REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

APPLIED FOOD INGREDIENTS CO., INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB NO. 359
(C.T.A. CASE NO. 6513)

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

JUN 0 4 2008

x --- x

DECISION

PALANCA-ENRIQUEZ, J.:

Pursuant to Section 112 (A) *of the National Internal Revenue Code of 1997 (hereafter "NIRC of 1997),* as amended, petitioner filed a claim for refund of its creditable input VAT attributable to its zero-rated export sales. To do so, however, petitioner must be able to show that its input VAT paid and output VAT transactions are properly substantiated. Failure to show proof of proper documentation is fatal to one's claim for refund or credit. The law provides for some statutory and procedural requirements which have to be complied with; otherwise, the claim cannot be granted.

THE CASE

This is a Petition for Review filed by Applied Food Ingredients, Co., Inc. (hereafter "petitioner") under *Section 11* of *RA 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals)*, in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended*, which seeks to reverse and set aside the Decision dated June 13, 2007 rendered by the First Division of this Court in C.T.A. Case No. 6513, the dispositive portion of which reads as follows:

> "**IN VIEW OF THE FOREGOING**, the instant Petition for Review is hereby **DENIED**.
>
> **SO ORDERED.**"

and the Resolution dated January 16, 2008 denying petitioner's "Motion for Reconsideration of the Honorable Court's Decision Promulgated on June 13, 2007" and "Supplement Motion for Reconsideration", the dispositive portion of which reads as follows:

"**WHEREFORE**, petitioner's "Motion for Reconsideration" and "Supplemental Motion for Reconsideration" are hereby **DENIED** for lack of merit and the pronouncement reached in the assailed Decision is hereby **REITERATED**.

SO ORDERED."

THE PARTIES

Petitioner Applied Food Ingredients, Co. Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines. It is registered with the Securities and Exchange Commission (SEC) under Certificate of Registration No. ASO91-198357 dated November 25, 1991, with principal office at 2505 West Tower, PSE Bldg., Exchange Road, Ortigas Center, Pasig City.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with power to decide, approve and grant refunds or tax credits of overpaid internal revenue taxes as provided by law, and holds office and may be served with summons, orders, pleadings and other processes at the Bureau of Internal Revenue (BIR) National Office, BIR Bldg., BIR Road, Diliman, Quezon City.

THE FACTS

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

Petitioner is registered with the Regional District Office (RDO) No. 43 of the BIR in Pasig City (BIR-Pasig) as, among others, a Value-Added Tax (VAT) taxpayer engaged in the importation and exportation business, as a pure buy-sell trader.

Petitioner alleged that from September 1998 to December 31, 2000, it paid an aggregate sum of input taxes of P9,528,565.85 for its importation of food ingredients, as reported in its Quarterly Vat Return.

Subsequently, these imported food ingredients were exported between the periods of April 1, 2000 to December 31, 2000, from which the petitioner was able to generate export sales amounting to P114,577,937.24. The proceeds thereof were inwardly remitted to petitioner's dollar accounts with Equitable Bank Corporation and with Australia New Zealand Bank-Philippine Branch.

Petitioner further claimed that the aforestated export sales which transpired from April 1, 2000 to December 31, 2000 were "zero-rated" sales, pursuant to *Section 106 (A) (2) (a) (1) of the NIRC of 1997.*

Petitioner alleged that the accumulated input taxes of P9,528,565.85 for the period of September 1, 1998 to December 31, 2000 have not been applied against any output tax.

On March 26, 2002 and June 28, 2002, petitioner filed two separate applications for the issuance of tax credit certificates in the amounts of P5,385, 208.32 and P4,143,357.53, respectively.

On July 24, 2002, in view of respondent's inaction, petitioner elevated the case before this Court by way of a Petition for Review, docketed as C.T.A. Case No. 6513.

In his Answer filed on August 28, 2002, respondent alleged by way of special and affirmative defenses that the request for tax credit certificate is still under examination by respondent's examiners; that taxes paid and collected are presumed to have been made in accordance with law and regulations, hence not refundable; petitioner's allegation that it erroneously and excessively paid the tax during the year under review does not ipso facto warrant the refund/credit or the issuance of a certificate thereto; petitioner must prove that it has complied with the governing rules with reference to tax recovery or refund, which are found in *Sections 204 (C) and 229 of the Tax Code, as amended.*

After trial on the merits, on June 13, 2007, the First Division rendered the assailed decision denying the Petition for Review.

On July 3, 2007, petitioner filed a "Motion for Reconsideration" and "Supplemental Motion for Reconsideration" on July 31, 2007.

In a Resolution dated January 16, 2008, the First Division denied the "Motion for Reconsideration" and "Supplemental Motion for Reconsideration" for lack of merit.

ISSUES

Hence, this Petition for Review raising the following issues, to wit:

I

THE HONORABLE CTA ERRED IN FINDING THAT PETITIONER-APPELLANT FAILED TO SUPPORT ITS ZERO-RATED OR EFFECTIVELY ZERO-RATED SALES TRANSACTIONS.

II

THE HONORABLE CTA ERRED IN HOLDING THAT PETITIONER-APPELLANT FAILED TO ESTABLISH ITS RIGHT TO THE ISSUANCE OF TCC IN THE AMOUNT OF P9,528,565.85 REPRESENTING EXCESS UNUTILIZED INPUT TAXES PAID WHICH ARE

ATTRIBUTABLE TO ITS EXPORT SALES FROM 01 APRIL 2000 TO 31 DECEMBER 2000.

On March 27, 2008, We required respondent Commissioner of Internal Revenue to file her comment on the petition, within ten (10) days from notice.

Despite notice, respondent has failed to file her comment Thus, the petition is now deemed submitted for decision.

The principal issue in the instant case is whether or not the petitioner is entitled to the issuance of a tax credit certificate or refund of the amount of P9,528,565.85 representing creditable input taxes incurred for the period of September 01, 1998 to December 31, 2000 which are attributable to zero-rated sales for the period of April 01, 2000 to December 31, 2000.

Petitioner's Arguments

Petitioner contends that it is entitled to the refund or issuance of a tax credit certificate because it has complied with all the requirements of the law when it presented the official receipts imprinted with the words "zero-rated" and "TIN/TIN VAT" with the BIR permit number. It further contends that there is no statutory provision which requires that the export sales invoices of a VAT-registered person should contain therein the imprinted words "zero-rated" in order to be entitled to the issuance of a tax credit certificate or refund of creditable input taxes paid which are attributable to its export sales.

Moreover, pursuant to *Sections 113 and 237 of the NIRC of 1997, as amended*, a VAT-taxpayer such as the petitioner is allowed to issue either a sales invoice or an official receipt for its export sale which eventually can be presented as evidence to substantiate its claim for refund or issuance of a tax credit certificate.

THE COURT *EN BANC's* RULING

The petition is without merit.

While *Section 112 of the NIRC of 1997, as amended*, allows tax refund or credit of input tax of zero-rated sales of VAT-registered person, nonetheless, certain invoicing requirements must be faithfully complied with before such claim for refund or credit can be granted.

Invoicing and Accounting Requirements

Invoicing and accounting requirements for VAT-registered persons are provided for under *Sections 113 and 237 of the NIRC of 1997, as amended,* which 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 informations 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.
>
> xxx xxx."
>
> "Sec.237. Issuance of Receipts or Sales or Commercial Invoices.- All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: Provided, however, that in case of sales, receipts or transfers in the amount of One hundred pesos (P100) 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, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer, or client: Provided, further, that where the purchaser is a VAT-

registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number of the purchaser…."

