REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

MARUBENI PHILIPPINES CORPORATION,
Petitioner,

C.T.A. CASE NO. 6215

- versus -

Members:

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

FEB 26 2007, 3:15 PM.

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DECISION

BAUTISTA, L., J.:

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P2,595,907.70 allegedly representing unutilized input value-added tax for the fourth quarter of 1998.

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with office address at 9th Floor, LV Locsin Building, Ayala Avenue corner Makati Avenue, Makati City. Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, with authority, among others, to decide, approve and grant tax credits and/or refunds of overpaid or erroneously paid internal revenue taxes, with office address at the 5th Floor, BIR National Office Building, Diliman, Quezon City (*pars. 1 & 2, Facts Admitted*).

Petitioner was organized primarily to engage in the business of buying, selling, distributing, marketing at wholesale insofar as may be permitted by law, all kinds of goods, commodities, wares and merchandise of every kind and description, and to enter into all kinds of contracts for the export, import, purchase, acquisition, sale at wholesale and other disposition for its own account as principal or in representative capacity as manufacturer's representative, merchandise broker, indentor, commission merchant, factors or agents, upon consignment or all kinds of goods, wares, merchandise or products whether natural or artificial. As such, petitioner is duly registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer, as evidenced by a copy of its BIR Certificate of Registration (*pars. 3 & 4, Facts Admitted*).

On January 25, 1999, petitioner filed with the BIR its VAT return for the fourth quarter of 1998 *(Exhibit LL)*, declaring an excess input VAT for the said quarter in the amount of P2,991,346.23, as shown below:

			Input VAT on		
Zero-Rated Sales	Taxable Sales	Output VAT	Domestic Purchases	Importation of Goods	Excess Input VAT
P41,233,493.65	P7,892,530.23	P789,253.44	P3,159,856.45	P620,743.22	P2,991,346.23

On December 28, 2000, petitioner filed a letter with the BIR requesting for the refund of its excess input VAT for the fourth quarter of 1998 but in the lower amount of P2,595,907.70 citing as legal bases therefor Sections 106(A)(2)(a)(1), 110(B) and 112(A) and (B) of the National Internal Revenue Code (NIRC) of 1997 (*Exhibit KK*).

On the following day, December 29, 2000, petitioner filed the instant Petition for Review before this Court in order to toll the running of the two-year prescriptive period provided under Section 229 in relation to Section 112(D) of the NIRC of 1997.

Respondent, in his Answer to the Petition for Review, interposed the following Special and Affirmative Defenses:

7. The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;

8. It is incumbent upon herein petitioner to show that it complied with the provisions of Section 229 of the Tax Code as amended;

9. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledasma, 31 SCRA 95; Manila Electric Company vs. Commissioner of Internal Revenue, 67 SCRA 35);

10. One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute (Asiatic Petroleum vs. LLanes, 49 Phils. 466; Union Garment Co. vs. CTA, 4 SCRA 304);

11. In an action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for refund. Furthermore, as pointed out in the case of William Li Yao vs. Collector (L-11875, December 28, 1963), amounts sought to be recovered or credited should be shown to be taxes which are erroneously or illegally collected; that is to say, their payment was an independent single act of voluntary payment of a tax believed to be due and collectible and accepted by the Government, which had therefor[e] become part of the State moneys subject to expenditure and perhaps already spent or appropriated;

12. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.

The parties, in their Joint Stipulation of Facts and Issues, submitted the following issues for this Court's resolution:

1. Whether or not petitioner is entitled to the claim for refund in the amount of P2,595,907.70 representing unutilized input VAT for the fourth quarter of 1998;

2. Whether or not out of the amount being claimed of P2,595,907.70 as unutilized and/or unapplied input VAT for calendar year 1998, the amount of P263,975.60 represents input VAT that petitioner had paid on its importation and/or domestic purchases of capital goods for use in its VAT-taxable business;

3. Whether or not out of the amount being claimed of P2,595,907.70 as unutilized and/or unapplied input VAT for the fourth quarter of calendar year 1998, the amount of P2,331,932.10 represents input VAT the petitioner had paid on its domestic purchase of goods attributable to its zero-rated export sales; and

4. Whether or not the amount of P2,595,907.70 was applied or credited against the output VAT liability of petitioner for the succeeding taxable quarters.

Central to the above issues is: Whether or not, petitioner, based on the evidence presented, is entitled to the refund or issuance of a tax credit certificate in the amount of P2,595,907.70 representing unutilized input VAT paid on domestic purchases and/or importation of taxable goods and services (including capital goods) for the fourth quarter of 1998.

Sections 112(A) and (B) of the NIRC of 1997 read 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 where 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 Pilipinas (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.

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

The foregoing provisions clearly allow the refund/tax credit of unutilized input VAT in two (2) instances, namely: (a) when the excess/unutilized input VAT is attributable to zero-rated or effectively zero-rated sales; and (b) when the excess/unutilized input VAT is attributable to capital goods purchased by a VAT registered person.

The subject claim of P2,595,907.70 allegedly represents the sum of petitioner's alleged input VAT payment of P2,331,932.10 on domestic purchases of goods and services which are attributable to zero-rated sales and input VAT payment of P263,975.60 on importation and/or domestic purchases of capital goods for the fourth quarter of 1998.

We shall rule first on petitioner's claimed input VAT payment in the amount of P2,331,932.10 arising from its alleged zero-rated sales for the subject period.

A scrutiny of the sales summary schedules *vis-à-vis* the VAT return submitted by petitioner for the fourth quarter of 1998 shows that out of the reported zero-rated sales amount of P41,233,493.65 (*Exhibit LL*), the amount of P37,334,946.50 consisted of the following:

Exhibit	Nature of Reported Zero-Rated Sales	Amount
NN	Direct Export Sales	P 23,671,573.98
	Sales of Services:	
RRRRRRRR	Commissions from PEZA entities	239,898.42
SSSSSSSS	Commissions from Petitioner's Non-Resident Affiliates	7,733,215.03
JJJJJJJJJ	Commissions from Marubeni-Tokyo	5,690,259.07
	Total	**P 37,334,946.50**

To substantiate its direct export sales of P23,671,573.98, petitioner presented export sales invoices (*Exhibits Y-4, BB-4, CC-4, DD-4, EE-4, FF-4, GG-4 HH-4, & II-4*), bills of lading (*Exhibits EEE, AAA, DDD, HHH, III, MMM, QQQ, PPP, LLL, TTT, UUU, WWW*) export declarations (*Exhibits II-3, Y-3, HH-3, GG-3, FF-3, DD-3, BB-3, CC-3, EE-3, AA-3 & Z-3*), and BPI Certificate of Inward Remittances (*Exhibit JJ*) which showed that for the fourth quarter of 1998, petitioner exported goods to Marubeni Corporation, Tokyo, Japan in the amount of P23,671,573.98, which were paid for in US dollars of 565,890.34 and accounted for in accordance with the rules and regulations of the BSP. These direct export sales may fall within those export sales transactions subject to zero percent (0%) VAT referred to under Section 106(A)(2)(a)(1) of the NIRC of 1997, which states:

"**SEC. 106.** ***Value-Added Tax on Sale of Goods or Properties.*** -

"(A) *Rate and Base of Tax.* – x x x

"(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

"(a) *Export Sales.* – The term '*export sales*' means:

"(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)."

However, Section 106(A)(2)(a)(1) of the NIRC of 1997 should not be read in isolation but in conjunction with Section 113 of the same Code, which prescribes that a VAT registered person like petitioner, shall, for every sale, issue an invoice or receipt which must contain the following information:

"**SEC. 113.** ***Invoicing and Accounting Requirements for VAT Registered Persons.*** —

"(A) *Invoicing Requirements.* — A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

"(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

"(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax."

