REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

TROPITEK INTERNATIONAL, INC.,	**C.T.A. CASE NO. 6318**
Petitioner,	Members:
-versus-	CASTAÑEDA, JR., Chairman UY, and PALANCA-ENRIQUEZ, JJ.
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	SEP 13 2005

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DECISION

PALANCA-ENRIQUEZ, J.:

The requirement of imprinting the words "zero-rated" on a VAT receipt or invoice for zero-rated sales is a mandatory provision that fulfills the intent of the law not only with respect to the proper implementation of the provisions of the *National Internal Revenue Code* (hereafter "NIRC") on zero-rated transactions, but also to prevent the claim for refund of non-existent input VAT. Strict compliance with said requirement must therefore be enforced.

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THE CASE

This is a Petition for Review filed by Tropitek International, Inc. (hereafter "petitioner") on July 23, 2001, which seeks the refund or the issuance of tax credit certificate representing the excess creditable VAT input taxes covering the 2^{nd}, 3^{rd} and 4^{th} quarters of year 1999 in the aggregate amount of P1,800,810.45, which petitioner after the trial, has reduced to P1,368,755.97, as prayed for in its Memorandum.

THE FACTS

In their "Joint Stipulation of Facts", the parties stipulated as follows:

> "1. Respondent is the duly appointed Commissioner of Internal Revenue, vested with the authority to act as such, including, inter alia, the power to decide, approve and grant refunds and/or tax credits of excess Value-Added Tax (VAT) input payments and holding office at the BIR National Office Building, Diliman, Quezon City, where he may be served with summons and other court processes.
>
> 2. Respondent is represented in the said One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center by the Revenue Examiners of the Value Added Tax Division of the Respondent's Bureau of Internal Revenue, who are assigned at said Center.

3. In the 2nd, 3rd and 4th quarters of 1999, Petitioner duly filed its quarterly VAT returns covering the period April 1, 1999 to December 31, 1999.

4. On July 20, 2001, petitioner, through its tax counsel, Laya Managhaya & Co., filed its application for tax credit/refund of the aforestated net value-added tax input payments which it generated for the period April 1, 1999 to December 31, 1999 with the Tax & Revenue Group of the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance."

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

"5. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the One-Stop-Inter-Agency Tax Credit and Duty Drawback Center;

6. To support its claim, it is imperative for petitioner to prove the following to wit:

a. The registration requirements of a Value Added Taxpayer pursuant to Section 6(a) & (b) of the Revenue Regulations No. 6-97 in relation to Section 4.107-1(a) of the Revenue Regulations No. 7-95.

b. That the VAT input taxes of P1,800,810.45 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: Refund or Tax Credits of Input Tax) and with Section 4. 106-2 (Re: Procedures for Claiming Refunds or Tax Credits of Input Tax) of Revenue Regulation No. 7-95.

d. That petitioner 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 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)."

Petitioner presented Maria Teresa A. Rojos and Wilfredo Z. Palad, as witnesses, and submitted documentary evidence, marked as Exhibits "A" to "FFF", including their respective submarkings.

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

Thereafter, both parties were ordered to file their respective memoranda within thirty (30) days from notice. Considering that only petitioner filed its memorandum, the case was deemed submitted for decision on August 23, 2005.

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ISSUES

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

I

WHETHER OR NOT THE PETITIONER HAS UNAPPLIED OR UNUTILIZED CREDITABLE VALUE-ADDED TAX INPUTS FOR QUARTERS ENDED JUNE 30, 1999, SEPTEMBER 30, 1999 AND DECEMBER 31, 1999 ARISING FROM ITS DOMESTIC PURCHASES OF GOODS AND SERVICES WHICH IS A PROPER OBJECT OF A CLAIM FOR REFUND PURSUANT TO SECTION 112 OF THE TAX CODE.

II

WHETHER OR NOT THE SAID CREDITABLE VALUE ADDED TAX INPUTS OF PETITIONER FOR THE QUARTERS ENDED JUNE 30, 1999, SEPTEMBER 30, 1999 AND DECEMBER 31, 1999 ARE SUBSTANTIATED BY DOCUMENTARY EVIDENCE IN THE FORM OF INVOICES AND OFFICIAL RECEIPTS.

III

WHETHER OR NOT THE SAID UNAPPLIED OR UNUTILIZED CREDITABLE VALUE ADDED TAX INPUTS FOR THE QUARTERS ENDED JUNE 30, 1999, SEPTEMBER 30, 1999 AND DECEMBER 31, 1999 WERE CARRIED FORWARD TO THE SUCCEEDING TAXABLE QUARTERS AND APPLIED AGAINST ANY OF THE VALUE-ADDED TAX OUTPUT OF THE PETITIONER FOR SAID PERIOD.