It is clear from the aforecited provisions that the law requires the issuance of invoice or receipts for every sale of a VAT-registered person. This requirement is mandatory in nature and consequently, non-compliance therewith is fatal to one's claim for credit or refund of its input taxes. The relevance of the said requirement is obvious: the presentation of invoices and/or receipts will prove the existence and nature of transactions and will be a basis for computation of taxes. The law does not only demand the substantiation of invoices or receipts for input taxes but more importantly for output taxes especially for those claiming zero-rated sales as this will determine the creditable or unutilized input taxes that are available for refund. To sum, the invoicing requirements do not only pertain to documents required to prove input taxes, but rather it also requires the presentation of proper documents to prove existence and/or non-existence of output taxes.

Corollary thereto, *Section 4-108-1 of Revenue Regulations No. 75 (The Consolidated Value-Added Tax Regulations)* enumerates the information that must appear on the face of the receipts or invoices issued for sales of goods by all VAT-registered person, pertinent portion of which states:

> "SEC. 4-108-1. Invoicing Requirements- All VAT-registered person 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.
>
> Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoices or receipts and this shall be considered as 'VAT INVOICE.' All purchases covered by invoices other than 'VAT INVOICE' shall not give rise to any input tax."

The aforequoted revenue regulations implementing 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 *(Filipino vs.*

Macabuhay, 508 SCRA 50; Francsico vs. Court of Appeals, 243 SCRA 392). Thus, the seller-taxpayer is duty bound to comply with the invoicing requirement laid down in the said memorandum circular.

Moreover, *Revenue Memorandum Circular No. 42-2003 [Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters]* expressly provides that the failure of a taxpayer claiming for tax refund/credit to comply with the invoicing requirements will result to the disallowance of the claim for input tax. The pertinent portion of said Revenue Memorandum Circular provides:

> "A-13. Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.
>
> If the claim for refund/TCC is based on existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g., failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation,

whichever is applicable. Moreover, the case shall be referred by the processing office to concerned BIR office for verification of other tax liabilities of the taxpayer."

The aforequoted provision clearly mandates that if the claim for refund/issuance of a tax credit certificate is based on the existence of zero-rated sales by the taxpayer, but fails to comply with the invoicing requirements, the claim for tax credit/refund of input VAT shall be denied

After a careful examination of petitioner's documentary evidence, We sustain the findings of the First Division that petitioner's sales for the subject period cannot qualify for VAT zero-rating under *Section 106(A)(2)(1)(a) of the NIRC of 1997, as amended,* because the corresponding export sales invoices do not bear the (1) imprinted words "zero-rated"; (2) petitioner's "TIN-VAT"; and (3) the Bureau of Internal Revenue's permit number, all in violation of the invoicing requirements prescribed by *Sections 113 and 237 of the NIRC of 1997,* as implemented by *Section 4.108-1 of Revenue Regulations No. 7-95.*

As aptly ruled by the First Division:

"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. Without valid VAT invoices, petitioner's reported export sales for the period April 1, 2000 to December 31, 2000 cannot qualify for VAT zero rating. Consequently, the claimed unutilized input VAT attributable thereto in the amount of P9,528,565.85 cannot be granted. It is clear from the provisions of Section 112(A) of the NIRC of 1997 that there must be zero-rated or effectively zero-rated sales in order that a refund of input VAT could prosper."

Petitioner's contention that with the submission of the pertinent official receipts and other related documents, the substantial requirements of the *Tax Code* have been effectively complied by petitioner is likewise devoid of merit.

We agree with the following ratiocination of the First Division in its Resolution dated January 16, 2008:

> "As clearly emphasized in the assailed Decision, the NIRC of 1997 has separate provisions pertaining to value-added tax on sale of goods or properties (Section 106) and value-added tax on sale of services and use or lease of properties (Section 108) which must be harmonized together with the provisions of Sections 113 and 237 of the same Code.
>
> For the sale of goods and properties, as in the case at bar, the 10% VAT is imposed upon the gross selling price. Succinctly stated, the VAT on sale of goods and properties accrues upon the consummation of the sale regardless of whether or not the consideration therefor was actually received. It is for this reason that section 106(D)(1) of the NIRC of 1997 provides that the tax shall be

computed by multiplying the total amount indicated in the invoice by one-eleventh (1/11).

In the case of sale of services and use or lease of properties, the 10% VAT is computed based on the gross receipts under Section 108 (A) of the NIRC of 1997. Therefore, the VAT on the sale of services accrues upon actual or constructive receipt of the consideration irrespective of whether or not services has been rendered. And Section 108 (C) of the same Code prescribes that the tax on the sale of services and the use or lease of properties shall be computed by multiplying the total amount indicated in the official receipt by one-eleventh (1/11).

Contrary to petitioner's assertion, even prior to the enactment of RA 9337, a taxpayer is required to issue an invoice for the sale of goods or properties, and an official receipt for the sale of services and the use of lease or properties. Hence, petitioner's official receipts covering its export sales of goods cannot be used as alternative to or in lieu of the required sales invoice.

It bears stressing that Section 113 of the NIRC of 1997, which provides that 'a VAT-registered person shall for every sale, issue an invoice or receipt', is a general provision on VAT invoicing requirements as opposed to Sections 106 and 108, which are special provisions intended to govern VAT on sale of goods or properties and VAT on sale of services and use or lease of properties. Well-settled is the rule that between a general provision and a special provision of law, the special provision prevails.

Any VAT taxpayer claiming zero-rated export sales must present at least three documents namely: a) the VAT sales invoice as proof of sale of goods, b) the export declaration and the bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country, and c) bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services. In other words, only export sales supported by these documents shall qualify for VAT zero-rating."

Thus, in the case of *Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue (318 SCRA 403)*, the Supreme Court ruled:

> "...It is clear that a VAT invoice can be used only for the sale of goods and services that are subject to VAT. The corresponding taxes thereon shall be allowed as input tax credits for those subject to VAT. Section 108 expressly provides the invoicing and accounting entries required from VAT-registered persons. On the other hand, Section 111 of the Tax Code empowers the commissioner to suspend the business operations of VAT-registered persons for the specific violation listed therein...
>
> xxx xxx.
>
> ...Indeed, 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.
>
> xxx xxx.
>
> From the foregoing pronouncements, it is clear that the issuance of VAT invoices or official receipts is mandatory for sales that are subject to VAT either at 10% or 0% (zero-rated sales)."

In sum, petitioner's non-compliance with the invoicing requirements is fatal to its claim of refund or credit. As expounded by the First Division:

> "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 sale or purchase of goods is determined by the total amount indicated in the invoice, while the output or input tax on sale or

purchase of services is determined by the total amount indicated in the official receipt *(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. The same was comprehensively elucidated by the Court En Banc in the case of *J.R.A. PHILIPPINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE, CTA CASE 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; xxx "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."

Without proper VAT export sales invoices issued to its client, petitioner's export sales in the total amount of P9,528,565.85 for the period April 1, 2000 to December 31, 2000 cannot qualify for zero-rating. Consequently, petitioner's claim of unutilized input VAT of P9,528,565.85 cannot be granted.

Well settled is the rule that petitioner, as taxpayer claimant, has the burden of proof to show that it is entitled to the refund of the amount claimed as refundable, because taxes are presumed to have been collected in accordance with laws and regulations on the matter. The burden of proof rests upon the taxpayer to establish by sufficient ad competent evidence its entitlement to a claim for refund (*Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 335*). Petitioner failed in this regard.

For having failed to sustain the burden placed upon it by presenting proof that it is entitled to the refund of the amount claimed, the Court *En Banc* has no alternative, but to sustain the findings and conclusion of the First Division denying the claim for tax refund.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED**, for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

(With 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

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice