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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TEAM SUAL CORPORATION
(*formerly* "Mirant Sual Corporation" and "Southern Energy Pangasinan, Inc."),
Petitioner,

C.T.A. EB No. 400
(C.T.A. Case No. 6259)

Present:

-*versus*-

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 11 2009

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DECISION

BAUTISTA, J.:

The Case

Before Us is a Petition for Review[1] filed on July 28, 2008, praying for the reversal of:

[1] *Rollo*, C.T.A. EB No. 400 (C.T.A. Case No. 6259), pp. 51 – 72.

1. the Decision dated February 27, 2008 of the Second Division of the Court ("Court in Division") in C.T.A. Case No. 6259, in so far as it disallowed petitioner's claim for a refund or tax credit in the amount of P6,472,197.86, representing unutilized input VAT on domestic purchases of goods and services attributable to its zero-rated sales to the National Power Corporation ("NPC") in the amount of P304,767,687.98; and
2. the Resolution dated June 24, 2008, denying both the "Motion for Reconsideration" of respondent and the "Motion for Partial Reconsideration" of petitioner.

Antecedent Facts

The undisputed facts of the case, as found by the Court in Division, are as follows:

> "Petitioner is a corporation duly organized and existing by virtue of Philippine laws, with principal office located at Barrio Pangascasan, Sual, Pangasinan. It was originally registered with the Securities and Exchange Commission under the name 'Pangasinan Electric Corporation' which was subsequently changed to 'Southern Energy Pangasinan, Incorporated' on August 17, 1999. On June 28, 2001, petitioner's name was again changed from 'Southern Energy Pangasinan, Incorporated' to 'Mirant Sual Corporation.' It is registered with the Bureau of Internal Revenue ('BIR') as a Value-Added Tax ('VAT') taxpayer engaged in the business of power generation services *(Exhibit 'C')*.
>
> Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue ('CIR') vested with authority to act as such, including, *inter alia*, the power to decide, approve and grant claims for refunds or tax credits of overpaid internal revenue taxes as provided by law, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City, where he may be served with summons and other court processes.

In connection with petitioner's sales of power generation services to NPC, petitioner filed with respondent CIR an Application for Zero Rate for the sale of power generation services to National Power Corporation ('NPC') under a BOT scheme, which was subsequently approved covering the period May 13, 1999 to December 31, 1999 *(Exhibit 'H')*.

For the four quarters of calendar year ('CY') 1999, petitioner filed with the BIR its VAT returns declaring zero-rated sales in the amount of P304,767,687.98 and unutilized input taxes in the amount of P240,463,818.16, detailed as follows:

Exhibit	1999	Date filed with the BIR	Zero-rated Sales	Input VAT
D	1st quarter	04/12/99		P100,093,399.85
E	2nd quarter	07/12/99		37,028,319.68
F	3rd quarter	10/22/99		41,382,566.80
G	4th quarter	01/25/00	P304,767,687.98	61,959,531.83
			P304,767,687.98	P240,463,818.16

On March 1, 2001, pursuant to *Revenue Regulations No. 7-95, as amended*, petitioner filed an administrative claim for refund of its unutilized input VAT with the BIR.

For failure of the respondent to act on petitioner's claim for refund, on March 29, 2001, petitioner elevated its case to this Court by way of a Petition for Review.

In his Answer, respondent, by way of special and affirmative defenses, alleged that the petition states no cause of action because on the assumption that petitioner filed an administrative claim for input VAT refund with the BIR there was no showing that petitioner submitted complete documents in support of the application for respondent to properly act on it, as required by *Section 112 (D) of the Tax Code.*

Petitioner presented Ruben Rubio, the Court-commissioned Independent CPA, Rosalinda Sempio, its Senior Accountant, and Vicente Romasanta, its Accounting Manager, as witnesses, and documentary evidence, marked as *Exhibits 'A' to 'FF,'* inclusive of their submarkings, which were all admitted by the Court in a Resolution dated February 14, 2003.

