Republic Of The Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

AMERICAN EXPRESS INTERNATIONAL, INC. - PHILIPPINE BRANCH,
Petitioner,

- versus -

C.T.A. CASE NO. 6294

Members:

CASTAÑEDA, *Chairman,*
UY, and
PALANCA-ENRIQUEZ, *JJ*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 28 2004

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DECISION

CASTAÑEDA, JR., *J.*

This case involves a claim for refund in the amount of P4,189,301.44 allegedly representing unapplied input value-added tax (VAT) payments directly attributable to petitioner's zero-rated sales for the period covering January 1, 1999 to December 31, 1999.

Petitioner American Express International, Inc. (Amex) is a Philippine branch of American Express International, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, United States of America, with office in the Philippines at the Ground Floor, ACE Building, corner Rada and de la Rosa Streets, Legaspi Village, Makati City. It is a servicing unit of American Express International, Inc. — Hongkong Branch, engaged primarily to facilitate the collection of Amex Hongkong's receivables from Amex cardholders residing or situated in the Philippines, as well as the payment of Amex Hongkong to American Express accredited service establishments and merchants in the Philippines.

Petitioner is registered as a VAT entity since March 1988 under VAT Registration Certificate No. 088445 pursuant to Section 107 of the National Internal Revenue Code (NIRC) of 1977, as amended (*Exhibit A*).

On April 13, 1989, the Bureau of Internal Revenue (BIR) issued VAT Ruling No. 080-89 addressed to the petitioner stating that:

> *"In reply, please be informed that, as a VAT registered entity whose service is paid for in acceptable foreign currency which is remitted inwardly to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines, your service income is automatically zero rated effective January 1, 1988. [Section 102(a)(2) of the Tax Code, as amended]. For this, there is no need to file an application for zero-rate" (Exhibit B; par. g, Stipulated Facts).*

For the period covering January 1, 1999 to December 31, 1999, petitioner allegedly generated and recorded revenues in the total amount of P75,728,490.76 which was paid for in acceptable foreign currency inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas. Thus, petitioner asserts that said revenues qualify as zero-rated, pursuant to Section 108(B)(2) of the NIRC of 1997 as confirmed in VAT Ruling No. 080-89.

333

For the same period, petitioner allegedly paid input VAT amounting to P4,189,301.44 on its domestic purchases of taxable goods/services which are all directly attributable to its zero-rated revenues of P75,728,490.76.

Petitioner filed its quarterly VAT returns for the year 1999 within the legally prescribed period (*Exhibits C to F*). However, on April 20, 2001, it simultaneously amended said returns reflecting the aforementioned zero-rated sales in the amount of P75,728,490.76 and net input VAT payments of P4,189,301.44, broken down as follows:

Exhibit	1999	Zero-rated Sales	Input VAT
G	1st qtr	P 16,663,375.00	P 922,401.46
H	2nd qtr	19,826,494.82	960,619.16
I	3rd qtr	17,288,461.80	1,090,911.80
J	4th qtr	21,950,159.14	1,215,369.02
		P 75,728,490.76	P 4,189,301.44

Since it was allegedly unable to utilize the input VAT payments of P4,189,301.44 and that the same was not carried over to the succeeding first quarter of 2000, petitioner filed with the BIR the corresponding letter/application for refund therefor on April 23, 2001 (*Exhibits M, M-1 & M-2*).

Due to respondent's inaction on its claim, petitioner instituted the present appeal before this Court on April 25, 2001.

In his Answer filed on June 21, 2001, respondent denied the material allegations of the petition and interposed by way of Special and Affirmative Defenses the following:

> 6. Petitioner's alleged claim for tax refund/tax credit is subject to administrative investigation/examination by the respondent's Bureau;
>
> 7. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;

334

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

9. It is incumbent upon petitioner to prove that it has complied with the governing rules relative to tax recovery or refund as provided for under Sections 204(C) and 229 of the Tax Code, as amended;

10. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to adduce sufficient proof is fatal to the action for tax refund/credit;

12. Finally, there is no way to dispute the cardinal rule in taxation that tax exemptions are highly disfavored in law and he who claims tax exemption must be able to justify his claim or right. The exemption cannot be established by mere implication but it must be clearly expressed. (Wonder Mechanical Engineering Corporation vs. Court of Tax Appeals, et al., 64 SCRA 555).

