REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

APPLIED FOOD INGREDIENTS CO., INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. E.B. NO. 220
(C.T.A. CASE NO. 6687)

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

MAY 07 2007

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DECISION

PALANCA-ENRIQUEZ, J.:

Pursuant to *Section 112 (A) of the National Internal Revenue Code of 1997* (hereafter "*NIRC of 1997*"), *as amended*, petitioner filed a claim for refund of its creditable input VAT attributable to its zero-rated export sales. To do so, however, petitioner must be able to show that its input VAT paid and output VAT transactions are properly substantiated. Failure to show proof of proper documentations is fatal to one's claim for refund or credit. Akin to the rules on evidence, some statutory and procedural requirements have to be complied with; otherwise, the same cannot be admitted.

THE CASE

This is a Petition For Review filed by Applied Food Ingredients Co., Inc. (hereafter "petitioner") under *Section 11 of Republic Act No. 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals)*, in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended*, which seeks the reversal of the Decision dated May 22, 2006 and Resolution dated October 9, 2006 issued by the First Division of this Court in C.T.A. Case No. 6687, the respective dispositive portions of which read:

> "**WHEREFORE**, in view of the foregoing, this instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"
>
> "**WHEREFORE**, there being no new matters or issues advanced by petitioner in its present motion which may compel this Court to reverse, modify or amend the assailed Decision, the same is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

The facts as culled from the records of the case are undisputed.

Petitioner is a corporation duly organized and existing under the laws of the Philippines. It is registered with the Securities and Exchange Commission under Certificate of Registration No. AS091-198357 dated November 25, 1991, with principal office address at 2505 West Tower, PSE Building, Exchange Road, Ortigas Center, Pasig City. It is also registered with the Regional District Office No. 43 of the Bureau of Internal Revenue in Pasig City as a Value-Added Tax (VAT) taxpayer.

The Commissioner of Internal Revenue (hereafter "respondent") is the duly appointed government officer vested with the power to decide, approve, and grant refunds or tax credits of overpaid internal revenue taxes, as provided by law.

Petitioner filed its Value Added Tax returns for the taxable year 2001 for the 1st, 2nd, 3rd, and 4th quarters on April 25, 2001, July 24, 2001, October 23, 2001 and January 25, 2002, respectively.

Consequently, petitioner reported in its VAT returns a total of P87,273,402.86 export sales of food ingredients for January 1, 2001 to December 31, 2001.

Petitioner alleged that it paid the amount of P7,131,280.35 as input taxes and it had incurred additional input taxes for the year 2002 which have not been applied to any output tax. On March 28, 2003, it filed an administrative claim for refund for the said amount. Subsequently, on April 25, 2003, petitioner filed a Petition for Review before this Court, docketed as C.T.A. Case No. 6687.

In his answer, respondent alleged by way of special and affirmative defenses that the burden of proof is upon the petitioner to prove that it is entitled to the claim for refund; the grant of a claim for refund is tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority; and the taxes sought to be refunded were paid in accordance with law.

After trial on the merits, the First Division rendered the assailed decision on May 22, 2006, denying the Petition For Review.

Not satisfied, petitioner moved for a reconsideration of the same, which the First Division denied in its Resolution dated October 9, 2006.

Hence, this Petition For Review.

ISSUE

WHETHER OR NOT THE PETITIONER IS ENTITLED TO THE ISSUANCE OF A TAX CREDIT CERTIFICATE

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OR REFUND OF THE AMOUNT OF P7,131,280.35 REPRESENTING CREDITABLE INPUT TAXES PAID WHICH ARE ATTRIBUTABLE TO ITS EXPORT SALES FROM JANUARY 1, 2001 TO DECEMBER 31, 2001, NOTWITHSTANDING THAT ITS EXPORT SALES INVOICES DO NOT REFLECT THE IMPRINTED WORDS "ZERO-RATED", THE WORD "TIN V/TIN VAT", AND THE BUREAU OF INTERNAL REVENUE (BIR) PERMIT NUMBER.

On November 22, 2006, We required respondent Commissioner of Internal Revenue to file his comment on the petition, within ten (10) days from notice.

Despite notice, respondent has failed to file his comment. Thus, the petition is now deemed submitted for decision.

<u>THE COURT *EN BANC's* RULING</u>

The Petition is without merit.

