REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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SILICON PHILIPPINES, INC.,
Petitioner,

C.T.A. CASE NO. 6310

Members:

\- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 11 2006, 8:00AM

x - x

DECISION

BAUTISTA, L., J.:

Before Us is a Petition for Review seeking the issuance of a tax credit certificate in the amount of Fifty Two Million Eight Hundred Nine Thousand Nine Hundred Thirty Nine Pesos and 93/100 (P52,809,939.93) allegedly representing input value-added tax paid on domestic purchases of goods and services and importation of goods/capital equipment which are attributable to zero-rated sales covering the second quarter of 1999.

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Silicon Philippines Inc., ("petitioner"), previously known as Intel Philippines Manufacturing Inc., is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office at No. 1321 Apolinario Street, Bangkal, Makati City. It is registered as a value-added tax ("VAT") taxpayer effective January 30, 1996, as evidenced by Certificate of Registration No. 32A-3-002649 and BIR Form No. 1556 - Certification of Registration No. 94-048-02621.[1] Petitioner is likewise registered with the Board of Investments ("BOI") as a preferred-pioneer enterprise for the production/manufacture and export of tested and untested integrated circuits, such as large scale integrated circuits and microprocessor.[2]

The Commissioner of Internal Revenue ("respondent") is the appointed government official vested with authority to exercise the functions of his office, including, among others, the power to refund any internal revenue tax erroneous or illegally assessed or collected under the 1997 National Internal Revenue Code ("NIRC"), as amended, with office address at the BIR National Office Building, Diliman, Quezon City.

On July 22, 1999, petitioner filed its VAT return for the second quarter of 1999 declaring, among others, zero-rated sales of P1,810,154,723.64, output VAT of P34,799.57 and excess input taxes of P52,809,939.93 for the said quarter, as follows:[3]

		INPUT VAT		
Zero-rated Sales	Output VAT	Domestic Purchases	Importation Of Goods	Excess
	(a)	(b)	(c)	(b) + (c) – (a)
P1,810,154,723.64	P34,799.57	P23,722,708.50	P29,122,031.00	P52,809,939.93

Convinced that it is entitled to the aforesaid excess input VAT payments of P52,809,939.93, on August 6, 1999, petitioner filed with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance ("DOF"), an

[1] Exhibits "A" & "B"
[2] Exhibit "C"
[3] Exhibit "D"

administrative claim for refund or tax credit thereof per BIR Form No. 2552 and Claimant Information Sheet No. 35421.[4]

Due to the inaction of the DOF to act on its claim, petitioner appealed before this Court on June 29, 2001. According to petitioner, it generated and recorded export sales in the amount of P1,810,154,723.64 which was paid for in acceptable foreign currency and accounted for in accordance with existing regulations of the Bangko Sentral ng Pilipinas ("BSP"). The said export sales are zero-rated for VAT purposes pursuant to Sections 106(A)(2)(a)(1) and 108(B)(1) of the 1997 NIRC, as amended, and as confirmed by VAT Ruling No. 102(a)(1)-402-88. Moreover, for the same taxable quarter, petitioner alleges that it paid input VAT on domestic purchases of goods and services and importation of goods/capital equipment in the sum of P52,809,939.93 which were all attributable to its zero-rated sales.

On the other hand, respondent, in his Answer, alleges that petitioner's claim for refund is subject to administrative investigation by the Bureau; petitioner must prove that its sales are export sales contemplated under Section 106(A)(2)(a)(1) of the 1997 NIRC, as amended; in an action for refund, the burden of proof rests upon the taxpayer to establish its right to refund; and failure to sustain the burden is fatal to its claim considering that claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation.

The parties jointly stipulated on the following issues for the consideration of the Court:

> "(a) Whether or not petitioner's claim for VAT refund of an alleged unutilized input VAT for the second quarter of 1999 is duly substantiated/supported by documentary evidence;
>
> (b) Whether or not the VAT input taxes have not been applied to any output tax for the period covered in its claim or any succeeding period; and

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[4] Exhibits "J" and "I", respectively

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(c) Whether or not petitioner is entitled to the refund of P52,809,939.93 allegedly representing domestic purchases of goods and services and importation of goods/capital equipment for the period April 1, 1999 to June 30, 1999.[5]"

It is the posture of petitioner that its export sales are subject to zero percent (0%) VAT pursuant to Sections 106(A)(2)(a)(1) and 108(B)(1) of the 1997 NIRC, as amended, quoted hereunder for easy reference:

