ATLAS CONSOLIDATED MINING & DEVELOPMENT CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

G.R. No. 134467. November 17, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

A litigation is neither a game of technicalities nor a battle of wits and legalisms; rather, it is an abiding search for truth, fairness and justice. While stipulations of facts are normally binding on the declarant or the signatory thereto, a party may nonetheless be allowed to show that an admission made therein was the result of a "palpable mistake" that can be easily verified from the stipulated facts themselves and from other incontrovertible pieces of evidence admitted by the other party. A patently clerical mistake in the stipulation of facts, which would result in falsehood, unfairness and injustice, cannot be countenanced.

Statement of the Case

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, challenging in part the February 6, 1998 Decision[1] of the Court of Appeals[2] (CA) in CA-GR SP No. 34152 and its July 2, 1998 Resolution denying reconsideration.

The Court of Tax Appeals in CTA Case No. 4794 was reversed in the herein assailed CA Decision, which ruled as follows:

> "a. VAT Ruling No. 008-92, in imposing 10% VAT on sales of copper concentrates to PASAR, pyrite to PHILPHOS and gold to the Central Bank lacks legal bases, hence, of no effect.
>
> b. VAT Ruling No. 059-92 (dated April 20, 1992) which applies retroactively to January 1, 1988 VAT Ruling No. 008-92 (dated January 23, 1992) is contrary to law.
>
> c. Refund of input tax for zero-rated sale of goods to Board of Investment (BOI)-registered exporters shall be allowed only upon presentation of documents of liquidation evidencing the actual utilization of the raw materials in the manufacture of goods at least 70% of which have been actually exported (Revenue Regulations No. 2-88).
>
> d. Revenue Regulations that automatically disallow VAT refunds on account of failure to faithfully comply with the documentary requirements enunciated thereunder are valid.
>
> e. A VAT-registered person shall, subject to the filing of an inventory as prescribed by regulations, be allowed transitional input tax which shall be credited against output tax. Be that as it may, current input tax, excluding the presumptive input tax, may be credited against output tax on miscellaneous taxable sales if the suspended taxes on purchasers and importations has not been fully paid. Further, direct offsetting of excess input over taxes against other internal revenue tax liabilities of the zero-rated taxpayer is not allowed.
>
> f. Section 106(e) of the NIRC prescribing a sixty (60) day period from the date of filing of the VAT refund/tax

credit applications within which the Commissioner shall refund the input tax is merely directory. Hence, no interest can be due as a result of the failure of the Commissioner to act on the petitioner's claim within sixty (60) days from the date of application therefor.

g. Motu proprio application of excess tax credits to other tax liabilities is not allowed.

"WHEREFORE, premises considered, the assailed decision and resolution of the Court of Tax Appeals in C.T.A. Case no. 4794 are hereby REVERSED and SET ASIDE. Let the records of this case be remanded to the court a quo for a proper computation of the refundable amount which should be remitted, without interest, to the petitioner within sixty (60) days from the finality of this decision. No pronouncement as to costs."[3]

Asking that the foregoing disposition be partially set aside, the instant Petition specifically prays for a new judgment declaring that:

"(1) Petitioner was VAT registered beginning January 1, 1988 and continued to be so for the first quarter of 1990;

"(2) In the computation of the amount to be refunded to petitioner, the totality of the sales to the EPZA-registered enterprise must be taken into account, not merely the proportion which such sales have to the actual exports of the enterprise.

"(3) Section 21 of Revenue Regulations No. 5-87 insofar as it disallows input taxes for purchases not covered by VAT invoices is invalid and contrary to law."[4]

The Facts

The facts are undisputed. They were culled by the Court of Appeals from the joint stipulation of the parties, which we quote:

"The antecedent facts of the case as agreed to by the parties in the Joint Stipulation of Facts submitted to the Court of Tax Appeals on January 8, 1993, follow:

"x x x x x x x x x

"2.

Petitioner is engaged in the business of mining, production and sale of various mineral products, consisting principally of copper concentrates and gold and duly registered with the BIR [Bureau of Internal Revenue] as a VAT [Value Added Tax] enterprise per its Registration No. 32-A-6-002224. (p. 250, BIR Records).

"3.

Respondent [BIR] duly approved petitioner's application for VAT zero-rating of the following sales:

a. Gold to the Central Bank (CB) [now referred to as the Bangko Sentral ng Pilipinas;]

b. Copper concentrates to the Philippines Smelting and Refining Corp. (PASAR); and

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c. Pyrite [concentrated] to Philippine Phosphates, Inc. (Philphos).

"The BIR's approval of sales to CB and PASAR was dated April 21, 1988 while zero-rating of sales to PHILPHOS was approved effective June 1, 1988.

"4.

PASAR and Philphos are both Board of Investments (BOI) and Export Processing Zone Authority (EPZA) registered export-oriented enterprises located in an EPZA zone.

"5.

On April 20, 1990, petitioner filed a VAT return with the BIR for the first quarter of 1990 whereby it declared its sales described in par. 3 hereof, i.e., to the CB, PASAR and Philphos, as zero-rated sales and therefore not subject to any output VAT x x x.

"6.

On or about July 24, 1990, petitioner filed a claim with respondent for refund/credit of VAT input taxes on its purchase of goods and services for the first quarter of 1990 in the total amount of P40,078,267.81 xxx.

"7.

On or about September 2, 1992, petitioner filed an Amended Application for tax credit/refund in the amount of P 35,522,056.58 x x x.

"8.

On September 9, 1992, respondent resolved petitioner's claim for VAT refund/credit by allowing only P2,518,122.32 as refundable/creditable while disallowing P33,003,934.26, to wit:

a. Amount claimed

P 35,522,056.58

LESS: Disallowances

b. No O.R./Invoices/Proper Documents

1,384,172.48

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c. Invoice without VAT Registration Number

474,606.87

d. Invoice with Sold to `Cash'

31,499.04

e. Invoice without Authority to Print

326,374.23

f. VAT No. stamped/typewritten/handwritten printed in 1988-1989

441,195.54

g. Others

71,088.09

h. Erroneous computation

85,382.58

i.

2,814,318.83

j. ALLOWANCE INPUT

P32,707,737.75

TAX

OTHER DEDUCTIONS:

k. Output tax due on miscellaneous taxable sales

972,535.67

l. *Output tax due on sale of gold to the Central Bank

16,301,277.11

(179,314,048.17 x 1/11)

m. **Input tax attributable to sales to PASAR (submitted BOI certification did not qualify as required under RMO 22-92)

(465,095,536.14

1,226,381,659.74 x 32,707,737.75)

12,404,150.65

n. ***Input tax attributable to sales to PHILPHOS (No BOI certificate from the BOI)

(18,809,519.07/

1,226,381,659.74 x

501,652.00

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32,707,737.75)

o. Penalty for issuance of invoices without authority to use loose leaf sales invoices

10,000.00

30,189,615.43

ALLOWANCE INPUT TAX RECOMMENDED FOR ISSUANCE OF TAX CREDIT CERTIFICATE

P 2,518,122.32

"9.

A supplemental report of investigation was submitted by the BIR examiners on October 15, 1992 recommending the increase in allowable input tax credit from P 2,518,122.32 to P12,101,569.11 or an increment of P9,583,446.79 due to petitioner's submission of BOI certifications on the sales to PASAR which brought down the deduction of P12,404,150.65 to P2,518,122.32.

"The parties further stipulated that the issues to be resolved are:
'a. the validity of VAT Ruling No. 008-92 in connection with -
'i. the applicability of 10% VAT rating with regard to sales of copper concentrates to PASAR and pyrite to PHILPHOS; and

'ii. the application of 10% VAT on sales of gold to CB.

'b. the validity of VAT Ruling No. 59-92 dated April 20, 1992 which applies retroactively VAT Ruling No. 008-92 dated January 23, 1992;

'c. the applicability of Revenue Regulation 2-88 in that it requires the purchaser to export more than 70% of its total sales for the supplier, such as petitioner to be 100% zero-rated;

'd. the validity of the disallowance of input taxes in the amount of P2,814,318.83 on the ground that the petitioner has not complied with Article 108(a) of the NIRC;

'e. the validity of BIR Regulations that automatically disallow VAT refund for failure to present the required documents although the purchases can be substantiated by other documents;

'f. the propriety of deducting the `output tax on miscellaneous taxable sales' from the current input tax instead of against petitioner's presumptive input tax (PIT) which, as per BIR findings, are sufficient to cover the amount assessed;

'g. the mandatory nature of Section 106 (e) of the NIRC prescribing a specific period of sixty (60) days within which to process and grant applications for input VAT refund and the corresponding right given to claimants to apply VAT credits to other tax liabilities as allowed under Section 104(b) of the NIRC as well as interest for the delay in the grant of petitioner's claims for VAT refund/credit.

"On November 8, 1993, the [Court of Tax Appeals] rendered a decision x x x. The petitioner moved for

reconsideration of the decision, which mo[tion] the respondent court denied."[5]

Ruling of the Court of Appeals

Ruling that the parties were bound by the above-quoted Joint Stipulation of Facts which it was powerless to modify, the Court of Appeals held: "[I]t is beyond cavil that the petitioner is registered with the BIR as a VAT enterprise effective August 15, 1990."[6] It upheld VAT Ruling No. 008-92 regarding the schedule of taxes to be imposed on VAT-registered entities, explaining that the "zero-percent rating" of BOI-registered enterprises shall be set in proportion to the amount of its actual exports; and that EPZA and BOI registrations were by themselves not enough for zero-rating to apply.

Finally, the CA ruled as mandatory the information which Revenue Regulation 5-87 required to be stated in VAT invoices and receipts, as such information had already been prescribed by Sections 108 (a) and 238 of the Tax Code and violations thereof were penalized under Sections 111 and 263 of the same Code.

On August 24, 1998, the present Petition was filed.[7] As the respondent commissioner did not appeal the CA Decision and Resolution, the Court shall take up in this review only the issues raised by Atlas Consolidated Mining and Development Corporation.

Issues

Petitioner submits, for the consideration of this Court, the following issues:

> "I
>
> Whether or not the court a quo erred in upholding the finding of the Court of Tax Appeals that petitioner is not VAT-registered for the 1st quarter of 1990 despite clear evidence showing the date of effectivity of petitioner's VAT registration to be January 1, 1988.
>
> "II
>
> Whether or not the court a quo erred in not holding that the totality of sales to EPZA-registered enterprises should be zero-rated, not merely the proportion which such sales have to the actual exports of the enterprise.
>
> "III
>
> [Whether or not] the court a quo erred in not declaring as invalid Section 21 of Revenue Regulations No. 5-87, insofar as it went beyond the law by disallowing input VAT for purchases not covered by VAT invoices."[8]

The Court's Ruling

The Petition is partly meritorious.

First Issue:
VAT Registration

Petitioner contends that its sales to Philippine Phosphate, Inc. (Philphos) and Philippine Smelting and Refining Corporation (PASAR) should be zero-rated for the first quarter of 1990, and not only as of "August 15, 1990" as held by the CA, which allegedly ignored "clear evidence" that petitioner's VAT registration had been effected earlier, on January 1, 1988.

Respondent commissioner counters that by virtue of the Joint Stipulation of Facts, petitioner is bound by its admission therein that it was registered as a VAT enterprise effective only from August 15, 1990, well beyond the first quarter of 1990, the period for which it is applying for tax credit.

We agree with the Court of Appeals that, as a rule, a judicial admission, such as that made by petitioner in the Joint Stipulation of Facts, is binding on the declarant. However, such rule does not apply when there is a showing that (1) the admission was made through a "palpable mistake," or that (2) "no such admission was made." Indeed, Section 4 of Rule 129 of the Rules of Court states:

> "SEC. 4. Judicial Admissions. --- An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made."

In the present case, we are convinced that a "palpable mistake" was committed. True, petitioner was VAT-registered under Registration No. 32-A-6-00224, as indicated in Item 2 of the Stipulation:

> "2. Petitioner is engaged in the business of mining, production and sale of various mineral products, consisting principally of copper concentrates and gold duly registered with the BIR as a VAT enterprise per its Registration No. 32-A-6-002224 (p. 250, BIR Records)."[9]

Moreover, the Registration Certificate, which in the said stipulation is alluded to as appearing on page 250 of the BIR Records, bears the number 32-0-004622 and became effective August 15, 1990. But the actual VAT Registration Certificate, which petitioner mentioned in the stipulation, is numbered 32-A-6-002224 and became effective on January 1, 1988, thereby showing that petitioner had been VAT-registered even prior to the first quarter of 1990. Clearly, there exists a discrepancy, since the VAT registration number stated in the joint stipulation is NOT the one mentioned in the actual Certificate attached to the BIR Records.

The foregoing simply indicates that petitioner made a "palpable mistake" either in referring to the wrong BIR record, which was evident, or in attaching the wrong VAT Registration Certificate. The Court of Appeals should have corrected the unintended clerical oversight. In any event, the indelible fact is: the petitioner was VAT-registered as of January 1, 1988.

Similarly, in Philippine American General Insurance Company v. IAC,[10] this Court accepted the explanation and the subsequent proof of petitioner that the latter had made a mistake in stating the date when the Order denying its Motion for Reconsideration was actually received. Thus, the Court ruled that the appeal to the IAC had been filed on time. It explained:

> "In assailing the decision of the respondent Intermediate Appellate Court, petitioner maintains that it was error for respondent court to refuse to consider petitioner's evidence that the accrual date of receipt by it of the order denying the motion for reconsideration of the lower court's decision was November 15, 1982, not November 12, 1982, as mistakenly stated in the Notice of Appeal. Invoking Section 2 of Rule 129 of the Rules of Court, petitioner contends that a party is allowed to contradict an admission in its pleading if it is shown that the same was made through palpable mistake.
>
> "We find merit in the petition. Apart from the showing that notice of the trial court's order denying petitioner's motion for reconsideration was actually received by petitioner on November, 15, 1982, the fact that the order was sent to the wrong address was apparently not considered by both the respondent appellate court and the trial court..."

That herein petitioner's explanation of the discrepancy was made only after the CTA had promulgated its Decision is understandable. It was only when that promulgation was made that petitioner became aware of the clerical error in the Joint Stipulation of Facts. Hence, it explained in its Motion for Reconsideration therein that it had already been VAT-registered as early as the first quarter of 1988 under VAT Registration No. 32-A-6-002224. Petitioner attached to said Motion a copy of the Registration Certificate corresponding to the above number, showing January 1, 1988 as its registration date.

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We note that petitioner also had another registration number, 32-0-004622, because sometime during the third quarter of 1990, it moved its principal place of business to a different revenue district. Its second registration as a VAT enterprise on August 15, 1990 was made in compliance with Section 3 of Revenue Memo Circular No. 6-88, which required it to re-register after it moved its principal place of business to another revenue district. The said Circular reads as follows:

> "Section 3. Time, Place and Manner of Registration. --- Persons who are required to register under Section 2 of these regulations shall file an application for Non-VAT registration within 10 days from the commencement of the business with the Revenue District Officer, or any other authorized officer of the Bureau of Internal Revenue indicating the name of style of the business, place of residence, place where the business is conducted, and such other information as may be required by the Commissioner in the form prescribed therefor.
>
> "Persons transferring their place of business to another Revenue District shall likewise file their application for registration within 10 days from the date of transfer."[11]

The above regulation implements Section 107 (a) of the Tax Code, which provides that registration shall be in the revenue district where the main office is located. The said provision states:

> "Sec. 107. Registration of value-added taxpayers.
>
> (a) In general. -- Any person subject to a value-added tax under Sections 100 and 102 of this Code shall register with the appropriate Revenue District Officer and pay an annual registration fee in the amount of One thousand pesos (P1,000.00) for every separate or distinct establishment or place of business and every year thereafter on or before the last day of January. Any person just commencing a business subject to the value-added tax must pay the fee before engaging therein.
>
> "A person who maintains a head or main office and branches in different places shall register with the Revenue District Office, collection agent, or authorized Treasurer of the municipality where each place of business or branch is situated."[12]

Petitioner presented the two different Registration Certificates corresponding to the two registration numbers assigned to it. The Registration Certificate numbered 32-A-6-002224 listed petitioner's address as 8776 Paseo de Roxas, Makati, and its date of effectivity as January 1, 1988. The Registration Certificate numbered 32-0-004622 showed petitioner's address (head office) to be at the 15th Floor of the Pacific Star Building in Gil Puyat Street corner Makati Avenue, Makati, and its date of effectivity as August 15, 1990.

In view of the foregoing, we believe that petitioner should be taxed only for such amount and under such circumstances as are true, fair and equitable. After all, even the respondent commissioner, as shown in the other provisions of the joint stipulation, has granted it VAT exemption for the period even prior to the first quarter of 1990; that is, as early as January 1, 1988. In view of the foregoing, we stress that a litigation is neither a game of technicalities nor a battle of wits and legalisms. Rather, it is an abiding search for truth, fairness and justice. We believe, and so hold, that substantial justice is on the side of petitioner on this issue.

Second Issue:
VAT Exemption of Sales to Export-Oriented Enterprises

Regarding the second issue, petitioner criticizes the respondent commissioner, as its sales to PASAR and Philphos -- both registered with the BOI (Board of Investments) and EPZA (Export Processing Zone Authority) as export-oriented entities -- were zero-rated only in proportion to the actual exports made by the two, and not to the entirety of petitioner's sales to them.

Respondent, on the other hand, maintains that before zero-rating can be applied, petitioner must first show that the entities to which the raw materials have been sold are export-oriented, and that their export sales exceed 70 percent of their total annual production. Should these conditions be met, zero-rating would apply, but only in proportion to the exports actually made.

The Joint Stipulation of Facts expressly states that petitioner's sales of raw materials have been approved for zero-rating. Verily, the commissioner has already conceded that PASAR and Philphos qualify as export-oriented enterprises whose export sales exceed 70 percent of their total annual production, and that petitioner's sales to them thus qualify for zero-rating.

Finding that the respondent commissioner had indeed already approved the zero-rating of petitioner's past sales to PASAR and Philphos, the CA ruled:

> "Indeed, the BIR has already recognized and admitted that said transactions are zero-rated (paragraph 3, pages 1-2 of the Joint Stipulation of Facts; page 40-41 of the CTA Records). Said stance is demonstrated in the following acts of the BIR:
>
> - the grant of petitioner's applications for zero-rating of sales to PASAR AND PHILPHOS (Annexes `A' and `B', Joint Stipulation of Facts; pages 56-57 of the CTA Record);
>
> - Revenue Regulation No. 2-88, wherein it recognized sales to BOI-registered enterprises which export over 70% of its sales as zero-rated, subject to certain conditions (Annex `H', Joint Stipulation of Facts; pages 70-71 of the CTA Record);
>
> - VAT Ruling No. 271-88 (dated June 24, 1988), wherein it was recognized that sales to PHILPHOS are zero-rated (Annex `I', Joint Stipulation of Facts; p. 72 of the CTA Record);
>
> - Letter dated April 18, 1988, whereby it recognized that sales of copper concentrates to PASAR are zero-rated (Annex `J', Joint Stipulation of Facts; page 73 of the CTA Record); and
>
> - VAT Ruling No. 008-92, which states that the sale of raw materials to BOI-registered enterprises can qualify for zero-rating (Annex `N', Joint Stipulation of Facts; pages 79-82 of the CTA Record)."[13]

