REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

HAZAMA PHILIPPINES, INC., Petitioner,	**C.T.A. E.B. NO. 232** **(C.T.A. CASE NO. 6420)**
	Present:
- versus -	**ACOSTA,** *P.J.* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** SEP 04 2007 GNApolinario

x- -x

D E C I S I O N

UY, J.:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed through registered mail on December 27, 2006 and duly received by this Court on January 4, 2007 under Republic Act No. 1125, as amended by Republic Act No. 9282, seeking a review of the Decision and Resolution by the First Division of this Court (Court in Division) in CTA Case No. 6420, entitled "Hazama Philippines, Inc. vs. Commissioner of Internal Revenue", to wit:

1) Decision promulgated on June 21, 2006 denying herein petitioner's claim for refund or issuance of a tax credit certificate in its favor in the amount of SIX MILLION TWO HUNDRED

NINETY SIX THOUSAND TWO HUNDRED FORTY SEVEN and 40/100 PESOS (P6,296,247.40) allegedly representing unutilized input taxes attributable to effectively zero-rated sales of services for the four quarters of taxable year 2000; and

2) Resolution promulgated on November 22, 2006 denying herein petitioner's Motion for Reconsideration of the aforesaid Decision for lack of merit.

THE FACTS

The factual antecedents of the case are undisputed.

Petitioner is a foreign corporation organized and existing under the laws of the Republic of the Philippines, with principal office address at Unit 304 SEDCCO I Building, 120 Rada cor Legaspi Sts., Legaspi Village, Makati City. It is a value-added tax (VAT) registered entity engaged in business as a general contractor.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes, with office address at BIR National Office Building, BIR Road, Diliman, Quezon City.

For the four quarters of taxable year 2000, petitioner allegedly derived revenues from construction services rendered to entities registered with the Philippine Economic Zone Authority (PEZA) in the total amount of P159,276,713.27, broken down as follows:

Year 2000	Amount of Sales to PEZA Registered Entities
1st Quarter	Php8,097,975.00
2nd Quarter	14,794,585.00
3rd Quarter	54,980,571.61
4th Quarter	81,403,581.66
TOTAL	Php159,276,713.27

Petitioner claims that such revenues are subject to zero percent (0%) VAT under Section 108 (B)(3) of the National Internal Revenue Code (NIRC) of 1997.

Relative to the construction services it rendered to PEZA registered entities, petitioner allegedly incurred input VAT in the amount of P6,296,247.40 for the four quarters of taxable year 2000, detailed as follows:

Year 2000	Input VAT
1st Quarter	Php20,943.00
2nd Quarter	994,359.82
3rd Quarter	647,390.23
4th Quarter	4,633,554.35
TOTAL	Php6,296,247.40

Petitioner avers that the input VAT payments of P6,296,247.40 formed part of the total input VAT of P16,215,542.42 reflected in its amended quarterly VAT returns for taxable year 2000, as follows:

				INPUT VAT		
Exh.	Year 2000	Zero-rated Sales/Receipts	Output VAT	Carried-Over from Previous Quarter	This Quarter	Excess
C	1st Qtr	Php8,097,975.00	Php4,143,220.24	Php15,068,490.26	Php2,576,924.26	Php13,502,194.28
C-1	2nd Qtr	14,794,585.00	5,925,072.05	13,502,194.28	3,335,982.89	10,913,105.12
C-2	3rd Qtr	54,980,571.61	7,269,887.30	10,913,105.12	2,986,721.50	6,629,939.32
C-3	4th Qtr	81,403,581.66	854,521.98	6,629,939.32	7,315,913.77	13,091,331.11
		Php159,276,713.27	Php18,192,701.57		Php16,215,542.42	

Alleging that the input VAT of P6,296,247.40 had not been utilized against any output VAT liability since the amount of input VAT carried over from the previous taxable years and incurred during the four quarters of taxable year 2000 attributable to petitioner's vatable sales of services was enough to offset petitioner's output VAT due for the same period, petitioner filed an administrative claim for the refund of the said amount on March 25, 2002 pursuant to Section 112(A) of the NIRC of 1997.

