REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HITACHI GLOBAL STORAGE TECHNOLOGIES PHILIPPINES CORP. [formerly Hitachi Computer Products (Asia) Corp.], Petitioner,	**C.T.A. EB No. 54** (C.T.A. Case No. 6312)
-versus-	Members: Acosta, *Presiding Justice,* Castañeda, Jr., Bautista, Uy, Casanova, Palanca-Enriquez, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAR 2 2 2006 Cn Apolinario

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D E C I S I O N

CASTAÑEDA, JR., *J.*:

This is a Petition for Review before the Court of Tax Appeals *En Banc* (the Court *En Banc*) pursuant to Section 18 of Republic Act No. 1125 as amended by Section 11 of Republic Act No. 9282 seeking for the reversal of the Decision promulgated on March 9, 2004 by the then Court of Tax Appeals (the Court in Division) in C.T.A. Case No. 6312 entitled *"Hitachi Global Storage Technologies Philippines Corp. [formerly*

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Hitachi Computer Products (Asia) Corp.] vs. Commissioner of Internal Revenue" and the Resolution dated December 9, 2004 affirming the assailed Decision. The dispositive portion of the Decision reads as follows:

> "**IN VIEW OF THE FOREGOING**, petitioner's claim for refund or issuance of a tax credit certificate in the amount of P25,023,471.84 representing excess input value-added tax (VAT) payments that are attributable to zero-rated export sales for the four taxable quarters of 1999 is hereby **DENIED**."

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

> "Petitioner is a domestic corporation organized and existing under the laws of the Republic of the Philippines, with principal office at Special Export Processing Zone, Laguna Technopark, Biñan, Laguna *(par. 1, Stipulated Facts)*. It is primarily engaged in the business of manufacturing, exporting, buying, selling or otherwise dealing in at wholesale electric, electronic and software products and industrial properties, including but not limited to hard disk drive and component parts and supplies used or employed in or related to the manufacture of such products *(Exhibit A-1)*.
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> Petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with Certificate of Registration bearing RDO Control No. 94-570-000298 dated June 28, 1994 *(Annex A, Petition for Review, page 6, CTA records)*. It is likewise registered as an Export Enterprise with the Export Processing Zone Authority pursuant to the provisions of Presidential Decree No. 66, as amended, with Certificate of Registration No. 94-28 dated May 11, 1994 *(Annex B, Petition for Review, page 7, CTA records)*.
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> On October 7, 1994, the Export Processing Zone Authority, through its Special Board, issued Resolution No. 94-212 approving petitioner's application for pioneer status of its small-sized, high density hard disk drive and thin film magnetic head manufacturing facility. It was further resolved that petitioner's facility/project shall be entitled to six (6) years income tax holiday *(Exhibit B)*.
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> Petitioner alleges that for the taxable year 1999, it generated export sales in the amount of P21,608,333,731.27 and paid input VAT amounting to P25,023,471.84 (net of output tax) on its domestic purchases of goods and services which are directly attributable to its export sales for the same year.

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> Petitioner believes that since its 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, the same are subject to zero percent (0%) VAT pursuant to Section 106(A)(2)(a)(1) of the Tax Code and that it can claim a refund or tax credit of the unutilized input VAT attributable thereto in accordance with Section 112 of the Tax Code.
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> On August 4, 2000, petitioner filed an administrative claim for refund corresponding to its alleged excess/unutilized input VAT payments of P25,023,471.84 *(Annex K, Petition for Review, page 66, CTA records)*."

Due to respondent's inaction on its claim, petitioner filed a Petition for Review with the Court of Tax Appeals on July 2, 2001.

The stipulated issues for resolution were the following:

1. Whether petitioner's sales are exempt from VAT or are zero-rated;

2. Assuming arguendo that the petitioner's sales are zero-rated, whether or not the VAT input taxes are attributable to zero-rated sales for the 1st, 2nd, 3rd and 4th quarters of 1999;

3. Whether or not the creditable VAT input taxes of petitioner for the 1st, 2nd, 3rd and 4th quarters of 1999 are substantiated by documentary evidence; and

4. Whether or not the said unapplied or unutilized creditable input for the 1st, 2nd, 3rd and 4th quarters of 1999 were carried over to the succeeding taxable quarter(s) and applied against any output tax liability of the petitioner for the said period.

On the issue of whether or not petitioner's export sales are exempt from VAT, the Court in Division ruled that petitioner's export sales are not exempt, thus:

> "It is worth stressing that the respondent failed to introduce any evidence to support his allegation that petitioner is exempt from the value-added tax. Petitioner, however, was able to establish that it

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> enjoyed an income tax holiday during the subject period of the claim, as evidenced by the EPZA Certificate of Board Resolution *(Exhibit B)*. Hence, petitioner was only exempt from income tax but was still subject to other national internal revenue taxes such as the VAT."