On the other hand, respondent presented Revenue Officer Bernadette Mangaoang, as witness, and formally offered documentary evidence, marked as *Exhibits '1' and '2,'* inclusive of their submarkings, which were all admitted by the Court in a Resolution dated September 5, 2003.

On rebuttal, petitioner presented Laura Baui, as witness, and formally offered documentary evidence, marked as *Exhibits 'GG' to 'D5,'* inclusive of their submarkings, which were admitted by the Court, except for *Exhibits 'FFF' to 'ZZZ,' 'AAAA' to 'ZZZZ,' 'A5' to 'D5,'* which were denied admission for these documents could not be found in the records of the case.

Upon manifestation of counsel for respondent that he will not present sur-rebuttal evidence, respondent was granted thirty days from October 2, 2006 to file his memorandum, while petitioner was granted twenty days from notice.

Petitioner having filed its memorandum, without respondent filing the same, the case was deemed submitted for decision."[2]

The Ruling of the Court in Division

The following issues were submitted by the parties for resolution by the Court in Division:

"I

WHETHER PETITIONER HAS UNUTILIZED VAT INPUT TAXES FOR CY 1999 ARISING FROM ITS (A) DOMESTIC PURCHASES AND IMPORTATION OF GOODS AND SERVICES WHICH ARE ATTRIBUTABLE TO ITS ZERO-RATED SALES OF POWER GENERATION SERVICES TO NPC DURING CY 1999; AND (B) PURCHASES OF CAPITAL GOODS DURING CY 1999.

II

WHETHER PETITIONER'S UNUTILIZED VAT INPUT TAXES FOR CY 1999 ARE SUBSTANTIATED BY DOCUMENTARY EVIDENCE IN THE FORM OF INVOICES AND OFFICIAL RECEIPTS.

III

WHETHER PETITIONER'S VAT INPUT TAXES FOR CY 1999 WERE APPLIED AGAINST ANY VAT OUTPUT TAXES IN THE SUBSEQUENT TAXABLE QUARTERS.

IV

WHETHER PETITIONER'S ADMINISTRATIVE CLAIM FOR REFUND FILED ON MARCH 1, 2001 WAS SEASONABLY FILED."[3]

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[2] *Rollo*, pp. 23 - 26.
[3] *Id.*, p. 27.

Regarding petitioner's claim for unutilized input VAT of P6,472,197.86 on domestic purchases of goods and services which are attributable to its zero-rated sales of power generation services to NPC in the amount of P304,767,687.98 for the year 1999, the Court in Division found that while the receipts bear the TIN-VAT number of the petitioner and the printer's BIR permit number, the word "zero-rated" was not imprinted thereon. This according to the Court in Division is a clear violation of Section 4.108.1-1 of Revenue Regulations No. 7-95 ("RR 7-95"), and the conditions imposed on petitioner's approved Application/Certificate for Zero-Rate. For this reason, it declared that petitioner's sales of electricity to the NPC for the year 1999 in the amount of P304,767,687.98 cannot qualify for VAT zero-rating, under Section 108 (B) (3) of the National Internal Revenue Code ("NIRC") of 1997. Hence, the claimed unutilized input VAT attributable thereto in the amount of P6,472,197.86 cannot be granted.

As to petitioner's remaining claim for unutilized input tax credits in the amount of P233,991,620.30 generated from purchases of capital goods, the Court in Division determined whether or not petitioner was able to comply with the requirements set forth in Section 112 (B) of the NIRC of 1997, to wit: (1) that it is a VAT registered entity; (2) that the claimed input taxes were paid on capital goods; (3) that it did not offset or apply the claimed input taxes on capital goods purchased against any output VAT liability; and (4) that the claim for refund was filed within the two-year period. It resolved that petitioner complied with the first, third, and fourth requisite, but not with the second requisite. It said:

"However, as to the second requisite, whether or not petitioner's paid input taxes on the purchases of capital goods in the amount of P233,991,620.30, petitioner submitted various suppliers' invoices and official receipts *(Exhibits 'AA-1' to 'AA-2273')*, which were examined by the Court-commissioned auditing firm, SGV & Co. As correctly noted by SGV & Co. in its report dated March 14, 2002 *(Exhibit 'V')*, the Court finds that out of P233,991,620.30 input taxes on purchases of capital goods, the following input taxes amounting to P10,994,181.65 was not properly substantiated by VAT invoices or official receipts in accordance with *Sections 110 (A) and 113 (A) of the NIRC of 1997*, as implemented by *Sections 4.104-1 and 4.104-5 of Revenue Regulations No. 7-95*, and should therefore be disallowed from petitioner's claim:

xxx xxx xxx

Records show that the substantiated input VAT amount of P222,997,438.65 [P233,991,620.30 less P10,994,181.65] pertains to purchases of supplies, materials, equipment, plant and machinery as well as civil, architectural, engineering, management, personnel, mobilization, operational and other services which were incurred by petitioner in connection with the installation, erection and commissioning of its 2 x 609-megawatt coal-fired thermal power plants at Sual, Pangasinan *(Exhibits 'P,' 'Q,' 'R,' & 'S;' Direct Testimony of Vicente Romasanta, TSN, October 30, 2001, pp. 12-14 & 17-21)*. Petitioner's power plants and related facilities fall within the definition of 'capital goods or properties' under *Section 4.106-1 of Revenue Regulations No. 7-95*, which states:

> *'Capital goods or properties' refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29 (f), used directly or indirectly in the production or sale of taxable goods or services.'*

Notwithstanding the fact that petitioner's claimed input VAT amount of P222,997,438.65 is in the nature of input VAT paid on capital goods or properties, respondent however, objects to the refund thereof on the basis of the findings made by Revenue Officer, Ma. Bernadette B. Mangaoang, that the claimed input tax was not properly reflected in the balance sheet of petitioner as an asset or Deferred Input Tax. The revenue officer concluded that the input VAT on capital goods already formed part of the cost of the power plants that benefited petitioner in the form of depreciation expense deductible from its gross income *(Exhibit '1')*. Hence, it cannot claim tax refund or credit.

On rebuttal, however, petitioner was able to prove that the findings of the revenue officer are bereft of legal and factual bases.

Based on the examination and validation made by the Court-commissioned auditing firm, SGV & Co. on the rebuttal evidence submitted by petitioner, except for the amount of P8,275.14, the total claimed input VAT of P240,463,818.16 (including the substantiated input

VAT of P222,997,438.65 on capital goods) was found to have been properly reflected in petitioner's Audited Financial Statements and Account Information Form. xxx xxx xxx

Considering that the above findings of SGV and Co. as regards the input VAT exception amounting to P8,275.14, which was not traced to the 'Prepaid Input VAT' account of petitioner, is comprised of both input VAT on capital goods purchases and input VAT on purchases of goods/services attributable to zero-rated sales, only the input VAT of P4,783.40 *(Annex L of Exhibit 'HHHH')*, pertaining to capital goods, as enumerated below, is hereby disallowed from petitioner's substantiated input VAT claim on capital goods of P222,997,438.65:

xxx xxx xxx

Hence, only the amount of P222,992,655.25 (P222,997,438.65 less P4,783.40) represents petitioner's valid input tax on purchases of capital goods, as reflected in petitioner's Audited Financial Statements and Account Information Form.

Furthermore, petitioner has proven that while the subject input VAT was capitalized and formed part of the cost of its power plants, petitioner did not benefit from the same in the form of deductible depreciation for income tax purposes, contrary to the revenue officer's allegation.

As clearly explained by petitioner's Financial Controller, Laura Baui, in her Affidavit and Supplemental Affidavit dated January 15, 2005 and March 30, 2005, respectively *(Exhibits 'YY' and 'EEE')*, the depreciation on the capitalized input VAT of P233,991,620.30 amounted to P1,836,834.00 for the year 1999 and P9,359,665.00 for every year thereafter, computed as follows:

For CY 1999

Capitalized Input VAT	P 233,991,620.30
Divided by useful life of the power plant (in months)	÷ 300.00
Depreciation per month	P 779,972.07
Multiplied by the number of months elapsed from October 1999 to December 1999	x 2.355
Depreciation for the year 1999	**P 1,836,834.00**

For Every Year Thereafter

Capitalized Input VAT	P 233,991,620.30
Divided by useful life of the power plant (in months)	÷ 300.00
Depreciation per month	P 779,972.07
Multiplied by 12 months	x 12
Depreciation for every year after 1999	**P 9,359,665.00**

The depreciation of P1,836,834.00 was not claimed as deductible expense in petitioner's income tax return for the year 1999, but was included in the non-deductible reconciling item of P22,316,013.00, captioned as 'Excess of book over tax depreciation' *(Exhibit 'MM-4')*. The same holds true as regards the full year's depreciation of P9,359,665.00, as clearly shown in the Lapsing Schedule of the Capitalized Provision for Unrefundable Input VAT *(Exhibit 'TT')*, prepared by petitioner based on its declarations in the financial statements *(Exhibits 'MM-7,' 'UU-4,' 'VV-4,' 'WW-4,' 'XX-4')* and income tax returns from 1999 to 2003 *(Exhibits 'MM-4,' 'UU-7,' 'VV-7,' 'WW-7' & 'XX-5')*. The schedule reveals the consistent practice of petitioner in treating the depreciation on the capitalized input VAT as a non-deductible expense for tax purposes. Evidently, respondent's allegation that petitioner's capitalized input VAT was claimed as deduction in the form of depreciation expense is without factual and legal bases."[4]

Accordingly, the Court in Division disposed of the case in this wise:

"**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Respondent is hereby **ORDERED to REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **TWO HUNDRED TWENTY TWO MILLION NINE HUNDRED NINETY TWO THOUSAND SIX HUNDRED FIFTY FIVE & 25/100 PESOS (P222,992,655.25)**, representing unutilized input VAT on capital goods purchased for the four quarters of 1999.

SO ORDERED."[5]

On March 18, 2008, respondent filed a "Motion for Reconsideration,"[6] while on March 19, 2008, petitioner filed a "Motion for Partial Reconsideration."[7] Both were denied by the Court in Division in its Resolution dated June 24, 2008[8] for lack of merit.

The Issue

Dissatisfied, petitioner filed the instant recourse, interposing the lone issue of:

"Whether the Second Division of the Honorable Court erred in disallowing the amount of Php6,472,197.86 representing input VAT from domestic purchases and importation of goods and services which are attributable to zero-rated sales to National Power Corporation (NPC) on

[4] *Rollo*, pp. 36 – 48.
[5] *Id.*, p. 48.
[6] *Records*, C.T.A. Case No. 6259, pp. 634 – 642.
[7] *Rollo*, pp. 9 - 21.
[8] *Id.*, pp. 5 – 8.

> the ground that the official receipts thereof did not strictly comply with the invoicing requirements of Section 4.108-1 of Revenue Regulations No. 7-95, as amended."[9]

Petitioner's Arguments

Petitioner is of the view that RR 7-95 has no legal basis. According to it, both Sections 113 (A) and 237 of the NIRC of 1997 do not require the imprinting of the words "zero-rated sale" on the invoice or receipt. Moreover, neither provision mandates the Secretary of Finance or the Commissioner of Internal Revenue to impose additional requirements on invoicing for VAT-registered persons. Therefore, petitioner contends that the inclusion of the requirement of imprinting of the words "zero-rated sale" on the invoice or receipt is an undue and invalid expansion of the law.

Petitioner claims that it understands the need for ensuring against baseless or invalid claims for non-existent input VAT. However, it avers that the mischief sought to be avoided by the requirement does not exist in this case. With or without the imprinting of the word "zero-rated" on the invoices, NPC has no means to fraudulently claim inexistent input VAT since it is not required to pay tax. Also, NPC could not claim any input VAT credit because as a tax-exempt entity, it does not generate any output VAT against which to credit any input VAT.

