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SECOND DIVISION

[G.R. No. 181858, November 24, 2010]

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*[1] under Rule 45 of the Rules of Court seeking reversal of the February 20, 2008 Decision[2] of the Court of Tax Appeals *En Banc (CTA)* in C.T.A. EB No. 299, which ruled that "in order for petitioner to be entitled to its claim for refund/issuance of tax credit certificate representing unutilized input VAT attributable to its zero-rated sales for taxable year 2002, it must comply with the substantiation requirements under the appropriate Revenue Regulations."

Petitioner KEPCO Philippines Corporation *(Kepco)* is a VAT-registered independent power producer engaged in the business of generating electricity. It exclusively sells electricity to National Power Corporation *(NPC),* an entity exempt from taxes under Section 13 of Republic Act No. 6395 *(RA No. 6395).*[3]

Records show that on December 4, 2001, Kepco filed an application for zero-rated sales with the Revenue District Office (*RDO*) No. 54 of the Bureau of Internal Revenue *(BIR).* Kepco's application was approved under VAT Ruling 64-01. Accordingly, for taxable year 2002, it filed four Quarterly VAT Returns declaring zero-rated sales in the aggregate amount of P3,285,308,055.85 itemized as follows:

Exhibit	Quarter Involved	Zero-Rated Sales
B	1st Quarter	P651,672,672.47
C	2nd Quarter	725,104,468.99
D	3rd Quarter	952,053,527.29
E	4th Quarter	956,477,387.10
	Total	P3,285,308,055.85[4]

In the course of doing business with NPC, Kepco claimed expenses reportedly sustained in connection with the production and sale of electricity with NPC. Based on Kepco's calculation, it paid input VAT amounting to P11,710,868.86 attributing the same to its zero-rated sales of electricity with NPC. The table shows the purchases and corresponding input VAT it paid.

Exhibit	Quarter Involved	Purchases	Input VAT
B	1st Quarter	P6,063,184.90	P606,318.49
C	2nd Quarter	18,410,193.20	1,841,019.32
D	3rd Quarter	16,811,819.21	1,681,181.93
E	4th Quarter	75,823,491.20	7,582,349.12
		P117,108,688.51	P11,710,868.86[5]

Thus, on April 20, 2004, Kepco filed before the Commissioner of Internal Revenue *(CIR)* a claim for tax refund covering unutilized input VAT payments attributable to its zero-rated sales transactions for taxable year 2002.[6] Two days later, on April 22, 2004, it filed a petition for review before the CTA. The case was docketed as C.T.A. Case No. 6965.[7]

In its Answer,[8] respondent CIR averred that claims for refund were strictly construed against the taxpayer as it was similar to a tax exemption. It asserted that the burden to show that the taxes were erroneous or illegal lay upon the taxpayer. Thus, failure on the part of Kepco to prove the same was fatal to its cause of action because it was its duty to prove the legal basis of the amount being claimed as a tax refund.

During the hearing, Kepco presented court-commissioned Independent Certified Public Accountant, Victor O. Machacon, who audited their bulky documentary evidence consisting of official receipts, invoices and vouchers, to prove its claim for refund of unutilized input VAT.[9]

On February 26, 2007, the CTA Second Division ruled that out of the total declared zero-rated sales of P3,285,308,055.85, Kepco was only able to properly substantiate P1,451,788,865.52 as its zero-rated sales. After factoring, only 44.19% of the validly supported input VAT payments being claimed could be considered.[10] The CTA Division used the following computation in determining Kepco's total allowable input VAT:

Substantiated zero-rated sales to NPC		P1,451,788,865.52
Divided by the total declared zero-rated sales	÷	3,285,308,055.85
Rate of substantiated zero-rated sales		44.19%[11]
Total Input VAT Claimed		P11,710,868.86
Less: Disallowance		
(a) Per	P125,556.40	

verification of the independent CPA		
(b) Per Court's verification	5,045,357.80	5,170,914.20
Validly Supported Input VAT		P6,539,954.66
Multiply by Rate of Substantiated Zero-Rated Sales		44.19%
Total Allowed Input VAT		**P2,890,005.96**[12]

The CTA Second Division likewise disallowed the P5,170,914.20 of Kepco's claimed input VAT due to its failure to comply with the substantiation requirement. Specifically, the CTA Second Division wrote:

> [i]nput VAT on purchases supported by invoices or official receipts stamped with TIN-VAT shall be disallowed because these purchases are not supported by "VAT Invoices" under the contemplation of the aforequoted invoicing requirement. To be considered a "VAT Invoice," the TIN-VAT must be printed, and not merely stamped. Consequently, purchases supported by invoices or official receipts, wherein the TIN-VAT are not printed thereon, shall not give rise to any input VAT. Likewise, input VAT on purchases supported by invoices or official receipts which are not NON-VAT are disallowed because these invoices or official receipts are not considered as "VAT Invoices." Hence, the claims for input VAT on purchases referred to in item (e) are properly disallowed.[13]

Accordingly, the CTA Second Division partially granted Kepco's claim for refund of unutilized input VAT for taxable year 2002. The dispositive portion of the decision[14] of the CTA Second Division reads:

> WHEREFORE, petitioner's claim for refund is hereby PARTIALLY GRANTED. Accordingly, respondent is ORDERED to REFUND petitioner the reduced amount of TWO MILLION EIGHT HUNDRED NINETY THOUSAND FIVE PESOS AND 96/100 (P2,890,005.96) representing unutilized input value-added tax for taxable year 2002.
>
> SO ORDERED.[15]

Kepco moved for partial reconsideration, but the CTA Second Division denied it in its June 28, 2007 Resolution.[16]

On appeal to the CTA *En Banc*,[17] Kepco argued that the CTA Second Division erred in not considering P8,691,873.81 in addition to P2,890,005.96 as refundable tax credit for Kepco's zero-rated sales to NPC for taxable year 2002.

On February 20, 2008, the CTA *En Banc* dismissed the petition[18] and ruled that "in

order for Kepco to be entitled to its claim for refund/issuance of tax credit certificate representing unutilized input VAT attributable to its zero-rated sales for taxable year 2002, it must comply with the substantiation requirements under the appropriate Revenue Regulations, i.e. Revenue Regulations 7-95."[19] Thus, it concluded that "the Court in Division was correct in disallowing a portion of Kepco's claim for refund on the ground that input taxes on Kepco's purchase of goods and services were not supported by invoices and receipts printed with "TIN-VAT."[20]

CTA Presiding Justice Ernesto Acosta concurred with the majority in finding that Kepco's claim could not be allowed for lack of proper substantiation but expressed his dissent on the denial of certain claims,[21] to wit:

> [I] dissent with regard to the denial of the amount P4,720,725.63 for nothing in the law allows the automatic invalidation of official receipts/invoices which were not imprinted with "TIN-VAT;" and further reduction of petitioner's claim representing input VAT on purchase of goods not supported by invoices in the amount of P64,509.50 and input VAT on purchase of services not supported by official receipts in the amount of P256,689.98, because the law makes use of invoices and official receipts interchangeably. Both can validly substantiate petitioner's claim.[22]

Hence, this petition alleging the following errors:

ASSIGNMENT OF ERRORS

I.

THE COURT OF TAX APPEALS *EN BANC* GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT HELD THAT NON-COMPLIANCE WITH THE INVOICING REQUIREMENT SHALL RESULT IN THE AUTOMATIC DENIAL OF THE CLAIM.

II.

THE COURT OF TAX APPEALS *EN BANC* GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF EXCESS OF JURISDICTION WHEN IT DISALLOWED PETITIONER'S CLAIM ON THE GROUND THAT `TIN-VAT' IS NOT IMPRINTED ON THE INVOICES AND OFFICIAL RECEIPTS.

III.

THE COURT OF TAX APPEALS *EN BANC* GRAVELY ABUSED ITS DISCRETION WHEN IT MADE A DISTINCTION BETWEEN INVOICES AND OFFICIAL RECEIPTS AS SUPPORTING DOCUMENTS TO CLAIM FOR AN INPUT VAT REFUND.[23]

At the outset, the Court has noticed that although this petition is denominated as Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, Kepco, in its assignment of errors, impugns against the CTA *En Banc* grave abuse of discretion amounting to lack or excess of jurisdiction, which are grounds in a petition for *certiorari* under Rule 65 of the Rules of Court. Time and again, the Court has emphasized that there is a whale of difference between a Rule 45 petition (*Petition for Review on Certiorari*) and a Rule 65 petition (*Petition for Certiorari*.) A Rule 65 petition is an original action that dwells on jurisdictional errors of whether a lower court acted without or in excess of its jurisdiction or with grave abuse of discretion.[24] A Rule 45 petition, on the other hand, is a mode of appeal which centers on the review on the merits of a judgment, final order or award rendered by a lower court involving purely questions of law.[25] Thus, imputing jurisdictional errors against the CTA is not proper in this Rule 45 petition. Kepco failed to follow the correct procedure. On this point alone, the Court can deny the subject petition outright.

At any rate, even if the Court would disregard this procedural flaw, the petition would still fail.

Kepco argues that the 1997 National Internal Revenue Code *(NIRC)* does not require the imprinting of the word zero-rated on invoices and/or official receipts covering zero-rated sales.[26] It claims that Section 113 in relation to Section 237 of the 1997 NIRC "does not mention the requirement of imprinting the words `zero-rated' to purchases covering zero-rated transactions."[27] Only Section 4.108-1 of Revenue Regulation No. 7-95 *(RR No. 7-95)* "required the imprinting of the word `zero-rated' on the VAT invoice or receipt."[28] "Thus, Section 4.108-1 of RR No. 7-95 cannot be considered as a valid legislation considering the long settled rule that administrative rules and regulations cannot expand the letter and spirit of the law they seek to enforce."[29]

The Court does not agree.

The issue of whether the word "zero-rated" should be imprinted on invoices and/or official receipts as part of the invoicing requirement has been settled in the case of *Panasonic Communications Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue****[30]*** and restated in the later case of *J.R.A. Philippines, Inc. v. Commissioner*.[31] In the first case, Panasonic Communications Imaging Corporation *(Panasonic),* a VAT-registered entity, was engaged in the production and exportation of plain paper copiers and their parts and accessories. From April 1998 to March 31, 1999, Panasonic generated export sales amounting to US$12,819,475.15 and US$11,859,489.78 totaling US$24,678,964.93. Thus, it paid input VAT of P9,368,482.40 that it attributed to its zero-rated sales. It filed applications for refund or tax credit on what it had paid. The CTA denied its application. Panasonic's export sales were subject to 0% VAT under Section 106(A)(2)(a)(1) of the 1997 NIRC but it did not qualify for zero-rating because the word "zero-rated" was not printed on Panasonic's export
invoices. This omission, according to the CTA, violated the invoicing requirements of Section 4.108-1 of RR No. 7-95. Panasonic argued, 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