REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

TAKENAKA CORPORATION PHILIPPINE BRANCH, *Petitioner,*	**CTA CASE NO. 6886**
	Members:
~versus~	**ACOSTA,** *PJ,* **BAUTISTA,** *and* **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** MAR 16 2009 1:50 pm

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AMENDED DECISION

ACOSTA, *PJ*:

This resolves petitioner's Motion for Partial Reconsideration filed on November 26, 2008 assailing in part the Court's Decision dated November 4, 2008, the dispositive portion thereof reads:

> "**IN VIEW OF THE FOREGOING**, petitioner's claim for refund or issuance of tax credit certificate is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of P53,374,366.52, representing unapplied or unutilized input taxes for the four quarters of taxable year 2002.
>
> **SO ORDERED**."

At the outset, it is to be noted that this Court ruled in the assailed decision that petitioner complied with the requisites for the entitlement of refund or tax credit of input tax but only in the reduced amount of P53,374,366.52 attributable to zero-rated

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sale of service duly supported by VAT official receipts. The amount of P143,997,333.40 input tax was not allowed for refund due to the fact that the related zero-rated sales thereof were not supported by VAT official receipts, disregarding the probative value of the formally offered VAT invoices.

In this Motion, the petitioner is asking the Court to grant the full amount of its claim on the following grounds:

> I. Sections 106 and 108 of the Tax Code do not deal with substantiation requirements for claims for refund of excess input VAT arising from zero-rated sales;
>
> II. There is no distinction as to the evidentiary value of an official receipt and sales invoice;
>
> III. Documents, other than official receipts, are admissible and competent to prove petitioner's zero-rated sales in favor of PIATCO; and
>
> IV. Without necessarily conceding the foregoing arguments, there are reasonable grounds for petitioner's failure to present official receipts for its zero-rated sales.

After judicious evaluation of the arguments presented by petitioner and a restudy of the case, this Court is persuaded to reconsider the assailed Decision. The official receipt is not the only acceptable evidence to prove the zero-rated sale of service in order that a refund of unutilized input tax attributable thereto can be granted because it can also be proven by sales invoices.

Section 112 (A) of the National Internal Revenue Code (NIRC), which provides the provisions for the "*Refunds or Tax Credits of Input Tax*" clearly grants to all VAT-registered enterprises engaged in zero-rated transactions the right to claim a refund of their creditable input tax due or paid to the extent that such input tax has not been applied against output tax within a period of two (2) years after the close of the taxable quarter. The said provision of law did not mention any particular evidence to support the zero-rated sales as a requirement to grant a claim for refund or tax credit of input tax attributable thereto.

Sections 113 and 237 of the 1997 NIRC are the primordial provisions on substantiation requirements. Nowhere can it be found that the acceptable evidence to substantiate a claim for refund when it involve sale of service are official receipts

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only. A reading of the aforesaid pertinent provisions of the NIRC will disclose that the invoices can be validly used interchangeably with official receipts, to quote:

> "**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 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."
>
> *(Emphasis supplied)*

It is clear under Section 113 of the NIRC that a VAT-registered person is mandated to issue an ***invoice or receipt*** for every sale; and Section 237 of the same Code clearly provides that 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. Thus, a VAT-registered person must issue an invoice or receipt for every sale of goods or services. The use of the disjunctive term "or" in the afore-cited provisions connote that either source document qualifies as two different evidences of sale-purchase transaction.[1] It is indicative of the intention of the lawmakers to use the same interchangeably in the sale of goods or services. Prevalent is the rule in statutory construction that where the law does not distinguish, the courts should make no distinction. *Ubi lex non distinguit nec nos distinguire debemos*.[2]

Interpreting **Sections 106 (A) and (D) and 108 (A) and (C) of the 1997 NIRC** as the source for the rule, *i.e.* sale of services should be supported by official receipts and sale of goods by invoices, would be stretching the meaning of the law beyond what it intends. Noteworthy that both Sections do not deal with substantiation requirements, but concern about the levy, assessment and collection, as well as, the computation of the value-added tax on sale of goods and properties, and services.

Settled is that rule in statutory construction that when the words and phrases of a statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says.[3] Hence, what is not clearly provided in the law cannot be extended to those matters outside its scope.[4]

In **Commissioner of Internal Revenue vs. Manila Mining Corporation**,[5] the Supreme Court made no differentiation of the evidentiary value between an invoice and 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***, and taken collectively are the best means to prove the input VAT payments."

It is therefore clear that the Court must not differentiate between the evidentiary value of an invoice, and official receipt to prove the fact of petitioner's

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[1] The word "or" has been 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).
[2] Mendoza, et al. vs. COMELEC, et al., G. R. No. 149736, December 17, 2002.
[3] Binay vs. Sandiganbayan, GR No. 120681-83, October 1, 1999.
[4] Statutory Construction by Ruben Agpalo, Fifth Ed. (2003) page 125.
[5] G.R. No. 153204. August 31, 2005.

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sale of service. After all, the pertinent laws as well as jurisprudence, made no pronouncement as to the use of a VAT official receipt as the exclusive and sole determinative piece of evidence to prove sale of service to the exclusion of all other proofs equally relevant and competent, like the sales invoice. The sales invoices, like the official receipts, are material, relevant and competent evidence inasmuch as they directly prove the amount of sales made by the petitioner.

Lastly, it must be noted that tax cases are civil in nature. In civil cases the quantum of proof required is by mere preponderance of evidence.[6] The phrase "preponderance of evidence" denotes the weight, credit and value of the aggregate on either side. This means that the testimony adduced by one side is more credible and conclusive than that of the other.[7] Since the petitioner was able to prove the existence of its zero-rated sale of service by sales invoices, making its side more conclusive and credible than the respondent, there is no reason to require petitioner to further produce its official receipts. It is to be noted that both documents are registered with the Bureau of Internal Revenue and are evidence of the commercial transaction that happened.

In **BPI-Family Savings Bank, Inc., vs. Court of Appeals, Court of Tax Appeals, and the Commissioner of Internal Revenue**,[8] the Supreme Court emphasized that:

> "[S]ubstantial justice, equity and fair play are on the side of petitioner. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. **If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes.** Indeed, the State must lead by its own example of honor, dignity and uprightness." *(Emphasis Supplied)*

Thus, not only the input tax of P53,374,366.52 attributable to the zero rated sales of service of P605,232,005.87, which are supported by official receipts, will be refunded but likewise the substantiated claim input tax of P143,997,333.40 related to P1,632,839,893.50 zero-rated sale of service supported by sales invoices.

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[6] Section 1, Rule 133, Revised Rules of Court.
[7] Municipality of Moncada vs. Cajuigan, 21 Phil. 184.
[8] 330 SCRA 507.

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WHEREFORE, the instant Motion for Partial Reconsideration is hereby **GRANTED**. Respondent is hereby ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner in the amount of P197,371,699.92 representing an unutilized input value-added tax paid on domestic purchases of goods and services attributable to zero-rated sales for taxable year 2002.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals, First Division in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice

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REPUBLIC OF THE PHILIPPINES
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****

TAKENAKA CORPORATION, PHILIPPINE BRANCH,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A CASE NO. 6886

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
MAR 16 2009 1:30 PM

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DISSENTING OPINION

With due respect to my esteemed colleagues, I wish to express my disagreement with this Court's view that the official receipt is not the only acceptable evidence to prove the zero-rated sale of service in order that a refund of unutilized input tax attributable thereto can be granted since it can also be proven by sales invoices.

Contrary to the view of the majority, laws, regulations, and decisions of this Court and the Court *En Banc* support the earlier finding, as stated in the assailed Decision, that there is a distinction as regards the evidentiary value of an invoice and an official receipt.

At this juncture, I reckon it appropriate to quote the pertinent provisions of the National Internal Revenue Code (NIRC) of 1997, particularly, Section 113 in relation to Section 237, to wit:

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"**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"

"**Section 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, 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 xxx xxx".

While the foregoing provisions appear to make no distinction as to the evidentiary value of an invoice or official receipt; nevertheless, the same must be taken in relation to Sections 106(A) and (D) as well as Sections 108(A) and (C) of the NIRC of 1997, as amended, which provide the manner of determining the output VAT due on the sale of goods or properties and sale of services, respectively. The said provisions are hereunder quoted for ready reference, to wit:

"**SEC. 106. Value-added Tax on Sale of Goods or Properties. — 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 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 xxx 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). xxx" (*Emphasis supplied*)

It is clear then from the afore-cited provisions that for sale of goods or properties, ten percent (10%) VAT is imposed on the gross selling price, which is defined in Section 106(A) 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."

This means that the VAT on the sale of goods or properties accrues upon the consummation of sale, whether or not the consideration therefore was actually received. This is likewise in keeping with Section 106(D) which provides the determination of tax, which shall be computed by multiplying the total amount indicated in the invoice by one-eleventh (1/11).

On the other hand, Sections 108 of the NIRC of 1997 provides:

"**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 properties.

xxx xxx xxx

(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)." (*Emphasis supplied*)

From the aforesaid provisions, in the sale of services, the 10% VAT is computed based on gross receipts, which is defined under Section 108 of the NIRC of 1997, in this wise:

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> "The terms **'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." (*Emphasis supplied*)

Therefore, the VAT on the sale of services accrues upon actual or constructive receipt of the consideration, whether or not the service has been rendered. And Section 108(C) prescribes that the tax on the sale of services shall be computed by multiplying the total amount indicated in the official receipt by one eleventh (1/11).

In other words, the VAT laws require that sales invoices must support the sale of goods or properties; whereas official receipts must support the sale of services. There is an apparent distinction in the evidentiary value between an invoice and an official receipt. Unfortunately, my distinguished colleagues have elected to rule otherwise.

Equally worthy of emphasis is the fact that Congress even granted a sort of an *imprimatur* or confirmation of this opinion when it enacted Republic Act No. 9337, which is "An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as amended, and for other purposes". Section 113 is now stated in this manner:

> "**SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons.** –
>
> **(A) Invoicing Requirements.** – A VAT-registered person shall issue:
>
> > **(1) A VAT invoice for every sale**, barter or exchange **of goods or properties**; and
> >
> > **(2) A VAT official receipt for** every lease of goods or properties, and for **every sale**, barter or exchange **of services.**" (*Emphasis supplied*)

These amendments manifest the real intent of the lawmakers not to have the invoice and official receipt used interchangeably so that in every sale an invoice or receipt can be used as proof of petitioner's input tax attributable to zero-rated sales of services.

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To recapitulate, in order to know the intention of the legislature, this Court must seek to harmonize and reconcile all parts of a statute so that effect may be given to each and every part thereof. And when the relevant VAT provisions are reconciled, they point to a conclusion that sales invoices must support the sale of goods or properties and official receipts must support the sale of services.

Accordingly, I manifest my dissent to the majority opinion insofar as it finds that sales invoices can be considered in proving petitioner's claim for refund of its input tax attributable to zero-rated sales of services.

LOVELL R. BAUTISTA
Associate Justice

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