REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

NIPPON EXPRESS PHILIPPINES INC., Petitioner,	**C.T.A. E.B. NO. 335** **(C.T.A. CASE NOS. 6464)**
	Present:
- versus -	**ACOSTA,** *P.J.* **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** AUG 2 0 2008 WApolinario 10:07 a.m.

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DECISION

UY, J.:

This is a Petition for Review filed before the Court of Tax Appeals *En Banc* on December 21, 2007 assailing the Decision[1] dated June 15, 2007, and the Resolution dated November 13, 2007, rendered by the First Division of this Court (Court in Division), in CTA Case No. 6464 entitled "Nippon Express Philippines Inc. vs. Commissioner of Internal Revenue". The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the instant petition is hereby DENIED DUE COURSE, and accordingly, DISMISSED for failure to comply with the substantiation requirement.

[1] Ponencia of Associate Justice Caesar A. Casanova concurred by Associate Justice Lovell R. Bautista, and Presiding Justice Ernesto D. Acosta, dissenting.

SO ORDERED."[2]

The dispositive portion of the assailed Resolution denying petitioner's motion for reconsideration of subject Decision, reads as follows"

> "**WHEREFORE**, finding no cogent reason to reverse the assailed Decision, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."[3]

THE FACTS

The established facts of the case are as follows.

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, registered with the Securities and Exchange Commission (SEC) under Certificate of Registration No. ASO95-005669, and with principal office at U-2701 Yuchengco Tower, RCBC Plaza, 6819 Ayala Ave., Salcedo Village, Makati City. Likewise, petitioner is registered with the Large Taxpayers District Office of the Bureau of Internal Revenue in Makati City as, among others, a Value-Added Tax (VAT) taxpayer rendering freight forwarding services.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue vested with power to decide, approve, and grant refunds or tax credits of overpaid internal revenue taxes as provided by law and holds office and may be served with summons, orders, pleadings, and other

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[2] Docket, p. 36; Decision p. 10.
[3] Docket p. 48; Resolution p. 5.

processes at BIR Revenue Region No. 8, 5/F Atrium Bldg., Makati Ave., Makati City.

For the calendar year 2000, petitioner's gross receipts were primarily derived from rendering its services to Philippine Economic Zone Authority (PEZA) registered clients. Likewise, it incurred total sales in the amount of P1,063,357,608.74, which as shown in petitioner's Amended Quarterly Value Added Tax (VAT) Return, is composed of the following:

TAXABLE SALES				
1st Quarter	Php	19,416,405.90		
2nd Quarter		21,727,369.30		
3rd Quarter		25,478,221.80		
4th Quarter		19,106,829.00	Php	85,728,826.00
ZERO-RATED SALES				
1st Quarter	Php	163,837,757.11		
2nd Quarter		189,237,849.49		
3rd Quarter		228,507,608.58		
4th Quarter		247,387,949.22		828,971,164.40
EXEMPT SALES				
1st Quarter	Php	45,234,485.51		
2nd Quarter		27,632,934.35		
3rd Quarter		49,971,632.54		
4th Quarter		25,818,565.94		148,657,618.34
TOTAL			Php	1,063,357,608.74

For the same year, petitioner paid input taxes amounting to P31,846,253.57. And apportioning this amount with its total sales abovementioned in accordance with Section 112 of the National Internal Revenue Code (NIRC) of 1997, the amount of total input taxes attributable to zero-rated sales would be P24,826,667.61. Under the premise that it is entitled to a refund of the amount of P24,826,667.61, petitioner filed four separate applications for tax credit / refund with the One-Stop Shop Inter-

Agency Tax Credit and Duty Drawback Center of the Department of Finance (OSSAC-DOF) on September 24, 2001.

Receiving no resolution from OSSAC-DOF, petitioner filed with the Court in Division a Petition for Review on April 24, 2002 pursuant to Section 112 in relation to Section 229 of the NIRC of 1997. It must be noted however, that petitioner subsequently received a Preliminary Assessment Notice issued by the respondent dated December 15, 2003, and a Formal Letter of Demand dated September 26, 2005, to which petitioner protested on November 23, 2005.

During trial before the Court in Division, both parties presented their respective testimonial and documentary evidence. Thereafter, the Court *a quo* rendered its June 15, 2007 Decision dated June 15, 2007,[4] finding petitioner not entitled to the claimed refund due to its failure to comply with the substantiation requirements as provided under Section 112 of the NIRC of 1997.

The Court in Division held that petitioner's supporting documents pertaining to its valid zero-rated sales, as verified by the commissioned independent CPA, consisted only of sales invoices, transfer slips and credit memos; and that these evidence submitted to prove petitioner's zero rated sales, are insufficient proofs to entitle it to the issuance of tax credit certificate considering that petitioner's sales are sales of services, and should be supported by official receipts. It further found that without the VAT official

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[4] Docket, pp. 27 – 37.

receipts to prove its zero-rated revenues, the input VAT payment alleged to be directly attributable thereto cannot be refunded or issued tax credit certificates in accordance with Revenue Memorandum Circular (RMC) No. 42-2003, which clarified the issue relative to the failure of a claimant to comply with certain invoicing requirements.

A Dissenting Opinion[5] was rendered by the Honorable Presiding Justice Ernesto D. Acosta, Chairperson of the First Division of this Court, stating that he dissents to the majority opinion on the ground that a reading of Section 106, 108, 113 and 237 of the NIRC of 1997, which were the bases for the denial of petitioner's claim, shows that official receipts can be validly used interchangeably with invoices, and the law makes use of these terms without distinction; that the Court must not differentiate between the evidentiary value of an invoice, an official receipt, and other documentary evidence to prove the fact of petitioner's sale of services. After all, the laws and regulations allegedly made no pronouncement as to the use of a VAT official receipt as the exclusive and sole determinative piece of evidence to the exclusion of all other proofs equally relevant and competent.

On July 9, 2007, petitioner filed a Motion for Reconsideration of the assailed Decision. In the same manner, the Court in Division denied said motion in the assailed Resolution[6] dated November 13, 2007, for lack of merit.

Hence, this recourse before the Court *En Banc* praying that the assailed Decision dated June 15, 2007, and Resolution dated November 13,

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[5] Docket, pp. 38 - 43.
[6] Docket pp. 44 – 48.

2007, be set aside and a new judgment be rendered granting petitioner's claim for tax credit and, correspondingly, order respondent to issue the tax credit certificate in its favor.

The Court *En Banc* required respondent to file comment to the instant petition for review in the Resolution dated January 17, 2008,[7] but no comment was filed within the given period.[8] Thereafter, this Court issued a Resolution[9] requiring the parties to submit their respective Memorandum. Petitioner filed its Memorandum on March 24, 2008[10] while respondent filed a Manifestation on April 14, 2008 stating that she is adopting her Memorandum dated January 3, 2007, and the Comment / Opposition dated September 24, 2007 which she allegedly filed in the Court *a quo* as her Memorandum herein.[11] Finally, in the Resolution dated May 19, 2008[12], the instant case was deemed submitted for decision.

Hence, this Decision.

THE ISSUES

Petitioner raises the following issues for the Court En Banc's consideration:

A. "Whether or not petitioner was able to prove its zero rated sales by the presentation and submission of pertinent BIR-registered sales invoices and other related commercial documents.

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[7] Docket pp. 55 – 56.
[8] A period of ten (10) days, upon receipt, was given to respondent to file his comment while petitioner was given five (5) days from receipt of respondent's comment to file its reply thereto.
[9] Resolution dated February 13, 2008, Docket p. 58.
[10] Docket, pp. 61-81
[11] Docket, pp. 84-85
[12] Docket p. 87.

B. Whether or not petitioner is entitled to the issuance of a tax credit certificate or refund of the amount of twenty four million eight hundred twenty six thousand six hundred sixty seven and 61/100 pesos (P24,826,667.61) representing excess or unutilized input tax credits which are attributable to its zero rated sales"[13].

Petitioner's Arguments:

In the instant petition for review, petitioner stresses that there is nothing in the NIRC of 1997 that requires the issuance of sales invoices only for sale of goods or properties, and official receipts only for sale of services; that there is allegedly no statutory provision which states that sale of goods not supported by an invoice or sale of services not supported by an official receipt is ineffectual or is not valid; that the invoicing and accounting requirements for VAT-registered persons found in Section 113 of the NIRC of 1997 requires the issuance of a duly registered invoice or receipts for every sale, without any distinction as to goods or services. In Section 237 of the same code, it is allegedly provided that for each sale or transfer of merchandise or for service, the VAT registered person must issue an official receipt or commercial invoice; and that Section 4.108-1 of Revenue Regulation No. 7-95[14] enumerates the information that must appear on the face of the receipts or invoices issued for sales of goods.