As jointly stipulated by the parties, the issues to be resolved by this Court are:

1. Whether or not AMEX has excess input value-added taxes in the amount of P4,189,301.44 for the period covering January 1, 1999 to December 31, 1999;

2. Whether or not AMEX's excess input value-added taxes are attributable to its purchases that are directly related to the performance of its business or service;

3. Whether or not AMEX's excess input value-added taxes were not carried-over to the next succeeding quarter, i.e., the first quarter of 2000;

4. Whether or not VAT Ruling NO. 080-89 (April 13, 1989) is applicable to the transactions involved in this petition so as to entitle AMEX to a refund of its excess 1999 input VAT payments as a zero-rated taxpayer;

5. Assuming that VAT Ruling No. 080-89 is not applicable, whether or not AMEX, based on the services it renders and the manner by which it is compensated for such services as described in the petition and as would be proven during the trial, qualifies as a zero-rated VAT entity pursuant to Section 108(B)(2) of the National Internal Revenue Code ("NIRC");

6. Depending on the court's resolution of the foregoing issues, whether or not AMEX is consequently entitled to a refund of the VAT input taxes it paid for its domestic purchases of taxable goods and services for the period beginning

335

January 1, 1999 to December 31, 1999, which purchases were directly related to the performance of AMEX's business/service.

To support its claim, petitioner presented testimonial and documentary evidence. Respondent, on the other hand, submitted his case for decision since he had no witness to present (*page 211, CTA records*).

We deem it best to first discuss the fourth and fifth issues as the resolution of the same predetermines whether or not the other issues still deserve Our consideration.

It is the argument of the respondent that VAT Ruling No. 080-89 which states that petitioner's service income is automatically zero-rated effective January 1, 1988 is no longer applicable to the transactions involved in this petition because said ruling was issued prior to the amendment introduced by Revenue Regulations No. 5-96. Therefore, petitioner is not entitled to a refund of its excess 1999 input VAT payments as a zero-rated taxpayer.

Revenue Regulations No. 5-96 dated February 20, 1996 was promulgated to implement Section 102 [now 108(B)(2)] of the NIRC of 1977 as amended, quoted in part below:

> "SECTION 4.102-2(b)(2) and 4.103-1(B)(c) of Revenue Regulations No. 7-95 are hereby amended to read as follows:
>
> > **Section 4.102-2(b)(2)** — "Services other than processing, manufacturing or repacking for other persons doing business outside the Philippines for goods which are subsequently exported, as well as services by a resident to a non-resident foreign client such as project studies, information services, engineering and architectural designs and other similar services, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP."

336

In relation thereto, Section 4.102-2(b) of Revenue Regulations No. 7-95 is being partly reproduced:

> "(b) Transaction subject to zero-rate. — The following services performed in the Philippines by VAT-registered persons shall be subject to 0%:
>
> (1) Processing, manufacturing or repacking of goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP;
>
> (2) Services other than those mentioned in the preceding subparagraph, e.g., those rendered by hotels and other service establishments, the consideration for which is paid for in accordance with foreign currency and accounted for in accordance with the rules and regulations of the BSP.

In interpreting the amendment laid down by Revenue Regulations No. 5-96, respondent issued VAT Ruling No. 040-98 dated November 23, 1998, which provides:

> "The sales of services subject to zero percent (0%) VAT under Section 108(B)(2) of the Tax Code of 1997, are limited to such sales which are destined for consumption outside of the Philippines in that such rating also extends to project studies, information services, engineering and architectural designs and other similar services sold by a resident of the Philippines to a non-resident foreign client because these services are likewise destined to be consumed abroad. . . ."
>
> xxx xxx xxx
>
> Accordingly, the onus of taxation under our VAT system is in the country where the goods, property or services are destined and consumed. This is the reason why under our VAT Law, goods, property or services destined to be consumed in the Philippines are subject to the 10% VAT whereas exports are zero-rated. (Sections 105 and 108, Tax Code of 1997)."

337

Respondent posits that since the services rendered by the petitioner consist of facilitating collection of AMEX Hongkong receivables from card members situated in the Philippines and payment to service establishments in the Philippines, such services, although rendered to a non-resident foreign client, are nevertheless performed in the Philippines and are not destined to be consumed abroad. Hence, the onus of taxation of the revenue arising therefrom, for VAT purposes, is also within the Philippines.

Respondent further argues that aside from the fact that petitioner's services are not destined to be consumed abroad, they are neither of the same class nor of the same nature as "project studies, information services, engineering and architectural designs and other similar services", mentioned in Section 4.102-(b)(2) of Revenue Regulations No. 5-96, which are destined to be consumed abroad. As such, they cannot legally qualify for zero-rated VAT, but rather, are subject to the regular VAT rate of 10%.