Finally, an examination of Section 4.100.2 of Revenue Regulation 7-95[14] in relation to Section 102 (b) of the Tax Code shows that sales to an export-oriented enterprise whose export sales exceed 70 percent of its annual production are to be zero-rated, provided the seller complies with other requirements, like registration with the BOI and the EPZA. The said Regulation does not even hint, much less expressly mention, that only a percentage of the sales would be zero-rated. The internal revenue commissioner cannot, by administrative fiat, amend the law by making compliance therewith more burdensome.

Third Issue:
Validity of Section 21 of Revenue Regulation 5-87

Petitioner contends that Section 21 of Revenue Regulation 5-87 is invalid, because it effectively legislates something not provided for in Section 108 of the Tax Code, which provides as follows:

> "Sec. 108. 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 238, 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.

(b) Accounting requirements. - Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 100 and 102 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."[15]

On the other hand, Section 21 of Revenue Regulation 5-87 states:

"Sec. 21. Invoicing Requirements. --- (a) Invoice and/or receipts. - All VAT-registered persons who sell goods or services shall, for every sale, issue an invoice or receipt. The invoice should contain the information prescribed in Section 108(a) and 238. Only VAT-registered persons can print the VAT registration number in their invoice and receipt. Any invoice bearing the VAT registration number of the seller shall be considered as `VAT Invoice.' Value-Added Tax, whether indicated as a separate item or not in the `VAT Invoice' shall be allowed as input tax credits to those liable to the value-added tax. All purchases covered by invoices other than `VAT Invoice' shall not be entitled to input taxes."[16]

Petitioner insists that while Section 108 of the Tax Code lists the information necessary for VAT Invoices, it is silent on the withholding of input tax credits for purchases that are not subjects to VAT.

We disagree. It is clear that a VAT invoice can be used only for the sale of goods and services that are subject to VAT. The corresponding taxes thereon shall be allowed as input tax credits for those subject to VAT. Section 108 expressly provides the invoicing and accounting entries required from VAT-registered persons. On the other hand, Section 111 of the Tax Code empowers the commissioner to suspend the business operations of VAT-registered persons for the specific violations listed therein. We quote below the latter provision:

"SEC. 111. Power of the Commissioner to suspend the business operations of a taxpayer. -- The Commissioner or his authorized representative is hereby empowered to suspend the business operations and temporarily close the business establishment of any person for any of the following violations:

(a) In the case of a VAT-registered person. --

(1) Failure to issue receipts or invoices;

(2) Failure to file a value-added tax return as required under Section 110;

(3) Understatement of taxable sales or receipts by 30% or more of his correct taxable sales or receipts for the taxable quarter.

(b) Failure of any person to register as required under Section 107. - The temporary closure of the establishment shall be for the duration of not less than five (5) days and shall be lifted only upon compliance with whatever requirements [are] prescribed by the Commissioner in the closure order."

Corollary thereto, punishment for other types of violations similar to but other than those listed in Section 111 are provided for in Section 263 of the Tax Code, which reads:

"SEC. 263. Failure or refusal to issue receipts or sales or commercial invoices, violations related to the printing of such receipts or invoices and other violations. --

(a) Any person who, being required under Section 238 to issue receipts or sales or commercial invoices, fails or refuses to issue such receipts or invoices, issues receipts or invoices that do not truly reflect and/or contain all the information required to be shown therein, or uses multiple or double receipts or invoices, shall, upon conviction for each act or omission, be fined not less than one thousand pesos but not more than fifty thousand

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pesos and suffer imprisonment of not less than two years but not more than four years.

(b) Any person who commits any of the acts enumerated hereunder shall be penalized in the same manner and to the same extent as provided for in this Section:

- Prints receipts or sales or commercial invoices without authority from the Bureau of Internal Revenue;

- Prints double or multiple sets of invoices or receipts;

- Prints unnumbered receipts or sales or commercial invoices, not bearing the name, business style, taxpayer identification number, and business address of the person or entity; or

- Fails to submit the quarterly report required in Section 239."

A careful perusal of the violations specifically listed down in Sections 111 and 263 of the Tax Code shows that they do not encompass all possible types of violations of Section 108. Certainly, there are other ways of noncompliance with the requirements the latter has laid down, and these too must have their corresponding consequences. Section 21 of Revenue Regulation 5-87 is not invalid, as it simply prescribes the penalty for failure to comply with the accounting and invoicing requirements laid down in Section 108, a penalty similar to that found in Sections 111 and 263. In short, Section 108 provides the guidelines and necessary requirements for VAT invoices; Sections 111 and 263 of the Tax Code provide penalties for different types of violations of Section 108; and Section 21 of Revenue Regulation 5-87 specifies the penalty for a specific violation of Section 108.

Furthermore, we agree with respondent's position that the computation of the output VAT of the seller should be based on the selling price appearing on its own VAT invoice, not on the selling price appearing on that of the customer. Indeed, it is the duty of the seller to comply with the invoicing and accounting requirements laid down in, among others, Section 108 of the Tax Code.

However, this Court's ruling on the validity of Section 21 of Revenue Regulation 5-87 must be taken in conjunction with its pronouncement regarding the zero-rating given to the sales which petitioner made to Philphos and PASAR. As explained above, such sales are subject to zero-rating, as that rating was definitely approved by the respondent commissioner. His approval indubitably signified that petitioner had already complied with the requirements, invoicing or otherwise, necessary for the zero-rating of petitioner's sales of raw materials to Philphos and PASAR.

WHEREFORE, the Petition is hereby partially GRANTED and the assailed Decision is MODIFIED as follows: (1) petitioner is deemed VAT-registered for the first quarter of 1990 and beyond; and (2) it is the totality of petitioner's sales to Philphos and PASAR that must be taken into account, not merely the proportion of such sales to the actual exports of the said enterprises. Other than the above modifications, the challenged Decision is AFFIRMED.

SO ORDERED.

Melo, (Chairman), Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.

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[1] Rollo, pp. 31-55.

[2] Second Division, composed of J. Ramon Mabutas Jr., ponente; and JJ Emeterio S. Cui, chairman, and Hilarion L. Aquino, member, both concurring.

[3] Assailed Decision, p. 25; rollo, p. 55.

[4] Petition for Review, p. 17; rollo, p. 26.

[5] Assailed Decision, pp. 1-4; rollo, pp. 31-34 (citations omitted, parentheses in original).

[6] Assailed Decision, p. 5; rollo, p. 35.

[7] This case was deemed submitted for resolution on August 23, 1999, upon receipt by this Court of the Memorandum for the respondent; petitioner's Memorandum was received on August 20, 1999.

[8] Memorandum for Petitioner, pp. 11-12; rollo, pp. 169-170.

[9] Joint Stipulation of Facts, p. 1; rollo, p. 58.

[10] 150 SCRA 133, 137, May 21, 1987, per Yap, J.

[11] Sec. 3, Revenue Memo Circular No. 6-88.

[12] Sec. 107 (a), National Internal Revenue Code.

[13] Assailed Decision, p. 10; rollo, p. 40.

[14] It provides that zero-rating applies to "[t]he sale of raw materials or packaging materials to an export-oriented enterprise whose export sales exceed 70% of the total annual production. Any enterprise whose export sales exceed 70% of the total annual production of the preceding taxable year shall be considered an export-oriented enterprise upon accreditation as such under the provisions of the Export Development Act (Republic Act No. 7844) and its implementing rules and regulations."

[15] Sec. 108, National Internal Revenue Code.

[16] Sec. 21, Revenue Regulation 5-87.

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