After determining that petitioner's export sales are not exempt from VAT, the Court in Division resolved whether or not petitioner's sales qualify as zero-rated sales, thus:

> "To prove its export sales for taxable year 1999 and the foreign currency proceeds thereof, petitioner presented in evidence various export invoices, airway bills, export declarations, summary of collections, netting schedule, bank passbooks and certifications, Deed of Assignment of Trade Receivables and Letter of Citibank, N.A. Tokyo to petitioner regarding the purchase of trade receivables of petitioner.
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> However, a thorough scrutiny of the preceding documents revealed that petitioner's export sales invoices failed to comply with the invoicing requirements under Section 113(A) in relation to Section 237 of the Tax Code and as implemented by Section 4.108-1 of Revenue Regulations No. 7-95, which are all quoted herein below:
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> Petitioner's export sales invoices do not have pre-printed taxpayer's identification number (TIN) followed by the word VAT nor do the sales invoices bear the imprinted word "zero rated" which is in contravention with Section 113(A) of the Tax Code and Section 4.108-1 of Revenue Regulations No. 7-95. Also, the invoices were not duly registered with the Bureau of Internal Revenue as required under Section 237 of the Tax Code. There was no BIR authority to print or BIR permit number indicated in the said invoices.
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> On account of petitioner's violation of the VAT law and regulations, this court cannot consider the export sales invoices as valid evidence of zero-rated sales of goods for VAT purposes. Although petitioner submitted other documents such as airway bills, export declarations and proofs of foreign currency remittances, the same cannot be considered sufficient. It should be noted that all of the aforementioned documents, together with the duly registered VAT invoices or receipts, taken collectively, are the best means to prove the exportation of goods ***(The Commissioner of Internal Revenue vs. Philippine Bobbin Corporation, CA-G.R. SP No. 59452, February 19, 2001)***."

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In view of the foregoing factual findings, the Court in Division denied petitioner's claim for refund or issuance of a tax credit certificate in the amount of P25,023,471.84 representing alleged excess input value-added tax (VAT) payments that are attributable to its alleged zero-rated export sales for the four taxable quarters of 1999.

Hence, petitioner filed this present appeal with the Court *En Banc* assigning the following as errors committed by the Court in Division:

1. **THE COURT A QUO ERRED WHEN IT RULED THAT PETITIONER'S EXPORT SALES INVOICES ARE NOT VALID EVIDENCE OF PETITIONER'S ZERO-RATED SALES OF GOODS FOR VAT PURPOSES SIMPLY BECAUSE SAID EXPORT SALES INVOICES FAILED TO MEET THE INVOICING REQUIREMENTS UNDER SECTION 113 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC);**

2. **THE COURT A QUO ERRED WHEN IT RULED THAT PETITIONER'S FAILURE TO COMPLY WITH THE INVOICING REQUIREMENTS UNDER SECTION 113 OF THE NIRC HAD AS A NECESSARY CONSEQUENCE THE DENIAL OF ITS CLAIM FOR REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE;**

3. **THE COURT A QUO ERRED WHEN IT DENIED PETITIONER'S CLAIM FOR REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE.**

In support of the foregoing assigned errors, petitioner proffers the following arguments:

I

"Petitioner has substantially complied with all the requirements of the law on the claim for refund of excess unutilized input VAT attributable to its export sales, citing Section 106 (A)(2)(a)(1) in relation to Section 112 of the NIRC of 1997 as legal authority therefor."

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According to the petitioner, "[b]ased on jurisprudence too numerous [to] cite, petitioner respectfully submits that the following requisites must concur in order to entitle a taxpayer to the claim for refund on the basis of Section 106(A)(2)(a)(1) of the NIRC of 1997:

1. The seller is a VAT-registered taxpayer;
2. There is a sale of goods;
3. There is actual shipment of the goods sold from the Philippines to a foreign country;
4. The sold goods are paid for in foreign currency and accounted for in accordance with the rules and regulations of the BSP;
5. The creditable input tax are duly substantiated; and
6. The claim for refund was filed within two years after the close of the taxable quarter when the sales were made."

Petitioner submits that the evidence presented during the trial substantially proved all of the requirements enumerated above.

II

"The NIRC of 1997 or Revenue Regulations No. 7-95, as amended, do not provide as penalty the disallowance of a claim for refund due to a taxpayer's non-compliance with the VAT invoicing requirements under Section 113 in relation to Section 237 of the NIRC."

Petitioner avers:

"6.5. A thorough examination of the above-cited provision of the NIRC and the regulation will clearly show that nowhere in said provision of law or regulations does it expressly provide that the consequence for non-compliance with the VAT invoicing requirements is the non-entitlement to the input tax credit or the denial of a claim for refund. Nowhere under Title IV of the NIRC nor under Revenue Regulations No. 7-95, as amended, does it expressly state that a taxpayer's inadvertent failure to meet the VAT invoicing requirements has as its consequence the taxpayer's non-entitlement to the input tax credit or the denial of its claim for refund.

6.6. The only instance where the entitlement to an input tax credit, and consequently the right to claim for refund, is taken away is that provided under the Transitory Provisions of Revenue Regulations No. 7-95, the relevant portions of which read:

> (e) Penalties – Those who, pursuant to RA 7716, are engaged in transaction subject to VAT but failed to register shall nevertheless be liable to output VAT starting January 1, 1996. **They cannot pass on the said output VAT to their customers <u>nor claim input VAT credit for purchases of goods, properties and services from VAT-registered suppliers.</u>** Moreover, buyers cannot claim input tax credit for purchases of goods from VAT-registrable sellers who failed to register. (Emphasis supplied)

Considering that Petitioner has sufficiently shown that it is a VAT-registered taxpayer, clearly, the above provision, penalizing those who failed to register under the VAT system by taking away their right to the input tax credit and consequently the right to claim for refund, will not find application.

6.7. While Petitioner must submit that non-compliance with the VAT invoicing requirements may have its consequences under Title IV and Title X of the NIRC, the denial of a claim for refund simply because of such non-compliance is definitely not one of those consequences."

III

"Petitioner's export sales invoices are valid and sufficient proof of petitioner's export sales and it has sufficiently shown its entitlement to the claim for refund."

"6.11. Petitioner has sufficiently shown that it is a VAT-registered taxpayer. Further, petitioner believes that its export sales invoices taken together with the other export documents such as airway bills, export declarations/permits and export sale summary have clearly shown its compliance with requirements 2 and 3 (The Commissioner of Internal Revenue vs. Philippine Bobbin Corporation, CA-G.R. SP No. 59452, February 19, 2001). Moreover, proof of payment in foreign currency accounted for in accordance with the rules and regulations of the BSP and substantiation of the creditable input tax were testified to and contained in the report of the independent CPA commissioned by the Honorable Court. Finally, both the administrative and judicial claims for refund were filed well within the two (2) year prescriptive period. Indisputably, Petitioner has shown by preponderance of evidence its compliance with all the requirements for its entitlement to the claim for refund."

Respondent, on the other hand, in his Comment asserts that the Honorable Court did not err in denying petitioner's claim for refund since "[t]he absence of BIR permit to print and the Taxpayer's

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Identification Number – VAT in the export sales invoices is fatal to the claim for refund because it violates the provisions of Section 113 of the 1997 Tax Code in relation to Sections 237 and 238 of the same code", as well as Section 4.108.1 of Revenue Regulations No. 7-95.

Respondent argues that "[i]t is explicit from the above provisions that a VAT registered person must issue a 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, BIR authority to print or BIR permit number and the word "zero-rated" imprinted on the invoice or receipt covering zero-rated sale. Without the duly registered VAT invoices, petitioner's export sales cannot be considered as zero-rated."

Moreover, respondent argues that:

> "Petitioner failed to comply with the invoicing requirement in order for its sale to qualify for zero-rating. As held by the First Division of this Honorable Court, to wit:
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>> Petitioner's export sales invoices do not have pre-printed taxpayer's identification number (TIN) followed by the word VAT nor do the sales invoices bear the imprinted word "zero-rated" which is in contravention with Section 113(A) of the Tax Code and Section 4.108-1 of Revenue Regulations No 7-95. Also, the invoices were not duly registered with the Bureau of Internal Revenue as required under 237 of the Tax Code. There was no BIR permit number indicated in the said invoices.
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> The Court of Tax Appeals had occasions to rule on this issue in the cases of **EG & G Omni, Inc. vs. CIR, CTA Case No. 5987 dated March 26, 2004; Intel Technology Philippines vs. CIR, CTA Cases Nos. 6039, 6169 and 6128 dated December 17,**

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2003, September 2, 2003 and September 1, 2003, respectively.

Petitioner alleges that its export sales invoices taken together with the other export documents, such as airway bills, export declarations/ permits and export sale summary have clearly shown its compliance with the requirements of the law. In its Resolution dated December 9, 2004, the First Division said, to wit:

> xxx the documents submitted by petitioner proving actual exportation of goods and the remittance of the foreign currency proceeds thereof such as airway bills, export declarations, summary of collections, netting schedule, bank passbooks and certifications, Deed of Assignment of Trade Receivables and Letter of Citibank, N.A. Tokyo to petitioner regarding the purchase of the trade receivables of petitioner are insufficient without the duly registered VAT export invoices. xxx
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> In conclusion, petitioner is not entitled to the refund sought."

In a Resolution dated July 29, 2005, the Court *En Banc* required the parties to submit their respective Memoranda within a non-extendible period of thirty (30) days from receipt thereof. Respondent filed a Manifestation stating that he is adopting his Comment on the Petition for Review as his Memorandum. On the other hand, petitioner did not heed the Order of the Court, hence, this case was resolved *sans* petitioner's Memorandum.

The petition is without merit.

Petitioner did not comply with the mandatory invoicing requirements under the 1997 NIRC and related Revenue Regulations, to wit:

a. The export sales invoices do not have a pre-printed taxpayer's identification number (TIN) followed by the word VAT as required in Section 113 (A) of the NIRC;

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b. The sales invoices were not duly registered with the Bureau of Internal Revenue (BIR) as required in Section 237 of the NIRC;

c. The sales invoices do not bear the imprinted word "zero-rated" as required in Section 4.108-1 of Revenue Regulations No. 7-95; and

d. There was no BIR authority to print or BIR permit number indicated on the export sales invoices (as required by Revenue Regulations No. 2-78).

The Value Added Tax (VAT) Law is clear, only transactions evidenced by VAT official receipts/sales invoices will be considered as VAT transactions for purposes of input/output tax. Therefore, We concur with the ruling of the Court in Division that petitioner's export sales invoices cannot be considered as valid evidence of zero-rated sales for VAT purposes.

Invoicing Requirements for
VAT – Registered Persons

The Supreme Court discussed the invoicing requirements for VAT-registered persons in *Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue* [1]. It ruled that "[i]t is clear that a VAT invoice can be used only for the sale of goods or services that are subject to VAT". This means that the issuance of VAT invoices or official receipts are mandatory for sales that are subject to

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[1] G.R. No. 134467, November 17, 1999 (318 SCRA 386).