Finally, assuming that the regulatory requirement for imprinting was indeed valid, petitioner insists that it cannot be faulted for non-compliance, as during the hearing on March 18, 2002, Mr. Ruben R. Rubio, the independent

[9] *Rollo*, p. 57.

CPA, testified that petitioner's zero-rated sales to NPC are supported by VAT invoices stamped with the word "zero-rated." Nowhere in the regulations is it stated that the word "imprint" was to be given peculiar signification. To bolster its point, petitioner cites BIR Ruling Nos. DA-456-04 dated August 27, 2004 and DA-140-05 dated April 11, 2005 where the Bureau of Internal Revenue ("BIR") allowed the stamping of the word "zero-rated" in the invoice or official receipt.

Respondent's Counter-arguments

In his Comment,[10] respondent counter-argues that RR 7-95 was promulgated by the Secretary of Finance on account of the authority accorded by Section 245 of the NIRC of 1977 for the effective enforcement of its provisions. The imprinting of the imprinting of the word "zero-rated" is useful, practical, and necessary not only with respect to the proper implementation of the provisions of the NIRC on zero-rated transactions but more importantly, to prevent the granting of refund or tax credit to non-existent input VAT. For this reason, the requirement that sales invoices shall be imprinted with the word "zero-rated" is not an amplification of the law. It merely brings to effect Section 113 of the NIRC of 1997. Clarification is not synonymous with amplification. As long as the administrative regulation is not in conflict with the law it seeks to implement, the same should be taken as part of the law taking into consideration the underlying purpose of the rule or regulation.

Respondent maintains that petitioner failed to show that it has demonstrated observance of the mandatory provisions of the NIRC of 1997 and

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[10] *Rollo*, pp. 91 - 97.

its implementing rules and regulations. He points out that a thorough review of petitioner's invoices show that there was no imprinting of the word "zero-rated," which is a violation of the invoicing requirement. Consequently, petitioner's claim for refund was properly denied.

The Ruling of the Court En Banc

The Petition for Review is bereft of merit.

Under Section 13 of Republic Act 6395, as amended, or otherwise known as the NPC Charter, the NPC is declared exempt from the payment of all forms of taxes, duties, fees and imposts.[11] For this reason and pursuant to Section 108 (B) (3) of the NIRC of 1997, petitioner's sale of power generation services to NPC is zero-rated. Petitioner may therefore claim a refund or tax credit for input VAT under Section 112 of the same Code.

In order for petitioner to be entitled to the refund or issuance of a tax credit certificate under Section 112, it is imperative that competent and sufficient evidence and documents required by our laws and jurisprudence be properly presented.[12]

Quoted hereunder are the pertinent 1997 NIRC provisions and Section 4.108-1 of RR 7-95:

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[11] "Section 13. Non-profit Character of the Corporation:
Exemption from All Taxes, Duties, Imposts and Other Charges by the Government and Government Instrumentalities. – The Corporation shall be non-profit and shall devote all its returns from its capital investment as well as excess revenues from its operations, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance of effective implementation of the policy enunciated in Section one of this Act, the Corporation, including its subsidiaries, is hereby declared exempt from the payment of all forms of taxes, duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings."
[12] San Roque Power Corporation v. The Commissioner of Internal Revenue, C.T.A. Case No. 6427, October 19, 2005.

"**SEC. 108.** *Value-added Tax on Sale of Services and Use or Lease of Properties.* —

xxx xxx xxx

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

(1) xxx

(2) xxx

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;

xxx xxx xxx"[13]

"**SEC. 112.** *Refunds or Tax Credits of Input Tax.* —

(A) Zero rated or Effectively Zero-rated Sales. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *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 attributable to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales "[14]

"**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:

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[13] Formerly Section 102(b) of the NIRC of 1977, as amended.
[14] Formerly Section 106(a) of the NIRC of 1977, as amended.

(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.

(B) Accounting Requirements. – Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance."[15]

"**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) 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, receipt 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 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 or 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."[16]

"**Sec. 4.108-1.** ***Invoicing Requirements. –***

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[15] Formerly Section 108 of the NIRC of 1977, as amended.
[16] Formerly Section 238 of the NIRC of 1977, as amended.

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 service;
5. the word 'zero-rated' imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration."

A careful reading of these NIRC provisions *vis-à-vis* Section 4.108-1 of RR 7-95 reveals that contrary to the claim of petitioner, Section 4.108-1 of RR 7-95, is not without any legal basis. Neither does it conflict with the law it seeks to implement. As such, it is a valid regulation which has the force and effect of the law, and partakes of the nature of a statute.[17]

In the case of *Marubeni Philippines Corporation v. Commissioner of Internal Revenue*,[18] We already ruled that the issuance of RR 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.

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[17] Mirant (Navotas II) Corporation (formerly: Southern Energy Navotas II Power, Inc.) v. Commissioner of Internal Revenue, C.T.A. EB No. 226 (C.T.A. Case Nos. 6636 and 6728), September 11, 2007.
[18] C.T.A. EB Case No. 319 (C.T.A. Case No. 6215) June 23, 2008.

In this light, We echo respondent's position that RR 7-95 is a valid regulation, as it seeks to provide for the proper implementation and effective enforcement of the provisions of the NIRC on zero-rated transactions in order to prevent the granting of refund of tax credit to non-existent input VAT. We stand by Our previous ruling that Section 4.108-1 of RR 7-95 does not in any way amplify the context of Sections 113 and 237 of the NIRC, but is a preventive measure to ensure the effective implementation of the said Code. [19]

Having said that, We shall now proceed to discuss the merits of the case.

We have examined the records and We agree with the Court in Division that petitioner is entitled to a refund or tax credit certificate in the reduced amount of P222,992,655.25, representing unutilized input VAT on capital goods purchased for the four quarters of 1999. The input VAT in the amounts of P10,994,181.65 and P4,783.40 were properly deducted by the Court in Division from petitioner's paid input VAT on purchases of capital goods in the amount of P233,991,620.30, for the following reasons:

(1) the amount of P10,994,181.65 was not substantiated by VAT invoices or official receipts in accordance with Sections 110 (A) and 113 (A) of the NIRC of 1997, as implemented by Sections 4.104-1 and 4.1404-5 of Revenue Regulations No. 7-95;[20] and

(2) the amount of P4,783.40 was not properly reflected in petitioner's Audited Financial Statements and Account Information Form.[21]

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[19] Mirant (Navotas II) Corporation (formerly: Southern Energy Navotas II Power, Inc.) v. Commissioner of Internal Revenue, *supra*, at note 17.
[20] *Rollo*, p. 36.
[21] *Id.*, pp. 42 – 46.

Anent the denial of petitioner's claim for unutilized input VAT of P6,472,197.86 on domestic purchases of goods and services which are attributable to its zero-rated sales of power generation services to NPC for the four quarters of 1999, the Court in Division explained that:

> "A careful scrutiny of the official receipts (Exhibits 'Z-1,' 'Z-3,' 'Z-5,' 'Z-7,' 'Z-9,' 'Z-11,' 'Z-13,' 'Z-15') supporting petitioner's reported zero-rated sales for the year 1999 in the amount of P304,767,687.98 shows that while said receipts bear the TIN-VAT number of the petitioner and the printer's BIR Permit number, the word **'zero-rated' was not imprinted thereon**, in clear violation of Section 4.108.1-1 of Revenue Regulations No. 7-95 and the conditions imposed on petitioner's approved Application/Certificate for Zero-Rate.
>
> The law and regulations require strict compliance with the invoicing requirements. Without valid VAT official receipts, petitioner's sales of electricity to the NPC for the year 1999 in the amount of P304,767,687.98 cannot qualify for VAT zero-rating, under Section 108 (B) (3) of the NIRC of 1997. **Hence, the claimed unutilized input VAT attributable thereto in the amount of P6,472,197.86 cannot be granted.**" *(Emphasis supplied)*

We affirm the same.

