REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

KEPCO PHILIPPINES CORPORATION,
Petitioner,

C.T.A. EB NO. 299
(C.T.A. Case No. 6965)

-versus-

Present:

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 2 0 2008 3:00 p.m.

x--x

DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review[1] filed pursuant to Section 4, Rule 8 of the Revised Rules of the Court of Tax Appeals in relation to Rule 43 of the Revised Rules of Civil Procedure, praying for the reconsideration of:

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[1] *Rollo*, pp. 10 - 84 with Annexes.

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1. the Decision dated February 26, 2007 rendered by the Second Division of the Court ("Court in Division") in CTA Case No. 6965, which partially granted petitioner's claim for tax refund in the amount of ₱2,890,005.96, representing petitioner's unutilized input value-added tax ("VAT") which it incurred from its zero-rated sales of electricity to the National Power Corporation ("NPC") for taxable year 2002 ; and
2. the Resolution of the Court in Division promulgated on June 28, 2007, which denied petitioner's Motion for Partial Reconsideration.

Antecedent Facts

The material antecedents that precipitated the subject Petition for Review are summarized by the Court in Division as follows:

> "On December 4, 2001, petitioner filed an application for zero-rated sales with the respondent, through its RDO No. 43. The same was eventually approved under VAT Ruling 64-01. For the calendar (taxable) year 2002, petitioner filed its Quarterly VAT Returns declaring zero-rated sales in the aggregate amount of P3,285,308,055.85 as follows:

Exhibit	Quarter Involved	Zero-Rated Sales
B	1st Quarter	P651,672,672.47
C	2nd Quarter	725,104,468.99
D	3rd Quarter	952,053,527.29
E	4th Quarter	956,477,387.10
	Total	**P3,285,308,055.85**

> In the same year, petitioner allegedly incurred expenses representing domestic purchases of goods and services in the amount of P117,108,688.60, which became the basis for the computation of its input VAT in the sum of P11,710,868.86 as declared in its Quarterly VAT Returns, to wit:

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Exhibit	Quarter Involved	Purchases	Input VAT
B	1st Quarter	P6,063,184.90	P606,318.49
C	2nd Quarter	18,410,193.20	1,841,019.32
D	3rd Quarter	16,811,819.21	1,681,181.93
E	4th Quarter	75,823,491.20	7,582,349.12
	Total	P117,108,688.51	P11,710,868.86

Allegedly, the expenses represent the costs attributable to its production and sale of electricity to the NPC, its sole customer. According to petitioner, such sale is effectively zero-rated for VAT purposes and the input VAT incurred in connection thereto is available for tax refund/credit. Thus, on April 20, 2004, petitioner filed a claim for refund of the input VAT incurred in the amount of P11,710,868.86 for taxable year 2002 with respondent (through Revenue District Office No. 43). Two days later, the instant Petition for Review was filed with this Court on April 22, 2004.

In his Answer, respondent submits the following Special and Affirmative Defenses:

> '6. Claims for refund are strictly construed against the taxpayer as the same partakes (sic) the nature of a tax exemption;
>
> 7. The taxpayer has the burden to show that the taxes were erroneously or illegally paid. Failure on the part of the Petitioner to prove the same is fatal to its cause of action;
>
> 8. The Petitioner should prove that (sic) its legal basis for claiming for the amount being refunded.'

During trial, petitioner presented its evidence, both testimonial and documentary. This included the testimony of the court commissioned Independent Certified Public Accountant, Victor O. Machacon, who conducted an audit of the voluminous documentary evidence of petitioner, such as official receipts, invoices and vouchers in support of its claim for refund of its unutilized input VAT. After the admission of petitioner's evidence in the Resolution dated May 3, 2006, presentation of respondent's evidence was set on July 19, 2006. However, due to the failure of respondent's counsel to appear on said date, the Court considered respondent to have waived his right to present evidence and the parties were directed to file their respective memoranda. Only petitioner filed its Memorandum on August 23, 2006, and this case was considered submitted for decision in the Resolution dated September 6, 2006 without any memorandum having been filed by respondent. Hence, this Decision."[2] *(Citations omitted)*

[2] Decision, C.T.A. Case No. 6965, February 26, 2007, pp. 2 - 4.

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c. Input taxes on purchase of goods/service in the amount of ₱2,156.42 are not in the company's name;

d. Input taxes on purchase of goods in the amount of ₱627.54 are not within the period of claim;

e. Input taxes on purchase of goods/service supported by invoices/official receipts in the amount of ₱4,720,725.63 are not printed with "TIN-VAT"; and

f. Input taxes on purchase of goods in the amount of ₱648.73 are without date or year date.

5. The reduced claim for refund in the amount of ₱2,890,005.96 was not applied against any output tax for the succeeding quarters.

The dispositive portion of the Court in Division's Decision reads as follows:

> "**WHEREFORE,** petitioner's claim for refund is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to **REFUND** petitioner the reduced amount of **TWO MILLION EIGHT HUNDRED NINETY THOUSAND FIVE PESOS AND 96/100 (P2,890,005.96)** representing unutilized input value-added tax for taxable year 2002.
>
> **SO ORDERED.**"

Dissatisfied, petitioner filed a Motion for Partial Reconsideration which was denied by the Court in Division in its Resolution promulgated on June 28, 2007.

Hence, the present recourse to the Court *En Banc.*

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The Ruling of the Court in Division

On February 26, 2007, the Court in Division rendered its Decision, partially granting petitioner's claim for refund of unutilized input VAT for taxable year 2002.

The Court in Division applied the requisites needed for the refund of input VAT directly attributable to effectively zero-rated sales and made the following findings:

1. Both administrative and judicial claims for refund were filed within two (2) years from the dates when petitioner filed its Quarterly VAT Returns for the four quarters of taxable year 2002;
2. Out-of the declared zero-rated sales of ₱3,285,308,055.85, petitioner was able to substantiate only the amount of ₱1,451,788,865.52 and the rate of substantiated zero-rated sales was computed to be 44.19%;
3. Based on the findings of the commissioned independent Certified Public Accountant ("CPA"), petitioner's claimed input VAT in the amount of ₱11,710,868.86 should be reduced by ₱125,556.40;
4. The input VAT in the aggregate amount of ₱5,045,357.80 should also be disallowed for the following reasons:
    a. Input taxes in the amount of ₱64,509.50 on purchase of goods are not supported by invoices;
    b. Input taxes in the amount of ₱256,689.98 are not supported by official receipts;

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The Issue

The sole issue submitted for resolution by petitioner is whether or not the Court in Division erred in not considering the amount of ₱8,691,873.81 in addition to the ₱2,890,005.96 already awarded, as refundable tax credit for petitioner's zero-rated sales to NPC for taxable year 2002.

The Ruling of the Court En Banc

The Petition for Review is devoid of merit.

Under Republic Act 6395 as amended, or otherwise known as the NPC Charter, the NPC is declared exempt from the payment of all forms of taxes, duties, fees and imposts. Section 13 of the said law states that:

> "**Section 13. Non-profit Character of the Corporation:**
>
> Exemption from All Taxes, Duties, Imposts and Other Charges by the Government and Government Instrumentalities. — The Corporation shall be non-profit and shall devote all its returns from its capital investment as well as excess revenues from its operations, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance of 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, supersedeas bonds, in any court or administrative proceedings." *(Emphasis supplied)*

Because of such exemption, petitioner's sale of power generation services (electricity) to NPC is indeed zero-rated under Section 108 (B) (3) of the 1997 National Internal Revenue Code ("NIRC"). It reads:

> "**SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. —**
>
> xxx xxx xxx

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(B) **Transactions Subject to Zero Percent (0%) Rate.** — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

(1) xxx
(2) xxx
(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; xxx" *(Emphasis supplied)*

Consequently, petitioner may claim a refund or tax credit of input tax pursuant to Section 112 (A) of the 1997 NIRC, which provides:

"**SEC. 112. Refunds or Tax Credits of Input Tax. —**

(A) **Zero rated or Effectively Zero-rated Sales.** — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years 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 the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP) xxx" *(Emphasis supplied)*

Corollary thereto, Sections 4.106-1 and 4.104-5 of Revenue Regulations 7-95 state, *viz*:

"**Section 4.106-1. Refunds or tax credits of input tax. — (a) Zero-rated sales of goods or properties or services** — Only a VAT-registered person may be given a tax credit certificate or refund of VAT paid corresponding to the zero-rated sales of goods, properties or services, excluding the presumptive input tax and to the extent that such input tax has not been applied against the output tax. The application should be made within two (2) years after the close of the taxable quarter when the sales were made."

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> "**Section 4.104-5. Substantiation of claims for input tax credit.** — (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. **The input tax should be supported by an invoice or receipt showing the information as required under Section 108 (a) and 238 of the Code.** Input tax on purchases of real property should be supported by a copy of the public instrument i.e. deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with the VAT receipt issued by the seller. xxx" *(Emphasis supplied)*

Hence, to be entitled to a refund or tax credit of input VAT payments directly attributable to zero-rated or effectively zero-rated sales, petitioner must comply with the following requisites:

1) there must be zero-rated or effectively zero-rated sales;

2) input taxes were incurred or paid;

3) such input VAT payments are directly attributable to zero-rated sales or effectively zero-rated sales;

4) the input VAT payments were not applied against any output VAT liability; and

5) the claim for refund was filed within the two-year prescriptive period.

At this juncture, it bears stressing that to establish zero-rated sales of services as well as input taxes in claims for refund, the corresponding duly

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registered official receipts and invoices must be presented pursuant to Sections 113 and 237 of the 1997 NIRC[3], which provide:

> "**SEC. 113. Invoicing and Accounting Requirements for VAT Registered Persons. —**
>
> (A) Invoicing Requirements. — **A VAT-registered person shall, for every sale, issue an invoice or receipt.** In addition to the information required under Section 237, the following information shall be **indicated in the invoice or receipt**:
>
> (1) **A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN)**; and
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.
>
> xxx xxx xxx"

> "**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: ...xxx " *(Emphasis ours)*

The foregoing provisions should not be taken in isolation but in conjunction with Section 4.108-1 of Revenue Regulations 7-95 which provides:

> "**Sec. 4.108-1. Invoicing Requirements. —**
>
> All Vat registered persons shall for every sale or lease of goods or properties or services, **issue duly registered receipts or sales or commercial invoices which must show:**

[3] American Express International, Inc. – Philippine Branch v. Commissioner of the Internal Revenue, C.T.A. E.B. No. 197 (C.T.A. Case No. 6468), May 23, 2007.

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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 service;
5. the word 'zero-rated' imprinted on the invoice covering zero-rated sales; and
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 invoice or receipts and this shall be considered as a '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." *(Emphasis ours)*

In the recent case of ***Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue***[4], the Supreme Court clearly recognized that applications for refund/credit of input VAT filed with the BIR must comply with the appropriate Revenue Regulations. The Supreme Court, in citing the case of ***Commissioner of Internal Revenue v. Manila Mining***

[4] G.R. Nos. 141104 & 148763, June 8, 2007.

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Corporation[5], stressed the importance of complying with the substantiation requirements for claiming refund/credit of input VAT on zero-rated sales in accordance with the appropriate Revenue Regulations, in this wise:

> "Although the foregoing decision focused only on the proof required for the applicant for refund/credit to establish the input VAT payments it had made on its purchases from suppliers, **Revenue Regulations No. 3-88 also required it to present evidence proving actual zero-rated VAT sales to qualified buyers, such as (1) photocopy of the approved application for zero-rate if filing for the first time; (2) sales invoice or receipt showing the name of the person or entity to whom the goods or services were delivered, date of delivery, amount of consideration, and description of goods or services delivered; and (3) the evidence of actual receipt of goods or services.**" *(Emphasis supplied)*

Thus, by analogy, in order for petitioner to be entitled to its claim for refund/issuance of tax credit certificate representing unutilized input VAT attributable to its zero-rated sales for taxable year 2002, it must comply with the substantiation requirements under the appropriate Revenue Regulations i.e. Revenue Regulations 7-95.[6]

In connection with the afore-quoted NIRC provisions and Revenue Regulations, it is noteworthy to quote a portion of the case of ***American Express International, Inc., Philippine Branch v. Commissioner of Internal Revenue***[7] which reads:

> "The law is very clear. **Section 113 provides that 'a VAT registered person shall, for every sale, issue a duly registered VAT invoice or receipt for every sale transaction'.** Such VAT invoice or receipt must show the taxpayer identification number, followed by the word 'VAT', the BIR Authority imprint or BIR permit marker and the word

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[5] 468 (SCRA) 571 (2005).

[6] Panasonic Communications Imaging Corporation of the Philippines (formerly Matsushita Business Machine Corporation of the Philippines) v. Commissioner of Internal Revenue, C.T.A. EB No. 233 (C.T.A. Case No. 6245), November 20, 2007.

[7] C.T.A. EB No. 103 (C.T.A. Case No. 6294), March 3, 2006.

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'zero-rated' imprinted on the invoice or receipt covering a zero-rated sale. Considering so, **the sales of services referred to under Section 108 (B) (2) of the NIRC of 1997, as amended, as being subject to zero percent (0%) rate are those sales covered by duly registered VAT official receipts.**

The VAT registered person must substantiate the input VAT paid by purchase invoices or official receipts. An official receipt issued by the taxpayer is an essential requirement to prove the existence of sale and receipt of income and thereafter duly recorded in the accounting records.

The afore-quoted revenue regulation issued to implement the NIRC provision on VAT invoicing and accounting requirements is mandatory as the word 'shall' is used. The word 'shall' is imperative, commonly operating to impose an obligation or duty which may be enforced; it is a word of command that must be given a compulsory meaning (*Pioneer Texturing Corp. vs. NLRC, 280 SCRA 806*). Indeed, it is the duty of a seller-taxpayer to comply with the invoicing requirements laid down in the said NIRC provisions and Revenue Regulations."

Here, the Court in Division did not grant petitioner's entire claim for refund on certain substantiation issues.

Petitioner contends that its Quarterly VAT Returns for taxable year 2002, Audited Financial Statements for year 2002 and its Income Tax Return for 2002 are sufficient to prove that petitioner had incurred ₱3,285,308,055.85 worth of sales for 2002.

The Court *En Banc* has previously ruled that VAT official receipts or VAT invoices issued by the seller (petitioner in this case) is the best evidence to prove effectively zero-rated sales.[8] Thus, the Court in Division correctly used petitioner's official receipts as bases in computing petitioner's substantiated zero-rated sales.

[8] Kepco Philippines Corporation v. The Commissioner of Internal Revenue, C.T.A. EB No. 174 (C.T.A. Case No. 6679), May 9, 2007.

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Petitioner also avers that the pro-rating or proportionate allocation made by the Court in Division with regard to its exclusive sales of electricity to NPC is erroneous for being an over-extended application of the law. Section 112 of the 1997 NIRC should not be applied to petitioner's case because petitioner's taxable sales are all effectively zero-rated.

According to the Court in Division, since all of petitioner's sales are zero-rated, all payments of input VAT on its purchases of goods and services amounting to ₱11,710,868.86 should be directly attributable to petitioner's declared zero-rated sales of ₱3,285,308,055.85. The Court in Division found that out of the declared zero-rated sales of ₱3,285,308,055.85, petitioner was able to substantiate only the amount of ₱1,451,788,865.52. Thus, as the Court *En Banc* has previously declared on this matter, it is but logical that only a proportionate amount relating to the duly substantiated excess input VAT be allowed to be refunded.[9] There is no plausible reason why petitioner should be entitled to a refund of the full amount of ₱11,710,868.86 pertaining to its substantiated input VAT, because this covers its entire reported zero-rated sales, both substantiated and unsubstantiated. In disallowing a portion of petitioner's zero-rated sales, it essentially follows that a portion of the claim for refund of input VAT attributable to such zero-rated sales should also be disallowed by the Court. Otherwise, the Court will be disregarding the substantiation of petitioner's zero-rated sales, thereby negating its effect on

[9] Panay Power Corporation v. Commissioner of Internal Revenue, C.T.A. E.B. No. 286 (C.T.A. Case No. 6807), October 18, 2007.

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the amount of unutilized input VAT claimed for refund.[10] In this case, since some of the effectively zero-rated sales were not duly substantiated, it is apt for the Court to apportion the input VAT because it is impossible to specifically pin-point what input VAT is directly attributed to such substantiated effectively zero-rated sales.[11] Thus, the Court *En Banc* quotes with approval the ruling made by the Court in Division:

> "...petitioner presented in evidence its Rehabilitation, Operation Maintenance and Management Agreement with the NPC and Korea Electric Power Corporation and the various official receipts to prove its sales to the NPC. Since all of its sales are zero-rated, all payments of input VAT on its purchases of goods and services amounting to P11,710,868.86 should be directly attributable to its declared zero-rated sales of P3,285,308,055.85. However, out of the declared zero-rated sales of P3,285,308,055.85, petitioner was able to substantiate only the amount of P1,451,788,865.52, to wit:

Exhibit	OR No.	Date	Amount
K	196	1/7/2002	P73,947,108.77
K-1	197	1/17/2002	93,128,704.04
K-2	198	2/7/2002	71,358,271.95
K-3	199	2/11/2002	89,203,098.59
K-4	200		73,381,775.74
K-5	201	3/13/2002	42,852,305.83
K-6	202	4/10/2002	73,308,066.29
K-7	204	5/8/2002	65,470,983.71
K-8	205	5/15/2002	85,847,822.37
K-9	206	6/11/2002	74,697,771.34
K-10	209	7/11/2002	72,299,993.43
K-11	211	8/8/2002	74,850,280.55
K-12	213	9/6/2002	72,325,968.86
K-13	215	10/9/2002	74,319,232.09
K-14	216	10/30/2002	87,146,130.17
K-15	217		128,230,460.22
K-16	219	11/7/2002	74,389,194.98
K-17	220	12/11/2002	34,880,455.30
K-18	221	12/11/2002	88,192,294.29
K-23	212	8/8/2002	1,958,947.00
	Total		**P1,451,788,865.52**

[10] Marubeni Philippines Corporation v. Commissioner of Internal Revenue, C.T.A. E.B. No. 236 (C.T.A. Case No. 6581), October 1, 2007.
[11] *Supra*, note 8.

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In view of the foregoing findings, it becomes necessary to apportion the validly supported input VAT to its substantiated zero-rated sales of P1,451,788,865.52. The rate to be applied will be based on the total volume of declared zero-rated sales, computed as follows:

Substantiated zero-rated sales to NPC	P1,451,788,865.52
Divided by the total declared zero-rated sales	3,285,308,055.85
Rate of substantiated zero-rated sales	44.19%

Therefore, the proper subject of petitioner's claim for refund shall only be 44.19% of the validly supported input VAT."[12]

Petitioner likewise disagrees with the Court in Division's disallowance of its input VAT on purchase of goods amounting to ₱64,509.50 on the ground that there were no invoices, because it allegedly submitted official receipts. It avers that the presentation of an official receipt for the same transaction can also be recognized as basis for the computation of VAT. In the hierarchy of proof for the substantiation of purchases of goods and services, official receipts occupy a higher plane because it is the best evidence of actual payment.

The Court *En Banc* agrees with the disquisition on this issue by the Court in Division as follows:

"The disallowances referred to in items (a) and (b) are supported by the provisions of Section 110 (A) (2) (a) of the NIRC of 1997, which state:

'**SEC. 110.** Tax Credits. –

(A) Creditable Input Tax. –

x x x

(2) The input tax on domestic purchase of goods or properties shall be creditable:

[12] Decision, C.T.A. Case No. 6965, February 26, 2007, pp. 9 – 10.

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(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

x x x

However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.' *[Underscoring supplied]*

In relation thereto, Sections 106(D)(1) and 108(C) of the NIRC of 1997 provide:

'**SEC. 106.** Value-added Tax on Sale of Goods or Properties. –

x x x

(D) Determination of the Tax. –

(1) The tax shall be computed by multiplying the total amount indicated in the invoice by one-eleventh (1/11).

x x x

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

x x x

(C) Determination of the Tax. – The tax shall be computed by multiplying the total amount indicated in the official receipt by one-eleventh (1/11).' *[Underscoring supplied]*

The Court *en banc* clarified in *BASF Philippines, Inc. v. Commissioner of Internal Revenue*[13] the use of an invoice and an official receipt as support for valid purchase of goods or service, to wit:

'The law is clear; it states "upon consummation of sale," in the case of domestic purchases of goods or properties, and "upon payment of compensation or fee," in the case of purchases of services. Pursuant to the afore-quoted Section 110, the input VAT on domestic purchases of goods or properties shall be allowed as tax credit to the purchaser only upon consummation of sale, which means upon issuance by the seller of the VAT sales invoice evidencing the sale of goods/properties. On the other hand, the input VAT on purchases of services shall be available as tax credit to the purchaser only upon payment of the compensation or fee i.e., upon issuance by the seller of the VAT official receipt evidencing receipt of the payment for services performed or yet to be performed.

[13] C.T.A. EB No. 47, January 5, 2006.

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> From the foregoing, it can be concluded that **there is a clear delineation between official receipts and invoices. Contrary to petitioner's position, these two documents cannot be used interchangeably as evidence to prove a particular transaction. Such as in the instant case, petitioner presented official receipts and statements of accounts to prove input VAT on its local goods purchases, instead of invoices as required by law.'"** *(Emphasis supplied)*

Petitioner further claims that the input VAT on purchases of service that were disallowed by the Court in Division for not being supported by official receipts, are evidenced by official receipts that were submitted to the independent CPA for verification. Copies of these receipts were allegedly submitted to the Court as annexes to the Report of the independent CPA.

Based on petitioner's Formal Offer of Documentary Exhibits[14] filed with Court in Division on March 16, 2006, ***Exhibits "O" to "O-6109"*** are photocopies of suppliers' invoices, statements of account and official receipts pertaining to petitioner's purchases of goods and services for taxable year 2002. Upon verification of these documents, the Court in Division found that input VAT on petitioner's purchases of service in the aggregate amount of ₱256,689.98 are not supported by official receipts, which are itemized as follows:

> "However, a careful scrutiny of petitioner's supporting documents reveals that input VAT in the aggregate amount of P5,045,357.80 should further be disallowed for the reasons hereunder stated:

	Supplier	Date	Invoice/OR Amount	Input VAT
(a)	**Input VAT on purchase of goods not supported by an invoice**			
	xxx	xxx	xxx	

[14] *Records*, C.T.A. Case No. 6965, pp. 121 – 130.

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(b) Input VAT on purchase of service not supported by an official receipt

AML Auto Aircon & Elec. Supply	5/18/2002	P1,100.00	P100.00
Delfin's Portrait & Photo Supply	9/28/2002	143.50	13.05
Delfin's Portrait & Photo Supply	9/7/2002	148.00	13.45
DHL	.6/28/2002	1,216.82	110.62
Ding's Auto Repair	2/5/2002	3,000.00	272.73
East Photo	10/29/2002	116.50	10.59
Eastern Telecoms	3/1/2002	88.77	8.07
Eurasian Motors Co 5/27/2002		1,100.00	100.00
Eurasian Motors Co 5/27/2002		1,160.00	100.00
First Imperial Cargo, Inc	10/30/2002	205,658.86	18,696.26
Globe Telecom	2/5/2002	2,064.75	404.13
Globe Telecom	various	26,497.67	2,408.88
Globe Telecom	11/20/2001	4,707.28	427.93
Globe Telecom	various	30,769.64	2,797.24
Globe Telecom	various	30,264.19	2,751.29
HD Edsa Auto Center Corp.	6/28/2002	27,803.05	2,527.55
INFOCOM	1/1/2002	16,500.00	1,500,00
INFOCOM	2/1/2002	41,454.60	3,768.60
INFOCOM	4/26/2002	37,159.10	3,378.10
INFOCOM	5/1/2002	16,500.00	1,500.00
INFOCOM	6/28/2002	30,800.00	2,800.00
Mr. Quickie Corp	1/31/2002	60.00	5.45
Mr. Quickie Corp	23-Nov	30.00	2.73
Omni Workx, Inc	5/21/2002	652,415.06	59,310.46
Omni Workx, Inc	various	253,225.26	23,020.48
PLDT	2/28/2002	4,523.32	411.21
PLDT	various	2,979.02	270.82
PLDT	2/24/2002	45,302.73	4,118.43
PLDT	4/26/2002	67,318.24	6,119.84
PLDT	5/15/2002	63,044.52	5,731.32
PLDT	5/27/2002	50,380.77	4,580.07
PT & T	6/30/2002	27,720.00	2,520.00
PT & T	6/28/2002	72,553.14	6,595.74
St. Francis Transport System	6/20/2002	5,649.49	513.59
Unisun Supermarket, Inc	1/30/2002	172.00	15.64
Globe Telecom	5/23/2002	61,280.34	5,570.94
Philippine Fuji Xerox	6/28/2002	2,237.51	203.41
Fuji Zerox	12/2/2002	2,687.63	244.33
Fuji Zerox	8/31/2002	921.58	83.78
3N Copy Systems	9/6/2002	1,225.00	111.36
3N Copy Systems	9/9/2002	1,225.00	111.37
Tirelandia, Inc.	8/9/2002	60.00	5.45
Globe Telecom	various	31,640.73	2,876.43
Globe Telecom	various	39,419.27	3,583.57
PLDT	10/11/2002	135,843.29	12,349.39
PLDT	10/30/2002	6,273.30	570.30
Hankook Insurance Agency	6/27/2002	22,421.63	2,038.33
INFOCOM	12/1/2002	23,650.00	2,150.00
PLDT	12/1/2002	6,273.30	570.30
Fast Clean Laundry & Dry Cleaning	4/15/2002	952.00	86.55
Ihsung Engineering	12/27/2002	761,532.20	69,230.20
Subtotal		**P2,821,269.06**	**P256,689.98"**[15]

If the items enumerated above were indeed supported by copies of official receipts that were submitted to the Court, then petitioner, to buttress its claim, could have identified or cited the corresponding *Exhibit* numbers of such receipts in its Petition for Review, but it failed to do so.

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[15] Decision, C.T.A. Case No. 6965, pp. 14 – 16.

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The Court *En Banc* need not belabor that the question of whether or not the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court. Thus, in the absence of the Court's abuse or improvident exercise of authority, findings of facts made by the Court in Division, especially if supported by the evidence, must be accorded deference and respect.[16] Such is the situation in the present case.

Lastly, petitioner posits that it is clear from the recently decided case of ***Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*** [17]**("*Intel*")** that the failure to comply with the requirements of invoicing (*imprint of TIN-V*) will not result in the automatic denial of a claim for tax credit/refund.

Petitioner's reliance on the *Intel* case is misplaced.

First. In the *Intel* case, the Supreme Court ruled that there is no law or BIR rule or regulation requiring petitioner's authority from the BIR to print its sales invoices (BIR authority to print) to be reflected or indicated therein. However, it declared that a statement that the seller is a VAT-registered entity followed by its TIN-V is one of the items required to be indicated in the receipts or invoices. Here, the principal ground for the partial denial of

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[16] Commissioner of Internal Revenue v. Philippine National Bank, C.T.A. EB No. 284 (C.T.A. Case No. 6680), November 15, 2007.
[17] G.R. No. 166732, April 27, 2007, 522 SCRA 657.

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petitioner's claim for refund is the failure to print "TIN-VAT" on the invoices and receipts supporting petitioner's purchases of goods and services.

Second. In the *Intel* case, the Supreme Court ruled that Revenue Memorandum Circular No. 42-2003[18] cannot be applied retroactively to *Intel's* case because to do so would be prejudicial to *Intel*. The Supreme Court noted that said Circular was issued on **July 15, 2003** by then Commissioner Guillermo L. Parayno, Jr., while *Intel's* claim was filed on May 18, 1999. Evidently, the Supreme Court recognizes the validity of the Circular which clarified that failure to comply with the invoicing requirements on the documents supporting the sale of goods and services would result in the disallowance of the claim for refund of creditable input taxes. Here, petitioner's claim was filed with the BIR on **April 20, 2004** and with this Court on **April 22, 2004**, which clearly shows that the said Circular applies to petitioner's case.

Based on the foregoing discussion, the Court in Division was correct in disallowing a portion of petitioner's claim for refund on the ground that input taxes on petitioner's purchase of goods and services were not supported by invoices and receipts printed with "TIN-VAT".

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[18]Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters.

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In fine, the Court *En Banc* finds no cogent reason to reverse the assailed Decision promulgated on February 26, 2007 and the Resolution dated June 28, 2007.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED.** Accordingly, the assailed Decision and Resolution are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice

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