

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

C.T.A. EB No. 514
(C.T.A. CASE No. 6886)

Present:

-versus-

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

TAKENAKA CORPORATION
PHILIPPINE BRANCH,

Respondent.

Promulgated:

MAR 29 2010

[Signature]
[Signature]

X ----- X

DECISION

PALANCA-ENRIQUEZ, J.:

Under the *NIRC of 1997, as amended*, an input tax may be creditable against output VAT by a VAT registered taxpayer if it is evidenced by a VAT invoice or receipt issued in accordance with the invoicing requirements prescribed by law. A VAT-registered person must issue a VAT invoice for every sale or exchange of goods or property and a VAT official receipt for lease or sale or exchange of services.

[Signature]

THE CASE

This is a Petition for Review filed on August 4, 2009 by the Commissioner of Internal Revenue (hereafter “petitioner CIR”) under *Section 3(b) Rule 8 of the Revised Rules of the Court of Tax Appeals*, in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended*, which seeks the reversal of the Amended Decision dated March 16, 2009 and Resolution dated June 29, 2009 rendered by the Former First Division of this Court in C.T.A. Case No. 6886, the respective dispositive portions of which read, as follows:

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

SO ORDERED.”

“WHEREFORE, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.”



THE PARTIES

Petitioner is the Commissioner of Internal Revenue, who is duly appointed and empowered to perform the duties of his office, including, among others, the duty to act and approve claims for refund or tax credit as provided for by law, with office address at the BIR, National Office Building, BIR Road, Diliman, Quezon City and may be served with summons and legal processes, thru counsel, at the Legal Division, BIR Revenue Region 8, 2/F Regional Office Building, 313 Sen. Gil Puyat Avenue, Makati City.

On the other hand, respondent Takenaka Corporation Philippine Branch (hereafter “respondent Takenaka”) is a foreign corporation duly organized and existing under the laws of Japan and duly licensed to transact business in the Philippines. It is registered with the BIR as a VAT taxpayer, and may be served with legal processes, thru its counsel, Aranas Consunji & Barleta Law Offices, at Unit 106, Le Metropole Building, 326 Tordesillas cor. Dela Costa Streets, Salcedo Village, Makati City.

THE FACTS

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



Respondent Takenaka, as a subcontractor, entered into an On-Shore Construction Contract with the Philippine Air Terminal Co., Inc. (PIATCO) for the purpose of constructing the Ninoy Aquino Terminal III (NAIA-IPT3).

PIATCO is a corporation duly organized and existing under the laws of the Philippines and was duly registered with the Philippine Economic Zone Authority (PEZA), as an Ecozone Developer/Operator under RA 7916.

Respondent Takenaka filed its Quarterly VAT Returns for the four quarters of taxable year 2002 on April 24, 2002, July 22, 2002, October 22, 2002 and January 22, 2003, respectively. Subsequently, respondent Takenaka amended its quarterly VAT returns several times. In its final amended Quarterly VAT Returns, the following were indicated thereon:

Exh.	Year	Zero-rate	Taxable	Output VAT	Input VAT	
		Sales/Receipts	Sales		This Quarter	Excess
Q	1 st	P854,160,170.42	P5,292,340.00	P529,234.00	P52,044,766.05	P51,515,532.05
II	2 nd	599,459,273.90			60,588,638.09	60,588,638.09
DDD	3 rd	480,168,744.90			55,234,736.15	55,234,736.15
VVV	4 th	304,283,710.15			30,494,993.51	30,494,993.51
TOTAL		P2,238,071,899.37	P5,292,340.00	P529,234.00	P198,363,133.80	P197,833,899.80

On January 13, 2003, the BIR issued VAT Ruling No. 011-03 which states that the sales of goods and services rendered by respondent

Que

Takenaka to PIATCO are subject to zero-percent (0%) VAT and requires no prior approval for zero rating based on Revenue Memorandum Circular 74-99.

On April 11, 2003, respondent Takenaka filed its claim for tax refund covering the aforesaid period before the BIR Revenue District Office No. 51, Pasay City Branch.