Petitioner mainly contends that it is entitled to the refund or issuance of a tax credit certificate because it has complied with all the requirements of the law. Petitioner asserts that there is no law or regulation which provides that to be entitled to the issuance of a tax credit certificate or refund of creditable input taxes paid which are attributable to its export sales, the export sales invoices of a VAT-registered person shall reflect the imprinted words "zero-rated", the word "TIN V/TIN VAT", and the BIR permit number.

Moreover, there is no provision in the *NIRC of 1997, as amended,* which requires that sale of goods should only be supported by sales invoice to the exclusion of other documents. According to petitioner, *Sections 113 and 237* of the *NIRC of 1997, as amended,* mandate that a VAT taxpayer should issue either a sales invoice or receipt for every sale, whether of goods or services. In other words, the law allows a VAT-taxpayer such as the petitioner to either issue a sales invoice or an official receipt for its export sale of goods. Petitioner noted that the Dissenting Opinion of Presiding Justice Ernesto D. Acosta pointed out that the above provisions, among others, prove the intention to accept other evidence to substantiate claims for VAT refund, particularly the use of either a VAT invoice or receipt. The Dissenting Opinion likewise emphasized the use of the disjunctive term "or" in the provisions. The said Opinion clarified that such term is indicative of the objective of the Revenue Bureau to use the same interchangeably in the sale of goods, the claimant may present either an invoice or a receipt and it will not have any negative repercussion on its claim.

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We do not agree with petitioner's contentions.

While *Section 112 of the NIRC of 1997, as amended*, allows tax refund or credit of the input tax of zero-rated sales of VAT registered persons, nonetheless, certain invoicing requirements must be faithfully complied with before such claim for refund or credit can be granted.

Invoicing Requirements

Invoicing and accounting requirements for VAT-registered persons are provided for under *Sections 113 and 237 of the NIRC of 1997, as amended,* which provide as follows:

> "SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. –
>
> (A) Invoicing Requirements. – A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.
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> xxx xxx."

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

It is clear from the aforecited provisions that the law requires the issuance of invoice or receipts for every sale of a VAT registered person. Such requirement is mandatory in nature and consequently, non-compliance regarding the issuance of such important documents is fatal to one's claim for credit or refund of its input taxes. The relevance of such requirement is obvious: the presentation of invoices and/or receipts will prove the existence and nature of transactions and will be a basis for computation of taxes. The law does not only demand the substantiation of invoices or receipts for input taxes but more importantly for output taxes especially for those claiming zero-rated sales as this will determine the creditable or unutilized input taxes that are available for refund. To sum, the invoicing requirements do not only pertain to documents required to prove input taxes, but rather it also requires the presentation of proper documents to prove the existence and/or non-existence of output taxes.

In relation to the above requirements, *Section 4-108-1 of Revenue Regulations No. 75 (The Consolidated Value-Added Tax Regulations)* enumerates the information that must appear on the face of the receipts or invoices issued for sales of goods by all VAT-registered persons, pertinent portion of which states:

> "SEC. 4-108-1. Invoicing Requirements - All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:
>
> 1. the name, TIN and address of seller;
> 2. date of transaction;
> 3. quantity, unit cost and description of merchandise or nature of service;
> 4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
> 5. the word "zero-rated" imprinted on the invoice covering zero-rated sales; and

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6. the invoice value or consideration.

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Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoices or receipts and this shall be considered as 'VAT Invoice'. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax.

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The aforequoted revenue regulation implementing 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. This is a settled rule in this jurisdiction (*Francisco vs. Court of Appeals, 243 SCRA 392*). Indeed, it is the duty of a seller-taxpayer to comply with the invoicing requirements laid down in said memorandum circular.

In the case of *Compania General de Tabacos de Filipinas vs. Hon. Court of Appeals, et al. (426 SCRA 203)*, the Supreme Court held that regulations issued by the BIR that would give effect to the law are valid regulations and ruled as follows:

"We agree with petitioner that both Sections 137 and 141 of the former Tax Code allowed the sale of stemmed leaf

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> tobacco without any prepayment of tax. We must stress, however, that a careful reading of the aforementioned provisions show that such sale is qualified by and is subject to 'such conditions as may be prescribed in the regulations of the Department of Finance.' Said conditions were provided for in Revenue Regulations Nos. V-39 and 17-67, which were issued to clarify and implement the foregoing provisions of the Tax Code. Hence, said provisions of the Tax Code must be read and interpreted in accordance with said regulations.
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> xxx xxx.
>
> Petitioner's arguments impugning the validity of Revenue Regulations Nos. 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 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."

A careful examination of petitioner's evidence shows that the same are deficient to prove that there are unutilized input taxes as against the output tax.

Petitioner offered Export Invoices (*Exhibits "J" to "J-17"*), Export Bills of Lading (*Exhibits "M" to "M-18"*) and Export Declarations (*Exhibits*

"N" to "N-16") to prove the sale and actual shipment of goods from the Philippines to customers based abroad. Petitioner also presented the Certification and Credit Advice issued by ANZ Bank (*Exhibits "L" to "L-11"*) to prove that the export sales were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

Upon a thorough perusal of the evidences presented, We find that petitioner's export sales invoices do not bear (1) the imprinted words "zero-rated"; (2) petitioner's "TIN-V" or "TIN-VAT"; and (3) the Bureau of Internal Revenue (BIR) Permit Number, which is a clear violation of *Sections 113, 237* and *238* of the *NIRC of 1997, as amended,* and *Section 4.108-1 of Revenue Regulations (RR) No. 7-95.* Petitioner in fact admitted that the export invoices do not reflect some of the information as required by the said laws *(Petition for Review En Banc, November 10, 2006, p. 19).*

As aptly ruled by the First Division:

> "In this regard, petitioner failed to comply. A thorough examination of the documents, more particularly the export invoices (Exhibits 'J' to 'J-17'), presented by petitioner reveals that the vital information as required under Sections 113 and 237 of the NIRC of 1997, in relation to Section 4.108-1 of Revenue Regulations No. 7-95, are

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wanting. The export invoices offered in evidence by petitioner do not show the following:

1. imprinted word 'zero-rated';
2. petitioner's TIN-VAT;
3. the Bureau of Internal Revenue's Permit to Print number.

Without any legitimate VAT sales invoices containing the above required data, petitioner's export sales in the total amount of P87,273,402.86 for the year 2001 cannot qualify for zero-rating under Section 106 (A)(2)(a)(1) of the NIRC of 1997. Consequently, petitioner's claim of P7,131,280.35 as excess unutilized input taxes attributable thereto cannot be granted for failure to comply with the third requisite that these input taxes are directly attributable to zero-rated sales or effectively zero-rated sales."

In the case of *Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue* (318 SCRA 403), the Supreme Court ruled:

"x x x. It is clear that a VAT invoice can be used only for the sale of goods and services that are subject to VAT. The corresponding taxes thereon shall be allowed as input tax credits for those subject to VAT. Section 108 expressly provides the invoicing and accounting entries required from VAT-registered persons. On the other hand, Section 111 of the Tax Code empowers the commissioner to suspend the business operations of VAT-registered persons for the specific violations listed therein. xxx.

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xxx. Indeed, it is the duty of the seller to comply with the invoicing and accounting

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> requirements laid down in, among others, Section 108 of the Tax Code.
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From the foregoing pronouncements, it is clear that the issuance of VAT invoices or official receipts is mandatory for sales that are subject to VAT either at 10% or 0% (zero-rated sales).

Failure to Comply with the Invoicing Requirements: Effects thereof

Revenue Memorandum Circular No. 42-2003 [Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters] expressly provides that the failure of a taxpayer claiming for tax refund/credit to comply with the invoicing requirements will result to the disallowance of the claim for input tax. The pertinent portion of said Revenue Memorandum Circular provides:

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

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> credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer."

The aforequoted provision clearly mandates that if the claim for refund/issuance of a tax credit certificate is based on the existence of zero-rated sales by the taxpayer, but fails to comply with the invoicing requirements, the claim for tax credit/refund of input VAT shall be denied.

Without proper VAT export sales invoices issued to its clients, petitioner's export sales in the total amount of P87,273,402.86 for the year 2001 cannot qualify for zero-rating for VAT purposes. Hence, it cannot claim such sale as zero-rated VAT not subject to output tax.

***<u>Rationale of
Strict Compliance</u>***

The law is explicit in emphasizing the importance of invoices and/or official receipts. Thus, *Section 110 of the NIRC of 1997, as amended*, provides that: "Any input tax evidenced by a VAT invoice or

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official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: x x x". VAT invoices and receipts, in relation to the instant case, are used as evidence for purposes of determining whether there is an excess in either the input or output taxes.

If the invoice or official receipt is not imprinted with the words "zero-rated", such as in the case at bar, there is a danger that the purchaser of the goods or services may be able to claim input tax on the sale to it by the taxpayers of the goods or services, notwithstanding the fact that no VAT was actually paid on such goods or services since the transaction is zero-rated.

This is the rationale for the mandatory requirement in *Revenue Regulations No. 7-95* that the words "zero-rated" be imprinted in the invoice or receipt. This is to assure that the purchaser cannot use the invoice as evidence to claim input tax since said invoice or receipt would reflect that there was no VAT involved in the transaction, as evidenced by the imprinted words "zero-rated". Otherwise, there may result the absurd situation where the government would be crediting/refunding non-existent input tax to purchasers of goods or services of such zero-rated taxpayer.

Considering the foregoing reasons, petitioner's failure to indicate the words "zero-rated' on its official receipts is fatal to its claim.

Petitioner has Burden of Proof

It is a doctrinal rule that laws granting tax exemption are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Equally settled is the rule that a claim for tax refund is in the nature of tax exemption. Consequently, the law does not look with favor on tax exemptions and he who thus seeks to be privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted (*Sea-Land Services, Inc. vs. Court of Appeals, 359 SCRA 441*).

Petitioner has the burden of proof to establish the factual basis of its claim for tax refund (*Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332*), which petitioner failed to discharge.

In the light of the laws and jurisprudence on the matter, We see no reason to reverse the assailed Decision dated May 22, 2006 and Resolution dated October 9, 2006 of the First Division of this Court.

WHEREFORE, premises considered, the present Petition For Review is hereby **DENIED DUE COURSE,** and, accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
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 the Court.

ERNESTO D. ACOSTA
Presiding Justice

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Present:

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

Promulgated:

MAY 07 2007

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DISSENTING OPINION

With due respect to my esteemed colleagues, I would like to manifest my disagreement to their view and I maintain that the instant Petition for Review should be granted. 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

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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.

As I have stated in my previous dissent to the majority opinion in the Division's Decision, it is appropriate to quote the significant provisions of the 1997 Tax Code, namely, Section 113 in relation to Section 237:

> "**Section 113. Invoicing and Accounting Requirements for VAT registered persons – (A) Invoicing Requirements** – A VAT-registered person, shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
>
> 1. A statement that the seller is a VAT-registered person followed by his taxpayer's identification number (TIN); and
>
> 2. The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax."
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> "**Section 237. Issuance of Receipts or Sales of Commercial Invoices.** – All persons subject to an internal revenue tax shall, for each sale, or transfer of merchandise or for services rendered valued at Twenty five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service; Provided however, That in case of sales, receipts or transfers in the amount of One Hundred Pesos (P100.00) or more, regardless of amount where the sale or transfer is made by a person liable to value added tax to another person also liable to value added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations, or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser; customer or client: Provided further, That where the purchaser is a VAT registered person, in addition to the information herein required,

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

From the foregoing, the only information required to appear in an invoice or official receipt, as a precondition for its validity and for claiming a refund or issuance of a tax credit certificate are as follows:

(1) A statement that the seller is a VAT-registered person;
(2) The taxpayers identification number (TIN);
(3) The total amount which the purchaser pays or is obligated to pay to the seller indicating the inclusion of the value-added tax;
(4) Transaction date;
(5) Quantity of merchandise;
(6) Description of merchandise or nature of service;
(7) Unit cost;
(8) The name, business style, if any, and address of the purchaser, customer or client in the case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees; and
(9) The TIN of the VAT-registered purchaser.

Section 112 (A) of the 1997 Tax Code, lends corroboration to the above view, it states:

> "(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

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> tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

Section 112 (A) of the Tax Code grants to all VAT-registered enterprises engaged in zero-rated transactions the right to claim a refund of their creditable input tax due or paid to the extent that such input tax has not been applied against output tax within a period of two (2) years after the close of the taxable quarter. And nowhere is it shown that failure to imprint the word "zero-rated" in the invoice will cause the outright rejection of the refund claim.

The lone provision where the "requirement" of imprinting the questioned information on the VAT invoice or receipt can be found is **Section 4.108-1 of Revenue Regulations No. 7-95** (*The Implementing Rules and Regulations of the VAT law*). Then again, the said provision is merely a regulation created for the sole and limited purpose of implementing an otherwise very exact law. Long-settled is the rule that administrative rules and regulations cannot expand the letter and spirit of the law they seek to enforce. Such rules and regulations should be confined and limited by the power conferred by the legislature (**Commissioner of Internal Revenue vs. Court of Appeals**, *240 SCRA 368 (1995).* And in case of conflict between the basic law and a rule or regulation issued to implement said law, the law prevails because said rule or regulation cannot go beyond the terms and provisions of the basic law (**People vs. Lim**, *108 Phil. 1091*).

In this case, petitioner has established its right to the issuance of a tax credit certificate through material and documentary exhibits. The documents formally offered as evidence by the petitioner, for instance, its export documents such as export sales invoices, official receipts, export declaration, bills of ladings and permits clearly prove that the petitioner's export sales were actually made.

Moreover, in ***Commissioner of Internal Revenue vs. Seagate Technology (Philippines),***[1] the Supreme Court pointed out the need to focus only on the legally mandated requirements for claims for VAT refund and explained that, *a VAT-registered status, as well as compliance with the invoicing requirements (Section 113 (A) of the Tax Code), is sufficient for the effective zero rating of the transactions of a taxpayer. The nature of its business and transactions can easily be perused from, as already clearly indicated in, its VAT registration papers and photocopied documents attached thereto. Administrative convenience cannot thwart legislative mandate.*

Consequently, there being sufficient proof of compliance with the substantive and main requirement of the Tax Code regarding the sale and actual shipment of goods in order to be considered as zero-rated sales, the claim should not be denied.

It is also noteworthy that this is a case seeking for the refund or issuance of tax credit certificate of petitioner's unutilized taxes for the year **2001** and it was only on November 1, 2005 with the effectivity of Republic Act No. 9337[2] that the requirement of writing or printing the term "zero-rated sale" was introduced, following the amendment of Section 113[3] of the National Internal Revenue Code. R.A. 9337 cannot apply retroactively so as to prejudice petitioner given the well-

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[1] *G.R. No. 153866, February 11, 2005*
[2] *R.A. 9337 was supposed to take effect on July 1, 2005 but due to constitutionality issues, it became effective only on November 1, 2005 upon the finality of the Supreme Court's September 1, 2005 Decision upholding the said law's validity.*
[3] *(B)(2)(c) of Section 113*

entrenched principle that statutes, including administrative rules and regulations, **operate prospectively only**, unless the legislative intent to the contrary is manifest by express terms or by necessary implication.[4]

Lastly, the majority failed consider that tax cases are civil in nature. And under **Section 1, Rule 133, Rules of Court**, in civil cases, the quantum of evidence required to sustain the proponent of an issue is mere preponderance of evidence. In ***Municipality of Moncada vs. Cajuigan***[5], it was explained that the phrase "preponderance of evidence" denotes the weight, credit and value of the aggregate on either side. This means that the testimony adduced by one side is more credible and conclusive than that of the other.

All told, the facts and the applicable laws and jurisprudence justify the reversal of the subject decision. As aptly stated by the Supreme Court[6]:

> "[S]ubstantial justice, equity and fair play are on the side of petitioner. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness."

The government has no right to hold money that does not belong to it, especially given the unmistakable bias of our tax laws in severely penalizing delinquent taxpayers with surcharges, interests, fines and at times, even imprisonment. Hence, while taxes are the lifeblood of the government, the Court must likewise

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[4] *BPI Leasing Corporation, vs. The Honorable Court of Appeals, et.al. G.R. No. 127624. November 18, 2003*
[5] *21 Phil. 184*
[6] *BPI-Family Savings Bank, Inc., vs. Court of Appeals, Court of Tax Appeals, and the Commissioner of Internal Revenue, 330 SCRA 507.*

be sensitive of its responsibility to apply the principles of justice, equity and fairness as its guide in its delicate tasks of weighing the evidence and of deciding tax cases.

Accordingly, it is my position that petitioner's claim for the refund or the issuance of tax credit certificate of the amount of its unutilized input VAT attributable to its export sales should be granted, for the Court has no sufficient basis in law for its denial.

ERNESTO D. ACOSTA
Presiding Justice

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