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

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

Ponente: ABAD, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-179632/

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

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

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 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. (Emphasis supplied)

The Court held in Seaoil Petroleum Corporation v. Autocorp Group[5] that business forms like sales invoices are recognized in the commercial world as valid between the parties and serve as memorials of their business transactions. And such documents have probative value.

Three. The CTA also did not accept SPP's official receipts due to the absence of the words "zero-rated" on it. The omission, said that court, made the receipts non-compliant with RR 7-95, specifically Section 4.108.1. But Section 4.108.1 requires the printing of the words "zero-rated" only on invoices, not on official receipts:

> Section 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:
>
> - The name, TIN and address of seller;
>
> - Date of transaction;
>
> - Quantity, unit cost and description of merchandise or nature of service;
>
> - The name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
>
> - The word "zero-rated" imprinted on the invoice covering zero-rated sales; and
>
> - The invoice value or consideration.
>
> x x x x (Emphasis supplied)

Actually, it is R.A. 9337 that in 2005 required the printing of the words "zero-rated" on receipts. But, since the receipts and invoices in this case cover sales made from 1999 to 2000, what applies is Section 4.108.1 above which refers only to invoices.

A claim for tax credit or refund, arising out of zero-rated transactions, is essentially based on excess payment. In zero-rating a transaction, the purpose is not to benefit the person legally liable to pay the tax, like SPP, but to relieve exempt entities like NPC which supplies electricity to factories, offices, and homes, from having to shoulder the tax burden that ultimately would be passed to the public.

The principle of solutio indebiti should govern this case since the BIR received something that it was not entitled to. Thus, it has to return the same. The government should not use technicalities to hold on to money that does not belong to it.[6] Only a preponderance of evidence is needed to grant a claim for tax refund based on excess payment.[7]

Notably, SPP does no other business except sell the power it produces to NPC, a fact that the CIR did not contest in the parties' joint stipulation of facts.[8] Consequently, the likelihood that SPP would claim input taxes paid on purchases attributed to sales that are not zero-rated is close to nil.

Four. The Court finds that SPP failed to indicate its zero-rated sales in its VAT returns. But this is not sufficient reason to deny it its claim for tax credit or refund when there are other documents from which the CTA can determine the veracity of SPP's claim.

Of course, such failure if partaking of a criminal act under Section 255 of the NIRC could warrant the criminal prosecution of the responsible person or persons. But the omission does not furnish ground for the outright denial of the claim for tax credit or refund if such claim is in fact justified.

Five. The CTA denied SPP's claim outright for failure to establish the existence of zero-rated sales, disregarding SPP's sales invoices and receipts which evidence them. That court did not delve into the question of SPP's compliance with the other requisites provided under Section 112 of the NIRC.

Consequently, even as the Court holds that SPP's sales invoices and receipts would be sufficient to prove its zero-rated transactions, the case has to be remanded to the CTA for determination of whether or not SPP has complied with the other requisites mentioned. Such matter involves questions of fact and entails the need to examine the records. The Court is not a trier of facts and the competence needed for examining the relevant accounting books or records is undoubtedly with the CTA.

WHEREFORE, the Court GRANTS the petition, SETS ASIDE the Court of Tax Appeals En Banc decision dated July 31, 2007 and resolution dated September 19, 2007, and REMANDS the case to the Court of Tax Appeals Second Division for further hearing as stated above.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Mendoza, and Perlas-Bernabe, JJ., concur.

---

[1] Penned by Associate Justice Juanito C. Castañeda, Jr. with the concurrence of Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez, rollo, pp. 115-127.

[2] Penned by Associate Justice Lovell R. Bautista with the concurrence of Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez. Presiding Justice Ernesto D. Accosta dissented, id. at 77-101.

[3] G.R. No. 180345, November 25, 2009, 605 SCRA 536, 555.

[4] As provided in Section 108(B)(3) of the NIRC, as amended, and in Republic Act 6395, also known as "An Act Revising the Charter of the National Power Corporation."

[5] G.R. No. 164326, October 17, 2008, 569 SCRA 387, 395-396.

[6] State Land Investment Corporation v. Commissioner of Internal Revenue, G.R. No. 171956, January 18, 2008, 542 SCRA 114, 123.

[7] Commissioner of Internal Revenue v. Mirant Pagbilao Corporation, G.R. No. 172129, September 12, 2008, 565 SCRA 154, 166.

[8] Rollo, p. 113.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.