REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NIPPON EXPRESS (PHILIPPINES) CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB NO. 467
(C.T.A. Case No. 7189)

Present:

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

Promulgated:
OCT 0 9 2009

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review[1] filed by Nippon Express (Philippines) Corporation pursuant to paragraph 2, Section 18 of Republic Act No.

[1] *Rollo*, C.T.A. EB No. 467 (C.T.A. Case No. 7189), pp. 24 – 83, with Annexes.

1125, as amended by Republic Act No. 9282 and Rule 8, Section 3(b) of the Revised Rules of the Court of Tax Appeals, praying for the reversal of:

1. the Decision[2] dated September 11, 2008 rendered by the Second Division of the Court ("Court in Division") in CTA Case No. 7189, which denied petitioner's claim for tax refund or issuance of a tax credit certificate in the amount of ₱22,940,560.86, representing petitioner's excess input value-added tax ("VAT") attributable to its zero-rated sales for taxable year 2003; and
2. the Resolution of the Court in Division promulgated on February 2, 2009, which denied petitioner's Motion for Reconsideration for lack of merit.

Petitioner likewise prays that in the alternative, it be allowed to introduce official receipts in a proceeding called for such purpose if only to prove the existence of its zero-rated sales in addition to the evidence already introduced before the Court in Division.

Antecedent Facts

The relevant antecedents are succinctly recited in the Decision subject of the review as follows:

> **THE PARTIES**
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> Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines. It is registered with the Securities and Exchange Commission under Certificate of Registration No. AS095-005669, with principal office address at U-2701 Yuchengco Tower, RCBC Plaza, 6819 Ayala Avenue, Salcedo Village, Makati City.

[2] Penned by Associate Justice Olga Palanca-Enriquez, with Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy, concurring.

Respondent, on the other hand, is the Commissioner of Internal Revenue, vested with the power to decide, approve, and grant refunds or tax credits of overpaid internal revenue taxes as provided by law. She holds office and may be served with summons, orders, pleadings, and other court processes at the Bureau of Internal Revenue ("BIR") National Office, BIR Building, Agham Road, Diliman, Quezon City.

THE FACTS

In their "Joint Stipulation of Facts and Issues", the parties stipulated, as follows:

> "3. Petitioner is registered with the Large Taxpayers District Office of the Bureau of Internal Revenue – Revenue Region No. 8 as a value-added tax (VAT) taxpayer;
>
> 4. Petitioner filed an administrative claim for tax credit/refund of P22,940,560.86 excess/unused input taxes attributable to its zero-rated sales with the Large Taxpayers District Office, Revenue Region No. 8 (Makati City) on March 30, 2005;
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> 5. Respondent has not yet resolved the administrative claim for refund of Petitioner;
>
> 6. Petitioner filed its quarterly VAT returns for the first, second, third and fourth taxable quarters of the year 2003 on April 25, 2003, July 25, 2003, October 23, 2003, and May 27, 2004; and
>
> 7. For the period January 1, 2003 to December 31, 2003, Petitioner reflected on its quarterly VAT returns the aggregate amount of P999,585,846.76 as zero-rated sales."

In her Answer, respondent alleged by way of special and affirmative defenses that: petitioner's claim for refund is subject to investigation by the BIR; petitioner failed to establish that the tax subject of the case was erroneously or illegally collected; in an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit; it is incumbent upon the petitioner to show that it has complied with the provisions of *Section 204*, in relation to *Section 229 of the Tax Code, as amended*; and claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from tax.

Petitioner presented Jose S. Tayag, Jr. and Virgincita B. Alapan, as witnesses, and formally offered documentary evidence, marked as *Exhibits "A" to "TTT"*, inclusive of their submarkings, which were all admitted by the Court in a Resolution dated January 3, 2008.

On the other hand, respondent submitted the case for decision, without presenting any evidence.

Thereafter, both parties were granted thirty (30) days from May 8, 2008, within which to file their simultaneous memoranda.

On May 29, 2008, only petitioner filed its memorandum, and the case was deemed submitted for decision.[3]

The Ruling of the Court in Division

The following issues were submitted by the parties for resolution by the Court in Division:

I

WHETHER OR NOT PETITIONER HAS EXCESS UNUTILIZED INPUT TAXES.

II

WHETHER OR NOT PETITIONER'S EXCESS INPUT TAXES BEING CLAIMED FOR REFUND ARE ATTRIBUTABLE TO ITS ZERO-RATED SALES.

III

WHETHER OR NOT THE EXCESS INPUT TAXES BEING CLAIMED FOR REFUND WERE APPLIED AGAINST ANY OUTPUT TAX DURING THE PERIOD COVERED BY THE CLAIM OR IN THE SUCCEEDING PERIOD(S).

IV

WHETHER OR NOT PETITIONER'S SALES AMOUNTING TO P999,585,846.76 QUALIFY AS ZERO-RATED SALES.

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[3] *Rollo*, pp. 53 – 55.

V

WHETHER OR NOT PETITIONER'S CLAIM FOR REFUND OF ALLEGED EXCESS UNUTILIZED INPUT TAXES FOR THE FOUR (4) QUARTERS OF THE YEAR 2003 IS SUBSTANTIATED BY DOCUMENTARY EVIDENCE.[4]

The Court in Division synthesized the foregoing issues into the principal issue of whether or not petitioner is entitled to the refund or issuance of a tax credit certificate in the amount of ₱22,940,560.86, representing its unutilized input VAT attributable to its zero-rated sales for taxable year 2003.

It then went on to declare that under Section 108 (B)(2) and (3) of the National Internal Revenue Code ("NIRC") of 1997, as amended and Section 3(3) of Revenue Memorandum Circular ("RMC") No. 74-99, petitioner's sales to PEZA-registered enterprises and foreign corporations in the amount of ₱999,585,846.76[5] are subject to zero percent (0%) VAT. Consequently, petitioner is not liable to pay any output VAT thereon, and the reported unutilized input VAT attributable thereto may be the proper subject of a claim for refund or issuance of a tax credit certificate, under Section 112 (A) of the NIRC of 1997, as amended.

However, the Court in Division emphasized that petitioner can only be entitled to a refund or a tax credit if it complies with the mandatory invoicing requirements under Sections 113 and 237 of the 1997 NIRC, as amended, in relation to Section 108 of the same Code. It stated that such invoicing requirements do not only pertain to documents required to prove input taxes, but also requires the presentation of proper documents to prove the existence and/or non-existence of

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[4] *Rollo*, p. 56.
[5] Total of sales subject to zero percent (0%), per Quarterly VAT Returns from January 2003 to December 2003, *Exhibits "B", "D", "F", and "H"*.

output taxes. Specifically, it said that petitioner being engaged in the sale of services to its clients, should produce official receipts to prove its alleged zero-rated sales of services to PEZA-registered entities and other foreign clients.

Upon evaluation of petitioner's evidence, the Court in Division ruled that the sales invoices that petitioner issued are not sufficient to meet the invoicing requirements. It held that without proper VAT official receipts issued to its clients, the payments received by petitioner for providing services to PEZA-registered entities and other foreign clients cannot qualify for zero-rating for VAT purposes. Thus, the Court in Division stated that petitioner is not entitled to a refund pursuant to Item A-13 of Revenue Memorandum Circular ("RMC") No. 42-2003.

Accordingly, the Court in Division disposed of the case in this wise:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit.
>
> **SO ORDERED.**

Aggrieved, petitioner filed a Motion for Reconsideration on October 2, 2008, which was denied for lack of merit by the Court in Division in its Resolution promulgated on February 2, 2009.

The Issues

Hence, the instant Petition for Review where petitioner alleges that:

a. The Honorable CTA – Second Division erred in finding that the sales invoices and their supporting documents issued by the Petitioner to PEZA-registered entities and foreign clients are not sufficient to prove its alleged zero-rated sales.

b. The Honorable CTA – Second Division erred in finding that Petitioner is not qualified for zero-rating for VAT purposes due to its failure to issue to its clients, which are PEZA-registered entities and other foreign clients, proper VAT official receipts.[6]

Petitioner's Arguments

Petitioner contends that nowhere in the 1997 NIRC and its Regulations does it state that only official receipts support the sale of services or that only sales invoices support the sale of goods. There is no statutory provision which states that a sale of goods which is not supported by an invoice or a sale of services which is not supported by an official receipt is ineffectual or is not valid.

Petitioner also avers that the 1997 NIRC, its implementing Regulations and jurisprudence allow other documentary evidence such as audited financial statements, books of accounts, summary of export sales, airway bills, export declarations, to prove zero-rated sales.

Petitioner likewise submits that the amendment introduced by Republic Act No. 9337 to the 1997 NIRC, which requires the issuance of sales invoice for every sale of goods and the issuance of official receipt for every sale of services cannot be given retroactive effect.

Lastly, petitioner argues that even assuming for the sake of argument that the Court in Division is correct, petitioner should at least be allowed to introduce its existing official receipts in the interest of justice and equity.

Respondent's Counter-arguments

For his part, respondent points out that there is a distinction between a sales invoice and an official receipt, thus a sales invoice cannot be presented in lieu of an official receipt.

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[6] *Rollo*, p. 31.

Respondent also posits that the use of the phrase "invoice or receipt" in Sections 112 and 237 of the 1997 NIRC merely denotes that the VAT-taxpayer being referred to in the said provisions pertain to both the seller of goods and the seller of services.

Respondent likewise asseverates that the *Intel*[7] case cited by petitioner is not on all fours with the facts of the present case, hence it is not applicable.

Finally, respondent maintains that petitioner's claim that the automatic denial of its claim for refund or tax credit is not among the prescribed penalties for non-compliance with invoicing requirements and that the same is not only a harsh and unfair penalty, but it also ignores the well-established rules of *strictissimi juris* construction of tax refunds and *dura lex, sed lex*.

The Ruling of the Court En Banc

The Petition for Review has no merit.

The issues presented are not novel. In a similar case[8] involving the same parties, the majority of the Court *En Banc* has categorically ruled that in claims for refund or issuance of a tax credit certificate of excess input VAT attributable to zero-rated sales of services, such sales of services must be supported by official receipts, without which, such claims shall be denied pursuant to Revenue Memorandum Circular ("RMC") No. 42-2003.[9]

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[7] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 166732, April 27, 2007, 522 SCRA 657.

[8] Nippon Express (Philippines) Inc. v. Commissioner of Internal Revenue, C.T.A. EB No. 335 (C.T.A. Case No. 6464), August 20, 2008.

[9] Entitled "Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters."

Petitioner's claim is based on Sections 108 (B)(2) and (3) in relation to Section 112 (A) of the 1997 NIRC, as amended, and on Section 3 of Revenue Memorandum Circular ("RMC") No. 74-99, scilicet:

> **SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –**
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> xxx xxx xxx
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> (B) **Transactions Subject to Zero Percent (0%) Rate**. – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
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> xxx xxx xxx
>
> (2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;
>
> xxx xxx xxx
>
> **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 volume of sales.

SEC. 3. Tax Treatment of Sales Made by a VAT Registered Supplier from the Customs Territory, to a PEZA Registered Enterprise. –

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3. In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to ART. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the "Cross Border Doctrine" of the VAT system.

This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of the issuance of this Circular. *(Boldfacing supplied)*

It is undisputed that petitioner's sales to PEZA-registered enterprises and foreign corporations are subject to zero percent (0%) VAT. Consequently, petitioner is not liable to pay any output VAT thereon, and the reported unutilized input VAT attributable thereto may be the proper subject of a claim for refund or issuance of a tax credit certificate, as provided in the afore-quoted Section 112 (A) of the 1997 NIRC.

However, the majority of the Court *En Banc* has consistently ruled that claims for refund or issuance of tax credit certificate shall be granted only when there is strict compliance with the invoicing and substantiation requirements, not only for input taxes, but also for output taxes, especially in instances where the claim is based on zero-rated sales or exemptions, since this will determine the creditable or unutilized input taxes that are available for refund.[10] These invoicing and substantiation requirements are contained in Section 113 (A) in relation to Section 237 of the 1997 NIRC, and Section 4.108-1 of Revenue Regulations No. 7-95, *viz.:*

> **SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons.** —
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> (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:
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> (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.
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> **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

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[10] Nippon Express (Philippines) Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 335 (C.T.A. Case No. 6464), August 20, 2008; Applied Food Ingredients Co., Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 359 (C.T.A. Case No. 6513), June 4, 2008; Applied Food Ingredients Co., Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 220 (C.T.A. Case No. 6687), May 7, 2007.

purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.

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 an internal revenue tax from compliance with the provisions of this Section.

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.

In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.

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.

If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A 'VAT Invoice' shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the Code. *(Boldfacing supplied)*

It is clear from the afore-quoted provisions that the law requires the issuance of either an invoice or receipt for every sale by a VAT-registered person. The invoice or receipt shall contain the information required under Sections 113 and 237 of the NIRC of 1997. It bears stressing that the presentation of invoices and/or receipts is crucial as such documents will prove the existence and nature of transactions and will be a basis for the computation of taxes.[11]

While Sections 113 and 237 of the 1997 NIRC and Section 4.108-1 of Revenue Regulations No. 7-95 use the words "invoice" and "receipt" without distinction, it is noteworthy that the 1997 NIRC provides separate provisions for the VAT on sale of goods or properties (Section 106) and for the VAT on sale of services and use or lease of properties (Section 108).

For the sale of goods or properties, the VAT is imposed upon the gross selling price which means that the VAT on the sale of goods or properties accrues upon the consummation of sale, whether or not the consideration was actually received already by the seller. It is for this reason that Section 106 (D) (1) provides that the tax shall be computed by multiplying the total amount indicated in the invoice by one-eleventh (1/11), to wit:

> **SEC. 106. Value-added Tax on Sale of Goods or Properties. –**
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> (A) Rate and Base of Tax. – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the **gross 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

[11] SPL Worldgroup (Phil.), Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 6802, August 31, 2006.

(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). *(Boldfacing supplied)*

On the other hand, in the case of sale of services, as in the instant case, the VAT is computed based on gross receipts as indicated under Section 108 (A) of the 1997 NIRC. 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. Furthermore, Section 108 (C) of the same Code 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).[12] Thus:

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

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

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The term "gross receipts" means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.

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(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). *(Boldfacing supplied)*

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[12] Jideco Manufacturing Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. EB No. 53 (CTA Case No. 6552), June 7, 2005.

In other words, in the computation of the output tax on the sale of goods or properties, the basis would be the amount appearing in the invoice, while in the computation of the output tax on sale of services, the basis would be the amount appearing in the official receipts.[13] Irrefragably, sales invoices must support sales of goods or properties while official receipts must support sales of services. It is well to note that the afore-quoted provisions do not provide for any document that can be used as an alternative to, or in lieu of an invoice and official receipt. In addition, said provisions were already in effect prior to Republic Act No. 9337.

Moreover, the majority of the Court *En Banc* explained the rationale for requiring the presentation of official receipts in sales of services and discussed the *Intel* case[14] relied upon by petitioner, in ***AT & T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 381 (C.T.A. Case No. 7221), September 24, 2008,*** as follows:[15]

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

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[13] AT&T Communications Services Phil., Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 6907, February 23, 2007.
[14] Supra, note 7.
[15] Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez concurring and Presiding Justice Ernesto D. Acosta dissenting.

1997 prior to its amendment, it was even clarified in the subsequent law under Republic Act (R.A.) No. 9337. In fact, during the Senate deliberation of Senate Bill No. 1950 which later on became R.A. No. 9337, it can be reasonably concluded that the true intendment of the legislature is to make a distinction between the VAT invoice and official receipt. The pertinent portion of the Senate deliberation provides:

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

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

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

Meanwhile, **Petitioner's reliance on the case of *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue* is misplaced. The two cases delve on distinct set of facts and issues**. In the herein case, the petitioner raises the issue of whether or not VAT invoices may be interchanged with VAT official receipts as proof of zero-rated sale of

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services. On the other hand, the Intel Case focuses on the relevance of the authority to print. Pertinent excerpts of the Intel Case are as follows:

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

Petitioner further argued that in a claim for refund or issuance of a tax credit certificate attributable to zero-rated sales, what is to be closely scrutinized is the documentary substantiation of the input VAT paid, as may be proven by other export documents, rather than the supporting documents for the zero-rated export sales as held by the Supreme Court in the above cited case. **While it is true that substantiation of the input VAT paid is important in the claim for refund, however, the Supreme Court also emphasized the importance of presenting evidence proving actual zero-rated sales in the case of *Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue*.**[16] It was held that:

> . . . It therefore falls upon herein petitioner corporation to first establish that its sales qualify for VAT zero-rating under the existing laws (legal basis), and then to present sufficient evidence that said sales were actually made and resulted in refundable or creditable input VAT in the amount being claimed (factual basis).
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> xxx xxx xxx
>
> Although the foregoing decision focused only on the proof required for the applicant for refund/credit to establish the input VAT payments it had made on its purchases from

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

> suppliers, Revenue Regulations No. 3-88 also required it to present evidence proving actual zero-rated VAT sales to qualified buyers, such as (1) photocopy of the approved application for zero-rate if filing for the first time; (2) sales invoice or receipt showing the name of the person or entity to whom the goods or services were delivered, date of delivery, amount of consideration, and description of goods or services delivered; and (3) the evidence of actual receipt of goods or services. *(Boldfacing supplied)*

Furthermore, Item A-13 of Revenue Memorandum Circular No. 42-2003[17] categorically provides that the failure of a taxpayer claiming for tax refund/credit to comply with the invoicing requirements *i.e.* the issuance of the proper document for the consummation of the sale, will result in the disallowance of the claim for input VAT, *viz.*:

> A-13. Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.
>
> **If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g., failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales.** Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer. *(Boldfacing supplied)*

To stress, the requirement of issuing a duly registered VAT official receipt with the imprinted word "zero-rated" is mandatory under the law and cannot be

[17] Entitled "Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters."

substituted especially for input VAT refund purposes.[18] Non-presentation of VAT official receipts to establish zero-rated sales is fatal to a taxpayer's claim for refund of its unapplied input VAT payments which are directly attributable to such zero-rated sales.[19]

Anent petitioner's alternative prayer that it be allowed to introduce official receipts in a proceeding called for such purpose if only to prove the existence of its zero-rated sales in addition to the evidence already introduced before the Court in Division, the same cannot be granted. Petitioner attached to its Petition for Review as Annex "D" a photocopy of a sample official receipt it issued for a zero-rated sale for the perusal of the Court.[20] Petitioner was already given an opportunity to present such evidence after the Court in Division pointed out in its Decision the significance of VAT official receipts to sufficiently substantiate its claim. Petitioner filed its Motion for Reconsideration and yet failed to present any VAT official receipt and insisted on the sufficiency of the documentary evidence it submitted during trial despite the Court in Division's ruling. It was only upon the filing of its Petition for Review before the Court *En Banc* that petitioner decided to produce a sample VAT official receipt which is a mere photocopy. This cannot be allowed following the Court *En Banc*'s ruling in ***Hazama Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 232 (C.T.A. Case No. 6420), September 4, 2007***, *viz.*:

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[18] Kepco Philippines Corporation v. Commissioner of Internal Revenue, C.T.A. EB Case No. 107 (C.T.A. Case No. 6413), June 29, 2007.
[19] American Express International, Inc.-Philippine Branch v. Commissioner of Internal Revenue, C.T.A. EB Case No. 103 (C.T.A. Case No. 6294), March 3, 2006.
[20] *Rollo*, p. 83.

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, 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)* and *Paseo Realty & Development Corporation vs. Court of Appeals (PRDC case)*, 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. 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 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 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.

> **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.** *(Boldfacing supplied)*

In fine, no reversible error was committed by the Court in Division in its assailed Decision in holding that petitioner's claimed input VAT payments in the amount of ₱22,940,560.86, allegedly attributable to its sales of services for taxable year 2003 cannot be refunded. After all, it has been the consistent holding, in this jurisdiction, that tax refunds partake the nature of tax exemptions. As such, they are regarded as a derogation of sovereign authority and is to be construed in *strictissimi juris* against the person or entity claiming the exemption.[21] In an action for refund, therefore, the burden of proof is upon the claimant to establish a right to refund. Claimant's failure to discharge its burden will result in the denial of the claim for refund.

WHEREFORE, the Petition for Review is **DISMISSED.** Accordingly, the impugned Decision of the Court in Division dated September 11, 2008 and its Resolution promulgated on February 2, 2009 in C.T.A. Case No. 7189 are **AFFIRMED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[21] Far East Bank and Trust Company v. Commissioner of Internal Revenue, G.R. No. 138919, 488 SCRA 473, May 2, 2006.

WE CONCUR:

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice