REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TAGANITO MINING CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 6597

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 12 2004

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DECISION

This case involves a claim for refund in the total amount of P11,411,383.02 representing petitioner's alleged excess VAT input taxes paid on petitioner's domestic purchases of taxable goods and services and importation of capital goods for the period January 1 to December 31, 2001.

The facts as culled from the records are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at 4th Floor, Solid Mills Building, Dela Rosa Street, Legaspi Village, Makati City. It is primarily engaged in the business of exploring, producing and exporting beneficiated nickel silicate ores and chromite ores and registered as a VAT-entity with Certificate of Registration No. 94-470-000373 *(Annex "C", Petition for Review)*.

The Board of Investments (BOI), likewise, issued a certification that petitioner exported 100% of its total sales volume/value for the calendar year covering January to December 2001. *(Annex "E", Petition for Review)*

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Petitioner alleges that for the period January 1, to December 31, 2001, it generated zero-rated export sales amounting to Six Hundred Fifty Million Eight Hundred Eighty Nine Thousand Six Hundred Twenty Pesos and 11/100 (P650,889,620.11) which were paid for in acceptable foreign currency and accounted for in accordance with the rules of the Bangko Sentral ng Pilipinas (BSP), pursuant to Section 106 (a)(2)(a)(1) of the National Internal Revenue Code (NIRC). Furthermore, for the same period, petitioner paid the amounts of Eight Million Five Hundred Ninety Eight Thousand Fifty Four Pesos and 89/100 (P8,598,054.89) and Two Million Eight Hundred Thirteen Thousand Three Hundred Twenty Eight and 13/100 (P2,813,328.13), representing VAT input taxes on its domestic purchases of taxable goods and services and on its importation of capital goods, respectively, details of which are as follows:

Exhibits	Taxable Quarter	Zero-rated Export Sales	Input VAT on Domestic Purchases of Goods and Services	Input VAT on Importation of Goods	Total Input VAT
K	1st Quarter	P169,367,952.76	P1,648,013.26	-	P 1,648,013.26
Q	2nd Quarter	194,080,976.41	2,600,606.17	P2,813,328.13	5,413,934.30
X	3rd Quarter	109,441,430.26	3,538,974.68	-	3,538,974.68
DD	4th Quarter	177,999,260.68	810,460.78	-	810,460.78
TOTAL		P650,889,620.11	P8,598,054.89	P2,813,328.13	P11,411,383.02

On December 27, 2002, petitioner filed with the respondent's Excise Taxpayers' Assistance Division under the Large Taxpayers Division, a claim for refund of the VAT input taxes paid *(par. (d), Stipulated Facts, Joint Stipulation of Facts)* on its domestic purchases of taxable goods and services and importation of capital goods in the aggregate amount of P11,411,383.02 for the period January 1 to December 31, 2001 in accordance with Section 112 (A) and (B) of the 1997 NIRC.

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For failure to receive any response from the respondent, petitioner filed the instant Petition for Review on January 27, 2003 to forestall the running of the two-year prescriptive period.

Respondent filed his Answer on February 28, 2003 and raised the following Special and Affirmative Defenses:

> "4. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
>
> 5. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the Bureau of Internal Revenue;
>
> 6. To support its claim, it is imperative on the part of petitioner to prove the following to wit:
>
> a. The registration requirements of a *Value Added Taxpayer* pursuant to Section 6 (a) and (b) of the Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95.
> b. That the VAT input taxes of *Php: 11,411,383.02* allegedly paid by petitioner from its domestic purchases of services were attributable to its zero-rated sales and such tax has not been applied against any output tax.
> c. That petitioner's claim for tax credit or refund of the excess Input Value Added Tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 4.106-1 (Re: Refunds or Tax Credits of Input Tax) and Section 4.106-2 (Re: Procedures for Claiming Refunds or Tax Credits of Input Tax) of Revenue Regulation No. 7-95.
> d. That petitioner's domestic purchases of services were made in the course of its trade or business, properly supported by invoices or receipts and import entry or other equivalent documents showing that it actually paid VAT in pursuance to Section 4.104-5 (a) & (b) of Revenue Reg. No. 7-95. (Re: Substantiation of Claims for Input Tax Credit).
> e. The requirements as enumerated under Section 4.104-2 of the Rev. Reg. 7-95. (Re: Persons who can avail of the Input Tax Credits)
> f. The requirements under Section 4.100-2 in relation to Section 4.102-1 and Section 4.102-2 of the Rev. Reg. No. 7-95, which

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provides that petitioner's export sale of taxable goods and services to persons doing business outside the Philippines, are paid for in acceptable foreign currency actually or constructively remitted to the Philippines and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*.

g. That Petitioner has complied with the governing rules and regulations with reference to recovery of tax erroneously or illegally collected as explicitly found in Sections 112 (A) and 229 of the Tax Code, as amended.

7. Furthermore, and consistent with the well settled principle in taxation, claims for refund are construed strictly against the claimant as they partake the nature of an exemption from tax and it is incumbent upon petitioner to prove that it is entitled thereto under the law. Failure to prove the same is fatal to its claim for tax refund. Exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon the vague implications. *(Asia Petroleum Co. vs. Llamas 49 Phil 466)"*

The following issues were stipulated by the parties:

(1) Whether or not the amount of Eleven Million Four Hundred Eleven Thousand Three Hundred Eighty Pesos and 02/100 (Php: 11,411,383.02) representing Petitioner's alleged excess VAT input taxes paid relative to its domestic purchases of goods and services for the period of January 1, 2001 to December 31, 2001 are attributable to its zero-rated transactions;

(2) Whether or not the said excess input VAT was carried over to succeeding quarter and applied against any of Petitioner's output VAT for the said period;

(3) Whether or not Petitioner's export sales are subject to Value-Added Tax at zero-percent rate;

(4) Whether or not Petitioner's alleged export sales in the amount of PhP:650,889,620.11 were paid for in acceptable foreign currency and accounted for in accordance with the rules of the Bangko Sentral ng Pilipinas (BSP);

(5) Whether or not the alleged excess input VAT is sufficiently substantiated by documentary evidence;

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(6) Whether or not Petitioner is entitled to tax refund.

We shall jointly discuss the issues considering that these are interrelated.

Petitioner claims that it is a VAT-registered entity whose sales in the amount of P650,889,620.11 for the period January 1, 2001 to December 31, 2001 consisted of direct export sales, the consideration of 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 BSP. Thus, its export sales are considered as zero-rated sales which are not subject to the 10% VAT, but which are subject to zero percent (0%) rate pursuant to Section 106(A)(2)(a)(1) of the 1997 NIRC, which provides, viz:

> "Section 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* –
>
> (1) x x x
>
> (2) [Zero-rated Sales.] - The following sales by VAT-registered persons shall be subject to zero percent (0%) rate;
>
> (a) *Export Sales.* – The term '**export sales**' means:
>
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> xxx xxx xxx"

Petitioner further argues that its VAT input taxes for the period January 1 to December 31, 2001 were paid on domestic purchases of taxable goods and services and on importation of capital goods and made in the course of trade or business,

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undiminished by any VAT output tax, not carried forward to the succeeding quarter or quarters subsequent to the filing of the claim, and which were duly supported by VAT-registered sales invoices and/or official receipts. Such that, it is entitled to refund of said VAT input taxes pursuant to Section 112 (A) and (B) of the 1997 NIRC, pertinent portions are hereunder quoted:

> "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): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.
>
> (B) *Capital goods.* – A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made."

We do not agree with petitioner's arguments.

A careful perusal of the documentary evidence presented, particularly, the export sales invoices *(part of Exhs. D to D-97)*, indubitably showed that the same did not comply with the invoicing requirements provided for under Section 4.108.1 of Revenue

Regulations No. 7-95 in relation to Sections 113 and 237 of the 1997 NIRC, for failure to imprint the word "zero-rated" on the export invoices.

This case is not one of first impression. We have already passed upon the issue in the case of ***Taganito Mining Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6384 promulgated January 12, 2004***, with the same parties and facts but involving the period January 1 to December 31, 2000, where we held that the export sales invoices presented by petitioner were invalid as they did not comply with the invoicing requirements provided for under Section 4.108-1 of Revenue Regulations No. 7-95 in relation to Sections 113 and 237 of the National Internal Revenue Code of 1997. Pertinent portions of these provisions of law and regulations are quoted hereunder for easy reference:

> "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.
>
> (Emphasis supplied)
>
> xxx xxx xxx"
>
> "Section 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

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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.

(B) Accounting Requirements. – Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance.

xxx xxx xxx"

"Section 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 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 (TIN) of the purchaser. x x x "

In the aforecited case, *Taganito Mining Corporation,* this court noted that all the export sales invoices did not show the imprinted word "zero-rated", and some of which

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did not have any "TIN-V" or TIN-VAT", and held that these invoices lacked the necessary information required by law and regulations.

Moreover, while petitioner in the said case was able to present other documents, such as the Bills of Lading, Export Declarations/ Permits, bank credit/debit advices and ore transport permits to prove actual exportation of its products, we have ruled that these documents were insufficient. In the case of ***Philippine Bobbin Corporation, CA-G.R. SP No. 59452, February 19, 2001***, the Court of Appeals ruled that these documents are not enough to be entitled to a claim for refund. Rather, these documents, together with the valid sales invoices, should be taken collectively as the best means to prove the exportation of goods, thus:

> "By and large, export sales invoices alone are inadequate proofs that the subject goods were actually exported. Such invoices are merely written accounts of the particulars of merchandise shipped or sent to purchaser or consignee with the value or prices and charges annexed *(Philippine Law Dictionary, 3rd Ed., p. 495)*. By no means are they accurate confirmations that goods were actually shipped out of the country. Yet, that is what the law requires. Section 100(a)(2) of the National Internal Revenue Code (then in effect at the time of the alleged exportation) defines "Export Sales" as the sale and 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. In that case, it is imperative for any claimant of a tax refund or credit in relation to the Input VAT paid to prove not only the existence of the sale but also the actual shipment of the goods from the Philippines to a foreign country.
>
> Rather than limiting the documentary requirements to just the export invoices, the law specifically enjoined the production of "export documents" to affirm the authenticity of the export sales. <u>In commercial practice, export documents include commercial invoices or receipts, bills of lading, airway bills, and export declarations or permit. These documents, taken collectively, are the best means to prove the exportation of goods.</u>" (Underscoring supplied) "

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Based on all the foregoing, this court finds that herein petitioner's export sales of P650,889,620.11 for the taxable year 2001 cannot qualify for zero-rating, thus, it is not entitled to a refund of the input VAT attributable thereto.

However, with respect to petitioner's claim for refund of input VAT on capital goods purchased for the taxable year 2001, we rule to grant the same. Section 112 (B) of the 1997 NIRC, in relation to Section 4.106-1 of Revenue Regulations No. 7-95, provides:

> "Section 112. Refunds or Tax Credits of Input Tax. –
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> xxx xxx xxx
>
> (B) Capital Goods. – A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.
>
> xxx xxx xxx
>
> Section 4.106-1. *Refunds or tax credits of input tax (a) Zero-rated sales of goods or properties or services* – x x x
>
> (b) *Capital goods*. – Only a VAT-registered person may apply for issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased. The refund shall be allowed to the extent that such input taxes have not been applied against output taxes. The application should be made within two (2) years after the close of the taxable quarter when the importation or purchase was made.
>
> Refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT taxable business. If it is also used in exempt operations; the input tax refundable shall only be the ratable portion corresponding to the taxable operations.
>
> "Capital goods or properties refer to goods or properties with estimated useful life greater than one year and which are treated as

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depreciable assets under Section 29(f), used directly or indirectly in the production or sale of taxable goods or services."

Petitioner must comply with the following requirements in order to be entitled to claim for a refund, to wit:

(1) that it is a VAT-registered person or entity;

(2) the input taxes claimed by petitioner were paid on capital goods;

(3) its input VAT payments on capital goods are duly supported by VAT invoices and/or official receipts;

(4) the input taxes have not been applied against its output tax liability; and

(5) the administrative claim for refund was seasonably filed. **(Telecommunications Technologies Philippines vs. Commissioner of Internal Revenue, CTA Case No. 6018, November 24, 2003; Air Liquide Philippines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case No. 5652, July 6, 2000)**

Records reveal that petitioner substantially complied with all the aforementioned requirements.

Firstly, the fact that petitioner is a VAT-registered entity is not disputed *(par. b, Joint Stipulation of Facts)*.

Secondly, for the taxable year 2001, petitioner actually paid input VAT amounting to P3,598,823.58 on purchases of capital goods which was defined in Section 4.106-1(b) of Revenue Regulations No. 7-95 as goods or properties with the estimated useful life greater than one year and which are treated as depreciable assets under Section 29(f), used directly or indirectly in the production or sale of taxable goods or services. Moreover, these were duly covered by valid VAT invoices and/or official receipts in accordance with Section 4.104-5 of Revenue Regulations No. 7-95. Below is the breakdown of the input taxes of P3,598,823.58, to wit:

EXHIBIT	NAME OF SUPPLIER	EQUIPMENT	AMOUNT	INPUT TAX
B-633 & B-633A	Marubeni Corporation	Hydraulic Excavator	P 5,149,510.00	P 514,951.00
B-633B & B-633C	Marubeni Corporation	Hydraulic Excavator	5,143,280.00	514,328.00
B-633D & B-633E	Marubeni Corporation	Tractor; Wheel Loader	17,495,030.00	1,749,503.00
B-633F & B-633G	First Int'l. Corporation	Diesel Engines	345,461.34	34,546.13
Total Input VAT from Importation			**P 28,133,281.34**	**P 2,813,328.13**
B-34 & B-35	Honda Cars Makati, Inc.	Honda CRV	P 1,019,954.55	P 101,995.45
B-388 & B-389	Ford Edsa, Inc.	Ford Ranger	844,545.45	84,454.55
B-686 & B-687	Int'l Heavy Equipment Corp.	Vibrator Roller	2,530,454.55	253,045.45
B-931 & B-932	Kubota	Agricultural Tractor	1,250,909.09	125,090.91
B-1245 & B-1246	Columbian Mftg. Corp.	Shuttle Bus	2,209,090.91	220,909.09
Total Input VAT from Domestic Purchases of Goods			**P 7,854,954.55**	**P 785,495.45**
Total Input VAT on Capital Goods			**P 35,988,235.89**	**P 3,598,823.58**

Likewise, petitioner was able to establish that the abovementioned input taxes in the amount of P3,598,823.58 were not applied against any output VAT liability during and in the subsequent periods since it did not have any output tax against which the said input taxes can be applied *(Exhibits F to JJ, inclusive of sub-markings)*. Although, petitioner carried over its 2001 unutilized input VAT up to the third quarter of 2002, petitioner deducted the same from the total available input tax of P29,563,762.78 as part of the amount of P27,553,025.91 indicated as "Any VAT refund/TCC Claimed" in the fourth quarterly VAT return of taxable year 2002 *(Exhibit JJ-3-A)*.

Finally, petitioner's claim for refund was timely filed within the two-year prescriptive period both in the administrative and judicial levels reckoned from the respective filing of the quarterly VAT returns for the taxable year 2001. ***(Atlas***

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Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, Resolution dated July 20, 1998)

WHEREFORE, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to **REFUND** to petitioner the amount of **THREE MILLION FIVE HUNDRED NINETY EIGHT THOUSAND EIGHT HUNDRED TWENTY-THREE AND 58/100 (P3,598,823.58)** representing input VAT paid on capital goods purchased for the taxable year 2001.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

See separate concurring and dissenting opinion

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TAGANITO MINING CORPORATION,
Petitioner,

- versus - **C.T.A. CASE NO. 6597**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 12 2004

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Concurring and Dissenting Opinion

This court denies petitioner's claim for refund representing its excess input value-added tax (VAT) paid on its domestic purchases of taxable goods and services and grants its refund claim arising from its importation of capital goods for the period from January 1 to December 31, 2001.

I concur, in part, with the majority opinion to the extent that it finds petitioner's input VAT claim on capital goods meritorious. As correctly observed by the court, the records reveal that petitioner substantially complied with all the requirements for refund, to wit:

1. That it is a VAT-registered person or entity;
2. The input taxes claimed by petitioner were paid on capital goods;
3. Its input VAT payments on capital goods are duly supported by VAT invoices and/or official receipts;
4. The input taxes have not been applied against its output tax liability; and
5. The administrative claim for refund was seasonably filed.

Nonetheless, I am expressing my disagreement with the decision of the majority based on the following reasons: (1) the pronouncement of "defects" in the invoices has no valid basis and (2) the pieces of evidence submitted aside from the supposedly technically defective VAT invoices are adequate to merit a favorable finding.

At this point, I reckon it appropriate to quote the pertinent provisions of the 1997 Tax Code, namely, Section 113 in relation to Section 237, to wit:

> "**Section 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.
>
> xxx
>
> "**Section 237. Issuance of Receipts or Sales of 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 (P100.00) or more, 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's Identification Number (TIN) of the purchaser. xxx".

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Based on the foregoing, it is mandatory to show the following information in a VAT invoice or official receipt, to wit:

(1) A statement that the seller is a VAT-registered person;
(2) The taxpayers identification number (TIN);
(3) The total amount which the purchaser pays or is obligated to pay to the seller indicating the inclusion of the value-added tax;
(4) Transaction date;
(5) Quantity of merchandise;
(6) Description of merchandise or nature of service;
(7) Unit cost;
(8) The name, business style, if any, and address of the purchaser, customer or client 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 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; and
(9) The TIN of the VAT-registered purchaser.

Noticeably, the term "zero-rated is not among the information that must appear on sales invoices or official receipt as a prerequisite for claiming a refund of input VAT paid.

It is worthy of emphasis that contrary to the majority's opinion, nowhere does it appear in **Section 112 (A) of the Tax Code** that neglect to imprint the words "zero-rated" will automatically cause the denial of the claim for refund.

Section 112 (A) of the 1997 Tax Code reads:

> "(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): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale

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> of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

The tenor of the law apparently permits all VAT-registered enterprises engaged in zero-rated transactions to claim a refund of their creditable input tax due or paid to the extent that such input tax has not been applied against output tax within a period of two (2) years after the close of the taxable quarter.

The only provision that perhaps the requirement of imprinting the word "zero-rated" on the VAT invoice or receipt is **Section 4.108-1 of Revenue Regulations No. 7-95** (The Implementing Rules and Regulations of the VAT law). Then again, the said provision is merely a regulation created for the sole and limited purpose of implementing an otherwise very exact law.

Long-settled is the rule that administrative rules and regulations cannot expand the letter and spirit of the law they seek to enforce. Such rules and regulations should be confined and limited by the power conferred by the legislature (**Commissioner of Internal Revenue vs. Court of Appeals**, *240 SCRA 368 (1995)*. And in case of conflict between the basic law and a rule or regulation issued to implement said law, the law prevails because said rule or regulation cannot go beyond the terms and provisions of the basic law (**People vs. Lim**, *108 Phil. 1091*). Rules that subvert the statute cannot be sanctioned (**University of Sto. Tomas vs. Board of Tax Appeals**, *93 Phil. 376*; **Del Mar vs. Phil. Veterans Administration**, *51 SCRA 340*). Accordingly, the court must not give its imprimatur on the patently invalid condition imposed by an administrative issuance that overstepped the parameters of its authority.

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Assuming *arguendo* that there was a violation of the so-called requirement to indicate the word "zero-rated" in the invoice or receipt, such omission does not automatically nullify the exports sales invoices for purposes of proving export sales made by the petitioner. The sales invoices are still material, relevant and competent since they still directly prove the amount of export sales made by the petitioner. It must be pointed out that "admissibility" refers to the question whether or not the evidence is to be considered, while "competency" refers to whether or not the evidence is expressly excluded by law or the rules. Needless to say, the said invoices comply with the above criterion in both counts.

A denial of petitioner's claim for tax credit/refund on the single ground that there was no indication of the word "zero-rated" in its sales invoices is a punishment too harsh, amounting to a denial of the petitioner's clearly legal and valid claims.

To a certain extent, the absence of the authority to print renders the petitioner accountable only for penalties under the Tax Code, particularly, Section 264. And it must be observed that nullification of the export sales invoice and outright denial of the refund claim are not two of the prescribed penalties. In fact, **BIR Ruling DA-375-03** supports this finding, where the Bureau of Internal Revenue held thus:

> "xxx The fact that the official receipts issued by DITFI do not bear the information that DITFI is a VAT-registered taxpayer as required under Section 4.108-1 of Rev. Regs. No. 7-95, **does not *motu propio* invalidate the claim for input tax credit** of Stanfilco xxx.
>
> "Finally, **the Revenue District Officer (RDO) concerned is hereby ordered to impose the corresponding penalty against DITFI as prescribed in Revenue Memorandum Order No. 56-2000, in relation to Section 264 of the Tax Code of 1997, for failure to issue the prescribed receipts."** *(Emphasis supplied)*

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Revenue Memorandum Circular No. 42-03 dated July 15, 2003, further clarifies this matter. The relevant part states that:

> **"If the taxpayer did not reflect zero-rated sales in the VAT returns but it is claiming for tax credit or refund based on zero-rated sales, the Revenue Officer should mandatorily establish the existence of zero-rated sales from the audited financial statements, books of accounts, export invoices, bills of lading or airway bills and by comparing the reported sales against output tax reflected in the VAT return.** When zero-rated sales have been determined despite the fact that specific amounts were not categorically reflected in the VAT return, the claim may be processed upon sufficient proof of its existence xxx." *(Emphasis supplied)*

In the case at bar, petitioner has established its right to the tax refund through material and documentary exhibits. The documents formally offered as evidence by the petitioner, for instance, its BOI Certificate of Registration and the export documents such as Export Declaration Permits, Ore Transport Permits, export sales invoices, official receipts, and bills of ladings clearly prove that the petitioner's export sales were actually made. The substantive and main requirement of the Tax Code requiring the sale and actual shipment of goods in order to be considered as zero-rated sales was satisfactorily complied with and sufficiently proven before this court by the petitioner. Thus, having proven the actual shipment or export of its products abroad, this conclusively show that being a VAT-registered entity, the petitioner is subject to VAT at the rate of zero percent (0%).

It must be pointed out that the applicable statutes rather than limiting the documentary requirements to just the export invoices, acknowledge and specifically enjoin the production of "export documents" to prove the fact of export sales. And in commercial practice, export documents include commercial invoices or receipts, bills of lading, airway bills and export declarations or permits. These documents, taken collectively are the best means to prove the exportation of goods.

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The CTA has issued decisions supporting this assertion. In the case of **Nichimen Corporation (Manila Branch) vs. CIR**, *CTA Case No. 5746 dated January 4, 2001*, this court decided to accept bank credit advices to establish the claimant's zero-rated sales without requiring the production of official receipts.

Similarly, in **Nichimen Corporation (Manila Branch) vs. CIR,** *CTA Case No. 5221 dated January 8, 1998*, in support of the petitioner's claim that its sales were zero-rated, it only submitted the statements from RCBC to the effect that the acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations. Although the respondent objected to the refund claim for alleged failure to submit substantial proof that the sales were really zero-rated, this court still held that, "Respondent's demand for additional requirements is unnecessary considering that the documentary and testimonial evidence adduced by the petitioner are uncontroverted. The same evidence has clearly substantiated petitioner's claim to the satisfaction of the Court."

The above-mentioned CTA decisions buttress the contention that the court is amenable to admit other proofs or evidence in lieu of VAT invoices to establish the existence of zero-rated transactions.

It likewise bears emphasis that opposite to what happened in the case at bar, in the above-cited case of Nichimen Corporation, the petitioner therein completely failed to submit copies of its VAT invoices to support its claim for refund. Despite such omission, this court nonetheless held that other proofs or evidence might still be presented as a substitute for said VAT invoices.

The 1997 Tax Code and BIR Regulations have a collection of provisions confirming further the intention to accept other evidence to substantiate claims for

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VAT refund, particularly the use of either a VAT invoice or receipt; foremost of which are **Sections 110, 113 of the 1997 Tax Code, Section 4.106-5 of Revenue Regulation No. 7-95** and **Section 2 of Revenue Regulation No. 3-88**.

The use of the disjunctive term "or" in the afore-cited provisions connotes that either act qualifies as two different evidences of input VAT. It is indicative of the objective of the Revenue Bureau to use the same interchangeably in sale of goods, viz., the claimant may present either an invoice or a receipt and it will not have any negative repercussion on its claim. In fact, the word "or" has been defined as *a disjunctive particle used to express an alternative or to give a choice of one among two or more things (**Black's Law Dictionary**, 6th Edition, 1990, page 1095).* Hence, the obvious intention to include the word "or" should be interpreted as providing an alternative rather than a limitation.

In all of these, never was it shown that the objective of the lawmakers and the BIR in issuing the numerous regulations, orders and interpretative memoranda is to make the VAT invoice as the sole evidence of input tax. In fact, the contrary is provided. Their manifest intention is to establish the use of VAT invoice and other relevant evidences as equally valid.

Consequently, there should be no distinction as to the evidentiary value of an invoice, an official receipt and other documentary evidence to prove the fact of export sales. After all, these laws and regulations made no pronouncement as to the use only of a VAT invoice to the exclusion of all other equally relevant and competent evidence. The elementary rule in statutory construction is that where the law does not distinguish, the courts should make no distinction. *Ubi lex non distinguit nec nos distinguire debemos* (**Mendoza, et. al. vs. COMELEC, et. al.,** *G. R. No. 149736,* *December 17, 2002). Maledicta expositio quo corrupti textum.* It is dangerous construction which is against the text of the statute. To determine otherwise will certainly amount to inappropriate judicial interpretation.

Lastly, it must be pointed out that tax cases involved herein are civil in nature. And in civil cases, the quantum of evidence required to sustain the proponent of an issue is preponderance of evidence ***(Section 1, Rule 133****, Rules of Court).* The Honorable Supreme Court in the case of **Municipality of Moncada vs. Cajuigan,** *21 Phil. 184*, explained that the term "preponderance of evidence" refers to the weight, credit and value of the aggregate on either side. It means that the testimony adduced by one side is more credible and conclusive than that of the other. So even assuming that export invoices have evidentiary value as far as proving the fact of exportation of goods, the other export documents presented such as commercial invoices or receipts, bills of lading, airway bills and export declarations or permits are far more significant and appropriate instruments to prove the fact of the transaction.

Even though the court is aware that taxes are the lifeblood of the government, it must also be similarly sensitive of its responsibility to apply the principles of justice, equity and fairness as its guide in its difficult tasks of weighing the evidence and of deciding cases.

Accordingly, I manifest my position that petitioner should be entitled to the refund or tax credit of the amount of its unutilized input VAT attributable to its zero-rated sales and input VAT claims on capital goods.

ERNESTO D. ACOSTA
Presiding Justice

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