> SEC. 106. *Value Added Tax on Sale of Goods or Properties.* —
>
> (A) *Rate and Base of Tax.* — x x x
>
> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* — The term *'export sales'* means:
>
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).
>
> SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —
>
> "(A) *Rate and Base of Tax.* — xxx
>
> 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) Processing, manufacturing or repacking of goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

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[5] Rollo, p. 62

Petitioner further contends that even the respondent confirmed the zero-rating of its export sales in VAT Ruling No. 102(a)(1)-402-88,[6] the pertinent portion of which reads as follows:

> "This refers to your letter dated May 19, 1988 stating that your company is a BOI-registered company on a pioneer status as export producer (per BOI Registration Certificate No. 851010); that your production of manufactured integrated circuits is exported 100% to your parent company, Intel Corporation, California, U.S.A. and that the services are paid for in acceptable foreign currency.
>
> x x x
>
> In reply, please be informed that services rendered by VAT-registered persons in connection with the processing, manufacturing or repacking of goods for persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency inwardly remitted to the Philippines and duly accounted for under the regulations of the Central Bank of the Philippines, shall be subject to zero rate (0%) pursuant to Section 102(a)(1) [now 108(B)(1)] of the Tax Code, as amended by E.O. 273."

To substantiate its export sales for the second quarter of 1999 and the foreign currency proceeds thereof, petitioner presented before this Court the following documents:

Document	Exhibit
1. Petitioner's Quarterly VAT Return for the second quarter of 1999	D
2. Certificate of Inward Remittances for the whole year 1999 issued by Citibank, N.A. dated June 15, 2000	L
3. Petitioner's export sales summary for the 2nd quarter of 1999	P, P-1 to P-4
4. Credit advice and bank statements issued to petitioner by Citibank, N.A., export sales invoices export declarations and air waybills	P-5 to P-597
5. Report of the commissioned independent CPA, Eliseo A. Aurellado	Q

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[6] Exhibit "K"

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This Court finds that the aforementioned documents proved that petitioner's products were actually sold and shipped abroad and in consideration thereof, petitioner received foreign currency payments, which were inwardly remitted in accordance with the rules and regulations of the BSP. Thus, these export sales may properly fall within the export sales transactions subject to zero percent (0%) VAT referred to under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, instead of Section 108(B)(1) of the same Code, which deals on the sale of services. Furthermore, per its VAT Registration Certificate (*Exhibit "A"*), petitioner's registered business activity is sale of goods, not sale of services. However, Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, must be read in relation to Section 113 of the same Code, as implemented by Section 4.108-1 of Revenue Regulations No. 7-95 which prescribes that a VAT registered person like petitioner, shall, for every sale, issue an invoice or receipt which must contain the following information:

> 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.

> **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
> 6. the invoice value or consideration.

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xxx xxx xxx

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 a "VAT Invoice". All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax. (*Emphasis supplied*)

Such invoice or receipt must be duly registered with the Bureau of Internal Revenue as prescribed under Section 237 of the NIRC of 1997, to wit:

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. x x x *(Emphasis supplied)*

A scrutiny of petitioner's sales invoices[7] reveals that they were not duly registered with the BIR as mandated under Section 237 of the NIRC of 1997. There was no authority to print or BIR permit number reflected on said invoices. Basic is the rule that before a printer can print receipts or sales or commercial invoices an authority to print must be secured first from the BIR by all persons who are engaged in business, pursuant to Section 238 of the NIRC of 1997. Pertinent portion of Section 238 is quoted hereunder:

SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* - All persons who are engaged in business shall secure from the Bureau of Internal Revenue an **authority to print** receipts or **sales or commercial invoices** before a printer can print the same. *(Emphasis supplied)*

The above provision seeks to eliminate the use of unregistered and double or multiple sets of receipts by striking at the very root of the problem — the printer (***Intel Philippines Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6338, July 18, 2005 citing Intel Philippines Manufacturing, Inc. vs. Commissioner of Internal Revenue CTA Case No. 6170, November 24, 2003***).

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[7] Included in Exhibits "P-9" to "P-597"

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Petitioner nevertheless asserts that it was authorized by the BIR to issue such computerized sales invoices as evidenced by the permit to use computerized accounting records dated May 27, 1998 issued by the BIR in its favor.[8]

We do not agree. The said permit was only limited to the use of pre-numbered loose leaf computerized books of accounts, such as the General Ledger, Accounts Receivable Subsidiary Ledger, Purchase Register, Export Sales Register and Import Register and did not include the issuance of computerized sales invoices.

In the case of ***Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, CTA EB Case No. 28 (CTA Case No. 6039), September 14, 2005,*** this Court ruled:

> After a careful and thorough perusal, evaluation and consideration of the instant Petition for Review, the Court *En Banc* finds that the absence of the Bureau of Internal Revenue's Permit to Print is fatal to petitioner's claim for refund/tax credit. In the case of *Intel Philippines Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6040, promulgated on October 24, 2003*, this Court had ruled and we quote:
>
> > *"It bears to emphasize that the export documents needed to substantiate the claim for refund must comply with the requirements as stated in Sections 113(A) and 238 of the Tax Code. Petitioner must show proof and convince this court that it has complied with the substantiation requirements imposed before the documents presented may be considered as valid evidence to prove its zero-rated sales of goods for VAT purposes under the provisions of Section 113 of the Tax Code in relation to Section 238 of the same code as well as Section 4.108-1 of Revenue Regulations No. 7-95. Pertinent provisions as follows:*
> >
> > *xxx xxx xxx*
> >
> > *Here, petitioner failed. Close scrutiny of the documents presented showed that all of petitioner's export sales invoices (included as part of export sales documents marked as Exhibits RR-1 to RR-712) did not have any Bureau of Internal Revenue Permit to Print, which contravened Section 113 and 238 of the 1997 Tax Code, nor did most of its sales invoices bear the imprinted word "zero-rated", as required under Section 4.108-*

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[8] TSN, July 14, 2004; Exhibit "U"

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1 of Revenue Regulations 7-95. Violation of these mandatory and specific requirements is tantamount to denying such evidence to prove the zero-rated sales of goods for VAT purposes of the petitioner, pursuant to Section 3 of Rule 128 of the 1997 Rules of Court. Evidently, petitioner failed to substantiate its demand for refund or issuance of a tax credit certificate."

Rules and regulations with regard to procedures are implemented not to be ignored nor taken for granted, but are to be strictly adhered to for they are developed from the law itself. Though we agree with the Honorable Supreme Court when it said that "rules of procedure are mere tools to facilitate the attainment of justice and that strict and rigid application of rules which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided", we believe that this does not apply to the instant case. It has always been the procedure and a requirement that before any printing of invoices or receipts is considered, the Bureau of Internal Revenue Permit to Print should have first been obtained. As an exporter, petitioner is, or should be, aware of this. Section 238 of the Tax Code requires that all persons who are engaged in business should secure from the Bureau of Internal Revenue an "authority to print" receipts or sales invoices or commercial invoices before a printer can print the same. Consequently, the only proof to show that such a mandatory requirement has been complied with is by clearly imprinting the said permit number on the invoices itself. In addition, Revenue Regulations No. 2-90 restored the requirement of registering and stamping the newly printed receipts or invoices prior to their use. To quote the pertinent provision:

"Sec. 19. Authentication and registration of books, register, or records, authority to print receipts, sales and commercial invoices, and registration and stamping of receipts and invoices:

xxx xxx xxx

(d) Registration and stamping of receipts and invoices.

Before being used, the printed receipts, sales or commercial invoices shall be registered with the revenue district officer where the principal place of business of the taxpayer is located within thirty (30) days from the date of printing the same. The registration of the printed receipts or invoices shall be evidenced by an appropriate stamp on the face of the taxpayer's copy of the authority to print as well as on the front cover, on the back of the middle invoice or receipt and on the back of the last invoice or receipt of the registered booklet or pad, authenticated by the signature of the officer authorized to place the stamp thereon."

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> Blunders and inaccuracies of petitioner cannot be tolerated since the law is very clear with its mandatory requirements. Thus, petitioner cannot just bury itself under the Honorable Supreme Court's decision on the relaxation of the rules of procedure. *(Underscoring Ours)*

Therefore, without **duly registered VAT sales invoices** containing the required information, particularly the **BIR authority to print**, petitioner's TIN-VAT number, and the imprinted word "zero-rated", petitioner's reported export sales of P1,810,154,723.64 for the second quarter of 1999 cannot qualify for zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997. Without zero-rated sales, petitioner's claimed input VAT payment attributable thereto cannot be granted pursuant to Section 112(A) of the NIRC of 1997 which allows the refund/tax credit of excess input VAT based on the existence of zero-rated or effectively zero-rated sales, to wit:

> "**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" *(Emphasis supplied)*

Notwithstanding the foregoing, petitioner may still claim refund/tax credit of the input taxes paid on capital goods in accordance with Section 112(B) of the NIRC of 1997, which states:

> "**SEC. 112.** ***Refunds of Tax Credits of Input Tax.*** –
>
> xxx xxx xxx
>
> "(B) *Capital goods.* — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made."

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Corollarily, Sections 4.106-1(b) and 4.104-5 of Revenue Regulations No. 7-95 provide as follows:

"**SEC. 4.106-1. Refunds or tax credits of input tax.** — (a) xxx

xxx xxx xxx

(b) Capital Goods - Only a VAT registered person may apply for issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased. The refund shall be allowed to the extent that such input taxes have not been applied against output taxes. The application should be made within two (2) years after the close of the taxable quarter when the importation or purchase was made.

Refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT taxable business. If it is also used in exempt operations; the input tax refundable shall only be the ratable portion corresponding to the taxable operations.

"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."

"**SEC. 4.104-5. Substantiation of claims for input tax credit.** — (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Section 108(a) and 238 of the Code. Xxx

xxx xxx xxx

(b) Input tax on importations shall be supported with the import entry or other equivalent document showing actual payment of VAT on the imported goods."

Based on the above provisions, in order to be entitled to a refund/tax credit of input VAT paid on capital goods purchased, petitioner has to prove:

1) That it is a VAT registered entity;
2) That input taxes claimed were paid on capital goods duly supported by VAT invoices and official receipts;
3) That it did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and
4) That the claim for refund was filed within the two-year prescriptive period both in the administrative and judicial levels (***BASF Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6283, February 10, 2004, affirmed on January 5, 2006 in CTA E.B. No. 47***).

Based on the evidence on record, petitioner is a VAT registered entity.[9] And the VAT returns for the second and third quarters of 1999[10] proved that the subject claim of P52,809,939.93 (inclusive of the claimed input VAT payment on importation of goods/capital equipment in the amount of P29,122,031.00) was not applied against any output VAT liability. Further, taking into account that the reckoning of the two (2)-year prescriptive period for the filing of a claim for input VAT refund starts from the date of filing of the corresponding quarterly VAT return (***JIDECO MANUFACTURING PHILIPPINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE, CTA Case No. 6552, September 16, 2004)***, both the administrative claim for refund filed on August 6, 1999 and the Petition for Review filed on June 29, 2001, fall within the two-year prescriptive period counted from July 22, 1999, the date when petitioner filed its VAT return for the second quarter of 1999. Thus, all the above requisites has been complied with by the petitioner save for the second requisite.

Petitioner avers that the total claim of P52,809,939.93 included input VAT paid on importation of goods/capital equipment in the amount of P29,122,031.00.[11] However, as per the report of the commissioned CPA, out of the claimed input VAT payment of P29,122,031.00, the amount of P7,125,713.00 was not supported by documents, such as Bureau of Customs (BOC) official receipts or machine validated Import Entry and Internal Revenue Declaration establishing actual payment thereof to the BOC[12], pursuant to Section 4.104-5 of Revenue Regulations No. 7-95, detailed as follows:

Ref.	Claimed Input Tax
MC-0404-99	P 341.00
MC-0404-99	3,377.00
MC-0404-99	38,855.00
MC-0404-99	2,769,963.00
MC-0404-99	8,663.00
MC-0404-99	2,571.00

[9] Exhibit "A"
[10] Exhibits "D" & "G"
[11] Page 3, Petition for Review; Exhibits "D" & "R"
[12] Under Exception "A", Exhibit "Q"

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MC-0404-99	9,078.00
MC-0404-99	696,595.00
JV-MN905095	6,105.00
JV-MN905095	1,542,092.00
JV-MN905095	978,022.00
JV-MN905095	977,974.00
JV-MN905095	76,482.00
MC-060199	784.00
MC-060299	5,856.00
MC-060399	598.00
MC-060499	559.00
MC-060599	6,803.00
MC-060699	668.00
MC-060799	327.00
	P 7,125,713.00

While petitioner was able to prove actual payment of the remaining input VAT of P21,996,318.00 (P29,122,031.00 less P7,125,713.00) on its importation, it nonetheless failed to submit documents, such as the detailed schedule of capital goods purchases, detailed general ledger, and audited financial statements proving that the related importation qualify as capital goods. It must be stressed that under Section 4.106-1(b) of RR No. 7-95, in order that the items purchased can be classified as capital goods or properties, it must be shown that: 1) the goods or properties have economic useful life of more than one year; 2) such goods or properties are treated as depreciable assets under Section 29(f) [now 34(F) of the NIRC of 1997]; and 3) they are used directly or indirectly in the production or sale of taxable goods or services.

For petitioner's failure to present documents proving that its importation fall within the definition of capital goods under Section 4.106-1(b) of RR No. 7-95, the claimed input VAT payment of P21,996,318.00 allegedly attributable thereto cannot be granted.

IN VIEW OF THE FOREGOING, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

Dissenting and Concurring

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SILICON PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE No. 6310

Members:

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

Promulgated:

OCT 1 1 2006, 8:00 AM

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Concurring and Dissenting Opinion

With due respect to my esteemed colleagues, although I agree with the majority as regards its decision to deny petitioner's claim for refund or issuance of tax credit certificate for its unutilized/excess input value-added tax paid on capital goods covering the second quarter of 1999, on the ground that petitioner failed to submit documents and other pieces of evidence to prove that the goods were capitalized in its book of accounts and subjected to depreciation, I wish to manifest my dissent with respect to the portion of the Decision that found the export sales invoices/receipts invalid, incompetent, and irrelevant for failure to imprint the term "zero-rated" and the subsequent denial of petitioner's claim for tax refund or issuance of tax credit certificate for its zero-rated sales.

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 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, the invalidation of the same and the denial of the refund claim are not the legally imposable penalties for failure to meet such alleged requirement; and (4) the other equally valid pieces of evidence presented and formally offered are sufficient proof to justify the grant of the VAT refund claim attributable to its zero-rated transactions.

The relevant provisions of the 1997 Tax Code, namely, **Sections 113** and **237**, provide as follows:

> "**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."
>
> xxx xxx xxx
>
> "**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

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> 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."

Clearly from the foregoing, the only information required to be indicated in an invoice or official receipt, as a precondition for its validity and for claiming a refund claim of input VAT paid, are:

(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.

Likewise, the tenor of **Section 112 (A) of the Tax Code** permits all VAT-registered enterprises engaged in zero-rated transactions to claim a refund of their creditable input tax due or paid to the extent that such input tax has not 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 term "zero-rated" on the VAT invoice can claim to get its authority from is **Section 4.108-1 of Revenue Regulations No. 7-95** (*The Implementing Rules and Regulations of the VAT*

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law). However, the said provision is merely a regulation created for the sole and limited purpose of implementing a very exact law. Long-established is the legal principle that administrative rules and regulations cannot expand the letter and spirit of the law they seek to enforce. 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*).

The High Tribunal in the recently promulgated case of **Commissioner of Internal Revenue vs. Seagate Technology (Philippines)**, *G.R. No. 153866, February 11, 2005*, 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. xxx. Administrative convenience cannot thwart legislative mandate.*

Consequently, the requisites to be entitled to the refund/tax credit of unapplied or unutilized input VAT are as follows:

1. There must be zero-rated or effectively zero-rated sales;
2. That input taxes were incurred or paid;
3. That the input taxes are attributable to such zero-rated or effectively zero-rated sales;
4. That the input taxes were not applied against any output VAT liability; and
5. The claim for refund was filed within the two-year prescriptive period.

As found by the majority, the petitioner has satisfied the foregoing requisites and established its right to the tax refund through duly submitted material and

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documentary exhibits. The documents formally offered as evidence by the petitioner, particularly, export documents, such as, export sales invoices, export declarations and airway bills, export sales summary, certificate of Inward Remittances, among others, sufficiently prove that the petitioner's export sales were actually made. The substantive and main requirement of the Tax Code, which is the actual sale and shipment of goods to be considered as zero-rated sales, was satisfactorily complied with and effectively proven before this Court by the petitioner.

Accordingly, I manifest my dissent to the majority opinion insofar as it finds that the term "zero-rated" must be imprinted in the export sales invoice/receipt to be a valid evidence in claiming for refund of or issuance of tax credit certificate for excess input taxes, notwithstanding the requirement stated in a BIR Regulation; and that failure to do so will not cause the outright denial of petitioner's claim especially as in this case where there are other pieces of evidence proving the export transactions and the taxpayer's VAT status.

ERNESTO D. ACOSTA
Presiding Justice