Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

KEPCO PHILIPPINES CORP.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

EB CASE NO. 186
(CTA Case No. 6287)

Members:
ACOSTA, PJ,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:
MAY 17 2007

x- -x

DECISION

CASANOVA, J.:

This is an appeal to the Court of Tax Appeals *En Banc* by way of a verified Petition for Review, under Section 11 of R.A. 9282, praying that the Decision dated August 31, 2005 rendered by the Second Division of this Court in CTA Case No. 6287 entitled "*Kepco Philippines Corporation vs. Commissioner of Internal Revenue*" as well as the Resolution dated May 4, 2006 of the said Division be reversed and set aside by ordering respondent to refund or to issue a tax credit certificate amounting to PhP 10,514,023.92 in favor of petitioner.

THE FACTS

The facts of the case, as culled from the records, are as follows:

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with its principal place of business located at Suite 2501-A, 25th Floor, Tektite Tower I, Exchange Road, Ortigas Center, City of Pasig. It is a Value-Added Tax (VAT) registered taxpayer engaged in the production and sale of electricity (as an independent power producer), and sells electricity to the National Power Corporation (NPC). Petitioner has filed the appropriate Application for Effective Zero-Rating of its sales of electricity to the NPC with the respondent.

For the calendar year 1999, petitioner avers that it incurred input VAT in the amount of P10,527,202.54 on its domestic purchases of goods and services that were used in its production and sale of electricity to NPC for the same period.

In its 1999 quarterly VAT returns simultaneously filed with the Bureau of Internal Revenue on March 30, 2000, petitioner declared the said input VAT as follows:

		INPUT TAX		
Exhibit	1999	Carried-over from previous qtr	this quarter	Carried-over to next quarter
A	1st qtr	P 100,564,209.14	P 4,804,974.70	P 105,369,183.84
B	2nd qtr	105,369,183.84	1,461,960.38	106,831,144.22
C	3rd qtr	106,831,144.22	2,563,288.00	109,394,432.22
D	4th qtr	109,394,432.22	1,696,979.46	111,091,411.68
			10,527,202.54	

On January 29, 2001, petitioner filed an administrative claim for refund corresponding to its reported unutilized input VAT for the four quarters of 1999 in the amount of P10,527,202.54.

Due to respondent's inaction on its claim, petitioner filed a Petition for Review with the Court of Tax Appeals on April 24, 2001.

After trial on the merits, the CTA Second Division promulgated a Decision on August 31, 2005 denying petitioner's claim for refund for failure to properly substantiate its effectively zero-rated sales for the taxable year 1999 in the total amount of P860,340,488.96 with the alleged input VAT of P10,527,202.54

directly attributable thereto. Specifically, the Court in Division ruled that petitioner failed to comply with the *invoicing requirements* under Section 108(B)(3) of the NIRC of 1997 in conjunction with Section 113 of the same Code as implemented by Section 4.108-1 of Revenue Regulations No. 7-95. The dispositive portion of the Decision reads as follows:

> "**WHEREFORE**, premises considered, petitioner's claim for refund is hereby **DENIED** for lack of substantiation.
>
> **SO ORDERED**."

On October 4, 2005, petitioner filed a Motion for Reconsideration through registered mail that was received by the Court on October 13, 2005. Petitioner stated therein, among others, that the Second Division had misappreciated and inadvertently considered important facts and law on the matter and that petitioner had proven by [means of] other supporting papers its claim to the refund.

On May 4, 2006, the Second Division, in a Resolution, denied petitioner's Motion for Reconsideration for lack of merit. Hence, this appeal by way of a Petition for Review filed with the CTA *En Banc*.

THE ASSIGNED ERRORS

Petitioner raised the following grounds in support of the instant petition, to quote:

I. THE COURT OF TAX APPEALS SECOND DIVISION ERRED IN NOT CONSIDERING THE AMOUNT OF PHP 10,514,023.92 AS REFUNDABLE TAX CREDIT FOR ZERO RATED SALES TO NPC FOR TAXABLE YEAR 1999.

II. THE COURT OF TAX APPEALS SECOND DIVISION ERRED IN FAILING TO APPRECIATE THAT PETITIONER IS

EXCLUSIVELY SELLING ELECTRICITY TO NPC, A TAX EXEMPT ENTITY.

THIS COURT EN BANC'S RULING

The petition is not meritorious.

After a careful and thorough evaluation and consideration of the records of the case, the Court *En Banc* finds no new matters which have not yet been considered and passed upon by the CTA Second Division in its assailed Decision and Resolution. The discussion proffered by the petitioner in the instant petition is a mere rehash of the arguments raised in its Motion for Reconsideration filed with the CTA Second Division.

This Court is constrained to reiterate the governing laws and jurisprudence in this case, accordingly Section 108(B)(3) of the NIRC of 1997 in relation to Section 13 of Republic Act No. 6395 (The Revised NPC Charter), as amended by Presidential Decree Nos. 380 and 938, which We all quote herein below for easy reference:

> "**SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. —**
> (A) Rate and base of tax. — x x x
> **(B) Transactions Subject to Zero Percent (0%) Rate. —** The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
> (1) x x x
> (2) x x x
> (3) Services rendered to persons or **entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate**; (Emphasis supplied)
>
> "**Section 13. Non-profit Character of the Corporation, Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities.** — The Corporation shall be

non-profit and shall devote all its returns from its capital investments, as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance of effective implementation of the policy enunciated in Section one of this Act, **the Corporation, including its subsidiaries, is hereby declared exempt from the payment of all forms of taxes, duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings**." (Emphasis supplied).

Clearly from the foregoing, NPC is an entity with a special charter, which categorically makes it exempt from payment of all taxes, whether direct or indirect, including VAT. Hence, by virtue of the said charter, services rendered by a VAT registered entity, like herein petitioner, to NPC are effectively subject to zero percent (0%) VAT.

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

"**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." (Emphasis supplied)

"**SECTION 4.108-1. Invoicing Requirements** — All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:
1. the name, TIN and address of seller;
2. date of transaction;

3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word "zero rated" imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration.

In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.

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

If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A "VAT Invoice" shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the Code.

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. (Underscoring Supplied)

Further, in the approved Application/Certificate for Zero Rate issued by the respondent to petitioner on January 19, 1999, the following was indicated:

"Valid only for sale of services from
Jan. 19, 1999 up to December 31, 1999 unless sooner revoked.
Note: Zero-Rated Sales must be indicated in the invoice/receipt."
(Underscoring Supplied)

Thus, based on all of the foregoing law and regulations as well as petitioner's approved Application/Certificate for Zero Rate, it is imperative that petitioner must issue VAT official receipts which contain all the necessary information such as petitioner's TIN-VAT number, the printer's BIR permit number and the imprinted words *"zero-rated"* in order that its sales of electricity to NPC shall qualify for zero-rating.

To prove its effectively zero-rated sales for taxable year 1999, petitioner presented various official receipts showing the following amounts:

Exhibit	Official Receipt Number	Date	Amount
S	120	3/3/99	P69,649,336.72
S-1	121	4/7/99	74,678,459.78
S-2	128	5/7/99	64,521,805.14
S-3	131	6/9/99	72,609,745.73
S-4	132	7/9/99	66,933,113.22
S-5	136	8/9/99	74,527,701.53
S-6	137	9/6/99	72,011,106.57
S-7	139	10/4/99	73,184,494.22
S-8	142	11/9/99	73,084,087.23
S-9	144	12/17/99	72,253,417.68
S-10	145	1/6/00	74,684,393.92
S-11	149	2/10/00	72,202,827.22
	TOTAL		P860,340,488.96

The Supreme Court in *ATLAS CONSOLIDATED MINING & DEVELOPMENT CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 134467, November 17, 1999*, discussed the invoicing requirements for VAT-registered persons. The Supreme Court said 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" which means that the issuance of VAT invoices or official receipts are mandatory for sales that are subject to value-added tax either at 10% or 0% (zero-rated sales). More importantly, the Supreme Court ruled that "[i]ndeed 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". 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, i.e. Revenue Regulations, which shall also be strictly complied with. 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 the 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."

The law and regulations require strict compliance with the invoicing requirements. In *TROPITEK INTERNATIONAL, INC. VS. COMMISSIONER OF INTERNAL REVENUE, CTA CASE NOS. 6422 & 6499, July 13, 2005*, We ruled that Section 4.108-1 of Revenue Regulations No. 7-95 is *mandatory*. In the case of *J.R.A. PHILIPPINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE, CTA CASE NO. 6454, June 30, 2005*, this Court discussed the rationale behind the requirement of imprinting the words "zero-rated" on VAT invoices and official receipts, as follows:

> "Furthermore, Section 110 of the NIRC of 1997, as amended, provides that: "Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: . . .." **If the invoice or official receipt was not imprinted with "zero-rated", there is a danger that the purchaser of the goods or services may be able to claim input tax on the sale to it by the taxpayer of the goods or services, as the case may be, notwithstanding the fact that no VAT was actually paid on such goods or services since the taxpayer is zero-rated.** This is the rationale for the mandatory requirement in

> Revenue Regulations No. 7-95 that the words "zero-rated" be imprinted in the invoice or receipt, as the case may be. The zero-rated taxpayer should be entitled to a tax credit/refund on input taxes paid on its purchase of goods or services subject to the mandatory compliance with the invoicing requirements under the regulations. **Otherwise, there may result the absurd situation where the government would be crediting/refunding non-existent input tax to purchasers of goods or services of such zero-rated taxpayer.**" (Emphasis supplied)

Applying the foregoing rulings to the case before Us, the Court finds that petitioner failed to comply with the requirement of imprinting the words *"zero-rated"* on its official receipts. Although the official receipts presented in evidence bear the TIN-VAT number of the petitioner and the printer's BIR Permit number, the words *"zero-rated"* are not imprinted thereon in clear violation of Section 4.108.1-1 of Revenue Regulations No. 7-95 and the conditions imposed under petitioner's approved Application/Certificate for Zero-rate.

Furthermore, the serial numbers of the official receipts submitted by petitioner are not in consecutive order, indicating the possibility that petitioner may have sold its electricity to entities other than NPC. In which case, the amount of creditable input tax shall be allocated proportionately among its zero-rated, exempt and taxable sales based on the volume of such sales [Sec. 112 (A)]. This brings to the fore another reason why the imprinting of the words *"zero-rated"* on VAT invoices or official receipts is necessary, that is, to properly implement and enforce the other provisions of the NIRC of 1997 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];
4. Refunds or tax credits of input tax [Sec. 112].

Considering the foregoing reasons, petitioner failed to properly substantiate its effectively zero-rated sales for the taxable year 1999 in the total amount of P860,340,488.96, hence, the alleged input VAT directly attributable thereto amounting to P10,527,202.54 cannot be refunded. Stated otherwise, petitioner's failure to indicate the words *"zero-rated"* on its official receipts is fatal to its claim.

If ordinary and necessary business expenses, claimed merely as deductions from gross income, are required to be substantiated by sufficient evidence, with more reason then that claims for outright refund of alleged excess tax payments must be substantiated by evidence that comply with the requirements of the law and its implementing rules and regulations.

Zero-rated sales of services can be proven by other documents. However, the requirement of issuing a duly registered VAT official receipt with the imprinted word *"zero-rated"* is very clear under the law and cannot be substituted especially for input VAT refund purposes.

We would like to stress that such a denial is not a harsh penalty. After all, the aforementioned invoicing requirements are not hard to comply with and if complied, would entail the benefit of VAT zero-rating and the privilege to refund the input tax attributable thereto. Corollarily, with the failure of petitioner to conform to the requirements provided by law, there can be no logical conclusion than the non-entitlement to zero-rating and denial of the benefit to claim refund of input tax.

Well entrenched in our jurisprudence is that tax 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 or entity claiming the exemption ***(Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., 309 SCRA 87 [1999]).*** Accordingly, the claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund ***(Citibank N.A. vs. Court of Appeals, 280 SCRA 459 [1997]).***

In sum, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed August 31, 2005 Decision and May 4, 2006 Resolution of the CTA Second Division. What the instant petition seeks is for the Court *En Banc* to view and appreciate the evidence in their own perspective of things, which unfortunately had already been considered and passed upon.

WHEREFORE, the instant Petition is hereby **DENIED DUE COURSE** and **DISMISSED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

KEPCO PHILIPPINES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 186
(C.T.A. CASE NO. 6287)

Present:

Acosta, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ.*

Promulgated:
MAY 17 2007

x---x

CONCURRING AND DISSENTING OPINION

I concur that Section 13 of Republic Act No. 6395, the charter of the National Power Corporation (NPC), as amended by Presidential Decree No. 938, provides for the exemption of the NPC including its subsidiaries is from the payment of all forms of taxes, duties, fees, imposts. This has long been settled in *Maceda vs. Macaraig, Jr.*[1], where the Supreme Court affirmed the National Power Corporation's tax exemption. And corollary thereto, Section 108(B)(3) provides that services rendered by a VAT-registered person to a tax-exempt entity is subject to VAT at zero percent (0%). To quote:

"Sec. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. —

[1] *G.R. No. 88291, May 31, 1991*

> (A) Rate and base of tax. — . . .
> (B) Transactions Subject to Zero Percent (0%) Rate. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent 0% rate:
> (1) . . .
> (2) . . .
> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate."

In view of the above, services rendered by a VAT — registered entity to the NPC, an entity exempt from the payment of all forms of taxes whether direct or indirect, including VAT, are effectively zero-rated.

I likewise agree with the majority that despite the above, petitioner's claim cannot be granted because it presented official receipts, the serial numbers of which are not in consecutive order indicating that petitioner may have sold electricity to entities other than the National Power Corporation.

However, I dissent to the majority's finding that imprinting the term "zero-rated" as well as the BIR authority to print or BIR Permit marker on duly registered Value Added Tax (VAT) official receipts/invoices is necessary such that non-compliance would result to the outright denial of petitioner's claim.

The significant provisions of the 1997 Tax Code, namely, Section 113 in relation to Section 237, only require the following information to appear in an invoice or official receipt:

(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;

Em

(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.

Section 112 (A) of the 1997 Tax Code lends corroboration to the above view. It grants to all VAT-registered enterprises engaged in zero-rated transactions the right to claim a refund of their creditable input tax due or paid to the extent that such input tax has not been applied against output tax within a period of two (2) years after the close of the taxable quarter.

Clearly, the applicable provisions of the Tax Code does not require the word "zero-rated" or the other information required by the majority in the invoice/official receipt. The "requirement" of imprinting the questioned information on the VAT invoice or receipt can be found in **Section 4.108-1 of Revenue Regulations No. 7-95** (*The Implementing Rules and Regulations of the VAT law*). Then again, the said provision is merely a regulation created for the sole and limited purpose of implementing an otherwise very exact law.

Moreover, granting for the sake argument that the Revenue Regulations above cited may validly impose such requirements, no provision allows the outright rejection of a refund claim as penalty for a taxpayer's failure to abide by the requirements laid down in the said regulations.

It is also noteworthy that it was only on November 1, 2005, with the effectivity of Republic Act No. 9337,[2] that the requirement of writing or printing the term "zero-rated sale" was introduced, following the amendment of Section 113[3] of the National Internal Revenue Code.

R.A. 9337 cannot apply retroactively so as to prejudice petitioner given the well-entrenched principle that statutes, including administrative rules and regulations, **operate prospectively only**, unless the legislative intent to the contrary is manifest by express terms or by necessary implication.[4]

I reiterate my opinion that the claim cannot be granted only because petitioner presented official receipts which are not in sequence, which missing receipts may have been used by petitioner for its sale to entities other than NPC. Thus, the input VAT on petitioner's purchases of goods and services may not be wholly attributable to its zero-rated sales.

Accordingly, I concur with the denial of petitioner's claim for refund of input VAT on the purchases of goods and services absent sufficient evidence that they are solely attributable to zero-rated sales.

ERNESTO D. ACOSTA
Presiding Justice

---

[2] *R.A. 9337 was supposed to take effect on July 1, 2005 but due to constitutionality issues, it became effective only on November 1, 2005 upon the finality of the Supreme Court's September 1, 2005 Decision upholding the said law's validity.*
[3] *(B)(2)(c) of Section 113.*
[4] *BPI Leasing Corporation, vs. The Honorable Court of Appeals, et.al. G.R. No. 127624. November 18, 2003.*