REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

CBK POWER COMPANY LIMITED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. E.B. NO. 283
(C.T.A. CASE NO. 6789)

Present:

ACOSTA, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

JAN 2 8 2008 ~~~ 8:55 p.m.

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DECISION

UY, J.:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed on July 2, 2007 seeking a review of the Decision and Resolution dated December 20, 2006 and May 23, 2007, respectively, rendered by the First Division of this Court[1] (Court in Division) in C. T. A. Case No. 6789 entitled "CBK Power Company Limited, petitioner, vs. Commissioner of Internal Revenue, respondent", pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282. The dispositive portions of which read as follows:

[1] Ponencia of Associate Justice Caesar A. Casanova and concurred by Associate Justice Lovell R. Bautista, with concurring and dissenting opinion by Presiding Justice Ernesto D. Acosta.

Decision in CTA Case No. 6789 promulgated on December 20, 2006:

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

SO ORDERED."

Resolution denying petitioner's Motion for Reconsideration promulgated on May 23, 2007:

"**WHEREFORE**, finding no compelling reasons to justifiably amend or overturn this Court's Decision promulgated on December 20, 2006, petitioner's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

As found by the Court in Division, these are the undisputed facts of the case:

Petitioner CBK Power Company Ltd. is a partnership duly organized and existing under and by virtue of the laws of the Philippines with principal office at the NPC Compound, Kalayaan, Laguna. Respondent, on the other hand, 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 credit of erroneously or illegally collected internal revenue taxes as provided by law, with office address at the BIR National Office Building, Diliman, Quezon City.

Petitioner was formed for the sole purpose of engaging in all aspects of (a) the design, financing, construction, testing, commissioning, operation, maintenance, management and ownership of Kalayaan II pumped-storage hydroelectric power plant, the new Caliraya Spillway, and other assets located in the Province of Laguna, and (b) the rehabilitation, upgrade, expansion, testing, commissioning, operation, maintenance, and management of the Caliraya, Botocan and Kalayaan I hydroelectric power plants and their related facilities located in the Province of Laguna. It is registered as a value-added tax (VAT) entity with TIN/VAT No. 205-760-474-000 and was issued the Certificate of Registration No. 1RC0000050243 dated April 10, 2000.

On September 20, 2000, petitioner entered into a Second Accession Undertaking with its affiliates; Industrias Metalurgicas Percarmona, S.A., and CBK Power Corporation, and the National Power Corporation (NAPOCOR) wherein petitioner became a party to a Build-Rehabilitate-Operate-and-Transfer (BROT) Agreement dated November 6, 1998 and agreed to rehabilitate, construct, operate and maintain the four hydroelectric power plants known as the Caliraya, Botocan, Kalayaan I and Kalayaan II in the Province of Laguna. Under the BROT Agreement, petitioner shall generate and supply electricity to NAPOCOR and shall receive fees in consideration thereof.

For the period July 1, 2001 to December 31, 2001, petitioner allegedly derived revenues in the amount of P695,949,007.68 relative to its sales of electricity to NAPOCOR under the BROT Agreement. Petitioner believes that such revenues qualify for zero percent (0%) VAT under Section 108(B)(3) of the National Internal Revenue Code (NIRC) of 1997.

For the same period, petitioner allegedly incurred input taxes in the amount of P4,381,067.49 which are attributable to its effectively zero-rated sales of electricity to NAPOCOR and which have not been applied to any output tax nor carried-over to the succeeding year. The said input taxes of P4,381,067.49 allegedly formed part of the total input taxes of P5,680,917.14 reflected in the amended VAT Returns for the third and fourth quarters of 2001 simultaneously filed by petitioner with the Bureau of Internal Revenue (BIR) on September 19, 2003.

Relying on the provisions of Section 112(A) of the NIRC of 1997 allowing the refund/tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales, petitioner filed with the BIR Revenue District Office No. 55 of Laguna on September 22, 2003, an administrative claim for the refund or issuance of a tax credit certificate in the amount of P4,381,067.49.

On September 30, 2003, petitioner filed the Petition for Review before the Court in Division due to respondent's inaction on its claim docketed as CTA Case No. 6789, in order to toll the running of the two-year period within which it may judicially claim for the tax credit of its alleged unutilized input VAT.