In the case of *Northern Mindanao Power Corporation v. Commissioner of Internal Revenue,*[22] We said that:

> "This Court has consistently ruled that in order for sales to be considered zero-rated for purposes of refund or tax credits of input tax, taxpayer must establish that it has complied with the substantiation requirements provided under Section 113 (A) in relation to Section 237 of the NIRC of 1997 and Section 4.108-1 of RR No. 7-95.
>
> xxx xxx xxx
>
> Based on the foregoing, a VAT-registered person shall issue an invoice or a receipt for every sale transaction. The invoice or receipt shall contain the information required under Sections 113 and 237 of the NIRC of 1997 including the imprinting of the word 'zero-rated' on official receipts/invoices pursuant to RR No. 7-95 issued by the BIR.
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> **The invoice under requirement no. 5 of RR No. 7-95 refers to VAT invoice which covers both official receipts and sales invoices for**

[22] C.T.A. EB Case No. 312 (C.T.A. Case No. 6337), July 18, 2008.

purposes of imprinting the word 'zero-rated.' Thus, it cannot be said that the requirement of imprinting the word 'zero-rated' applies only to sales invoice and not to official receipts.

xxx xxx xxx

xxx **Since petitioner is engaged in the sale of electricity, classified as sale of services, it must present appropriate VAT official receipts.** The applicable law is Section 108 of the NIRC of 1997 which provides:

xxx xxx xxx

The law is clear. For every sale of services, VAT shall be computed on the basis of gross receipts indicated in the official receipt. While the use of official receipt as proof of sale of services has already been recognized in NIRC of 1997, it was even clarified during the Senate deliberation of R.A. No. 9337, which we quote:

> 'The President: Mr. Sponsor, is it not better if we delegate these matters of strict implementation to the BIR rather than define it here in the law which might be difficult to change later on should there be a need to change it? These are matters of implementation and administration. If we provide appropriate standards, maybe we can delegate these implementation provisions to the Bureau Internal of Revenue. Would that be an acceptable idea to the sponsor?
>
> Senator Recto: To improve the system, Mr. President, I think that we are better off putting it in the law insofar as a VAT invoice is for goods; a receipt is for services. And then it should be clear in the law that if one is selling an exempt product, it should be exempt; if one is selling a zero-rated product, it should be zero-rated; if one is selling at 10%, it should be 10% so that it is clear to the consumer, to the taxpayer, how much taxes he paid. That is found in Europe.'

Clearly, official receipt cannot be interchanged with sales invoice. Accordingly, **the requirement of issuing a duly registered VAT official receipt with the imprinted word 'zero-rated' is mandatory under the law and cannot be substituted especially for input VAT refund purposes.**" *(Emphasis supplied)*

Again, in the case of *Nippon Express Philippines, Inc. v. Commissioner of Internal Revenue,*[23] We ruled that:

"Although Sections 113 and 237 of the NIRC of 1997 and Section 4.108-1 of Revenue Regulation 7-95 use the words 'invoice' and 'receipt' without distinction, nevertheless, the NIRC of 1997 provides separate

[23] C.T.A. EB Case No. 335 (C.T.A. Case No. 6464), August 20, 2008.

provisions, which must be read in relation thereto: Section 106 for VAT on sale of goods or properties, and Section 108 for VAT on sale of services and use or lease of properties.

For sale of goods or properties, the VAT is imposed upon the gross selling price. In other words, the VAT on the sale of goods or properties accrues upon the consummation of sale, whether or not the consideration was actually received already by the seller. It is for this reason that Section 106 (D) (1) provides that the tax shall be computed by multiplying the total amount indicated in the invoice by one-eleventh (1/11), to wit:

> 'SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –
>
> (A) Rate and Base of Tax. – These shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.
>
> xxx xxx xxx
>
> (D) Determination of the Tax. –
>
> (1) The tax shall be computed by multiplying the total amount indicated in the invoice by one-eleventh (1/11).'

