G.R. No. 222436 – Commissioner of Internal Revenue, *petitioner,* **versus Euro-Philippines Airline Services, Inc.,** *respondent.*

Promulgated:

23 JUL 2018

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CONCURRING OPINION

CAGUIOA, *J.*:

The petition of the Commissioner of Internal Revenue (CIR), which seeks to reverse and set aside the decision of the CTA *En Banc* cancelling the value-added tax (VAT) assessment issued against respondent Euro-Philippines Airline Services, Inc., is anchored on respondent's failure to comply with the invoicing requirements provided under Section 113 of the National Internal Revenue Code (NIRC) of 1997, as amended. The CIR asserts that since respondent failed to print the word "zero-rated" in its VAT official receipts, the subject transaction cannot be considered as zero-rated. In support of this argument, the CIR alludes to the case of *Kepco Philippines Corporation v. Commissioner of Internal Revenue*[1] (*Kepco*) and other VAT refund cases,[2] where the Court has consistently ruled that the failure to print the word "zero-rated" on the invoices or receipts is fatal to a claim for refund or credit of input VAT on zero-rated sales. The CIR, adopting the dissenting opinion of Presiding Justice Roman G. Del Rosario, posits that the strict compliance with the invoicing requirement in refund cases should also be applied in this case.

However, I find the ruling in *Kepco* and other relevant VAT refund cases on the strict compliance with invoicing requirement inapplicable to the instant case.

In *Panasonic Communications Imaging Corp. of the Philippines v. Commissioner of Internal Revenue,*[3] involving a claim for refund of input VAT attributable to zero-rated sales, the Court explained that the requirement of printing the word "zero-rated" on the invoice or receipt "is reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services. x x x [T]he appearance of the word "zero-rated" on the face of invoices covering zero-rated sales prevents

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[1]   656 Phil. 68, 85-86 (2011).
[2]   *Kepco Philippines Corporation v. Commissioner of Internal Revenue,* 650 Phil. 525 (2010); *Hitachi Global Storage Technologies Philippines Corp. (formerly Hitachi Computer Products (Asia) Corporations) v. Commissioner of Internal Revenue,* 648 Phil. 425 (2010); *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue,* 647 Phil. 33 (2010); and *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue,* 625 Phil. 631 (2010);.
[3]   625 Phil. 631 (2010).

buyers from falsely claiming input VAT from their purchases when no VAT was actually paid. If, absent such word, a successful claim for input VAT is made, the government would be refunding money it did not collect."[4] In other words, the ratio for requiring the printing of the word "zero-rated" was essentially to protect the government from refunding a tax it did not actually collect; thus, unjustly enriching the taxpayer at the expense of the government.

However, the "evil" of refunding taxes not actually paid is not present in this case. Here, respondent is not claiming for a refund of its unutilized input VAT attributable to its zero-rated sales. On the contrary, respondent is being assessed by the government for deficiency VAT on transactions which, under the NIRC of 1997, as amended, and as sufficiently proven by respondent, are clearly subject to 0% VAT rate. Thus, to apply the strict compliance rule in this case is tantamount to allowing the government to collect taxes not authorized by law. Upholding the deficiency VAT assessment against respondent simply because the word "zero-rated" does not appear on the VAT official receipts will only result in the government effectively enriching itself at the expense of the taxpayer – the very evil which the strict compliance rule seeks to prevent in the first place.

Verily, in light of the foregoing considerations, I concur with the denial of the CIR's petition and affirmation of the decision and resolution of the CTA *En Banc* cancelling the deficiency VAT assessment issued against respondent.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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[4] Id. at 642.