Corollary thereto, Section 4.108-1of Revenue Regulations No.7-95, provides:

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

While petitioner's export invoices bear the TIN-VAT number of petitioner and the printer's BIR permit number, nevertheless, the word "zero-rated" was not imprinted thereon in clear violation of Section 4.108-1 of Revenue Regulations No. 7-95.

The law and regulations are explicit in emphasizing strict compliance with the invoicing requirements because for the same transactions the output VAT of the seller becomes the input VAT of the purchaser. Pursuant to Sections 106(D)(1) and 108(C), in relation to Section 110 of the NIRC of 1997, as amended, the output or input tax on the sale or purchase of goods is determined by the total amount indicated in the invoice, while the output or input tax on the sale or purchase of services is determined by the total amount indicated in the official receipt. In the case of zero-rated sales transactions, the regulations further require that the word "zero-rated" be imprinted on the face of the covering invoices or official receipts (***AMERICAN EXPRESS INTERNATIONAL, INC., PHILIPPINE BRANCH vs. COMMISSIONER OF INTERNAL REVENUE, CTA EB No. 103, March 3, 2006***). The rationale for the imprinting of the word "zero-rated" on the face of the covering invoice or official receipt of the seller is for the buyer or purchaser not to claim any input VAT from such purchase as elucidated by the Second Division of this Court in the case of ***J.R.A. PHILPPINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE, C.T.A. E.B. NO. 128, January 15, 2007,*** to wit:

> 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)*

In the case of ***TAGANITO MINING CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE, CTA EB No. 7, January 31, 2006,*** the Court *En Banc* held that the issuance of Revenue Regulations No. 7-95 was made pursuant to the respondent's duty of implementing the VAT provisions of the NIRC, thus:

> Revenue Regulations No. 7-95, otherwise known as the Consolidated Value-Added Tax Regulations, 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 other things, contain provisions specifying, prescribing or defining:
> >
> > xxx xxx xxx

> (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 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 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 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].

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 tax 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.[2] (Emphasis supplied; *citations omitted*)

> We agree with the respondent that the issuance of Revenue Regulation No. 7-95 was made 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, practical 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 refund or tax credit of non-existent input VAT. It is an act of tax administration which is not violative of the rule on non-delegation of delegated powers.

> xxx xxx xxx

> 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.

To emphasize, it is explicit from the provisions of Section 113 of the NIRC of 1997 in relation to Section 237 of the same Code and Section 4.108-1 of Revenue Regulations No. 7-95 that a VAT registered person like herein petitioner must issue a duly 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, printer's BIR permit number and **the word "zero rated" imprinted on the invoice** or receipt **covering a zero-rated sale**. Considering so, the export sales referred to under Section 106(A)(2)(1)(a) of the NIRC of 1997 as subject to zero percent (0%) VAT are those covered by duly registered VAT invoices bearing all the required information. Since the word "zero-rated" was not imprinted on its sales invoices, petitioner's direct export sales for the fourth quarter of 1998 cannot qualify for VAT zero-rating.

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[2] 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).

We now delve on petitioner's alleged zero-rated sales of services to PEZA registered companies, non-resident affiliates and Marubeni-Tokyo in the respective amounts of P239,898.42, P7,733,215.03 and P5,690,259.07. The relevant provisions of the NIRC of 1997 on this particular claim are Sections 108(B)(2) and (3) which state:

> "**SEC. 108.** ***Value-Added Tax on Sale of Services and Use or Lease of Properties.***-
>
> xxx xxx xxx
>
> "(B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate;
>
> xxx xxx xxx
>
> "(2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> "(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."

