

662 Phil. 762

SECOND DIVISION**[G.R. No. 180173, April 06, 2011]****MICROSOFT PHILIPPINES, INC., PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.****D E C I S I O N****CARPIO, J.:****The Case**

Before the Court is a petition^[1] for review on certiorari assailing the Decision^[2] dated 24 October 2007 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 258, which affirmed the Decision^[3] dated 31 August 2006 and Resolution^[4] dated 8 January 2007 of the CTA Second Division in CTA Case No. 6681.

The Facts

Petitioner Microsoft Philippines, Inc. (Microsoft) is a value-added tax (VAT) taxpayer duly registered with the Bureau of Internal Revenue (BIR). Microsoft renders marketing services to Microsoft Operations Pte Ltd. (MOP) and Microsoft Licensing, Inc. (MLI), both affiliated non-resident foreign corporations. The services are paid for in acceptable foreign currency and qualify as zero-rated sales for VAT purposes under Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997,^[5] as amended. Section 108(B)(2) states:

SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties.

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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:

(1) Processing, manufacturing or repacking goods for other persons doing

business outside the Philippines which goods are subsequently exported x x x;

(2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP); x x x

For the year 2001, Microsoft yielded total sales in the amount of P261,901,858.99. Of this amount, P235,724,614.68 pertain to sales derived from services rendered to MOP and MLI while P26,177,244.31 refer to sales to various local customers. Microsoft paid VAT input taxes in the amount of P11,449,814.99 on its domestic purchases of taxable goods and services.

On 27 December 2002, Microsoft filed an administrative claim for tax credit of VAT input taxes in the amount of P11,449,814.99 with the BIR. The administrative claim for tax credit was filed within two years from the close of the taxable quarters when the zero-rated sales were made.

On 23 April 2003, due to the BIR's inaction, Microsoft filed a petition for review with the CTA.^[6] Microsoft claimed to be entitled to a refund of unutilized input VAT attributable to its zero-rated sales and prayed that judgment be rendered directing the claim for tax credit or refund of VAT input taxes for taxable year 2001.

On 16 June 2003, respondent Commissioner of Internal Revenue (CIR) filed his answer and prayed for the dismissal of the petition for review.

In a Decision dated 31 August 2006, the CTA Second Division denied the claim for tax credit of VAT input taxes. The CTA explained that Microsoft failed to comply with the invoicing requirements of Sections 113 and 237 of the NIRC as well as Section 4.108-1 of Revenue Regulations No. 7-95^[7] (RR 7-95). The CTA stated that Microsoft's official receipts do not bear the imprinted word "zero-rated" on its face, thus, the official receipts cannot be considered as valid evidence to prove zero-rated sales for VAT purposes.

Microsoft filed a motion for reconsideration which was denied by the CTA Second Division in a Resolution dated 8 January 2007.

Microsoft then filed a petition for review with the CTA *En Banc*.^[8] In a Decision dated 24 October 2007, the CTA *En Banc* denied the petition for review and affirmed *in toto* the Decision dated 31 August 2006 and Resolution dated 8 January 2007 of the CTA Second Division. The CTA *En Banc* found no new matters that have not been considered and

passed upon by the CTA Second Division and stated that the petition had only been a mere rehash of the arguments earlier raised.

Hence, this petition.

The Issue

The main issue is whether Microsoft is entitled to a claim for a tax credit or refund of VAT input taxes on domestic purchases of goods or services attributable to zero-rated sales for the year 2001 even if the word "zero-rated" is not imprinted on Microsoft's official receipts.

The Court's Ruling

The petition lacks merit.

Microsoft insists that Sections 113 and 237 of the NIRC and Section 4.108-1 of RR 7-95 do not provide that failure to indicate the word "zero-rated" in the invoices or receipts would result in the outright invalidation of these invoices or receipts and the disallowance of a claim for tax credit or refund.

At the outset, a tax credit or refund, like tax exemption, is strictly construed against the taxpayer.^[9] The taxpayer claiming the tax credit or refund has the burden of proving that he is entitled to the refund or credit, in this case VAT input tax, by submitting evidence that he has complied with the requirements laid down in the tax code and the BIR's revenue regulations under which such privilege of credit or refund is accorded.

Sections 113(A) and 237 of the NIRC which provide for the invoicing requirements for VAT-registered persons state:

SEC. 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. x
x x

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 information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to internal revenue tax from compliance with the provisions of this Section.

Related to these provisions, Section 4.108-1 of RR 7-95 enumerates the information which must appear on the face of the official receipts or invoices for every sale of goods by VAT-registered persons. At the time Microsoft filed its claim for credit of VAT input tax, RR 7-95 was already in effect. The provision states:

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;
2. date of transaction;

3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. **the word "zero-rated" imprinted on the invoice covering zero-rated sales;** and
6. the invoice value or consideration.

X X X

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoices or receipts and this shall be considered as a "VAT invoice." All purchases covered by invoices other than a "VAT invoice" shall not give rise to any input tax. (Emphasis supplied)

The invoicing requirements for a VAT-registered taxpayer as provided in the NIRC and revenue regulations are clear. A VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to file a claim for input taxes on domestic purchases for goods or services attributable to zero-rated sales. A "VAT invoice" is an invoice that meets the requirements of Section 4.108-1 of RR 7-95. Contrary to Microsoft's claim, RR 7-95 expressly states that "[A]ll purchases covered by **invoices other than a VAT invoice shall not give rise to any input tax.**" Microsoft's invoice, lacking the word "zero-rated," is not a "VAT invoice," and thus cannot give rise to any input tax.

The subsequent enactment of Republic Act No. 9337^[10] on 1 November 2005 elevating provisions of RR 7-95 into law merely codified into law administrative regulations that already had the force and effect of law. Such codification does not mean that prior to the codification the administrative regulations were not enforceable.

We have ruled in several cases^[11] that the printing of the word "zero-rated" is required to be placed on VAT invoices or receipts covering zero-rated sales in order to be entitled to claim for tax credit or refund. In *Panasonic v. Commissioner of Internal Revenue*,^[12] we held that the appearance of the word "zero-rated" on the face of invoices covering zero-rated sales prevents buyers from falsely claiming input VAT from their purchases when no VAT is actually paid. Absent such word, the government may be refunding taxes it did not collect.

Here, both the CTA Second Division and CTA *En Banc* found that Microsoft's receipts did not indicate the word "zero-rated" on its official receipts. The findings of fact of the CTA are not to be disturbed unless clearly shown to be unsupported by substantial evidence.^[13] We see no reason to disturb the CTA's findings. Indisputably, Microsoft failed to comply

with the invoicing requirements of the NIRC and its implementing revenue regulation to claim a tax credit or refund of VAT input tax for taxable year 2001.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the Decision dated 24 October 2007 of the Court of Tax Appeals *En Banc* in CTA EB No. 258.

SO ORDERED.

*Peralta, Abad, Mendoza, and Sereno, * JJ., concur.*

* Designated additional member per Special Order No. 978 dated 30 March 2011.

[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

[2] *Rollo*, pp. 66-78. Penned by Associate Justice Caesar A. Casanova with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy and Olga Palanca-Enriquez, concurring and Presiding Justice Ernesto D. Acosta, dissenting.

[3] *Id.* at 45-60. Penned by Associate Justice Olga Palanca-Enriquez with Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy, concurring.

[4] *Id.* at 63-64.

[5] Republic Act No. 8424, or The Tax Reform Act of 1997.

[6] Docketed as CTA Case No. 6681.

[7] Consolidated Value-Added Tax Regulations. Issued on 9 December 1995 and took effect on 1 January 1996.

[8] Docketed as CTA EB No. 258.

[9] *Hitachi Global Storage Technologies Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 174212, 20 October 2010, citing *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 178490, 7 July 2009, 592 SCRA 219, and *Commissioner of Internal Revenue v. Seagate Technology*, 491 Phil. 317 (2005).

[10] An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as amended, and for other Purposes.

[11] *Kepeco Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 179961, 31 January 2011; *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 172378, 17 January 2011; *Kepeco Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 181858, 24 November 2010; *Hitachi Global Storage Technologies Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 174212, 20 October 2010; *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 177127, 11 October 2010; *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue*, G.R. No. 178090, 8 February 2010, 612 SCRA 28.

[12] *Supra*.

[13] *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.*, 364 Phil. 541 (1999).