

THIRD DIVISION

[G.R. No. 179632, October 19, 2011]

**SOUTHERN PHILIPPINES POWER CORPORATION, PETITIONER,
VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

D E C I S I O N

ABAD, J.:

The case is about the sufficiency of sales invoices and receipts, which do not have the words "zero-rated" imprinted on them, to evidence zero-rated transactions, a requirement in taxpayer's claim for tax credit or refund.

The Facts and the Case

Petitioner Southern Philippines Power Corporation (SPP), a power company that generates and sells electricity to the National Power Corporation (NPC), applied with the Bureau of Internal Revenue (BIR) for zero-rating of its transactions under Section 108(B)(3) of the National Internal Revenue Code (NIRC). The BIR approved the application for taxable years 1999 and 2000.

On June 20, 2000 SPP filed a claim with respondent Commissioner of Internal Revenue (CIR) for a P5,083,371.57 tax credit or refund for 1999. On July 13, 2001 SPP filed a second claim of P6,221,078.44 in tax credit or refund for 2000. The amounts represented unutilized input VAT attributable to SPP's zero-rated sale of electricity to NPC.

On September 29, 2001, before the lapse of the two-year prescriptive period for such actions, SPP filed with the Court of Tax Appeals (CTA) Second Division a petition for review covering its claims for refund or tax credit. The petition claimed only the aggregate amount of P8,636,126.75 which covered the last two quarters of 1999 and the four quarters in 2000.

In his Comment on the petition, the CIR maintained that SPP is not entitled to tax credit or refund since (a) the BIR was still examining SPP's claims for the same; (b) SPP failed to substantiate its payment of input VAT; (c) its right to claim refund already prescribed, and (d) SPP has not shown compliance with Section 204(c) in relation to Section 229 of the NIRC as amended and Revenue Regulation (RR) 5-87 as amended by RR 3-88.

In a Decision dated April 26, 2006, the Second Division^[1] denied SPP's claims, holding that its zero-rated official receipts did not correspond to the quarterly VAT returns, bearing a difference of P800,107,956.61. Those receipts only support the amount of P118,945,643.88. Further, these receipts do not bear the words "zero-rated" in violation of RR 7-95. The Second Division denied SPP's motion for reconsideration on August 15, 2006.

On appeal, the CTA *En Banc* affirmed the Second Division's decision dated July 31, 2007.^[2] The CTA *En Banc* rejected SPP's contention that its sales invoices reflected the words "zero-rated," pointing out that it is on the official receipts that the law requires the printing of such words. Moreover, SPP did not report in the corresponding quarterly VAT return the sales subject of its zero-rated receipts. The CTA *En Banc* denied SPP's motion for reconsideration on September 19, 2007.

The Issues Presented

The case presents the following issues:

1. Whether or not the CTA *En Banc* correctly rejected the invoices that SPP presented and, thus, ruled that it failed to prove the zero-rated or effectively zero-rated sales that it made;
2. Whether or not the CTA *En Banc* correctly ruled that the words "BIR-VAT Zero Rate Application Number 419.2000" imprinted on SPP's invoices did not comply with RR 7-95;
3. Whether or not the CTA *En Banc* correctly held that SPP should have declared its zero-rated sales in its VAT returns for the subject period of the claim; and
4. Whether or not the CTA *En Banc* correctly ruled that SPP was not entitled to a tax refund or credit.

The Court's Rulings

One and Two. The Court reiterated in *San Roque Power Corporation v. Commissioner of Internal Revenue*^[3] the following criteria governing claims for refund or tax credit under Section 112(A) of the NIRC:

- (1) The taxpayer is VAT-registered;
- (2) The taxpayer is engaged in zero-rated or effectively zero-rated sales;
- (3) The input taxes are due or paid;
- (4) The input taxes are not transitional input taxes;
- (5) The input taxes have not been applied against output taxes during and in the succeeding quarters;
- (6) The input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
- (7) For zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;
- (8) Where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and
- (9) The claim is filed within two years after the close of the taxable quarter when such sales were made.

While acknowledging that SPP's sale of electricity to NPC is a zero-rated transaction, [4] the CTA *En Banc* ruled that SPP failed to establish that it made zero-rated sales. True, SPP submitted official receipts and sales invoices stamped with the words "BIR VAT Zero-Rate Application Number 419.2000" but the CTA *En Banc* held that these were not sufficient to prove the fact of sale.

But NIRC Section 110 (A.1) provides that the input tax subject of tax refund is to be evidenced by a VAT invoice **"or"** official receipt issued in accordance with Section 113. Section 113 has been amended by Republic Act (R.A.) 9337 but it is the unamended version that covers the period when the transactions in this case took place. It reads:

Section 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 (TIN); 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. (Emphasis supplied)

The above does not distinguish between an invoice and a receipt when used as evidence of a zero-rated transaction. Consequently, the CTA should have accepted either or both of these documents as evidence of SPP's zero-rated transactions.

Section 237 of the NIRC also makes no distinction between receipts and invoices as evidence of a commercial transaction:

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 the 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