REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

MARUBENI PHILIPPINES CORPORATION, Petitioner,	**CTA CASE NO. 7223 (CTA EB NO. 799)**
- versus -	Members: **BAUTISTA,** *Chairperson, and* **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 19 2016 10:50 a.m.

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RESOLUTION

CASANOVA, *J.*:

For resolution are the following:

1. respondent's **Motion for Partial Reconsideration**, filed through registered mail on May 5, 2016, with petitioner's **Comment (To: Respondent's Motion for Partial Reconsideration dated May 5, 2016)**, filed through registered mail on July 4, 2016; and

2. petitioner's **Motion for Partial Reconsideration (Re: Amended Decision dated April 21, 2016)**, filed through registered mail on May 10, 2016, without respondent's comment as per Records Verification dated July 1, 2016.

Both parties move for the reconsideration of the Court's Amended Decision[1] dated April 21, 2016, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Decision dated December 15, 2009 issued by the Special First Division of this Court, ordering the refund or issuance of tax credit certificate in favor of petitioner in the amount of **ONE HUNDRED THIRTY FOUR THOUSAND SIX HUNDRED SIXTY TWO PESOS and 95/100 (₱134,662.95),** representing petitioner's unutilized excess input taxes attributable to its zero-rated sales for the four taxable quarters of 2003, is **AFFIRMED**.
>
> **SO ORDERED**."

Respondent's Motion for Partial Reconsideration

Based on the following grounds, respondent seeks reconsideration of the Amended Decision insofar as it partially granted petitioner's claim for refund in the amount of ₱134,662.95, representing its unutilized excess input Value-Added Tax (VAT) attributable to its zero-rated sales for taxable year 2003:

a. petitioner's invoices and official receipts in support of its claimed unutilized input VAT failed to comply with the mandatory invoicing requirements under Sections 110(A), 113 (A)(B) and 237 of the National Internal Revenue Code (NIRC) of 1997, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of Revenue Regulations (RR) No. 16-05 and Revenue Memorandum Circular (RMC) No. 42-2003;

b. the documentary exhibits of petitioner should not have been given probative value for being hearsay evidence pursuant to Section 36, Rule 130 of the Rules of Court; and

c. petitioner's claim for refund is strictly construed against it for the same partakes the nature of tax exemption.

[1] Docket, pp. 1368-1386.

On the other hand, in its Comment, petitioner claims that it complied with the invoicing requirements laid down in the Tax Code and relevant rules and regulations. Petitioner further alleges that Rule 130 of the Rules of Court provides exceptions to the hearsay rule, *i.e.* Section 43 involving entries in the course of business. In any case, petitioner claims that even assuming that its documentary evidence are hearsay evidence, it is already too late for respondent to attack the admissibility of petitioner's evidence as the same were already admitted by the Court. Petitioner also states that claims for refund of erroneously paid taxes, like any other ordinary civil case, necessitate only preponderance of evidence.

Petitioner's Motion for Partial Reconsideration

Petitioner prays for this Court to reconsider its Amended Decision and to grant in full its claim for refund of input VAT for the four quarters of calendar year 2003 in the amount of ₱11,139,650.20 based on the following grounds:

a. the presentation of the sales invoices, export declarations, bank credit advices, bank statements, mutual account ledgers, and bills of lading is sufficient to prove that petitioner's export sales are qualified for VAT zero-rating; and

b. the Tax Code and jurisprudence allow the presentation of VAT invoices to prove zero-rated sales of services for purposes of claiming a refund of unutilized input tax.

Considering that both parties raised similar and interrelated issues and arguments in their Motions, the Court shall discuss them jointly.

Both Motions for Partial Reconsideration are bereft of merit.

At the outset, it must be noted that the issues and arguments raised by both parties in their Motions had been extensively discussed and passed upon by the Court in the assailed Amended Decision. In fact, a perusal of their Motions reveals that the arguments and issues stated therein are mere rehash and reiteration of the issues and arguments asserted in their previous pleadings and were already resolved by the Court in the assailed Amended Decision.

In his Motion, respondent alleges that petitioner's invoices and official receipts in support of its claimed unutilized input VAT failed to comply with the mandatory invoicing requirements under the law and regulations.

After a thorough examination of petitioner's relevant supporting documents (*i.e.*, invoices, official receipts), the Court found that petitioner was able to prove its entitlement to the claim for refund or issuance of tax credit certificate representing its unutilized excess input VAT attributable to its substantiated zero-rated sales for the four taxable quarters of 2003, *but in the reduced amount of ₱134,662.95*. As regards the amount ₱134,662.95, petitioner complied with the invoicing requirements set forth under the law and regulations applicable to the instant case, *i.e.*, Section 106(A)(2)(a)(1) of the NIRC of 1997, in relation to Section 113(A) of the same Code and Section 4.108-1 of RR No. 7-95.

While petitioner was able to prove its entitlement to a portion of its claim, the Court denied the substantial portion of its refund claim for failure to comply with the other requirements. For one, petitioner's alleged direct export sales to Marubeni-Tokyo did not qualify for VAT zero-rating for failure to establish the offsetting arrangement with the latter. The Court squarely ruled on this issue in this wise:

> "Based on the foregoing provisions of Section 106(A)(2)(a)(1) of the Tax Code, in relation to Section 113(A) of the same Code and Section 4.108-1 of Revenue Regulations No. 7-95, any person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit: **a)** the sales invoice as proof of sale of goods; **b)** the export declaration ***and*** bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and **c)** bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services. In other words, only export sales supported by these documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the Tax Code.

> Further, the sales invoices supporting the export sales must be registered with the BIR and contain all the required information under the law and regulations, such as the imprinted word 'zero-rated' and the taxpayer's TIN-VAT number.
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> While petitioner satisfactorily met the first requirement as it presented sales invoices duly stamped with the phrase 'zero-rated sales', however, petitioner failed to comply with the equally significant second and third requisites."[2]

In the assailed Amended Decision, the Court further ruled:

> "However, it should be noted at this point that, the presentation of the bills of lading does not, in any way, alter the initial Decision of the Special First Division of this Court on December 15, 2009 because petitioner was not able to meet the requirements to prove its offsetting arrangement pursuant to Revenue Memorandum Circular (RMC) No. 42-2003 xxx."[3]

Meanwhile, respondent contends that the documentary exhibits of petitioner should not have been given probative value for being hearsay evidence pursuant to Section 36, Rule 130 of the Rules of Court. Respondent asserts that petitioner's witness had no personal knowledge on the issuance of its documentary exhibits such as invoices, official receipts, airway bills, bills of lading, bank credit advice and certificate of bank remittances, which were prepared by another person other than the witness.

This argument, however, is bereft of merit.

In the case of *Seaoil Petroleum Corporation vs. Autocorp Group and Paul Y. Rodriguez*[4], the Supreme Court recognized the probative value of invoices and other commercial documents, as follows:

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[2] Decision dated December 15, 2009 as affirmed by an Amended Decision dated April 21, 2016, Docket, pp. 1075-1076.
[3] Docket, p. 1373.
[4] G.R. No. 164326, October 17, 2008.

> "A sales invoice is a commercial document. Commercial documents or papers are those used by merchants or businessmen to promote or facilitate trade or credit transactions. Business forms, *e.g.,* order slip, delivery charge invoice and the like, are commonly recognized in ordinary commercial transactions as valid between the parties and, at the very least, they serve as an acknowledgment that a business transaction has in fact transpired. These documents are not mere scraps of paper bereft of probative value, but vital pieces of evidence of commercial transactions. They are written memorials of the details of the consummation of contracts."

Also, the Court takes into consideration the service of the Independent Certified Public Accountant (ICPA) who conducted an independent special audit and examination of various receipts, invoices and other supporting documents of petitioner. The ICPA certified that the documents are faithful reproduction of the original.

While the Court gives probative value to the invoices, the same treatment cannot be given to it when used as proof of sale of service for output VAT purposes. The Court extensively discussed this matter as follows:

> "In a similar case involving the same company, AT&T, but covering taxable year 2003, the Supreme Court interpreted the same provisions of the NIRC of 1997 (prior to its amendment under RA No. 9337) in this wise:
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> > 'For emphasis, even prior to the enactment of R.A. No. 9337, which clearly delineates the invoice and official receipt, our Tax Code has already made the distinction.
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> > Section 113 of the NIRC of 1997, as amended is the focal provision, to wit:
> >
> > > Section 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: (Emphasis supplied)

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> Although it appears under the above-quoted provision that there is no clear distinction on the evidentiary value of an invoice or official receipt, it is worthy to note that the said provision is a general provision which covers all sales of a VAT registered person, whether sale of goods or services. It does not necessarily follow that the legislature intended to use the same interchangeably. The Court therefore cannot conclude that the general provision of Section 113 of the NIRC of 1997, as amended, intended that the invoice and official receipt can be used for either sale of goods or services, because there are specific provisions of the Tax Code which clearly delineates the difference between the two transactions.

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Therefore, as aptly held by the First Division of this Court in its December 15, 2009 Decision, without VAT official receipts, petitioner's reported collected commissions from non-residents in the amount of ₱39,475,267.97 and commissions from PEZA entities in the amount of ₱687,626.92 cannot qualify for VAT zero-rating."[5]

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[5] Docket, pp. 1379-1381.

Furthermore, in the case of *KEPCO Philippines Corporation vs. Commissioner of Internal Revenue*,[6] the Supreme Court discussed the difference between VAT invoice and VAT official receipt, as follows:

> "Under the law, a *VAT invoice* is necessary for every sale, barter or exchange of goods or properties while a *VAT official receipt* properly pertains to every lease of goods or properties, and for every sale, barter or exchange of services. In *Commissioner of Internal Revenue v. Manila Mining Corporation*, the Court distinguished an invoice from a receipt, thus:
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>> A '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.
>>
>> A '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.
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> In other words, the VAT invoice is the seller's best proof of the sale of the goods or services to the buyer while the VAT receipt is the buyer's best evidence of the payment of goods or services received from the seller. Even though VAT invoices and receipts are normally issued by the supplier/seller alone, the said invoices and receipts, taken collectively, are necessary to substantiate the actual amount or quantity of goods sold and their selling price (*proof of transaction*), and the best means to prove the input VAT payments (*proof of payment*). Hence, VAT invoice and VAT receipt should not be confused as referring to one and the same thing. Certainly, neither does the law intend the two to be used alternatively."

[6] G.R. No. 181858, November 24, 2010.

Consequently, petitioner's claim for VAT zero-rating on its collected commissions from non-residents must be denied for failure to comply with the submission of official receipts pursuant to Section 113 and 237 in relation to Sections 106(A) and (D) and 108(A) and (C) of the NIRC of 1997.

While it is true that this Court is not strictly governed by technical rules of evidence[7], the invoicing and substantiation requirements must, nevertheless, be followed because it is the only way to determine the veracity of petitioner's claims. The rule is that "tax refunds or tax credits — just like tax exemptions — are strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit".[8] "This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim."[9]

As ruled in the assailed Amended Decision which affirmed the Decision dated December 15, 2009, the Court finds that petitioner has established its claim for tax refund/credit only in the reduced amount of ₱134,662.95, representing its unutilized excess input VAT attributable to its zero-rated sales for the four taxable quarters of 2003. For this reason, the Court finds no reason to reverse its Amended Decision dated April 21, 2016.

WHEREFORE, finding no compelling reason to reverse the ruling of the Court in the Amended Decision dated April 21, 2016, respondent's **Motion for Partial Reconsideration** and petitioner's **Motion for Partial Reconsideration (Re: Amended Decision dated April 21, 2016)** are hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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7 Section 8, Republic Act No. 1125.
8 Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (now TeaM Energy Corporation), G.R. No. 180434, January 20, 2016.
9 *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.

I CONCUR:

LOVELL R. BAUTISTA
Associate Justice