Petitioner, on the other hand, counters that VAT Ruling No. 040-98, while purportedly interpreting Section 4.102-2(b)(2) of Revenue Regulations No. 7-95, as amended by Revenue Regulations No. 5-96, can not contravene the terms of the statute itself, the language of which is clear and unequivocal, or engraft unto Section 102(b)(2) [now Section 108(B)(2)] of the NIRC of 1977, as amended, additional requirements for zero-rating other than those set out in the said section. Petitioner submits that the requirements for zero-rating must and can only be those set out in Section 102(b)(2) of the NIRC of 1977, as amended.

The issues presented are not novel. In a previous similar case involving the same parties and issues, the case of ***American Express International, Inc. – Philippine***

Branch vs. Commissioner of Internal Revenue, CTA Case No. 6099, April 19, 2002, this Court ruled:

> "Indeed, respondent in VAT Ruling No. 040-98, while purportedly interpreting Section 4.102-2(b)(2) of Revenue Regulations No. 5-96, cannot contravene the terms of the statute itself, the language of which is clear and unequivocal.
>
> A tabular presentation of the requirements under Section 108(B)(2) of the Tax Code, under Section 4.102-2(b)(2) of Revenue Regulations No. 5-96, and under VAT Ruling No. 040-98 graphically shows the discrepancy mentioned:

Section 108(B)(2) of the Tax Code	Section 4.102-2(b)(2) of Revenue Regulations No. 5-96	Interpretation of the petitioner in VAT Ruling No. 040-98
Services other than those mentioned in the preceding <u>paragraph, the consideration paid for in acceptable foreign Currency and accounted for In accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).</u>	Services other than processing, manufacturing or repacking for other persons doing business outside the Philippines for goods which are subsequently exported, <u>as well as services by a resident to a non-resident foreign client, such as project studies, information services, engineering and architectural designs and other similar services,</u> the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.	"The sales of services subject to zero percent (0%) VAT under Section 108(b)(2), of the Tax Code of 1997, are limited to such sales which are destined for consumption outside of the Philippines in that such services are tacked-in as part of cost of goods exported. The zero-rating also extends to project studies, information services, engineering and architectural designs and other similar services sold by a resident of the Philippines to a non-resident foreign client <u>which services are likewise destined to be consumed abroad and are not rendered within the Philippines.</u>

> Note that while Section 108(B)(2) of the Tax Code only requires payment of the services in acceptable foreign currency, accounted for in accordance with existing BSP regulations, VAT Ruling No. 040-98 requires that the services be "destined for consumption abroad" and "not rendered within the Philippines". In fact, said VAT ruling appears to digress even from the very revenue regulations which it purports to interpret. Section 4.102-2(b)(2) of Revenue Regulations No. 5-96 does not require that the services to be rendered by a VAT registered person be destined, consumed or rendered abroad.

379

In sum, it is very clear that VAT Ruling No. 040-98 not only expands the language of Section (108)(B)(2) but also of Revenue Regulations No. 5-96 which interprets the said statute. The same cannot be countenanced. It is a settled rule of legal hermeneutics that the implementing rules and regulations cannot amend the act of Congress (**National Tobacco Administration vs. COA**, 311 SCRA 755) for administrative rules and regulations are intended to carry out, not supplant or modify, the law. (**Grego vs. COMELEC**, 274, SCRA 481). Likewise, it is axiomatic that a rule or regulation must bear upon, and be consistent with, the provisions of the enabling statute if such rule or regulations is to be valid (**Lina, Jr. vs. Carino**, 221 SCRA 515). And in case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails (**Hijo Plantation, Inc. vs. Central Bank**, 164 SCRA 192; **Conte vs. Court of Appeals**, 264 SCRA 19).

In other words, even assuming that VAT Ruling No. 080-89 is no longer applicable, petitioner still qualifies as a zero-rated VAT entity pursuant to Section 108(B)(2) of the Tax Code, as amended. As we held in the recent case of **American Express International, Inc. — Philippine Branch vs. Commissioner of Internal Revenue** (CTA Case No. 5813, January 2, 2001):

> "The provisions of Section 108(B)(2) of the Tax Reform Act of 1997 and Section 4.102-2(b)(2) are too clear to admit of interpretation advanced by Respondent. The former merely provides that services other than those enumerated in the preceding paragraph shall be subject to zero percent (0%) rate for as long as the consideration is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas."

The above ruling in CTA Case No. 5813 was affirmed by the Court of Appeals in the case of ***Commissioner of Internal Revenue vs. American Express International, Inc. – Philippine Branch, CA-G.R. SP No. 62727, February 28, 2002.***

Considering that petitioner's sales of services fall within those transactions referred to under Section 108(B)(2) of the NIRC of 1997 as subject to zero percent rate, we now determine whether or not petitioner, based on the evidence presented, is entitled to the claimed input VAT payment of P4,189,301.44.

In this regard, Section 112 of the NIRC of 1997 provides:

> *"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 Pilipinas (BSP)."

From the above provision, in order to be entitled to a refund or tax credit of input VAT payments directly attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1) there must be zero-rated or 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; and
5) that the claim for refund was filed within the two-year prescriptive period (***Epson Precision (Philippines), Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6184, November 17, 2003; EG & G Omni, Inc. vs. The Commissioner of Internal Revenue vs. The Commissioner of Internal Revenue, CTA Case No. 5987, March 26, 2004***).

To prove its reported 1999 zero-rated revenues from sales of services, petitioner presented various photocopies of telex advices and demand deposit statements *(Exhibits X-2 to X-105)* and a certificate of inward remittance from the BPI Forex Corporation (*Exhibit AA*). However, this Court finds the preceding documents insufficient. Petitioner

341

failed to present the required VAT official receipts and invoices pursuant to the following provisions of Section 113 of the NIRC of 1997 in relation to Section 4.108-1 of Revenue Regulations No. 7-95, to wit:

> **"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.
>
> **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 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.
>
> If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt

312

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.

For taxation purposes, in determining whether or not a certain item of expense is an allowable deduction from gross income, the taxpayer is required to prove that the said expense is duly supported by an official receipt issued by the seller of the goods or service. The taxpayer who purchased the goods or service is required to keep and preserve the official receipt for a period of three (3) years, pursuant to Section 237, as proof that the particular deductible expense was really incurred and the law, in fact, imposes the same duty of safekeeping on the part of the seller since an official receipt likewise serves as proof of the income received by the seller of the goods or service. The importance, therefore, of the issuance of an official receipt cannot be taken lightly because it benefits both the purchaser and the seller of the goods or service. This is precisely why Section 113 of the NIRC of 1997 was enacted as a mandatory provision of law by using the word "shall". In the case of VAT-Registered persons or entities, the official receipts are vital in determining any excess Input VAT credits or Output VAT payable and the same is true in the case of VAT-Registered persons or entities engaged in *zero-rated sales,* like the petitioner in the case before us, in proving that they have zero-rated sales.

As a consequence of the mandatory nature of Section 113, petitioner is obligated to comply therewith even if it claims that it renders service exclusively to AMEX –

343

Hongkong Branch. The law provides that "A VAT-registered person shall, for every sale, issue an invoice or receipt". No distinction was made by Section 113 as to whether or not a VAT-registered person renders service only to a single entity or to the general public in order for the requirement of the issuance of an official receipt should apply. Accordingly, this Court rules that an official receipt issued by the taxpayer is an essential document to prove that there was a sale and that an income was received and thereafter duly recorded in the accounting records.

In this regard, the petitioner failed to present the official receipts it issued to AMEX Hongkong Branch in order to establish the fact that there are zero-rated sales or that petitioner's sales are all zero-rated. Petitioner's non-compliance with the first requisite is fatal to its claim. Without the VAT invoices and official receipts evidencing its reported zero-rated revenues, the input VAT payments of P4,189,301.44 alleged to be directly attributable thereto cannot be refunded. As earlier stated, the taxpayer must show, among others, that there must be *zero-rated or effectively zero-rated sales* in order to be entitled to a refund of input VAT pertaining to the *zero-rated sales* pursuant to Section 112 (A) of the NIRC of 1997.

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. Procter and Gamble Phil. Mfg. Corp., 204 SCRA 377; Commissioner of Internal Revenue vs. S.C. Jonhson & Son, Inc., 309 SCRA 87***).

3414

Accordingly, this Court finds it unnecessary to delve on the other issues submitted for resolution.

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

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA- ENRIQUEZ
Associate Justice

CERTIFICATION

I hereby certify that the above 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.
JUANITO C. CASTAÑEDA, JR.
Chairman

3415