Based on the above-mentioned provisions, petitioner stresses that it is not mandatory that only an official receipt, with the exclusion of all other documents, can support sale of services, or that only a sales invoice can

[13] Petition for Review, p. 7, Docket p. 13.
[14] Consolidated Value Added Tax Regulations.

support sale of goods. Both sections use the disjunctive term "or" between the words receipt and invoice which only connotes that either act qualifies as two (2) different pieces of evidence of sale. And considering that it has presented and formally offered pertinent sales invoices, transfer slips, credit memos, cargo manifests and credit notes in connection with its sale of services during the year 2000, on the basis of which, it should have been found to have substantially established its zero-rated sales. All these documents together with the formal report issued by the Court commissioned independent CPA, as well as the testimonies of witnesses presented during trial, are allegedly sufficient to prove its zero-rates sales for the year 2000.

To bolster its argument, petitioner cites pertinent portions in the discussion of the Honorable Presiding Justice Ernesto D. Acosta of this Court, in his Dissenting Opinion, wherein he said that the "conclusion that the sale of goods or properties must be supported by sales invoices ONLY, while the sale of services, as in this case, must be supported by official receipts ONLY is erroneous", to wit:

> "Section 112 (A) of the 1997 NIRC lends statutory corroboration to my opinion that failure to submit official receipts should not automatically result in the denial of the claim for refund. It states:
>
> xxx xxx xxx
>
> The language of the afore-mentioned law (referring to Section 112 A. of the NIRC of 1997) confirms that all VAT-registered enterprises engaged in zero-rated transactions are permitted to demand a refund of their creditable input tax due or paid to the extent that such input tax remains unapplied against output tax for the period of two (2) years after the close of the

taxable quarter. **Furthermore, nowhere in the said provision can it be found that the failure to present official receipts would amount to the denial of the claim for refund.**

The Court must not differentiate between the evidentiary value of an invoice, an official receipt and other documentary evidence to prove the fact of petitioner's sale of services. After all, the laws and regulations made no pronouncement as to the use of a VAT official receipt as the exclusive and sole determinative piece of evidence to the exclusion of all other proofs equally relevant and competent.[15]"

Finally, petitioner prays that the Court *En Banc* gives due course to the instant Petition for Review, set aside the Decision and Resolution of the Court in Division dated June 15, 2007 and November 13, 2007, respectively, and render a judgment granting petitioner's claim for tax credit, and consequently order respondent to issue a tax credit certificate in its favor.

Respondent's Counter-Arguments

Respondent, on the other hand, explains in her "Comment/Opposition (to Petitioner's Motions for Reconsideration)" filed before the Court *a quo* on September 27, 2007,[16] that the rationale in requiring the presentation of official receipt is because said document is the evidence of receipt of the payment for services performed, or yet to be performed. It is allegedly the proof of the consummation of the service, while the sales invoice is just a proof of the sale or agreement to sell without any indication as to the fulfillment of the service. Thus, Section 108(A) of the NIRC of 1997 clearly

[15] Petition for Review, pp. 11-12, Docket, pp. 17-18.
[16] CTA Case No. 6464 Records, pp. 517-525

requires that the sale of service must be consummated or paid before VAT can be applied as it uses the word "receipt" as the tax base.

According to respondent, the payment of the service, which should be evidenced by official receipts, is necessary to show the existence of zero-rated sales and that the purchases, the input tax of which is being refunded, were really used in such sales. Section 112(A) of the NIRC of 1997 is allegedly explicit in this requirement. Thus, petitioner's argument that the law allows a VAT taxpayer to issue either a sales invoice or an official receipt for its zero-rated sale of service is misleading because nowhere in Section 113 and 237 of the NIRC of 1997 is it stated that a sales invoice or an official receipt can be issued for a zero-rated sale of service. Moreover, petitioner is allegedly losing sight of the fact that the said laws were talking about a VAT taxpayer in general, thus, the use of the phrase "invoice or receipt" merely denotes that the VAT taxpayer being referred to are both the seller of the goods and the seller of service.

