REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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MATSUSHITA BUSINESS MACHINE CORPORATION OF THE PHILIPPINES,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6245

Members:

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

Promulgated:
JUN 02 2006

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DECISION

CASANOVA, C., J.:

This case involves a claim for the refund or issuance of a tax credit certificate in the amount of P12,017,138.47 allegedly representing unutilized input value-added taxes attributable to zero-rated sales for the period covering April 1, 1999 to March 31, 2000.

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at Bo. Mapandan, Ortigas Avenue Extension, Taytay, Rizal, while respondent 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. In view of Executive Order No. 132

dated October 26, 1993, the address where the respondent may be served with pleadings and other processes is at The Chief, Legal Division, Bureau of Internal Revenue, Revenue Region No. 7 Bldg., corner Scout Santiago and Quezon Avenue, Quezon City (*pars. 1 & 2, Facts Admitted*).

Petitioner was organized to principally engage in the business of manufacturing, importing, exporting, buying and selling or otherwise dealing in, at wholesale, all equipment, apparatus, appliances, instruments and devices concerned with information handling, including but not limited to copiers, scanners, and printers and other goods of similar nature, and any and all equipment, materials, supplies used or employed in or related to the manufacture of such finished products. It is registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer starting October 5, 1995 and with the Board of Investments (BOI) in accordance with the provisions of the Omnibus Investments Code of 1987 as a preferred pioneer enterprise for the production and export of plain paper copiers, sub-assemblies, parts and components (*pars. 3, 4 & 5, Facts Admitted*).

For the period covering April 1, 1999 to March 31, 2000, petitioner duly filed with the Bureau of Internal Revenue its Quarterly VAT Returns, including amendments thereto, reflecting the following:

Exh	Period Covered	Zero-rated Sales	Taxable Sales	Output VAT	Input VAT this Quarter	Excess Input VAT this Qtr
	1999			(a)	(b)	(c) = (b) – (a)
A	2nd qtr	P 221,200,908.52			P 4,149,486.92	P 4,149,486.92
C	3rd qtr	254,588,328.20	P 962,392.42	P 96,239.25	1,106,016.13	1,009,776.88
D	4th qtr	193,644,637.07			3,982,480.17	3,982,480.17
	2000					
E	1st qtr	172,791,772.96	882,544.06	88,254.41	2,779,155.25	2,690,900.84
		P 842,225,646.75	P1,844,936.48	P184,493.66	P12,017,138.47	P11,832,644.81

On February 8, 2000 and August 25, 2000, petitioner filed with the BIR two separate letters requesting for the refund of its reported unutilized input VAT payments for the periods of April 1, 1999 to September 30, 1999 and October 1, 1999 to March 31, 2000 in the amounts of P5,159,263.80 and P6,673,381.00, respectively, totaling to P11,832,644.81, and citing as legal bases therefor Sections 106(A)(2)(a)(1), 110(B) and 112 of the National Internal Revenue Code (NIRC) of 1997 (*Exhibits H & I*).

Due to the respondent's inaction on the aforesaid claims, petitioner appealed before this Court by way of a Petition for Review filed on March 6, 2001, this time praying for the refund or issuance of a tax credit certificate of a higher amount of P12,017,138.47.

In his Answer filed on April 20, 2001, respondent interposed the following Special and Affirmative Defenses:

5. That the herein petitioner is not entitled to the refund of the amounts prayed for in the instant petition for review;

6. That the instant petition for review was prematurely filed as petitioner has not exhausted the administrative remedies required by law and jurisprudence on the actions of this nature as no decision has as yet been rendered by the respondent;

7. In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action; and

8. Claims for tax refund are strictly construed against the taxpayer. Petitioner has no cause of action.

Petitioner and respondent submitted the following issues for resolution:

1. Whether or not the petitioner is entitled to the claim for refund and/or issuance of a tax credit certificate for the amount of P12,017,138.47 representing unutilized and/or unapplied input VAT, attributable to its export sales for the period April 1, 1999 to March 31, 2000, which remains unutilized and/or unapplied against its output VAT liability;

2. Whether or not the accumulated input VAT of P12,017,138.47 arising from petitioner's purchase of goods and services for the period covering April 1, 1999 to March 31, 2000 which purchases of goods and services are attributable to its zero-rated export sales, is duly supported by VAT invoices and receipts;

3. Whether or not petitioner's accumulated input VAT of P12,017,138.47 for the period April 1, 1999 to March 31, 2000 was applied or utilized against its output VAT in the succeeding taxable quarters of taxable year 2000; and

4. Whether or not petitioner is engaged in zero-rated export sales during the period April 1, 1999 to March 31, 2000.

We shall first delve on the fourth issue of whether or not petitioner is engaged in zero-rated export sales during the period April 1, 1999 to March 31, 2000, since the resolution of the same determines the necessity of discussing the other issues stipulated by the parties.

Petitioner maintains that its export sales which were paid for in US dollars, inwardly remitted and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas, are subject to zero percent (0%) VAT pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, which states:

> "SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
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> "(A) *Rate and Base of Tax.* –There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.
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> xxx xxx xxx
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> "(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
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> "(a) *Export Sales.* – The term '*export sales*' means:
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> "(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)."

To substantiate its export sales for the period April 1, 1999 to March 31, 2000 and the foreign currency proceeds thereof, petitioner proffered before this Court the following documents:

DOCUMENT	**EXHIBIT NO.**
Quarterly VAT Returns for the period April 1, 1999 to March 31, 2000	A, C, D & E
Certification issued by Security Bank dated November 9, 1999 certifying that for the period April 1, 1999 to September 30, 1999 the bank received inward remittances in the form of telegraphic transfer from the bank's	F to F-1

(70)

foreign correspondent banks in favor of petitioner totaling US$11,411,133.31	
Certification issued by Security Bank dated June 8, 2000 certifying that the bank received inward remittances totaling US$10,134,351.72 and was credited to the account of petitioner	G to G-1
Schedule of Summary of Export Sales for the period April 1, 1999 to March 31, 2000	LL-1 to LL-27 P to P-26
Documents such as invoices, delivery receipts, bills of lading	T to T-1648
Bank Certificates of Inward Remittance for the period April 1, 1999 to March 31, 2000	U to U-3
Consolidated Report of the Independent CPA, Mr. Ruben R. Rubio, dated September 15, 2004	RR-1 to RR-52

A perusal of the aforementioned documents reveals that petitioner's products were actually sold and shipped abroad and in consideration thereof, petitioner received foreign currency payments, which were inwardly remitted in accordance with the BSP rules and regulations. These export sales may fall within the export sales transactions subject to zero percent (0%) VAT referred to under Section 106(A)(2)(a)(1) of the NIRC of 1997.

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.* —
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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:
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> (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, reads as follows:

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. *(Emphasis supplied)*

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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.

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 this Court in the case of ***J.R.A. PHILIPPINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE, C.T.A. CASE NO. 6454, June 30, 2005,*** 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:
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>> 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:
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> xxx xxx xxx
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> (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.

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> 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.
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> 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 reported export sales for the period April 1, 1999 to March 31, 2000 in the amount of P842,225,646.75 cannot qualify for VAT zero-rating. Consequently, the claimed input VAT attributable thereto in the amount of P12,017,138.47 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, to wit:

"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)."

Accordingly, this Court finds it unnecessary to discuss the other issues raised.

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

SO OREDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
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