550 Phil. 751

THIRD DIVISION

[G.R. NO. 166732, April 27, 2007]

INTEL TECHNOLOGY PHILIPPINES, INC., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

CALLEJO, SR., J.:

Before the Court is a Petition for Review on *Certiorari* filed by Intel Technology Philippines, Inc. (petitioner) seeking to reverse and set aside the Decision[1] dated August 12, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 79327. The assailed decision affirmed that of the Court of Tax Appeals denying petitioner's claim for a refund or issuance of a tax credit certificate in the amount of P11,770,181.70, allegedly representing the value-added input taxes it had paid on domestic purchases of goods and services for the period of April 1, 1998 to June 30, 1998. Likewise sought to be reversed and set aside is the appellate court's Resolution[2] dated January 14, 2005 denying petitioner's Motion for Reconsideration.

The Antecedents

Petitioner is a domestic corporation engaged primarily in the business of designing, developing, manufacturing and exporting advanced and large—scale integrated circuit components (ICs).[3] It is registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) entity in 1996 under Certificate of Registration RDO Control No. 96-540-000713.[4] It is likewise registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone export enterprise.[5]

As a VAT-registered entity, petitioner filed with the Commission of Internal Revenue its Monthly VAT Declarations and Quarterly VAT Return for the second quarter of 1998 declaring zero-rated export sales of P2,538,906,840.16 and VAT input taxes from domestic purchases of goods and services in the total amount of P11,770,181.70. Petitioner alleged that its zero-rated export sales were paid for in acceptable foreign currency and were inwardly remitted in accordance with the regulations of the *Bangko Sentral ng Pilipinas* (BSP).

On May 18, 1999, petitioner filed with the Commission of Internal Revenue, through its One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance, a claim for tax credit/refund of VAT input taxes on its domestic purchases of

goods and services directly used in its commercial operations. Petitioner's claim for refund amounted to P11,770,181.70 covering the period April 1, 1998 to June 30, 1998.[6]

On June 30, 2000, when the two-year prescriptive period to file a refund was about to lapse without any action by the Commission of Internal Revenue on its claim, petitioner filed with the Court of Tax Appeals (CTA) a petition for review with the Commissioner of Internal Revenue (Commissioner) as respondent.[7] Petitioner alleged therein that:

> 3. Petitioner is engaged primarily in the business of designing, developing, manufacturing and exporting advanced and large-scale integrated circuit components, commonly referred to in the industry as Integrated Circuits or "ICs." As such, [it] has registered itself as a value-added tax entity pursuant to Section 107 of the Tax Code effective January 30, 1996, pursuant to which it was issued Certificate of Registration No. 96-540-000713. Being engaged in said business, Petitioner registered itself with the Philippine Economic Zone Authority (PEZA) as an export enterprise and was issued Certificate of Registration No. 95-133 by the Philippine Economic Zone Authority. Photocopies of Petitioner's Certificate of Registration (BIR Form 1556) and PEZA Certificate of Registration are hereto attached as *Annexes "A" and "B,"* and made as integral parts hereof;
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> 4. For the period covering April 01 to June 30, 1998, petitioner generated and recorded zero-rated export sales in the amount of PhP2,538,906,840.16, Philippine Currency;
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> 5. The above amount of P2,538,906,840.16 was paid to petitioner in acceptable foreign currency and was inwardly remitted in accordance with existing regulations of the Central Bank of the Philippines pursuant to Sec. 106(A)(2)(a)(1) of the Tax Code;
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> 6. For the period covering April 01, 1998 to June 30, 1998, petitioner paid VAT input taxes amounting to PhP11,770,181.70 for domestic purchases of goods and services which were attributable to petitioner's zero-rated sales of PhP2,538,906,840.16. Photocopies of petitioner's quarterly VAT returns and monthly declarations for the second taxable quarter of 1998 which was duly filed with the Respondent, and received by Respondent's collection agents, RCBC — Gateway Branch are hereto attached as Annex "C," "D," "E" and "F" forming as integral parts hereof;
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> 7. The above VAT input taxes were paid in connection with the Petitioner's trade or business and were duly supported by invoices and/or receipts showing the information required under Sections 113

and 237 of the Tax Code, and had not been applied against any VAT output tax liability of the Petitioner during the same period from April 1, 1998 to June 30, 1998, or any succeeding period or periods;

x x x x

8. Being a VAT-registered entity, Petitioner is subject to the Value-Added Tax imposed under Title IV of the Tax Code.

x x x x

9. The export sales of the petitioner are not subject to 10% value-added tax but are zero-rated. Hence, such zero-rated sales will not result to any VAT output tax pursuant to Sec. 106(A)(2)(a)(1) and Sec. 108(B)(1) of the Tax Code;

10. Petitioner, for the period covering April 01, 1998 to June 30, 1998, having generated zero-rated sales and paid VAT input taxes in the course of its trade or business, which VAT input taxes are attributable to the zero-rated sales and have not been applied to any VAT output tax liability of the Petitioner for said period or any succeeding quarter or quarters nor has been issued any tax credit certificate, it follows that petitioner is entitled to the issuance of a tax credit certificate for VAT input taxes in the amount of PhP11,770,181.70 x x x.

x x x x

11. On May 18, 1999, petitioner in compliance with the requisites provided for by law for the issuance of a tax credit certificate filed a claim for tax credit in the total amount of PhP11,770,181.70, with respondent through the One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center per BIR Form No. 2552 entitled "APPLICATION FOR TAX CREDIT/REFUND OR VALUE-ADDED TAX PAID" and Claimant Information Sheet No. 35418. x x x

12. Respondent, however, despite such application for the issuance of a tax credit certificate above-mentioned and notwithstanding presentation of documentary evidences in support of such application, failed to grant the tax credit applied for. x x x[8]

Petitioner prayed that, after due proceedings, judgment be rendered in its favor, as follows:

> WHEREFORE, it is respectfully prayed that this Honorable Court after trial render judgment:

1. Declaring Petitioner entitled to the issuance of tax credit certificate in the amount of PhP11,770,181.70 representing VAT input taxes paid by it during the period from April 01, 1998 to June 30, 1998, for which no tax credit certificate was issued;

