

## Reviewing the Philippines - Japan Economic Partnership Agreement, (PJEPA)



by

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### Background

The PJEPA (Philippines-Japan Economic Partnership Agreement)<sup>1</sup> is the first bilateral trade agreement covering trade in goods, services, investments, movement of natural persons, intellectual property, customs procedures, improvement of business environment and government eliminations<sup>2</sup>.

The JPEPA (or the PJEPA) was signed on September 9, 2006 by the former President Gloria Macapagal-Arroyo and the Japanese Prime Minister Junichiro Koizumi in Helsinki, Finland. Its objectives are as follows:

1. Liberalize and facilitate trade in goods and services between the Parties;
2. Facilitate the mutual recognition of the results of conformity assessment procedures for products or processes;

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<sup>1</sup> Please do not confuse JPEPA with PJEPA because it's a matter of which country name comes first. In the original version Japan comes first before the Philippines, hence, JPEPA, but in the Philippines, it is now called PJEPA.

<sup>2</sup> Japan-Philippines Economic Partnership Agreement (JPEPA), A Primer on New Developments in Trade and Tariff Policy, Philippine Tariff Commission, August 2010, page 216.

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3. Increase investment opportunities and strengthen protection for investments and investment activities in the Parties;
4. Enhance protection of intellectual property and strengthen cooperation thereof to promote free trade and investment between the Parties;
5. Promote transparency in government procurement in the Parties;
6. Establish a framework for further bilateral cooperation and improvement in business environment;
7. Promote transparency in the implementation of laws and regulations respecting matters covered by the Agreement; and
8. Create effective procedures for the implementation and operation of the Agreement and for the resolution of disputes.

### Filipino workers in Japan

According to the Department of Trade and Industry (DTI),<sup>3</sup> Japan has historically maintained very restrictive entry requirements for foreign professionals. Between 2001-2006, the only occupational categories Filipinos were able to substantially fill were choreographers (139,521 deployed), and composers, musicians and singers (177,457). Not a single nurse was deployed to Japan during the said 6-year period; in contrast, 5,244 were deployed to the United States and 32,380 to Saudi Arabia.

Under PJEPA, Japan initially agreed to allow a limited number of nurses (100 in the first year) to stay beyond the current four-year limit if they acquire a Japanese license. As negotiated, the quota was raised to 400 to 500 per year. The Philippines agreed to a demand-driven, vis-a-vis the quota-driven approach in order to accommodate more nurses and caregivers wanting to work in Japan.

In spite of PJEPA's good intentions, several issues arose in its implementation phase. According to the organization of Filipino nurses<sup>4</sup> (*Ang Nars*), both the nurses and caregivers working in Japan are in a miserable situation as they are subjected to unfair labor practices, extreme pressure to pass licensing examinations administered in Japanese within three (3) years, cramped living conditions and poor salaries.

In this regard, *Ang Nars* recommends the following solutions:

1. Provide an effective Japan nurse orientation program for newcomers;
2. Transfer Filipino nurses to fairer and higher paying hospitals in Japan;
3. Nurse licensing examinations must appear in an easier format that includes *furigana* phonetic guides for *kanji* so that workers can pass them in three years;
4. Provide free *Nihongo* training to qualified nurses and pass the Japanese nursing licensure **in the Philippines** so that they will go to Japan as professional nurses;
5. Ensure that Filipino nurses enjoy their rights, good salary and better working conditions; and
6. Oblige Japanese hospitals to pay the nurse returnees to the Philippines the unpaid salaries and benefits due them.

The problems concerning Filipino nurses and caregivers may be solved through the dispute settlement mechanism of PJEPA. As such, there is no need to renegotiate the treaty.

### Philippine exports to Japan; PJEPA Trade in Goods

Considering that Japan exports industrial products, while the Philippine exports consist mainly of agricultural products, some sectors are of the opinion that there is a trade deficit in favour of Japan. Based on data, however, the trade deficit is in favor of the Philippines as shown below:

PJEPA: Merchandise Trade

Philippines – Japan Bilateral Merchandise Trade, 2006-2011 (Jan-Oct)				
(In Billion USD)				
Year	Total Trade	PH Exports to Japan	PH Imports from Japan	Balance of Trade
2006	15.19	7.92	7.27	0.65
2007	14.14	7.30	6.84	0.46
2008	14.31	7.71	6.60	1.11
2009	11.57	6.21	5.36	0.85
2010	14.58	7.84	6.74	1.10
Jan-Sep 2011	11.37	6.68	4.68	2.00
Jan-Oct 2011		7.51		

Source: Department of Trade and Industry

<sup>3</sup> Assistant Secretary Vicente T. Kabigting, Department of Trade and Industry, [International Trade Engagements and Free Trade Agreements of the Philippines](#), Consultative Meeting with the Senate Tax Study and Research Office, February 16, 2012.

