REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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NORTHERN MINI HYDRO CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7257

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
MAY 28 2009, 3:28 pm

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DECISION

BAUTISTA, *J.*:

This case involves a claim for refund or issuance of tax credit certificate of unutilized input value-added tax (VAT) in the amount of ONE MILLION ONE HUNDRED SEVENTY-FOUR THOUSAND SEVEN HUNDRED EIGHT AND 46/100 (P1,174,708.46) from January to December 2003, allegedly arising from petitioner's domestic purchases of goods and services which are attributable to its VAT zero-rated sales of power generation services to the National Power Corporation (NPC).

Northern Mini Hydro Corporation (Petitioner) is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at 214 Obulan, Ambuklao Road, Beckel, La Trinidad, Benguet.[1] It is registered as a VAT taxpayer with the Bureau of Internal Revenue (BIR) under Revenue

[1] Annex "B", Petition for Review.

District No. 9 — Cordillera Adminstrative Region, with Tax Identification Number (TIN) 001-946-904-000 and Certificate of Registration dated April 10, 2003.[2]

Petitioner is duly registered with the Securities and Exchange Commission (SEC) and the Department of Energy.[3] It also has a duly approved Application for VAT Zero-Rate issued by respondent.[4]

Respondent is the Commissioner of the BIR, who is duly appointed and empowered to perform the duties of his office, including, among others, the duty to act and approve claims for refund or tax credit as provided by law. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On March 4, 2004, petitioner filed its Quarterly VAT Returns for the second[5], third[6] and fourth[7] quarters of taxable year 2003. However, on March 21, 2005, petitioner wittingly or unwittingly filed once again the same set of returns, having exactly the same information and figures as that which were filed earlier.[8]

On March 31, 2005, petitioner filed an administrative claim for refund.[9]

On May 26, 2005, the instant *Petition for Review* was filed before this Court, seeking refund or issuance of tax credit certificate of alleged unutilized input VAT payments for taxable year 2003 in the sum of P1,174,708.46. This amount actually referred to that which was declared for the fourth quarter of taxable year 2003.[10]

On July 29, 2005, respondent filed his *Answer* to the said *Petition for Review*.

The parties' *Joint Stipulation of Facts and Issues* filed on October 7, 2005 was admitted by this Court through a *Resolution* dated October 14, 2005.

Trial on the merits then proceeded.

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[2] Annex "A", Petition for Review.
[3] Pars. 1 and 3, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), *Rollo*, p. 88.
[4] Annex "D", Petition for Review.
[5] Exhibit "S".
[6] Exhibit "V".
[7] Exhibit "Y".
[8] Exhibits "C", "F", and "I".
[9] Par. 4, Summary of Admitted Facts, JSFI, *Rollo*, p. 89.
[10] Exhibit "Y".

On June 20, 2006, respondent, through Regional Director Norberto D. Vitug, partially granted the said claim by issuing a tax credit certificate with serial number 006402[11], in the amount of P457,678.17 in favor of petitioner.

By virtue of such development, on August 9, 2006, petitioner filed a *Motion for Leave of Court To File Supplemental Petition for Review*, attaching a copy of the said supplemental pleading.

At the hearing held on August 10, 2006, respondent interposed no objection and said *Motion* was thus granted. Respondent however reserved the right to file a Supplemental Answer. The Court then required respondent to file his Supplemental Answer within ten (10) days from such date.

By way of *Amended Answer*[12] filed on August 17, 2006, respondent alleged the following Special and Affirmative Defenses:

> "5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue;
>
> 6. The amount of P1,174,708.46 being claimed by petitioner as alleged unutilized input VAT for the period January 2003 to December 2003 is not properly documented;
>
> 7. The decision of the Supreme Court in the case of Maceda vs. Macaraig 223 SCRA 217 (1993) which states that the NPC is exempt from all taxes, duties, fees, imposts, charges and restrictions of the Republic of the Philippines and its provinces, cities and municipalities, is not applicable to the instant petition. What is being exempted in said decision is NPC per se and such exemption does not extend to the supplier such as the petitioner in the instant case.
>
> 8. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
>
> 9. Petitioner must show that it has complied with the provisions of Sections 204(C) and 229 of the 1997 Tax Code on the prescriptive period for claiming tax refund/credit.

