REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

J.R.A. PHILIPPINES, INC., ***Petitioner,***	**C.T.A. CASE NO. 6454**
	Members:
-versus-	CASTAÑEDA, JR., Chairman UY, and PALANCA-ENRIQUEZ, JJ.
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	JUN 30 2005

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DECISION

PALANCA-ENRIQUEZ, J.:

It cannot be stressed enough that invoicing requirements set forth in our Tax Code are mandatory, and non-compliance thereof has adverse effects. Invoices, receipts and similar documents remain the foremost, if not the only tool used by our tax agents in its tax audit. Akin to the rules on evidence, it has to comply with some statutory and procedural requirements; otherwise, the same cannot be admitted.

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The instant case will be an opportunity for Us to unveil, once more, the importance of observing said requirements. Let Us explore how a simple oversight in the invoicing proved fatal in an almost guaranteed tax refund of petitioner.

THE CASE

Before Us is this Petition For Review filed by J.R.A PHILIPPINES, Inc. (hereafter "petitioner") seeking the refund of its unutilized input taxes for the taxable year 2000 in the total amount of P8,228,276.34, which allegedly arose from its domestic purchases of goods and service directly attributable to its zero-rated sales.

THE FACTS

Petitioner and respondent submitted the following Joint Stipulation of Facts:

> 1. Petitioner is a domestic corporation organized and existing under and by virtue of the Philippine laws, with offices at Blk. 18, Lot 13, Road E, Phase IV, Cavite Export Processing Zone, Rosario, Cavite;
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> 2. Respondent is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including, inter alia, the power to decide, approve, and grant refunds or tax credits of excess internal revenue tax payments as provided by law, including excess

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or unutilized input Value-Added Tax (VAT) payments, with office at the 5/F, BIR National Office Bldg., Diliman, Quezon City, where he may be served with summons;

3. Petitioner is duly licensed, among others, to engage in the business of manufacturing and selling, on wholesale basis, jackets, pants, trousers, overalls, shirts, polo shirts, ladies' wear, dresses and other wearing apparel of different fabrics;

4. Petitioner is registered in the Philippine Economic Zone Authority (PEZA);

5. Petitioner is registered with the BIR as a Value Added Tax (VAT) taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC), as amended;

6. For the taxable quarters covering January 1, 2000 to December 31, 2000, petitioner filed its 1st, 2nd, 3rd, and 4th quarterly VAT returns;

7. Petitioner filed separate applications for VAT tax credits/refund with the BIR of its unapplied input VAT payments for CY 2000;

8. Under Section 112(a) of the NIRC, as implemented by Revenue Regulations No. 7-95, a VAT registered taxpayer may file a claim for refund or application for issuance of tax credit certificate for unapplied or unutilized input VAT payments attributable to the zero-rated sales of goods and services;

Respondent, in his Answer, by way of special and affirmative defenses, averred:

"4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

5. Being allegedly registered with the Philippine Economic Zone Authority as an export enterprise, petitioner's business is not subject to VAT pursuant to Section 24 of R.A. No. 7916 in relation to Section 109 (q) of the Tax Code. Hence, it is not entitled to tax credit of input taxes pursuant to Section 4.103-1 of Revenue Regulations No. 7-95;

6. The amount of P8,228,276.34 being claimed by petitioner as alleged unutilized VAT input taxes for the year 2000 was not properly documented;

7. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

8. Petitioner must show that it has complied with the provisions of Section 204 (c) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;

9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation."

Petitioner presented Liani Marcia B. Constantino and Ma. Rita Corvera, as witnesses, and submitted documentary evidence, marked as Exhibits "A" to "PP-2", together with their submarkings.

On the other hand, respondent submitted the case for decision, without presenting any evidence.

Thereafter, both parties were ordered to file their respective memoranda, within thirty (30) days from notice. Only petitioner filed its Memorandum on March 11, 2005, then, the case was deemed submitted for decision.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT PETITIONER IS AN EXPORTER

II

WHETHER OR NOT PETITIONER EXPORTS 100% OF ITS GOODS ABROAD

III

WHETHER OR NOT THE ADMINISTRATIVE CLAIM FOR REFUND WAS DULY FILED WITHIN THE TWO-YEAR PRESCRIPTIVE PERIOD

IV

WHETHER OR NOT THE UNAPPLIED OR UNUTILIZED INPUT VAT OF P8,228,276 IS ATTRIBUTABLE TO PETITIONER'S EXPORT SALES

V

WHETHER OR NOT PETITIONER'S EXPORT SALES QUALIFY AS ZERO-RATED SALES UNDER SECTION 106 (A)(2)(A) OF THE TAX CODE, AS AMENDED

VI

WHETHER OR NOT PETITIONER'S SUPPLIERS CONTINUED TO PASS ON VAT TO PETITIONER FOR CY 2000

VII

WHETHER OR NOT THE UNAPPLIED OR UNUTILIZED INPUT VAT OF P8,228,276 ARISING FROM PETITIONER'S ZERO-RATED SALES, IS DULY SUBSTANTIATED BY THE LATTER'S VAT INVOICES AND/OR RECEIPTS

VIII

WHETHER OR NOT PETITIONER'S UNAPPLIED/UNUTILIZED INPUT VAT OF P8,228,276 FOR THE PERIOD JANUARY 1, 2000 TO DECEMBER 31, 2000 WAS CARRIED OVER FOR THE SUCCEEDING TAXABLE YEAR;

IX

WHETHER OR NOT PETITIONER WAS PAID FOREIGN CURRENCY INWARDLY REMITTED THROUGH THE PHILIPPINE BANKING SYSTEM.

THE COURT'S RULING

The petition is devoid of merit.

Indubitably, petitioner is registered with the Bureau of Internal Revenue as a value-added tax (VAT) taxpayer in accordance with *Section 236 of the National Internal Revenue Code (NIRC),* as amended, as shown in petitioner's BIR Certificate of Registration (*Annex "C"*). Likewise, it is registered with the Philippine Economic Zone Authority (hereafter "PEZA") as an export enterprise evidenced by its PEZA Certificate of Registration (*Annex "B"*).

Petitioner is engaged in export sale which is defined in *Section 106(A)(2)(a) of the NIRC* as " 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)." Pursuant to the foregoing section, it was further provided that export sale is subject to 0% VAT: frequently referred to as "zero-rated sales" [*Section 106(A)(2)*].

In the course of its trade, petitioner accumulated input taxes on its domestic purchases of goods and services. Said input taxes remained unutilized since petitioner is not engaged in any business activity for which it may be liable for output tax, in view of its zero-rated sale.

With the foregoing circumstances in mind, petitioner seeks application of *Section 112(a) of the NIRC*, which provides for the right to refund tax credits or input taxes. Pertinent portion of the above provision is provided hereunder, to wit:

> "Sec. 112. Refunds of Tax Credits or Input Taxes –
>
> 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 or creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not applied against the output tax. x x x"

Allegedly, petitioner has accumulated input taxes which remained unutilized in the absence of corresponding output taxes to offset with. Thus, it is critical at this point to first determine whether petitioner has ably proved its zero-rated sales which justifies the absence of the output taxes.

Key Issue to be Resolved

This leads Us to the key issue of whether petitioner, in relation to its zero-rated sales, has complied with the invoicing requirements of the NIRC. The resolution of this issue must take precedence over the others since a negative ruling to such effect renders the rest of the issues moot and academic.

While *Section 112 of the NIRC of 1997, as amended,* allows tax refund or credit on input tax of zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, however, certain invoicing requirements must be faithfully complied with before such claim for refund or credit can be granted.

Invoicing Requirements

Sections 113(A) and 237 of the NIRC lay down the invoicing requirements for VAT registered persons. More specifically, *Section 4-108-1 of Revenue Regulation No. 7-95* enumerates the information that must appear on the face of the receipts or invoices issued for sales of goods by all VAT-registered persons. The pertinent portion thereof is quoted hereunder:

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

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, 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.

