REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

MARUBENI PHILIPPINES CORPORATION, Petitioner,	**C.T.A. E.B. NO. 236** **(C.T.A. CASE NO. 6581)** Present:
- versus -	**ACOSTA,** *P.J.* **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** OCT 0 1 2007 GVApolinario

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DECISION

UY, J.:

This is a petition for review before the Court of Tax Appeals *En Banc* filed on January 3, 2007 seeking a review of the Decision and Resolution dated May 18, 2006 and November 23, 2006, respectively, rendered by the First Division of this Court[1] (Court in Division) in C. T. A. Case No. 6581 entitled "Marubeni Philippines Corporation, petitioner, vs. Commissioner of Internal Revenue, respondent", pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282. The dispositive portions thereof read as follows:

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[1] Ponencia of Associate Justice Lovell R. Bautista, and concurred by Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova of the First Division of the Court of Tax Appeals.

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<u>Decision in C.T.A. Case No. 6581 promulgated on May 18, 2006</u>:

"**WHEREFORE**, the Petition is hereby **PARTIALLY GRANTED**. Respondent is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** to the petitioner in the amount of P545,379.13 representing unutilized input VAT for the fourth quarter of 2000.

SO ORDERED."

<u>Resolution denying petitioner's Motion for Reconsideration promulgated on November 23, 2006</u>:

"**IN VIEW OF THE FOREGOING**, petitioner's 'Motion for Reconsideration' is hereby **DENIED** for lack of merit and the pronouncement reached in the assailed DECISION is hereby ***REITERATED***.

SO ORDERED."

THE FACTS

As found by the Court in Division, these are the facts of the case:

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at 9th Floor, LV Locsin Building, Ayala Avenue corner Makati Avenue, Makati City. Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, with authority, among others to decide, approve and grant tax credits and/or refunds of overpaid or erroneously paid internal revenue taxes, with office address at BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner is primarily engaged in the business of buying, selling, distributing, marketing at wholesale insofar as may be permitted by law, all kinds of goods, commodities, wares and merchandise of every kind and description, and to enter into all kinds of contracts for the export, import,

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purchase, acquisition, sale at wholesale and other disposition for its own account as principal or in representative capacity as manufacturer's representative, merchandise broker, indentor, commission merchant, factors or agents, upon consignment or all kinds of goods, wares, merchandise or products whether natural or artificial. It is duly registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer.

On January 25, 2001, petitioner filed its VAT return for the fourth quarter of 2000, declaring an excess input VAT in the amount of P39,224,816.94. Subsequently, on September 17, 2002, petitioner amended the said return reducing its excess input VAT payment to P6,908,625.46. And on October 28, 2002, petitioner amended for the second time its VAT return for the fourth quarter of 2000, reflecting a lower excess input VAT payment of P2,926,674.17, computed as follows:

Total Sales / Receipts & Output Tax	24,047,251.60	2,404,725.09
Zero-rated Sales / Receipts	110,594,773.05	
Total Sales / Receipts	134,642,024.65	
Less: Input Tax		
Input Tax Carried over from Previous Quarter		
Domestic Purchases - Capital Goods	1,573,253.80	157,325.38
Domestic Purchases - Goods other than Capital Goods	50,271,786.75	5,027,178.57
Domestic Purchases - Services	1,468,952.09	146,895.31
Total Purchases	53,313,992.64	
Total Available Input Tax		5,331,399.26
Excess Input Tax		(2,926,674.17)
Less: Tax Credits / Payments		-
Tax Overpayment		(2,926,674.17)

On December 19, 2002, petitioner filed a letter with the BIR requesting for the refund or issuance of a tax credit certificate in the amount of P2,772,523.61 out of the total excess input VAT payment of P2,926,674.17 reported in its VAT return for the fourth quarter of 2000. The claimed amount of P2,772,523.61 allegedly represents unutilized input VAT paid on domestic

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purchases of taxable goods and services (including capital goods), which are directly attributable to petitioner's zero-rated sales/receipts for the fourth quarter of 2000.

On December 27, 2002, petitioner filed the Petition for Review before the Court in Division due to respondent's inaction on its claim.

On May 18, 2006, the Court in Division rendered the assailed Decision partially granting petitioner's claim for refund or issuance of a tax credit certificate in the amount of P545,379.13 representing unutilized input VAT for the fourth quarter of 2000, based on the following pertinent discussions:

> "Similarly, petitioner's sale of services to non-residents for the fourth quarter of 2000 which were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP may fall under the category of services subject to zero percent (0%) VAT under Section 108(B)(2) of the NIRC of 1997. Nevertheless, since petitioner's reported sales of services in the amount of P69,693,571.05 was not duly supported by VAT official receipts in accordance with Section 113 of the NIRC of 1997, the same shall not qualify for VAT zero-rating.
>
> Accordingly, out of the total declared sales of P110,594,773.05 for the fourth quarter of 2000, only the amount of P40,373,794.00 qualifies for VAT zero-rating, detailed as follows:

Export Sales	40,027,804.15
Sales of Services	
Commission from PEZA registered companies	345,989.85
TOTAL	**40,373,794.00**

> x x x However, as correctly noted by the Court commissioned auditing firm, SGV & Co. in its report dated March 29, 2004 *(pages 13 & 14, Exhibit H)*, the following input taxes totaling P486,589.67 failed to meet the substantiation requirements under Section 4.104-5 of Revenue Regulations No. 7-95 in relation to Sections 110 and 113 of the NIRC of 1997 and should, therefore, be disallowed from petitioner's claim:

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Item	Nature	Exhibit No.	Amount (in Php)
1	Input Tax Claimed from a Purchase of Service Supported by a Photocopied VAT OR	2-A	41.73
2	Input Taxes Claimed from Purchases of Goods Supported by Photocopied VAT Invoices	2-B	27,773.14
	subtotal		**27,814.87**
3	Input Taxes Claimed from Purchases of Services Supported by VAT ORs not dated within the 4th quarter of 2000 and not within the same calendar year	2-C	170,587.28
4	Input Taxes Claimed from Purchases of Services Without Supporting Documents	2-D	31,514.99
5	Input Taxes Claimed from Purchases of Services Supported by Documents other than VAT ORs	2-E	97,042.23
6	Input Tax Claimed from a Purchase of Services Supported by an OR Without TIN	2-F	207.99
7	Input Taxes Claimed from Purchases of Services Supported by VAT ORs with TAN-VAT	2-G	20,409.28
8	Erroneous Computation of Input Taxes Claimed from Purchases of Services	2-H	1,183.58
9	Input Taxes Claimed from Purchases of Goods Without Supporting Documents	2-I	912.70
10	Input Tax Claimed from Purchases of Goods Supported by Documents other than VAT Invoices	2-J	5,280.39
11	Input Tax Claimed from a Purchase of Goods Supported by a VAT Invoice Without BIR permit	2-K	1,636.36
12	Input VAT Erroneously Claimed from Purchase of Automobile	2-L	130,000.00
	subtotal		**458,774.80**
	Total		**486,589.67**

Likewise, the input taxes of P229,543.95 and P582,392.34 for which dates of the related VAT official receipts and invoices fall outside the subject period of claim *(see items 4 & 5, pages 14 & 15 of Exhibit H)* should also be deducted from the total claim of P2,772,523.61.

Therefore, petitioner was able to substantiate by proper VAT invoices and/or official receipts only the input taxes of P1,473,997.65, computed as follows:

Amount of Claimed Input VAT	2,772,523.61
Less: 1.) Input taxes without valid VAT invoices or official receipts	486,589.67
2.) Input taxes claimed on purchases of services for which the date of the related VAT official receipts fall outside the period of claim	229,543.95
3.) Input taxes claimed on purchases of goods for which the date of the related VAT invoices fall outside the period of claim	582,392.34
Substantiated Input VAT	**1,473,997.65**

x x x However, of the input VAT of P1,473,997.65, only the input VAT of P545,379.13 can be attributed to the zero-rated sales of P40,373,794.00 that have been duly substantiated, thus:

Subtantiated Zero-rated Sales		40,373,794.00
Divided by Total Reported Zero-rated Sales	/	110,594,773.05
Multiplied by Substantiated Input VAT	x	1,473,997.65
Input VAT attributable to Substantiated Zero-rated Sales		**545,379.13**

xxx xxx xxx

In fine, this Court finds petitioner to have sufficiently proven its entitlement to the refund or issuance of a tax credit certificate representing unutilized input VAT attributable to zero-rated sales for the fourth quarter of 2000 in the reduced amount of P545,379.13 as discussed above."[2]

On June 8, 2006, petitioner filed its Motion for Reconsideration seeking reconsideration of the aforesaid Decision. Subsequently, the Court in Division denied the said motion for lack of merit in its Resolution dated November 23, 2006.[3]

Hence, this recourse before the Court *En Banc* assailing the Decision and Resolution of the Court in Division promulgated on May 18, 2006 and

[2] Decision in C.T.A. Case No. 6581, pp.8-12; Docket, pp. 42-47.
[3] Docket, pp. 47-49.

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November 23, 2006, respectively, raising the following grounds in support thereof:

"**Grounds Relied Upon In Support of the Petition**

(A)

The existence of zero-rated sales in the amount of P69,693,571.05 may be established by evidence other than the presentation of Petitioner's VAT invoices or official receipts.

(B)

Petitioner is entitled to a refund or tax credit of its input VAT of P229,543.95 and P582,392.34 regardless of the fact that the dates of the related VAT official receipts and invoices fall outside the period of claim.

(C)

The First Division miscomputed the amount of input VAT attributable to Petitioner's zero-rated sales."

Moreover, petitioner prays that the assailed Decision and Resolution be reversed and set aside, and that a new judgment be rendered: (1) finding petitioner's input taxes for which the dates of the related VAT invoices or official receipts fall outside of the subject period of claim in the amounts of P229,543.95 and P582,392.34 to be the proper subject of a refund; (2) admitting petitioner's sales of services to non-residents for the fourth quarter of 2000 in the amount of P69,693,571.05 as part of its zero-rated sales for the same period; and (3) ordering respondent to refund or issue to petitioner a tax credit certificate in the aggregate amount of P2,285,933.94 representing VAT attributable to zero-rated sales for the fourth quarter of taxable year 2000.

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THE ISSUES

Based on the grounds relied upon in the instant petition, petitioner raised the following issues for the Court *En Banc*'s consideration:

A. Whether or not the presentation of VAT invoices or official receipts are necessary evidence for the establishment of the existence of zero-rated sales;

B. Whether or not the petitioner is entitled to refund or tax credit of its input VAT of P229,543.95 and P582,392.34 whose invoice dates fall outside the period of claim; and

C. Whether or not the Court in Division erred in its computation of input VAT attributable to petitioner's zero-rated sales.

THE COURT EN BANC'S RULING

The petition is bereft of merit.

At the outset, the Court in Division partially granted petitioner's claim for refund on the ground that out of the P110,594,773.05 total zero-rated sales that it has reported, only the amount of P40,373,794.00 have been sufficiently substantiated. The remaining P69,693,571.05, although supported by other documentary evidence, were not considered on the ground that petitioner failed to present the necessary VAT invoices or official receipts in order to prove such zero-rated sales.

Petitioner argues that the presentation of VAT invoices or official receipts are not necessary for the establishment of the existence of its zero-rated sales as its sales of services to non-residents were allegedly established through the presentation of its records which were examined by the independent CPA commissioned in the case in division. Petitioner, thus, quotes a portion of the independent CPA's Report,[4] to wit:

> "Sales of services to non-residents amounting to P69,693,571.05 consist of commissions from the Company's affiliates abroad (e.g., Marubeni Corporation in Tokyo, Japan). There are no available supporting VAT invoices/ORs for this amount. However, this is substantiated as follows:

Sales of Services to Non-residents	**Exhibit Reference**		**Amount (P)**
Per Schedule of Sales / Receipts	Exhibit O		**69,693,571.05**
Commissions from Marubeni Corporation			
> Supported by M/A Summary and Credit / Debit Advices from Marubeni Corporation	Exhibit 1-2		52,214,416.27
Commissions from other affiliates			
> Without supporting documents of inward remittances but supported by a Service Agreement (Exhibit V)	1-C	162,287.79	
> Supported by Debit Notes only	1-D	100,336.64	
> Supported by Bank Credit Advices only	1-E	677,021.17	
> Supported by Debit Notes and Bank Credit Advices		16,539,509.18	
	Exhibit 1-3		17,479,154.78
Total			**69,693,571.05**
Difference			-

We do not agree.

Section 113 of the NIRC of 1997, provides:

> "***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

[4] Petition for Review, pp. 9-10, Docket, pp. 16-17.

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(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." *(Underscoring and emphasis Ours)*

More specifically, Section 4-108-1 of Revenue Regulations No. 7-95 enumerates the information that must appear on the face of the receipts or invoices issued for sales of goods by all VAT-registered persons. The pertinent portion thereof is quoted hereunder:

> "**SEC. 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.
>
> xxx xxx xxx
>
> Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoices or receipts and this shall be considered as 'VAT Invoice'. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax." *(Underscoring and emphasis Ours)*

Applying the afore-cited provisions in the case at bench, it is evident that the documentary evidence submitted and relied upon by petitioner is insufficient to prove the basis for its entire claim for refund. As We have 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, We quote Our discussion

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on the matter in the case of ***American Express International Inc., Philippine Branch v. Commissioner of Internal Revenue***.[5] 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 income and thereafter duly recorded in the accounting records**.
>
> The aforequoted 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." *(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.

[5] CTA EB No. 103 (CTA Case No. 6294), March 3, 2006.

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> 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**."[6] *(Emphasis Ours)*

In view of the foregoing, the Court in Division committed no reversible error in disallowing petitioner's reported sales of services for VAT zero-rating in the amount of P69,693,571.05 because of petitioner's failure to present the invoices and official receipts in support of the alleged zero-rated sales.

Petitioner further posits that Section 4.102-2(b)(2) of Revenue Regulations No. 7-95 does not indicate the invoicing requirements of Section 113 of the NIRC of 1997 and that compliance with Section 4-108-1 of the same Revenue Regulation is required in order to classify a sale as zero-rated.

It should be noted that Section 113 of the NIRC of 1997, as well as the corresponding implementing Revenue Regulation 7-95, particularly Section 4.108-1, pertaining to VAT invoicing and accounting requirements, are mandatory in nature as the word "shall" was 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.[7] Section 113 is clear in requiring that for every sale, a VAT invoice or official receipt should be issued. Although

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[6] 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).
[7] Dizon vs. Encarnacion, 9 SCRA 714 (1963).

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Section 4.102-2 does not specifically state the invoicing requirements, this does not mean that petitioner is exempted from it since Section 113 of the NIRC of 1997 made no distinction as to whether the sale is for zero-rated, exempt or not.

"It is a well-known maxim in statutory construction that where the law does not distinguish, we should not distinguish."[8] 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 and supporting evidence, then the granting thereof could prove to be improper, if not difficult.[9]

In the case of ***Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue***,[10] the Supreme Court discussed the invoicing requirements for VAT-registered persons. It ruled that "[i]t is clear that a VAT invoice can be used only for the sale of goods or services that are subject to VAT'. This means that the issuance of VAT invoices or official receipts are mandatory for sales that are subject to VAT either at 10% or 0% (zero-rated sales). The Supreme Court likewise expressed, in the same case, that "it is the duty of the seller to comply with the invoicing and accounting requirements laid down in, among others, Section 108 of the Tax Code".

Clearly, this is a recognition that there are other sources of VAT invoicing and accounting requirements aside from Section 108 of the Tax Code (now Sec. 113 of the NIRC of 1997), such as implementing rules and

[8] Robles vs. Zambales Chromite Mining Company, 104 Phil. 688 (1958).
[9] ECW Joint Venture, Inc., vs. Commissioner of Internal Revenue, supra.
[10] 318 SCRA 386 (1999).

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regulations issued by the administrative agencies of the government that require strict compliance, i.e. Revenue Regulations.

Pursuant to settled jurisprudence, petitioner in claiming for tax refund has the burden of proof to establish the factual basis of its claim. Having failed to discharge the burden in this regard, petitioner's claim must therefore fall.

On the issue of the out-of-period claims, petitioner contends that "while certain invoices or official receipts may be dated outside the period covered by the claim, this should not detract from the fact that these invoices and official receipts still substantiate valid creditable input VAT."

We note that there is no issue as to whether or not the subject out-of-period invoices and official receipts substantiate a valid creditable input VAT. The Court in Division, in its assailed Decision, denied its inclusion for the reason that said invoices and official receipts fall outside the subject period of claim, i.e. the fourth quarter of 2000.

As previously ruled, input taxes on domestic purchases of goods supported by VAT invoices, as well as on domestic purchases of services supported by VAT ORs, which are not dated within the VAT-taxable quarter, should be disallowed considering that input VAT supported by VAT invoices and official receipts dated earlier than the period of claims can no longer be claimed for refund.[11]

Petitioner should have declared these input taxes in the corresponding taxable quarters when payments for the services were made as evidenced by

[11] Matsushita Business Machine Corporation of the Philippines vs. Commissioner of Internal Revenue, CTA Case No. 6580, September 14, 2006.

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VAT ORs and when purchases of goods were consummated as evidenced by VAT invoices.[12]

In the case of ***Lepanto Consolidated Mining Co. vs. Commissioner of Internal Revenue***,[13] this Court ruled that:

> "The alleged unutilized input VAT of P5,820,863.87 should be denied since the supporting invoices and official receipts thereof bore dates which were earlier than the period of petitioner's claim. Section 110(A)(2) of the 1997 Tax Code provides:
>
> > 'Sec. 110. *Tax Credits.* –
> >
> > A. *Creditable Input Tax.* –
> >
> > 2. The input tax on domestic purchase of goods or properties shall be creditable:
> >
> > (a) To the purchaser upon consummation of sale and on importation of goods or properties; and
> >
> > However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.'
>
> It is clear from the above-quoted provisions of law that for purchases of goods, the corresponding input value-added taxes of which is creditable to the purchaser upon consummation of sale, that is, upon the issuance of the corresponding invoice. On the other hand, for purchases of services, the corresponding input value added taxes of which is creditable to the purchaser upon payment of compensation, rental, royalty, or fee, that is, upon the date of official receipt. Section 110(A) is explicit. It states 'upon consummation', in the case of domestic purchases of goods, and 'upon payment', in the case of purchases of services. It does not provide any qualification, such as 'upon

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[12] Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue, CTA Case Nos. 6628 & 6732, July 31, 2006, affirmed in CTA EB No. 251, May 30, 2007.
[13] CTA Case Nos. 6368 and 6480, December 15, 2004, cited in the cases of Mirant (Navotas II) Corporation (formerly Southern Energy Navotas II Power, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6418, April 11, 2006 (Entry of Judgment dated September 14, 2006) and Takenaka Corp. Phil. Branch vs. Commissioner of Internal Revenue, CTA Case No. 6752, January 2, 2007 (Entry of Judgment dated February 16, 2007).

delivery of invoice or official receipt' which is the main thesis of petitioner's contention.

In a resolution of the case entitled ***Telecommunications Technologies Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6168, promulgated on July 28, 2004***, this Court elucidated that 'the input VAT on domestic purchases of goods or properties shall be allowed as tax credit to the purchaser upon consummation of sale, which means upon issuance by the seller of the VAT sales invoices evidencing the sale of goods/properties. On the other hand, the input VAT on purchases of services shall be available as tax credit to the purchaser only upon payment of the compensation or fee, i.e., upon issuance by the seller of the VAT official receipt evidencing receipts of the payment for services performed or yet to be performed.'

Thus, it is indubitable on the part of the petitioner to declare the input value added taxes on domestic purchases of goods and services at the end of the corresponding taxable quarter where purchases of goods were consummated, as evidenced by VAT invoice and for payment of services, as evidenced by VAT official receipt.

Therefore, the amount of input VAT of P5,820,863.87 which is supported by VAT invoices and official receipts dated earlier than the period of petitioner's claims can no longer be claimed for refund pursuant to Section 110(A) in relation with Section 112(A) of the 1997 National Internal Revenue Code." *(Underscoring Ours)*

From the foregoing, We agree with the Court in Division's finding that a portion of petitioner's claimed input VAT in the total amount of P811,936.29 (P229,543.95[14] + P582,392.34[15]) cannot be considered since those input taxes should have been declared in the corresponding taxable quarters when purchases of goods were consummated, as evidenced by VAT invoices or upon payment of the services, as evidenced by VAT ORs.

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[14] Input taxes claimed on purchases of services for which the date of the related VAT official receipts fall outside the period of claim.
[15] Input taxes claimed on purchases of goods for which the date of the related VAT invoices fall outside the period of claim.

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On the last issue raised, petitioner asserts that the Court in Division committed an error in determining its excess input VAT attributable to its zero-rated sales to be only P545,379.13, the computation or allocation being based only on the substantiated zero-rated sales versus the total zero-rated sales as reported by petitioner, computed as follows:

Subtantiated Zero-rated Sales		40,373,794.00
Divided by Total Reported Zero-rated Sales	/	110,594,773.05
Multiplied by Substantiated Input VAT	x	1,473,997.65
Input VAT attributable to Substantiated Zero-rated Sales		545,379.13

Further, petitioner contends that even based on the amounts of zero-rated sales and input VAT as determined by the Court in Division, its input VAT attributable to its zero-rated sales should be P1,473,997.65 and not P545,379.13 as stated in the assailed Decision.

In resolving this matter, We take note that the total unutilized input VAT being claimed by the petitioner for the fourth quarter of 2000 amounted to P2,772,523.61. Out of this amount, only P1,473,997.65 was sufficiently substantiated and therefore allowed for refund assuming all reported zero-rated sales as reported are qualified, computed as follows:

Amount of Claimed Input VAT			P	2,772,523.61
Less:	1.)	Input taxes without vaid VAT invoices or official receipts		486,589.67
	2.)	Input taxes claimed on purchase of services for which the date of the related VAT official receipts fall outside the period of claim		229,543.95
	3.)	Input taxes claimed on purchase of goods for which the date of the related VAT official receipts fall outside the period of claim		582,392.34
TOTAL				1,473,997.65

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It must be noted that out of the total declared sales of petitioner in the amount of P110,594,773.05 for the fourth quarter of 2000, only the amount of P40,373,794.00 qualified for VAT zero-rating. Thus, in computing for the portion allowed to be claimed for refund, We proportioned the substantiated unutilized input VAT between the qualified and non-qualified zero-rated sales. Using this as Our basis, We found that only the amount of P545,379.13 is refundable to the petitioner.

We therefore disagree with petitioner's submission that its input VAT attributable to its zero-rated sales should be P1,473,997.65 and not P545,379.13. There is no justifiable reason why petitioner should be entitled to a refund of the full amount of P1,473,997.65 pertaining to its substantiated input VAT, because this covers its entire reported zero-rated sales, substantiated and unsubstantiated. In disallowing a portion of petitioner's reported zero-rated sales, it necessarily follows that a portion of the claim for refund of input VAT attributable to zero-rated sales should also be disallowed by the court. Otherwise, We will be disregarding the substantiation of those zero-rated sales of the petitioner, thereby negating its effect on the amount of unutilized input VAT claimed for refund.

To reiterate, the rule in this jurisdiction is that "[t]ax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person claiming the exemption".[16]

[16] Commissioner of Internal Revenue vs. Procter and Gamble Philippine Manufacturing Corporation (204 SCRA 377 [1991]) and Commissioner of Internal Revenue vs. S. C. Johnson & Son, Inc. (309 SCRA 87 [1999]).

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In the light of the foregoing discussions, the Court *En Banc* finds no reversible error committed by the Court in Division that would merit a reversal of its assailed Decision and Resolution dated May 18, 2006 and November 23, 2006, respectively.

WHEREFORE, premises considered, the instant petition is hereby **DENIED** 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

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C E R T I F I C A T I O N

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

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