REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

BASF PHILIPPINES, INC., *Petitioner,*	**C.T.A. E.B. NO. 47 (C.T.A. CASE NO. 6283)**
	Present:
-versus-	ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** JAN 05 2006

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DECISION

PALANCA-ENRIQUEZ, J.:

Pursuant to *Section 112 (B) of the 1997 National Internal Revenue Code* (hereafter "NIRC") *of 1997, as amended*, petitioner filed a claim for refund of its excess input VAT attributable to its capital goods purchases. To be entitled to the said claim, however, petitioner must be able to show that its input VAT, is sufficient to cover its output VAT and is properly supported by invoices and official receipts. It is in this regard that petitioner failed. The Division of this Court found several of the input VAT(s) to be wanting in substantiation and documentary support, and dismissed the earlier Petition For Review. Hence, the instant petition before this Court *En Banc*.

THE CASE

This is a Petition For Review filed by BASF Philippines, Inc. (hereafter 'petitioner") under *Section 11 of Republic Act No. 9282 (An Act Expanding the Jurisdiction 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 Decision of February 10, 2004, and the Resolution of October 20, 2004 denying petitioner's Motion For Reconsideration, issued by this Court in C.T.A. Case No. 6283.

The assailed Decision disposed as follows:

> "**WHEREFORE**, the Petition For Review is hereby **DENIED** for lack of merit.
>
> SO ORDERED."

The Motion For Reconsideration was denied by the Court in the assailed Resolution dated October 20, 2004, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in view of the foregoing, petitioner's Motion For Reconsideration" is hereby **DENIED** for lack of merit and the pronouncement reached in the assailed Decision is hereby **REITERATED**.
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> SO ORDERED."

THE FACTS

On April 19, 2001, petitioner filed a Petition For Review praying for the issuance of a tax credit certificate in the amount of P18,485,424.12 allegedly representing unutilized input value added tax (VAT) paid on the importation and/or local purchase of capital goods and/or services for the four taxable quarters of 1999.

In his Answer filed on June 4, 2001, respondent alleged the following by way of special and affirmative defenses:

> "5. Petitioner's alleged claim for tax refund/tax credit is subject to administrative investigation/examination by the respondent's Bureau;
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> 6. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;
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> 7. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;

8. 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;

9. Moreover, petitioner must show compliance with the provisions of Section 204 (C) and 229 of the Tax Code, as amended;

10. Let it be stressed that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed strictissimi juris against the person or entity claiming the exemption. (Asiatic Petroleum Co. v. Llanes, 49 Phil. 466; Northern Phil. Tobacco Corp. v. Mun. of Agoo, La Union, 31 SCRA 304; Reagan v. Commissioner, 30 SCRA 968; Austrias Sugar Central, Inc. v. Commissioner of Customs, 29 SCRA 617) and liberally in favor of the government."

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

"1. Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal offices and business address at Road 5, Phase I GIZ, Carmelray Industrial Park I, 4028 Canlubang, Calamba, Laguna.

2. Respondent is the duly appointed Commissioner of Internal Revenue vested by law in general to implement and enforce the provisions of the National Internal Revenue Code and other tax laws and, in particular, to decide claims for refund of internal revenue taxes.

3. Petitioner is a VAT-registered entity evidenced by Certificate of Registration No. OCN 1R0000034522.

4. On 25 February 1999, Petitioner filed its Monthly VAT Declaration for January 1999 and deducted an output tax of ₱4,079,209.97 on its vatable sales from its total input tax of ₱36,518,970.88 with an excess input tax in the amount of ₱32,439,760.90, as evidenced by BIR Form No. 2550M, a copy of which is attached as *Annex 'A'* hereof.

5. On 25 March 1999, Petitioner filed its Monthly VAT Declaration for February 1999 and deducted an output tax of ₱2,982,551.35 on its vatable sales from its total input tax of ₱35,291,049.87 with an excess input tax of ₱32,308,498.52, as evidenced by BIR Form No. 2550M, a copy of which is attached as *Annex 'B'* hereof.

6. On 26 April 1999, Petitioner filed its First Quarter VAT Declaration for 1999, and deducted a total output tax of ₱11,366,567.20 on its vatable sales from its total input tax of ₱43,269,949.78 with an excess total input tax of ₱31,903,382.58, as evidenced by BIR Form No. 2550Q, a copy of which is attached as *Annex 'C'* hereof.

7. In May 1999, Petitioner filed its Monthly VAT Declaration for April 1999 and deducted a total output tax of ₱852,690.35 on its vatable sales from its total input tax of ₱36,762,679.87 with an excess total input tax of ₱35,909,989.52 as evidenced by BIR Form No. 2550M, a copy of which is attached as *Annex 'D'* hereof.

8. In June 1999, Petitioner filed its Monthly VAT Declaration for the month of May 1999 and deducted a total output tax of ₱2,433,091.48 on its vatable sales from its total input tax of ₱40,237,290.48 with an excess total input tax of

₱37,804,199.00 as evidenced by BIR Form No. 2550M, a copy of which is attached as *Annex 'E'* hereof.

9. Petitioner filed its Second Quarter VAT Declaration for 1999 and deducted a total output tax of ₱5,096,532.21 on its vatable sales from its total input tax of ₱47,484,287.97 with an excess total input tax of ₱42,387,755.76 as evidenced by BIR Form No. 2550Q, a copy of which is attached as *Annex 'F'* hereof.

10. In August 1999, Petitioner filed its monthly VAT Declaration for July 1999 and deducted an output tax of ₱1,542,051.95 vatable sales from its total input tax of ₱42,296,783.04 with an excess input tax of ₱47,754,731.09, as evidenced by BIR Form No. 2550M, a copy of which is attached as *Annex 'G'* hereof.

11. In September 1999, Petitioner filed its monthly VAT Declaration for the month of August 1999 and deducted an output tax of ₱1,370,573.16 on its vatable sales from its total input tax of ₱53,973,675.81 with an excess input tax of ₱52,603,102.65, as evidenced by BIR form No. 2550M, a copy of which is attached as *Annex 'H'* hereof.

12. Petitioner filed its Third Quarter VAT Declaration of 1999 and deducted a total output tax of ₱5,139,553.39 on its vatable sales from its total input tax of ₱59,543.787.06 with an excess total input tax of ₱54,404,233.67, as evidenced by BIR Form No. 2550Q, a copy of which is attached as *Annex 'I'* hereof.

13. In November 1999, Petitioner filed its monthly VAT Declaration for October 1999 and deducted an output tax of ₱2,109,669.69 on its vatable sales from its total input tax of ₱58,157,934.90 with an excess input tax of

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₱56,048,265.21 as evidenced by BIR Form No. 2550M, a copy of which is attached as *Annex 'J'* hereof.

14. In December 1999, Petitioner filed its monthly VAT Declaration for November 1999 and deducted an output tax of ₱2,127,398.16 on its vatable sales from its input tax of ₱58,495,937.19 with an excess input tax of ₱56,368,539.03 as evidenced by BIR Form No. 2550M, a copy of which is attached as *Annex 'K'* hereof.

15. Petitioner filed its Fourth Quarter VAT Declaration for 1999 and deducted a total output tax of ₱6,257,651.92 on its vatable sales from its total input tax of ₱64,256,821.76 with an excess of total input tax of ₱57,999,169.84, as evidenced by BIR Form No. 2550Q, a copy of which is attached as *Annex 'L'* hereof.

16. Petitioner has not claimed for the refund or tax credit of the above amounts until 27 March 2001, when it filed with the Revenue District Officer No. 56 of the Bureau of Internal Revenue-Laguna an application for the issuance of tax credit in its favor in the amount of ₱18,485,424.12 representing the value-added tax paid on its importation and local purchase of capital goods and/or services for the first, second, third and fourth quarters of 1999."

In their "Supplemental Joint Stipulation of Facts", the parties further agreed on the following:

"1. On January 24, 2001, Petitioner filed its VAT Return for the 4th Quarter of 2000 with total input VAT of P85,360,313.83 (Exhibit 'DD').

2. On February 28, 2001, Petitioner filed its Monthly Value Added Tax Declaration (BIR Form No.

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2550M) for January 2001 and reported an excess Input VAT in the amount of P93,046,971.3 for the said period with the amount carried over from the previous return in the amount of P85,360,313.83 (Exhibit 'CC'; 'CC-1').

3. On February 14, 2002, Petitioner filed an Amended Monthly Value Added Tax Declaration (BIR Form No. 2550M) for the year 2001. (Exhibit 'BB').

4. In said Amended Return, Petitioner merely removed the amount of P36,876,170.19 from the excess input VAT 'Carried Over from the Previous Return Period.' Said amount represented Petitioner's claim for refund of input VAT paid on the purchase and/or importation of capital goods for the years 1998, 1999 and 2000.

5. After removing the amount of P36,876,170.19 from the total excess input VAT, Petitioner declared the amount of P48,484,143.64 as 'Carry Over from Previous Return Period' in its Amended Monthly Value Added Tax Declaration (BIR Form No. 2550M) for January 2001. (Exhibit "BB-1').

6. On August 9, 2002, Petitioner filed its second amended Value Added Tax Returns for the year 2001. (Exhibits 'P' to 'AA').

7. The second amended Value Added Tax Returns for 2001 deducted the amount of P36,876,170.19 representing Petitioner's claim for refund of input VAT paid on the purchase and/or importation of capital goods for the years 1998, 1999 and 2000 from the amount declared as 'Carried Over from Previous Return Period'. (Exhibits 'P-1'; 'P-2'; 'Q-1'; 'R-1'; 'S-1'; 'T-1'; 'U-1'; 'V-1'; 'W-1'; 'X-1'; 'Y-1'; 'Z-1'; 'AA-1').

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> 8. Petitioner filed the second amended returns for the year 2001 in order to reflect and segregate the amount of P36,876,170.19 representing the claims for refund for the years 1998, 1999, 2000 from Petitioner's excess input VAT which was being carried over to the next taxable quarter.
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> 9. Petitioner did not reflect the amount of P18,485,424.12 which represents its claim for refund of the input VAT paid on the purchase and/or importation of capital goods for the year 1999 in its Value Added Tax Declarations for 1999 because the claim for refund was filed before the BIR only on March 27, 2002 and the Petition for Review before the Honorable Court only on April 19, 2001.
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> 10. Petitioner can not amend its Value Added Tax Return for the years 1999 and 2000 to reflect the amount being refunded for the year 1999 because a Letter of Authority for the examination of Petitioner's books was already issued by the Bureau of Internal Revenue at the time of its administrative application on March 27, 2002."

After trial on the merits, this Court rendered the assailed Decision on February 10, 2004.

Not satisfied, petitioner moved for a reconsideration of the same, which this Court denied in the aforesaid Resolution dated October 20, 2004.

ISSUES

Hence, this Petition For Review raising as grounds the following:

I

THE HONORABLE COURT OF TAX APPEALS 1st DIVISION GRAVELY ERRED IN DISALLOWING THE AMOUNT OF P2,243,857.51 REPRESENTING INPUT VALUE ADDED TAXES PAID ON LOCAL PURCHASES AND IMPORTATION OF CAPITAL GOODS FOR THE YEAR 1999.

II

THE HONORABLE COURT GRAVELY ERRED IN NOT CONSIDERING THE AMOUNT OF P23,356,010.73 WHICH REPRESENTS THE INPUT TAX CARRIED OVER BY PETITIONER FROM 1998.

III

THE HONORABLE COURT GRAVELY ERRED IN RULING THAT PETITIONER HAS NO EXCESS OR UNUTILIZED INPUT VAT ON CAPITAL GOODS THAT CAN BE THE SUBJECT OF THE INSTANT REFUND.

On February 22, 2005, We required the respondent to file his comment on the petition, which the latter complied on April 21, 2005.

On May 10, 2005, We gave due course to the Petition, and required the parties to file their respective memoranda, within fifteen (15) days from notice.

On May 31, 2005, petitioner filed its "Memorandum" and on June 10, 2004, respondent filed his "Manifestation" stating that he is adopting his Comment dated April 21, 2005 as his Memorandum.

On June 17, 2005, the case was deemed submitted for decision.

<u>THE COURT EN BANC'S RULING</u>

The petition is without merit.

<u>*Local Purchases of Capital Goods:*</u>

As regards the first assigned error on the disallowed input VAT of P475,754.51, petitioner avers that the local purchases are evidenced by Exhibits *"JJ-2-3-10a", "JJ-2-4-13a", "JJ-2-5-21a", "JJ-2-6-22a", "JJ-2-6-23a", "JJ-2-7-31a", "JJ-2-9-42a", "JJ-2-10-53a", "JJ-2-10-55a"* and *"JJ-2-10-56a"*, which are all VAT invoices. It argues that Exhibits *"JJ-2-3-10b", "JJ-2-5-21b", "JJ-2-6-23b", "JJ-2-7-31b", "JJ-2-9-42b", "JJ-2-10-53b", "JJ-2-10-55b", "JJ-2-10-56b" and "JJ-2-20-56c"* are statements of accounts which are the basis for the payments made by petitioner and evidenced by the official receipts covered by the said exhibits.

It further claims that contrary to the ruling of this Court the foregoing exhibits clearly show that the official receipts have complied with the invoicing requirements provided for under *Section 4.108-1 of Revenue Regulations No. 07-95*. According to petitioner, neither the law nor the rules provide that a sales invoice is the only document required to substantiate a claim for refund of input tax on purchases of capital goods.

On the other hand, respondent maintains that petitioner's failure to support its claim for input VAT pertaining to its local purchases of capital goods in the amount of P475,754.51 by presenting the corresponding VAT sales invoices warrants the denial of the claim.

We sustain the findings of this Court.

Section 110 of the NIRC of 1997, as amended, provides:

"SEC. 110. Tax Credits. –

(A) Creditable Input Tax. –

(1) xxx xxx

(2) The input on domestic purchase of goods or properties shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and xxx xxx

However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee."

Corollarily thereto, *Sections 106 and 108 of the NIRC of 1997, as amended*, provides:

"SEC. 106. Value-added tax on Sale of Goods or Properties.–

xxx xxx

(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)."

xxx xxx."

"SEC. 108. Value-added Tax on Sale of Services and 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)."

The law is clear; it states "upon consummation of sale," in the case of domestic purchases of goods or properties, and "upon payment of compensation or fee", in the case of purchases of services. Pursuant to

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the aforequoted *Section 110*, the input VAT on domestic purchases of goods or properties shall be allowed as tax credit to the purchaser only 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 the VAT official receipt evidencing receipt of the payment for services performed or yet to be performed.

From the foregoing, it can be concluded that there is a clear delineation between official receipts and invoices. Contrary to petitioner's position, these two documents cannot be used interchangeably as evidence to prove a particular transaction. Such as in the instant case, petitioner presented official receipts and statements of accounts to prove input VAT on its local goods purchases, instead of invoices as required by law.

As aptly ruled by this Court in its assailed Resolution dated October 20, 2004:

> "It must be noted that at first glance, the word 'or' in the statement '(1) Any input tax evidenced by a VAT

invoice *or* official receipt xxx shall be creditable against the output tax' indicates an alternative. However, a further reading of the provisions of Section 110(A) particularly paragraph (2)(a) thereof reveals otherwise. 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 the VAT ***official receipt*** evidencing receipt of the payment for services performed or yet to be performed.

The provisions of Sections 110(A)(1) & (2) of the NIRC of 1997 are in harmony with the provisions of Sections 106(A) & (D) as well as Sections 108 (A) & (C) of the same Code, which provide the manner of determining the output VAT due on the sale of goods or properties and sale of services, respectively.

For the sale of goods or properties, the 10% VAT is imposed upon the ***gross selling price***, which is defined under Section 106(A) of the NIRC of 1997 as follows:

> '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 the value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price.'

In other words, the VAT on the sale of goods or properties accrues upon the ***consummation of sale*** regardless of whether or not the consideration therefor was actually received. It is for this reason that Section 106(D) provides that the tax shall be computed by multiplying the total amount indicated in the ***invoice*** by one-eleventh (1/11).

In the case of sale or services, the 10% VAT is computed based on ***gross receipts***, which is defined under Section 108(a) of the NIRC of 1997, as follows:

> '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.'

Plainly, from the foregoing, the VAT on the sale of services accrues upon ***actual or constructive receipt of the consideration*** irrespective of whether or not the service has been rendered. Accordingly, Section 108(C) provides 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).

Considering that for the same transaction, the output VAT of the seller becomes the input VAT of the purchaser, the law requires that the input VAT be substantiated by the very same document on which the output VAT was based. Hence, the input VAT on purchases of goods must be supported by VAT ***sales invoices*** while the input VAT on purchases of services must be supported by VAT ***official receipts***.

> Accordingly, without the corresponding VAT sales invoices, the input taxes of P475,754.51 pertaining to petitioner's purchases of capital goods shall be denied."

<u>*Importation of Capital Goods:*</u>

As to the disallowed input VAT of P1,698,021.00 on importation of goods, petitioner argues that the value-added taxes were indeed paid as evidenced by the stamps of the BOC. Petitioner further maintains that Exhibits *"JJ-3-7-5a", "JJ-3-7-8a", "JJ-3-7-10a", "JJ-3-7-15a"," JJ-3-8-19a", "JJ-3-8-32a", "JJ-3-9-38a", "JJ-3-9-42a", "JJ-3-10-46a"," JJ-3-10-47a"," JJ-3-10-48a", "JJ-3-10-49a", "JJ-3-10-50a"," JJ-3-10-51a", "JJ-3-10-52a", "JJ-3-10-55a", "JJ-3-10-56a"," JJ-3-10-57a", "JJ-3-10-59a", "JJ-3-10-60a", and "JJ-3-10-63a"* pertain to the computation of the duties and charges of the importation as indicated in the import entry declaration. In its verification of the various documents pertaining to petitioner's importation of capital goods, the commissioned auditing firm credited the input taxes based on the import tax declaration as duly reported and submitted to the Bureau of Customs, and not on the statement of account.

On the other hand, respondent maintains that this Court did not err in holding that without the machine validation for the total amount of customs duties and taxes (including VAT) paid, the input entry cannot be accounted as valid proof of payment of the claimed input VAT on imported capital goods.

We rule for the respondent.

Pursuant to *Customs Administrative Order No. 2-95*, dated September 8, 1995, under *paragraphs 2.3 and 2.3.1*, the amount of duty and tax collected including other required information must be machine validated directly on the following import documents and signed by the duly authorized bank official, thus:

> "September 8, 1995
>
> CUSTOMS ADMINISTRATIVE ORDER NO. 2-95
>
> xxx xxx
>
> 2.3 The Bureau of Customs Official Receipt (BCOR) will no longer be issued by the AABs (Authorized Agent Banks) for the duties and taxes collected. In lieu thereof, the amount of duty and tax collected including other required information must be machine validated directly on the following import documents and signed by the duly authorized bank official:

2.3.1. Import Entry and Internal Revenue Declaration (IEIRD) for final payment of duties and taxes.

xxx xxx."

Contrary to petitioner's assertion, the BOC stamp on the face of the import entry does not indicate that the total duties and taxes reflected therein have been actually paid. Pursuant to the aforecited *Customs Administrative Order No. 2-95*, without the machine validation for the total amount of customs duties and taxes paid, the import entry cannot be accepted as valid proof of payment of the claimed input VAT on imported capital goods.

1998 Input Tax Carry-over:

With regard to the 1998 input VAT carry-over in the amount of P23,356,010.73, petitioner invokes the case of *BASF Phil., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6175*, promulgated on March 20, 2002, wherein it was allegedly recognized that petitioner had excess input taxes at the end of the taxable year 1998. According to petitioner, it was a grave error for this Court to disregard the existence of the very same excess input taxes which was carried over for the year 1999 in determining the total input taxes of petitioner on the ground that the latter did not present the invoices pertaining to such input taxes. Petitioner further contends that the existence of the excess input taxes which were carried over from 1998 was not even raised as one of the issues in this case. Respondent did not even present any proof or evidence to controvert the carry over input taxes, hence, the existence of said amount is uncontroverted.

In summary, petitioner wants this Court to credit the unutilized input VAT of 1998 in the amount of P23,356,010.73 without its further validation and proof. This, however, cannot be allowed, for being contrary to law and settled jurisprudence.

Thus, this Court correctly ruled:

> "Nowhere in CTA Case No. 6175 was it categorically stated that this court found the excess input taxes of P23,356,010.73 to be substantiated by VAT sales invoices or official receipts. In fact, in the said case, this court did not tackle the issue on substantiation because petitioner's claim had to be denied based solely on the figures appearing in its monthly VAT declarations and quarterly VAT returns for the period July 1, 1998 to September 31, 2000. The VAT returns showed that petitioner's reported excess input taxes in a given quarter were habitually carried-over to the succeeding quarters. This court ruled that petitioner's claim of P9,317,152.48 cannot be granted since it formed part of the excess input VAT of P32,673,163.21 as of the fourth quarter of 1998 which were carried-over and applied against

petitioner's output VAT liability in the succeeding quarters. This court held that petitioner should have deducted the 1998 claim of P9,317,152.48 under the category 'Less any VAT Refund/TCC claimed' provided in every quarterly returns, in order to assure us that it will no longer be applied to its future output tax liabilities. Inasmuch as petitioner failed to submit convincing proof that it did not apply the claimed input VAT of P9,317,152.48 to its succeeding quarter's output VAT liability, this court denied the said claim and found it not necessary to tackle the issue on substantiation.

As to the third ground, let it be emphasized that the case at bar is a claim for refund and/or tax credit and it is a hornbook rule that petitioner (taxpayer) has the burden of proof to show that it is entitled thereto. It has the duty to present sufficient and convincing evidence to buttress its claim and not merely rely on respondent's non-submission of rebuttal evidence; otherwise the court has no other recourse than to deny its claim."

To recapitulate, in order to be entitled to the refund, pursuant to *Section 112(B) of the NIRC of 1997, as amended*, petitioner has to establish that it has enough input VAT, excluding those attributable to its capital goods purchases, to cover the output VAT.

The corresponding VAT(s) are summarized as follows:

Corresponding VAT(s)	**Annual Amount**
Adjusted Output VAT	P31,174,159.02
Input VAT Carry Over- 1998	P23,356,010.73
Verified Input VAT-ordinary purchase	P19,566,610.95
Verified Input VAT-capital expenditures	P13,624,801.45

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However, in its assailed decision of February 10, 2004, this Court reduced further the following input VAT(s), to wit:

Input VAT-capital expenditure	P13,624,801.45
Less: Disallowed input VAT	
Local Purchases	475,754.51
Importation (including P1,698,021.00)	2,745,074.57
Adjusted Input VAT-capital expenditure	P10,403,972.37

In addition thereto, the 1998 input VAT carry-over in the amount of P23,356,010.73 was also disallowed entirely for failure to substantiate the same.

Thus, only the claimed input VAT from ordinary purchases of P19,566,610.95 and input VAT from capital expenditure of P10,403,972.37 or the total input VAT of P29,970,583.32 were found to be duly substantiated. Apparently, the total input VAT of P29,970,583.32 is lesser than the petitioner's adjusted output VAT liability of P31,174,159.02. As such, there is no excess amount of input VAT payment that may be subject of a claim for refund/tax credit under *Section 112(B) of the 1997 NIRC, as amended.*

In the light of the laws and jurisprudence on the matter, We find no reason to deviate from the findings and conclusion of this Court. Thus,

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the claim for refund amounting to P18,485,424.12, representing unutilized input value added tax paid on the importation and/or local purchase of capital goods and/or services for the four taxable quarters of 1999 was properly denied by this Court.

WHEREFORE, premises considered, the instant Petition For Review is hereby **DISMISSED**.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

Juanito C. Castañeda, Jr.
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.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

BASF PHILIPPINES, INC., *Petitioner,*	**C.T.A. E.B. No. 47** (C.T.A. Case No. 6283)
-versus-	Present: **Acosta,** ***P.J.,*** **Castañeda, Jr., Bautista, Uy, Casanova, and Palanca-Enriquez,** ***JJ.***
COMMISSIONER OF INTERNAL, REVENUE, *Respondent.*	Promulgated: JAN 05 2006

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Concurring and Dissenting Opinion

With due respect to my esteemed colleagues, I wish to manifest my dissent with respect only to the portion denied based on the opinion that sale of goods can only be evidenced by an invoice inasmuch as despite the interpretation of the Court *En Banc* of the provisions cited in the Decision, there is nothing in the law or administrative regulations which proscribes the use of an official receipt to substantiate a claim for refund or issuance of a tax credit certificate involving purchases of capital goods.

It must be pointed out that the applicable statutes rather than limiting the documentary requirements to just the sales invoice, specifically enjoin and acknowledge the production of an official receipt to prove the fact of the VAT-related transaction.

The undersigned reckons it proper to quote the relevant provisions of the 1997 Tax Code, namely, Section 113 in relation to Section 237, to wit:

> "**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**. xxx
>
> "**Section 237. Issuance of Receipts or Sales of 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 case of sales, receipts or transfers in the amount of One Hundred Pesos (P100.00) or more, 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's Identification Number (TIN) of the purchaser. xxx".*(Emphasis supplied)*

Based on the foregoing, there is no mention that the use of an official receipt as opposed to the use of an invoice for claims of input VAT arising from purchase of goods automatically results in the denial of the claim for issuance of a tax credit certificate or refund.

Aside from the above-cited provisions, **Sections 110 the 1997 Tax Code, Section 4.106-5 of Revenue Regulation No. 7-95** and **Section 2 of Revenue Regulation No. 3-88** likewise lend credit to the argument concerning the intention to accept other evidence to substantiate claims for VAT refund, particularly the use of either a VAT invoice or receipt. To wit:

> "**Section 110. Tax Credits.** -
>
> (A) Creditable Input Tax. -
>
> (1) **Any input tax evidenced by a VAT invoice or official receipt** issued in accordance with Section 113 hereof on the following transactions **shall be creditable against the output tax**:
>
> (a) Purchase or importation of goods: x x x
>
> (b) Purchase of services on which a value-added tax has been actually paid." (*Emphasis supplied*)

> "**Section 4.106-5. Substantiation of claims for input tax credit** - (a) Input taxes shall be allowed only if the domestic purchases of good, properties or services is made in the course of trade or business. **The input tax should be supported by an invoice or receipt** showing the information as required under Section 108 (a) and 238 of the Code. x x x" (*Emphasis supplied*)

Section 2, Revenue Regulation No. 3-88 provides thus:

> "**Section 2.** x x x
>
> (c) **Claims for tax credit refunds.** - x x x
>
> 4. Purchase of capital goods.
>
> i) Original copy of **invoice or receipt** showing the date of purchase, purchase price, amount of value-added tax paid x x x." *(Emphasis supplied)*.

From the afore-cited provisions, a VAT-registered person must not only issue an **invoice or receipt** for every sale but more importantly, the creditable input tax may be evidenced by either a VAT invoice or official receipt. The use of the disjunctive term "or" in the afore-cited provisions connotes that either act qualifies as two different evidences of input VAT. It is indicative of the intention of the Revenue Bureau to use the same interchangeably in sale of goods, viz., the claimant may present either an invoice or a receipt and it will not have any negative repercussion on its claim. In fact, the word "or" has been defined as *a disjunctive particle used to express an alternative or to give a choice of one among two or more things (**Black's Law Dictionary**, 6th Edition, 1990, page 1095).* Hence, the obvious intention to include the word "or" should be interpreted as providing an alternative rather than a limitation.

Assuming *arguendo* that there was a violation of the alleged requirement to employ an invoice rather than an official receipt for sale of goods such omission does not automatically nullify the transaction for purposes of proving the petitioner's claim. The official receipts, which indicate all the necessary information for its validity, are still material, relevant and competent inasmuch as they still directly prove the subject transactions made by the petitioner. It must be pointed out that "admissibility" refers to the question whether or not the evidence is to be considered at all, while "competency" refers to whether or not the evidence is expressly excluded by law or the rules. And the said official receipts satisfy the above standards in both counts.

In the case at bar, petitioner has established its right to the tax refund through material and documentary exhibits. The documents formally offered as evidence by the petitioner such as the sales invoices and official receipts clearly prove that the VAT-related transactions were actually made.

The questioned Decision indicates that this Court placed too much importance on the sales invoices when clearly none is due. However, such invoices are merely written accounts of the particulars of merchandise shipped or sent to a purchaser or consignee with the value or prices and charges annexed (**Philippine Law Dictionary**, it, not to reinvent or second-guess it (**Del Mar vs. Philippine Amusement and Gaming Corporation,** *358 SCRA 768*). Here, the law could not be any clearer.

Accordingly, I manifest my disagreement with the majority opinion pertaining only to the portion denied based on the opinion that sale of goods can only be evidenced by an invoice to the exclusion of all others. However, with respect to the remaining other matters contained in the majority opinion, I concur.

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Presiding Justice

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