For failure of the BIR to act on its claim, respondent Takenaka filed a Petition for Review with this Court, docketed as C.T.A. Case No. 6886.

After trial on the merits, on November 4, 2008, the Former First Division rendered a Decision partly granting the Petition for Review and ordering herein petitioner CIR to refund to respondent Takenaka the reduced amount of P53,374,366.52, with a Concurring and Dissenting Opinion from Presiding Justice Ernesto D. Acosta.

Not satisfied, on November 26, 2008, respondent Takenaka filed a "Motion for Reconsideration".

During the deliberation of respondent Takenaka's "Motion for Reconsideration", Associate Justice Caesar A. Casanova changed his stand and concurred with Presiding Justice Ernesto D. Acosta, while the original *Ponente*, Associate Justice Lovell R. Bautista, maintained his



stand. Thus, respondent Takenaka's "Motion for Reconsideration" was granted by the Former First Division in its Amended Decision dated March 16, 2009, with a Dissenting Opinion from Associate Justice Lovell R. Bautista.

On April 7, 2009, petitioner CIR filed a "Motion for Reconsideration" of the Amended Decision, which the Former First Division denied in a Resolution dated June 29, 2009, with Associate Justice Lovell R. Bautista reiterating his Dissenting Opinion.

Hence, this instant Petition for Review raising a lone issue:

ISSUE

WHETHER OR NOT THE SALES INVOICES CAN BE
VALIDLY USED INTERCHANGEABLY WITH
OFFICIAL RECEIPTS TO SUPPORT RESPONDENT'S
SALES OF SERVICES.

On August 18, 2009, without necessarily giving due course to the petition, We required respondent Takenaka to file its comment, not a motion to dismiss, within ten (10) days from notice.

On August 20, 2009, respondent Takenaka filed its "Comment (To Petitioner's Petition for Review)".



On August 28, 2009, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice; afterwhich, the petition shall be deemed submitted for decision.

On October 1, 2009, respondent Takenaka filed its "Memorandum" while as per report of the Judicial Records Division dated October 9, 2009, petitioner CIR failed to file his memorandum despite due notice. Thus, the case was submitted for decision on October 15, 2009.

Petitioner CIR's Arguments

Petitioner CIR contends that the law is clear that sales invoice must support the sale of goods or properties, whereas official receipts must support sale of services; that the use of official receipts as proof of sale of services and sales invoice for sale of goods was clarified in RA 9337 where the true intention of the legislature to make a distinction between VAT invoice and official receipt can be concluded; and that failure of respondent Takenaka to support its claim for input VAT pertaining to its purchases of services in the amount of P143,997,333.40 by presenting the corresponding VAT official receipts warrants the denial of the claim.

Respondent Takenaka's Counter-arguments

Respondent Takenaka, on the other hand, argues that the words "invoice or receipts" under *Sections 113 and 237 of the NIRC of 1997*, as



amended, are used in the alternative, hence, there is no basis to make any distinction as to the evidentiary weight of the sales invoice and official receipt; that *Sections 106 and 108* are not the proper bases for imposing the strict rule that sale of goods should be evidenced only by sales invoice and sale of services by official receipt; and that reliance on RA 9337 is also misplaced, as the law took effect only on July 1, 2005, while this case involves a refund of input tax for taxable year 2002.

Former First Division's Ruling

In its Amended Decision dated March 16, 2009, the Former First Division ruled as follows: "after judicial evaluation of the arguments presented by petitioner and a restudy of the case, this Court is persuaded to reconsider the assailed Decision. The official receipt is not the only acceptable evidence to prove the zero-rated sale of service in order that a refund of unutilized input tax attributable thereto can be granted because it can also be proven by sales invoice." The Former First Division further ruled that a reading of *Sections 113 and 237 of the NIRC of 1997, as amended*, will disclose that the invoices can be validly used interchangeably with official receipts.

THE FORMER COURT EN BANC'S RULING

We grant the petition.



At the outset, the crux of the controversy lies on the interpretation of the relative provisions of the Tax Code on the substantiation of claims for refund of creditable input tax attributable to zero-rated sales.

Respondent Takenaka's claim for refund is founded on its zero-rated sale of services, to which the applicable law is *Section 108 (B)(3) of the NIRC of 1997, as amended*, which provides:

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

xxx xxx

(B) Transaction 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:

xxx xxx

(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.”

Pursuant to the above-provision, respondent Takenaka being engaged in the sale of services to PEZA registered enterprises, such as PIATCO, is indeed subject to zero percent (0%) rate of VAT on its sales of services relative to said exempt entities. Undeniably, respondent



Takenaka's input VAT attributable to its zero rated sales may be rightfully claimed for refund. However, such right of respondent Takenaka, as granted by law, is subject to compliance with the substantiation requirements of the law, which granted the same. Respondent Takenaka's right to claim for tax refund is based on a tax-refund statute, where the rule on strict interpretation against the taxpayer is applicable, as the claim for refund partakes of the nature of an exemption (*CIR vs. Fortune Tobacco Corp.*, 559 SCRA 160). Consequently, the provisions regarding zero rated sales of services should be strictly construed against respondent Takenaka.

Invoicing Requirements

We now proceed to determine whether respondent Takenaka has complied with the invoicing and substantiation requirements prescribed by law.

Respondent Takenaka contends that the law makes no distinction as to the use of an invoice and official receipt, and that the same can be used interchangeably, pursuant to *Section 113* of the same Code, to wit:

“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:

xxx xxx.” (*Emphasis supplied*)

We agree that the above provision makes no clear distinction on the evidentiary value of an invoice or official receipt, however, it must be stressed that *Section 113* is a general provision which covers all sales of a VAT registered person, whether sale of goods or services. Nevertheless, it does not necessarily follow that the legislature intended to use the same interchangeably. It cannot be concluded that the general provision of *Section 113* intended that the invoice and official receipt can be used interchangeably for either sale of goods or services, because there are specific provisions of the Tax Code which clearly delineate the substantiation requirements between the two transactions. Since this case involves proper substantiation of sale of services, the provision of *Section 108* of the *NIRC of 1997, as amended*, applies, which provides:

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

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

xxx

xxx



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.

xxx xxx

(C) Determination of the Tax.- The tax shall be computed by multiplying the total amount indicated in the **official receipt** by one-eleventh (1/11)." (*Emphasis supplied*)

On the other hand, *Section 106* of the same Code, which covers sale of goods, provides. -

"SEC. 106. *Value-added Tax on Sale of Goods* or Properties -

(A) Rate and Base of Tax. - There shall be levied, assessed and collected, 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.

xxx xxx

The term **gross selling price** means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price.

xxx xxx

apl

(D) Determination of the Tax. – The tax shall be computed by multiplying the total amount indicated in the *invoice* by one-eleventh (1/11).” (*Emphasis supplied*)

For sale of services, the VAT is imposed upon the gross receipts, which follows that the VAT on sale of services accrues upon actual or constructive receipt of the consideration, whether or not service has been rendered. On the other hand, for sale of goods or properties, the VAT is imposed upon the gross selling price. In other words, the VAT on sale of goods or properties accrues upon the consummation of sale, whether or not the consideration was actually received by the seller.

In the case of *Commissioner of Internal Revenue vs. Manila Mining Corporation* (468 SCRA 590), the Supreme Court defined a “receipt” as a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer.

Clearly, a receipt is the best evidence of the fact of payment of the consideration for every sale. Since the VAT on the sale of services accrues upon actual or constructive receipt of the consideration, the best evidence to prove that the services were paid is the official receipt. The requirement of the law for the presentation of VAT official receipts for

apl

sale of services is a preventive measure to avoid an absurd situation where the purchaser of the service (taxpayer) can claim a tax refund/credit representing input VAT even before there is payment of the output VAT by the seller on the sale pertaining to the same transaction.

Apparently, the construction of the statute shows that there is intent to distinguish the use of an invoice from an official receipt. It is more logical to conclude that subsections of a statute under the same heading should be construed as having relevance to its heading. The argument that the above quoted provisions are not applicable as the same do not pertain to the substantiation requirements, but rather only to the computation of the VAT on sales of goods or services, is misplaced. The legislature separately categorized VAT on sale of goods from VAT on sale of services, not only by its treatment with regard to tax, but also with respect to substantiation requirements. Having been grouped under *Section 108*, its *subparagraphs, (A) to (C)*, have significant relations with each other.

Legislative intent must be ascertained from a consideration of the statute as a whole and not of an isolated part or a particular provision alone. This is a cardinal rule of statutory construction. For taken in the abstract, a word or phrase might easily convey a meaning quite different



from the one actually intended and evident when the word or phrase is considered with those with which it is associated. Thus, an apparently general provision may have a limited application if viewed together with the other provisions (*Aboitiz Shipping Corp., et al. vs. City of Cebu, 13 SCRA 449, 453*).

Settled is the rule that every part of the statute must be considered with the other parts (*Planters Association of Southern Negros Inc. vs. Hon. Bernardo Ponferrada, et al., 317 SCRA 463*). Accordingly, the whole of *Section 108* should be read in conjunction with *Sections 113 and 237* so as to give life to all the provisions intended for the sale of services. There is no conflict between the provisions of the law that cover sale of services that are subject to zero rated sales, thus, it should be read altogether to reveal the true legislative intent.

By express provision of *Section 108 of the NIRC of 1997, as amended*, the determination of respondent Takenaka's tax liabilities with respect to sale of services will be computed on the basis of the official receipts it issued to its clients. Since respondent Takenaka is engaged in the sale of services, its transactions should be evidenced by official receipts, as prescribed by law, which is the only acceptable proof of its zero rated sale of services. Therefore, respondent Takenaka should

Qb

produce and present official receipts to prove the sale of services to its clients. The law itself prescribes that an official receipt should cover sale of services. A careful examination of the evidence presented by respondent Takenaka shows that it presented sales invoices, and not official receipts, as required by law. Without proper VAT official receipts issued to its clients, the payments received by respondent Takenaka for providing services to PEZA-registered entities cannot qualify for VAT zero-rating. Hence, it cannot claim such sales as zero-rated VAT not subject to output tax.

As aptly ruled by Associate Justice Lovell R. Bautista in his

Dissenting Opinion:

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

"SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. —

(A) Invoicing Requirements. — A VAT-registered person shall issue:

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and



(2) **A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services."** (Emphasis supplied)

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

The Senate Deliberation of RA 9337 further 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 of 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."
(Emphasis supplied)

Evidently, the amendment to *Section 113* was intended to clarify the confusion of interchangeably using invoices and official receipts. It is a mere clarification of what the previous law was already

implementing. There are no indications from the afore-quoted deliberation that the provision is new to the system of VAT.

Equally settled is the rule that tax refunds are in the nature of tax exemptions, which is merely a legislative grace. As such, these are regarded as in derogation of sovereign authority and are to be strictly construed against the person or entity claiming the exemption. The burden of proof is upon him who claims the exemption and he must be able to justify his claim by the clearest grant under Constitutional or statutory law, and he cannot be permitted to rely upon vague implications.

For all the foregoing and after a careful consideration of all the arguments of both parties and the evidence presented, we are constrained to reverse and set aside the assailed Amended Decision dated March 16, 2009 and Resolution dated June 29, 2009 of the Former First Division.

WHEREFORE, premises considered, the present Petition for Review is hereby **GRANTED**. Accordingly, the Amended Decision dated March 16, 2009 and Resolution dated June 29, 2009 rendered by the Former First Division are hereby **REVERSED** and **SET ASIDE**, and another one is hereby entered **DENYING** respondent Takenaka's

al

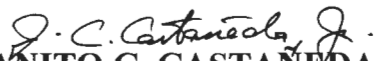
claimed input tax attributable to its zero rated sales of services for taxable year 2002 in the amount of P143,997,333.40.

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice

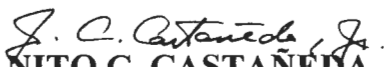

LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
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 the Court.


JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice