REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

ACCENTURE, INC. Petitioner,	C.T.A. E.B. NO. 308 (C.T.A. CASE NOS. 6626 & 6702)
	Present:
- versus -	ACOSTA, *P.J.* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, *and* PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 04 2008

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DECISION

UY, J.:

This is a Petition for Review filed before the Court of Tax Appeals *En Banc* on August 28, 2007 seeking a review of the Decision dated March 13, 2007 and Resolution dated July 30, 2007, rendered by the First Division of this Court (Court in Division),[1] in the consolidated cases entitled **"Accenture, Inc. vs. Commissioner of Internal Revenue" under C.T.A. Case Nos. 6626 and 6702**. In said cases, the Court in Division denied petitioner's claim for refund or the issuance of a tax credit in the total amount of **Thirty**

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

Four Million Seventy Three Thousand One Hundred Eighty Six Pesos and 81/100 (P34,730,186.81) allegedly representing unutilized input value-added tax on domestic purchases of goods and services for the first quarter of year 2001 and second quarter of 2002.

THE FACTS

The facts, as found by the Court in Division in its assailed Decision, are as follows:

Petitioner, Accenture, Incorporated, is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office located at MSE Building, Ayala Avenue, Makati City. It is duly registered with the Securities and Exchange Commission (SEC) as evidenced by SEC Registration No. AS091-199207. Petitioner is likewise a value-added tax (VAT) registered entity evidenced by VAT Registration/Identification No. 000-845-543-000. On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, with authority, among others, to decide, approve and grant claims for refund or tax credit of internal revenue taxes, with office address at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

Petitioner is primarily engaged in the business of providing management consulting and management information, consulting services, including but not limited to business strategic services, change management services, systems integrations, systems management, the development, sale and/or licensing of software, and the sale of hardware and related products, either as principal or agent, and other business related activities. For the four (4) quarters of 2001 until the second quarter of 2002, petitioner rendered services in the Philippines to foreign clients that were paid for in acceptable foreign currency inwardly remitted and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas. During the said period, petitioner filed with the BIR its Quarterly VAT Returns, including the amendments thereto, reflecting the following overpayments:

Exh.	Period	Overpayment
	2001	
F	1st	30,146,014.42
I	2nd	40,703,022.74
L	3rd	47,888,670.26
O	4th	55,447,624.50
	2002	
R	1st	62,036,112.82
U	2nd	70,638,358.12

Notwithstanding the application of its available input VAT against its output tax liabilities for each and every taxable quarter, petitioner incurred accumulated excess input VAT as of the second quarter of 2002 in the amount of P70,638,358.12. Out of the said excess input VAT, the amount of P34,073,186.81 allegedly represents input VAT arising from its zero-rated sales of services for the subject period.

In a Letter dated January 13, 2003 addressed to the respondent, petitioner filed an administrative claim for refund and/or issuance of a tax credit certificate for its alleged unutilized input VAT of P34,073,186.81 arising from domestic purchases of goods and services for the first quarter of 2001 until the second quarter of 2002. Subsequently on March 31, 2003, petitioner filed a Petition for Review before the Court in Division seeking a refund of its alleged unutilized input VAT amounting to P3,534,929.81 covering the first quarter of taxable year 2001 and docketed as **CTA Case No. 6626**.

On June 12, 2003, petitioner filed another Petition for Review before the Court in Division for the refund of its alleged excess input VAT in the amount of P30,538,257.00 covering the second quarter of 2001 up to the second quarter of 2002 and docketed as **CTA Case No. 6702**.

On August 29, 2003, petitioner filed a Motion to Consolidate CTA Case No. 6626 with CTA Case No. 6702 considering that both cases allegedly involve the same parties and common questions of law and fact. Said motion was granted by the Court in Division on September 2, 2003.

Thereafter, both parties submitted their respective documentary and testimonial evidence. Only petitioner filed its Memorandum on August 22, 2006, and the case before the Court in Division was considered submitted for decision on November 22, 2006.