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VAT either at 10% or 0% (zero-rated sales). The Supreme Court likewise expressed that "it is the duty of the seller to comply with the invoicing and accounting requirements laid down in, among others, Section 108 of the Tax Code". This is a clear recognition that there are other sources of VAT invoicing and accounting requirements aside from Section 108 of the Tax Code (now Sec. 113 of the NIRC of 1997), such as implementing rules and regulations issued by the administrative agencies of the government which also requires strict compliance, *i.e.* Revenue Regulations. As held by the Supreme Court in the above-cited case:

> "A careful perusal of the violations specifically listed down in Sections 111 and 263 of the Tax Code shows that they do not encompass all possible types of violations of Section 108. Certainly, there are other ways of noncompliance with the requirements the latter has laid down, and these too must have their corresponding consequences. Section 21 of Revenue Regulation 5-87 is not invalid, as it simply prescribes the penalty for failure to comply with the accounting and invoicing requirements laid down in Section 108, a penalty similar to that found in Sections 111 and 263. In short, Section 108 provides the guidelines and necessary requirements for VAT invoices; Sections 111 and 263 of the Tax Code provide penalties for different types of violations of Section 108; and Section 21 of Revenue Regulation 5-87 specifies the penalty for a specific violation of Section 108."

Petitioner did not Comply with the Mandatory Invoicing Requirements for VAT transactions

In the case before Us, petitioner failed to substantiate its alleged zero-rated sales because the export sales invoices submitted in evidence are not duly registered with the Bureau of Internal Revenue as

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required under Section 237 of the NIRC of 1997 and that said invoices do not comply with the requirements of Section 113(A) of the same code which requires the indication of the seller's Tax Identification Number (TIN) and that the seller is a VAT-Registered person. Even the Concurring and Dissenting Opinion in the Resolution dated December 9, 2004 penned by Presiding Justice Acosta recognizes that "the imprinting of the word "TIN-V" or any indication to that effect on the invoice as an essential requirement".

Applying the ruling of the Supreme Court in the Atlas case, *supra*, the absence of the indication that petitioner is a VAT-registered taxpayer through the imprinting of the TIN-VAT or TIN-V on the face of the sales invoices is fatal to petitioner's claim for refund/tax credit because the export sales invoices issued by the petitioner do not comply with the mandatory invoicing requirements laid down in Section 113 of the 1997 NIRC in relation to Section 237 of the same Code. Section 113 requires that the invoice or receipt shall contain a "statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN)" while Section 237 requires that the seller shall "issue duly registered receipts or sales or commercial invoices". Consequently, petitioner's export sales invoices cannot qualify as VAT invoices because they failed to show that petitioner is a VAT-registered person, the export sales invoices were not registered

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with the Bureau of Internal Revenue and non-compliance with Revenue Regulations No. 2-78 which requires that every copy of the invoice or receipt shall bear the name, business address and authority number of the printer.

In addition to the foregoing, all of petitioner's sales invoices are likewise not imprinted with the word "zero-rated" as required by Revenue Regulations No. 7-95, otherwise known as the Consolidated Value-Added Tax Regulations. Revenue Regulations No. 7-95 is explicit in its requirements, thus:

> "Sec. 4.108-1. Invoicing Reguirements. – 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:
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> 1. the name, TIN and address of seller;
> 2. the 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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> 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.
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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 a "VAT Invoice". All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax.
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> 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 this Code.

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> The invoice or receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records."

Revenue Regulations Validly Adopted by the Secretary of Finance [2]

Revenue Regulations No. 7-95 was promulgated by the Secretary of Finance pursuant to the authority granted by Section 245 of the National Internal Revenue Code of 1977, which provides:

> SEC. 245. ***Authority of Secretary of Finance to promulgate Rules and Regulations***. – The Secretary of Finance, upon the recommendation of the Commissioner, shall promulgate **all needful rules and regulations for the effective enforcement of the provisions of this Code**. (Emphasis supplied)

The above provision was re-enacted *in toto* under Section 244 of the 1997 NIRC. Moreover, to further strengthen the rule making power of the Secretary of Finance in coordination with the Bureau of Internal Revenue, an additional section (SEC. 245) was incorporated defining the extent of such rule making power. Section 245, in pertinent part, provides:

> SEC. 245. **Specific provisions to be contained in rules and regulations.** – The rules and regulations of the Bureau of Internal Revenue shall, among others things, contain provisions specifying, prescribing or defining:
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> xxx xxx xxx
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> (g) The manner in which revenue shall be collected and paid, the instrument, document or object to which revenue stamps shall be affixed, the mode of cancellation of the same, **the manner in which**

[2] Atlas Consolidated Mining Development Corporation vs. Court of Tax Appeals and Commissioner of Internal Revenue, C.A. G.R. SP No. 46718, September 15, 2000.

