

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

**NORTHERN MINI HYDRO
CORPORATION,**

Petitioner,

CTA EB CASE NO. **547**
(CTA Case No. 7257)

-versus-

Present:

ACOSTA, P.J.,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
PALANCA-ENRIQUEZ
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS,

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

JJ.

Promulgated:

JUL 26 2010

*Appellate review
8:25 p.m.*

X-----X

DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *en banc* under Section 18 of Republic Act No. 1125¹, as amended by Republic Act No. 9282², of the Decision³ dated May 28, 2009, rendered

¹ An Act Creating the Court of Tax Appeals.

² An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, otherwise known as the Law Creating the Court of Tax Appeals, and for Other Purposes. A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*. *C*

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by the former First Division of this Court⁴ in CTA Case No. 7257, and its Resolution⁵ dated September 16, 2009, the dispositive portions of which, respectively, read as follows:

Decision dated May 28, 2009:

*"WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit.*

SO ORDERED."

Resolution dated September 16, 2009:

*"WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.*

SO ORDERED."

The facts culled from the records are undisputed:

"Northern Mini Hydro Corporation (Petitioner) is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at 214 Obulan, Ambuklao Road, Beckel, La Trinidad, Benguet. It is registered as a VAT taxpayer with the Bureau of Internal Revenue (BIR) under Revenue District No. 9 – Cordillera Administrative Region, with Tax Identification Number (TIN) 001-946-904-000 and Certificate of Registration dated April 10, 2003.

Petitioner is duly registered with the Securities and Exchange Commission (SEC) and the Department of Energy. It also has a duly approved Application for VAT Zero-Rate issued by respondent.

Respondent is the Commissioner of the BIR, who is duly appointed and empowered to perform the duties of his office, including, among others, the duty to act and approve claims for refund or tax credit as provided by law. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

³ En banc Docket, pp. 38-48

⁴ Penned by Associate Justice Lovell R. Baulista and concurred in by Associate Justice Caesar A. Casanova. Presiding Justice Ernesto D. Acosta has a concurring and dissenting opinion.

⁵ En Banc Docket, pp. 76-79

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On March 4, 2004, petitioner filed its Quarterly VAT Returns for the second, third and fourth quarters of taxable year 2003. However, on March 21, 2005, petitioner wittingly or unwittingly filed once again the same set of returns, having exactly the same information and figures as that which were filed earlier.

On March 31, 2005, petitioner filed an administrative claim for refund.

On May 26, 2005, the Instant Petition for Review was filed before this Court, seeking refund or issuance of tax credit certificate of alleged unutilized input VAT payments for taxable year 2003 in the sum of P1,174,708.46. This amount actually referred to that which was declared for the fourth quarter of taxable year 2003.

On July 29, 2005, respondent filed his Answer to the said Petition for Review.

The parties' Joint Stipulation of Facts and Issues filed on October 7, 2005 was admitted by this Court through a Resolution dated October 14, 2005.

Trial on the merits then proceeded.

On June 20, 2006, respondent, through Regional Director Norberto D. Vitug, partially granted the said claim by issuing a tax credit certificate with serial number 006402, in the amount of P457,678.17 in favor of petitioner.

By virtue of such development, on August 9, 2006, petitioner filed a Motion for Leave of Court To File Supplemental Petition for Review, attaching a copy of the said supplemental pleading.

At the hearing held on August 10, 2006, respondent interposed no objection and said Motion was thus granted. Respondent however reserved the right to file a Supplemental Answer. The Court then required respondent to file his Supplemental Answer within ten (10) days from such date.

By way of Amended Answer filed on August 17, 2006, respondent alleged the following Special and Affirmative Defenses:

'5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue;

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6. The amount of P1,174,708.46 being claimed by petitioner as alleged unutilized input VAT for the period January 2003 to December 2003 is not properly documented;

7. The decision of the Supreme Court in the case of *Maceda vs. Macaraig* 223 SCRA 217 (1993) which states that the NPC is exempt from all taxes, duties, fees, imposts, charges and restrictions of the Republic of the Philippines and its provinces, cities and municipalities, is not applicable to the instant petition. What is being exempted in said decision is NPC per se and such exemption does not extend to the supplier such as the petitioner in the instant case.

8. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.

9. Petitioner must show that it has complied with the provisions of Sections 204(C) and 229 of the 1997 Tax Code on the prescriptive period for claiming tax refund/credit.

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (**Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95**) and as such, they are looked upon with disfavour (**Western Minolco Corp. Vs. Commissioner of Internal Revenue, 124 SCRA 1211**).'

The parties' Additional Joint Stipulation of Facts and Issues filed on February 1, 2007 was approved per this Court's Resolution dated February 13, 2007.

The trial of the case continued; after which the parties were ordered to file their respective Memorandum.

On June 26, 2008, the case was submitted for decision, considering the Memorandum filed by petitioner on March 7, 2008 and the Memorandum filed by respondent on March 28, 2008.

Thereafter, this Court's former First Division rendered the assailed Decision dated May 28, 2009. Petitioner filed its motion for reconsideration therefrom, which was denied by this Court's former First Division on September 16, 2009. Hence, petitioner filed the instant Petition for the Court en banc. *L*

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Petitioner Northern Mini Hydro Corporation prays for the reversal of both the aforesaid Decision and Resolution, and for respondent to grant a cash refund or issue a tax credit certificate to petitioner in the amount of P717,030.29 representing unutilized input VAT paid on domestic purchases and importations of goods and services attributable to zero-rated sales of power generation services for taxable year 2003.

Originally, the instant case involves a claim for refund or issuance of tax credit certificate of unutilized input value-added tax (VAT) in the amount of P1,174,708.46 from January to December, 2003, allegedly arising from petitioner's domestic purchases of goods and services which are attributable to its VAT zero-rated sales of power generation services to the National Power Corporation (NPC). This Court's former First Division held that without valid VAT official receipts, petitioner's alleged sales of electricity to NPC for taxable year 2003 cannot qualify for VAT zero-rating under Section 108(B)(3) of the NIRC of 1997.⁶ Thus, from the aforesaid amount of P1,174,708.46, the claimed unutilized input VAT attributable thereto in the amount of P717,030.29 cannot be granted.

The issues submitted to this Court *en banc* for consideration are substantially the same issues raised in petitioner's motion for reconsideration, as follows:

⁶ *En Banc* Docket p.47 **L**

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1. Whether or not the Court of Tax Appeals' former First Division erred in requiring the term "zero-rated" to be imprinted in the Charge Invoices and Official Receipts as a condition for the grant of petitioner's claim for tax credit or refund;
2. Whether or not the Court of Tax Appeals' former First Division erred in sanctioning petitioner for its failure to imprint the word "zero-rated" in its invoices by disallowing the claim for refund notwithstanding the fact that petitioner already established by sufficient evidence that its sales to the National Power Corporation are zero-rated;
3. Whether or not the Court of Tax Appeals' former First Division erred in totally disregarding petitioner's documentary evidence; and
4. Whether or not the Court of Tax Appeals' former First Division erred in declaring that the petitioner failed to comply with the substantiation/invoicing requirements of the Tax Code.⁷

We find that no error was committed by the Court of Tax Appeals' former First Division.

⁷ *En Banc* Docket p.13

DECISION

The aforesaid issues, however, are joined as the sole issue on whether petitioner is entitled to the refund of its unutilized input VAT although petitioner's Charge invoices and Official Receipts which support its zero-rated sales were not imprinted/stamped with the word "zero-rated".

This sole issue is answered negatively, as the same has been raised time and again but jurisprudence is clear on the mandatory invoicing requirements prescribed by law.

Consequently, the instant Petition for Review is without merit.

Petitioner maintains that for the year 2003, the law governing the issuance of official receipts and invoices is the Tax Reform Act of 1997 or Republic Act No. 8424 which took effect on January 1, 1998. There was then no express nor implied requirement of the imprinting of the word "zero-rated" in the invoices or official receipts. Petitioner maintains further that the amendment incorporated therein by Republic Act No. 9337 which took effect on July 1, 2005, on the requirement of imprinting the term "zero-rated" in official receipts and sales invoices, is a clear recognition of the fact that prior to the amendment, there was no such requirement imposed. At the time when the zero-rated sales in question were made and an administrative claim for tax refund was filed, the additional requirement of imprinting the word "zero-rated" was imposed only by Section 4.108-

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1 of Revenue Regulations No. 7-95⁸ (RR 7-95) and not by the Tax Code. RR 7-95 cannot expand the law itself and it is therefore void for being unconstitutional.

Nonetheless, we agree with respondent that this Court's former First Division correctly found that petitioner is not entitled to the refund of its unutilized input VAT when petitioner's Charge invoices and Official Receipts which support its zero-rated sales were not imprinted/stamped with the word "zero-rated".

We quote:

"It is explicit from the provisions of Sections 113 and 237 of the NIRC of 1997, in relation to 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. Accordingly, the zero-rated sales of services referred to under Section 108(B)(3) of the NIRC of 1997 as subject to zero percent (0%) VAT are those covered by duly registered VAT official receipts bearing all the required information.

As to the documentation of petitioner's sales to NPC for the subject period of claim, the former submitted Charge Invoices and Official Receipts as part of the supporting documents in substantiating its zero-rated sales to NPC.

A scrutiny of the said supporting documents shows that all the Charge Invoices and Official Receipts issued by the Company, which support the foregoing sales, are not imprinted/stamped with the word 'zero-rated'. The Court also noted that (1) all Charge Invoices used were pre-printed with 'NON-VAT', and (2) all the Official Receipts used were pre-printed with 'TAN' and not 'TIN'.

⁸ An Act amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as amended, and for other purposes. Section 113 of the 1997 NIRC was amended to read, at Section 113(B)(2)(c) of the new law, to include the provision that "if the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt."

h

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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), 108(C), and 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. **The rationale for the requirement of imprinting 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 the Court *En Banc* in the case of **J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue**, 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:...' **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 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 and services of such zero-rated taxpayer.**' (*Emphasis supplied*)"⁹

Suffice it to say that the sole issue raised herein was squarely met and that further the above-mentioned rationale was reiterated in the case of **Panasonic Communications Imaging Corporation of the Philippines (formerly Matsushita Business Machine Corporation of the**

⁹ *En Banc* Docket p.46

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Philippines) v. Commissioner of Internal Revenue¹⁰. In the **Panasonic** case, the Supreme Court, citing **Commissioner of Internal Revenue v. Seagate Technology (Philippines)**¹¹, held that VAT is a tax on consumption, an indirect tax that the provider of goods or services may pass on to his customers. Under the VAT method of taxation, which is **invoice-based**, an entity can subtract from the VAT charged on its sales or outputs the VAT it paid on its purchases, inputs and imports.¹²

We quote:

"For the effective zero rating of such transactions, however, the taxpayer has to be VAT-registered and must comply with invoicing requirements. Interpreting these requirements, respondent CIR ruled that under Revenue Memorandum Circular (RMC) 42-2003, the taxpayer's failure to comply with invoicing requirements will result in the disallowance of his claim for refund. RMC 42-2003 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.

¹⁰ G.R. No. 178090, February 8, 2010

¹¹ 491 Phil. 317, 332 (2005).

¹² *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, 491 Phil. 317, 332 (2005).

Petitioner Panasonic points out, however, that in requiring the printing on its sales invoices of the word 'zero-rated,' the Secretary of Finance unduly expanded, amended, and modified by a mere regulation (Section 4.108-1 of RR 7-95) the letter and spirit of Sections 113 and 237 of the 1997 NIRC, prior to their amendment by R.A. 9337. Panasonic argues that the 1997 NIRC, which applied to its payments-specifically Sections 113 and 237-required the VAT-registered taxpayer's receipts or invoices to indicate only the following information:

- (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN);
- (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;
- (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and
- (4) The name, business style, if any, address and taxpayer's identification number (TIN) of the purchaser, customer or client.

Petitioner Panasonic points out that Sections 113 and 237 did not require the inclusion of the word 'zero-rated' for zero-rated sales covered by its receipts or invoices. The BIR incorporated this requirement only after the enactment of R.A. 9337 on November 1, 2005, a law that did not yet exist at the time it issued its invoices.

But when petitioner Panasonic made the export sales subject of this case, i.e., from April 1998 to March 1999, the rule that applied was Section 4.108-1 of RR 7-95, otherwise known as the Consolidated Value-Added Tax Regulations, which the Secretary of Finance issued on December 9, 1995 and took effect on January 1, 1996. It already required the printing of the word 'zero-rated' on the invoices covering the zero-rated sales. When R.A. 9337 amended the 1997 NIRC on November 1, 2005, it made this particular revenue regulation a part of the tax code. This conversion from regulation to law did not diminish the binding force of such regulation with respect to acts committed prior to the enactment of the law.

Section 4.108-1 of RR 7-95 proceeds from the rule-making authority granted to the Secretary of Finance under Section 245 of the 1977 NIRC (Presidential Decree 1158) for the efficient enforcement of the tax code and of course its amendments. The requirement is reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services. As aptly explained by the CTA's First Division, the appearance of the word 'zero-rated' on the face of invoices covering zero-rated sales

prevents buyers from falsely claiming input VAT from their purchases when no VAT was actually paid. If, absent such word, a successful claim for input VAT is made, the government would be refunding money it did not collect.

Further, the printing of the word 'zero-rated' on the invoice helps segregate sales that are subject to 10% (now 12%) VAT from those sales that are zero-rated. Unable to submit the proper invoices, petitioner Panasonic has been unable to substantiate its claim for refund."

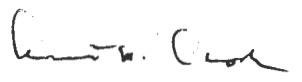
In fine, we find no cogent reason to reverse the findings of this Court's former First Division.

WHEREFORE, the instant Petition for Review is **DENIED**. The Decision of the former First Division of this Court in CTA Case No. 7257, dated May 28, 2009, and its Resolution dated September 16, 2009, are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.


CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice

DECISION

(On Leave)
ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
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 among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.


ERNESTO D. ACOSTA
Presiding Justice