REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AT & T COMMUNICATIONS SERVICES PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 381
(C.T.A. Case No. 7221)

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

Promulgated:

SEP 24 2008 [illegible] 3:00 p.m.

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D E C I S I O N

CASTAÑEDA, JR., J.:

This is a Petition for Review filed before the Court of Tax Appeals *en banc* assailing the Decision dated December 12, 2007 and the Resolution dated March 12, 2008 issued by the First Division of this Court in the case entitled, *"AT&T Communication Services Philippines, Inc. vs. Commissioner of Internal Revenue"*, docketed as CTA Case No. 7221.

The assailed Decision DISMISSED the petition seeking the refund or issuance of tax credit certificate in the amount of P 3,003,265.14 allegedly representing unutilized input Value Added Tax (VAT) paid on its domestic purchases of goods and services attributable to zero-rated sales of services for the period covering January 1, 2003 to December 31, 2003.

THE FACTS

The facts of the case as found by the Court in First Division are as follows:

> Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal place of business at the 18th Floor, BA-Lepanto Building, 8747 Paseo de Roxas, Makati City. It is principally engaged in the business of rendering information, promotional, supportive and liaison services. It is duly registered with the Bureau of Internal Revenue (BIR) as a VAT Taxpayer with Taxpayer Identification (TIN) No. 004-519-384-000.
>
> Respondent is the duly appointed BIR Commissioner, vested by law to decide, approve and grant claims for refund or tax credit of erroneously or excessively paid taxes, including excess or unutilized input VAT payments. He holds office at the 4th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.
>
> On January 1, 1999, petitioner entered into a Service Agreement with AT&T Communications Services International, Inc. (AT&T-CSI), whereby compensation for such services is paid in US Dollars.
>
> Petitioner has an Assignment Agreement with AT&T-SI where the latter assigned to petitioner the performance of services AT&T-SI was supposed to provide to Mastercard International Inc. under a Virtual Private Network Services Agreement. AT&T-SI and Mastercard International Inc. are both non-resident foreign corporations. The compensation for such services is likewise paid in US Dollars to be inwardly remitted to the Philippines by AT&T-SI, which acts as the collecting agent of petitioner.
>
> Subsequently, petitioner executed a second Assignment Agreement with AT&T-SI to perform the latter's obligation to Lexmark International, Inc. by providing services to its affiliates in the Philippines, namely: Lexmark Research and Development Corporation and Lexmark International (Philippines), Inc. Lexmark Research International, Inc. is a non-resident foreign corporation. And its affiliates are both Philippine Economic Zone Authority (PEZA)-registered enterprises. It pays petitioner's services in US Dollars through telegraphic transfer.

Petitioner filed its Quarterly VAT Returns and Amended Quarterly Returns with the BIR for the taxable period January 1, 2003 to December 31, 2003 as follows:

Date of Filing:	Date of Filing Amended Return	Period Covered:
April 22, 2003	April 26, 2004	1st Quarter
July 23, 2003	April 15, 2004	2nd Quarter
Oct. 22, 2003	April 15, 2004	3rd Quarter
Jan. 26, 2004	April 15, 2004	4th Quarter

The aforesaid Quarterly VAT Returns reflected the following:

						INPUT VAT		
Exhibit No.	**Date Filed**	**Qtr Involved**	**Zero-Rated Sales**	**Taxable Sales**	**Output VAT**	**Carried-Over from Previous Quarter**	**This Quarter**	**Excess Input VAT**
					(a)	**(b)**	**(c)**	**(a) - (b+c)**
C	22-Apr-03	1st Qtr.	P14,062,193.88	P 1,812,238.62	P 181,225.82	P2,050,736.69	P 410,520.07	P(2,280,030.94)
E	23-Jul-03	2nd Qtr.	20,944,145.09	1,366,846.71	136,685.80	2,280,030.94	528,406.00	(2,671,751.14)
G	22-Oct-03	3rd Qtr.	15,438,937.87	511,719.77	51,142.10	2,671,751.14	1,529,216.44	(4,149,825.48)
I	26-Jan-04	4th Qtr.	13,801,920.63	214,602.85	21,454.86	4,149,825.48	1,142,017.33	(5,270,387.95)

On February 5, 2004, petitioner filed its first Amended Quarterly VAT Return for the Fourth Quarter of taxable year 2003, showing the following information:

						INPUT VAT		
Exhibit No.	**Date Filed**	**Qtr Involved**	**Zero-Rated Sales**	**Taxable Sales**	**Output VAT**	**Carried-Over from Previous Quarter**	**This Quarter**	**Excess Input VAT**
					(a)	**(b)**	**(c)**	**(a) - (b+c)**
J	05-Feb-04	4th Qtr.	P13,801,920.63	P 214,602.85	P 21,454.86	P4,149,825.48	P1,108,191.32	P(5,236,561.94)

On April 26, 2004, petitioner filed its final Amended Quarterly VAT Returns for the First to Fourth Quarters of the taxable year 2003, disclosing the following:

					INPUT VAT			
Exhibit No.	**Qtr Involved**	**Zero-Rated Sales**	**Taxable Sales**	**Output VAT**	**Carried-Over from Previous Quarter**	**This Quarter**	**VAT Refund/TCC Claimed**	**Excess Input VAT**
				(a)	**(b)**	**(c)**	**(d)**	**(a) - [(b+c) - (d)]**
D	1st Qtr.	P 14,062,193.88	P 1,812,238.62	P 181,225.82	P 2,050,736.69	P 410,520.07	P1,801,826.82	P (478,204.12)
F	2nd Qtr.	20,944,145.09	1,366,846.71	136,685.80	478,204.12	528,406.00	-	(869,924.32)
H	3rd Qtr.	15,438,937.87	511,719.77	51,142.10	869,924.32	1,529,216.44	-	(2,347,998.66)
K	4th Qtr.	13,801,920.63	214,602.85	21,454.86	2,347,998.66	1,108,191.32		(3,434,735.12)
	Total	**P 64,247,197.47**	**P 3,905,407.95**	**P 390,508.58**		**P 3,576,333.83**		

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According to petitioner, for the aforesaid taxable period, it had a total zero-rated sales amounting to P64,247,197.47 which was paid to it by non-resident foreign clients and PEZA-registered enterprises in US dollars inwardly remitted in accordance with existing rules and regulations of the Bangko Sentral ng Pilipinas (BSP). Petitioner applied against its VAT output tax payable in the amount of P390,508.58, the VAT input taxes of P3,576,333.83, incurred for the purchases of capital goods and other taxable goods and services, as well as importation of capital goods used in its business operations; resulting in excess and unutilized VAT input taxes of P3,185,825.25. Such excess/unutilized VAT input tax has not been applied nor carried over to any succeeding quarters, and are duly supported by VAT invoices and/or official receipts.

Petitioner further explained that since the entire amount of unutilized VAT input taxes for the calendar year ending December 31, 2003 is not exclusively and directly attributable to either of its zero-rated sales or its domestic sales, it made an allocation of said unutilized VAT input taxes; resulting in the amount of P3,003,265.14, which represents the VAT input taxes allocable to petitioners zero-rated sales. The computation is as follows:

$$\text{VAT input taxes attributable to Zero-rated sales} = \frac{\text{Zero-rated Sales}}{\text{Total sales}} \times \text{Total unutilized VAT input taxes}$$

Thus:

$$\text{P}3{,}003{,}265.14 = \frac{\text{P } 64{,}247{,}197.47}{\text{P } 68{,}152{,}605.42} \times 3{,}185{,}825.25$$

On April 13, 2005, within the two-year prescriptive period, petitioner filed with the BIR an application for refund and/or tax credit of its unutilized VAT input taxes for the aforesaid taxable period amounting to P 3,003,265.14.

Since no action has been taken by respondent, petitioner filed this Petition for Review on April 20, 2005, in order to suspend the running of the prescriptive period prescribed by Section 229 of the 1997 NIRC, as amended.

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Acting on the Petition, the First Division of this Court issued a Decision on December 12, 2007 which is now the subject of appeal. The said Decision dismissed the petition for lack of merit.

The petitioner filed a Motion for Reconsideration of the Decision dated December 12, 2007 against the respondent. In a Resolution dated March 12, 2008, the First Division denied the Motion for lack of merit.

Hence, this Petition for Review *en banc.*

THE ISSUES

The issues in this case are as follows:

(1) Whether or not VAT invoices and VAT official receipts may be used interchangeably in order to substantiate zero-rated sale of services.

(2) Whether or not petitioner is entitled to the claim for refund.

PETITIONER'S ARGUMENTS

Petitioner seeks recourse to the Court *en banc* with the following arguments:

I.

The 1997 Tax Code does not limit the proof of input or output VAT to a single document. There is no distinction of the evidentiary value of the supporting documents.

II.

The 1997 Tax Code does not restrict the evidence of input or output VAT. VAT invoices or receipts may be used interchangeably to substantiate VAT.

III.

Respondent does not distinguish between the evidentiary value of a VAT invoice and a VAT official receipts. Either document is valid proof of VAT transactions.

IV.

The ruling that the VAT official receipts must be submitted as proof of payment of the sale of service is illogical due to the jurisprudential requirement that petitioner should prove the validity of its inward remittances.

V.

Petitioner presented substantial evidence that unequivocally proves petitioner's zero-rated transactions for the CY 2003.

Meanwhile, the respondent failed to file her Comment on the Petition for Review despite the Court's notice and grant of extension of time to file Comment.

COURT'S RULING

The petition is without merit.

This Court has consistently ruled that in order for sales to be considered zero-rated for purposes of refund or tax credits of input tax, taxpayer must establish that it has complied with the substantiation requirements provided under Section 113(A) in relation to Section 237 of the National Internal Revenue Code (NIRC) of 1997 and Section 4.108-1 of Revenue Regulation (RR) No. 7-95.

The pertinent provisions provide as follows:

> 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 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: *Provided, however,* That in the case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of the amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided, further,* That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.
>
> xxx xxx xxx xxx

Likewise, Section 4.108.1 of RR No. 7-95 provides:

> 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; and
> 6. the invoice value or consideration.
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> xxx xxx xxx xxx

Petitioner contends that the First Division erred in denying its claim for refund of unutilized input VAT taxes for failure to comply with substantiation requirements since it was unable to submit VAT official receipts in support of its claim for refund. Petitioner further argues that its submission of VAT invoices in order to establish its zero-rated sales will suffice considering that VAT invoices and VAT official receipts may be used interchangeably.

Petitioner also submits that the Decision of the First Division is based on overly technical interpretation of the 1997 Tax Code after it differentiated VAT sales invoices from VAT official receipts.

The Court *en banc* cannot sustain petitioner's arguments.

Petitioner is engaged in the business of rendering information, promotional, supportive and liaison services, classified as sale of services, thus, it must present appropriate VAT official receipts. As correctly pointed out by the First Division, Sections 113 and 237 of the 1997 Tax Code, should be read in relation to Sections 106 (A) and (D) and Sections 108 (A) and (C) of the same Code. These provisions require a taxpayer to support its sale of goods with VAT invoices and its sale of services with VAT official receipts. To reiterate, pertinent excerpts of the ruling of the First Division are as follows:

> While the foregoing law and regulations appear to make no distinction as to the evidentiary value of an invoice or official receipt; however, the same must be taken together with Sections 106(A) and (D), as well as Sections 108(A) and (C) of the 1997 NIRC, as amended, which provide for the manner of determining the output VAT due on the sale of goods or properties and sale of services, respectively. The above-cited provisions are hereby quoted as follows:
>
> > "**SEC. 106. Value-added Tax on Sale of Goods or Properties.**–
> >
> > (A) Rate and Base of Tax. – **There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross**

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> **selling price or gross value in money of the goods or properties sold, bartered or exchanged,** such tax to be paid by the seller or transferor.
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> xxx
>
> (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)**." (*Emphasis supplied*)

From the foregoing, in the case of sale of goods or properties, a ten percent (10%) VAT is imposed upon the ***gross selling price.*** And this is defined under Section 106(A)(1) 2nd paragraph of the 1997 NIRC, as amended, as follows:

> "The term *'gross selling price'* means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter, or exchange of the goods or properties, excluding the value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price."

In other words, the VAT on the sale of goods or properties accrues upon the ***consummation of sale*** regardless of whether or not the consideration thereof was actually received. It is for this reason that the afore-cited Section 106(D) of the 1997 NIRC, as amended, provides that the tax shall be computed by multiplying the total amount indicated in the ***invoice*** by one-eleventh (1/11).

On the other hand, in the case of sale of services, the 10% VAT is computed based on ***gross receipts*** pursuant to Section 108(A) of the 1997 NIRC, as quoted hereunder:

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

> (A) Rate and Base of Tax.– **There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services,** including the use or lease of properties." (*Emphasis supplied*)

The term "gross receipts" is defined under Section 108(A) of the 1997 NIRC, as amended, as follows: *Jr*

> "The term *'gross receipts'* means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax."
>
> Plainly, from the foregoing, the VAT on the sale of services accrues upon ***actual or constructive receipt of the consideration*** irrespective of whether or not the service has been rendered. In addition to this, Section 108(C) of the 1997 NIRC, as amended, provides that the tax on the sale of services shall be computed by multiplying the total amount indicated in the ***official receipt*** by 1/11.
>
> In other words, the VAT law and regulations require that ***sales invoices*** must support the ***sale of goods or properties*** whereas ***official receipts*** must substantiate the ***sale of services***. It is further required that invoices and official receipts must contain all the necessary information such as the taxpayer's TIN, the BIR authority to print or BIR permit number, and the imprinted word "zero-rated" in the case of zero-rated sales transactions. xxx"

The Court *en banc* finds the above ruling of the First Division in accord with law. For every <u>sale of services, VAT shall be computed on the basis of gross receipts indicated in the official receipt</u>. The sale transaction becomes subject to VAT upon the actual or constructive receipt of the consideration whether or not the service has been rendered. In the same transaction, the output VAT of the seller becomes the input VAT of the purchaser.

This is to avoid the situation where the government could end up refunding a tax which was not even paid. It should be noted that the seller will only become liable to pay the output VAT upon receipt of payment from the purchaser. If we are to use sales invoice in the sale of services, an absurd situation will arise when the purchaser of the service can claim tax credit representing input VAT even before there is payment of the output VAT by the seller on the sale pertaining to the same transaction. As a matter of fact if the seller is not paid on the transaction, the seller of service would legally not have to pay output tax while the purchaser may legally claim input tax credit thereon. The government ends up refunding a tax which has not been paid at all. Hence, to avoid this, official receipt for the sale of services is an absolute requirement.

While the use of official receipt as proof of sale of services and sales invoice for sale of goods has already been recognized in NIRC of 1997 prior to its amendment, it was even clarified in the subsequent law under Republic Act (RA) No. 9337. In fact, during the Senate deliberation of Senate Bill No. 1950 which later on became RA No. 9337, it can be reasonably concluded that the true intendment of the legislature is to make a distinction between the VAT invoice and official receipt. The pertinent portion of the Senate deliberation provides:

> The President: Mr. Sponsor, is it not better if we delegate these matters of strict implementation to the BIR rather than define it here in the law which might be difficult to change later on should there be a need to change it? These are matters of implementation and administration. If we provide appropriate standards, maybe we can delegate these implementation provisions to the Bureau Internal Revenue. Would that be an acceptable idea to the sponsor?
>
> Senator Recto: To improve the system, Mr. President, I think that we are better off putting it in the law insofar as a VAT invoice is for goods; a receipt is for services. And then it should be clear in the law that if one is selling an exempt product, it should be exempt; if one is selling a zero-rated product, it should be zero-rated; if one is selling at 10%, it should be 10% so that it is clear to the consumer, to the taxpayer, how much taxes he paid. That is found in Europe. (underlining ours)

Clearly, official receipt cannot be interchanged with sales invoice. Accordingly, the requirement of issuing a duly registered VAT official receipt with the imprinted word zero-rated" is mandatory under the law and cannot be substituted especially for input VAT refund purposes. [1]

The law itself specified that an official receipt shall cover sales of services. It did not provide for any other document which can be used as an alternative to or in lieu of an official receipt. [2]

Meanwhile, Petitioner's reliance in the case of *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*[3] is misplaced. The two cases delve on distinct set of facts and issues. In the herein case, the petitioner raises the issue of whether or not VAT invoices may be interchanged with VAT official receipts as proof of zero-rated sale of services. On the other hand, the Intel Case focuses on the relevance of the authority to print. Pertinent excerpts of the Intel Case are as follows:

> In this connection, petitioner, in order to prove that it was engaged in export sales during the second quarter of 1998, offered in evidence copies of summary of export sales, sales invoices, official receipts, airway bills, export declarations and certification of inward remittances during the said period. xxx
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> Xxx xxx xxx xxx
>
> It is clear from the foregoing that while entities engaged in business are required to secure from the BIR an authority to print receipts or invoices and to issue duly registered receipts or invoices, it is not required that the BIR authority to print be reflected or indicated therein. Only the following items are required to be indicated in the receipts or invoices xxx

Petitioner further argued that in a claim for refund or issuance of a tax credit certificate attributable to zero-rated sales, what is to be closely scrutinized is the documentary substantiation of the input VAT paid, as may be proven by other export documents, rather than the supporting

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[1] *Southern Philippines Corporation vs. Commissioner of Internal Revenue,* C.T.A. EB No. 214, July 31, 2007 citing the case of *Kepco Philippines Corporation vs. Commissioner of Internal Revenue,* C.T.A. Case EB No. 107, June 29, 2007.
[2] *Jideco Manufacturing Philippines, Inc. vs. Commissioner of Internal Revenue,* C.T.A. EB No. 53, June 7, 2005.
[3] G.R. 166732, April 27, 2007, 522 SCRA 657.

documents for the zero-rated export sales as held by the Supreme Court in the above cited case. While it is true that substantiation of the input VAT paid is important in the claim for refund, however, the Supreme Court also emphasized the importance of presenting evidence proving actual zero-rated sales in the case of *Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue.* [4] It was held that:

> xxx It therefore falls upon herein petitioner corporation to first establish that its sales qualify for VAT zero-rating under the existing laws (legal basis), and then to present sufficient evidence that said sales were actually made and resulted in refundable or creditable input VAT in the amount being claimed (factual basis).
>
> xxx xxx xxx xxx
>
> 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 <u>purchases</u> from suppliers, Revenue Regulations No. 3-88 also required it to present evidence proving actual zero-rated VAT <u>sales</u> 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.

Meanwhile, records show that petitioner presented invoices and official receipts in order to support its sale of services subject to 10% VAT. If petitioner can present official receipts for its sales subject to 10% VAT, then, there is no reason why it cannot present official receipts for its zero-rated sales. The law does not make a distinction that if the sale of service pertains to zero-rated sale it is exempt from issuing official receipts.

On the other hand, petitioner contended that the presentation of its bank credit advices proved the inward remittances from its customers and that they were made in acceptable foreign currency. Thus, petitioner has received the compensation for its services, such being the case, it is clear that petitioner's sales fall within the definition of zero-rated sales.

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[4] G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 105.

The Court *en banc* disagrees.

Proofs of inward remittances like bank credit advices cannot be used in lieu of VAT official receipts to demonstrate petitioner's zero-rated transactions. Under Section 113 of the NIRC of 1997, as amended, irrespective of the nature of transaction, be it taxable, exempt or zero-rated sale, the law mandates that the taxpayer "for every sale, issue an invoice or receipt." Thus, the enumerated zero-rated transactions under Section 106 and 108 are those which are duly covered by VAT invoices (in the case of sales of goods), and VAT official receipts (in the case of sales of services).

WHEREFORE, in light of the foregoing laws and jurisprudence, the Petition for Review *en banc* is **DISMISSED** for lack of merit. Accordingly, the Decision dated December 12, 2007 and the Resolution dated March 12, 2008 issued by the First Division are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

(Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
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 the Court.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AT&T COMMUNICATIONS SERVICES PHILIPPINES, INC., *Petitioner,*	**CTA EB No. 381** (C.T.A. CASE NO. 7221)
	Present:
-versus-	**Acosta,** ***P.J.*** **Castañeda, Jr., Bautista, Uy, Casanova, and Palanca-Enriquez,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	*Promulgated:* SEP 2 4 2008 GoApolinario 3:00 p.m.

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DISSENTING OPINION

ACOSTA, PJ:

The majority affirmed *in toto* the division Decision of the First Division dismissing petitioner's claim for refund or issuance of tax credit certificate of unutilized input Value Added Tax (VAT) paid on its domestic purchases of goods and services for the period covering January 1, 2003 to December 31, 2003.

Thus, it is again with due respect to my esteemed colleagues that I am expressing my dissent as regards the conclusion that without official receipts, petitioner sale of services cannot qualify for zero-rating.

I agree with the argument advanced by petitioner that the Decision affirmed was based on an overly technical interpretation of the National Internal Revenue Code (NIRC), which interpretation is unwarranted.

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In ***Commissioner of Internal Revenue vs. Manila Mining Corporation***,[1] the Supreme Court defined an invoice and a receipt as:

> "Sales or commercial invoice" is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services.
>
> "Receipt" on the other hand is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer.

And held that:

> "For a judicial claim for refund to prosper, however, respondent (claimant) must not only prove that it is a VAT registered entity and that it filed its claims within the prescriptive period. It must also ***substantiate*** the input VAT paid by purchase ***invoices or official receipts***."

It should be noted that the Supreme Court made no differentiation between an invoice and an official receipt. It held that the Manila Mining's sale of goods, in that case, gold in particular, to the Central Bank, as export sales, may be substantiated by either an invoice or an official receipt. According to the Supreme Court these sales invoices or receipts issued by the supplier are necessary to substantiate the actual amount or quantity of goods sold and their selling price, taken collectively are the best means to prove the input VAT payments. It was only unfortunate that in the Manila Mining case, neither sales invoice nor official receipts was submitted to the Court.

Furthermore, the applicable statutes rather than limiting the documentary requirements to just the official receipts, specifically enjoin and acknowledge the production of an invoice to prove the fact of a VAT-related transaction.

[1] *G.R. No. 153204. August 31, 2005.*

I have already explained in my Dissenting Opinion to the Decision of the First Division that the pertinent provisions of the NIRC, namely Sections 113 and 237 disclose that invoices can be validly used interchangeably with official receipts. These provisions read:

> ***"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*
>
> ***"SEC. 237. Issuance of Receipts or Sales of 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 case of sales, receipts or transfers in the amount of One Hundred Pesos (P100.00) or more, 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's Identification Number (TIN) of the purchaser.". xxx*

Under Section 237, all persons subject to an internal revenue tax are required to issue duly registered ***receipts or sales or commercial invoices*** for each sale, or transfer of merchandise or for services rendered valued at Twenty five pesos (P25.00) or more. And under Section 113 of the same code, a VAT-registered person is mandated to issue an invoice or receipt for every sale.

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Moreover, Section 110 of the same code and Section 4.106-5 of Revenue Regulations No. 7-95, show the intention to accept other evidence to substantiate claims for VAT refund, particularly the use of either a VAT invoice or receipt. Section 110 provides that any input tax evidenced by a VAT invoice or official receipt, issued in accordance with Section 113 shall be creditable against the output tax. On the other hand, Section 4.106-5 provides that input tax should be supported by an invoice or receipt.

From the aforesaid provisions, a VAT-registered person must not only issue an invoice or receipt for every sale but more importantly, the creditable input tax may be evidenced by either a VAT invoice or official receipt. The use of the disjunctive term "or" in the afore-cited provisions connote that either act qualifies as two different evidences of input VAT. The word "or" is defined as a disjunctive particle used to express an alternative or to give a choice of one among two or more things (***Black's Law Dictionary***, 6th Edition, 1990, page 1095). It is indicative of the intention of the Revenue Bureau and the lawmakers to use the same interchangeably in the sale of goods or services. There is no reason therefore to limit the acceptable evidence only to official receipts, to the exclusion of invoices.

Section 112 (A) of the NIRC confirms that all VAT-registered enterprises engaged in zero-rated transactions are permitted to demand a refund of their creditable input tax due or paid to the extent that such input tax remains unapplied against output tax for the period of two (2) years after the close of the taxable quarter. Nowhere in the said provision can it be found that the failure to present official receipts would amount to the denial of the claim for refund.

In the landmark case of ***Commissioner of Internal Revenue vs. Seagate Technology (Philippines)***,[2] the Supreme Court stressed the need to focus only on the legally mandated requirements for claims for VAT refund and explained that, *A VAT-registered status, as well as compliance with the invoicing requirements (Section 113 (A) of the Tax Code), is sufficient for the effective zero rating of the transactions of a taxpayer. The nature of its business and transactions can easily be perused*

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[2] *G.R. No. 153866, February 11, 2005.*

from, as already clearly indicated in, its VAT registration papers and photocopied documents attached thereto.

Clearly, there is no reason to differentiate an invoice, from an official receipt, as to its evidentiary value.

The majority also cited the Senate Deliberations of Senate Bill No. 1950, the bill which later became Republic Act No. 9337, as basis for its conclusion. According to the majority, based on the deliberations, it can be reasonably concluded that the true intendments of the legislature is to make a distinction between an invoice and an official receipt.

I, however, disagree. A reading of the amendments introduced to the National Internal Revenue Code by R.A. 9337 would show that no limitation or differentiation was added with regard to invoices or receipts. *Verba legis* the language of the statute affords the best means of its exposition and legislative intent must be determined primarily therefrom. When the language of the law is clear and unequivocal the law must be taken to mean exactly what is says. (***Martin, Statutory Construction***, 6th Edition, pages 58 and 59)

Accordingly, I vote for the reversal of the assailed decision as the denial of the instant claim for the sole reason that invoices and not official receipts were presented to substantiate has no basis in law.

ERNESTO D. ACOSTA
Presiding Justice