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IV

WHETHER OR NOT THERE WAS AN INWARD REMITTANCE OF FOREIGN EXCHANGE PROCEEDS.

The foregoing issues raised by both parties boil down to the principal issue of whether or not petitioner is entitled to a tax refund.

THE COURT'S RULING

We find no merit in the petition.

Petitioner is registered with the Bureau of Internal Revenue as a VAT taxpayer pursuant to the requirements of then *Section 107 of the NIRC*, as shown by the Certificate of Registration No. 080-005-106-640-VAT (*Exhibit "B"*). It is engaged in the manufacture, production and exporting of furniture. As such, petitioner claims that its export sales are subject to value added tax (VAT) at zero percent (%) rate under *Section 106 (A)(2)(a) of the NIRC*, which reads as follows:

> "(2) 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)."

During the 2nd, 3rd and 4th quarters of 1999, petitioner has accrued input taxes on its domestic purchases of goods and services. Corollary thereto, substantial portion of said input taxes remained unutilized in view of petitioner's zero-rated sales for which it does not generate output tax. Thus, there was no output tax to offset the input tax.

In view of the circumstance, petitioner anchors its right for refund on *Section 112(a) of the NIRC*, pertinent portion of which provides:

> "SEC. 112. Refunds or Tax Credits of Input Tax –
>
> (A) Zero-rated or Effectively Zero-rated Sales. Any VAT registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax x x x."

Primordial Issue to Resolve

This Court must first determine 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 other issues since a finding of non-compliance with the invoicing requirements 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 the input tax of zero-rated sales, nonetheless, certain invoicing requirements must be faithfully complied with before such claim for refund or credit can be granted.

Invoicing Requirements

Invoicing and accounting requirements for VAT-registered persons are provided for under *Sections 113 and 237 of the NIRC of 1997*. They read, thus:

> "SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. –
>
> (A) Invoicing Requirements. – A VAT-registered person, shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

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> 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 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.

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

> "SEC. 4-108-1. Invoicing Requirements - All VAT-registered persons shall, for every sale or lease of goods or

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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.

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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 'VAT Invoice'. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax.

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The afore-quoted revenue regulation implementing the NIRC provision on VAT invoicing and accounting requirements is mandatory as the word "shall" is used. The word "shall" is imperative, commonly operating to impose an obligation or duty which may be enforced; it is a word of command that must be given a compulsory meaning. This is a settled rule in this jurisdiction (*Francisco vs. Court of Appeals, 243 SCRA 392*).

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Indeed, it is the duty of a seller-taxpayer to comply with the invoicing requirements laid down in said memorandum circular.

A careful perusal of petitioner's official sales receipts (*Exhibits "FF1-FF352", "GG1-GG3", "HH1-HH4", "II", "JJ1-JJ8", "KK1-KK2", "LL1-LL16", "MM1-MM3", and "NN1-NN10"*) shows that the same do not bear the imprinted words "zero-rated" on the face thereof, which is in violation of the above-quoted regulation.

Failure to Comply with the Invoicing Requirements: Effects thereof

On the other hand, *Revenue Memorandum Circular No. 42-2003* expressly provides that the failure of a taxpayer claiming for tax refund/credit to comply with the invoicing requirements will result to the disallowance of the claim for input tax. The pertinent portion of said Memorandum Circular provides:

> "A-13. Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.
>
> If the claim for refund/TCC is based on 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."

The provisions of law quoted above clearly mandate that 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, such as the failure of a claimant-taxpayer to imprint the words "zero-rated" on the sale invoices or receipts, the claim for tax credit/refund of VAT on its sales shall be denied.

Rationale of Strict Compliance

The law is explicit in emphasizing the importance of invoices and/or official receipts. Thus, *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". 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.

If the invoice or official receipt is not imprinted with the words "zero-rated", such as in the case at bar, 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 taxpayers of the goods or services, notwithstanding the fact that no VAT was actually paid on such goods or services since the transaction 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. This is to assure that the purchaser cannot use the invoice as evidence to claim input tax since said invoice or receipt would reflect that there was no VAT involved in the transaction, as evidenced by the imprinted words "zero-rated". 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.

Considering the foregoing reasons, petitioner's failure to indicate the words "zero-rated' on its official receipts is fatal to its claim.

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Petitioner has Burden of Proof

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

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*). An examination of the evidence on record shows that the petitioner failed to substantiate its claim for tax refund with sufficient evidence. The official receipts submitted by petitioner in violation of the invoicing requirements cannot be considered as valid proof of its zero-rated sales of goods for VAT purposes.

Thus, with the conclusion reached, We find no need to discuss the other issues raised in this petition.

WHEREFORE, premises considered, the present Petition For Review is hereby **DISMISSED.**

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On leave)
ERLINDA P. UY
Associate Justice

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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman, Second Division