THE COURT *EN BANC'S* RULING

The petition is bereft of merit.

The issues raised by petitioner for resolution by the Court *En Banc* is summarized as follows: Whether or not petitioner was able to prove its zero rated sales by the presentation and submission of pertinent BIR-registered sales invoices and other related commercial documents, so as to entitle it to the issuance of a tax credit certificate or a refund of the amount of

P24,826,667.61 representing excess or unutilized input tax credits attributable to its zero rated sales.

A perusal of the records of this case show that petitioner submitted various documents before the Court in Division in support of its claim thereat, maintaining that these are sufficient to establish its zero-rated sales, to wit: Sales invoices, transfer slips, credit memos, cargo manifests and credit notes, as well as formal report of the independent certified public accountant or ICPA. However, the Court in Division found said documents insufficient, and correspondingly denied its claim.

We sustain the denial.

It must be noted that for claims for refund or issuance of tax credit certificate to be allowed, the law requires compliance with substantiation requirements, not only for input taxes, but also for output taxes, especially in instances where the claim is based on zero-rated sales or exemptions, as this will determine the creditable or unutilized input taxes that are available for refund. And in ascertaining proper compliance with the invoicing and substantiation requirements of the NIRC of 1997, it is important that the provisions of Section 113(A) in relation to Section 237 of the said Code, and Section 4.108-1 of Revenue Regulation No. 7-95 be looked into. These sections provide thus:

> "**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:

(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."

"**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.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to an internal revenue tax from compliance with the provisions of this Section."

"**SECTION 4.108-1. Invoicing Requirements** — All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN and address of seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word "zero rated" imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration.

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

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or receipts and this shall be considered as a "VAT Invoice". All purchases covered by invoices other than "VAT" Invoice" shall not give rise to any input tax.

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

The invoice or receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records."

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Clearly from the aforequoted provisions, the law requires the issuance of either an invoice or receipt for every sale by a VAT registered person. The invoice or receipt shall contain the information required under Sections 113 and 237 of the NIRC of 1997. 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.[17]

Although Sections 113 and 237 of the NIRC of 1997 and Section 4108-1 of Revenue Regulation 7-95 use the words "invoice" and "receipt" without distinction, nevertheless, the NIRC of 1997 provides separate provisions, which must be read in relation thereto: Section 106 for VAT on sale of goods or properties, and Section 108 for VAT on sale of services and use or lease of properties.

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

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

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

goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

xxx 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)."

On the other hand, in the case of sale of services, as in the instant case, the VAT is computed based on gross receipts as indicated under Section 108(A). Therefore, the VAT on the sale of services accrues upon actual or constructive receipt of the consideration, whether or not service has been rendered. Furthermore, Section 108(C) prescribes that the tax on the sale of services shall be computed by multiplying the total amount indicated in the official receipt by one-eleventh (1/11).[18] We quote :

"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 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 advance payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.

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[18] Jideco Manufacturing Philippines, Inc. vs. Commissioner of Internal Revenue, C.T.A. EB No. 53, June 7, 2005.

> (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)."

Based on the above laws, when We speak of computing the output tax on the sale of goods or properties, the basis would be the amount appearing in the invoice, while when We speak of computing the output tax on sale of services, the basis would be the amount appearing in the official receipts.[19] Therefore, as specified is said legal provisions, sales invoice must support the sale of goods or properties, whereas official receipts must support sale of services. It should be noted that said legal provisions do not provide for any the document that can be used as an alternative to, or in lieu of an invoice and official receipt.

Thus, We agree with the findings of the Court in Division when it held that the evidence submitted by petitioner to prove its zero rated sales to be insufficient so as to entitle it to the issuance of a tax credit certificate. Petitioner's sales are sales of services and as such, should properly be supported by official receipts.

Moreover, Revenue Memorandum Circular No. 42-2003[20] specifically provides that the failure of a taxpayer claiming for tax refund / credit to comply with the invoicing requirements – that is issuance of the proper document for the consummation of the sale – will result to the disallowance of the claim for

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[19] AT&T Communications Services Phil., Inc. vs. Commissioner of Internal Revenue, C.T.A. Case No. 6907, February 23, 2007.

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

input VAT. We therefore agree with the Court in Division when it said in its assailed Decision that:

> "Without the VAT official receipts evidencing its zero-rated revenues, the input VAT payment alleged to be directly attributable thereto cannot be refunded or tax credit certificates cannot be issued in accordance with Revenue Memorandum Circular (RMC) No. 42-2003. RMC No. 42-2003 clarified the issue relative to the failure of a claimant to comply with certain invoicing requirements. Pertinently, said Circular provides:
>
> > '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.
> >
> > <u>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.</u> 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.' (Emphasis Supplied)
>
> Petitioner failed to comply with the substantiation/invoicing requirement hence it follows that it likewise failed to comply with the first requisite mandated under Section 112 of the 1997 Tax Code, as amended. Thus this Court is left with no recourse but to deny petitioner's claim. Consequently at this point discussing the other requisites under Section 112 of the 1997 Tax Code, as amended shall be moot and academic."

We cannot overemphasize the fact that taxpayers have the burden of proving compliance with the mandatory provisions of the NIRC of 1997 as well as the corresponding implementing rules and regulations issued thereof. This well-entrenched principle must be applied in all actions involving taxation, more particularly, when claim for refunds or tax credits are involved as in petitioner's case before this Court. Moreover, it bears stressing that tax refunds are in the nature of tax exemption and as such, it is regarded as derogation of sovereign authority and should be construed *strictissimi juris* against the person or entity claiming the exemption.[21]

In claims for refund, the law mandates the court to observe a higher standard of caution in appreciating and evaluating evidence. If indeed a claim for refund is wanting in pertinent and supporting evidence, then the granting thereof could prove to be improper, if not difficult.[22] Therefore, having failed to discharge the burden in this regard, petitioner's claim must therefore fall.

WHEREFORE, in view of the foregoing, the Decision and Resolution of the Court in Division dated June 15, 2007 and November 13, 2007, respectively, are hereby AFFIRMED, and consequently, the instant Petition for Review is hereby **DENIED** for lack of merit.

[21] Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc. and Court of Appeals, G.R. No. 127105, June 25, 1999. Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation and The Court of Tax Appeals, G.R. No. 66838, December 2, 1991.
[22] ECW Joint Venture, Inc., vs. Commissioner of Internal Revenue, CTA EB No. 14 (CTA Case No. 6509), March 22, 2006.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(*With Dissenting Opinion*)
ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NIPPON EXPRESS PHILIPPINES INC.,
Petitioner,

C.T.A. EB No. 335
(CTA Case No. 6464)

Present:

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

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 2 0 2008 10:00 a.m.

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Dissenting Opinion

ACOSTA, *P.J.*:

Again raised before the Court *En Banc* is the issue of whether sales invoices can validly substantiate a claim for the issuance of a tax credit certificate or a refund of excess or unutilized input tax credits attributable to a taxpayer's zero rated sales. And in this case, the majority of the members of the Court *En Banc* upheld the findings of the Division in its ruling that the documents which petitioner submitted in support of its claim, such as: sales invoices, transfer slips, credit memos, cargo manifests, and credit notes, as well as a formal report of the Independent Certified Public Accountant, are insufficient. The bases for the denial of the instant claim are the supposed invoicing and substantiation requirements of the National Internal Revenue Code (NIRC), namely, Sections 113(A), in relation to Section 237, and Section 4.108-1 of Revenue Regulations No. 7-95.

Thus, it is with due respect to my esteemed colleagues that I, once again register my disagreement to their opinion. As I have already explained in my dissent to Decision rendered by the CTA in Division, nothing in the applicable statutes limit the documentary requirements to just the official receipts, conversely, these statutes allow and acknowledge the production of an invoice to prove the fact of a VAT-related transaction. I stand firm in my opinion that it is erroneous to deny the instant claim because petitioner merely submitted sales invoices, transfer slips and credit memos, as supporting documents.

A reading of the provisions cited by the majority as bases for its denial of the instant claim discloses that official receipts can be validly used interchangeably with invoices. These provisions read:

> "**SEC. 106. Value-added Tax on Sale of Goods or Properties. —**
>
> (A) *Rate and Base of Tax.* — There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.
>
> xxx 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"
>
> "**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 xxx

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

"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:

(1) A statement that the seller is a VAT-registered person followed by his taxpayer's identification number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax."

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"SEC. 237. Issuance of Receipts or Sales 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".

Clearly, the law makes use of the terms "invoice" and "official receipt" without distinction, even the majority subscribe to this observation.