<sup>4</sup> Leah Primitiva G. Samaco-Paquiz, Ed.D., R.N., *Ang NARS* position paper on “Why our Nurses are Against JPEPA”, [angnars@yahoo.com.ph](mailto:angnars@yahoo.com.ph), posted on September 8, 2010.

From 2006 to 2011, JPEPA trade in goods was consistently in favor of the Philippines. Some of the Philippine exports to Japan are industrial products mostly from Japanese manufacturers in the Philippines. Thus, it is not true that Philippine exports to Japan consist mainly of bananas and pineapple.

**Japanese investment in the Philippines**

It is in the area of investments where JPEPA needs more scrutiny and possible amendment to the Agreement itself. Currently, there are bilateral talks aiming to liberalize the investment conditions for Japanese corporations in the Philippines such as concessions in the steel trade, and the creation of better conditions for Japanese direct investments in the automobile industry.

Under JPEPA, the following Japanese investments were made:<sup>5</sup>

However, immediately after the JPEPA was ratified and went into effect, Japan's share in total IPA-approved investments in Philippines surged from 9% in 2008 to 58% in 2009. But after this extraordinary surge, Japan's share decreased to 30% in 2010. Nevertheless, in absolute terms, Japanese IPA-approved investments in 2009 was USD 1.48 billion, a 310% jump from USD 362.4 million in 2008 before JPEPA was ratified.

In 2010, there was a softening of investments from Japan with approved FDIs declining by 13% (USD 1.29 billion) compared to 2009. But significantly, investment levels remained above the USD 1 billion mark. Majority of Japan's investments are in manufacturing, a great portion of which is in the manufacture of electronic products.

For the first three quarters of 2011, total IPA-approved investments from Japan amounted to USD 737.96 million or 36.57 percent of the IPA-approved investments from foreign nationals, making Japan the largest investor of the Philippines for the period.

Year	IPA-Approved Investments from Foreign Nationals		Japanese Investments		Share
	PHP	USD	PHP	USD	
2006	165,880.0	3,232.6	20,065.7	390.99	12.10
2007	214,082.8	4,639.0	38,587.3	835.59	18.02
2008	182,680.9	4,107.5	16,115.6	362.39	8.82
2009	121,815.9	2,557.2	70,737.1	1,484.91	58.07
2010	196,068.6	4,346.5	58,333.1	1,293.14	29.75
Jan-Sep 2010	79,437.6	1,741.9	17,126.8	375.57	21.56
Jan-Sep 2011	87,315.8	2,018.2	31,927.8	737.96	36.57

DTI-Industry Development and Trade

Article 161 (General Review) of the JPEPA states the following – *The parties shall undertake General Review of the Agreement and its implementation and operation in 2011 and every five (5) years thereafter, unless agreed by both Parties.*”

In this regard, during the 3<sup>rd</sup> Meeting of the JPEPA Joint Committee on February 2011 in Tokyo, both parties created sub-committees to identify the items needing review. The items for review, which includes issues regarding investments, shall be discussed in the 4<sup>th</sup> Meeting of the

JPEPA Joint Committee this year to be held in Manila.

**Trade in toxic wastes**

The most talked about provision in the JPEPA is trade in toxic wastes. Before the signing of the treaty, protests were made by environmentalists<sup>6</sup>, such non-approval persisting even today. Considering that JPEPA is scheduled for review this

After JPEPA was signed in 2006, a 114% (USD 835.59 million) surge in investment promotion agency (IPA)-approved investments from Japan was recorded in 2007.

In 2008, when there was uncertainty in JPEPA's ratification by the Philippine Senate and with the onset of the global financial crisis, Japan's share in total IPA-approved investments in the Philippines plunged from 18% in 2007 to 9% in 2008.

<sup>5</sup> The data and the discussions on Japanese investments in the Philippines under JPEPA were taken from the lecture of Assistant Secretary Ramon Vicente T. Kabigting, Industry Development and Trade Policy, Department of Trade and Industry, International Trade Engagements and Free Trade Agreements of the Philippines, February 16, 2012.

<sup>6</sup> The environmentalist groups include the Global Alliance for Incinerator Alternatives, Global Anti-Incinerator Alliance (GAIA), Basel Action Network Asia Pacific (BAN-AP), Eco Waste Coalition, and Initiatives for Dialogue and Empowerment through Legal services, Inc. (IDEALS).

year, it is timely to reconsider the provision on trade in toxic wastes.

On November 7, 2008, President Gloria Macapagal-Arroyo issued Executive Order No. 767, modifying tariff rates included in the PJEPA. Among the “products” enjoying preferential treatment is the importation of toxic wastes with 0% tariff rate from 2008 to 2018. The base for the tariff rate and the value added tax (VAT) is the value of the imports (*ad valorem*). Toxic wastes do not have any commercial value, meaning, the Philippines will not realize any revenue from the importation because the tariff base is *ad valorem*. Why then should the following products enjoy preferential tariff of 0%?

Imported products from Japan enjoying preferential treatment under PJEPA	
AHTN Code 2007	Description
38.25	- Residual products of the chemical or allied industries, not elsewhere specified or included; municipal waste; sewage sludge; other wastes specified in Note 6 to this Chapter.
3825.10.00	- Municipal waste
3825.20.00	- Sewage sludge
3825.30.00	- Clinical waste
3825.30.00A	- Adhesive dressings and other articles having adhesive layer; wadding, gauze, bandages; surgical gloves
3825.30.00B	- Syringes, needles, cannulae and the like
3825.30.00C	- Waste organic solvents
3825.41.00	- Halogenated
3825.50.00	- Wastes of metal pickling liquors, hydraulic fluids, brake fluids and anti-freeze fluids - Other wastes from chemical or allied industries
3825.61.00	- Mainly containing organic constituents

**Philippine environmental laws**

The 1987 Philippine Constitution provides for the following:

*“Section 15 – The State shall protect and promote the right to health of the people and promote the right to health and instil health consciousness among them.”*

*“Section 16 – The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.”*

In compliance with the mandate of the Constitution, the following laws were enacted:

**1. RA 6969, the Toxic Substance and Hazardous and Nuclear Wastes Control**

**Act of 1990 (October 26, 1990)** – The aims of the law are as follows:

- a. *To keep an inventory of chemicals that are presently being imported, manufactured, or used, indicating, among others, their existing and possible uses, test data, names of firms manufacturing or using them, and such other information as may be considered relevant to the protection of health and environment;*
- b. *To monitor and regulate the importation, manufacture, processing, handling, storage, transportation, sale, distribution, use and disposal of chemical substances and mixtures that present unreasonable risk or injury to health or to the environment in accordance with national policies and international commitments;*
- c. *To inform and educate the populace regarding the hazards and risks attendant to the manufacture, handling, storage, transportation, processing, distribution, use and disposal of toxic chemicals and other substances and mixture; and*
- d. *To prevent the entry, even in transit, as well as the keeping or storage and disposal of hazardous and nuclear wastes into the country for whatever purpose.*

**2. RA 8749, The Philippine Clean Air Act of 1999 (June 23, 1999)** – Section 20 of the law provides for the following:

*“Section 20. Ban on Incineration. – Incineration, hereby defined as the **burning** of municipal, biomedical and hazardous waste, which process, emits poisonous and toxic fumes is hereby **prohibited**: Provided, however, That the prohibition shall not apply to traditional small-scale method of community/neighborhood sanitation “siga”, traditional, agricultural, cultural, health, and food preparation and crematoria: Provided, further, That existing incinerators dealing with biochemical wastes shall be out within three (3) years after the effectivity of this Act: Provided, finally, that in the interim, such units shall be limited to the burning of pathological and infectious wastes, and subject to close*

monitoring by the Department (i.e., the Department of Environment and Natural Resources).”

**3. RA 9003, The Ecological Solid Waste Management Act of 2000 (January 26, 2001) –**

Under Section 48 of the law, the following acts are prohibited:

- “ a. *Littering, throwing, dumping of waste matters in public places, such as roads, sidewalks, canals, esteros or parks, and establishment, or causing or permitting the same;*
- b. *Undertaking activities or operating, collecting or transporting equipment in violation of sanitation operation and other requirements or permits set forth;*
- c. *The open burning of solid waste;*
- d. *Causing or permitting the collection of non-segregated or unsorted wastes;*
- e. *Squatting in open dumps and landfills;*
- f. *Open dumping, burying of biodegradable or non-biodegradable materials in flood prone areas;*
- g. *Unauthorized removal of recyclable material intended for collection by authorized persons;*
- h. *The mixing of source-separated recyclable material with other solid waste in any vehicle, box, container or receptacle used in solid waste collection or disposal;*
- i. **Establishment or operation of open dumps**, or closure of said dumps in violation of Sec. 37;
- j. *The manufacture, distribution or use of non-environmentally acceptable packaging materials;*
- k. *Importation of consumer products packaged in non-environmentally acceptable materials;*
- l. *Importation of toxic wastes misrepresented as “recyclable” or “with recyclable content”;*

m. *Transport and dumplog in bulk of collected domestic, industrial, commercial, and institutional wastes in areas other than centers of facilities prescribed under the Act;*

n. *Site preparation, construction, expansion or operation of waste management facilities without an Environmental Compliance Certificate required pursuant to Presidential decree No. 1586 and the Act and not conforming with the land use plan of the LGU;*

o. *The construction of any establishment within two hundred (200) meters from open dumps or controlled dumps, or sanitary landfill; and*

p. *The construction or operation of landfills or any waste disposal facility on any aquifer, ground water reservoir, or watershed area and or any portions thereof.*”

**Treaties signed by the Philippines on the importation of toxic wastes**

Aside from Philippine laws on toxic wastes, the Philippines also signed the following treaties:

1. **The Basel Convention<sup>7</sup>** - The Philippines became a party to the Basel Convention on the Transboundary Movements of Hazardous Wastes and their Disposal on March 10, 1993. *“The Convention seeks to minimize the generation and exports of hazardous wastes, and the promotion of national self-sufficiency by placing responsibility on toxic waste generators to dispose of the wastes as close to area of generation as possible. In its efforts at minimizing waste exports, the Basel Convention restricts traffic in toxic wastes by applying the “Prior Informed Consent” procedure.”*

The amendment of the Convention “was primarily driven by developing countries and this group called for the **prohibition, for any reason, whatsoever, disposal or recycling, in the export of toxic wastes from Annex VII, i.e. European Union, member countries of the organization for Economic Cooperation and Development and Leichtenstein to any non-Annex VII countries (developing countries). The obligation to prevent toxic**

<sup>7</sup> The text is directly lifted from IDEALS, INC. – JPEPA and the toxic waste issues in the Philippines, prepared for the Global Alliance for Incinerator Alternatives/Global Anti-Incinerator Alliance (GAIA), Basel Action Network Asia Pacific (BAN-AP), Eco Waste Coalition, in cooperation with Initiatives for Dialogue and Empowerment through Alternative Legal services, Inc. (IDEALS).

**waste exports falls upon developed countries that are part of the Annex VII group, and not on developing countries...**"

2. **The Stockholm Convention<sup>8</sup>** - The Philippines became a party to the Stockholm Convention on Persistent Organic Pollutants (POPs) on February 27, 2004. The Convention "is an international treaty designed to end the production and use of some of the world's most poisonous chemicals, namely POPs."

**"The Stockholm Convention severely restricts export and import of POPs and POP wastes<sup>9</sup>..."**

3. **The Montreal Protocol<sup>10</sup>** - The Montreal Protocol on Substances That Deplete the Ozone Layer was ratified on July 17, 1991. "The Protocol requires each country-Party to ratchet-down its respective production and consumption of Ozone Depleting Substances (ODS) following the time frame stated in the Protocol, with the ultimate goal of global elimination of ODS. The Protocol also requires all Parties to **ban exports and imports of controlled substances<sup>11</sup> and to non-Parties.**"

The PJEPA provision regarding the export of toxic wastes to the Philippines is a violation of the Treaties and Philippine environmental laws cited above.

## Conclusion

It is timely that a PJEPA review will be held in Manila this year. It is an opportunity for both Parties to correct provisions detrimental to them.

From the Philippine point of view, the most objectionable issue under PJEPA is the provision regarding the Japanese exportation of its toxic wastes to the Philippines.

Japan's decision to allow Filipino nurses is advantageous for the Philippines. Difficulties in its implementation phase may be solved without the need to amend the pertinent PJEPA provision.

The ongoing negotiation between Thailand and the Philippines regarding the opportunity for Filipino teachers to work in Thailand may also be discussed during the PJEPA negotiations. Filipinos have competitive advantage in this area considering that the Philippines has more than enough number of teachers with English proficiency.

Congress is currently legislating the bill on fiscal incentives. This is a good opportunity to revise provisions regarding investments in the Philippines. Once the fiscal incentives bill becomes a law, foreign investors like Japan could be convinced to invest more in the Philippines.



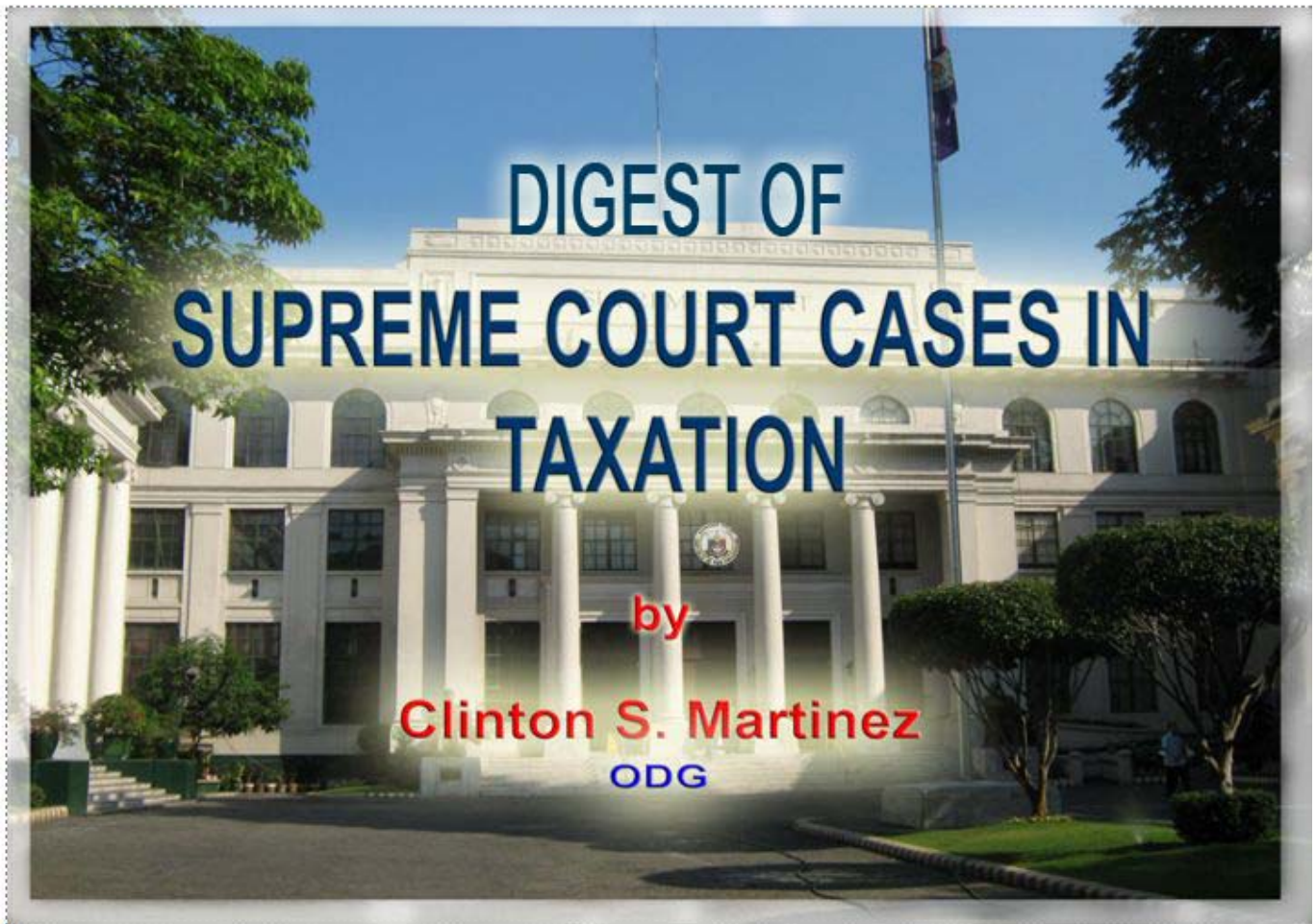
<sup>8</sup> Same source as footnote 7.

<sup>9</sup> Examples of POPs are polychlorinated biphenyls (PCBs), Dioxins, and DDT.

<sup>10</sup> Same source as in footnote 7.

<sup>11</sup> Examples of ODS are chlorofluorocarbons (CFCs), halons, carbon tetrachloride, methyl chloroform, hydrochlorofluorocarbons (HCFCs), hydrobromofluorocarbons (HBFCs), and methyl bromide.

<sup>12</sup> Eunice Barbara C. Novio, OFW teachers find niche in Thailand, Philippine Daily Inquirer (Global Pinoy), February 26 2012.



**1. ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE (CIR), RESPONDENT, G.R. NO. 159471, JANUARY 26, 2011, PERALTA, J.**

**Facts:**

Petitioner Atlas Mining is an exporter of copper concentrate and is a zero-rated Value-Added Tax (VAT) entity under the National Internal Revenue Code (NIRC), as amended.

Atlas Mining filed on January 20, 1994 its VAT return for the fourth quarter of 1993. Said return detailed a total input tax of P863,556,963.74 and an excess VAT credit of P842,336,291.60. It applied with the CIR for a refund or credit certificate for the last amount on January 25, 1996. Likewise, on the latter date it filed the said claim with the Court of Tax Appeals (CTA), alleging that the two-year prescriptive period under the Tax Code was on the verge of expiring. The CIR was declared on default after it failed to file his answer with the tax court.

The CTA in its Decision (August 24, 1998) denied the petition, emphasizing that Atlas Mining failed to comply with the documentary requirements as per Regulations of the BIR<sup>1</sup>. Subsequently, petitioner filed a Motion for Reconsideration (MR) for the reopening of the case so that it could submit the necessary documents. The CTA granted the MR, but on a later date it denied petitioner's claim in a Resolution (June 21, 2000), declaring that "X x x the action has already expired and that petitioner has failed to substantiate its claim that it has not applied its alleged excess input taxes to any of its subsequent quarter's output tax liability." The Court of Appeals (CA) affirmed the CTA Decision and Resolution, *in toto*, for lack of merit. The MR filed by petitioner was turned down in a Resolution dated August 6, 2003.

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<sup>1</sup> RR Nos. 5-87 as amended by RR Nos. 3-88 (April 7, 1988).

**Issues:**

The appeal hinges on the following assertions:

- 1] The CA committed error in declaring that Atlas Mining's claim for refund has prescribed, even though the CIR and the CTA failed to raise the issue of prescription in its Answer or in the Tax Court's original decision on September 16, 1998.
- 2] The CA erred in supporting the CTA's declaration in its Decision of August 24, 1998 that Atlas Mining, in not submitting its export documents, was remiss in offering substantial proof that its input taxes are rightly ascribing to its export sales.
- 3] The CA made a mistake in siding with the CTA's assertion that Atlas Mining fell short in forwarding adequate proof that it has not applied the claimed input tax to its output taxes from prior and succeeding quarters.

**Held:**

The Supreme Court (SC) **denied** the petition for lack of merit and affirmed the CA Decision and Resolution.

Said the SC:

*"In the present case, petitioner is basically asking this Court to review the factual findings of the CTA and the CA. Petitioner insists that it had presented the necessary documents or copies thereof with the CTA that would prove that it is entitled to a tax refund. Again, citing the earlier case of Atlas Consolidated Mining and Development Corporation v. CIR,<sup>[13]</sup> this Court has expounded the nature and bases of claiming tax refund, thus:*

*"Applications for refund/credit of input VAT with the BIR must comply with the appropriate revenue regulations. As this Court has already ruled, Revenue Regulations No. 2-88 is not relevant to the applications for refund/credit of input VAT filed by petitioner corporation; nonetheless, the said applications must have been in accordance with Revenue Regulations No. 3-88, amending Section 16 of Revenue Regulations No. 5-87, which provided as follows -*

*"SECTION 16. Refunds or tax credits of input tax. -*

*x x x x*

*"(c) Claims for tax credits/refunds. - Application for Tax Credit/Refund of Value-Added Tax Paid (BIR Form No. 2552) shall be filed with the Revenue District Office of the city or municipality where the principal place of business of the applicant is located or directly with the Commissioner, Attention: VAT Division.*

***"A photocopy of the purchase invoice or receipt evidencing the value added tax paid shall be submitted together with the application. The original copy of the said invoice/receipt, however, shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or refund. In addition, the following documents shall be attached whenever applicable:***

*"3. Effectively zero-rated sale of goods and services.*

*"i) photocopy of approved application for zero-rate if filing for the first time.*

*"ii) sales invoice or receipt showing name of the person or entity to whom the sale of goods or services were delivered, date of delivery, amount of consideration, and description of goods or services delivered.*

*"iii) evidence of actual receipt of goods or services.*

*"4. Purchase of capital goods.*

*"i) original copy of invoice or receipt showing the date of purchase, purchase price, amount of value-added tax paid and description of the capital equipment locally purchased.*

*"ii) with respect to capital equipment imported, the photocopy of import entry document for internal revenue tax purposes and the confirmation receipt issued by the Bureau of Customs for the payment of the value-added tax.*



"5. In applicable cases, where the applicant's zero-rated transactions are regulated by certain government agencies, a statement therefrom showing the amount and description of sale of goods and services, name of persons or entities (except in case of exports) to whom the goods or services were sold, and date of transaction shall also be submitted.

"In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of the value-added tax (VAT) paid directly and entirely attributable to the zero-rated transaction during the period covered by the application for credit or refund.

"Where the applicant is engaged in zero-rated and other taxable and exempt sales of goods and services, and the VAT paid (inputs) on purchases of goods and services cannot be directly attributed to any of the aforementioned transactions, the following formula shall be used to determine the creditable or refundable input tax for zero-rated sale:

$$\begin{aligned} & \text{Amount of Zero-rated Sale} \\ & \quad \text{Total Sales} \\ & \quad \quad \times \\ & \text{Total Amount of Input Taxes} \\ & = \text{Amount Creditable/Refundable} \end{aligned}$$

"In case the application for refund/credit of input VAT was denied or remained unacted upon by the BIR, and before the lapse of the two-year prescriptive period, the taxpayer-applicant may already file a Petition for Review before the CTA. If the taxpayer's claim is supported by voluminous documents, such as receipts, invoices, vouchers or long accounts, their presentation before the CTA shall be governed by CTA Circular No. 1-95, as amended, reproduced in full below -

"In the interest of speedy administration of justice, the Court hereby promulgates the following rules governing the presentation of voluminous documents and/or long accounts, such as receipts, invoices and vouchers, as evidence to establish certain facts pursuant to Section 3(c), Rule 130 of the Rules of Court and the doctrine enunciated in *Compania Maritima vs. Allied Free*

*Workers Union (77 SCRA 24)*, as well as Section 8 of Republic Act No. 1125:

"1. The party who desires to introduce as evidence such voluminous documents must, after motion and approval by the Court, present:

"(a) a Summary containing, among others, a chronological listing of the numbers, dates and amounts covered by the invoices or receipts and the amount/s of tax paid; and (b) a Certification of an independent Certified Public Accountant attesting to the correctness of the contents of the summary after making an examination, evaluation and audit of the voluminous receipts and invoices. The name of the accountant or partner of the firm in charge must be stated in the motion so that he/she can be commissioned by the Court to conduct the audit and, thereafter, testify in Court relative to such summary and certification pursuant to Rule 32 of the Rules of Court.

"2. The method of individual presentation of each and every receipt, invoice or account for marking, identification and comparison with the originals thereof need not be done before the Court or Clerk of Court anymore after the introduction of the summary and CPA certification. It is enough that the receipts, invoices, vouchers or other documents covering the said accounts or payments to be introduced in evidence must be pre-marked by the party concerned and submitted to the Court in order to be made accessible to the adverse party who desires to check and verify the correctness of the summary and CPA certification. Likewise, the originals of the voluminous receipts, invoices or accounts must be ready for verification and comparison in case doubt on the authenticity thereof is raised during the hearing or resolution of the formal offer of evidence.

The old Tax Code, under Section 106<sup>2</sup> and the applicable Regulation, details the required evidence that must be presented:

"Refunds or tax credits of input tax. - (a) Any VAT-registered person, whose sales are zero-rated, may, within two (2) years

<sup>2</sup> Section 112 of the present NIRC. The law has been amended.

after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in case of zero-rated sales under Section 100 (a) (2) (A) (I), (ii) and (b) and Section 102 (b) (1) and (2), the acceptable foreign currency exchange proceeds thereof have been duly accounted for in accordance with the regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

“Section 16 of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88, dated April 7, 1988.

“A photocopy of the purchase invoice or receipt evidencing the value added tax paid shall be submitted together with the application. The original copy of the said invoice/receipt, however, shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or refund. In addition, the following documents shall be attached whenever applicable:

“1. Export Sales

“i) Photocopy of export document showing the amount of export, the date and destination of the goods exported. With respect to foreign currency denominated sale, the photocopy of the invoice or receipt evidencing the sale of the goods, as well as the name of the person to whom the goods were delivered.

“ii) Statement from the Central Bank or any of its accredited agent banks that the proceeds of the sale in acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations.

“In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of value-added tax (VAT) paid directly and entirely attributable to the zero-rated transaction during the period covered by the application for credit or refund.”

The CTA said that petitioner “X x x failed to include photocopy of its export documents, x x x.” Because of this, “There is no way x x x, in determining the kind of goods and actual amount of export sales it allegedly made during the quarter involved. This finding is very crucial when we try to relate it with the requirement of the aforementioned regulations that the input tax being claimed for refund or tax credit must be shown to be entirely attributable to the zero-rated transaction, in this case, export of sales of goods. X x x. Lastly, We cannot grant petitioner’s claim for credit or refund of input taxes due to its failure to show convincingly that the same has not been applied to any of its output tax liability as provided under Section 106(a) of the Tax Code. X x x.”

The SC said:

“X x x. It must be remembered that when claiming tax refund/credit, the VAT-registered taxpayer must be able to establish that it does have refundable or creditable input VAT, and the same has not been applied against its output VAT liabilities – information which are supposed to be reflected in the taxpayer’s VAT returns. Thus, an application for tax refund/credit must be accompanied by copies of the taxpayer’s VAT return/s for the taxable quarter/s concerned. The CTA and the CA, x x x, committed no error when they declared that petitioner failed to prove that it is entitled to a tax refund and this Court, not being a Trier of facts, must defer to their findings.”

On the issue of prescription, the SC ruled:

“Anent the issue of prescription, wherein petitioner questions the ruling of the CA that the former’s claim for refund has prescribed, disregarding the failure of respondent x x x and the CTA to raise the said issue in their answer and original decision, respectively, this Court finds the same moot and academic. Although it may appear that the CTA only brought up the issue of prescription in its later resolution and not in its original decision, its ruling on the merits of the application for refund, could only imply that the issue of prescription was not the main consideration for the denial of petitioner’s claim for tax refund. Otherwise, the CTA would have just denied the application on the ground of prescription.”

**2. KEPKO PHILIPPINES CORPORATION, Petitioner, VS. COMMISSIONER OF INTERNAL**

**REVENUE (CIR), Respondent, G.R. NO. 179961, JANUARY 31, 2011, MENDOZA, J.**

**Facts:**

Petitioner (Kepco), a domestic corporation authorized to do business in the Philippines, is a Value-Added Tax (VAT) registered taxpayer engaged in the production and sale of electricity as an independent power producer. Kepco sells its electricity to National Power Corporation (NPC/NAPOCOR), a tax-exempt entity. Petitioner filed with CIR an application for effective zero-rating of its sales to NAPOCOR.

Kepco filed an administrative claim for refund in the amount of P10,527,202.54 representing its unutilized input VAT relative to its transaction with NAPOCOR. Petitioner subsequently filed with the Second Division of the CTA a petition for review pursuant to the provisions of the Tax Code, as amended, which was denied for failure to properly substantiate its effectively zero-rated sales for taxable year 1999. Kepco allegedly did not comply with invoicing requirements as per Revenue Regulation No. 7-95. Its appeal to the CTA *En Banc* was likewise not successful, the Court declaring that: "X x x Kepco's failure to comply with the requirement of imprinting the words "zero-rated" on its official receipts resulted in non-entitlement to the benefit of VAT zero-rating and denial of its claim for refund of input tax." The Motion for Reconsideration (MR) of Kepco was denied.

**Issues:**

Kepco filed a petition for review on Certiorari pursuant to Rule 45 of the Rules of Court with the Supreme Court (SC) assailing that:

- 1] The CTA *En Banc* erred when it decided that its failure to imprint the words "ZERO-RATED" on its VAT official receipts issued to NAPOCOR is adverse to its claim for refund of unutilized input tax credits.
- 2] It has adequately proven that it is qualified to a refund or issuance of a tax credit certificate (TCC) in the amount of P10,514,023.92.

**Held:**

The main issue according to the SC is: "X x x whether Kepco's failure to imprint the words "zero-rated" on its official receipts issued to NPC justifies an outright denial of its claim for refund of unutilized input tax credits."

The SC ruled in favor of respondent CIR. It declared that the entity dealing with NPC must comply with the invoicing requirements under Sections 113 and 237 of the Tax Code<sup>3</sup> as implemented by Revenue Regulation (RR) No. 7-95. The Court quoted the following provisions of the 1997 National Internal Revenue Code (NIRC) and RA 6935 (The Revised NPC Charter), as amended:

**"Sec. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. -**

**"(A) Rate and Base of Tax. - x x x**

**"(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:**

**"(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;**

**"Sec. 13. Non-profit Character of the Corporation; Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities.**

*The Corporation shall be non-profit and shall devote all its return from its capital investment as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section One of this Act, the Corporation, including its subsidiaries, is hereby declared exempt from the payment of all forms of taxes, duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersede as bonds, in any court or administrative proceedings.*

*"Based on the afore-quoted provisions, there is no doubt that NPC is an entity with a special charter and exempt from payment of all forms of taxes, including VAT. As such, services rendered by any VAT-registered person/entity, like Kepco, to NPC are effectively*

<sup>3</sup> Sec. 113. Invoicing and Accounting Requirements for VAT-registered Persons (Title IV-Value-Added Tax, Chapter II, Compliance Requirements). Sec. 237. Issuance of Receipts or Sales or Commercial Invoices (Title IX, Chapter II, Administrative Provisions). The SC decision relied on the 1997 NIRC.

subject to zero percent (0%) rate.

*“For the effective zero rating of such services, however, the VAT-registered taxpayer must comply with invoicing requirements under Sections 113 and 237 of the 1997 NIRC as implemented by Section 4.108-1 of R.R. No. 7-95, thus:*

**“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; 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 106 and 108 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. (Emphasis supplied)*

**“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 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 an internal revenue tax from compliance with the provisions of this Section.*

**“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:

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;
6. The invoice value or consideration.

*“In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.*

“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 “VAT Invoice.” All purchases covered by invoices other than “VAT Invoice” shall not give rise to any input tax.

“If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A “VAT Invoice” shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the code.

“The invoice or receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records. (Emphases supplied)

With the above as basis, the SC pronounced:

“Indeed, it is the duty of Kepco to comply with the requirements, including the imprinting of the words “zero-rated” in its VAT official receipts and invoices in order for its sales of electricity to NPC to qualify for zero-rating.

“It must be emphasized that the requirement of imprinting the word “zero-rated” on the invoices or receipts under Section 4.108-1 of R.R. No. 7-95 is mandatory as ruled by the CTA En Banc, citing *Tropitek International, Inc. v. Commercial Internal Revenue*. In *Kepeco Philippines Corporation v. Commissioner of Internal Revenue*, the

CTA En Banc explained the rationale behind such requirement in this wise:

“The imprinting of “zero-rated” is necessary to distinguish sales subject to 10% VAT, those that are subject to 0% VAT (zero-rated) and exempt sales, to enable the Bureau of Internal Revenue to properly implement and enforce the other provisions of the 1997 NIRC on VAT, namely:

- “1. Zero-rated sales x x x;
- “2. Exempt transactions x x x;
- “3. Tax Credits x x x; and
- “4. Refunds or tax credits of input tax x x x.

“Indeed, in a string of recent decisions on this matter, x x x, this Court has consistently held that 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.”

In finally disposing of the issues, the Supreme Court clearly stated that:

“Well-settled in this jurisdiction is the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in strictissimi juris against the taxpayer. The pieces of evidence entitling a taxpayer to an exemption are also strictissimi scrutinized and must be duly proven.”

Petition was denied.



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