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# SECOND DIVISION

# [ G.R. No. 181136, June 13, 2012 ]

## WESTERN MINDANAO POWER CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

## D E C I S I O N

**SERENO, J.:**

This is a Petition for Review under Rule 45 seeking the reversal of the 15 November 2007 Decision and 9 January 2008 Resolution of the Court of Tax Appeals (CTA) En Banc in C.T.A. EB No. 272,[1] which upheld the Court of Tax Appeals Second Division's denial of the Petition for refund of unutilized input Value Added Tax (VAT) on the ground that the Official Receipts of petitioner Western Mindanao Power Corporation (WMPC) did not contain the phrase "zero-rated," as required under Revenue Regulations No. 7-95 (RR 7-95).

Petitioner WMPC is a domestic corporation engaged in the production and sale of electricity. It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer. Petitioner alleges that it sells electricity solely to the National Power Corporation (NPC), which is in turn exempt from the payment of all forms of taxes, duties, fees and imposts, pursuant to Section 13[2] of Republic Act (R.A.) No. 6395 (An Act Revising the Charter of the National Power Corporation). In view thereof and pursuant to Section 108(B) (3) of the National Internal Revenue Code (NIRC),[3] petitioner's power generation services to NPC is zero-rated.

Under Section 112(A) of the NIRC,[4] a VAT-registered taxpayer may, within two years after the close of the taxable quarter, apply for the issuance of a tax credit or refund of creditable input tax due or paid and attributable to zero-rated or effectively zero-rated sales. Hence, on 20 June 2000 and 13 June 2001, WMPC filed with the Commissioner of Internal Revenue (CIR) applications for a tax credit certificate of its input VAT covering the taxable 3rd and 4th quarters of 1999 (amounting to P3,675,026.67)[5] and all the taxable quarters of 2000 (amounting to P5,649,256.81).[6]

Noting that the CIR was not acting on its application, and fearing that its claim would soon be barred by prescription, WMPC on 28 September 2001 filed with the Court of Tax Appeals (CTA) in Division a Petition for Review docketed as C.T.A. Case No. 6335, seeking refund/tax credit certificates for the total amount of P9,324,283.30.

The CIR filed its Comment on the CTA Petition, arguing that WMPC was not entitled to the latter's claim for a tax refund in view of its failure to comply with the invoicing requirements under Section 113 of the NIRC in relation to Section 4.108-1 of RR 7-

95, which provides:

> 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 invoice 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. (Underscoring supplied.)

WMPC countered that the invoicing and accounting requirements laid down in RR 7-95 were merely "compliance requirements," which were not indispensable to establish the claim for refund of excess and unutilized input VAT. Also, Section 113 of the NIRC prevailing at the time the sales transactions were made did not expressly state that failure to comply with all the invoicing requirements would result in the disallowance of a tax credit refund. [7] The express requirement – that "the term '**zero-rated sale**' shall be written or printed prominently" on the VAT invoice or official receipt for sales subject to zero percent (0%) VAT – appeared in Section 113 of the NIRC only after it was amended by Section 11 of R.A. 9337.[8] This amendment cannot be applied retroactively, considering that it took effect only on 1 July 2005, or long after petitioner filed its claim for a tax refund, and considering further that the RR 7-95 is punitive in nature. Further, since there was no statutory requirement for imprinting the phrase "zero-rated" on official receipts prior to 1 July 2005, the RR 7-95 constituted undue expansion of the scope of the legislation it sought to implement.

### *CTA Second Division Decision*

On 1 September 2006, the CTA Second Division dismissed[9] the Petition. It held that while petitioner submitted in evidence its Quarterly VAT Returns for the periods applied for, "the same do not reflect any zero-rated or effectively zero-rated sales allegedly incurred during said periods. The spaces provided for such amounts were left blank, which only shows that there existed no zero-rated or effectively zero-rated sales for the 3rd and 4th quarters of 1999 and the four quarters of 2000."[10] Moreover, it found that petitioner's VAT Invoices and Official Receipts did not contain on their face the phrase "zero-rated," contrary to Section 4.108-1 of RR 7-95.

Petitioner moved for reconsideration, but the motion was denied by the CTA in Division in its Resolution dated 30 January 2007.[11]

### *CTA En Banc Decision*

On 13 March 2007, WMPC appealed to the CTA En Banc, which on 15 November 2007 issued a Decision dismissing the appeal and affirming the CTA ruling. The CTA En Banc held that the receipts and evidence presented by petitioner failed to fully substantiate the existence of the latter's effectively zero-rated sales to NPC for the 3rd and 4th quarters of taxable year 1999 and the four quarters of taxable year 2000. The CTA En Banc quoted the CTA Second Division finding that the Quarterly VAT Returns that petitioner adduced in evidence did not reflect any zero-rated or effectively zero-rated sales allegedly incurred during the said period, to wit:

> Petitioner submitted in evidence its Quarterly Value Added Tax Returns for the 3rd and 4th quarters of 1999 and the four quarters of 2000 to prove that it had duly reported the input taxes paid on its domestic purchases of goods and services (Exhibits 'E' to 'J'). However, a closer examination of the returns clearly shows that the same do not reflect any zero-rated or effectively zero-rated sales allegedly incurred during the said periods. The spaces provided for such amounts were left blank, which only shows that there existed no zero-rated or effectively zero-rated sales for the 3rd and 4th quarters of 1999 and the four quarters of 2000.

In addition, the CTA En Banc noted that petitioner's Official Receipts and VAT Invoices did not have the word "zero-rated" imprinted/stamped thereon, contrary to the clear mandate of Section 4.108-1 of RR 7-95.

CTA Presiding Justice Ernesto Acosta filed a Concurring and Dissenting Opinion. Justice Acosta disagreed with the majority's view regarding the supposed mandatory requirement of imprinting the term "zero-rated" on official receipts or invoices. He opined that Section 113 in relation to Section 237[12] of the NIRC does not require the imprinting of the phrase "zero-rated" on an invoice or official receipt for the document to be considered valid for the purpose of claiming a refund or an issuance of a tax credit certificate. Hence, the absence of the term "zero-rated" in an invoice or official receipt does not affect its admissibility or competency as evidence in support of a refund claim. Also, assuming that stamping the term "zero-rated" on an invoice or official receipt is a requirement of the current NIRC, the denial of a refund

claim is not the imposable penalty for failure to comply with that requirement.

Nevertheless, Justice Acosta agreed with the "decision to deny the claim due to petitioner's failure to prove the input taxes it paid on its domestic purchases of goods and services during the period involved."

WMPC filed a Motion for Reconsideration, which was denied by the CTA En Banc in a Resolution dated 9 January 2008.[13]

Hence, the present Petition.

***Issue***

Whether the CTA En Banc seriously erred in dismissing the claim of petitioner for a refund or tax credit on input tax on the ground that the latter's Official Receipts do not contain the phrase "zero-rated"

***Our Ruling***

We deny the Petition.

Being a derogation of the sovereign authority, a statute granting tax exemption is strictly construed against the person or entity claiming the exemption. When based on such statute, a claim for tax refund partakes of the nature of an exemption. Hence, the same rule of strict interpretation against the taxpayer-claimant applies to the claim.[14]

In the present case, petitioner's claim for a refund or tax credit of input VAT is anchored on Section 112(A) of the NIRC, viz:

> **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 of 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.

Thus, a taxpayer engaged in zero-rated or effectively zero-rated sale may apply for the issuance of a tax credit certificate, or refund of creditable input tax due or paid, attributable to the sale.

In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law. It must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit.[15] Hence, the mere fact that petitioner's application for zero-rating has been approved by the CIR does not, by itself, justify the grant of a refund or tax credit. The taxpayer claiming the refund must further comply with the invoicing and accounting requirements mandated by the NIRC, as well as by revenue regulations implementing them. [16]

Under the NIRC, a creditable input tax should be evidenced by a VAT invoice or official receipt,[17] which may only be considered as such when it complies with the requirements of RR 7-95, particularly Section 4.108-1. This section requires, among others, that "(i)f 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."

We are not persuaded by petitioner's argument that RR 7-95 constitutes undue expansion of the scope of the legislation it seeks to implement on the ground that the statutory requirement for imprinting the phrase "zero-rated" on VAT official receipts appears only in Republic Act No. 9337. This law took effect on 1 July 2005, or long after petitioner had filed its claim for a refund.

RR 7-95, which took effect on 1 January 1996, proceeds from the rule-making authority granted to the Secretary of Finance by the NIRC for the efficient enforcement of the same Tax Code and its amendments. In *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue*,[18] we ruled that this provision is "reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services." Moreover, we have held in *Kepco Philippines Corporation v. Commissioner of Internal Revenue*[19] that the subsequent incorporation of Section 4.108-1 of RR 7-95 in Section 113 (B) (2) (c) of R.A. 9337 actually confirmed the validity of the imprinting requirement on VAT invoices or official receipts – a case falling under the principle of legislative approval of administrative interpretation by reenactment.

In fact, this Court has consistently held as fatal the failure to print the word "zero-rated" on the VAT invoices or official receipts in claims for a refund or credit of input VAT on zero-rated sales, even if the claims were made prior to the effectivity of R.A. 9337.[20] Clearly then, the present Petition must be denied.

In addition, it is notable that the CTA Second Division and the CTA En Banc, including Presiding Justice Acosta in his Concurring and Dissenting Opinion, both found that petitioner failed to sufficiently substantiate the existence of its effectively zero-rated sales to NPC for the 3rd and 4th quarters of taxable year 1999, as well as all four quarters of taxable year 2000. It must also be noted that the CTA is a highly specialized court dedicated exclusively to the study and consideration of revenue-related problems, in which it has necessarily developed an expertise.[21] Hence, its