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SECOND DIVISION

[G.R. No. 179961, January 31, 2011]

KEPCO PHILIPPINES CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure assailing the May 17, 2007 Decision[1] of the Court of Tax Appeals En Banc *(CTA),* in C.T.A. E.B. No. 186 entitled "*KEPCO Philippines Corporation v. Commissioner of Internal Revenue*," which denied petitioner's claim for refund or issuance of tax credit certificate for the unapplied input value-added taxes attributable to zero-rated sales of services for taxable year 1999, as well as its Resolution, dated September 28, 2007, which denied the motion for reconsideration of the said decision.

THE FACTS

Petitioner Kepco Philippines Corporation (*Kepco*) is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. It is a value-added tax *(VAT)* registered taxpayer engaged in the production and sale of electricity as an independent power producer. It sells its electricity to the National Power Corporation (*NPC*). Kepco filed with respondent Commissioner of Internal Revenue (*CIR*) an application for effective zero-rating of its sales of electricity to the NPC.

Kepco alleged that for the taxable year 1999, it incurred input VAT in the amount of P10,527,202.54 on its domestic purchases of goods and services that were used in its production and sale of electricity to NPC for the same period. In its 1999 quarterly VAT returns filed with the Bureau of Internal Revenue (BIR) on March 30, 2000, Kepco declared the said input VAT as follows:

		INPUT TAX		
Exhibit	1999	Carried-over from previous quarter	This quarter	Carried over to next quarter
A	1st qtr	100,564,209.14	4,804,974.70	105,369,183.84
B	2nd qtr	105,369,183.84	1,461,960.38	106,831,144.22
C	3rd qtr	106,831,144.22	2,563,288.00	109,394,432.22
D	4th qtr	109,394,432.22	1,696,979.46	111,091,411.68
TOTAL			P10,527,202.54:[2]	

Thus, on January 29, 2001, Kepco filed an administrative claim for refund corresponding to its reported unutilized input VAT for the four quarters of 1999 in the amount of P10,527,202.54. Thereafter, on April 24, 2001, Kepco filed a petition for review before the CTA pursuant to Section 112(A) of the 1997 National Internal Revenue Code (NIRC), which grants refund of unutilized input taxes attributable to zero-rated or effectively zero-rated sales. This was docketed as CTA Case No. 6287.

On August 31, 2005, the CTA Second Division rendered a decision[3] denying Kepco's claim for refund for failure to properly substantiate its effectively zero-rated sales for the taxable year 1999 in the total amount of P860,340,488.96, with the alleged input VAT of P10,527,202.54 directly attributable thereto. The tax court held that Kepco failed to comply with the invoicing requirements in clear violation of Section 4.108-1 of Revenue Regulations *(R.R.)* No. 7-95, implementing Section 108(B)(3) in conjunction with Section 113 of the 1997 NIRC.

In view of the denial of its motion for reconsideration, Kepco filed an appeal via petition for review before the CTA *En Banc*, on the ground that the CTA Second Division erred in not considering the amount of P10,514,023.92 as refundable tax credit and in failing to appreciate that it was exclusively selling electricity to NPC, a tax exempt entity.

On May 17, 2007, the CTA *En Banc* dismissed the petition, reasoning out that Kepco's failure to comply with the requirement of imprinting the words "zero-rated" on its official receipts resulted in non-entitlement to the benefit of VAT zero-rating and denial of its claim for refund of input tax. The decision reads in part:

> In sum, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed August 31, 2005 Decision and May 4, 2006 Resolution of the CTA Second Division. What the instant petition seeks is for the Court *En Banc* to view and appreciate the evidence in their own perspective of things, which unfortunately had already been considered and passed upon.
>
> **WHEREFORE**, the instant Petition is hereby **DENIED DUE COURSE** and **DISMISSED** for lack of merit.
>
> **SO ORDERED**.[4]

Presiding Justice Ernesto D. Acosta agreed with the majority that services rendered by a VAT-registered entity to the NPC, a tax-exempt entity, were effectively zero-rated. He was likewise of the view that Kepco's claim could not be granted because it presented official receipts which were not in sequence indicating, that it might have sold electricity to entities other than NPC. But, he strongly dissented on the outright rejection of Kepco's refund claim for failure to comply with the imprinting requirements. His dissenting opinion states in part:

> However, I dissent to the majority's finding that imprinting the term "zero-rated" as well as the BIR authority to print or BIR Permit marker on

duly registered Value Added Tax (VAT) official receipts/invoices is necessary such that non-compliance would result to the outright denial of petitioner's claim.

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Clearly, the applicable provisions of the Tax Code does not require the word "zero-rated" or the other information required by the majority in the invoice/official receipt. The "requirement" of imprinting the questioned information on the VAT invoice or receipt can be found in Section 4.108-1 of Revenue Regulations No. 7-95 (*The Implementing Rules and Regulations of the VAT law*). Then again, the said provision is merely a regulation created for the sole and limited purpose of implementing an otherwise very exact law.

Moreover, granting for the sake of argument that the Revenue Regulations above cited may validly impose such requirements, no provision allows the outright rejection of a refund claim as penalty for a tax-payer's failure to abide by the requirements laid down in the said regulations.[5]

Kepco filed a motion for reconsideration of the decision but it was denied for lack of merit by the CTA *En Banc* in its Resolution[6] dated September 28, 2007.

Hence, Kepco interposes this petition praying for the reversal and setting aside of the May 17, 2007 CTA Decision anchored on the following

GROUNDS:

(I)

THE COURT OF TAX APPEALS EN BANC COMMITTED SERIOUS ERROR OF LAW WHEN IT RULED THAT PETITIONER'S FAILURE TO IMPRINT THE WORDS "ZERO-RATED" ON ITS VAT OFFICIAL RECEIPTS ISSUED TO NPC IS FATAL TO ITS CLAIM FOR REFUND OF UNUTILIZED INPUT TAX CREDITS.

(II)

PETITIONER HAS SUFFICIENTLY PROVEN THAT IT IS RIGHTFULLY ENTITLED TO A REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE IN THE AMOUNT OF PHP10,514,023.92.[7]

From the foregoing arguments, the principal issue to be resolved is whether Kepco's failure to imprint the words "zero-rated" on its official receipts issued to NPC justifies an outright denial of its claim for refund of unutilized input tax credits.

Kepco contends that the provisions of the 1997 Tax Code, specifically Section 113 in relation to Section 237, do not mention the mandatory requirement of imprinting

the words "zero-rated" to purchases covering zero-rated transactions. The only provision which requires the imprinting of the word "zero-rated" on VAT invoice or official receipt is Section 4.108-1 of R.R. No. 7-95. Kepco argues that the condition imposed by the said administrative issuance should not be controlling over Section 113 of the 1997 Tax Code, "considering the long-settled rule that administrative rules and regulations cannot expand the letter and spirit of the law they seek to enforce."

Kepco further argues that there is no law or regulation which imposes automatic denial of taxpayer's refund claim for failure to comply with the invoicing requirements. No jurisprudence sanctions the same, not even the *Atlas* case,[8] cited by the CTA *En Banc.* According to Kepco, although it agrees with the CTA ruling that administrative issuances, like BIR regulations, requiring an imprinting of "zero-rated" on zero-rating transactions should be strictly complied with, it opposes the outright denial of refund claim for non-compliance thereof. It insists that such automatic denial is too harsh a penalty and runs counter to the doctrine of *solutio indebiti* under Article 2154 of the New Civil Code.

The CIR, in his Comment,[9] counters that Kepco is not entitled to a tax refund because it was not able to substantiate the amount of P10,514,023.92 representing zero-rated transactions for failure to submit VAT official receipts and invoices imprinted with the wordings "zero-rated" in violation of Section 4.108-1 of R.R. 7-95.

The petition is bereft of merit.

The pertinent laws governing the present case is Section 108(B)(3) of the NIRC of 1997 in relation to Section 13 of Republic Act *(R.A.)* No. 6395 (The Revised NPC Charter), as amended by Presidential Decree *(P.D.)* Nos. 380 and 938, which provide as follows:

> **Sec. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. -**
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> (A) Rate and Base of Tax. - x x x
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> (B) Transactions Subject to Zero Percent (0%) Rate. - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
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> x x x
>
> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;
>
> x x x

> **Sec. 13. Non-profit Character of the Corporation; Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities.** The Corporation shall be non-profit and shall devote all its return from its capital investment as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section One of this Act, the Corporation, including its subsidiaries, is hereby declared exempt from the payment of all forms of taxes, duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings.

Based on the afore-quoted provisions, there is no doubt that NPC is an entity with a special charter and exempt from payment of all forms of taxes, including VAT. As such, services rendered by any VAT-registered person/entity, like Kepco, to NPC are effectively subject to zero percent (0%) rate.

For the effective zero rating of such services, however, the VAT-registered taxpayer must comply with invoicing requirements under Sections 113 and 237 of the 1997 NIRC as implemented by Section 4.108-1 of R.R. No. 7-95, thus:

> **Sec. 113. Invoicing and Accounting Requirements for VAT-Registered Persons.** -
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> (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:
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> > (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.
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> (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.[10] (Emphasis supplied)
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> **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