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> **the** proper books, records, **invoices** and other papers **shall be kept and *entries therein made*** by the person subject to the tax, as well as the manner in which licenses and stamps shall be gathered up and returned after serving their purposes; (Emphasis/italics supplied)

Considering that there is a legislative grant of authority to the Secretary of Finance to promulgate all needful rules and regulations for the effective enforcement of the provisions of the NIRC, Section 4.108-1 of Revenue Regulations No. 7-95 requiring the imprinting of the words "zero-rated" on sales invoices or official receipts cannot be said as having no valid basis or legislative root. On the contrary, it is both reasonable and necessary for the effective implementation of the provisions of the NIRC concerning zero-rated sales. The imprinting of "zero-rated" is necessary to distinguish sales subject to 10% VAT, those that are subject to 0% VAT (zero-rated) and exempt sales, to enable the Bureau of Internal Revenue to properly implement and enforce the other provisions of the 1997 NIRC on VAT, namely:

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

Hence, the requirement that sales invoices shall be imprinted with the word "zero-rated" cannot be taken as an enlargement or expansion of the law for the reason that it merely implements the provisions of the 1977 (as well as the 1997) NIRC on sales that are subject to 10% VAT, zero-rated sales (0% VAT) and exempt sales. 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 a recent decision, the Supreme Court held that regulations issued by the Department of Finance/Bureau of Internal Revenue that would give effect to the law are valid regulations, thus:

> Petitioner's arguments impugning the validity of Revenue Regulations 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.[3] *(Emphasis supplied; citations omitted)*

In the same vein, Revenue Regulations No. 7-95 was issued pursuant to the respondent's duty of implementing the 1977 NIRC, as amended. The requirement of imprinting the word "zero-rated" fulfills the intent of the law. It is useful and necessary not only with respect to the proper implementation of the provisions of the 1997 NIRC on zero-rated transactions but more importantly to prevent the granting of

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[3] Compania General de Tabacos de Filipinas vs. Hon. Court of Appeals and The Commissioner of Internal Revenue, G.R. No. 147361, March 23, 2004 (426 SCRA 203).

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refund or tax credit of non-existent input VAT. It is only an act of tax administration which is not violative of the rule on non-delegation of delegated powers.

In a recent case[4] the Second Division of the Court of Tax Appeals had explained the rationale behind the requirement of imprinting the word "zero-rated" on sales invoices/official receipts in the following manner:

> "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: x x x. **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)*

The absurd situation referred to in the above-cited case can be explained in monetary terms by a simple illustration. Let us assume that a VAT-registered taxpayer whose sales are zero-rated sells its product for P2,200,000.00 and issues a sales invoice that is not imprinted with the word "zero-rated" contrary to the mandatory

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[4] J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue, C.T.A. CASE NO. 6454, June 30, 2005.

requirement of Revenue Regulations No. 7-95. Since the sale is a zero-rated sale, no output VAT is due on the transaction. The buyer, *who did not even pay any input tax*, could take advantage of the situation by filing a claim for refund of the inexistent input VAT in the amount of P200,000.00.

Similarly, "sales of goods, properties and services by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be treated as export sales. If such sales are made by a VAT-registered supplier, they shall be subject to VAT at zero percent (0%)"[5] like the local purchases of the herein petitioner. Supposing the sales invoices issued by the local supplier were not imprinted with the word "zero-rated" as prescribed by Revenue Regulations No. 7-95, the PEZA registered company can file a claim for refund of the alleged unutilized input VAT attributable to its own zero-rated sales, *notwithstanding the fact that there was no payment of any input VAT at all* because the sale of goods by the local supplier to a PEZA registered company is likewise zero-rated. Consequently, the government will be refunding something that it did not even receive. Clearly, a VAT-registered taxpayer's non-compliance with the requirement of imprinting the word "zero-rated" on the face of the sales invoices or official receipts exposes the government to the danger of refunding a

[5] Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phil.), Inc., G.R. No. 150154, August 9, 2005.

non-existent input VAT payment. Hence, the need for strict compliance with the mandatory requirement of imprinting the word "zero-rated" on sales invoices or official receipts regardless of whether or not the business entity engages only in export sales since Revenue Regulations No. 7-95 did not make any distinction on the different kinds of zero-rated sales.

Apropos the refund of alleged unutilized input VAT of PEZA-registered entities, the Supreme Court quoted a portion of Revenue Memorandum Circular No. 42-03 in the case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phil.) Inc.*[6] that reads, in part, as follows:

> "For invoices/receipts issued upon the effectivity of RMC No. 74-99, the claims for input VAT by PEZA-registered companies, regardless of the type or class of PEZA registration, should be denied."

Imprinting of the word "zero-rated" on VAT Official Receipts / Sales Invoices is Mandatory

The Second Division of the Court of Tax Appeals had already explained that pursuant to Section 4.108-1 of Revenue Regulations No. 7-95, the requirement of imprinting the word "zero-rated" on official receipts and sales invoices is mandatory, thus:

> "The afore-quoted revenue regulation issued to implement the NIRC provision on VAT invoicing and accounting requirements is mandatory as the word "shall" is used. The word "shall" is imperative,

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[6] Ibid.

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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 (*Pimentel vs. Aguirre, Jr., citing Ruben A. Agpalo, Statutory Construction, 1990 Ed., p. 239*). Indeed, it is the duty of a seller-taxpayer to comply with the invoicing requirements laid down in the said memorandum circular."[7]

In another case, the First Division had ruled as follows:

"After a careful perusal of the documents presented by petitioner to prove that the amount of P1,727,504.38 represents export sales, We have noted that the commercial invoices of petitioner failed to comply with invoicing requirements under Section 4.108-1 of Revenue Regulations No. 7-95 in relation to Sections 108 and 238 of the National Internal Revenue Code of 1993.

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The commercial invoices issued by petitioner to support its export sales failed to meet the above standard. **Petitioner failed to indicate that it is a VAT-registered person, followed by his taxpayer's identification number. The word "zero-rated" is also not imprinted in the invoices.** In addition, there was no indication that the commercial invoices were authorized to be printed by the Bureau of Internal Revenue as required in Section 239 of the National Internal Revenue Code of 1993 which provides:

> SEC. 239. *Printing of receipts or sales or commercial invoices.* – All persons who print receipts or sales or commercial invoices shall for every job order, secure from the Bureau of Internal Revenue an authority to print said receipts or invoices before printing the same.
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> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, taxpayer account number and business address of the person or entity to use the same.
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Corollarily, for failure of petitioner to comply with the requisites under the law, the export sales in the amount of P1,727,504.38 cannot be qualified as zero-rated for VAT purposes. Moreover, the commissioned Independent CPA noted the said export sales have either no export declaration/permits or supported by

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[7] Tropitek International, Inc. vs. Commissioner of Internal Revenue, C.T.A. CASE NOS. 6422 and 6499, July 13, 2005.

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> photocopied export declarations/permits. Hence, respondent's assessment for 10% value-added tax is sustained."[8] *(Emphasis supplied)*

The Court of Appeals had likewise ruled that non-compliance with the invoicing requirements is fatal to a claim for tax credit/refund, thus:

> "While it may be true that under Section 106 (a)(2)(a)(1) of the NIRC, VAT registered persons are entitled to claim VAT refunds on their input taxes while their export sales are zero-rated, **nevertheless, it is subject to compliance with certain requirements**.
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> Section 113 of the NIRC explicitly sets forth the Invoicing and Accounting Requirements for VAT-Registered Persons. xxx xxx xxx
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> xxx xxx xxx
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> From the foregoing, therefore, it is clear that it is not only the export sales that should be proven but also compliance with the requirements set forth under the aforestated sections of the NIRC.
>
> Moreover, Revenue Regulations No. 7-95, as amended, states that:
>
> > 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;
> > 6. The invoice value or consideration.
> >
> > xxx xxx xxx
>
> Besides, Revenue Memorandum Circular No. 42-2003 has already clarified the issue relative to the failure of a claimant to comply with certain invoicing requirements. Under said memorandum,

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[8] Littlegiant Steel Pipe Corporation vs. Commissioner of Internal Revenue, C.T.A. CASE NO. 6203, July 19, 2005.

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> failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax by the purchaser-claimant. Thus, if the claim for refund/issuance of tax credit certificate is based on the existence of zero-rated sales by the taxpayer but fails to comply with the invoicing requirements in the issuance of sales invoices (e.g. failure to indicate the TIN), **the claim for tax credit/refund of VAT on its purchases shall be denied since the invoice issued to the customers failed to depict that he is a VAT-registered taxpayer whose sales are classified as zero-rated sales**. xxx xxx xxx."[9] *(Emphasis supplied)*

Effect of Non-Compliance with the Mandatory Invoicing Requirements

According to the petitioner, "The NIRC of 1997 or Revenue Regulations No. 7-95, as amended, do not provide as penalty the disallowance of a claim for refund due to a taxpayer's non-compliance with the VAT invoicing requirements under Section 113 in relation to Section 237 of the NIRC". Petitioner argues that "[n]owhere under Title IV of the NIRC nor under Revenue Regulations No. 7-95, as amended, does it expressly state that a taxpayer's inadvertent failure to meet the VAT invoicing requirements has as its consequence the taxpayer's non-entitlement to the input tax credit or the denial of its claim for refund".

We are not persuaded.

The Court in Division ruled that "[f]or petitioner's failure to properly substantiate its alleged zero-rated sales, the input VAT refund

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[9] Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, CA-G.R. SP NO. 79327, August 12, 2004.

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sought for cannot be granted"[10] reiterating that tax refunds are in the nature of tax exemptions and as such they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption.

We agree with the ruling of the Court in Division that petitioner's claim for refund of input VAT cannot be granted. Considering that "[s]ales invoices or receipts are necessary to substantiate the actual amount or quantity of goods sold and their selling price"[11] and that petitioner's claim for refund or issuance of tax credit certificate for unutilized input VAT is based on the existence of zero-rated sales, the failure of the petitioner to prove that its sales are indeed "zero-rated" nullifies the very basis of its claim for refund.

The importance of complying with the mandatory invoicing requirements under the NIRC and Revenue Regulations cannot simply be brushed aside. In the course of a tax audit, official receipts and sales or commercial invoices which do not comply with the provisions of the NIRC and Revenue Regulations are not considered as sufficient substantiation for expenses incurred by individuals and business entities. *The business expenses which are otherwise deductible from gross income are disallowed as deductions when found to be covered*

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[10] Decision, March 9, 2004, C.T.A. Case No. 6312, p. 9.
[11] Deoferio, Jr. and Mamalateo, The Value Added Tax in the Philippines, First Edition, p. 280, citing Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue, C.T.A. Case Nos. 4984, 5008, 5037 & 5061.

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by official receipts or invoices which do not comply with the requirements of the NIRC and Revenue Regulations. If the deductible business expenses are required to be substantiated by registered official receipts or sales invoices that comply with the provisions of the NIRC of 1997, then and with more reason, should strict compliance with the requirements of the NIRC and Revenue Regulations be demanded in claims for refund of taxes.

Also, Revenue Memorandum Circular No. 42-03 dated July 15, 2003, entitled *"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"*, in part, provides:

> "If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g. failure to indicate the TIN), **its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales**." *(Emphasis supplied)*

As aptly ruled by the Court of Appeals in the above-cited *Intel Technology Philippines, Inc.* case:

> "Under the said memorandum, failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax by the purchaser-claimant. Thus, if the claim for refund/issuance of tax credit certificate is based on the existence of zero-rated sales by the taxpayer but fails to comply with the invoicing requirements in the issuance of sales invoices (e.g. failure to indicate the TIN), **the claim**

> **for tax credit/refund of VAT on its purchases shall be denied since the invoice issued to the customers failed to depict that he is a VAT-registered taxpayer whose sales are classified as zero-rated sales.**" *(Emphasis supplied)*

Finally, it is well-settled that tax refunds are in the nature of tax exemptions and as such must be strictly construed against the claimant[12] and that taxpayers have the burden of proving compliance with the mandatory provisions of the National Internal Revenue Code and various revenue issuances when claims for refund or issuance of tax credit certificates are involved as in petitioner's case before this Court. Otherwise, the intention of the lawmakers in enacting the VAT law as a revenue generating mechanism would be negated and the same law could in fact become a convenient and effective scheme of bleeding the already limited financial resources that are available to the government in performing its functions.

WHEREFORE, the Petition for Review *En Banc* is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision dated March 9, 2004 and Resolution dated December 9, 2004 are hereby **AFFIRMED** *in toto.*

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.,
Associate Justice

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[12]Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation and The Court of Tax Appeals, G.R. No. 66838, December 2, 1991 (204 SCRA 377); Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc. and Court of Appeals, G.R. No. 127105, June 25, 1999 (309 SCRA 87).

We Concur:

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

(Official Business)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of this Court before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HITACHI GLOBAL STORAGE TECHNOLOGIES PHILIPPINES, CORP. [formerly Hitachi Computer Products (Asia) Corp.], *Petitioner,*	**C.T.A. EB No. 54 (C.T.A. Case No. 6312)**
	Present:
-versus-	**Acosta,** ***P.J.*** **Castañeda, Jr., Bautista, Uy, Casanova, and Palanca-Enriquez,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 2 2 2006 Apolinario

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Concurring and Dissenting Opinion

I wish to reiterate my disagreement to the denial of herein petitioner's claim for refund or issuance of a tax credit certificate representing excess input value-added tax (VAT) payments on its domestic purchases of goods and services attributable to its zero-rated export sales, on the ground that the export sales invoices are not valid evidence of zero-rated sales for failure to comply with alleged VAT invoicing requirements imposed by Sections 113 (A) and 237 of the 1997 Tax Code and Section 4.108-21 of Revenue Regulations No. 7-95, specifically, that the supporting VAT invoices (1) did not have pre-printed taxpayer's identification number (TIN) followed by the word VAT, (2) did not bear the imprinted word "zero-rated", and (3) were not duly registered with the Bureau of Internal Revenue (BIR).

I concur in the majority opinion only as regards the finding that the imprinting of the word "TIN-V" or any indication to that effect in the invoice as an essential requirement.

However, I differ with the position of the majority concerning the view that failure to reflect on its sales invoices its authority to print and/or the word "zero-rated" will automatically make the same invalid, incompetent and irrelevant.

Inasmuch as the requirements mentioned in **Section 113** in relation to **Section 237 of the 1997 Tax Code** and their proper interpretation are the crux of the controversy, the same are quoted hereunder for ready reference, to wit:

> "**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
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> 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

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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".

From the foregoing, the information required to be indicated in an invoice or official receipt 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.

Clearly, the petitioner's authority to print and the word "zero-rated" are not among the information required to appear on its sales invoice or official receipt as a condition for claiming refund of input VAT paid.

This view is corroborated by the recent pronouncement of the Honorable Supreme Court in the case of **Commissioner of Internal Revenue vs. Seagate Technology (Philippines),** *G.R. No. 153866, February 11, 2005*, where the High Tribunal stressed 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*

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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. Evidently, an indication of the petitioner's authority to print and a separate zero-rating registration are no longer necessary. The petitioner did not violate any of the said provisions of law or regulations since there are no such additional requirements to speak of.

The sole provision where the "requirements" of imprinting the word "zero-rated" and the petitioner's authority to print on the VAT invoice purportedly get their authority from is **Section 4.108-1 of Revenue Regulations No. 7-95** (The Implementing Rules and Regulations of the VAT law). However, the said provision is just a regulation created for the single and limited objective of implementing a very precise statute. And well-settled is the legal principle 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)*. After all, a mere administrative issuance, like a BIR regulation, cannot amend the law. The Courts will not countenance one that overrides the statute it seeks to apply and implement (**Commissioner of Internal Revenue vs. Seagate Technology (Philippines)**, *G.R. No. 153866, February 11, 2005*). And in case of conflict between a law and a rule or regulation issued to implement said law, the former prevails because the latter cannot go beyond the terms and provisions of the former **(People vs. Lim**, *108 Phil. 1091*).

Assuming *arguendo* that there was a violation of the supposed requirement to indicate the Authority to Print/BIR permit number or the term "zero-rated", such omission does not automatically invalidate the exports sales invoices for purposes of

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proving export sales made by the petitioner. The sales invoices are still material, relevant and competent inasmuch as they still directly prove the amount of export sales made by the petitioner. It must be pointed out that "admissibility" refers to the question of whether or not the evidence is to be considered at all, while "competency" refers to whether or not the evidence is expressly excluded by law or the rules. Significantly, the said invoices satisfy the above standards in both counts. Hence, as long as the invalidated export invoices point to the fact that petitioner's goods were sold and actually shipped abroad, the same should be considered valid and sufficient proof of petitioner's export sales.

Denying the petitioner's claim for tax credit/refund on the ground that there was no indication of the BIR Permit to Print and/or the word "zero-rated" in its sales invoices is a very harsh penalty not countenanced by pertinent provisions of the Tax Code. If at all, the absence of the authority to print makes the petitioner merely accountable for penalties under the Tax Code, particularly, Section 264.

The Revenue Bureau made a corroborative finding in **BIR Ruling DA-375-03** which states thus:

> "xxx The fact that the official receipts issued by DITFI do not bear the information that DITFI is a VAT-registered taxpayer as required under Section 4.108-1 of Rev. Regs. No. 7-95, **does not *motu propio* invalidate the claim for input tax credit** of Stanfilco xxx.
>
> "Finally, **the Revenue District Officer (RDO) concerned is hereby ordered to impose the corresponding penalty against DITFI as prescribed in Revenue Memorandum Order No. 56-2000, in relation to Section 264 of the Tax Code of 1997, for failure to issue the prescribed receipts."** *(Emphasis supplied)*

And it is noteworthy that invalidation of the export sales invoice and outright denial of the refund claim are not among the approved punishments.

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As I had pointed out in my Concurring and Dissenting Opinion to the Resolution dated December 9, 2004 of herein petitioner's Motion for Reconsideration, the majority placed too much importance on the export sales invoices, which however, are merely written accounts of the particulars of merchandise shipped or sent to a purchaser or consignee with the value or prices and charges annexed (**Philippine Law Dictionary**, *3rd Ed., p. 495*). They are not accurate confirmations that goods were actually shipped out of the country (**CIR vs. Philippine Bobbin Corporation,** *C.A.G.R. SP No. 59452, February 19, 2001*). The export sales invoices alone are insufficient evidence that the subject goods were actually exported. In fact, the applicable statutes rather than limiting the documentary requirements to just the export invoice, recognize and specifically instruct the production of "export documents" to prove the fact of export sales. In commercial practice, export documents include commercial invoices or receipts, bills of lading, airway bills and export declarations or permits. These documents, taken collectively are the best means to prove the exportation of goods.

The CTA has rendered decisions supporting this view. In the case of **Nichimen Corporation (Manila Branch) vs. CIR**, *CTA Case No. 5746 dated January 4, 2001*, this Court resolved to accept bank credit advices to prove the claimant's zero-rated sales without requiring the production of official receipts. Likewise, in **Nichimen Corporation (Manila Branch) vs. CIR,** *CTA Case No. 5221 dated January 8, 1998*, in support of the petitioner's claim that its sales were zero-rated, it only submitted the statements from RCBC to the effect that the acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations. Although the respondent objected to the refund claim for alleged failure to submit substantial proof that the sales were really zero-rated, this

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Court still held that, "Respondent's demand for additional requirements is unnecessary considering that the documentary and testimonial evidence adduced by the petitioner are uncontroverted. The same evidence has clearly substantiated petitioner's claim to the satisfaction of the Court."

Contrary to what happened in the case at bar, in the above-cited case of Nichimen Corporation, the petitioner therein completely failed to submit copies of its VAT invoices to support its claim for refund. Despite such omission, this Court nevertheless held that other proofs or evidence might still be presented as a replacement for said VAT invoices; thus, reinforcing the contention that the court is willing to accept other proofs or evidence in lieu of VAT invoices to establish the existence of zero-rated transactions.

Here, petitioner has established its right to the tax refund through material and documentary exhibits. The documents formally offered as evidence by the petitioner such as the original or certified true copies of export invoices, official receipts, export declarations, airway bills and bank certification of inward remittance to petitioner satisfactorily prove that the petitioner's export sales were actually made. The substantive and main condition of the Tax Code requiring the sale and actual shipment of goods in order to be considered as zero-rated sales was adequately complied with and sufficiently proven before this Court by the petitioner.

To recapitulate, there should be no distinction as to the evidentiary value of an invoice, an official receipt and other documentary evidence to prove the fact of export sales. After all, these laws and regulations made no pronouncement as to the use only of a VAT invoice to the exclusion of all other equally relevant and competent evidence. The elementary rule in statutory construction is that where the law does not distinguish, the Courts should make no distinction. *Ubi lex non distinguit nec nos* *distinguire debemos* (**Mendoza, et. al. vs. COMELEC, et. al.**, *G. R. No. 149736, December 17, 2002).* In the present case, even assuming that export invoices have evidentiary value as far as proving the fact of exportation of goods, the other export documents presented such as commercial invoices or receipts, bills of lading and export declarations are far more appropriate and significant means to prove the fact of the transaction. Accordingly, petitioner's entitlement to the input tax credit or refund.

ERNESTO D. ACOSTA
Presiding Justice