[11] *Rollo*, p. 269.
[12] *Rollo*, pp. 277 to 280.

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (**Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95**) and as such, they are looked upon with disfavor (**Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211**)."

The parties' *Additional Joint Stipulation of Facts and Issues* filed on February 1, 2007 was approved per this Court's *Resolution* dated February 13, 2007.

The trial of the case continued; after which, the parties were ordered to file their respective *Memorandum*.[13]

On June 26, 2008, the case was submitted for decision, considering the *Memorandum* filed by petitioner on March 7, 2008 and the *Memorandum* filed by respondent on March 28, 2008.

The issues[14] as stipulated by the parties are as follows:

"1. Whether or not petitioner is entitled to a refund of the amount of P1,174,708.46 as alleged unutilized input VAT for the period January 2003 to December 2003;

2. Whether or not petitioner's sale of electricity to NPC is effectively zero-rated;

3. Whether or not petitioner filed its claim for refund within the two (2) year prescriptive period;

4. Whether or not petitioner's input VAT are properly supported;

5. Whether or not petitioner's input VAT have been carried forward to the succeeding taxable period."

The Court will only resolve the first three issues inasmuch as their resolution is enough to properly dispose of this case; however, the Court shall address them in a reverse sequence for an orderly disposition.

Petitioner's administrative and judicial claims for refund were timely filed

Section 112 of the National Internal Revenue Code (NIRC) of 1997 provides as follows:

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[13] *Resolution* dated December 18, 2007, *Rollo*, p. 434.
[14] Issues To Be Tried, JSFI, *Rollo,* p. 89.

> "**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: xxx"

In **Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)**[15], the Supreme Court made the following pronouncement:

> "**The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not**. As the CA aptly puts it, albeit it erroneously applied the aforequoted Section 112(A), '[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued.' Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. **The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid.**" *(Emphasis supplied)*

It can be gleaned from the foregoing Decision that the two-year prescriptive period under Section 112(A) of the NIRC of 1997 for the recovery of creditable input VAT due or paid attributable to zero-rated or effectively zero-rated sales is to be counted "from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not." Here, considering the amount of the subject claim refers to the declared input VAT for the fourth quarter of taxable year 2003, the two-year prescriptive period should be counted from the close of the said taxable quarter on December 31, 2003 and shall end on December 31, 2005. And since the subject

[15] G.R. No. 172129, September 12, 2008.

administrative claim was filed on March 31, 2005, while the instant judicial claim was filed on May 26, 2005; both the administrative and judicial claims of petitioner were filed well within the said two-year prescriptive period under the law. Such being the case, prescription has definitely not set in.

Petitioner's sale of electricity to NPC is effectively zero-rated

The sale of electricity to NPC is zero-rated for VAT purposes pursuant to Section 108(B)(3) of the NIRC of 1997, as amended, in relation to Section 13 of Republic Act No. 6395, otherwise known as the NPC Charter, which are all quoted hereunder for easy reference:

> "**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:
>
> xxx xxx 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**." *(Emphasis supplied)*
>
> "Sec. 13. *Non-profit Character of the Corporation; Exemption from All Taxes, Duties, Fees, 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 investments, as well as excess revenues from its operation, 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." *(Emphasis supplied)*

This Court has consistently held that NPC is an entity with a special charter, which categorically makes it exempt from payment of all taxes, whether direct or indirect, including

VAT. Therefore, by virtue of the said charter, services rendered by a VAT-registered entity like herein petitioner to NPC are effectively subject to zero percent (0%) VAT in accordance with Section 108(B)(3) of the NIRC of 1997.

Petitioner is not entitled to the refund of its alleged unutilized input VAT

Section 108(B)(3) of the NIRC of 1997 must not be read in isolation, but in conjunction with Section 113(A) of the same Code, as implemented by Section 4.108-1 of Revenue Regulations No. 7-95, as amended, to wit:

> "**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."
>
> "**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. **the word 'zero rated' imprinted on the invoice covering zero-rated sales**; and
> 6. the invoice value or consideration.
>
> In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.
>
> 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.
>
> If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A 'VAT Invoice' shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the Code." *(Emphasis supplied)*

Likewise, in the approved Application for VAT Zero-Rate issued by respondent to petitioner, covering the period June 11, 2003 to December 31, 2003, the following was indicated:

> "Valid only for sale of services from June 11, 2003 up to December 31, 2003 unless sooner revoked.
>
> **Note: Zero-Rated Sales must be indicated in the invoice/receipt.** xxx."*(Emphasis supplied)*

It is explicit from the provisions of Sections 113 and 237 of the NIRC of 1997, in relation to Section 4.108-1 of Revenue Regulations No. 7-95, that a VAT-registered person like herein petitioner must issue a duly registered VAT invoice or receipt for every sale transaction. Such VAT invoice or receipt must show the taxpayer's identification number (TIN) followed by the word "VAT", printer's BIR permit number and the word "zero-rated" imprinted on the invoice or receipt covering a zero-rated sale. Accordingly, the zero-rated sales of services referred to under Section 108(B)(3) of the NIRC of 1997 as subject to zero percent (0%) VAT are those covered by duly registered VAT official receipts bearing all the required information.

As to the documentation of petitioner's sales to NPC for the subject period of claim, the former submitted Charge Invoices[16] and Official Receipts[17] as part of the supporting documents in substantiating its zero-rated sales to NPC.

A scrutiny of the said supporting documents shows that all the Charge Invoices and Official Receipts issued by the Company, which support the foregoing sales, are not imprinted/stamped with the word "zero-rated". The Court also noted that (1) all Charge

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[16] Exhibits "L" to "L-24".
[17] Exhibits "O" to "O-22".

Invoices used were pre-printed with "NON VAT", and (2) all the Official Receipts used were pre-printed with "TAN" and not "TIN".

The law and regulations are explicit in emphasizing strict compliance with the invoicing requirements because for the same transactions the output VAT of the seller becomes the input VAT of the purchaser. Pursuant to Sections 106(D)(1), 108(C), and 110 of the NIRC of 1997, as amended, the output or input tax on the sale or purchase of goods is determined by the total amount indicated in the invoice, while the output or input tax on the sale or purchase of services is determined by the total amount indicated in the official receipt. In the case of zero-rated sales transactions, the regulations further require that the word "zero-rated" be imprinted on the face of the covering invoices or official receipts.[18] The rationale for the requirement of imprinting the word "zero-rated" on the face of the covering invoice or official receipt of the seller is for the buyer or purchaser not to claim any input VAT from such purchase, as elucidated by the Court *En Banc* in the case of **J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue**[19], to wit:

> "Furthermore, Section 110 of the NIRC of 1997, as amended, provides that: 'Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:. . . .' **If the invoice or official receipt was not imprinted with 'zero-rated', 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 taxpayer of the goods or services, as the case may be, notwithstanding the fact that no VAT was actually paid on such goods or services since the taxpayer 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, as the case may be. **The zero-rated taxpayer should be entitled to a tax credit/refund on input taxes paid on its purchase of goods or services subject to the mandatory compliance with the invoicing requirements under the regulations. 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.**" *(Emphasis supplied)*

[18] *American Express International, Inc., Philippine Branch vs. Commissioner of Internal Revenue,* CTA EB No.103, March 3, 2006.
[19] C.T.A. EB No. 128, January 15, 2007.

Considering the legislative grant of authority to the Secretary of Finance to promulgate all needful rules and regulations for the effective enforcement of the provisions of the NIRC, Section 4.108-1 of Revenue Regulations No. 7-95 requiring the imprinting of the word "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. Consequently, the requirement that sales invoices 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 NIRC of 1997 on sales that are subject to ten percent (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 NIRC of 1997 on VAT, namely:

1. Zero-rated sales [Sections 106(A)(2) and 108(B)];
2. Exempt transactions [Sections 109 and 112(A)];
3. Tax Credits [Section 110]; and
4. Refunds or tax credits of input tax [Section 112].

The rule is that 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.

In fine, without valid VAT official receipts, petitioner's alleged sales of electricity to NPC for taxable year 2003 cannot qualify for VAT zero-rating under Section 108(B)(3) of the NIRC of 1997. Consequently, the claimed unutilized input VAT attributable thereto in the amount of P717,030.29 cannot be granted. It is clear from the provision of Section 112(A) of the NIRC of 1997 that there must be zero-rated or effectively zero-rated sales in order for a refund claim of input VAT could prosper.

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

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

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

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division