REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

NIPPON EXPRESS (PHILS.) CORPORATION, ***Petitioner,***	C.T.A. CASE NO. 7189 Members:
- versus -	CASTAÑEDA, JR., *Chairperson* UY, *and* PALANCA-ENRIQUEZ, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	Promulgated: SEP 1 1 2008 10:50 a.m

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DECISION

PALANCA-ENRIQUEZ, *J.*:

Pursuant to *Section 112 (A) of the National Internal Revenue Code of 1997* (hereafter "NIRC of 1997"), *as amended*, petitioner filed a claim for refund of its creditable input VAT attributable to its zero-rated sales. To do so, however, petitioner must be able to show that its input VAT paid and output VAT transactions are properly substantiated. Failure to show proof of proper documentations is fatal to one's claim for refund or credit. aul

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THE CASE

This is a Petition for Review filed on March 31, 2005 by Nippon Express (Phils.) Corporation (hereafter "petitioner"), which seeks the refund or issuance of a tax credit certificate in the amount of P22,940,560.86, representing the alleged excess input tax attributable to its zero-rated sales for the taxable year 2003.

THE PARTIES

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.

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.

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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;
>
> 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

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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.

Hence, this decision.

THE ISSUES

As stipulated upon by the parties, the issues for this Court's consideration are:

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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.

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.

Principal Issue

The foregoing issues boil down to the principal issue of whether or not petitioner is entitled to the refund or issuance of a tax credit certificate

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in the amount of P22,940,560.86, representing unutilized input VAT attributable to its zero-rated sales for taxable year 2003.

THE COURT'S RULING

The petition is without merit.

Petitioner anchors its claim for refund on *Section 108(B)(2)* and *(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) *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:
>
> 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"

Corollary thereto, *Section 3(3) of Revenue Memorandum Circular No. 74-99*, dated October 15, 1999, provides:

> "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 Sec. 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."

Pursuant to the aforecited provisions, petitioner's sales to PEZA-registered enterprises and foreign corporations in the amount of P999,585,846.76 (total of sales subject to zero percent (0%), per Quarterly VAT Returns from January 2003 to December 2003, *Exhibits "B," "D," "F," and "H"*) are subject 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,* which provides:

"**SEC. 112.** ***Refunds or Tax Credits of Input Tax*** —

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> **(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 sales 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 the volume of sales."

Pursuant to the foregoing provisions, an unutilized input tax arising from purchases of goods and services evidenced by a VAT invoice or official receipt issued, in accordance with *Section 113 of the NIRC of 1997, as amended*, which is attributable to zero-rated sales or effectively zero-rated sales under *Sections 106 and 108 of the same Code,* may be refunded or credited against other internal revenue taxes of the claimant.

Invoicing Requirements

However, *Sections 106, 108, 110, and 112 of the NIRC of 1997, as amended*, should be read in conjunction with *Section 113 of the same Code*, which provides for the invoicing and accounting requirements for VAT-registered persons, as follows:

> "**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:

(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.

(B) *Accounting Requirements.* – Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance."

Corollary thereto, *Section 237 of the NIRC of 1997, as amended,* provides:

"**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 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.

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

It is clear from the aforecited provisions that the law requires the issuance of invoices or receipts for every sale of a VAT registered person. Such requirement is mandatory in nature and consequently, non-compliance regarding the issuance of such important documents is fatal to one's claim for credit or refund of its input taxes. The relevance of such requirement is obvious: the presentation of invoices and/or receipts will prove the existence and nature of transactions and will be a basis for computation of taxes. The law does not only demand the substantiation of invoices or receipts for input taxes, but more importantly for output taxes especially for those claiming zero-rated sales as this will determine the creditable or unutilized input taxes that are available for refund. To sum, the invoicing requirements do not only pertain to documents required to prove input taxes, but rather it also requires the presentation of proper documents to prove the existence and/or non-existence of output taxes.

In support of its allegations, petitioner submitted the following documents:

1) Report of the Court-Commissioned Independent CPA (ICPA) (*Exhibit "P"*);

2) Summary of Sales/Summary of Input Taxes and Output Taxes, as well as the Allocation of Unutilized Input Tax to zero-rated sales (*Exhibit "A"*);

3) Certifications of Non-Registration of Corporation with the Securities and Exchange Commission (*Exhibits "U" to "TTT"*);

4) Various documents supporting petitioner's valid zero-rated sales (*Exhibits "N-1" to "N-107698" and "R" to "R-39"*).

After a careful examination of the evidence presented by the petitioner, the Court finds that the documents supporting petitioner's zero-rated sales, as verified by the Court-Commissioned ICPA, consisted of documents, other than official receipts.

The question now is whether the sales invoices petitioner issued to its PEZA registered entities and other foreign clients and the certification from the said clients are sufficient to prove the alleged zero-rated sales

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which, in turn, would entitle it to a refund of input taxes for the said period.

We rule in the negative.

Petitioner's claim for refund is founded on its zero-rated sales of services, therefore, the applicable law is *Section 108 (B)(2)and (3) of the NIRC of 1997, as amended,* which requires the issuance of official receipts, to wit:

> "SEC. 108. Valued-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.
>
> (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)."

On the basis of the foregoing, in case of sale of services, the 10% VAT is computed based on gross receipts, which is defined under *Section 108 (A) of the NIRC of 1997, as amended*, as 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

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performed or to be performed for another person, excluding value-added tax." Accordingly, the VAT on the sale of services accrues upon actual or constructive receipt of the consideration, regardless of whether or not the service has been rendered. It is for this reason why the tax shall be computed by multiplying the total amount indicated in the official receipt by 1/11.

In fact, these distinctions in the substantiation requirements between the sale of goods and services were made clear by *Section 11 of RA 9337*, amending *Section 113 of the NIRC of 1997, as amended*, when it explicitly provides for the invoicing requirements of VAT-registered persons to issue a VAT invoice for every sale, barter or exchange of goods or properties; and a VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

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

The sales invoices that petitioner issued are not sufficient to meet the invoicing requirements and have no basis in law. The law itself prescribes that an official receipt should cover sales of services. It does

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not provide for any other document which can be used as an alternative to or in lieu of an official receipt.

<u>Failure to Comply with the Invoicing Requirements: Effects thereof</u>

Revenue Memorandum Circular No. 42-2003 (*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 Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters)* expressly provides that the failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax of the taxpayer claimant. Pertinent portion of said Revenue Memorandum Circular reads as follows:

> "**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."

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The aforequoted provision clearly mandates that if the claim for refund/issuance of tax credit certificate is based on the existence of zero-rated sales by the taxpayer, but fails to comply with the invoicing requirements, the claim for tax credit/refund of input VAT shall be denied.

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. Therefore, petitioner is not entitled to a refund.

Having definitively disposed of the case through the resolution of the principal issue, We find no need to pass upon the other incidental issues raised for being moot and academic.

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

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

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WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice

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