Under the above-quoted, *Section 237* of the NIRC, all persons subject to an internal revenue tax are required to ***issue duly registered receipts or sales or commercial invoices*** for each sale, or transfer of merchandise or for services

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rendered valued at Twenty five pesos (P25.00) or more. And under *Section 113* of the same code, on Invoicing and Accounting Requirements for VAT-Registered Persons, it is also mandated that a VAT-registered person ***issue an invoice or receipt*** for every sale.

Aside from these two NIRC provisions, *Section 110* of the same code and *Section 4.106-5 of Revenue Regulations No. 7-95* also show the intention to accept other evidence to substantiate claims for VAT refund, particularly the use of either a VAT invoice or receipt. Section 110 provides that any input tax ***evidenced by a VAT invoice or official receipt,*** issued in accordance with Section 113 shall be creditable against the output tax. On the other hand, Section 4.106-5 provides that input tax should be ***supported by an invoice or receipt.***

From the aforesaid 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 these provisions connote that either act qualifies as two different evidences of input VAT. 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.*[1] It is indicative of the intention of the Revenue Bureau and the lawmakers to use the same interchangeably in the sale of goods or services. Clearly, the claimant may present either an invoice or a receipt and this should not have any negative repercussion on its claim.

A claim should therefore not be denied on the basis of a taxpayer's failure to present official receipts, if there are other pieces of evidence in support of its claim. The majority's ratiocination that based on Sections 106 and 108 of the NIRC, the basis in computing output tax on the sale of goods and properties would be the amount appearing in the *invoice,* on the other hand, when computing for the output tax on the sale of services, the basis would be the amount appearing in the *official receipts,* and the concomitant conclusion that the sale of goods or properties must

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[1] *Black's Law Dictionary, 6th Edition, 1990, page 1095*

be supported by sales invoices ONLY, while the sale of services, as in this case, must be supported by official receipts ONLY, is erroneous.

Further, I am of the opinion that the majority failed to consider that the substantive and main condition of the NIRC was effectively complied with and adequately proven by the petitioner.

Failure to submit official receipts should not automatically result in the denial of the claim for refund. Section 112 (A) NIRC lends statutory corroboration to this view. It states:

> "(A) **Zero-rated or Effectively Zero-rated Sales.** – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1),(2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

Under this provision, all VAT-registered enterprises engaged in zero-rated transactions are permitted to demand a refund of their creditable input tax due or paid, to the extent that such input tax remains unapplied against output tax, for the period of two (2) years after the close of the taxable quarter. Furthermore, nowhere in the said provision can it be found that the failure to present official receipts would amount to the denial of the claim.

Accordingly, the Court must not differentiate between the evidentiary value of an invoice, an official receipt and other documentary evidence to prove the fact of petitioner's sale of services. After all, the laws and regulations made no pronouncement as to the use of a VAT official receipt as the exclusive and sole determinative piece of evidence to the exclusion of all other proofs equally relevant and competent. Where the law does not distinguish, the courts should not distinguish, as well, *Ubi lex non distinguit nec nos distinguire debemos.*[2], this is an elementary rule in statutory construction.

The sales invoices are still material, relevant and competent inasmuch as they still directly prove the amount of sales made by the petitioner. The term "admissibility" refers to the question of whether or not the evidence is to be considered, while "competency" refers to whether or not the evidence is expressly excluded by law or the rules. The subject invoices satisfy the above standards in both counts.

Lastly, it must be noted that tax cases are civil in nature. And under *Section 1, Rule 133, Rules of Court,* in civil cases, the quantum of evidence required to sustain the proponent of an issue is by mere preponderance of evidence. In ***Municipality of Moncada vs. Cajuigan,***[3] the Supreme Court explained that the phrase "preponderance of evidence" denotes the weight, credit and value of the aggregate on either side. This means that the testimony adduced by one side is more credible and conclusive than that of the other.

In sum, as there is no basis to distinguish between the evidentiary value of an official receipt or an invoice, the denial of the instant claim has no leg to stand on. I vote for the grant of the instant Petition for Review.

ERNESTO D. ACOSTA
Presiding Justice

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[2] *Mendoza, et. al. vs. COMELEC, et. al., G. R. No. 149736, December 17, 2002*
[3] *21 Phil. 184*