2. Ordering respondent to issue the tax credit certificate in favor of petitioner in the amount of PhP11,770,181.70 referred to above; and

3. Granting petitioner such other reliefs as may be just and equitable under the premises.[9]

The Commissioner, as respondent, opposed the petition and prayed for its dismissal. The following special and affirmative defenses were raised:

4. Petitioner, being allegedly registered with the Philippine Economic Zone Authority, is exempt from all taxes, including value-added tax, pursuant to Section 24 of Republic Act No. 7916, in relation to Section 103 of the Tax Code, as amended by RA 7716. Since its sales are not zero-rated but are exempt from VAT, petitioner is not entitled to refund of input tax pursuant to Section 4.106-1 and 4.103-1 of Revenue Regulations No. 7-95;

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

6. The amount of P47,582,813.72 being claimed by petitioner as alleged VAT input taxes for the period of 01 July 1997 to 31 December 1997 was not properly documented;

7. In an action for refund 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;

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

9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.[10]

The CTA commissioned the services of an independent auditor, Eliseo Aurellado, to conduct an audit and evaluate petitioner's claim. On March 22, 2001, he submitted a Report to the CTA with the following conclusion:

> In performing the above procedures, except for the net effect of the Input VAT paid on its purchases as compared to the results of my review of

supporting documents, as shown in Annex "B" no other matters came to my attention that cause me to believe that the attached Schedule of Input VAT Paid should be adjusted. We believe that only the amounts of P9,688,809.39 is a valid claim for tax credit. This report relates only to the application of Intel Technology Philippines, Inc. for tax credit/refund specified on page 1 of this report and does not extend to the Financial Statements, taken as a whole, for any period where the aforementioned tax refund is present.[11]

Appended thereto were the summary of purchases, statements of input VAT exception, and statements of zero-rated export sales.[12]

Petitioner adduced testimonial evidence and offered the following documents in evidence:

EXHIBIT	DESCRIPTION	PURPOSE
"A"	A copy of Petitioner's Certificate of Registration No. 95-133 issued by Philippine Economic Zone Authority (PEZA). This was already subject of stipulation of facts.	To prove that Intel Technology Philippines, Inc. is registered with PEZA as Ecozone Export Enterprise.
"B"	A copy of Petitioner's BIR Certificate of Registration with RDO Control No. 96-540-000713 issued on January 30, 1996 by Revenue District Office No. 54. This was already subject of stipulation of facts.	To prove that Petitioner is duly registered with the Bureau of Internal Revenue. To prove that Petitioner is a duly registered VAT entity.
"C" & "D"	Copies of the Monthly VAT Returns for the month of April and May of 1998. These were already subjects of stipulation of facts.	To prove that Petitioner filed its Monthly VAT Declaration for the month of April and May of 1998.
"C-1" & "D-1"	Signature of Pablo V. Pablo.	To prove that the monthly VAT Returns was duly signed by

		Petitioner's authorized agent.
"E"	Copies of Petitioner's Quarterly VAT Return for the second quarter of 1998.	To prove that Petitioner filed its Quarterly VAT return for the second quarter of 1998.
"E-1"	Signature of Pablo V. Pablo This was already subject to stipulation of facts	To prove that Petitioner's authorized agent properly signed the Quarterly VAT Return for the second quarter of 1998.
"F" & "F-2"	Copies of Petitioner's Amended Quarterly VAT Return for the second quarter of 1998.	To prove that Petitioner filed its Amended Quarterly VAT return for the second quarter of 1998.
"F-1"	Signature of Pablo V. Pablo This was already subject to stipulation of facts.	To prove that Petitioner's authorized agent properly signed the Amended Quarterly VAT Return for the second quarter of 1998.
"F-3"	Box No. 16A of the Amended Quarterly VAT return for the second quarter of 1998.	To prove that Petitioner properly reported its sales subject to zero-rated for the second quarter of 1998.
"F-4"	Box No. 16B of the Amended Quarterly VAT return for the second quarter of 1998.	To prove that petitioner paid and remitted the output VAT for the second quarter of 1998.
"F-5"	Box No. 17 of the Amended Quarter VAT return for the second quarter of 1998	To prove that petitioner property reported its export sales subject to zero-rated for the second quarter of 1998 in the amount of P2,538,906,840.160.
"F-6"	Box No. 22B of the Amended Quarterly VAT return for the second quarter of 1998.	To prove that petitioner incurred an input taxes on its domestic purchases of goods and services for the second quarter of 1998 in the

		amount of P11,770,181.70.
"G" to "L" and "H-2" and "K-2"	Copies of Petitioner's Quarterly VAT Returns for the third and fourth quarters of 1998 and first and second quarters of 1999 including the amended returns for the third quarter and first quarter of 1998 and 1999, respectively. Signature of Pablo V. Pablo.	To prove that Petitioner filed its Quarterly VAT Returns for the third and fourth quarters of 1998 and first and second quarters of 1999 including the amended returns for the third and first quarters of 1998 and 1999, respectively.
"G-1" to "L-1"	These were already subject of stipulation of facts.	To prove that the Quarterly VAT returns were properly signed by Petitioner's duly authorized representative.
"H-3," "I-2," "K3" & "L-2"	Box No. 34 or 35 of the Quarterly VAT returns for the third and fourth quarters of 1998 and first and second quarters of 1999.	To prove that the Petitioner always has excess input VAT and the same was not utilized in the succeeding quarter or quarters.
"M" & "N"	Copies of Petitioner's Claimant Information Sheet No. 35418 including BIR Form No. 2552 for the period April 1, 1998 to June 30, 1998 filed with the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance duly stamped received last 05-18-99. Signature of Pablo V. Pablo	To prove that Petitioner filed a claim for refund of input taxes in the total amount of P11,770,181.70 with the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance last 05-18-99.

"M-1" & "N-1"	These were already subject of stipulation of facts.	To prove that the claimant information sheet and BIR form 2552 were signed by Petitioner's duly authorized representative.
"O"	Certification of inward remittance dated March 08, 2000 issued by CITIBANK	To prove that the proceeds of export sales of petitioner were properly remitted in US dollars in accordance with the regulations of the Bangko Sentral ng Pilipinas.
"O-1"	Signature of Pepper M. Lopez, CitiService Officer	To prove that the Certification was properly signed by Citibank's authorized representative.
"O-2"	Amount of inward remittance in the amount of US$98,000,000.00	To prove the amount of inward remittance in the amount of US$98,000,000.00.
"P"	Certification of inward remittance dated March 09, 2000 issued by RCBC	To prove that the proceeds of export sales of petitioner were properly remitted in US dollars in accordance with the regulations of the Bangko Sentral ng Pilipinas.
"P-1"	Signture of Ms. Araceli V. Dyoco, Head Export Dept.	To prove that the Certification was properly signed by RCBC's authorized representative.
"P-2"	Amount of inward remittance in the amount of US$102,499,965.00	To prove the amount of inward remittance in the amount of US$102,499,965.00.
"Q"	Copy of the Certification issued by Mr. Eliseo A. Aurellado, independent CPA commissioned by the	To prove that Mr. Eliseo A. Aurellado has issued a certification with regards to the correctness of Petitioner's summary input VAT paid and

	Honorable Court of Tax Appeals.	summary of zero-rated sales.
"Q-1" and "Q-2"	Signature and PTR No. of Mr. Eliseo A. Aurellado.	To prove that Mr. Eliseo A. Aurellado is the one who issued the above-mentioned Certification and that he has the authority to act as such.
"S"	Copy of the summary of purchases attached as Annex "A" to the Certification marked as "Annex "Q."	To prove the correctness of the input VAT paid on domestic purchases of goods and services for the second quarter of 1998.
"T"	Copy of schedule of input VAT paid with exception attached as Annex "B" to the Certification marked as "Annex "Q."	To prove the amount of input VAT paid on domestic purchases of goods and services with exception.
"T-1"	The total amount of exception is P2,081,372.31.	To prove the total input VAT with exception in the amount of P2,081,372.31.
"U-1" to "U-375," "V-1" to V-665" and "W-1" to "W-424"	Copies of Petitioner's supplier invoices and official receipts for the second quarter of 1998.	To prove that the input VAT paid by Petitioner for the second quarter of 1998 except those with exception are property supported with sales invoices and official receipts.
"X" to "X-669"	Copies of Petitioner's summary of export sales, sales invoices, official receipts, airway bills, export declarations and certification of inward remittances for the second quarter of 1998.	To prove that Petitioner for the second quarter of 1998 generated export sales in the total amount of P2,538,906,840.16 and the same were duly supported with documents.
"Y"	Copy of the summary export sales consisting of 13 pages attached as Annex "C" to the	To prove [that] from April 1, 1998 to June 30, 1998, Petitioner generated and recorded an export sales in the

	Certification marked as Exhibit "Q."	amount of P2,538,906,840.16.[13]

On April 21, 2003, the CTA rendered judgment denying petitioner's claim for refund or issuance of a tax credit certificate. The tax court acknowledged that petitioner is legally entitled to a refund or issuance of a tax credit certificate of its unutilized VAT input taxes on domestic purchases of goods and service attributable to its zero-rated sales. However, the export invoices adduced in evidence by petitioner could not be considered as competent evidence to prove its zero-rated sales of goods for VAT purposes and for refund or issuance of a tax credit certificate because no BIR authority to print said invoices was indicated thereon. The CTA also observed that some of the invoices do not contain the Taxpayer's Identification Number-VAT (TIN-V) of petitioner as required in Section 113, in conjunction with Section 237, of the Tax Code. The dispositive portion of the CTA decision reads:

> WHEREFORE, in view of the foregoing, petitioner's claim for issuance of a tax credit certificate in the amount of P11,770,181.70 allegedly representing its VAT input taxes on domestic purchases of goods and services for the period April 1, 1998 to June 30, 1998 is hereby DENIED.
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> SO ORDERED.[14]

Petitioner filed a Motion for Reconsideration[15] alleging that it was able to prove its export sales by the following documentary evidence:

> (1) Certifications of inward remittances marked as Exhibits "O" and "P" for the Petitioner.
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> (2) Airway bills.
>
> (3) Export declarations.
>
> (4) Certifications of Mr. Eliseo Aurellado (Exhibit "Q" for the Petitioner), the independent CPA duly commissioned by this Honorable Court, to the effect that the petitioner made export sales for the period covered in the amount of Php2,538, 906,840.16.[16]

Petitioner also alleged the following in its Supplemental Motion for Reconsideration:

> The petitioner truly believes that although the invoicing requirements prescribed under Section 113 (A)(1), in relation to Section 237 of the 1997 Tax Code, should be applied strictly in the use of invoices or receipts for purposes of substantiating input VAT incurred, the same stringent application is not called for when the invoices or receipts are used for purposes of substantiating actual export sales.

> While the invoices or receipts being used to substantiate claim for input VAT pertain to domestic sales, the invoices or receipts presented by the petitioner, and which were invalidated by this Honorable Court pertain to export sales. There should be a marked difference because in domestic sales, there results a corresponding input VAT which may be possibly claimed by the purchaser, whereas in export sales, such as those done by the petitioner, the purchaser incurs no input VAT which it may eventually claim. Thus, for purposes of substantiation in the claim for input VAT resulting from domestic sales the stern application of the mentioned invoicing requirements is naturally demanded. But for simple purposes of substantiating export sales, as in the case of petitioner, it should not be as exacting especially considering that the petitioner still has to substantiate its input VAT, which, this time, needs to hurdle the aforesaid invoicing requirements under the 1997 Tax Code.
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> Moreover, unlike in the substantiation of input VAT, which can only be done through the submission of domestic sales invoices, there are other documents to show the fact of export sales such as export declarations, inward remittances and airway bills. This gives more plausible reason why invoices or receipts being used to prove input VAT need to comply with the invoice requirements set forth under Section 113(A)(1), in relation to Section 237, of the 1997 Tax Code.[17]

Petitioner appended thereto a letter-authority dated April 17, 1997 signed by BIR Regional Director Sol Hubahib of Region No. 9 approving its request to use computerized sales invoices.

On September 1, 2003, the CTA denied petitioner's Motion for Reconsideration and Supplemental Motion for Reconsideration.

Aggrieved, petitioner filed before the CA a petition for review of the tax court's decision. Petitioner averred that, under Sections 113(A)(1) and 237 of the 1997 Tax Code, the following information is required to be indicated in the invoice or receipt: (1) a statement that the seller is VAT-registered; (2) the seller's TIN; and (3) the name, business style, if any, and address of the purchaser, customer or client. However, petitioner averred, such requirements apply only to domestic or local sales, considering that the output tax (the input tax on the part of the local purchaser), may be claimed by the latter as a credit against its output VAT. Thus, according to petitioner, the invoices or receipts being issued by the local seller are required to indicate the information listed under the aforementioned provisions of the Tax Code so that the local purchaser would have a valid basis in its claim for the crediting of the input VAT. On the other hand, such requirements do not apply to its export sales, since no input VAT may be claimed thereon. Petitioner further pointed out that the transaction is subject to 0% rate; there is no input VAT to be claimed by its foreign purchaser; and the latter is not a VAT-registered entity in the Philippines. Considering that no

refundable or creditable input VAT results from its export sales transactions, it should not be subjected to strict compliance with the invoicing requirements.

Petitioner also claimed that the absence of BIR authority to print its TIN-V in some of the invoices is not fatal to its claim for refund or issuance of a tax credit certificate as to invalidate the documents used to prove its export sales. It declared that it used computerized accounting forms as sales invoices in its export sales based on the letter-authority dated April 17, 1997 of the BIR. It was only through plain mistake and inadvertence that the sales invoices it used had no authority to print. Such omission should not allegedly render the said sales invoices altogether invalid or inadmissible for purposes of substantiating petitioner's *actual* export sales covering the period April 1, 1998 to June 30, 1998. Petitioner opined that its failure to adduce in evidence the said letter-authority of the BIR was due to its honest belief that it had already adduced sufficient evidence to prove its actual export sales.

Petitioner submitted that while the CTA ruled that the invoices which did not indicate TIN-V were not sufficient proof of its export sales, this constituted only a small part of the hundreds of invoices it had submitted. These defective invoices, therefore, relate to a small chunk of the export sales it made for the covered period. If at all, the invalid invoices could only mean that only a small part of its claim was being disallowed, not the entire claim.

On August 12, 2004, the CA rendered its Decision[18] affirming the CTA ruling. The CA ruled that while under Section 106(A)(2)(a)(1) of the Tax Code, VAT-registered entities are entitled to claim VAT refund on their input taxes if their export sales are zero-rated, the claim is nevertheless subject to the invoicing and accounting requirements of VAT-registered persons under Section 113 in relation to Section 237 of the Tax Code. It is therefore clear, the appellate court concluded, that what should be proven are not only the export sales but also compliance with the requirements under the aforesaid sections of the Tax Code.[19]

The CA further ruled that Revenue Regulations (RR) No. 7-95 requires VAT-registered persons to issue *duly registered* receipts, and enumerates the entries that should be contained in the said *duly registered* receipts. Section 237 of the Tax Code further mandates that persons required to issue receipts or invoices should register these documents with the BIR. In fact, RR No. 2-90 restored the requirement to register and stamp receipts and invoices prior to their use.[20] Thus, VAT-registered persons are directed to issue duly registered invoices for every sale or lease of goods, properties or services, containing the required information under the law.[21]

According to the CA, since petitioner issued invoices with the BIR's authority to print, it must be concluded that these invoices were not registered as they did not comply with the invoicing requirements under Section 113, and the requirements for issuance of receipts or sales or commercial invoices under Section 237. The CA declared that an

unregistered receipt could not be used as supporting document for input tax.[22] It further explained that Revenue Memorandum Circular (RMC) No. 42-2003 already clarified that failure to comply with invoicing requirements would result in the disallowance of the claim for input tax by the purchaser-claimant. Hence, the CA ruled, if the claim for refund or issuance of a tax credit certificate is based on the taxpayer's zero-rated sales, but the invoicing requirements in the issuance of sales invoices are not complied with, the claim for tax credit/refund of VAT on its purchases shall be denied. This is because the invoices issued to its customers failed to depict that the taxpayer is VAT-registered and that its sales are classified as zero-rated. According to the appellate court, however, 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.[23]

The CA further declared that petitioner failed to establish that its computer-generated sales invoices were duly stamped with the approval of the BIR as shown by the letter-authority dated April 17, 1997, considering that the said letter-authority was not presented during the trial of the case, much less attached to the petition filed before it.[24] The *fallo* of the CA decision reads:

> WHEREFORE, in view of the foregoing, the instant petition is DENIED. The Decision of the Court of Tax Appeals in CTA Case No. 6128 is hereby AFFIRMED. No pronouncement as to costs.
>
> SO ORDERED.[25]

Undaunted by the adverse ruling of the appellate court, petitioner now seeks recourse to this Court on the following grounds:

> I.
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> THE DECISION OF THE COURT OF APPEALS AFFIRMING THE DENIAL OF PETITIONER'S CLAIM FOR TAX CREDIT/REFUND IS CONTRARY TO PROVISIONS OF THE TAX CODE AND APPLICABLE REGULATIONS AND DECISIONS OF THE HONORABLE SUPREME COURT.
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> II.
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> SECTIONS 113 AND 237 OF THE TAX CODE DO NOT REQUIRE PETITIONER TO REFLECT ITS AUTHORITY TO PRINT IN ITS INVOICES. PETITIONER IS NOT REQUIRED BY ANY LAW OR REGULATION TO REFLECT ITS AUTHORITY TO PRINT UPON ITS INVOICES. NEITHER IS THE FAILURE PENALIZED BY ANY LAW OR STATUTE SUCH THAT THE INVOICES ARE RENDERED INADMISSIBLE.
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> III.

THE FAILURE TO STATE THE TIN-V IN PETITIONERï¿½S EXPORT SALES INVOICES SHOULD NOT INVALIDATE PETITIONER'S CLAIM. PETITIONER'S EXPORT SALES INVOICES, WHICH ARE ADMISSIBLE, COMPETENT AND MATERIAL EVIDENCE, SUFFICIENTLY PROVE PETITIONERï¿½S EXPORT SALES.[26]

The Issues

The issues to be resolved in the instant case are (1) whether the absence of the BIR authority to print or the absence of the TIN-V in petitioner's export sales invoices operates to forfeit its entitlement to a tax refund/credit of its unutilized input VAT attributable to its zero-rated sales; and (2) whether petitioner's failure to indicate "TIN-V" in its sales invoices automatically invalidates its claim for a tax credit certification.

Petitioner's Arguments

Petitioner contends that Sections 113 and 237 of the Tax Code, and even RR 7-95, do not require the taxpayer to reflect its authority to print in its invoices.[27] Failure to print such authority is not even penalized by any law or statute such that the invoices which do not contain the BIR authority for petitioner to print its sales are rendered inadmissible in evidence.[28] Further, the authority to print under Section 238 of the Tax Code is a requirement that is separate from and independent of the information that ought to be reflected in the invoice or official receipt as mandated by Section 113, in relation to Section 237 of the Tax Code.[29] The BIR has even ruled, in BIR Ruling DA-375-03, that receipts which do not reflect that the taxpayer is VAT-registered do not automatically invalidate the claim for an input tax credit.[30] Moreover, RR 2-90 (which the appellate court cited in the assailed decision) does not state that failure to reflect the authority to print on the face of a sales invoice or receipt results in the outright invalidation of such sales invoice or of the claim for tax credit/refund.[31] It insists that RMC No. 42-03, which the CA likewise relied on in the assailed decision, does not apply, for it relates to non-compliance with invoicing requirements; the authority to print is not among the information required by law or any regulation to be reflected in petitioner's invoices.[32]

Petitioner asserts that even if it were assumed for the sake of argument that the BIR has issued a regulation to the effect that failure to indicate the authority to print on the face of a sales invoice would render it invalid, such regulation cannot prevail over the law that it seeks to implement. It insists that any additional requirement imposed by the BIR for a valid claim other than those mandated by law is invalid,[33] and that the provisions of a taxing act are not to be extended by implication.[34]

Further, petitioner contends that it was authorized by the BIR to use a computerized

accounting system[35] through the letter-authority dated April 17, 1997.[36] It avers that even if the letter-authority was not offered in evidence, the Court ought to take judicial notice thereof as an official act of the Executive Branch.[37] Petitioner asserts that since its export sales invoices were computer-generated under an approved computerized accounting system, it is no longer mandated to comply with the requirements under Section 19 of RR No. 2-90 on the authentication and registration of books, registers or records, authority to print receipts, sales or commercial invoices; and registration and stamping of receipts and invoices. Such requirements apply only to manually generated receipts and invoices. Even granting *arguendo* that it was still required by RR No. 7-95 to indicate its authority to print in its invoices, it was not mandated to obtain an authority to print as the burden of securing the same falls upon the printer of the receipts.[38]

Petitioner further contends that the invoicing requirement of stating the TIN-V applies only to domestic or local sales, given that the output tax (the input tax on the part of the local purchaser), may be claimed by the latter as a credit against its output VAT. In such a case, the invoicing requirements should be complied with in order for the local purchaser to have a valid basis in its claim for crediting of input VAT. This, however, does not apply in the instant case for the following reasons: petitioner's export sales with its foreign purchaser is subject to zero-rated VAT; its foreign purchaser cannot claim input VAT as it is governed by a foreign taxing jurisdiction; and the latter is not a VAT-registered entity in the Philippines.[39] To buttress its claim, petitioner cites the decision of the CA in *Intel Technology Philippines, Inc. v. CIR.*[40]

In any case, petitioner argues, it sufficiently proved its export sales since, other than the subject invoices, it also submitted in evidence the following: certifications of inward remittances; airway bills; export declarations; certification by Eliseo Aurellado, the independent CPA duly commissioned by the tax court, attesting that petitioner made export sales of P2,538,906,840.16 during the second quarter of 1998.

Petitioner pleads that its application for tax credit/refund should be granted to serve the higher interest of justice, equity and fairness, and claims that technicalities should give way to its substantive rights.[41] While it may be true that taxes are the lifeblood of the government, technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens.

The Respondent's Counter-Arguments

For his part, respondent Commissioner, through the Office of the Solicitor General, maintains that the absence of the BIR authority to print and the TIN-V in its export sales invoices is fatal to petitioner's claim for refund.[42] Section 113 of the Tax Code enumerates the invoicing requirements for VAT-registered persons, which include, among others, a statement that the seller is VAT-registered and the seller's TIN.[43]

Section 237 of the same Code, and Section 4.108.1 of RR No. 7-95, further require the issuance of *duly registered* receipts or invoices for every sale or transaction, indicating thereon the purchaser's TIN.[44]

A VAT-registered person is, therefore, required to issue a receipt or invoice with a TIN for every consummated sale, and which, following Section 19 of RR No. 2-90,[45] must be duly registered with the BIR as evidenced by a stamp of the taxpayer's authority to print.[46] Respondent stresses that Section 238 of the Tax Code mandates all persons engaged in business to secure an authority to print receipts or invoices from the BIR.[47] There is an additional requirement that such authority to print must be stamped on every receipt or invoice of a VAT-registered person. While it is not explicitly enumerated in Sections 113 and 237 of the Tax Code as one of the invoicing requirements, it can be implied from said provisions that such information must be reflected on the receipt or invoice, as the stamping of the said BIR authority to print is a proof of the invoice being BIR-registered.[48] Absent the said authority to print, therefore, petitioner's invoices are considered unregistered, and thus cannot be used as supporting documents to prove its input tax and eventually, its claim for tax refund.[49]

Respondent Commissioner further emphasizes that tax refunds/ credits are in the nature of tax exemptions; hence, laws relating to them call for a strict application against the claimant.[50] The burden to prove the entitlement to the refund also rests on the taxpayer, which, in this case, was not proven by petitioner.[51] Moreover, petitioner's argument, that it was authorized by the BIR to use a computerized accounting system and as such is no longer required to secure an authority to print, has no leg to stand on because the April 17, 1997 letter-authority[52] from the BIR was not formally offered in evidence.[53] It insists that since the letter-authority is a mere correspondence containing matters that are not of public knowledge and incapable of unquestionable demonstration, the Court cannot take judicial notice thereof.[54] And even if petitioner was authorized to use computerized invoices, it was not excused from complying with the stamping and invoicing requirements.[55]

Lastly, respondent contends that it is incorrect for petitioner to state that the invoicing requirement under the Tax Code finds relevance only in domestic or local sales. The provisions of the law and the BIR regulations on invoicing do not distinguish whether the transaction is an export or local sale.[56]

The Court's Ruling

The petition is partially granted.

