REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

SILICON PHILIPPINES, INC, (formerly INTEL PHILIPPINES MANUFACTURING, INC.),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6419

Present:

CASTAÑEDA,JR., Chairman
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

OCT 25 2006

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D E C I S I O N

PALANCA-ENRIQUEZ, J.:

It cannot be stressed enough that invoicing requirements set forth in our Tax Code are mandatory, and non-compliance therewith has adverse effects. Invoices, receipts and similar documents remain the foremost, if not the only tool used by our tax agents in their tax audit. Akin to the rules on evidence, some statutory and procedural requirements have to be complied with; otherwise, the same cannot be admitted.

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THE CASE

This is a Petition for Review filed on March 26, 2002 by Intel Philippines Manufacturing, Inc. (now known as Silicon Philippines, Inc., hereafter "petitioner") which seeks the issuance of a tax credit certificate in the amount of P23,151,845.40, representing input VAT it paid on its domestic purchases of goods and services and importation of goods/capital equipment for the period covering January 1, 2000 to March 31, 2000.

THE FACTS

In their "Joint Stipulation of Facts and Simplification of Issues", the parties agreed on the following facts:

> "1. Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at No. 1321 Apolinario St., Bangkal, Makati City;
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> 2. Respondent is the duly appointed Commissioner of Internal Revenue vested with authority to exercise the functions of said office, including inter alia, the power to refund any internal revenue tax erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, with office address at BIR National Office Building, Diliman, Quezon City;
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> 3. Petitioner is registered as a Value-Added Tax (VAT) taxpayer, pursuant to Section 107 of the Tax Code

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effective January 30, 1996, in regard to which it was issued Certificate of Registration No. 32A-3-002649 and BIR Form No. 1556- Certificate of Registration No. 94-048-02621;

4. Petitioner is also registered with the Board of Investment (BOI) as an export enterprise. It was issued a Certificate of Registration No. 85-1010 by the Board of Investment;

5. Petitioner is engaged primarily in the business of designing, developing, manufacturing and exporting advance and large-scale integrated circuit components, commonly referred to in the industry as Integrated Circuits or "ICs";

6. Petitioner filed its Quarterly VAT return and Monthly VAT Declarations for the first (1st) quarter of 2000 and the same were accordingly stamped received by the BIR or its authorized agent;

7. That the Petitioner was issued VAT Ruling No. 102 (a) (1)-402-88 by the Bureau of Internal Revenue;

8. Sometime in 18 May 2000, Petitioner filed a claim for tax credit in the total amount of P23,151,845.40, with the respondent through the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance, per BIR Form No. 2552 entitled "APPLICATION FOR TAX CREDIT/REFUND OF VALUE-ADDED TAX PAID" and Claimant Information Sheet No. 35466;

9. No final action has been taken by the Respondent on Petitioner's claim for refund and the two (2) years prescriptive period is about to lapse;

10. The Petition for Review was filed within the two (2) years prescriptive period for filing of a claim with the Honorable Court."

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In his Answer, respondent alleged, by way of special and affirmative defenses:

> "4. Assuming without admitting that petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue.
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> 5. The instant petition, which sought for the refund of its alleged unutilized input taxes for the first quarter of 2000, failed to state a cause of action. Under Revenue Memorandum Order No. 9-2000, sales of goods, properties and services made by VAT registered suppliers to BOI registered exporters shall be accorded automatic zero-rating and that is, without the necessity of applying for and securing approval of the application for zero-rating as provided for under Revenue Regulations No. 7-95.
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> 6. The petitioner being a BOI registered exporter, and considering the sales of goods, properties or services made by VAT registered supplier to the petitioner is automatic zero-rated, there is no value-added tax (VAT) that has to be passed on to the petitioner. Consequently, the petitioner would not gain input taxes on their purchases of goods, properties or services and importation of capital goods.
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> 7. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.
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> 8. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.
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> 9. 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.

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> 10. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended, as well as the requirements provided for in Revenue Regulations No. 5-87 as amended by Revenue Regulations No. 3-88.
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> 11. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)."

Petitioner presented Atty. Marc Paul Tan, its Tax Manager and Maria Wencita C. Salvador, the Commissioned Independent CPA, as witnesses, and submitted its "Formal Offer of Evidence" and "Supplement to Petitioner's Offer of Evidence", which were all admitted by the Court, except for *Exhibits "O", "O-1" to "O-4365"*, for failure to submit said exhibits to the Court and *Exhibits "P-1" to "P-178"* for failure of the Commissioned Independent CPA to compare said exhibits with the original.

On July 7, 2005, the petitioner filed a "Motion for Reconsideration (of the Resolution dated June 9, 2005)", which the Court partially granted. Accordingly, *Exhibits "O", "O-1" to "O-4365"* were admitted, while Exhibits *"P-1" to "P-178"* were denied admission.

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Not satisfied, on November 2, 2005, petitioner filed a Petition for Review with this Court En Banc to admit the remaining evidence, *Exhibits "P-1" to "P-178"*, docketed as C.T.A. E.B. No. 133. On February 16, 2006, the Court *En Banc* denied due course to and dismissed the petition for lack of jurisdiction. Said Resolution dated February 16, 2006 had become final and executory, as per Entry of Judgment issued by this Court on May 31, 2006.

On May 17, 2006, petitioner filed a "Motion to Amend Caption" to Silicon Philippines, Inc. vs. Commissioner of Internal Revenue, on the ground that Intel Philippines Manufacturing and Silicon Philippines, Inc. entered into a Merger Agreement whereby the entire assets and liabilities of Silicon Philippines, Inc., will be transferred to and absorbed by Intel Philippines Manufacturing, Inc., which was granted in the Resolution dated August 8, 2006.

On the other hand, counsel for the respondent submitted the case for decision, without presenting any evidence.

Both parties were granted thirty (30) days from February 8, 2006 within which to file their simultaneous memoranda, after which the case will be deemed submitted for decision.

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Upon motion, petitioner was granted thirty (30) days from March 10, 2006 or until April 9, 2006 within which to file its memorandum.

For failure of both parties to submit their respective memoranda within the prescribed period, the case is now deemed submitted for decision.

ISSUES

Stipulated Issues

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT THE PETITIONER HAS GENERATED AND RECORDED ZERO-RATED EXPORT SALES IN THE TOTAL AMOUNT OF P1,240,201,005.61 FOR THE PERIOD JANUARY 1, 2000 TO MARCH 31, 2000.

II

WHETHER OR NOT SUCH EXPORT SALES WERE PAID TO PETITIONER IN ACCEPTABLE FOREIGN CURRENCY AND INWARDLY REMITTED TO THE PHILIPPINES IN ACCORDANCE WITH EXISTING REGULATIONS OF THE BANGKO SENTRAL NG PILIPINAS.

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III

WHETHER OR NOT PETITIONER AS BOI-REGISTERED ENTERPRISE WOULD GAIN INPUT TAXES ON THEIR PURCHASES OF GOODS, PROPERTIES OR SERVICES.

IV

WHETHER OR NOT PETITIONER IS ENTITLED TO THE CREDIT/REFUND OF THE INPUT TAX PAID ARISING FROM DOMESTIC PURCHASES OF GOODS AND SERVICES AND IMPORTATION OF GOODS FOR THE PERIOD JANUARY 1, 2000 TO MARCH 31, 2000 IN THE AMOUNT OF P23,151,845.40 SUBJECT OF THIS PETITION.

V

WHETHER OR NOT THE PETITIONER'S CLAIM FOR REFUND OF ALLEGED UNUTILIZED INPUT TAXES FOR THE FIRST (1^{ST}) QUARTER OF 2000 IS SUBSTANTIATED BY DOCUMENTARY EVIDENCE.

Principal Issue To Resolve

The foregoing issues raised by both parties boil down to the principal issue of whether or not petitioner is entitled to the issuance of a tax credit certificate in the amount of P23,151,845.40, representing input VAT it paid from January 1, 2000 to March 31, 2000.

Petitioner's Arguments

Petitioner alleges that for the period of January 1, 2000 to March 31, 2000, it generated and recorded zero-rated export sales in the amount

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of P1,240,201,005.61, which were paid for in acceptable foreign currency and were inwardly remitted to the Philippines and accounted for in accordance with existing regulations of the Bangko Sentral ng Pilipinas (BSP), pursuant to *Sections 106 (A)(2)(a)(1) and 108 (B)(1) of the 1997 Tax Code*.

Petitioner further contends that for the same period, it paid VAT input taxes on its domestic purchases of taxable goods and services and importation of goods/capital equipment in the amount of P23,151,845.40 which were all attributable to its zero-rated sales of P1,240,201,005.61 made in the 1st quarter of 2000. And since the petitioner is a VAT-registered entity with export sales, the said export sales are not subject to 10% value-added tax, but are zero-rated. Hence, such zero-rated sales will not result to any VAT output tax, pursuant to *Sections 106 (A)(2)(a)(i) and 108 (B)(1) of the Tax Code*.

In support of its claim, petitioner invokes *Sections 106(A)(2)(a)(1), 108(B)(1), 112 (A) and (B) of the Tax Code and Section 4-100-2(a) of Revenue Regulations No. 7-95*.

<u>Respondent's Arguments</u>

On the other hand, respondent counter argues that the petition failed to state a cause of action; under Revenue Memorandum Order No.

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9-2000, sales of goods, properties and services made by VAT registered suppliers to BOI registered exporters shall be accorded automatic zero-rating and that is, without the necessity of applying for and securing the approval of the application for zero-rating, as provided under *Revenue Regulations No. 7-95*; the party being a BOI-registered exporter, and considering the sales of properties or services made by VAT registered supplier to the petitioner is automatic zero-rated, there is no value-added tax (VAT) that has to be passed on to the petitioner; and consequently petitioner would not gain input taxes on their purchases of goods, properties or services and importation of capital goods.

THE COURT'S RULING

The petition is not meritorious.

Petitioner is registered with the Bureau of Internal Revenue as a value-added tax (VAT) taxpayer in accordance with *Section 107 of the National Internal Revenue Code of 1997* (hereafter "NIRC of 1997 "), *as amended*, as shown in petitioner's BIR Certificate of Registration No. 32A-3-002649 and BIR Form No. 1556- Certification of Registration No. 94-048-02621 *(Exhibits "A" and "B")*. Likewise, it is registered with the Board of Investment (BOI) as an export enterprise, evidenced by its Board of Investments Certificate of Registration *(Exhibit "C")*. al

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Petitioner alleges that for the period covering January 1, 2000 to March 31, 2000, it generated and recorded zero rated export sales in the amount of P1,240,201,005.61. Said export sales were paid to petitioner in US dollars and were inwardly remitted in accordance with existing regulations of the BSP. For the same period, it paid VAT input taxes amounting to P23,151,845.40 for domestic purchases of goods and services and importation of goods/capital equipment which were all attributable to petitioner's zero rated sales of P1,240,201,005.61.

Petitioner further alleges that said VAT input taxes were paid in connection with its trade or business and were duly supported by invoices and/or receipts showing the information required under *Sections 113 and 237 of the Tax Code*, and had not been applied against any VAT output tax liability of the petitioner during the same period from January 1, 2000 to March 31, 2000, or any succeeding period or periods.

It further maintains that being a VAT-registered entity, it is subject to VAT imposed under *Sections 106 and 108 of the Tax Code*. The exempt sales of petitioner are not subject to the 10% VAT, but are zero rated. Hence, such zero rated sales will not result to any VAT output tax, pursuant to *Section 106 (A)(2)(a)(1)* and *Section 108(B)(1) of the Tax Code*.

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To prove its alleged zero-rated export sales, petitioner presented in evidence the following documents:

1) Export documents (*Exhibits "U-19" to "U-408", "V-1" to "V-530", "W-1" to "W-631"*); Export Declarations (*Exhibits "X-1" to "X-38"*); and Sales Invoices (*Exhibits "Y-1" to "Y-3"*); and

2) Final Report of the Commissioned Independent CPA (*Exhibit "Z"*).

