

### THIRD DIVISION

[ G.R. No. 168856, August 29, 2012 ]

**EASTERN TELECOMMUNICATIONS PHILIPPINES, INC., PETITIONER, VS. THE COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

#### DECISION

**MENDOZA, J.:**

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure assailing the April 19, 2005 Decision<sup>[1]</sup> and the July 8, 2005 Resolution<sup>[2]</sup> of the Court of Tax Appeals *En Banc* (CTA-*En Banc*) in CTA E.B. No. 11 (CTA Case No. 6255) entitled "*Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*."

#### The Facts

Petitioner Eastern Telecommunications Philippines, Inc. (ETPI) is a duly authorized corporation engaged in telecommunications services by virtue of a legislative franchise. It has entered into various international service agreements with international non-resident telecommunications companies and it handles incoming telecommunications services for nonresident foreign telecommunication companies and the relay of said international calls within the Philippines. In addition, to broaden the coverage of its distribution of telecommunications services, it executed several interconnection agreements with local carriers for the receipt of foreign calls relayed by it and the distribution of such calls to the intended local end-receiver.<sup>[3]</sup>

From these services to non-resident foreign telecommunications companies, ETPI generates foreign currency revenues which are inwardly remitted in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas to its US dollar accounts in banks such as the Hong Kong and Shanghai Banking Corporation, Metrobank and Citibank. The manner and mode of payments follow the international standard as set forth in the Blue Book or Manual prepared by the Consultative Commission of International Telegraph and Telephony.<sup>[4]</sup>

ETPI seasonably filed its Quarterly Value-Added Tax (VAT) Returns for the year 1999, but these were later amended on February 22, 2001, to wit:

Quarter	VAT Output	Zero-Rated Sales	Exempt Sales	VAT Input Domestic	Ex
First	P 246,493.67	P 117,492,585.78	P 68,961,171.91	P 6,646,624.35	
Second	396,701.57	406,216,049.26	238,424,702.46	5,955,933.54	
Third	243,620.78	245,267,026.51	143,957,182.21	6,108,825.34	
Fourth	975,939.54	279,851,242.11	164,256,063.38	6,759,948.00	
Total	P 1,853,755.56	P 1,048,826,903.66	P 615,599,119.96	P 25,471,331.23	

Both ETPI and respondent Commissioner of Internal Revenue (CIR) confirmed the veracity of the entries under Excess Input VAT in the table above, pursuant to their Joint Stipulation of Facts and Issues dated June 13, 2001.<sup>[5]</sup>

Of the total excess input tax for the period from January 1999 to December 1999, ETPI claims that the following are allocable to its zero- rated transactions:<sup>[6]</sup>

Quarter	Excess Input Taxes Attributable to Zero-Rated Transactions
First	P 6,020,246.15
Second	5,394,646.08
Third	5,533,129.35
Fourth	6,122,890.17
Total	P 23,070,911.75

Believing that it is entitled to a refund for the unutilized input VAT attributable to its zero-rated sales, ETPI filed with the Bureau of Internal Revenue (BIR) an administrative claim for refund and/or tax credit in the amount of P 23,070,911.75 representing excess input VAT derived from its zero-rated sales for the period from January 1999 to December 1999.<sup>[7]</sup>

On March 26, 2001, without waiting for the decision of the BIR, ETPI filed a petition for review before the Court of Tax Appeals (CTA) to toll the running of the two-year prescriptive period.<sup>[8]</sup>

In its Decision,<sup>[9]</sup> dated December 12, 2003, the Division<sup>[10]</sup> of the CTA (CTA-Division) denied the petition for lack of merit, finding that ETPI failed to imprint the word "zero-rated" on the face of its VAT invoices or receipts, in violation of Revenue Regulations No. 7-95. In addition, ETPI failed to substantiate its taxable and exempt sales, the verification of which was not included in the examination of the commissioned independent certified public accountant.

Aggrieved, ETPI elevated the case to the CTA-*En Banc*, which promulgated its Decision<sup>[11]</sup> on April 19, 2005 dismissing the petition and affirming the decision of the CTA-Division. The CTA-*En Banc* ruled that in order for a zero-rated taxpayer to claim a tax credit or refund, the taxpayer must first comply with the mandatory invoicing requirements under the regulations. One such requirement is that the word "zero-rated" be imprinted on the invoice or receipt. According to the CTA-*En Banc*, the purpose of this requisite is to avoid the danger that the purchaser of goods or services may be able to claim input tax on the sale to it by the taxpayer of goods or services despite the fact that no VAT was actually paid thereon since the taxpayer is zero-rated. Also, it agreed with the conclusion of the CTA-Division that ETPI failed to substantiate its taxable and exempt sales.

ETPI filed a motion for reconsideration, but it was denied by the CTA-*En Banc* in its July 8, 2005 Resolution.<sup>[12]</sup>

Hence, this petition.

### **The Issues**

ETPI presents the following grounds for the grant of its petition:

#### **I**

The CTA-*En Banc* erred when it sanctioned the denial of petitioner's claim for refund on the ground that petitioner's invoices do not bear the imprint "zero-rated," and disregarded the evidence on record which clearly establishes that the transactions giving rise to petitioner's claim for refund are indeed zero-rated transactions under Section 108(B)(2) of the 1997 Tax Code.

#### **II**

The CTA-*En Banc* erred when it denied petitioner's claim for refund based on petitioner's alleged failure to substantiate its taxable and exempt sales.

#### **III**

Petitioner presented substantial evidence that unequivocally proved petitioner's zero-rated transactions and its consequent entitlement to a refund/tax credit.

#### **IV**

In civil cases, such as claims for refund, strict compliance with technical rules of evidence is not required. Moreover, a mere preponderance of evidence will suffice to justify the grant of a claim.<sup>[13]</sup>

The central issue to be resolved in this case is whether ETPI's failure to imprint the word "zero-rated" on its invoices or receipts is fatal to its claim for tax refund or tax credit for excess input VAT.

### **The Court's Ruling**

The petition is bereft of merit.

*Imprinting of the word "zero-rated"  
on the invoices or receipts is required*

ETPI argues that the National Internal Revenue Code of 1997 (NIRC) allows VAT-registered taxpayers to file a claim for refund of input taxes directly attributable to, or otherwise allocable to, zero-rated transactions subject to compliance with certain conditions.<sup>[14]</sup> Nowhere in the NIRC does it appear that the invoices or receipts must have been printed with the word "zero-rated" on its face or that failure to do so would result in the denial of the claim.<sup>[15]</sup> Such a requirement only appears in Revenue Regulations No. 795 which, ETPI insists, cannot prevail over a taxpayer's substantive right to claim a refund or tax credit for input taxes attributable to its zero-rated transactions.<sup>[16]</sup> Moreover, the lack of the word "zero-rated" on ETPI's invoices and receipts does not justify the outright denial of its claim for refund, considering that the zero-rated nature of the transactions has been sufficiently established by other equally relevant and competent evidence.<sup>[17]</sup> Finally, ETPI points out that the danger to be avoided by the questioned requirement, as mentioned by the CTA-*En Banc*, is more theoretical than real. This is because ETPI's clients for its zero-rated transactions are nonresident foreign corporations which are not covered by the Philippine VAT system. Thus, there is no possibility that they will be able to unduly take advantage of ETPI's omission to print the word "zero-rated" on its invoices and receipts.<sup>[18]</sup>

ETPI is mistaken.

Section 244 of the NIRC explicitly grants the Secretary of Finance the authority to promulgate the necessary rules and regulations for the effective enforcement of the provisions of the tax code. Such rules and regulations "deserve to be given weight and respect by the courts in view of the rule-making authority given to those who formulate them and their specific expertise in their respective fields."<sup>[19]</sup>

Consequently, the following invoicing requirements enumerated in Section 4.108-1 of Revenue Regulations No. 7-95 must be observed by all VAT-registered taxpayers:

**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;