On March 13, 2007, the Court in Division rendered its assailed Decision[2] denying petitioner's claim for refund or issuance of a tax credit certificate representing unutilized input VAT on domestic purchases of goods and services for the first quarter of 2001 up to the second quarter of 2002 in the total amount of P34,073,186.81, on the ground that petitioner's reported zero-rated sales cannot qualify for VAT zero-rating for failure to comply with the invoicing requirements, specifically the requirement that a VAT invoice or

[2] Docket, pp. 21 - 31.

receipt must show the word "zero-rated" imprinted on the invoice or receipt covering a zero-rated sale.

A Dissenting Opinion[3] was rendered by the Honorable Presiding Justice Ernesto D. Acosta,[4] stating his position that the term "zero-rated" need not be imprinted in the invoice/official receipt in order for it to be a valid evidence in claiming for refund or excess input VAT, considering that:

> "... (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/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/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 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."

On April 3, 2007, petitioner filed a "Motion for Reconsideration (of the Decision promulgated on 13 March 2007)" without any comment/objection thereto from respondent despite due notice, assailing the subject Decision of the Court in Division. Finding no compelling reason to either modify or alter the assailed Decision, said motion was denied for lack of merit in the assailed Resolution[5] dated July 30, 2007.

Hence, this recourse before the Court *En Banc* praying that the subject Decision and Resolution of the Court in Division promulgated on March 13,

[3] Docket pp. 32 – 37.
[4] Chairperson of the First Division of this Court.
[5] Docket pp. 38 – 47.

2007 and July 30, 2007, respectively, in CTA Case Nos. 6626 and 6702, be reversed and set aside, and a new one be issued ordering respondent to refund or issue a tax credit certificate in favor of petitioner the amount of P34,073,186.81 allegedly representing unutilized input taxes attributable to zero-rated sales of services for the period from the first quarter of 2001 up to the second quarter of 2002.

In the Resolution dated September 20, 2007,[6] respondent was required to file Comment to the instant petition within ten (10) days from receipt thereof. However, despite the lapse of the given period, respondent failed to file the same. Nevertheless, on October 30, 2007, this Court issued a Resolution[7] giving due course to the instant Petition for Review and requiring the parties to submit their respective Memorandum[8] within thirty (30) days from receipt thereof. Only petitioner submitted its Memorandum[9] on December 5, 2007, while respondent again failed to file her memorandum within the given period. Thus, the instant case was deemed submitted for decision in the Resolution dated January 3, 2008.[10]

Hence, this Decision.

THE ISSUE

Petitioner raises this sole issue in the instant petition for review, to wit:

> "Whether or not the Court in Division correctly ruled in denying petitioner's consolidated Petitions for Review and Motion for Reconsideration on the sole ground that the official receipts

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6 Docket pp. 50 – 51.
7 Docket p. 53.
8 A non-extendible period of thirty (30) days from receipt of the Resolution or until December 7, 2007 was given, as per this Court's Resolution.
9 Docket pp. 54 – 68.
10 Docket, p. 70

presented to prove the sales of services to foreign clients do not bear the imprinted word 'zero-rated'."

Petitioner's Arguments

Petitioner emphasizes that Sections 113 and 237, as well as Section 112(A), of the National Internal Revenue Code (NIRC) of 1997 do not require the imprinting of the word "zero-rated" as a condition precedent to the claim of refund; and that the absence of such term in the invoice or official receipt does not affect the admissibility and competency of the same as evidence in support of the claim for refund or issuance of a tax credit certificate. In addition, petitioner maintains that the tenor of Section 112(A) of the NIRC of 1997 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 yet been applied against output tax within a period of two (2) years after the close of the taxable quarter.

Further, petitioner asserts that nowhere in the above-quoted provision is there a requirement for the imprinting of the word "zero-rated" on the invoices or receipts issued by the petitioner. It continues by arguing that this additional requirement was merely inserted in Section 4.108-1 of the Revenue Regulations No. 7-95. Petitioner points out that Section 4.108-1 of Revenue Regulation No. 7-95 is merely a regulation created for the sole and limited purpose of implementing a very exact law; and thus, it should not expand the letter and spirit of the law it is meant to enforce.

To further support its claim, petitioner cites the case of *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*[11] wherein the Supreme Court ruled that only the following items are required to be indicated in the receipts or invoices: (1) a statement that the seller is a VAT-registered entity followed by its TIN-V; (2) the total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; (3) date of the transaction; (4) quantity of merchandise; (5) unit cost; (6) description of merchandise or nature of service; (7) the name, business style, if any, and address of the purchaser, customer or client in the case of sales, receipt or transfers in the amount of P100.00 or more, or regardless of the amount, where the sale or transfer is made by a person liable to VAT to another person also liable to VAT, or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees; and (8) the TIN of the purchaser where the purchaser is a VAT-registered person.

Moreover, petitioner points out that, in the above mentioned case, the Supreme Court held as follows:

> "x x x As the Court had the occasion to explain since no output VAT was imposed on the zero-rated export sales, what the government reimburses or refunds to the claimant is the input VAT paid – thus, the necessity for the *input VAT paid* to be substantiated by purchase invoices or official receipts. These sales invoices or receipts issued by the supplier are necessary to substantiate the actual amount or quality of goods sold and their selling price, and, taken collectively, are the best means to prove the input VAT payments of the claimant.

NVA

[11] G.R. No. 166732, April 27, 2007.

> In a claim for refund or issuance of a tax credit certificate attributable to zero-rated sales, what is to be closely scrutinized is the documentary substantiation of the input VAT paid, as may be proven by other export documents, rather than the supporting documents for the zero-rated export sales. And since petitioner has established by sufficient evidence that it is entitled to a refund or issuance of a tax credit certificate, in accordance with the requirements of Sections 106 (A)(2)(a)(1) and 112(A) of the Tax Code, then its claim should not be denied, notwithstanding its failure to state on the invoices the BIR authority to print and the TIN-V. x x x"

According to petitioner, it has satisfied the foregoing requisites and established clearly its right to the tax refund based on the numerous documentary exhibits presented, such as Schedule of Zero-rated and Exempt Sales, Billing Statements, Official Receipts, Schedule of Collections, Bank Statements and Passbook Entries, Interim Payment Requests and Memo Invoices, to prove the fact of its sales of services to various foreign clients which were paid in acceptable foreign currency and duly accounted for in accordance with the rules of the Banko Sentral ng Pilipinas. Likewise, petitioner argues that, as found by the Court in Division, its administrative claim and judicial recourse were all made within the prescribed two (2) year period. Therefore, it had clearly and satisfactorily complied with the requirements set forth in the provisions of the NIRC of 1997.

Finally, petitioner emphasizes that the invalidation of the sales invoices and/or official receipts submitted before the Court in Division, and the denial of its claim for refund, are not the imposable penalties provided under Section 264 of the NIRC of 1997 in case of failure to satisfy the invoicing requirements enumerated in Section 4.108-1 of Revenue Regulations No. 7-95, more specifically, the imprinting of the word "zero-rated".

THE COURT *EN BANC'S* RULING

The petition is bereft of merit.

Time and again, We have consistently ruled that the invoicing requirement of the imprinting of "zero-rated" on the VAT official receipts or invoices is mandatory,[12] pursuant to Section 4.108-1 of Revenue Regulations (RR) No. 7-95. In the absence of the wording "zero-rated" imprinted on these VAT invoices and/or receipts, the claim for input VAT will be disallowed.[13]

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.[14]

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

[12] 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 Inc. vs. Commissioner of Internal Revenue, CTA EB No. 128, January 15, 2007.

[13] 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.

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

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) 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 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 a matter of fact, In the case of ***Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,***[15] the Supreme Court 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.***

[15] G.R. Nos. 141104 & 148763, June 8, 2007

Manila Mining Corporation,[16] emphasized the importance of complying with the substantiation requirements 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 on domestic purchases of goods and services for the first quarter of 2001 up to the second quarter of 2002, it is therefore necessary to first comply with the substantiation requirements set forth under the appropriate revenue regulation, i.e. RR No. 7-95.

Pursuant to settled jurisprudence, petitioner in claiming for tax refund or issuance of a tax credit certificate in its favor has the burden of proof to establish the factual basis of such claim. Having failed to discharge the burden in this regard, petitioner's claim must therefore fall.

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[16] G.R. No. 153204, August 31, 2005, 468 SCRA 571.

To further stress this point, We highlight the rationale of strict compliance with the invoicing requirements, as discussed in the case of ***American Express International, Inc., Philippine Branch vs. Commissioner of Internal Revenue***,[17] quoted hereunder as follows:

> "The law is very clear. 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 identification number, followed by the word 'VAT', the BIR Authority imprint or BIR permit marker and **the word 'zero-rated' imprinted on the invoice or receipt covering a zero-rated sale**. Considering so, the sales of services referred to under Section 108 (B) (2) of the NIRC of 1997, as amended, as being subject to zero percent (0%) rate are those sales covered by duly registered VAT official receipts.
>
> **The VAT registered person must substantiate the input VAT paid by purchase invoices or official receipts. An official receipt issued by the taxpayer is an essential requirement to prove the existence of sale and receipt of income and thereafter duly recorded in the accounting records**.
>
> The aforequoted revenue regulation issued to implement the NIRC provision on VAT invoicing and accounting requirements is mandatory as the word 'shall' is used. The word 'shall' is imperative, commonly operating to impose an obligation or duty, which may be enforced; it is a word of command that must be given a compulsory meaning (Pioneer Texturing Corp. vs. NLRC, 280 SCRA 806). Indeed, it is the duty of a seller-taxpayer to comply with the invoicing requirements laid down in the said NIRC provisions and Revenue Regulations." *(Emphasis Ours)*

Moreover, in ***Kepco Philippines Corp. vs. Commissioner of Internal Revenue***,[18] this Court elucidated:

[17] CTA EB No. 103, March 3, 2006.
[18] CTA EB No. 107, June 29, 2007.

"It is noteworthy to state that the legislative grant of authority to the Secretary of Finance to promulgate all needful rules and regulations for the effective enforcement of the provisions of the NIRC, Section 4.108-1 of Revenue Regulations No. 7-95 requiring the imprinting of the words 'zero-rated' on sales invoices or official receipts cannot be said as having no valid basis or legislative root. On the contrary, it is both reasonable and necessary for the effective implementation of the provisions of the NIRC concerning zero-rated sales. **Hence, the requirement that sales invoices shall be imprinted with the word 'zero-rated' cannot be taken as an enlargement or expansion of the law for the reason that it merely implements the provisions of the 1997 NIRC on sales that are subject to 10% VAT, zero-rated sales (0% VAT) and exempt sales. The imprinting of 'zero-rated' is necessary to distinguish sales subject to 10% VAT, those that are subject to 0% VAT (zero-rated) and exempt sales, to enable the Bureau of Internal Revenue to properly implement and enforce the other provisions of the 1997 NIRC on VAT,** namely:

1. Zero-rated sales [Sec. 106 (A) 2 and Sec. 108 (B)];
2. Exempt transactions [Sec.109] in relation to Sec. 112 (A);
3. Tax Credits [Sec. 110]; and
4. Refunds or tax credits of input tax [Sec.112]" *(Emphasis Ours).*

Evidently in the light of the foregoing discussion, there are three reasons why the word "zero-rated" is mandated by law to be imprinted on the VAT invoice/ official receipt, to wit: (1) for the buyer or purchaser not to claim any input VAT from such purchase; (2) the purpose of segregating/ distinguishing those sales subject to 0% VAT (zero-rated) from those sales that are subject to VAT and from exempt sales; and (3) to enable the BIR to properly implement and enforce the other provisions of the NIRC of 1997 on VAT, namely: (a) Zero-rated sales [Sec. 106 (A) 2 and Sec. 108 (B)]; (b) Exempt transactions [Sec. 109] in relation to Sec. 112 (A); (c) Tax Credits [Sec. 110]; and (d) Refunds or tax credits of input tax [Sec. 112].

Thus, We rule that strict compliance with Section 4.108-1 of RR No. 7-95 requiring the imprinting of the word "zero-rated" on sales invoices or official receipts is mandatory. It must be kept in mind that prejudice will result to the government when the word "zero-rated" is not imprinted on said invoices/official receipts because the smooth implementation of the VAT system will be interrupted.

With respect to petitioner's contention that Section 4.108-1 of Revenue Regulation No. 7-95 is a mere regulation and should not expand the letter and spirit of the law it is meant to enforce, this Court has held, in the case of ***Taganito Mining Corporation vs. Commissioner of Internal Revenue***,[19] that RR No. 7-95 was promulgated by the Secretary of Finance pursuant to the authority granted to it by Section 245 of the NIRC of 1977 (now Section 244 of the NIRC of 1997), 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.*" (*Italics Ours*)

To further fortify the rule making power of the Secretary of Finance in coordination with the BIR, Section 245 was included in the NIRC of 1997 defining the extent of such rule making power. The pertinent part provides:

> "**SEC. 245. Specific provisions to be contained in rules and regulations.** — The rules and regulations of the Bureau of Internal Revenue shall, among other things, contain provisions specifying, prescribing or defining:
>
> xxx xxx xxx

[19] CTA EB No. 7, January 31, 2006, with Entry of Judgment issued on February 22, 2006.

> (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; xxx" (*Italics Ours*)

Clearly therefore, requiring taxpayers to imprint the word "zero-rated" on invoices and/or receipts cannot be said to be of no legal basis.

On the contrary, it fulfills the intent of the law and thus, cannot be considered to have gone beyond the tenor of the law that it seeks to implement. Such requirement is both reasonable and necessary for the effective implementation of the provisions of the NIRC of 1997 concerning zero-rated sales in line with the authority granted by law to the Secretary of Finance to promulgate all necessary rules and regulations for the effective enforcement of the provisions of the NIRC of 1997, Section 4.108-1 of Revenue Regulations No. 7-95; and more significantly, it is useful to prevent the granting of refund or tax credit of non-existent input VAT.[20]

It should be noted that the Supreme Court has constantly held 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

[20] Hitachi Global Storage Tech. Phil. Corp. vs. Commissioner of Internal Revenue, C.T.A. EB No. 54, March 22, 2006.

and sanctions intended by the legislature. **The details and the manner of carrying out the law are oftentimes 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.**[21]

On the argument raised by petitioner that invalidation of the sales invoice/official receipt and the denial of the claim for refund are not the imposable penalties provided in the NIRC of 1997, We look into the provision of Revenue Memorandum Circular No. 42-2003[22] that expressly provides in 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, to wit:

> "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,

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[21] Victories Milling Co., Inc. vs. Social Security Commission, G.R. No. L-16704, March 17, 1962; People of the Philippines vs. Hon. Maximo A. Maceren, et al., G.R. No. L-32166, October 18, 1977; CEMCO Holdings Inc. vs. National Life Insurance Company of the Philippines, Inc., G.R. No. 171815, August 7, 2007.

[22] 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.

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."

Based on the provision quoted above, if the claim for refund/credit is based on the existence of zero-rated sales by the taxpayer but there is failure to comply with the invoicing requirements, such as the failure of the claimant-taxpayer to imprint the word "zero-rated" on the sales invoices/official receipts, the claim for tax refund/credit of VAT on its sales shall be denied.

It is well-entrenched in our jurisprudence 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[23]. In this regard, taxpayers have the burden of proving the factual basis of its claim for refund[24] that includes compliance with the mandatory provisions of the NIRC of 1997 and other appropriate revenue regulations, issued to implement it, when claims for refund or issuance of tax credit certificates are involved.[25]

In sum, the Court in Division correctly found that the petitioner failed to comply with the invoicing requirement of imprinting the word "zero-rated" in its official receipts. This is in violation of the provisions of Section 4.108-1 of RR No. 7-95, which as discussed above, cannot be considered to have gone beyond the tenor of the law that it seeks to implement. Consequently, its reported sales of services to foreign clients cannot qualify for VAT zero-rating

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[23] Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., 309 SCRA 87 [1999].
[24] Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., G.R. No. L-68252, May 26, 1995.
[25] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 141104 & 148763, June 8, 2007.

thereby operating to forfeit petitioner's entitlement to a tax refund/credit of its unutilized input VAT attributable to its alleged zero-rated sales for the first quarter of 2001 to the second quarter of 2002.

In the light of the foregoing discussions, the Court *En Banc* finds no reversible error committed by the Court in Division that would merit a reversal of its assailed Decision and Resolution dated March 13, 2007 and July 30, 2007, respectively.

WHEREFORE, premises considered, the instant petition is hereby **DENIED** for lack of merit. Accordingly, the Decision and Resolution of the Court in Division dated March 13, 2007 and July 30, 2007, respectively, are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

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