With respect to petitioner's sale of services to PEZA registered companies, Revenue Memorandum Circular (RMC) No. 74-99 likewise provides:

> "SECTION 3. **Tax Treatment of Sales Made By A VAT Registered Supplier from the Customs Territory, To A PEZA Registered Enterprise.**-
>
> "(1) If the Buyer is a PEZA registered enterprise which is subject to the 5% special tax regime, in lieu of all taxes, except real property tax, pursuant to R.A. No. 7916, as amended:
>
> xxx xxx xxx
>
> (b) **Sale of service.** – This shall be treated subject to zero percent (0%) VAT under the "cross border doctrine" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.
>
> "(2) If Buyer is a PEZA registered enterprise which is not embraced by the 5% special tax regime, hence, subject to taxes under the NIRC, e.g., Service Establishments which are subject to taxes under the NIRC rather than the 5% special tax regime:
>
> xxx xxx xxx
>
> (b) **Sale of Service.** – This shall be treated subject to zero percent (0%) VAT under the "cross border doctrine" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.
>
> "3 In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type

> of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5) , NIRC , in relation to Art. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered supplies from the Customs Territory, shall be treated effectively subject to 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the "Cross Border Doctrine" of the VAT system.
>
> "This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of issuance of this Circular."

Based on the foregoing provisions of Section 108(B)(3) and as clarified under RMC No. 74-99, sales of services by a VAT-registered person to PEZA entities are zero-rated for VAT purposes. Nonetheless, this Court denies VAT zero-rating of petitioner's reported sales to PEZA entities in the amount of P239,898.42 because the covering official receipts do not have the imprinted words "zero-rated" (*Exhibits MMMMMMMM, NNNNNNNN, OOOOOOOO, PPPPPPPP & QQQQQQQQ*).

Similarly, petitioner's sales of services to its non-residents affiliates and Marubeni-Tokyo for the fourth quarter of 1998 which were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP may fall under the category of services subject to zero percent (0%) VAT under Section 108(B)(2) of the NIRC of 1997. Nevertheless, since petitioner's reported sales of services to its non-resident affiliates and Marubeni-Tokyo in the respective amounts of P7,733,215.03 and P5,690,259.07 were not duly supported by VAT official receipts in accordance with Section 113 of the NIRC of 1997, the same shall not qualify for VAT zero-rating.

Considering that petitioner's reported sales of P41,233,493.65 for the fourth quarter of 1998 do not qualify as zero-rated sales, the claimed input taxes which are allegedly attributable thereto in the amount of P2,331,932.10 cannot be granted pursuant to Section 112(A) of the NIRC of 1997.

What is now left to be resolved is whether or not petitioner is entitled to the refund claim of P263,975.60 allegedly representing unutilized excess input VAT on capital goods purchases for the fourth quarter of 1998.

Section 4.106-1 of Revenue Regulations No. 7-95, implementing Section 112(B) of the NIRC of 1997, defines "capital goods or properties" as follows:

> **"SEC. 4.106-1. Refunds or tax credits of input tax. – xxx**
>
> xxx xxx xxx
>
> **(b) Capital Goods – xxx**
>
> xxx xxx xxx
>
> "*Capital goods or properties*" refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29(f), used directly or indirectly in the production or sale of taxable goods or services." *(Underlining supplied).*

Clearly, in order that the items purchased can be classified as capital goods or properties, petitioner must show that: (1) the goods or properties have economic useful life of more than one year; (2) such goods or properties are treated as depreciable assets under Section 29(f) [now 34F of the NIRC of 1997]; and (3) they are used directly or indirectly in the production or sale of taxable goods or services.

Evidence forwarded to this Court, such as VAT sales invoices/official receipts from petitioner's suppliers, namely, SNBC Trading, CIM Technologies, Inc. and Phil-Data Business Systems (*Exhibits D, F, G, H & I*) prove that the claimed input VAT of P263,975.60 relates to petitioner's purchases of computers. While these computers have estimated useful life of more than one (1) year and used directly or indirectly by petitioner in its business, petitioner failed to submit documents such as detailed general ledger and audited financial statements to prove that these were capitalized in its books of accounts and subjected to depreciation.

Therefore, for petitioner's failure to prove that the subject computer purchases were treated as depreciable assets in its books of accounts, the related input VAT of P263,975.60 cannot be granted.

IN VIEW OF THE FOREGOING, the Petition for Review is hereby **DENIED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division