On December 20, 2006, the Court in Division rendered a decision denying petitioner's claim for the issuance of a tax credit certificate representing unutilized input VAT attributable to its effectively zero-rated sales of electricity to NAPOCOR for the period July 1, 2001 to December 31, 2001 on the ground that petitioner failed to comply with the invoicing requirements as provided in Section 113 and 237 of the NIRC of 1997 and Section 4.108-1 of Revenue Regulation No. 7-95. In particular, the subject VAT invoices and official receipts of petitioner failed to bear the word "zero-rated" imprinted on

Division denied the said motion for lack of merit in its Resolution dated May 23, 2007.[3]

Hence, this recourse before the Court *En Banc* assailing the Decision and Resolution of the Court in Division promulgated on December 20, 2006 and May 23, 2007, respectively, raising the sole ground in support thereof, to wit:

> "The First Division of the Honorable Court erred when it ruled that the Petitioner is not entitled to the issuance of a tax credit certificate for Petitioner's unutilized input taxes paid or incurred on its local purchases of goods and services for the third and fourth quarters of CY 2001 amounting to Four Million Three Hundred Eighty One Thousand Sixty Seven and 49/100 Pesos (P4,381,067.49) attributable to its zero rated sales for the same period, on the ground that the Petitioner's VAT sales invoices and/or VAT official receipts issued to the National Power Corporation do not bear the word 'zero rated'."[4]

Moreover, petitioner prays that the assailed Decision and Resolution be reversed and set aside, and that a new judgment be rendered ordering respondent to issue a tax credit certificate in favor of petitioner in the total amount of P4,381,067.49 representing unutilized input taxes for the period covering July 1, 2001 to December 31, 2001.

In a Resolution dated August 31, 2007, the instant petition was given due course and the parties were required to submit their respective memorandum within the period of thirty (30) days from notice.

Respondent Commissioner of Internal Revenue filed a Manifestation on October 2, 2007 adopting her Comment dated August 14, 2007 as her memorandum; while petitioner CBK Power Company Ltd. filed its

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[3] Docket, pp. 59-62.
[4] Ibid., pp. 39-40.

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[3] Docket, pp. 59-62.
[4] Ibid., pp. 39-40.

Memorandum on October 5, 2007. This case was deemed submitted for decision on October 17, 2007.

Hence, this Decision.

THE ISSUES

Based on the arguments contained in the instant petition, petitioner raised the following issues for the Court *En Banc*'s consideration:

A. Whether Section 4.108-1 of Revenue Regulations No. 7-95 merely interprets Section 113 and 237 of the NIRC of 1997 or it went beyond the terms of the law it seeks to implement in requiring the petitioner to imprint the words "zero-rated" in its sales invoices or official receipts; and

B. Whether or not the petitioner is entitled to the issuance of a tax credit certificate in its favor in the amount of P4,381,067.49.

THE COURT EN BANC'S RULING

The petition is bereft of merit.

At the outset, the Court in Division denied petitioner's instant claim for the reason that the word "zero-rated" was not imprinted on petitioner's sales invoices or official receipts; hence, its alleged derived revenues for the period July 1, 2001 to December 31, 2001 in the amount of P695,949,007.68 relative to its sales of electricity to NAPOCOR cannot qualify for VAT zero-rating. This prompted the Court in Division to rule that the claimed input VAT allegedly attributable thereto in the amount of P4,381,067.49 cannot be granted.

Petitioner reiterates that it had sufficiently proven and established, through testimonial and documentary evidence presented and by stipulation of the parties and admissions by the respondent, that it is entitled to the issuance of a tax credit certificate of its unutilized input VAT paid or incurred on its local purchases of goods and services for the third and fourth quarters of the year 2001 amounting to P4,381,067.49 attributable to its zero rated sales for the same period. It further stresses the fact that it has complied with the basic requirements in order to be entitled to its claim for refund or issuance of tax credit certificate under Section 112 (A) in relation to Section 229 of the NIRC of 1997.

It posits that 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 sales, and that after all, the applicable tax 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 distinguish, the courts should make no distinction.

Applying these arguments in the present case, the Court disagrees.

Pertinent herein is Section 112(B) of the NIRC of 1997 which reads, as follows:

> "**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: *Provided, however*, That in the case of zero-rated sales under Section 106 (A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Plipinas* (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and

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

Based on the foregoing, the requisites for refund/tax credit of unutilized input VAT on purchases of goods and services attributable to zero-rated sales or effectively zero-rated sales are as follows:.

1. that there must be zero-rated of effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input VAT payments are directly attributable to zero-rated sales or effectively zero-rated sales;
4. that the input VAT payments were not applied against any output VAT liability during and in the succeeding quarters; and
5. that the claim for refund was filed within the two-year prescriptive period.

It is therefore clear that zero-rated or effectively zero-rated sales must be proven first before the claim for refund/tax credit will be granted. In tax refund cases, the burden of proof is on the taxpayer. This is in line with the well-settled principle that tax refunds are in the nature of tax exemptions and as such must be strictly construed against the claimant.[5] Thus, petitioner bears the burden of proving the zero-rated or effectively zero-rated transactions as the first requisite in the grant of a refund or issuance of a tax credit certificate of unutilized input VAT on purchases of goods and services attributable to zero-rated sales or effectively zero-rated sales.

To be more specific, We shall now dwell on the validity of the requirement of imprinting of the word "zero-rated" on the VAT official receipts or invoices representing zero-rated sales or effectively zero-rated sales, the very focal issue presented before Us.

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[5] Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation and The Court of Tax Appeals, 204 SCRA 377 (1991); Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc. and Court of Appeals, 309 SCRA 87 (1999).

Time and again, We have consistently ruled that the invoicing requirement of the imprinting of "zero-rated" on the VAT official receipts or invoices is mandatory,[6] pursuant to Section 4.108-1 of RR 7-95. In the absence of the wordings "zero-rated" imprinted on these VAT invoices and/or receipts, the claim for input VAT will be disallowed.[7]

In connection with the invoicing requirements, Sections 113 of the NIRC of 1997 and Section 4.108-1 of Revenue Regulations (RR) No. 7-95[8] read, as follows:

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

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[6] See Mirant (Navotas II) Corporation (Formerly: Southern Energy Navotas II Power, Inc) vs. Commissioner of Internal Revenue, CTA EB No. 226, September 11, 2007; Southern Philippines Power Corporation vs. Commissioner of Internal Revenue, CTA EB No. 214, July 31, 2007; Panasonic Communications Imaging Corporation of the Philippines, (formerly, MATSUSHITA BUSINESS MACHINE CORPORATION OF THE PHILIPPINES) vs. Commissioner of Internal Revenue, CTA EB No. 239, May 23, 2007; Kepco Philippines Corporation vs. Commissioner of Internal Revenue, CTA EB No. 186, May 17, 2007; Kepco Philippines Corporation vs. Commissioner of Internal Revenue, CTA EB No. 174, May 9, 2007; Applied Food Ingredients Co., Inc. vs. Commissioner of Internal Revenue, CTA EB No. 220, May 7, 2007; Intel Technology Philippines Inc. vs. Commissioner of Internal Revenue, CTA EB No. 181, March 27, 2007; and J.R.A. Philippines Inc. vs. Commissioner of Internal Revenue, CTA EB No. 128, January 15, 2007.

[7] Mirant (Navotas II) Corporation (Formerly: Southern Energy Navotas II Power, Inc) vs. Commissioner of Internal Revenue, CTA EB No. 226, September 11, 2007; Kepco Philippines Corporation vs. Commissioner of Internal Revenue, CTA EB No. 107, June 29, 2007; and Applied Food Ingredients Co., Inc. vs. Commissioner of Internal Revenue, CTA EB No. 220, May 7, 2007.

[8] The Consolidated Value-Added Tax Regulations.

Particularly, Section 4-108-1 of RR 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. xxx" *(Underscoring and emphasis Ours)*

Applying the afore-cited provisions in the case at bench, it is evident that before a refund/tax credit of unutilized input VAT on purchases of goods and services attributable to zero-rated sales or effectively zero-rated sales may be allowed, it is necessary for the claimant to strictly comply with above-enumerated invoicing requirements. Specifically, the issuance of VAT invoice/official receipt with the word "zero-rated" imprinted thereon is required for VAT transactions.

It should be noted that Section 113 of the NIRC of 1997, as well as the corresponding implementing RR No. 7-95, particularly Section 4.108-1 thereof, pertaining to VAT invoicing and accounting requirements, are mandatory in nature as the word "shall" was 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.[9] Section 113 is clear in requiring that for every sale, a VAT invoice or official receipt should be issued. Although Section 4.102-2 does not specifically state the invoicing requirements, this does not mean that petitioner is exempted from it since Section 113 of the NIRC of 1997 made no distinction as to whether the sale is for zero-rated, exempt or not.

It is a well-known maxim in statutory construction that where the law does not distinguish, we should not distinguish.[10] Furthermore, We believe that in claims for refund, the law mandates the court to observe a higher standard of caution in appreciating and evaluating evidence. If indeed a claim for refund is wanting in pertinent and supporting evidence, then the granting thereof could prove to be improper, if not difficult.[11]

In the case of ***Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue***,[12] the Highest Court discussed the invoicing requirements for VAT-registered persons. It ruled 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 VAT either at 10% or 0% (zero-rated sales). It likewise expressed, in the same case, that "it is the duty

[9] Dizon vs. Encarnacion, 9 SCRA 714 (1963).
[10] Robles vs. Zambales Chromite Mining Company, 104 Phil. 688 (1958).
[11] ECW Joint Venture, Inc., vs. Commissioner of Internal Revenue, CTA EB No. 14, March 22, 2006.
[12] 318 SCRA 386 (1999).

of the seller to comply with the invoicing and accounting requirements laid down in, among others, Section 108 of the Tax Code".

Clearly, this is a 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 that require strict compliance, i.e. Revenue Regulations.

As a matter of fact, in the most recent ruling of the Supreme Court in ***Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 141104 & 148763, June 8, 2007***, it has clearly recognized that applications for refund/credit of input VAT with the BIR must comply with the appropriate revenue regulations. The Supreme Court, in citing the case of ***Commissioner of Internal Revenue vs. Manila Mining Corporation***,[13] emphasized the importance of complying with the substantiation requirements for claiming refund/credit of input VAT on zero-rated sales in accordance with the appropriate revenue regulations, in this manner:

> "Although the foregoing decision (Commissioner of Internal Revenue vs. Manila Mining Corporation) focused only on the proof required for the applicant for refund/credit to establish the input VAT payments it had made on its purchases from suppliers, **Revenue Regulations No. 3-88 also required it to present evidence proving actual zero-rated VAT sales to qualified buyers, such as (1) photocopy of the approved application for zero-rate if filing for the first time; (2) sales invoice or receipt showing the name of the person or entity to whom the goods or services were delivered, date of delivery, amount of consideration, and description of goods or services delivered; and (3) the evidence of actual receipt of goods or services.**" *(Emphasis Ours)*

[13] 468 SCRA 571 (2005).

Hence, by analogy, in order for petitioner to be entitled to its claim for refund/issuance of tax credit certificate representing unutilized input VAT attributable to its export sales for the period April 1, 1999 to March 31, 2000, it is therefore necessary to first comply with the substantiation requirements set forth under the appropriate revenue regulation, i.e. RR No. 7-95.

Pursuant to settled jurisprudence, petitioner in claiming for tax refund or issuance of a tax credit certificate in its favor has the burden of proof to establish the factual basis of such claim. Having failed to discharge the burden in this regard, petitioner's claim must therefore fall.

To further stress this point, We highlight the rationale of strict compliance with the invoicing requirements, as discussed in the case of ***American Express International, Inc., Philippine Branch vs. Commissioner of Internal Revenue***,[14] quoted hereunder as follows:

> "The law is very clear. Section 113 provides that 'a VAT registered person shall, for every sale, issue a duly registered VAT invoice or receipt for every sale transaction'. **Such VAT invoice or receipt must show** the taxpayer identification number, followed by the word 'VAT', the BIR Authority imprint or BIR permit marker and **the word 'zero-rated' imprinted on the invoice or receipt covering a zero-rated sale**. Considering so, the sales of services referred to under Section 108 (B) (2) of the NIRC of 1997, as amended, as being subject to zero percent (0%) rate are those sales covered by duly registered VAT official receipts.
>
> **The VAT registered person must substantiate the input VAT paid by purchase invoices or official receipts. An official receipt issued by the taxpayer is an essential requirement to prove the existence of sale and receipt of income and thereafter duly recorded in the accounting records.**

[14] CTA EB No. 103, March 3, 2006.

The aforequoted 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 (Pioneer Texturing Corp. vs. NLRC, 280 SCRA 806). Indeed, it is the duty of a seller-taxpayer to comply with the invoicing requirements laid down in the said NIRC provisions and Revenue Regulations." *(Emphasis Ours)*

Moreover, in ***Kepco Philippines Corp. vs. Commissioner of Internal Revenue***,[15] this Court elucidated:

"It is noteworthy to state that the legislative grant of authority to the Secretary of Finance to promulgate all needful rules and regulations for the effective enforcement of the provisions of the NIRC, Section 4.108-1 of Revenue Regulations No. 7-95 requiring the imprinting of the 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. **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 1997 NIRC on sales that are subject to 10% VAT, zero-rated sales (0% VAT) and exempt sales. The imprinting of 'zero-rated' is necessary to distinguish sales subject to 10% VAT, those that are subject to 0% VAT (zero-rated) and exempt sales, to enable the Bureau of Internal Revenue to properly implement and enforce the other provisions of the 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]" *(Emphasis Ours)*.

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[15] CTA EB No. 107, June 29, 2007.

In view of the foregoing discussion, this Court concludes that there are three reasons why the word "zero-rated" is mandated by law to be imprinted on the VAT invoice/ official receipt, to wit: (1) for the buyer or purchaser not to claim any input VAT from such purchase; (2) the purpose of segregating/distinguishing those sales subject to 0% VAT (zero-rated) from those sales that are subject to 10% VAT and from exempt sales; and (3) to enable the BIR to properly implement and enforce the other provisions of the NIRC of 1997 on VAT, namely: (a) Zero-rated sales [Sec. 106 (A) 2 and Sec. 108 (B)]; (b) Exempt transactions [Sec. 109] in relation to Sec. 112 (A); (c) Tax Credits [Sec. 110]; and (d) Refunds or tax credits of input tax [Sec. 112].

Thus, We rule that strict compliance with Section 4.108-1 of RR No. 7-95 requiring the imprinting of the word "zero-rated" on sales invoices or official receipts is mandatory. It must be kept in mind that prejudice will result to the government when the word "zero-rated" is not imprinted on said invoices/official receipts because the smooth implementation of the VAT system will be interrupted.

Clearly, the Court in Division correctly denied petitioner's instant claim for the issuance of a tax credit certificate when it pronounced that:

> "After a careful scrutiny of the documents presented in evidence by petitioner in this case, this Court finds that its invoices and official receipts issued to NAPOCOR do not bear the word 'zero-rated' as required to be imprinted, which is clearly a violation of the requirements of the afore-mentioned provisions of law. Hence, they cannot be considered as valid proofs of petitioner's alleged zero-rated sales for VAT purposes. Moreover, petitioner even failed to present some of the official

receipts for its sales of electricity in blatant contravention of Section 113 of the NIRC of 1997."[16]

To reiterate, the rule in this jurisdiction is that "[t]ax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person claiming the exemption".[17]

In the light of the foregoing discussions, the Court *En Banc* finds no reversible error committed by the Court in Division that would merit a reversal of its assailed Decision and Resolution dated December 20, 2006 and May 23, 2007, respectively.

WHEREFORE, premises considered, the instant petition is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

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[16] Decision, CTA Case No. 6245; Docket, p.39.
[17] Commissioner of Internal Revenue vs. Procter and Gamble Philippine Manufacturing Corporation, supra., and Commissioner of Internal Revenue vs. S. C. Johnson & Son, Inc., supra.

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 conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice