

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PILIPINAS TOTAL GAS, INC.,

Petitioner,

- versus -

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

C.T.A. E.B. NO. 558
(C.T.A. CASE NO. 7422)

Present:

ACOSTA, PJ
CASTAÑEDA, JR.
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

JUL 06 2010

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D E C I S I O N

UY, J.:

This Petition for Review filed before the Court of Tax Appeals *En Banc* on November 13, 2009 seeks a review of the Decision and Resolution by the Former First Division of this Court (Court in Division)¹ in CTA Case No. 7422, entitled "Pilipinas Total Gas, Inc., petitioner, vs. Commissioner of Internal Revenue, respondent"², to wit:

¹ Chaired by Presiding Justice Ernesto D. Acosta, with Associate Justice Lovell R. Bautista and Associate Justice Caesar A. Casanova as members.

² Ponencia of Associate Justice Caesar A. Casanova concurred by Associate Justice Lovell R. Bautista, and with concurring and dissenting opinion of Presiding Justice Ernesto D. Acosta.

- 1) Decision promulgated on June 16, 2009³ granting herein petitioner's claim for the issuance of a tax credit certificate in its favor in the reduced amount of TWO MILLION SIX HUNDRED EIGHTY FIVE THOUSAND NINE HUNDRED EIGHTY SEVEN PESOS and 27/100 (₱ 2,685,987.27) representing its unutilized input VAT for the 1st to 4th quarters of taxable year 2004; and
- 2) Resolution promulgated on October 21, 2009⁴ denying herein petitioner's Motion for Reconsideration for lack of merit.

THE FACTS

The factual antecedents of the case are not in dispute.

Petitioner is a domestic corporation duly organized and existing, under the laws of the Philippines, with principal place of business located at the Philippine Stock Exchange Centre 8/F West Tower, Exchange Road, Ortigas Center, Pasig City.

Respondent, on the other hand, is the Commissioner of Internal Revenue with address at the BIR National Office Building, Agham Road, Quezon City, where he may be served with summons, and who was duly appointed and empowered to perform the duties of his office including among others, the duty to act on and approve claims for refund or issue the tax credit certificate as provided by law.

Petitioner is engaged in the sale, transportation and distribution of industrial gases as well as the sale of gas equipment and other related business on wholesale basis. It is likewise registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer as per its Certificate of Registration No. 3RC0000031647 showing petitioner's taxpayer identification number (TIN) of 004-609-538-000.

³ Docket, pp. 27-58.

⁴ Ibid, at pp. 60-69.

In the year 2004, petitioner allegedly incurred input VAT on its domestic purchases and importations pursuant to its business operations. However, petitioner stipulated that its clientele comprised mainly of companies registered with the Philippine Economic Zone of Authority (PEZA). Pursuant to Sections 106(A)(2)(c) of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Sections 110(B) and 112(A) of the same code and Section 3 of Revenue Memorandum Circular (RMC) No. 74-99, petitioner did not charge its PEZA-registered clients output VAT. This in effect left a large portion of its input VAT unutilized.

Petitioner submitted its amended Quarterly VAT returns with the following details:

EXHIBIT	ZERO-RATED SALES	TAXABLE SALES	OUTPUT VAT (a)	INPUT VAT ON DOMESTIC (b)	ON IMPORTATION (c)	EXCESS INPUT VAT (c) + (b) – (a)
"III"	35,956,796.14	3,428,872.24	299,394.25	2,592,424.45		P 2,293,030.20
"LLL"	36,076,214.10	385,277.94	38,527.79	2,514,348.34	7,373.04	2,483,193.59
"PPP"	36,943,924.55	226,627.44	22,662.74	2,727,528.53	173,324.70	2,878,190.49
"UUU"	36,396,080.24	70,681.09	7,068.11	2,912,418.87	1,819.15	2,907,169.91
EXCESS INPUT VAT FOR 2004						P <u>10,561,548.18</u>

Although the amount of excess input tax reflected in its Amended Returns is only P 10,561,584.18, petitioner filed an administrative claim for refund/tax credit for taxable year 2004 before the Revenue District Office No. 4 of the BIR in the amount of P 11,057,502.81 on September 30, 2005. Respondent failed to act upon petitioner's claim for refund/tax credit, and in order to protect its interests, petitioner filed its judicial claim before the CTA Court in Division on March 27, 2006, through a Petition for Review and

docketed as C.T.A. Case No. 7422, pursuant to Sections 204(C) and 229 of the NIRC of 1997, as amended.

During trial, petitioner presented documentary and testimonial evidence to prove its claim. Respondent, on the other hand, failed to present any evidence on his behalf.

On June 16, 2009, the Court in Division rendered its assailed Decision granting petitioner's claim for the issuance of a tax credit certificate in its favor in the reduced amount of TWO MILLION SIX HUNDRED EIGHTY FIVE THOUSAND NINE HUNDRED EIGHTY SEVEN PESOS and 27/100 (₱ 2,685,987.27) representing its unutilized input VAT for the 1st to 4th quarters of taxable year 2004.

A Concurring and Dissenting Opinion was rendered by the Honorable Presiding Justice Ernesto D. Acosta, stating that he concurs with the majority view on the following: (a) that PEZA-registered entities are deemed zero-rated; (b) that petitioner has complied with the requirement of proving that its clients are situated in an economic zone or is a PEZA-registered entity, so much so that its sales qualify for zero-rating; and (c) that petitioner must substantiate its claim with, among others, receipts and invoices issued in its name and within the period of the claim, and their denial of a portion of petitioner's claim for failure to comply with the requirements set forth by law.

However, he holds the view that the denial of the claim corresponding to the invoices not imprinted with the term "zero-rated" is improper, and that petitioner failed to timely appeal to the Court in Division.

A Motion for Reconsideration of the assailed Decision was filed by petitioner before the Court *a quo* on July 7, 2009. Finding no valid or cogent

reason to either alter or modify the assailed Decision, the Court in Division denied said Motion for Reconsideration in the Resolution dated October 21, 2009.

Hence, this recourse before the Court *En Banc* praying that the assailed Decision dated June 16, 2009 and Resolution dated October 21, 2009 of the Court in Division, be reversed and set aside and a new one be issued ordering respondent to grant the refund or issue a tax credit certificate in its favor in the total amount of ₱ 11,057,502.81 allegedly representing petitioner's excess and unutilized input VAT arising from its zero-rated sales.

In the Resolution dated January 5, 2010⁵, respondent was directed by the Court *En Banc* to file his comment in this case, but he failed to do so despite such notice. Thus, in the Resolution dated February 12, 2010⁶, both parties were directed to file their respective memorandum. Consequently, this case was considered submitted for decision on April 13, 2010,⁷ after petitioner filed its memorandum on March 19, 2010.⁸

Hence, this Decision.

THE ISSUE

The sole issue for the Court's consideration is whether or not the absence or non-printing of the word "zero-rated in petitioner's invoices operates to forfeit its entitlement to a tax refund/credit of its unutilized input VAT attributable to its zero-rated sales.

⁵ Id., at pp. 71-72.

⁶ Id., at pp. 75-76.

⁷ Resolution dated April 13, 2010; Docket, p. 102.

⁸ Petitioner's Memorandum; Docket, pp. 77-99.

In support of the instant Petition for Review, petitioner submits the following arguments:

1. "Sections 113 and 237 of the Tax Code do not require petitioner to imprint or stamp 'zero-rated' on its invoices; neither is the failure to so imprint or stamp render such invoices inadmissible";
2. "A regulation requiring the imprinting or stamping of the words 'zero-rated' on the face of the invoice cannot prevail over the law that it seeks to implement"; and
3. "The rationale for the supposed imprinting or stamping requirement was not violated since petitioner's customers were all PEZA-registered entities".

THE COURT EN BANC'S RULING

We find no merit in the petition.

A careful and closer look at the arguments set forth by the petitioner in the instant petition for review readily reveal that the grounds relied upon, are mere restatements of petitioner's previous arguments raised before the Court *a quo*. However, although these matters have been exhaustively discussed and passed upon by the Court in Division in its assailed Decision and Resolution dated June 16, 2009 and October 21, 2009, respectively, We deem it necessary to discuss petitioner's arguments in seriatim considering petitioner's availment of the procedural remedy in this case.

At the outset, it must be emphasized that while Section 112 (A) of the NIRC of 1997, as amended, allows tax refund or credit of the input tax of any VAT-registered person whose sales are zero-rated or effectively zero-rated, nevertheless, it is necessary that certain invoicing requirements be faithfully complied with in order that a claim for tax refund or credit may prosper.

Time and again, We have consistently ruled that the invoicing requirement of the imprinting of "zero-rated" on the VAT official receipts or invoices is mandatory,⁹ pursuant to Section 4.108-1 of Revenue Regulations (RR) No. 7-95¹⁰. In the absence of the wordings "zero-rated" imprinted on these VAT invoices and/or receipts, the claim for input VAT will be disallowed.¹¹

In connection with the invoicing requirements, Sections 113 of the NIRC of 1997, as amended, reads as follows:

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

(A) Invoicing Requirements- A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following 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 xxx." (*Underscoring and emphasis Ours*)

⁹ See *Mirant (Navotas II) Corporation (Formerly: Southern Energy Navotas II Power, Inc) vs. Commissioner of Internal Revenue*, CTA EB No. 226, September 11, 2007; *Southern Philippines Power Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 214, July 31, 2007; *Panasonic Communications Imaging Corporation of the Philippines, (formerly, MATSUSHITA BUSINESS MACHINE CORPORATION OF THE PHILIPPINES) vs. Commissioner of Internal Revenue*, CTA EB No. 239, May 23, 2007; *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 186, May 17, 2007; *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 174, May 9, 2007; *Applied Food Ingredients Co., Inc. vs. Commissioner of Internal Revenue*, CTA EB No. 220, May 7, 2007; *Intel Technology Philippines Inc. vs. Commissioner of Internal Revenue*, CTA EB No. 181, March 27, 2007; and *J.R.A. Philippines Inc. vs. Commissioner of Internal Revenue*, CTA EB No. 128, January 15, 2007.

¹⁰ The Consolidated Value-Added Tax Regulations.

¹¹ *Mirant (Navotas II) Corporation (Formerly: Southern Energy Navotas II Power, Inc) vs. Commissioner of Internal Revenue*, CTA EB No. 226, September 11, 2007; *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 107, June 29, 2007; and *Applied Food Ingredients Co., Inc. vs. Commissioner of Internal Revenue*, CTA EB No. 220, May 7, 2007.

Corollary thereto, Section 4-108-1 of RR No. 7-95 prescribes the following information which must appear on the face of receipts or invoices issued for the sale of goods or services by all VAT-registered entities:

"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 the 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. (*Underscoring and emphasis Ours*)

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."

Applying the afore-cited provisions in the case at bench, it is evident that before a refund/tax credit of unutilized input VAT on purchases of goods

and services attributable to zero-rated sales or effectively zero-rated sales may be allowed, it is necessary for the claimant to strictly comply with above-enumerated invoicing requirements. Specifically, the issuance of VAT invoice/official receipt with the word "zero-rated" imprinted thereon is required for VAT transactions.

The law is explicit and concise. Section 113 provides that "a VAT registered person shall, for every sale, issue a duly registered VAT invoice receipt for every sale transaction".

In its implementing rules, Section 4-108-1 of RR No. 7-95 mandates that such VAT invoice or receipt must show the word "zero-rated" imprinted on the invoice receipt covering a zero-rated sale. The word "shall" was used, thereby connoting the mandatory nature of the requirement. Specifically, the first sentence thereof provides that "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".

It is well-settled¹² that 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. Thus, the seller-taxpayer is duty-bound to comply with the invoicing requirements laid down in the said provisions of the tax code and its implementing Revenue Regulations.

The foregoing requirement of imprinting the word "zero-rated" on the face of the invoice was imposed to effectuate the intent of the law. This is to prevent, in instances where invoices or official receipts would be issued

¹² *Francisco vs. Court of Appeals*, 234 SCRA 392.

without the words “zero-rated” imprinted thereon, the possibility of the purchaser of goods or services in a zero-rated transaction, in being able to claim input tax on such 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 RR No. 7-95 that the words “zero-rated” be imprinted in the invoice or receipt, as the case may be.

While 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 RR No. 7-95, said regulation seeks to prevent 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 if the mandatory requirement under RR No. 7-95 is not enforced. Furthermore, We believe that in claims for refund, the law mandates the court to observe a higher standard of caution in appreciating and evaluating evidence. If indeed a claim for refund is wanting in pertinent and supporting evidence, then the granting thereof could prove to be improper, if not difficult.¹³

In ***Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue***,¹⁴ the Highest Court discussed the invoicing requirements for VAT-registered persons. It ruled that a VAT invoice can be used only for the sale of goods or services that are subject to VAT. This means that the issuance of VAT invoices or official receipts are mandatory for sales that are subject to VAT either at 10% or 0% (zero-rated

¹³ ECW Joint Venture, Inc., vs. Commissioner of Internal Revenue, CTA EB No. 14, March 22, 2006.

¹⁴ 318 SCRA 386 (1999).

sales). It likewise expressed, in the same case that “it is the duty of the seller to comply with the invoicing and accounting requirements laid down in, among others, Section 108 of the Tax Code”.

Clearly from the foregoing, this is a recognition that there are other sources of VAT invoicing and accounting requirements aside from Section 108 of the Tax Code (now Sec. 113 of the NIRC of 1997, as amended), such as implementing rules and regulations issued by the administrative agencies of the government that require strict compliance, i.e. Revenue Regulations.

As a matter of fact, in the more recent ruling of the Supreme Court in *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*,¹⁵ it has clearly recognized that applications for refund/credit of input VAT with the BIR must comply with the appropriate revenue regulations. The Supreme Court, in citing the case of *Commissioner of Internal Revenue vs. Manila Mining Corporation*,¹⁶ emphasized the importance of complying with the substantiation requirements for claiming refund/credit of input VAT on zero-rated sales in accordance with the appropriate revenue regulations, in this manner:

“Although the foregoing decision (Commissioner of Internal Revenue vs. Manila Mining Corporation) focused only on the proof required for the applicant for refund/credit to establish the input VAT payments it had made on its purchases from suppliers, **Revenue Regulations No. 3-88 also required it to present evidence proving actual zero-rated VAT sales to qualified buyers, such as (1) photocopy of the approved application for zero-rate if filing for the first time; (2) sales invoice or receipt showing the name of the person or entity to whom the goods or services were delivered, date of delivery, amount of consideration, and description of goods or services delivered; and (3) the evidence of actual receipt of goods or services.**” (*Emphasis Ours*)

¹⁵ G.R. Nos. 141104 & 148763, June 8, 2007.

¹⁶ 468 SCRA 571 (2005).

Hence, by analogy, in order for petitioner to be entitled to its claim for refund/issuance of tax credit certificate representing unutilized input VAT attributable to its domestic purchases and importations for the taxable year 2004, it is therefore necessary to first comply with the substantiation requirements set forth under the appropriate revenue regulation, i.e. RR No. 7-95.

Pursuant to settled jurisprudence, petitioner in claiming for tax refund or issuance of a tax credit certificate in its favor has the burden of proof to establish the factual basis of such claim. Having failed to discharge the burden in this regard, petitioner's claim must therefore fall.