A perusal of the above-mentioned documents, particularly the Final Report of the Commissioned Independent CPA, reveals that most of the sales entered into by petitioner from January 1 to March 31, 2000 were all export sales; the finished goods exported by the petitioner were paid in US dollars; the total inward remittance relating to the first quarter of 2000 export sales is US$52,500,000.00; the over remittance of US$23,176,800.37 of the total export sales came from the payment of outstanding receivables and advances from the affiliates of the petitioner; and these were accounted for in accordance with the rules and regulations of the BSP.

Thus, it appears that petitioner's export sales in the amount of P1,191,670,353.33 for the period January 1, 2000 to March 31, 2000 fall

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under the category of export sales transactions, subject to zero percent (0%) VAT, pursuant to the above-quoted provisions.

On the Issue of
Substantiation of
The Amount Claimed

This leads us to the issue of whether petitioner, in relation to its zero-rated sales, has complied with the invoicing requirements of the NIRC. The resolution of this issue must take precedence over the others since an adverse ruling to such effect renders the rest of the issues moot and academic.

While *Section 112 of the NIRC of 1997, as amended*, allows tax refund or credit of zero-rated or effectively zero-rated sales, and also in taxable or exempt sales of goods or properties or services, however, the law provides for invoicing requirements that must be faithfully complied with before such claim for refund or credit can be granted.

Invoicing Requirements

Sections 113, 237 and 238 of the NIRC of 1997, as amended, lay down the invoicing requirements for VAT-registered persons.

Section 113 provides:

> "SEC. 113- Invoicing and Accounting Requirements for VAT-registered Persons.-

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(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.

xxx xxx."

On the other hand, *Section 237* reads:

"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 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; 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

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> is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.
>
> The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in the business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.
>
> xxx xxx."

While *Section 238* provides:

> "SEC. 238.- Printing of Receipts or Sales or Commercial Invoices.- All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

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> All persons who print receipt or sales or commercial invoices shall maintain a logbook/register of taxpayers who availed of their printing services. The logbook/register shall contain the following information:
>
> (1) Names, Taxpayer Identification Numbers of the persons or entities for whom the receipts or sales or commercial invoices were printed; and
>
> (2) Number of booklets, number of sets per booklet, number of copies per set and the serial numbers of receipts or invoices in each booklet."

Pursuant to the above provisions, therefore, it is clear that it is not only the export sales that should be proven, but also compliance with the requirements set forth under the aforecited sections of the NIRC.

In relation to these requirements, *Section 4-108-1 of Revenue Regulations No. 7-95 (The Consolidated Value-Added Tax Regulations)* enumerates the information which must appear on the face of receipts or invoices issued for the sale of goods by all VAT-registered persons, the pertinent portion of which 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:
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> 1. the name, TIN and address of the seller;

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> 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 "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."

The law is very clear. *Section 113* provides that "a VAT registered person shall, for every sale, issue a duly registered VAT invoice receipt

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for every sale transaction". Such VAT invoice or receipt must show the taxpayer's identification number, followed by the word "VAT", the BIR Authority to imprint or BIR permit marker and the word "zero-rated" imprinted on the invoice receipt covering a zero-rated sale.

Under the aforecited *Section 237*, persons required to issue receipts or sales or commercial invoices are mandated to register the same with the BIR. *Revenue Regulations No. 2-90*, in fact, restored the requirement to register and stamp receipts and invoices prior to their use, to wit:

> "SEC. 19. *Authentication and registration of books, registers, or records; authority to print receipts, sales or commercial invoices; and registration and stamping of receipts and invoices.*
>
> *Registration and stamping of receipts and invoices.- Before being used, the printed receipts, sales or commercial invoices* shall be *registered* with the revenue district officer where the principal place of business of the taxpayer is located within thirty days from the date of printing the same. The registration of *the printed receipts or invoices shall be evidenced by an appropriate stamp on the face of the taxpayer's copy of the authority to print as well as on the front cover, on the back of the middle invoice or receipt and on the back of the last invoice or receipt of the registered booklet or pad*, authenticated by the signature of the officer authorized to place the stamp thereon."

In resume, VAT-registered persons are directed to issue duly registered invoice or receipt for every sale or lease of goods, properties or services under *Section 237*, containing the required information in

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Section 113 of the NIRC. For, a sales invoice is not merely an evidence of payment. From the provision of *Section 237*, the issuance of an invoice is required the moment there is already a sale or transfer of merchandise or services rendered. In other words, a sales invoice is ordinarily issued to a purchaser only upon payment by the latter of the price of goods purchased (*The National Internal Revenue Code Annotated, by Hector S. De leon, Seventh Ed., 2000, pp. 898-899; citing BIR ruling No. 046, May 27, 1989*). Verily, under *Section 237,* only registered receipts or sales or commercial invoices are considered as "VAT invoices".

In the case at bench, a cursory examination of the documentary evidence presented by petitioner reveals that the computer generated sales invoices (*Exhibits "Y-1" to "Y-3"*) issued by it do not bear the BIR permit to print. Absent any authority to print said invoices leads Us to the conclusion that the same is not registered, in violation of *Sections 113 and 237 of the NIRC of 1997, as amended.* Surely, an unregistered receipt cannot be used as supporting document for input tax.

We hold that petitioner's failure to imprint the BIR permit number on the face of sales receipts or invoices, issued by it, is fatal to its claim for tax credit/issuance of tax credit certificate. The documents presented by the petitioner cannot be used to substantiate its claim for tax refund/issuance of tax credit certificate for the reason that it is not a valid evidence to prove that the sales were zero-rated sales for its failure to comply with the invoicing requirements prescribed by law.

Although petitioner was able to secure BIR permit to use computerized books of accounts such as General Ledger, Accounts Payable Subsidiary Ledger, Purchase Register, Export Sales Register, Input Register (*Exhibit "AA"*), said permit does not include the authority to use computerized sales invoices or receipts.

Said letter authority to use computerized books of accounts is hereinbelow quoted in full as follows:

> "May 27, 1988
>
> Intel Philippines Manufacturing, Inc.
> 2221 Apolinario St., Bangkal
> Makati, Metro Manila
>
> Gentlemen:
>
> With reference to the request contained in your letter dated May 23, 1988, please be informed that after proper evaluation of facts and circumstances relative to your case, this Office hereby approves your request to use pre-numbered loose leaf computerized books of accounts such as the General Ledger, Accounts Payable Subsidiary Ledger, Purchase Register, Export A2 Sales Register, Import Register, subject to the requirements provided for in Revenue Memorandum Circular No. 13-82 dated May 28, 1982 and the further condition that all the data intended to be reflected therein are typewritten.

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Upon receipt of the permit, you should immediately submit the registration either with the Collection Agent or Revenue District Office of book bound registered book. This book should show in detail and in column on the left side the serial number of receipts printed for use. Every additional printing should be recorded on the same side of the book. On the right hand side, there should be entered the serial number of receipts used during the week, together with the total amount involved.

All of your books of accounts and other accounting receipts as well as the loose leaf forms authorized to be used herein should be preserved intact, unaltered and unutilized for a period of three (3) years in the same manner as in the case of your other principal books of accounts.

Should you change your present loose leaf forms with permanent bound xxx, the same should first be presented to the Revenue District Office concerned for approval and registration before they are used.

This permit should be framed and permanently displayed in conspicuous place in your establishment at all times. Any violation of the terms and conditions or that of any provision of the Bookkeeping Regulations shall be sufficient ground for the immediate cancellation or withdrawal of the same.

Very truly yours,

(SGD.) PERFECTO T. DOMINGO
Regional Director" (*Exhibit "AA"*)

The above letter authority dated May 27, 1988 speaks for itself. The wordings of the letter authority are explicit and unequivocal that the BIR only granted petitioner permit to use computerized books of

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accounts. Said permit does not include the authority to print sales invoices.