On the following day, March 26, 2002, petitioner filed a Petition for Review before the Court in Division, docketed as C.T.A. Case No. 6420, in order to toll the running of the two-year period within which it may judicially claim as refund or tax credit the aforesaid input VAT of P6,296,247.40.

On June 21, 2006, the Court in Division rendered its assailed Decision denying the petition for lack of merit. It ruled that petitioner failed to submit VAT official receipts issued in accordance with Section 113 of the NIRC of 1997 and as implemented by Section 4.108-1 of Revenue Regulations No. 7-95. Without said receipts to prove the existence of petitioner's reported sales of services to PEZA entities for taxable year 2000 in the amount of P159,276,713.27, the claimed input VAT payments of P6,296,247.40

allegedly attributable thereto cannot be refunded, pursuant to Section 112(A) of the NIRC of 1997.

Likewise, finding no compelling reason to either modify or alter the assailed Decision, the Court in Division denied petitioner's Motion for Reconsideration thereof in the assailed Resolution dated November 22, 2006.

Hence, this recourse before the Court *En Banc* praying that the Decision dated June 21, 2006 and the Resolution dated November 22, 2006 be reversed and set aside, and a new one be issued ordering respondent to refund or issue a tax credit certificate in favor of petitioner the amount of P6,296,247.40 allegedly representing unutilized input taxes attributable to effectively zero-rated sales of services for the four quarters of taxable year 2000.

THE ISSUES

Petitioner submits the following issues for the resolution of the Court *En Banc*:

a. Petitioner has, by a preponderance of evidence, established the existence of its effectively zero-rated sales of services;

b. The existence of effectively zero-rated sales may be established by evidence other than the presentation of petitioner's VAT invoice or official receipts; and

c. This Court may consider evidence submitted after the termination of trial.

In support of its Petition for Review, petitioner argues, that it has submitted oral and documentary evidence, of sufficient weight and credibility, to establish the existence of its effectively zero-rated sales. In particular,

130

petitioner's Amended Quarterly VAT Returns[1] for the four quarters of 2000 were presented, and due to failure of respondent to present any evidence to controvert the same, petitioner posits that the amount of zero-rated sales for the year 2000 contained in said returns should be sufficient proof to establish the claimed input VAT payments of P6,296,247.40 attributable thereto.

Nevertheless, petitioner further manifests that "should it be held that the presentation of petitioner's VAT official receipts is crucial in the determination of its zero-rated sales", this Court should now consider the photocopies of its Schedule of Official Receipts and the VAT official receipts[2] attached to the instant petition in order to prove the existence of petitioner's reported sales of services to PEZA entities for taxable year 2000.

On January 31, 2007, this Court issued a Resolution requiring respondent to file a Comment thereto. However, upon the expiration of the given period,[3] respondent failed to file the same. Hence, the case was deemed submitted for decision on April 11, 2007.

THE COURT EN BANC'S RULING

The petition is bereft of merit.

A careful and closer look at the arguments set forth by the petitioner in the instant petition for review would readily reveal that the grounds relied upon and the matters raised herein are mere restatements of petitioner's previous arguments raised before the Court in Division which had already been

---

[1] Exhibits "C", "C-1" to "C-3", CTA Case No. 6420.
[2] Annexes "C", "C-1" to "C-38", Petition for Review.
[3] A final and non-extendible period of twenty (20) days was given to respondent to file his comment or until March 7, 2007, per this Court's Resolution dated February 26, 2007.

131

exhaustively discussed and passed upon by it in its assailed Decision and Resolution.

Be that as it may, with the end view of further clarifying the decision of the Court in Division, We adhere to its ruling to deny petitioner's claim mainly on the ground that no sufficient evidence was presented during the trial in order to establish the existence of the reported sales of services to PEZA registered entities.

To begin with, relevant to Our discussion is Section 112 of the NIRC of 1997 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): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: xxx"

Pursuant to the above provision, petitioner must show compliance with the following requisites in order to be entitled to a refund or tax credit of input VAT payments directly attributable to zero-rated sales or effectively zero-rated sales:

132

1) there must be zero-rated or effectively zero-rated sales;
2) that input taxes were incurred or paid;
3) that such input VAT payments are directly attributable to zero-rated or effectively zero-rated sales;
4) that the input VAT payments were not applied against any output VAT liability; and
5) the claim for refund/tax credit was filed within the two year prescriptive period.

In support of its claim for refund, petitioner presented before the Court in Division the following documentary evidence:

1) Amended 2000 Quarterly VAT Returns;
2) Certificates of PEZA Registration / Certificates of Effective Zero-Rating of Adamay Int'l. Co., Inc., Sanyo Semiconductor Manufacturing Philippines Corporation, International Electric Wires Phils. Corp., and Honda Parts Manufacturing Corporation; and
3) Certificates of Registration and Tax Exemption of SMK Electronics (Phils.) Corp. and Philippine Shin-ei, as Clark Special Economic Zone Enterprises.

However, as observed by the Court in Division, VAT official receipts were not presented in accordance with the requirements of Section 113 of the NIRC of 1997, in relation to Section 237 of the same Code, and as implemented by Section 4.108-1 of Revenue Regulations No. 7-95, quoted hereunder, to wit:

> "***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."

133

"***SEC. 237. Issuance of Receipts or Sales or Commercial Invoices.*** — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: Provided, however, That in the case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: Provided further; That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer's Identification Number (TIN) of the purchaser.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to internal revenue tax from compliance with the provisions of this Section."

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

1. the name, TIN and address of seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word 'zero rated' imprinted on the invoice covering zero-rated sales; and

134

6. the invoice value or consideration.

xxx xxx xxx

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."

Applying the afore-cited provisions in the case at bench, We agree that the documentary evidence submitted and relied upon by petitioner is insufficient to prove the basis for its claim for refund. At most, it proves only the fact of payment/filing to the BIR of the Amended Quarterly VAT Returns and the existence of these PEZA registered entities as well as the tax exempt status of those registered with the Clark Special Economic Zone.

In a long line of cases, this Court has consistently emphasized the importance of presenting VAT official receipts as evidence to establish the existence of zero-rated or effectively zero-rated sales before a refund of input VAT could prosper. Thus:

"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 '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

135

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."[4] *(Emphasis Ours)*

In an earlier case, We stressed that:

"Considering, however, that petitioner reported taxable sales along with its zero-rated and exempt sales, **the court finds it also necessary for the petitioner to submit invoices pertaining to the taxable sales and the corresponding input VAT. These documents are necessary to determine the veracity of such declaration for any discrepancy will affect petitioner's claim for refund**. To illustrate, an underdeclaration of output VAT liability or overstatement of input VAT will reduce the excess VAT credit.

Based on the evidence submitted by petitioner, we cannot verify if the latter had indeed incurred any excess input VAT credits. **Petitioner failed to present the invoices and/or official receipts pertaining to the said taxable sales and purchases of goods and services to support its taxable sales and the input VAT attributable thereto. As a consequence, the court cannot verify the amounts declared in the quarterly VAT returns. We cannot determine with accuracy the allocated input VAT for taxable sales. Petitioner's presentation of the abovementioned documents is material to its claim for refund. Its failure to do so is a fatal defect.**"[5] *(Emphasis Ours)*

---

[4] American Express International, Inc., Philippine Branch vs. Commissioner of Internal Revenue, CTA EB No. 103 (CTA Case No. 6294), March 3, 2006.

[5] Honda Trading Philippines Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6282, August 21, 2003 (also cited in ECW Joint Venture, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 14 [CTA Case No. 6509], March 22, 2006).

In view of the foregoing, the denial of the claims for refund/issuance of tax credit certificate of input VAT attributable to zero-rated sales for failure to present the invoices and official receipts to support the alleged zero-rated sales in accordance with the invoicing requirements under Sections 113 and 237 of the NIRC of 1997, and Section 4.108-1 of Revenue Regulations No. 7-95 by the Court in Division is definitely not without any legal basis.

With respect to petitioner's attempt to convince this Court to grant the instant petition by now including photocopies of the alleged Schedule of Official Receipts and various VAT official receipts attached thereto,[6] citing as its legal basis Section 8 of Republic Act No. 1125, as amended by Republic Act No. 9282, and the applicability of the cases *BPI-Family Savings Bank vs. Court of Appeals (BPI case)*[7]and *Paseo Realty & Development Corporation vs. Court of Appeals (PRDC case)*,[8] We rule to deny admission of the said documents as part of its evidence.

As We have constantly emphasized in previous cases, evidence existing at the time of the trial but was not presented at such time, can no longer be considered since these are in the nature of a *forgotten evidence* already. Forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel.[9]

---

[6] Supra.
[7] 330 SCRA 507 (2000).
[8] 440 SCRA 235 (2004).
[9] Tumang vs. Court of Appeals, 172 SCRA 328 (1989), citing the cases of Bersabal vs. Bernal, 13 Phil. 463 (1909) and Manila Railroad vs. Mitchel, 49 Phil. 801 (1926).

137

Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice[10] and serves only to delay the proceedings. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or a motion for a new trial, in the guise of newly discovered evidence.

In this case, petitioner was given ample opportunity to present such evidence after the Court in Division pointed out the significance of VAT official receipts to sufficiently substantiate its claim. It filed its Motion for Reconsideration[11] but still failed to present any VAT official receipts and insisted on the sufficiency of the documentary evidence it submitted during trial despite the Court in Division's ruling. It is only upon the filing of its Petition for Review before the Court *En Banc that* petitioner decided to produce the alleged VAT official receipts which are mere photocopies.

While petitioner pleads that a liberal, not literal, interpretation of the rules should be our policy guidance, nevertheless procedural rules are not to be disdained as mere technicalities. They may not be ignored to suit the convenience of a party. Adjective law ensures the effective enforcement of substantive rights through the orderly and speedy administration of justice. Rules are not intended to hamper litigants or complicate litigation. But they help provide for a vital system of justice where suitors may be heard in the correct form and manner, at the prescribed time in a peaceful though

---

[10] Cansino vs. Court of Appeals, 409 SCRA 403 (2003).
[11] Docket, pp. 90-102.

138

adversarial confrontation before a judge whose authority litigants acknowledge. Public order and our system of justice are well served by a conscientious observance of the rules of procedure, particularly by government officials and agencies.[12]

Moreover, to accept the contrary view of the petitioner would give rise to a dangerous precedent in that there would be no end to a hearing before this court because, every time a party is aggrieved by its decision, he can have it set aside by asking to be allowed to present additional evidence without having to comply with the requirements of a motion for new trial based on newly discovered evidence.[13]

By way of resume, as herein petitioner failed to timely present and submit the VAT official receipts to support its alleged reported sales of services to PEZA entities for taxable year 2000 in the amount of P159,276,713.27, the claimed input VAT payments of P6,296,247.40 allegedly attributable thereto cannot be refunded, pursuant to Section 112(A) of the NIRC of 1997. Hence, We are left with no recourse but to deny the claim for tax refund or issuance of tax credit certificate in favor of petitioner.

Well settled is the rule that a claim for refund is construed *strictissimi juris* against the taxpayer as it partakes in the nature of exemption from taxation.[14] Furthermore, We believe that in claims for refund, the law mandates the court to observe a higher standard of caution in appreciating and evaluating evidence. If indeed a claim for refund is wanting in pertinent

---

[12] Commissioner of Internal Revenue vs. Court of Appeals, Smith Kline & French Overseas Co., 351 SCRA 436 (2001).
[13] Commissioner of Internal Revenue vs. A. Soriano Corporation, 267 SCRA 313 (1997).
[14] Citibank N.A. vs. Court of Appeals, 280 SCRA 459 (1997).

MO

139

and supporting evidence, then the granting thereof could prove to be improper, if not difficult. [15]

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and, accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

[15] ECW Joint Venture, Inc., vs. Commissioner of Internal Revenue, CTA E.B. No. 14, March 22, 2006.

140

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice

141