In view of the foregoing discussion, this Court concludes that there are three reasons why the word "zero-rated" is mandated by law to be imprinted on the VAT invoice/ official receipt, to wit: (1) for the buyer or purchaser not to claim any input VAT from such purchase; (2) the purpose of segregating/distinguishing those sales subject to 0% VAT (zero-rated) from those sales that are subject to 10% VAT and from exempt sales; and (3) to enable the BIR to properly implement and enforce the other provisions of the NIRC of 1997 on VAT, namely: (a) Zero-rated sales [Sec. 106 (A) 2 and Sec. 108 (B)]; (b) Exempt transactions [Sec. 109] in relation to Sec. 112 (A); (c) Tax Credits [Sec. 110]; and (d) Refunds or tax credits of input tax [Sec. 112].

Consequently, We rule that strict compliance with Section 4.108-1 of RR No. 7-95 requiring the imprinting of the word "zero-rated" on sales invoices or official receipts is mandatory. It must be kept in mind that prejudice will result to the government when the word "zero-rated" is not

imprinted on said invoices/official receipts because the smooth implementation of the VAT system will be interrupted.

The importance of complying with the mandatory invoicing requirements under the NIRC and Revenue Regulations cannot simply be brushed aside. In the course of a tax audit, official receipts and sales or commercial invoices which do not comply with the provisions of the NIRC and implementing revenue regulations, are not considered as sufficient substantiation for expenses incurred by individuals and business entities.

In the instant case, petitioner's failure to prove that some of its sales are indeed "zero rated" nullifies the very basis of its claim for refund.

In ***Commissioner of Internal Revenue vs. Seagate Technology (Philippines)***¹⁷ the Supreme Court enunciated that "A VAT-registered status, as well as compliance with the invoicing requirements, is sufficient for the effective zero rating of the transactions of a taxpayer." Conversely, non-compliance with the invoicing requirements will not give rise to effective zero-rating of the transactions of a taxpayer.

In conjunction thereto, Revenue Memorandum Circular (RMC) No. 42-2003¹⁸ expressly provides in clear and unequivocal words 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

¹⁷ 451 SCRA 159.

¹⁸ 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.

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 customer 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 aforesaid Memorandum Circular, 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 the claimant-taxpayer to indicate that it is a VAT-registered entity, and/or to imprint the word “zero-rated” on the sales invoices or receipts, the claim for tax credit/refund of VAT on its sales shall be denied.

To reiterate, the rule in this jurisdiction is that “[t]ax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person claiming the exemption”.¹⁹

In light of the foregoing considerations, petitioner’s failure to imprint the word “zero-rated” on said sales invoices is fatal to its refund claim. Hence, We are left with no recourse but to deny the instant petition as We

¹⁹ *Commissioner of Internal Revenue vs. Procter and Gamble Philippine Manufacturing Corporation* and *The Court of Tax Appeals*, 204 SCRA 377 (1991); and *Commissioner of Internal Revenue vs. S. C. Johnson & Son, Inc.*, 309 SCRA 87 (1999).

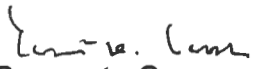
see no cogent reason to reverse the assailed Decision dated June 16, 2009 and Resolution dated October 21, 2009.

WHEREFORE, premises considered, the instant petition is hereby **DISMISSED** for lack of merit. Accordingly, the Decision dated June 16, 2009 of the Court in Division in C.T.A. Case No. 7422 is **AFFIRMED IN TOTO**.

SO ORDERED.


ERLINDA P. UY
Associate Justice

WE CONCUR:

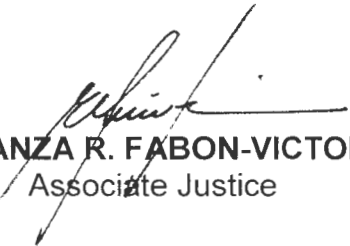

(With Separate Concurring Opinion)
ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice


CAESAR A. CASANOVA
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice

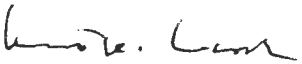

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.


ERNESTO D. ACOSTA
Presiding Justice