SECOND DIVISION

PANASONIC COMMUNICATIONS IMAGING CORPORATION OF THE PHILIPPINES (*formerly* MATSUSHITA BUSINESS MACHINE CORPORATION OF THE PHILIPPINES),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

G.R. No. 178090

Present:

Carpio, *J.*, Chairperson,
Brion,
Del Castillo,
Abad, and
Perez, *JJ.*

Promulgated:

February 8, 2010

x ---------- x

DECISION

ABAD, *J.*:

This petition for review puts in issue the **May 23, 2007 Decision**[1] of the Court of Tax Appeals (CTA) *en banc* in **CTA EB 239**, entitled "*Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue*," which affirmed the denial of petitioner's claim for refund.

The Facts and the Case

Petitioner Panasonic Communications Imaging Corporation of the Philippines (Panasonic) produces and exports plain paper copiers and their sub-assemblies, parts, and components. It is registered with the Board of Investments as a preferred pioneer

enterprise under the Omnibus Investments Code of 1987. It is also a registered value-added tax (VAT) enterprise.

From April 1 to September 30, 1998 and from October 1, 1998 to March 31, 1999, petitioner Panasonic generated export sales amounting to US$12,819,475.15 and US$11,859,489.78, respectively, for a total of US$24,678,964.93. Believing that these export sales were zero-rated for VAT under Section 106(A)(2)(a)(1) of the 1997 National Internal Revenue Code as amended by Republic Act (R.A.) 8424 (1997 NIRC),[2] Panasonic paid input VAT of ₱4,980,254.26 and ₱4,388,228.14 for the two periods or a total of ₱9,368,482.40 attributable to its zero-rated sales.

Claiming that the input VAT it paid remained unutilized or unapplied, on March 12, 1999 and July 20, 1999 petitioner Panasonic filed with the Bureau of Internal Revenue (BIR) two separate applications for refund or tax credit of what it paid. When the BIR did not act on the same, Panasonic filed on December 16, 1999 a petition for review with the CTA, averring the inaction of the respondent Commissioner of Internal Revenue (CIR) on its applications.

After trial or on August 22, 2006 the CTA's First Division rendered judgment,[3] denying the petition for lack of merit. The First Division said that, while petitioner Panasonic's export sales were subject to 0% VAT under Section 106(A)(2)(a)(1) of the 1997 NIRC, the same did not qualify for zero-rating because the word "zero-rated" was not printed on Panasonic's export invoices. This omission, said the First Division, violates the invoicing requirements of Section 4.108-1 of Revenue Regulations (RR) 7-95.[4]

Its motion for reconsideration having been denied, on January 5, 2007 petitioner Panasonic appealed the First Division's decision to the CTA *en banc*. On May 23, 2007 the CTA *en banc* upheld the First Division's decision and resolution and dismissed the petition. Panasonic filed a motion for reconsideration of the *en banc* decision but this was denied. Thus, petitioner filed the present petition in accordance with R.A. 9282.[5]

The Issue Presented

The sole issue presented in this case is whether or not the CTA *en banc* correctly denied petitioner Panasonic's claim for refund of the VAT it paid as a zero-rated taxpayer on the ground that its sales invoices did not state on their faces that its sales were "zero-rated."

The Court's Ruling

The 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.[6] For example, when a seller charges VAT on its sale, it issues an invoice to the buyer, indicating the amount of VAT he charged. For his part, if the buyer is also a seller subjected to the payment of VAT on his sales, he can use the invoice issued to him by his supplier to get a reduction of his own VAT liability. The difference in tax shown on invoices passed and invoices received is the tax paid to the government. In case the tax on invoices received exceeds that on invoices passed, a tax refund may be claimed.

Under the 1997 NIRC, if at the end of a taxable quarter the seller charges output taxes[7] equal to the input taxes[8] that his suppliers passed on to him, no payment is required of him. It is when his output taxes exceed his input taxes that he has to pay the excess to the BIR. If the input taxes exceed the output taxes, however, the excess payment shall be carried over to the succeeding quarter or quarters. Should the input taxes result from zero-rated or effectively zero-rated transactions or from the acquisition of capital goods, any excess over the output taxes shall instead be refunded to the taxpayer.[9]

Zero-rated transactions generally refer to the export sale of goods and services. The tax rate in this case is set at zero. When applied to the tax base or the selling price of the goods or services sold, such zero rate results in no tax chargeable against the foreign buyer or customer. But, although the seller in such transactions charges no output tax, he can claim a refund of the VAT that his suppliers charged him. The seller thus enjoys automatic zero rating, which allows him to recover the input taxes he paid relating to the export sales, making him internationally competitive.[10]

For the effective zero rating of such transactions, however, the taxpayer has to be VAT-registered and must comply with invoicing requirements.[11] 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.**

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.[12] 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 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 that 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.[13] 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.[14]

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.[15] Unable to submit the proper invoices, petitioner Panasonic has been unable to substantiate its claim for refund.

Petitioner Panasonic's citation of *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*[16] is misplaced. Quite the contrary, it strengthens the position taken by respondent CIR. In that case, the CIR denied the claim for tax refund on the ground of

the taxpayer's failure to indicate on its invoices the "BIR authority to print." But Sec. 4.108-1 required only the following to be reflected on the invoice:

1. The name, taxpayer's identification number (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.

This Court held that, since the "BIR authority to print" is *not* one of the items required to be indicated on the invoices or receipts, the BIR erred in denying the claim for refund. Here, however, the ground for denial of petitioner Panasonic's claim for tax refund—the absence of the word "zero-rated" on its invoices—is one which is specifically and precisely included in the above enumeration. Consequently, the BIR correctly denied Panasonic's claim for tax refund.

This Court will not set aside lightly the conclusions reached by the CTA which, by the very nature of its functions, is dedicated exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.[17] Besides, statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to the VAT are in the nature of such exemptions. The general rule is that claimants of tax refunds bear the burden of proving the factual basis of their claims. Taxes are the lifeblood of the nation. Therefore, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government.[18]

WHEREFORE, the petition is **DENIED** for lack of merit.

Costs against petitioner.

SO ORDERED.

ROBERTO A. ABAD
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE P. PEREZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

REYNATO S. PUNO
Chief Justice

---

[1] *Rollo*, pp. 37-56; penned by Associate Justice Lovell R. Bautista.

[2] Which provides as follows:

SEC. 106. Value-Added Tax on Sale of Goods or Properties. -

(A) Rate and Base of Tax. - There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, value-added tax equivalent to ten percent (10%) [now 12%] of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

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).

[3] *Rollo*, pp. 57-67; penned by Associate Justice Caesar A. Casanova, and concurred in by Associate Justice Lovell R. Bautista. Presiding Justice Ernesto D. Acosta dissented.

[4] **The Consolidated Value-Added Tax Regulations**, issued on December 9, 1995 and implemented beginning January 1, 1996, provides:

Sec. 4.108-1. Invoicing Requirements. – All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. The name, TIN and address of 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;**
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 "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. (Emphasis supplied)

[5] An Act Expanding the Jurisdiction of the Court of Tax Appeals, Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, which became effective on March 30, 2004. Under this law, specifically Section 19 thereof, a party adversely affected by a decision or ruling of the Court of Tax Appeals *en banc* may file with the Supreme Court a verified petition for review on *certiorari* pursuant to Rule 45 of the 1997 Rules of Procedure.

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

[7] In simple terms, output tax is the tax due to the person when he sells goods.

[8] Stated simply, input tax is the tax paid by a person, passed on to him by the seller, when he buys goods.

[9] *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, supra note 6, at 333.

[10] Id. at 334-335.

[11] Id.

[12] 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."**

[13] Section 245. Authority of Secretary of Finance to promulgate rules and regulations. – The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needed rules and regulations for the effective enforcement of the provisions of this Code.

[14] Citing its own disposition in *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case 6454, June 30, 2005.

[15] *American Express International, Inc., Philippine Branch v. Commissioner of Internal Revenue*, CTA E.B. 103, March 3, 2006.

[16] G.R. No. 166732, April 27, 2007, 522 SCRA 657.

[17] *Commissioner of Internal Revenue v. Cebu Toyo Corporation*, 491 Phil. 625, 640 (2005).

[18] *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*, 500 Phil. 149, 163 (2005).