Since the issues are interrelated, the Court shall delve into and resolve them simultaneously.

The pertinent provision of the Tax Code on VAT on the sale of goods or properties, particularly with respect to export sales, is Section 106(A)(2)(a)(1).[57] The provision reads:

> Section 106. Value-added Tax on Sale of Goods or Properties.
>
> (A) Rate and Base of Tax.-- xxx
>
> x x x x
>
> (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).

Based on the above provision, export sales, or sales outside the Philippines, are subject to VAT at 0% rate if made by a VAT-registered person.[58] When applied to the tax base, the 0% rate obviously results in no tax chargeable against the purchaser. The seller of such transactions charges no output tax, but can claim a refund or tax credit certificate for the VAT previously charged by suppliers.[59]

In the instant case, petitioner, as a VAT-registered as well as PEZA-registered entity engaged in the export of advanced and large-scale ICs, is claiming a refund or issuance of a tax credit certificate in the amount of P11,770,181.70 for VAT input taxes it paid on its domestic purchases of goods and services covering the period April 1, 1998 to June 30, 1998. For petitioner (or other VAT-registered persons or entities whose sales are zero-rated or effectively zero-rated) to validly claim a refund or tax credit, Section 112(A) of the Tax Code provides:

> **Section 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.[60]

Under Sections 106 (A)(2)(a)(1) in relation to 112(A) of the Tax Code, a taxpayer engaged in zero-rated or effectively zero-rated transactions may apply for a refund or issuance of a tax credit certificate for input taxes paid attributable to such sales upon complying with the following requisites: (1) the taxpayer is engaged in sales which are zero-rated (like export sales) or effectively zero-rated; (2) the taxpayer is VAT-registered; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax; and (5) in case of zero-rated sales under Section 106(A)(2)(a)(1) and (2), Section 106(B), and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with BSP rules and regulations. It is added 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 or entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of the sales."

In this connection, petitioner, in order to prove that it was engaged in export sales during the second quarter of 1998, offered in evidence copies of summary of export sales, sales invoices, official receipts, airway bills, export declarations and certification of inward remittances during the said period.[61] In addition, petitioner's Certificate of Registration with RDO Control No. 96-540-000713[62] issued by the BIR and Certificate of Registration No. 95-133[63] issued by the PEZA were likewise offered in evidence to prove that it is a VAT-registered entity as well as an Ecozone export enterprise.

To the mind of the Court, these documentary evidence submitted by petitioner, *e.g.*, summary of export sales, sales invoices, official receipts, airway bills and export declarations, prove that it is engaged in the "sale and actual shipment of goods from the Philippines to a foreign country." In short, petitioner is considered engaged in export sales (a zero-rated transaction) if made by a VAT-registered entity. Moreover, the certification of inward remittances attests to the fact of payment "in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the *BSP*." Thus, petitioner's evidence, juxtaposed with the requirements of Sections 106 (A)(2)(a)(1) and 112(A) of the Tax Code, as enumerated earlier, sufficiently establish that it is entitled to a claim for refund or

issuance of a tax credit certificate for creditable input taxes.

Significantly, the CTA and the CA have similarly found petitioner to be legally entitled to a claim for refund or issuance of tax credit certificate of its unutilized VAT input taxes on domestic purchases of goods and services attributable to its zero-rated sales. They denied petitioner's claim, however, on the ground that it purportedly failed to comply with the invoicing requirements under Sections 113 and 237 of the Tax Code since its sales invoices do not bear the BIR authority to print, and several of the invoices do not indicate the TIN-V.

On the latter point, the Court disagrees with the CTA and CA. As correctly argued by petitioner, there is no law or BIR rule or regulation requiring petitioner's authority from the BIR to print its sales invoices (BIR authority to print) to be reflected or indicated therein. Sections 113, 237 and 238 of the Tax Code provide:

> **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; 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.[64] (emphasis supplied)
>
> **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 Identification Number (TIN) of the purchaser*.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to an internal revenue tax from compliance with the provisions of this Section. [65] (emphasis supplied)

Sec. 238. Printing of Receipts or Sales or Commercial Invoices. — *All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.*

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

All persons who print receipt or sales or commercial invoices shall maintain a logbook/register of taxpayer who availed of their printing services. The logbook/register shall contain the following information:

(1) Names, Taxpayer Identification Numbers of the persons or entities for whom the receipts or sales or commercial invoices are printed; and

(2) Number of booklets, number of sets per booklet, number of copies per set and the serial numbers of the receipts or invoices in each booklet. (emphasis supplied)

RR 2-90, as cited by respondent Commissioner, also states in its Section 19(d) that:

> Section 19. *Authentication and registration of books, register, or records; authority to print receipts, sales or commercial invoices; and registration and stamping of receipts and invoices.*
>
> x x x x
>
> (d) *Registration and stamping of receipts and invoices*
>
> *Before being used, the printed receipts*, sales or commercial invoices shall be *registered* with the revenue district officer where the principal place of business of the taxpayer is located within thirty (30) days from the date of printing the same. *The registration of the printed receipts or invoices shall be evidenced by an appropriate stamp on the face of the taxpayer's copy of the authority to print as well as on the front cover, on the back of the middle invoice or receipt and on the back of the last invoice or receipt of the registered booklet or pad, authenticated by the signature of the officer authorized to place the stamp thereon.* (emphasis supplied)

RR 7-95, the Consolidated VAT Regulations, also states in Section 4.108-1 that:

> **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.
>
> 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 a "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.

It is clear from the foregoing that while entities engaged in business are required to secure from the BIR an authority to print receipts or invoices and to issue duly registered receipts or invoices, it is not required that the BIR authority to print be reflected or indicated therein. Only the following items are required to be indicated in the receipts or invoices: (1) a statement that the seller is a VAT-registered entity followed by its TIN-V; (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) date of the transaction; (4) quantity of merchandise; (5) unit cost; (6) description of merchandise or nature of service; (7) the name, business style, if any, and address of the purchaser, customer or client in the case of sales, receipt or transfers in the amount of P100.00 or more, or regardless of the amount, where the sale or transfer is made by a person liable to VAT to another person also liable to VAT, or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees; and (8) the TIN of the purchaser where the purchaser is a VAT-registered person.

It should be noted that petitioner is engaged in export sales, such that the purchasers of its goods are foreign entities, which are, logically, not VAT-registered in our country or liable to pay VAT in our jurisdiction. Items (7) and (8) in the above enumeration do not, thus, apply to petitioner; that is, they need not be reflected or indicated in the invoices or receipts, given that it is an entity engaged in export sales, and the purchasers of its goods which are foreign entities are not VAT-registered in our country nor liable to pay VAT in our jurisdiction.

In any case, the above cited provisions of law and revenue regulations do *not* provide that failure to reflect or indicate in the invoices or receipts the BIR authority to print, as well as the TIN-V, would result in the outright invalidation of these invoices or receipts. Neither is it provided therein that such omission or failure would result in the outright denial of a claim for tax credit/refund. Instead, Section 264 of the Tax Code imposes the penalty of fine and imprisonment for, among others, invoices or receipts that do not truly reflect or contain all the required information, to wit:

> **Section 264. Failure or Refusal to Issue Receipts or Sales or Commercial Invoices, Violations Related to the Printing of such Receipts or Invoices or Other Violations.** —
>
> (a) Any person who, being required under Section 237 to issue receipts or sales or commercial invoices, fails or refuses to issue such receipts or invoices, issues receipts or invoices that do not truly reflect and/or contain all the informations required to be shown therein or uses multiple or double

receipts or invoices, shall, upon conviction for each act or omission, be punished by a fine of not less than One thousand pesos (P1,000) but not more than Fifty thousand pesos (P50,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years.

(b) Any person who commits any of the acts enumerated hereunder shall be penalized in the same manner and to the same extent as provided for in this Section:

(1) Printing of receipts or sales or commercial invoices without authority from the Bureau of Internal Revenue; or

(2) Printing of double or multiple sets of invoices or receipts;

(3) Printing of unnumbered receipts or sales or commercial invoices, not bearing the name, business style, Taxpayer Identification Number, and business address of the person or entity.

The appellate court's reliance on RMC No. 42-2003 is misplaced. The said Circular clarified, *inter alia*, that failure to comply with the invoicing requirements on the documents supporting the sale of goods and services would result in the disallowance of the claim for refund or issuance of a tax credit certificate of creditable input taxes. The said Circular mentioned as an example the failure to state the TIN of the taxpayer in the invoice or receipt. However, in petitioner's case, the principal ground for the denial of its claim for refund or issuance of a tax credit certificate is its failure to reflect or indicate in its invoices the BIR authority to print. As earlier discussed, the BIR authority to print is not one of the items required by law to be reflected or indicated in the invoices or receipts. In any case, the said Circular was issued on July 15, 2003 by then Commissioner Guillermo L. Parayno, Jr., while petitioner's claim was filed on May 18, 1999. Hence, RMC No. 42-2003 cannot be applied retroactively because to do so would be prejudicial to petitioner. In a long line of cases,[66] the Court has affirmed that the rulings, circulars, rules and regulations promulgated by the Commissioner on Internal Revenue would have no retroactive application if to so apply them would be prejudicial to the taxpayers.

It bears reiterating that while the pertinent provisions of the Tax Code and the rules and regulations implementing them require entities engaged in business to secure a BIR authority to print invoices or receipts and to issue duly registered invoices or receipts, it is not specifically required that the BIR authority to print be reflected or indicated therein. Indeed, what is important with respect to the BIR authority to print is that it has been secured or obtained by the taxpayer, and that invoices or receipts are duly registered.

To stress, petitioner, as a VAT-registered entity, is engaged in export sales of advanced and large-scale ICs and, as such, under Section 106 (A)(2)(a)(1) of the Tax Code, its

sales or transactions are subject to VAT at 0% rate. Further, subject to the requirements stated in Section 112(A), it is entitled to claim refund or issuance of a tax credit certificate for input VAT taxes attributable to its export sales. As the Court had the occasion to explain since no output VAT was imposed on the zero-rated export sales, what the government reimburses or refunds to the claimant is the input VAT paid — thus, the necessity for the *input VAT paid* to be substantiated by purchase invoices or official receipts.[67] These sales invoices or receipts issued by the supplier are necessary to substantiate the actual amount or quality of goods sold and their selling price, and, taken collectively, are the best means to prove the input VAT payments of the claimant.[68]

In a claim for refund or issuance of a tax credit certificate attributable to zero-rated sales, what is to be closely scrutinized is the documentary substantiation of the input VAT paid, as may be proven by other export documents, rather than the supporting documents for the zero-rated export sales. And since petitioner has established by sufficient evidence that it is entitled to a refund or issuance of a tax credit certificate, in accordance with the requirements of Sections 106 (A)(2)(a)(1) and 112(A) of the Tax Code, then its claim should not be denied, notwithstanding its failure to state on the invoices the BIR authority to print and the TIN-V. Worthy of mentioning again is the fact that even the CTA and the CA have found petitioner to be legally entitled to a claim for refund or issuance of a tax credit certificate of its unutilized VAT input taxes on domestic purchases of goods and services attributable to its zero-rated sales.

What applies to petitioner, as a PEZA-registered export enterprise, is the Court's pronouncement that leniency in the implementation of the VAT is an imperative, precisely to spur economic growth in the country and attain global competitiveness as envisioned in our laws.[69] The incentives offered to PEZA enterprises, among which are tax exemptions and tax credits, ultimately redound to the benefit of the national economy, enticing as they do more enterprises to invest and do business within the zones, thus creating more employment opportunities and infusing more dynamism to the vibrant interplay of market forces.[70]

Even as the Court now holds that petitioner is legally entitled to a refund or issuance of a tax credit certificate of its unutilized VAT input taxes on domestic purchases of goods and services attributable to its zero-rated sales, the case shall nevertheless be remanded to the CTA for proper determination and computation of petitioner's tax credit/refund, considering that in the Report[71] of the independent auditor, Eliseo Aurellado, only the amount of P9,688,809.00 was deemed as petitioner's valid claim for tax credit.[72] According to Aurellado, the difference of P2,081,372.32 from petitioner's input VAT claim of P11,770,181.70 was not supported by sufficient documentary proof.[73] The Court, not being a trier of facts, cannot certainly decide this factual circumstance.

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. The

Decision dated August 12, 2004 of the CA in CA-G.R. SP No. 79327 is **REVERSED** and **SET ASIDE**. The instant case is **REMANDED** to the Court of Tax Appeals for the determination and computation of petitioner's tax credit/refund.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and *Nachura, JJ.*, concur.

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[1] Penned by Associate Justice Lucenito N. Tagle, with Associate Justices Eloy R. Bello, Jr. (retired) and Regalado E. Maambong, concurring; CA *rollo*, pp. 124-133.

[2] Id. at 167-169.

[3] *Rollo*, p. 25.

[4] Id. at 87.

[5] Id. at 88.

[6] Id. at 93-94.

[7] CA *rollo*, pp. 55-63.

[8] Id. at 56-61.

[9] Id. at 62.

[10] Id. at 25-26.

[11] Id. at 76.

[12] *Rollo*, p. 242.

[13] Id. at 169-174.

[14] CA *rollo*, p. 34.

[15] Id. at 36-42.

[16] Id. at 39.

[17] Id. at 44-45.

[18] Supra note 1.

[19] CA *rollo*, p. 130.

[20] Id. at 131.

[21] Id. at 132.

[22] Id.

[23] Id.

[24] Id. at 133.

[25] Id.

[26] Id. at 31-32.

[27] Id. at 33-39.

[28] Id. at 33-34.

[29] Id. at 36.

[30] Id. at 38-39.

[31] Id. at 39.

[32] Id. at 40.

[33] Id. at 40-41.

[34] Id.

[35] Id. at 42.

[36] CA *rollo*, pp. 47-48.

[37] *Rollo*, p. 42.

[38] Id. at 44.

[39] Id. at 46-47.

[40] CA-G.R. No. 79328, October 20, 2004; Memorandum for the Petitioner, p. 13.

[41] Id. at 55.

[42] Id. at 299.

[43] Id. at 300.

[44] Id. at 301-302.

[45] Id. at 303.

[46] Id. at 303.

[47] Id. at 304.

[48] Id. at 306.

[49] Id.

[50] Id. at 307.

[51] Id. at 308.

[52] CA *rollo*, pp. 47-48.

[53] *Rollo*, p. 309.

[54] Id.

[55] Id. at 310.

[56] Id. at 310-311.

[57] The Tax Code, also known as the National Internal Revenue Code (NIRC) has been amended by, among others, Republic Act No. (R.A.) 9337 which took effect on July 1, 2005. R.A. 9337 amended several provisions of the Tax Code including Section 106. Paragraph (A)(2)(a)(1) thereof has been retained.

[58] *Commissioner of Internal Revenue v. Cebu Toyo Corporation*, G.R. No. 149073, February 16, 2005, 451 SCRA 447, 461-462.

[59] *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, G.R. No. 153866, February 11, 2005, 451 SCRA 132, 143; *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.*, G.R. No 150154, August 9, 2005, 466 SCRA 211, 227.

[60] As amended by R.A. 9337, this provision now reads:

Section 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: Provided, finally, That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

x x x x

[61] Exhibits "X" to "X-669"Also Exhibit "Y," which is a copy of the summary of export sales.

[62] Exhibit "B."

[63] Exhibit "A."

[64] As amended by RA 9337, the provision now reads:

Section 113. Invoicing and Accounting Requirements for VAT-registered Persons.—

(A) Invoicing Requirements. — A VAT-registered person shall issue:

(1) A VAT invoice for every sale, barter or exchange of goods and properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) Information Contained in the VAT Invoice or VAT Official Receipt. — The following information shall be indicated in the VAT invoice or VAT official receipt:

(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; Provided, That:

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from the value-added tax, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;

(c) 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;

(d) If the sale involves goods, properties or services some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt; Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) The date of the transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) In the case of sales in the amount of one thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and taxpayer identification number (TIN) of the purchaser, customer or client.

(C) 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.

(D) Consequence of Issuing Erroneous VAT Invoice or VAT Official Receipt. —

(1) If a person who is not a VAT-registered person issues an invoice or receipt showing his Taxpayer Identification Number (TIN) followed by the word "VAT":

(a) The issuer shall, in addition to any liability to other percentage taxes, be liable to:

(i) The tax imposed in Section 106 or 108 without the benefit of any input tax credit; and

(ii) A 50% surcharge under Section 248 (B) of this Code;

(b) The VAT shall, if the other requisite information required under Subsection (B) hereof is shown on the invoice or receipt, be recognized as an input tax credit to the purchaser under Section 110 of this Code.

(2) If a VAT-registered person issues a VAT invoice or VAT official receipt for a VAT-exempt transaction, but fails to display prominently on the invoice or receipt the term "VAT-exempt Sale", the issuer shall be liable to account for the tax imposed in Section 106 or 108 as if Section 109 did not apply.

(E) Transitional Period. — Notwithstanding Section (B) hereof, taxpayers may continue to issue VAT invoices and VAT official receipts for the period July 1, 2005 to December 31, 2005, in accordance with Bureau of Internal Revenue administrative practices that existed as of December 31, 2004.

[65] As amended by R.A. 9337, the provision now reads:

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 sale 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 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.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to an internal revenue tax from compliance with the provisions of this Section.

[66] Among others, *Commissioner of Internal Revenue v. Benguet Corporation*, G.R. No. 134587, July 8, 2005, 463 SCRA 28, 41; *Commissioner of Internal Revenue v. Court of Appeals, et al.*, G.R. No. 117982, February 6, 1997, 267 SCRA 557, 564; *Commissioner of Internal Revenue v. Telefunken Semiconductor Philippines, Inc.*, G.R. No. 103915, October 23, 1995, 249 SCRA 401.

[67] *Commissioner on Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005, 468 SCRA 571, 587.

[68] Id. at 590.

[69] *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, supra note 62, at 158.

[70] *Commissioner of Customs v. Philippine Phospate Fertilizer Corporation*, G.R. No. 144440, September 1, 2004, 437 SCRA 452, 457.

[71] *Rollo*, pp. 242-247.

[72] Id. at 246.

[73] Id. at 245.