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

> "We agree with petitioner that both Sections 137 and 141 of the former Tax Code allowed the sale of stemmed leaf tobacco without any prepayment of tax. We must stress, however, that a careful reading of the aforementioned provisions show that such sale is qualified by and is subject to "such conditions as may be prescribed in the regulations of the Department of Finance." Said conditions were provided for in Revenue Regulations Nos. V-39 and 17-67, which were issued to clarify and implement the foregoing provisions of the Tax Code. Hence, said provisions of the Tax Code must be read and interpreted in accordance with said regulations.
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> x x x x x x
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> Petitioner's arguments impugning the validity of Revenue Regulations Nos. V-39 and 17-67 deserve scant consideration. First, both regulations were issued pursuant to Section 245 (now Section 244) of the Tax Code. The authority of the Secretary of Finance, in conjunction with the Commissioner of Internal Revenue, to promulgate needful rules and regulations for the effective enforcement of internal revenue laws cannot be controverted. Such rules and regulations, as well as administrative opinions and rulings, ordinarily deserve to be given weight and respect by the courts. Second, our scrutiny of Revenue Regulations

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Nos. V-39 and 17-67 show that said regulations did not modify or deviate from the text of Sections 137 and 141 but merely implemented and clarified said two provisions by providing certain conditions under which stemmed leaf tobacco may be exempted from prepayment of specific tax."

A careful perusal of petitioner's official sales receipts (*Exhibits "U-123" to "V-52"*) reveals that the same do not bear the imprinted words "zero-rated" on the face thereof, in violation of *Section 4.108-1 of Revenue Regulation No. 7-95*.

In addition, petitioner's official receipts reveal neither the word "VAT" nor its taxpayer's identification number (TIN) thereof, which are clear violations of *Section 113 of the NIRC*, which reads:

"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 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);

x x x

Failure to Comply with the Invoicing Requirements: Effects thereof

In conjunction thereto, *Revenue Memorandum Circular No. 42-2003* has clarified the issue relative to the failure of a taxpayer claiming for tax refund/credit to comply with the invoicing requirements. The pertinent portion of the said circular provides:

> "A-13. Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.
>
> 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. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer."

Under 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 of the taxpayer 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, such as the failure of a claimant-taxpayer to imprint the word "zero-rated" on the sale invoices or receipts, the claim for tax credit/refund of VAT on its sales shall be denied.

Rationale of Strict Compliance

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 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.

Unregistered Receipts

Moreover, persons required to issue receipts or sales or commercial invoices are mandated under *Section 237 of the NIRC* to register the same with the BIR. *Revenue Regulation No. 2-90*, in fact, restored the requirement to register and stamp receipts and invoices prior to their use, as follows:

> "SEC. 19. Authentication and registration of books, registers, or records; authority to print receipts, sales or commercial invoices; and registration and stamping of receipts and in voices.
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> 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 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."

As such, VAT-registered persons are directed to issue duly registered invoice or receipt for every sale or lease of goods, properties or services under *Section 237*, containing the required information in *Section 113 of the NIRC*. For, a sales invoice is not merely an evidence of payment. From the provision of *Section 237*, the issuance of an invoice is required the moment there is already a sale or transfer of merchandise or services rendered. In other words, a sales invoice is ordinarily issued to a purchaser only upon payment by the latter of the price of the goods purchased. Verily, under *Section 237*, only registered receipts or sales or commercial invoices are considered as "VAT invoices."

From the same exhibits presented, this Court finds the invoices issued by petitioner to have no authority to print from the BIR. Absence of authority to print in the invoices led Us to conclude that the said invoices are not registered, compounded by the fact that the same do not comply with the invoicing requirements under *Section 113* and *Section 237*. Consequently, an unregistered receipt cannot be used as supporting document for input tax.

Petitioner has Burden of Proof

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

Petitioner has the burden of proof to establish the factual basis of its claim for tax refund (*Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332*). Petitioner failed in this regard. The denial of the tax refund was the petitioner's fault having failed to substantiate its claim for tax refund with sufficient evidence. The official receipts submitted by petitioner in violation of the invoicing requirements cannot be considered as valid proof of its zero-rated sales of goods for VAT purposes.

With the conclusion thus reached, We find no reason to delve on the other issues raised in this petition.

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and, accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman, Second Division