In the case of *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, CA-G.R. SP No. 79327, August 12, 2004*, involving the same parties and issue, the Court of Appeals affirmed the decision, dated April 21, 2003, of this Court in C.T.A. Case No. 6128, and ruled as follows:

> "Besides, Revenue Memorandum Circular No. 42-2003 has already clarified the issue relative to the failure of a claimant to comply with certain invoicing requirements. Under said memorandum, failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax by the purchaser-claimant. Thus, if the claim for refund/issuance of tax credit certificate is based on the existence of zero-rated sales by the taxpayer but fails to comply with the invoicing requirements in the issuance of sales invoices (e.g. failure to indicate the TIN), the claim for tax credit/refund of VAT on its purchases shall be denied since the invoice issued to the customers failed to depict that he is a VAT-registered taxpayer whose sales are classified as zero-rated sales. This treatment, however, 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.
>
> In the case at bench, the invoices issued by petitioner were found by the CTA to have no authority to print from the BIR. Absence of authority to print in the invoices only leaves us the conclusion that the said invoices are not registered, as the said invoices do not comply with the invoicing requirements under Section 113 and also the

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> requirements of issuance of receipts or sales or commercial invoices under Sec. 237. Surely, an unregistered receipt cannot be used as supporting document for input tax.
>
> Parenthetically, the ruling of the CTA that there was failure on the part of petitioner INTEL TECH to substantiate its demand for refund/issuance of tax credit certificate because the documents it submitted in support of its claim cannot be considered as valid evidence to prove its zero-rated sales of goods for VAT purposes is not erroneous. The CTA acts as a highly specialized body specifically created for the purpose of reviewing tax cases and because of its recognized expertise, its findings of fact will not ordinarily be reviewed, absent any showing of gross error or abuse on its part. There being no showing of gross error on the part of the CTA, thus, this Court will have to sustain its findings."

Effect of Failure to Comply with the Invoicing Requirements

In this regard, *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. Pertinent portion of said Memorandum Circular provides:

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> "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 the 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 the concerned BIR office for verification of other tax liabilities of the taxpayer."

Pursuant to the aforequoted Circular, failure 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 of the taxpayer claimant. Thus, if the claim for refund/issuance of 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.

<u>Rationale of Strict Compliance</u>

The law and revenue regulations are explicit in emphasizing strict compliance with the invoicing requirements. Pursuant to *Section 110 of*

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the NIRC of 1997, as amended: "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". VAT invoices and receipts, in relation to the instant case, are used as evidence for purposes of determining whether there is an excess in either the input or output taxes.

The zero-rated taxpayer should be entitled to a tax credit/refund of input taxes paid on its purchase of goods or services subject to the mandatory compliance with the invoicing requirements prescribed by law. Otherwise, there may result the absurd situation where the government would be crediting/refunding non-existent input tax to purchases of goods or services of such zero-rated taxpayer.

For all the foregoing, We conclude that petitioner's failure to secure authority to print computerized invoices or receipts and failure to indicate said authority or permit to print invoices or receipts is fatal to its claim.

Petitioner Has Burden of Proof

Petitioner has the burden of proof to establish the factual basis of its claim for tax refund (*Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332*). Petitioner failed in this regard. The denial of the tax refund was petitioner's fault for having failed to substantiate its claim for tax refund in accordance with the prescribed invoicing requirements.

Laws granting tax exemption are construed strictissimi juris against the taxpayer and liberally in favor of the taxing authority

Settled is the rule that a claim for tax refund is in the nature of tax exemption. Laws granting tax exemption are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and he who thus seek to be privileged must justify it by words too plain too be mistaken and too categorical to be misinterpreted *(Sea-Land Services, Inc. vs. Court of Appeals, 359 SCRA 441)*.

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

OLGA-PALANCA ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman, Second Division

CERTIFICATION

I hereby certify that the 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.

ERNESTO D. ACOSTA
Presiding Justice

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