

SECOND DIVISION

[G.R. No. 178090, February 08, 2010]

**PANASONIC COMMUNICATIONS IMAGING CORPORATION OF
THE PHILIPPINES (FORMERLY MATSUSHITA BUSINESS
MACHINE CORPORATION OF THE PHILIPPINES), PETITIONER,
VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

D E C I S I O N

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 P4,980,254.26 and P4,388,228.14 for the two periods or a total of P9,368,482.40 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