REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. EB No. 409
(C.T.A. Case No. 7381)

Present:

-versus-

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

PROFESSIONAL SERVICES, INC.,
Respondent.

Promulgated:
JAN 08 2009

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DECISION

BAUTISTA, J.:

The Case

Before Us is a Petition for Review[1] filed on August 14, 2008, praying for the reversal of:

[1] *Rollo*, C.T.A. EB No. 409 (C.T.A. Case No. 7381), pp. 7 - 46 with Annexes.

1. the Decision dated March 17, 2008 of the Second Division of the Court ("Court in Division") in C.T.A. Case No. 7381, withdrawing and canceling the assessment for deficiency income and value-added taxes ("VAT") for the taxable year 2001 against herein respondent; and

2. the Resolution dated July 11, 2008, denying the "Motion for Reconsideration" of herein petitioner.

Antecedent Facts

As recapitulated by the Court in Division, the following facts are undisputed:

> "Professional Services, Inc. (petitioner)[2] is a corporation whose primary purposes are '[t]o establish, operate, manage, own and maintain a hospital or hospitals, medical and chemical clinics or laboratories and such other enterprises which may have similar or analogous undertakings or dedicated services in connection therewith, and to do any and all things and to enter into any and all kinds of transactions that will achieve the purposes so mentioned, provided that purely professional medical or surgical services in connection therewith shall be performed by duly qualified physicians or surgeons who may or may not be connected with the corporation and who shall be freely and individually contracted by patients.'
>
> Petitioner owns and operates the New Medical City hospital; a licensed tertiary hospital located at The Medical City Complex, Ortigas Avenue, Pasig City.

[2] Herein Respondent.

On March 4, 2005, petitioner received from respondent[3] a Preliminary Assessment Notice (PAN) for deficiency income and value-added taxes for the taxable year 2001, computed as follows:

Kind of Tax	Basic	Surcharge	Interest	Compromise	Total
Income Tax	4,468,700.22	0.00	2,568,584.40	25,000.00	7,062,284.62
Value Added Tax	20,326,211.80	0.00	12,574,407.19	25,000.00	32,925,618.99
TOTAL	24,794,912.02	0.00	15,142,991.59	50,000.00	39,987,903.61

On March 18, 2005, respondent received petitioner's letter-protest dated March 17, 2005, to the PAN for the taxable year 2001.

On April 15, 2005, petitioner received from respondent a Formal Letter of Demand dated March 17, 2005, demanding payment of deficiency income and value-added taxes computed as follows:

Income Tax		
Basic Tax Due (unsupported CWT per audit)		P4,468,700.22
Add: 20% Interest	P2,867,313.95	
Compromise Penalty	25,000.00	2,892,313.95
Total Amount Still Due		**7,361,014.17**
Value Added Tax		
Taxable sales per audit		203,262,118.00
Output tax due		-20,326,211.80
Less: Creditable input tax	0.00	
Tax withheld/paid per return	0.00	0.00
Basic Tax Due		20,326,211.80
Add: 20% Interest	13,933,200.53	
Compromise Penalty	25,000.00	13,958,200.53
Total Amount Still Due		**34,284,412.33**
TOTAL		**41,645,426.50**

Further, in two Audit Result/Assessment Notices INC No. 01-000144 and VT No. 01-000165, both dated April 15, 2005, respondent informed petitioner of its deficiency income tax in the amount of P7,361,014.17 arising from the tax credits granted to senior citizens under Section 4 of Republic Act (RA) 7432 and Revenue Regulations (RR) 2-94 and deficiency value-added tax in the amount of P34,284,412.33 arising from its sales of pharmacy medicines under RR No. 10-94.

Petitioner filed its Formal Protest to the Final Demand Letter, with supporting documents, to strengthen its claim that it is not liable for any deficiency tax assessment.

As the one hundred eighty (180)-day period within which to render decision on the protest expired on November 9, 2005,

[3] Herein Petitioner.

petitioner filed before this Court the present Petition on December 9, 2005.