On the other hand, in the case of sale of services, as in the instant case, the VAT is computed based on gross receipts as indicated under Section 108 (A). Therefore, the VAT on the sale of services accrues upon actual or constructive receipt of the consideration, whether or not service has been rendered. Furthermore, Section 108 (C) prescribes that the tax on the sale of services shall be computed by multiplying the total amount indicated in the official receipt by one-eleventh (1/11). We quote:

xxx xxx xxx

Based on the above laws, when We speak of computing the output tax on the sale of goods or properties, the basis would be the amount appearing in the invoice, while when We speak of computing the output tax on sale of services, the basis would be the amount appearing in the official receipts. Therefore, **as specified is said legal provisions, sales invoice must support the sale of goods or properties, whereas official receipts must support sale of services.** It should be noted that said legal provisions do not provide for any the document that can be used as an alternative to, or in lieu of an invoice and official receipt.

Thus, We agree with the findings of the Court in Division when it held that the evidence submitted by petitioner to prove its zero rated sales to be insufficient so as to entitle it to the issuance of a tax credit certificate. **Petitioner's sales are sales of services and as such, should properly be supported by official receipts.**" *(Emphasis supplied)*

Applying the foregoing cases to the instant case, We find that indeed the official receipts[24] submitted by petitioner in support of its claim for refund or tax credit are not stamped nor imprinted with the word "zero-rated." Only the invoices submitted by it are stamped with the word "zero-rated," which as We have said, are not sufficient in the case of sales of services. Being engaged in the sale of power generation services to NPC, petitioner must present VAT official receipts stamped with the word "zero-rated" pursuant to Section 108 of the NIRC of 1997. In failing to do so, petitioner's claim for a refund or tax credit in the amount of P6,472,197.86, representing unutilized input VAT on domestic purchases of goods and services attributable to its zero-rated sales of power generation services to NPC in the amount of P304,767,687.98 for the year 1999, must be denied.

We need not belabor that the requirement of issuing a duly registered VAT official receipt with the imprinted word "zero-rated" is mandatory under the law and cannot be substituted especially for input VAT refund purposes.[25] Non-presentation of VAT official receipts to establish zero-rated sales is fatal to a taxpayer's claim for refund of its unapplied input VAT payments which are directly attributable to such zero-rated sales.[26]

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[24] Exhibits "Z-1," "Z-3," "Z-5," "Z-7," "Z-9," "Z-11," "Z-13" and "Z-15."
[25] Kepco Philippines Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. E.B. 107 (C.T.A. Case No. 6413), June 29, 2007.
[26] American Express International, Inc. - Philippine Branch v. Commissioner of Internal Revenue, C.T.A. E.B. No. 103 (C.T.A. Case No. 6294), March 3, 2006.

Once again, the question of whether or not the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.[27] And in the absence of the Court's abuse or improvident exercise of authority, findings of facts made by the Court in Division must be accorded deference and respect.[28]

In closing, We deem it opportune to emphasize the oft-repeated rule that tax refunds partake the nature of tax exemptions and are construed *strictissimi juris* against the person or entity claiming the exemption, and as such, the burden in proving the claim for refund necessarily falls on the taxpayer.[29]

WHEREFORE, the instant Petition for Review is hereby **DISMISSED**. Accordingly, the Decision dated February 27, 2008 and the Resolution dated June 24, 2008 are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

[27] El Greco Ship Manning and Management Corporation v. Commissioner of Customs, C.T.A. EB No. 172 (C.T.A. Case No. 6618), March 14, 2007.
[28] Union Refinery Corporation v. Commissioner of Customs, C.T.A. EB NO. 149 (C.T.A. Case No. 5917), January 15, 2007.
[29] Far East Bank and Trust Company v. Commissioner of Internal Revenue, G.R. No. 138919, 488 SCRA 473, May 2, 2006.

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 above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice