REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MSF TIRE AND RUBBER, INC., Petitioner,	**EB No. 265** (CTA Case No. 6804)
	Present: ACOSTA, *PJ.* CASTAÑEDA JR., BAUTISTA UY, CASANOVA, and PALANCA-ENRIQUEZ, *JJ:*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 06 2007

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DECISION

CASANOVA, J:

This is a Petition for Review,[1] filed, through registered mail, by the petitioner-MSF Tire and Rubber, Inc. with the Court *En Banc*, pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282, from the Decision[2] (*Assailed Decision*) of the Court of Tax Appeals Second Division (*CTA Second Division*) dated September 14, 2006 in CTA Case No. 6804 entitled, "*MSF Tire and Rubber, Inc., petitioner vs. Commissioner of Internal Revenue, respondent,*" denying the Petition for Review[3] in the above-mentioned case for lack of merit, and from the Resolution[4] (*Assailed Resolution*) dated January 10, 2007 denying petitioner's Motion for Reconsideration.

The facts of the case, as culled from the records, are as follows:

[1] CTA En Banc Rollo, pp. 58-103.
[2] Annex "A", CTA En Banc Rollo, pp.35-48.
[3] CTA Second Division Rollo, pp. 1-46.
[4] Annex "B", CTA En Banc Rollo, pp. 49-54.

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"Petitioner, MSF Tire and Rubber, Inc., is a domestic corporation duly organized under the laws of the Republic of the Philippines, with principal office address at KM 21 East Service Road, South Superhighway, Sucat, Muntinlupa City, Metro Manila. It is registered with the Securities and Exchange Commission as an entity engaged in the business of buying, selling at wholesale, and otherwise, dealing in automobile tires, tubes and accessories, including performing automobile and tire repair work and manufacturing rubber goods. Petitioner is likewise registered with the Bureau of Internal Revenue as a value-added tax (VAT) taxpayer with Tax Identification Number (TIN) 053-004-503-975.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, empowered to perform the duties of his office including, among others, the duty to act on and approve claims for refund or tax credit as provided by law, with office address at the BIR National Office Building BIR Road, East Triangle, Diliman, Quezon City.

On February 17, 2000, petitioner entered into a Lease Agreement[5] with EEI Power Corporation (EEI), a domestic corporation organized under Philippine laws. Under the said Lease Agreement, it was agreed upon that EEI 'shall cause and shall be responsible for the purchase, installation (including but not limited to design, short circuit calculation, development, construction, completion, testing and commissioning), operation and maintenance of a Bunker C Fuel Power Station (the 'Equipment') able to follow Lessee's requirements,' and that petitioner shall rent the Equipment from EEI for a period of ten (10) years from the completion date. It was likewise stipulated that in case of termination or expiration of the contract of lease, petitioner is granted an option to purchase the Equipment.

On April 2, 2001, petitioner, through the accounting firm, Joaquin Cunanan & Co., filed its Application for Tax Clearance/Notice of Dissolution for its alleged dissolution effective March 1, 2001.

On account of the cessation of its operations, petitioner allegedly was constrained to terminate the Lease Agreement with EEI, and to purchase and acquire ownership of the Equipment by reimbursing EEI the entire cost that it had incurred at the time for the purchase, importation and installation of the Equipment.

For its alleged purchase of the Equipment from EEI in view of the dissolution, as well as, payment of the corresponding input value-added taxes therein, petitioner filed with the BIR Large Taxpayer Assistance

[5] Exhibit "A" (Power Equipment Project Lease Agreement between EEI Power Corp. and MSF Tire and Rubber, Inc.), CTA Second Division Rollo, pp. 121-198.

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Division (LTAD) a written claim for refund of excess input VAT on its purchase of capital goods on September 30, 2003 in the amount of P12,009,333.37.

Having received no reply from respondent, petitioner then elevated this case to this Court on October 24, 2003 before it could be barred by prescription.

On December 23, 2003, respondent filed his Answer, raising the following as his Special and Affirmative Defenses, to wit:

> 3. He reiterates and repleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses;
>
> 4. Petitioner's claim for refund is subject to administrative investigation/examination by the respondent;
>
> 5. To support its claim, it is imperative for petitioner to prove the following, viz:
>
> > a. The registration requirements of a value-added taxpayer in compliance with Section 6 (a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;
> >
> > b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code as amended;
> >
> > c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, **otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition *sine qua non* prior to the filing of judicial claim** in accordance with the provision of Section 229 of the Tax Code, as amended. It is worthy of

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emphasis that Section 112 (D) of the Tax Code, as amended, requires the **submission of complete documents in support of the application filed** with the Bureau of Internal Revenue before the 120-day audit period shall apply, and **before the taxpayer could avail of judicial remedies as provided for in the law**. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review;

d. That the amount of P12,009,333.37 allegedly paid by the petitioner representing unused or excess creditable input VAT credits arising from the purchase of capital goods (the Equipment) have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112 (A) and (D) and 229 of the Tax Code, as amended;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal, showing that it actually paid VAT in accordance with Sections 110 (A)(2) and 113 of the Tax Code as amended, and in pursuance to Section 4.104-5 (a) & (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Credit);

g. The requirements as enumerated under Section 4.104-2 of Revenue Regulations 7-95 (Re: Persons who can avail of the Input

Tax Credits);

6. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications (Asiatic Petroleum Co. {P.I.} vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue vs. Manila Jockey Club, Inc. 98 Phil. 670);

7. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

After both parties have filed their respective memoranda, this Court ordered the submission of the case for decision via Resolution dated January 24, 2006.

The parties have agreed on the following issues which are to be resolved by this Court, to wit:

1. Whether or not petitioner purchased equipment for EEI Power Corporation in the third quarter of 2001;

2. Whether or not the purchase of the equipment by petitioner from EEI Power Corporation was made in the course of petitioner's trade or business, and whether the equipment qualifies as 'capital goods' within the purview of Section 112 of the NIRC and Section 4.106-1 of Revenue Regulations No. 7-95, as amended;

3. Whether or not, as a result of the purchase of the equipment from EEI Power Corporation, petitioner obtained or generated creditable input VAT amounting to P19,282,060.64;

4. Whether or not the creditable input VAT being claimed by petitioner on the purchase of the equipment is supported by VAT-registered invoices and/or official receipts;

5. Whether or not petitioner subsequently sold the

> equipment to Orix Metro Leasing and Finance Corporation, and was liable to pay output VAT of P7,272,727.27 on the sale;
>
> 6. Whether or not, after the sale of the equipment to Orix Metro Leasing and Finance Corporation, petitioner has excess or unused creditable input VAT amounting to P12,009,333.37 which has not been applied against any output VAT in the succeeding taxable quarters; and
>
> 7. Whether or not petitioner's administrative and judicial claims for refund of excess or unused creditable input VAT arising from the purchase of the equipment were filed within the 2-year prescriptive period provided under Section 112 (B) of the NIRC. (*Joint Stipulation of Facts and Issues*)
>
> The issues can be summarized as follows: Whether or not petitioner is entitled to the refund of input VAT from its purchase of capital goods."[6]

On September 14, 2006, the *CTA Second Division* promulgated the assailed Decision, the dispositive portion of which reads as follows:

> *"WHEREFORE, this instant petition for Review is DENIED for lack of merit.*
>
> *SO ORDERED."*

Not satisfied with the above-mentioned Decision, petitioner filed a Motion for Reconsideration[7] on October 10, 2006 raising the following grounds:

1. Section 112 (B) of the National Internal Revenue Code merely requires that capital goods be imported or locally purchased by a VAT –registered person in order for any excess or unused input tax credits paid thereon to be refundable. The requirements that the capital goods be (i) treated as part of the assets of a VAT-registered person in its books and (ii) actually used, directly or indirectly, in the taxpayer's trade or business, are not required by law;

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[6] Decision, CTA Second Division Rollo, pp. 347-360.
[7] CTA Second Division Rollo, pp. 361-372.

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2. Charge Order No. 160 issued by EEI to petitioner qualifies as a valid VAT-registered invoice within the context of Section 113 (A) of the National Internal Revenue Code; and

3. The discrepancies noted by the Honorable Court in Charge Order No. 160 and the Official Receipt issued by EEI to petitioner for the purchaser of the equipment are not fatal to petitioner's claim.

On January 10, 2007, the *CTA Second Division* promulgated the assailed Resolution, to wit:

> "*WHEREFORE, there being no new matters or arguments advanced in petitioner's Motion for Reconsideration which may compel this Court to reverse, modify or amend the assailed Decision, the same is hereby DENIED for lack of merit.*
>
> *SO ORDERED.*"

The assailed Resolution was received by the petitioner on January 25, 2007, thus, it has fifteen (15) days from said date within which to file a Petition for Review with the Court *En Banc* pursuant to Section 3(b) Rule 8 of the Revised Rules of the Court of Tax Appeals[8]. On February 6, 2007, petitioner filed a "Motion for Extension of Time to File Petition for Review with the CTA En Banc."[9] On February 8, 2007, the Court *En Banc* issued a Minute Resolution[10] granting the said motion thus, giving petitioner a final and non-extendible period of fifteen (15) days from February 9, 2007 or until February 24, 2007 within which to file a Petition for Review with the Court *En Banc*. In compliance with the Court's Resolution, petitioner filed, through registered mail, a Petition for Review[11] on February 22, 2007.

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[8] Sec. 3. Who may appeal; period to file petition-
(a) xxx xxx
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. xxx xxx.

[9] CTA En Banc Rollo, pp. 3-6.

[10] CTA En Banc Rollo, p. 7.

[11] Ibid.

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Petitioner raised the following grounds in support of the instant petition:

I. THE SECOND DIVISION OF THE HONORABLE COURT ERRED IN HOLDING THAT THE EQUIPMENT PUCHASED BY PETITIONER DOES NOT QUALIFY AS "CAPITAL GOODS" WHICH ENTITLES PETITIONER TO CLAIM THE EXCESS OR UNUSED INPUT TAX CREDITS PAID ON THE EQUIPMENT AS A TAX REFUND.

II. THE SECOND DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT PETITIONER FAILED TO PRESENT A VALID VAT-REGISTERED INVOICE TO SUBSTANTIATE ITS CLAIM FOR REFUND OF EXCESS OR UNUSED INPUT TAX CREDITS IN RESPECT OF THE EQUIPMENT PURCHASED.

III. THE SECOND DIVISION OF THE HONORABLE COURT ERRED IN CONCLUDING THAT THE DISCREPANCIES NOTED IN THE CHARGE SLIP AND RECEIPTS PRESENTED BY PETITIONER ABSOLUTELY WARRANT THE DENIAL OF ITS CLAIM FOR REFUND.

Petitioner emphasizes that the requirements of Section 112 (B) of the NIRC state only that capital goods must either be "imported or locally purchased" in order to entitle a taxpayer to claim any excess or unused input tax credits paid on such purchase as a refund. There is no statutory requirement for capital goods to be actually used by the taxpayer in its business and recorded as a depreciable asset in its books in order to entitle the taxpayer to claim such refund. The term "capital goods" is merely descriptive and used only to distinguish such goods from revenue expenditures.

Petitioner also stresses that Section 113 (A) of the NIRC on Invoicing Requirements does not mandate that a VAT invoice be expressly denominated or labeled as an "invoice" in order to be valid and considered proper substantiation for a claim of refund of input tax credits. Petitioner asserts that as long as the subject document represents a statement of money owed for goods purchased or acquired and contains the information required by law, it should be considered

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a valid VAT invoice within the context of Section 113 (A) of the NIRC, whether or not the word "invoice" actually appears on the face of the document.

Lastly, petitioner argues that insofar as the discrepancies noted in Official Receipts Nos. 239 and 240 issued by EEI, these should not detract from (i) the requirement under the law and applicable regulations that petitioner should substantiate its claim for refund of input tax credits paid on capital goods using a VAT-registered sales or commercial invoice and not official receipts, and (ii) the evidence on record that petitioner's claim is, in fact, duly supported by such a VAT-registered sales or commercial invoice in the form of Charge Order No. 160.

After a careful and thorough evaluation and consideration of the records of the case, the Court *En Banc* finds no new matters which have not yet been considered and passed upon by the *CTA Second Division* in its assailed Decision and Resolution. The arguments raised by the petitioner are basically the same grounds it stated in its Motion for Reconsideration, which were exhaustively discussed in the *CTA Second Division* Resolution dated January 10, 2007.

As aptly discussed in the assailed Decision, to wit:

> *"At this juncture, the Court deems it proper to quote Section 112 (B) of the National Internal Revenue Code of 1997, in relation to Section 4.106-1 (b) of Revenue Regulations No. 7-95 inasmuch as the granting of the claim depends on the satisfaction of its enumerated requirements, to wit:*
>
> > ***Section 112. Refunds or Tax Credits of Input Tax –***
> >
> > *(A) x x x*
> >
> > *(B) Capital Goods. – A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years, after the close of the taxable quarter when the importation or purchase was made.*
> >
> > ***Section 4.106-1. Refunds or tax credits of input tax.***

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xxx xxx xxx

(b) Capital Goods – Only a VAT registered person may apply for issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased. The refund shall be allowed to the extent that such input taxes have not been applied against output taxes. The application should be made within two (2) years after the close of the taxable quarter when the importation or purchase was made.

Refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT taxable business. If it is also used in exempt operations, the input tax refundable shall only be the ratable portion corresponding to the taxable operations.

Based on the foregoing provision, before petitioner can validly claim for a refund on it (sic) purchases of capital goods, the following requirements must first be complied with:

1. That petitioner is a VAT registered entity;
2. That input taxes claimed were paid on capital goods duly supported by VAT invoices and/or official receipts;
3. That petitioner did not offset or apply the claimed input VAT payment on capital goods against any output VAT liability; and
4. That the claim for refund was filed within the two-year prescriptive period both in the administrative and judicial levels ***(Telecommunications Technologies Philippines, Inc. vs CIR, CTA Case No. 6018, November 24, 2003)****.*

Regarding the first requirement, it has been stipulated by the parties that petitioner is a VAT registered corporation by virtue of the issuance of its Certificate of Value-Added Tax Registration No. 053-004-503-975.

As to the second requirement, this Court reckons it appropriate to quote Section 4.106-1 (b) of Revenue Regulations No. 7-95, which defines "capital goods or properties" as follows:

Section 4.106-1. Refunds or tax credits of input tax. – xxx

xxx xxx xxx

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*(c) **Capital Goods** – xxx*

"Capital goods or properties" refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29 (f), used directly or indirectly in the production or sale of taxable goods or services.

Based on the foregoing, for the purchased property to fall under the definition of "capital goods", it must have the following qualities:

1. Useful life greater than one (1) year;
2. Treated as depreciable assets under Section 29 (f); and
3. Used directly or indirectly in the production or sale of taxable goods or services.

To prove that its alleged purchase of the Equipment falls under the definition of 'capital goods,' petitioner presented and offered in evidence its Lease Agreement[12] with EEI Power Corporation dated February 17, 2000 (Exhibit 'A'), Charge Slip No. 0160 dated January 28, 2003[13] (Exhibit 'B'), Official Receipt No. 0240 dated July 17, 2001[14](Exhibit 'C'), and Official Receipt No. 0239 dated September 29, 2003[15] (Exhibit 'D').

A thorough examination, however, of the above documents failed to show and to convince this Court that indeed the purchase made by petitioner can be classified as 'capital goods,' which may entitle petitioner to claim for a refund of the alleged input VAT paid.

Based on the Lease Agreement, EEI shall cause the purchase, installation, operation and maintenance of a Bunker C Fuel Power Station (the 'Equipment'), which comprises of '2 units of 5.2 Megawatt each brand new Pielstick generating sets and one unit of 1.5 Megawatt high-speed engine and all related equipment necessary for the delivery of a continuous, reliable and sufficient supply of power xxx.'[16] The Equipment clearly has a useful life greater than one year.

*However, there is nothing in the records that would prove that the generating sets were treated by petitioner as 'depreciable assets under Section 29(f)'. **The second requirement does not only mean that***

[12] Ibid.
[13] CTA Second Division Rollo, pp. 199-200.
[14] CTA Second Division Rollo, pp. 201.
[15] CTA Second Division Rollo, pp. 202.
[16] Article 1.02, Power Equipment Project Lease Agreement between EEI Power Corp. and MSF Tire and Rubber, Inc., Exhibit "A", CTA Second Division Rollo, p.125.

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> ***the 'capital goods' is depreciable in nature, as what petitioner has argued, but rather, petitioner must have itself treated the same as its depreciable asset, or as part of its "properties/assets" in its books. How can petitioner treat the same as depreciable assets when in the first place, the same does not even form part of its properties and assets?*** *The generating sets and accessories purchased by petitioner that formed part of the Equipment were owned by EEI. The ownership was only transferred to petitioner upon its purchase of the same after its dissolution on March 1, 2001. In fact, the official receipt allegedly evidencing the purchase of two generating sets with accessories and showing the net purchase price was issued on July 17, 2001.*[17] *Similarly significant is the finding that according to the records of the case,* ***the generating sets were never used by petitioner****, either directly or indirectly, in its trade or business. Nowhere in the documents and allegations presented did it reveal that petitioner even used the generating sets in the production or sale of its taxable goods and services. It is noteworthy that after its purchase of the generating sets from EEI, petitioner sold the same to Orix Leasing through the Sale and Purchase Agreement dated February 20, 2003 (Exhibit "E"). Thus, it cannot be concluded that the generating sets purchased by petitioner may be considered as 'capital assets.' (Emphasis supplied.)*

As defined in Section 4.106-1 Revenue Regulations No. 7-95, "capital goods or properties" refer to goods or properties with estimated useful life greater than one (1) year and which are treated as depreciable assets under Section 29 (f), used directly or indirectly in the production or sale of taxable goods or services. Section 112 (B) requires that "capital goods be imported or locally purchased", however, said provision must be read in conjunction with the above mentioned definition of "capital goods". Thus, Section 112 (B) refers to imported and locally purchased goods or properties with useful life of greater than one (1) year and which are treated as depreciable assets.

With regard to the second ground raised by the petitioner, the Court *En Banc* agrees with the *CTA Second Division* in holding that:

> *"Section 113 of the NIRC of 1997 specifically provides for the necessity of an invoice, as well as, the invoicing requirements for VAT-registered entities. To quote:*

[17] Exhibit "C".

> ***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:*
>
> *1.* ***A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN);*** *and*
>
> *2. The total amount which the purchaser pays or is obligated to pay to the seller* ***with the indication that such amount includes the value-added tax****. xxx (Emphasis supplied)*

> *A charge slip is not the same as an invoice and petitioner's presentation of a mere charge slip fails to comply with the requirements of the above-quoted sections."*

Lastly, the Court *En Banc* does not agree with the petitioner's contention that the discrepancies noted by the *CTA Second Division* as regards the Charge Slip and the Official Receipt issued by EEI are not fatal to its claim for refund. As correctly held by the *CTA Second Division* and *We* quote:

> *"Section 110 (A)(2) of the 1997 NIRC also provides that for purchases of goods, the corresponding input value added tax is creditable to the purchaser upon the consummation of sale, that is, upon the issuance of the corresponding invoice. And for purchases of services, the corresponding input value added taxes is creditable to the purchaser upon payment of the compensation, rental, royalty or fee, that is, upon the issuance or date of the official receipt. In the case of* ***Telecommunications Technologies Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6168, July 28, 2004****, this Court, through a Resolution, 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 invoice 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*

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> *the VAT official receipt evidencing receipt of the payment for services performed or yet to be performed.' These further stress the necessity of an invoice and/or receipt. Thus, petitioner's argument that it was only able to report and claim the creditable input VAT arising from the purchase only in the first quarter of 2003, with the belated issuance by EEI of the Charge Order Slip No. 160 dated January 28, 2003 cannot be given credence. Neither can it suffice to satisfy the invoicing condition for refund of input VAT on capital goods.*
>
> *Likewise, a close examination of the receipts would reveal that the official receipt allegedly evidencing the payment of the net value-added tax in the amount of P17,353,854.78 issued on* ***September 29, 2003*** *bears the number* ***"0239 OR"*** *(Exhibit 'D'), while the receipt evidencing the purchase of the generating sets with accessories in the amount of P192,820,606.40 issued on a much earlier date, that is,* ***July 17, 2001*** *bears the number* ***"0240 OR"*** *(Exhibit 'C'), showing a clear and convincing discrepancy. It is quite strange that a transaction entered into at a much later date would have been issued an invoice bearing a number preceding that which has been issued to a transaction entered into at a much earlier date. While the Charge Slip, or a statement of bill which is by practice issued before an official receipt is issued, evidencing the alleged full purchase amount of P212,102,667.04 is dated* ***January 28, 2003*** *(Exhibit 'B'), the Official Receipt supposedly evidencing the net purchase price of P192,820,606.04 for the generating sets was issued on* ***July 17, 2001*** *(Exhibit 'C'), or way before the issuance of the charge slip. These discrepancies and failure of petitioner to properly substantiate its claim rule out the granting of the refund." (Emphasis supplied.)*

To allow petitioner's argument would allow other taxpayers to claim for tax refunds by just the mere showing of valid VAT receipts. For an invoice to be valid, the same must be an accurate proof of the corresponding transaction in question.

In sum, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed September 14, 2006 Decision and January 10, 2007 Resolution of the *CTA Second Division*. What the instant petition seeks is for the Court *En Banc* to view and appreciate the evidence in their own perspective of things, which unfortunately had already been considered and passed upon.

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WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the September 14, 2006 Decision and January 10, 2007 Resolution of the *CTA Second Division* are hereby **AFFIRMED *in toto***.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ERNESTO D. ACOSTA
Presiding Justice

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