Respondent raised the following counterarguments in his Answer:

1. The assessment issued by respondent has become final and executory;

2. The term 'tax credit' as used in RA 7432 is not the literal 'tax credit' as used in the National Internal Revenue Code; and

3. The sale of drugs to in-patients is subject to VAT on sales of goods.

Trial proceeded and only petitioner presented its testimonial and documentary evidence after the Court declared respondent to have waived his right to present evidence. The case was submitted for decision on July 4, 2007 after both parties filed their respective Memorandum.

The issues as stipulated by the parties are as follows:

'1. Whether or not the *Formal Protest to the Final Demand Letter* was filed on time by Petitioner via registered mail on May 13, 2005. Corollary thereto, whether or not the assessment has become final, executory, and demandable.

2. Whether or not the sale of pharmacy drugs/medicine to in-patients are VAT-able receipts; or stated otherwise, whether or not the sale of pharmacy drugs/medicine to in-patients fall within the purview of Section 109(1) of the National Internal Revenue Code (NIRC), as amended.

3. Whether or not the 20% discount on purchase of medicine granted by Petitioner in year 2001 to senior citizens should be treated as a deduction from gross sales/income as interpreted in Revenue Regulation No. 2-94, or as a tax credit under Republic Act 7432 and as defined under the NIRC.'"[4] *(Citations omitted)*

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[4] *Rollo*, pp. 28 – 31.

The Ruling of the Court in Division

At first, the Court in Division resolved the issue of whether or not the "Protest on the Formal Letter of Demand" of herein respondent was timely filed. Citing the case of *Gold Line Transit, Inc. v. Luisa Ramos,*[5] and applying the pertinent provisions of the Revised Rules of Court ("ROC"), particularly Section 3 of Rule 13, and Section 3(v) of Rule 131, the Court in Division found that:

> "Basic is the rule that when a mail matter was received by registered mail, there exists a presumption that it was received in the regular course of mail as provided in Section 3(v), Rule 131 of the Revised Rules of Court. And in order to raise this presumption, it must be proven that: (1) the letter was properly addressed with postage prepaid; and, (2) it was mailed.
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> To prove that it filed a protest within the reglementary period, petitioner[6] presented the following exhibits:
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> 1. Exhibit 'K' Affidavit of Mr. June B. Rojas, paralegal of The Bengzon Law Firm, stating that he filed the *Protest on the Formal Letter of Demand* by registered mail, with Registry Receipt No. 22224, on May 13, 2005 at the Makati Central Post Office;
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> 2. Exhibit 'L' Affidavit of Ms. Candelaria A. Ponciano, employee of petitioner, stating that she received copy of the *Protest on the Formal Letter of Demand* on May 12, 2005;
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> 3. Exhibit 'I' Makati Central Post Office Registry Receipt No. 22224; and
>
> 4. Exhibit 'J' Makati Central Post Office Certification, dated April 11, 2006, with an attached Inquiry Form on Domestic Recorded Mail.

[5] G.R. No. 144813, August 15, 2001, 363 SCRA 262.
[6] Herein Respondent.

The Certification issued by Ms. Emily A. Gianan, Chief of the Administrative Unit of the Philippine Postal Corporation, and the Inquiry Form on Domestic Recorded Mail show that the counsel for petitioner sent a letter to the Bureau of Internal Revenue (BIR) by registered mail on May 13, 2005. Petitioner's witness, Mr. June B. Rojas, attested to the facts that the letter-protest was filed by registered mail before the lapse of the prescribed period and that no return card was received.

As the Revised Rules of Court shall apply by analogy or in a suppletory character, the date of the mailing of pleadings, motions, and other papers, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing and the envelope shall be attached to the record of the case. Hence, the *Protest on the Formal Letter of Demand* was deemed to have been filed on May 13, 2005.

In ***Gold Line Transit, Inc. v. Luisa Ramos,*** the Supreme Court ruled that 'xxx postal officials enjoy the presumption, without clear and convincing evidence to the contrary, to have regularly performed their official duty and that they have acted in good faith. *Omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium.* All things are presumed to have been done correctly and with due formality until the contrary is proved. For another reason, mails are presumed to have been properly delivered and received by the addressee "in the regular course of the mail." These *juris tantum* presumptions stand even against the most well-reasoned allegations, pointing to some possible irregularity or anomaly.'

As the presumption exists in favor of petitioner, respondent[7] has the burden of proving that petitioner's protest to the FAN was actually mailed after the prescriptive period by presenting the mail envelope used by petitioner duly stamped by the Philippine Postal Corporation showing the date when the protest was sent by registered mail. And, this Court finds that respondent failed to discharge the burden as there appears to be no controverting evidence to prove his assertion that petitioner failed to file its protest on time."[8]

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[7] Herein Petitioner.
[8] *Rollo*, pp. 33 – 35.

The Court in Division then proceeded to determine whether the sale of pharmacy drugs/medicines to in-patients falls within the purview of Section 109 (l) of the National Internal Revenue Code of 1997 ("NIRC"), which exempts medical, dental, hospital and veterinary services subject to the provisions of Section 17 of Republic Act No. 7716, as amended, from the payment of VAT.

In the case of *St. Luke's Medical Center, Inc. v. Court of Tax Appeals and The Commissioner of Internal Revenue*,[9] the Court of Appeals construed the phrase "hospital services" to include the sale of pharmaceutical items to in-patients. Finding no reason to depart from this interpretation, the Court in Division ruled that the sale of medicines, drugs and pharmaceutical items to in-patients is part of the "hospital service", and thus, exempt from VAT, as provided by Section 109 (l) of the NIRC, as amended.[10]

Finally, in keeping with the prevailing jurisprudence, the Court in Division declared that the 20% sales discounts granted to qualified senior citizens must be treated as tax credits pursuant to Republic Act No. 7432 ("RA 7432"), not deductions from gross income as provided in Revenue Regulations No. 2-94 ("RR 2-94").[11]

In view of the foregoing, the Court in Division disposed of the case in this wise:

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[9] CA-G.R. SP No. 45892, March 13, 1998.
[10] *Rollo*, p. 37.
[11] *Id.*, p. 40.

> "**WHEREFORE**, petitioner's Petition for Review is hereby **GRANTED**. Accordingly, the assessment for deficiency income and value-added taxes for the taxable year 2001 against petitioner is hereby **WITHDRAWN** and **CANCELLED.**
>
> **SO ORDERED.**"[12]

On April 9, 2008, herein petitioner filed a "Motion for Reconsideration"[13] to which herein respondent filed an Opposition.[14]

On July 11, 2008, the Court in Division denied the "Motion for Reconsideration" for lack of merit.[15]

The Issues

Hence, the instant Petition anchored upon the following grounds:

"I.

THE SECOND DIVISION OF THE HONORABLE CTA ERRED WHEN IT HELD THAT THE PROTEST OF RESPONDENT TO THE ASSESSMENT WAS FILED ON TIME.

II.

THE SECOND DIVISION OF THE HONORABLE CTA ERRED WHEN IT HELD THAT THE TERM 'TAX CREDIT' AS USED IN REPUBLIC ACT NO. 7432 SHOULD BE LITERALLY CONSTRUED AS A 'TAX CREDIT' AS USED IN THE NIRC OF 1997.

III.

THE SECOND DIVISION OF THE HONORABLE CTA ERRED WHEN IT HELD THAT THE SALE OF PHARMACY DRUGS/MEDICINE TO IN-PATIENTS IS COVERED BY THE EXEMPTION FROM VAT UNDER SECTION 109 (L) OF THE

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[12] *Rollo*, p. 40.
[13] *Records*, C.T.A. Case No. 7381, pp. 264 - 282.
[14] *Id.*, pp. 289 - 295.
[15] *Rollo*, pp. 42 - 43.

NATIONAL INTERNAL REVENUE CODE OF 1997 (NIRC OF 1997)."[16]

The Ruling of the Court En Banc

The Petition must fail as all the grounds raised by petitioner are bereft of merit. We shall discuss each one of them in the order they are presented.

The Protest on the Formal Letter of Demand was filed on time

Petitioner contends that respondent failed to prove the timely filing of its "Protest on the Formal Letter of Demand." He reasons that the presumption under Section 3 (v), Rule 131 of the ROC, used by the Court in Division is inapplicable, as it pertains to situations where receipt of mail matters coursed through the official post is denied. In this case, petitioner does not deny receipt of the protest but only that it was filed out of time. Hence, petitioner claims that what should exist is a burden on the respondent to prove by independent and competent evidence, the timely filing of its protest by registered mail. Petitioner insists that the best evidence to prove the date of filing is the Return Card of the registered mail. Furthermore, petitioner avers that the Certification,[17] issued by the Makati Central Post Office and submitted as evidence by respondent, is

[16] *Rollo*, pp. 9 -10.
[17] *Records*, p. 165, Exhibit "J."

inadmissible, given that no witness was presented to properly identify the said letter.

In its Comment,[18] respondent counter-argues that under Section 13, Rule 13 of the ROC, if service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. Also in the case of *Domingo v. De Leon*,[19] if service is made by mail, proof of service of a pleading shall consist of the affidavit of the person serving, together with the registry receipt, if registered.

Thus, respondent maintains that the Registry Receipt No. 22224[20] issued by the Makati Central Post Office and the Affidavit executed by Mr. June B. Rojas[21], a paralegal of respondent's counsel, are sufficient to prove that respondent timely filed its protest on May 13, 2005.

As to the Certification issued by the Makati Central Post Office, respondent asserts that it is an official public document and, therefore, considered as *prima facie* evidence of the facts stated therein. Accordingly, there is no need for the person who issued the Certification to testify in Court.

Moreover, respondent points out that since petitioner refuses to present the envelope containing the "Protest on the Formal Letter of

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[18] *Rollo*, pp. 50 – 63.
[19] G.R. No. L-17686, November 29, 1961, 3 SCRA 586.
[20] *Records*, p. 70, and Exhibit "I" of duplicate docket.
[21] *Id.*, pp. 168 - 169, Exhibit "K."

Demand" to show the date of filing, it is presumed that the date stamped on the envelope is adverse to the case of petitioner based on Section 3 (e), Rule 131 of the ROC, which provides that evidence willfully suppressed would be adverse if produced.

As We see it then, the crux of the controversy is the date of filing of the "Protest on the Formal Letter of Demand."

Section 228 of the NIRC states that:

> "SEC. 228. Protesting of Assessment. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.** Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30)

> days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis supplied)*

Applying suppletorily the provisions of the ROC,[22] particularly Section 3, Rule 13 of the ROC, if the protest is filed by registered mail, the date of the mailing as shown by the post office stamp on the envelope or the registry receipt shall be considered as the date of its filing. As proof of service, Section 13 of the same Rule states that, if service is made by registered mail, proof shall be made by the registry receipt issued by the mailing office.

In the instant case, respondent is resolute in saying that it filed its protest by registered mail on May 13, 2005. To prove its claim, respondent presented the following:

1. Affidavit of Mr. June B. Rojas, paralegal of The Bengzon Law Firm, stating that he filed the "Protest on the Formal Letter of Demand" by registered mail, with Registry Receipt No. 22224, on May 13, 2005 at the Makati Central Post Office (Exhibit "K");

2. Affidavit of Ms. Candelaria A. Ponciano, employee of respondent stating that she received a copy of the "Protest on the Formal Letter of Demand" on May 12, 2005 (Exhibit "L");

3. Makati Central Post Office Registry Receipt No. 22224 (Exhibit "I"); and

4. Makati Central Post Office Certification, dated April 11, 2006, with an attached Inquiry Form on Domestic Recorded Mail (Exhibit "J").

[22] Section 4, Rule 1 of the Revised Rules of Court.

Petitioner, on the other hand, alleges that respondent filed its protest only on May 25, 2005 or after a lapse of forty (40) days from receipt of the Final Assessment Notice and Formal Letter of Demand. No evidence was presented by petitioner to prove his claim.

As between the two, We are inclined to rule that the evidence preponderates in favor of the respondent.

Contrary to the view of petitioner, the Certification issued by the Makati Central Post Office is admissible in evidence. Having been issued by a government office, and certified to by an authorized personnel clothed with authority and duty to issue such Certification, it is an exception to the hearsay rule as provided in Section 44, Rule 130[23] of the ROC, which should be read in conjunction with Section 23, Rule 132[24] of the same Rules. Simply put, a certification, without the testimony of the person giving the certification, is sufficient and competent evidence.[25]

Furthermore, it is well settled that the evidentiary nature of public documents must be sustained in the absence of strong, complete, and conclusive proof of its nullity.[26] In this case, petitioner did not present any evidence to show that the contents of the Certification issued by the

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[23] SEC. 44. *Entries in official records.*—Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated. (38)
[24] SEC. 23. *Public documents as evidence.*—Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter. (24a)
[25] Escobar v. Luna, G.R. No. 169204, March 23, 2007, 519 SCRA 1.
[26] Sierra v. Court of Appeals, et. al., G.R. No. 90270, July 24, 1992, 211 SCRA 785.

Makati Central Post Office are false. Neither did petitioner present any evidence to prove that the person who issued the Certification was not authorized to do so, nor did he present evidence to show that the person who issued the same acted beyond her authority.

Under the circumstances, We find Registry Receipt No. 22224, the affidavit of Mr. June B. Rojas, and the Certification issued by the Makati Central Post Office sufficient to show that the "Protest on the Formal Letter of Demand" was timely filed.

The 20% discount on purchase of medicines granted by respondent to senior citizens in the year 2001 should be treated as a tax credit

Petitioner is of the view that the term "tax credit" under RA 7432 means a deduction from the establishment's gross income and not from its income tax liability pursuant to RR 2-94. To support his position, petitioner alludes to the enactment of Republic Act No. 9257 ("RA 9257"), which amended RA 7432. Under Section 4 of the new law, an establishment may claim the discounts granted as "tax deductions" based on the net cost of the goods sold or services rendered; provided that, the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted. In view of this development, petitioner believes that there is a need to revisit the jurisprudence cited by Court in Division in its Decision.

We are not persuaded.

Indeed, with the effectivity of RA 9257 on 21 March 2004, there is now a new tax treatment of senior citizens' discount granted by all covered establishments. The discount is now considered as a deductible expense from gross income and no longer as a tax credit.[27] However, since the present case covers the taxable year 2001, the old law (RA 7432) should apply and not RA 9257, as it cannot be applied retroactively.

Section 4 (a) of the old law states that:

> "SECTION 4. Privileges for the Senior Citizens. – The senior citizens shall be entitled to the following:
>
> a) **the grant of twenty percent (20%) discount from** all establishments relative to utilization of transportation services, hotels and similar lodging establishment, restaurants and recreation centers and **purchase of medicine anywhere in the country**: Provided, That **private establishments may claim the cost as tax credit;**" *(Emphasis supplied)*

It is clear from the wordings of the law that the 20% discount required by the RA 7432 to be given to senior citizens is a tax credit, not a deduction from the gross sales of the establishment concerned as petitioner wants it to be. RR 2-94 from which petitioner draws its definition of the term "tax credit" may not prevail over the clear provision of the law. In a string of cases,[28] the Supreme Court has declared RR 2-94, which considers

[27] Commissioner of Internal Revenue v. Central Luzon Drug Corporation, G.R. No. 159610, June 12, 2008, 554 SCRA 398.

[28] Commissioner of Internal Revenue v. Central Luzon Drug Corporation, *supra*, at note 27; M.E. Holding Corporation v. Court of Appeals, G.R. No. 160193, March 3, 2008, 547 SCRA 389; Commissioner of Internal Revenue v. Bicolandia Drug Corporation, G.R. No. 148083, July 21, 2006, 496 SCRA 176; Commissioner of Internal Revenue v. Central Luzon Drug Corporation, G.R. No. 148512, June 26, 2006, 492 SCRA 575; and

such discount as mere deductions to the taxpayer's gross income or gross sales, null and void for failing to conform to the law it sought to implement.

To quote the Supreme Court, "If the words of the law are clear, plain, and free of ambiguity, it must be given its literal meaning and applied without any interpretation. Hence, the senior citizens' discount may be claimed as a tax credit and not as a refund." [29]

Premises considered, We affirm the ruling of the Court in Division that the 20% sales discounts granted to qualified senior citizens should be treated as tax credits and not as mere tax deductions from gross income.[30]

The sale of pharmacy drugs/medicines to in-patients is exempt from VAT under Section 109 (l) of the NIRC

Petitioner is adamant that the sale of drugs and medicines to in-patients is not exempt from VAT because said transaction does not fall under the phrase "hospital services."

Relying on Section 106 (A) (1) of the NIRC, petitioner argues that drugs are considered goods and not services, as they are tangible items subject to pecuniary estimation. For this reason, the sale of pharmacy drugs/medicines to in-patients should not be included in the exemption

Commissioner of Internal Revenue v. Central Luzon Drug Corporation, G.R. No. 159647, April 15, 2005, 456 SCRA 414.
[29] Commissioner of Internal Revenue v. Central Luzon Drug Corporation, *supra*, at note 27.
[30] *Rollo*, p. 38.

provided for in Section 109 (l) of the NIRC as this pertains to "hospital services" only.

In response to this argument, respondent cites BIR Ruling dated April 6, 2005,[31] issued by then BIR Commissioner Jose Mario Buñag, the dispositive portion of which reads:

> "**WHEREFORE**, in *view of the foregoing*, this Office holds that the pharmacy sales by PSI to in-patients are exempt from VAT pursuant to Section 109 (l) of the Tax Code of 1997. Accordingly, being a VAT exempt transaction, PSI need not reflect in its VAT return the aforesaid sales to in-patients. But the same should nevertheless be properly accounted for and declared as part of patients' services income in computing the income tax of PSI and in the preparation of its audited financial statements."

The said ruling cited the decision of the Court of Appeals in *St. Luke's Medical Center v. Court of Tax Appeals and Commissioner of Internal Revenue.*[32] In that case, the Court of Appeals ruled that the item "hospital services" in Section 103 (l)[33] should include the sale of drugs to in-patients of the hospital because the maintenance and operation of a pharmacy or drugstore by a hospital is a necessary and essential service or facility rendered by any hospital for its patients. The Court of Appeals further explained that, "a person who resorts to the hospital for medical treatment can reasonably expect that the hospital would make available to its patients immediate and prompt access not only to the services of doctors, nurses and allied medical personnel, but also to necessary laboratory

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[31] *Records,* pp. 159 - 161, Exhibit "G."
[32] *Supra,* at note 9.
[33] Presently Section 109 (l) of the NIRC.

services as well as medicines, drugs and pharmaceutical items which are dispensable aids in practically any form of medical treatment and care of patients." It went on to say that, "the sale of drugs or pharmaceutical items to in-patients of the hospital should be exempted from VAT because unlike the sale of retailing of drugs or medicines by drugstores in general, the procurement of medicines and pharmaceutical items from the hospital drugstore or pharmacy amounts to the availment of service rendered or made available by the hospital for its in-patients and not simply the buying of such goods."

Based on the foregoing disquisition, We hold that the sale of pharmacy drugs/medicines to in-patients is included in the phrase "hospital service," and thus, exempt from VAT pursuant to Section 109 (l) of the NIRC, as amended.

All told, We find no reversible error that can be ascribed to the Court in Division.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED**. Accordingly, the Decision dated March 17, 2008 and the Resolution dated July 11, 2008 are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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