No. 66838, December 2, 1991.
[19] ECW Joint Venture, Inc., vs. Commissioner of Internal Revenue, CTA EB No. 14 (CTA Case No. 6509), March 22, 2006.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice