REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PROCTER & GAMBLE ASIA, PTE. LTD.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7820

Members:
CASTAÑEDA, JR., *Chairperson;*
CASANOVA, and
MINDARO-GRULLA, *JJ.*

Promulgated:
SEP 27 2016 10:10 am

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RESOLUTION

CASANOVA, *J.*:

This resolves petitioner's Motion for Reconsideration, filed through registered mail, on July 8, 2016, without the respondent's comment per Records Verification dated August 16, 2016.

Petitioner seeks reconsideration of this Court's Amended Decision dated June 22, 2016, on the following grounds:

> 1. Petitioner substantially complied with the substantiation requirements of Section 113(B)(2)(a) of the NIRC of 1997 as amended since the input tax not shown separately in the official receipts were separately shown in the invoices from which the respective official receipts issued to the petitioner were based upon.
>
> 2. Petitioner should not be faulted for the acts of its service provider in indicating the VAT separately in corresponding sales invoices but not in the official receipts issued by the latter.
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> 3. There is no provision in the Tax Code which states that if the VAT was not indicated separately in the

official receipt, though indicated separately in the corresponding invoices, the input tax cannot be credited against output tax or cannot be refunded in case of zero-rated sales.

4. The provision of the Tax Code on the refund of input tax on zero sales is actually an incentive to foreign capitalists to invest here in the Philippines hence the tax benefit should be construed in favor of the petitioner.

Petitioner seeks reconsideration particularly of its claimed input VAT on its purchases of services from Hewlett-Packard Philippines Corporation in the amount of ₱143,499,437.11 which We disallowed on the ground that the VAT was not separately indicated in the supporting official receipts.

Petitioner submits that as a matter of business practice, its principal service provider, Hewlett-Packard Philippines Corporation, issued to herein petitioner both VAT-registered invoices and VAT-registered official receipts. The VAT-registered invoices show the unit price of the service and 12% VAT as separate item therein. The VAT-registered official receipts, on the other hand, show the amount collected net of two percent (2%) expanded withholding tax and the invoice number or numbers paid. In effect, the two documents (invoice and official receipt) are considered one for VAT purposes.

Petitioner contends that since the amount of input tax was already shown and stated in the invoices corresponding to the official receipts issued by Hewlett-Packard Philippines Corporation, there was substantial compliance with the requirement of showing separately the VAT under Section 113(B)(2)(a) of the NIRC of 1997, as amended, which states that:

> "The amount of the tax shall be shown as a separate item in the invoice or receipt;"

We find the instant Motion unmeritorious.

Section 113(A)(1) and (2) of the NIRC of 1997, as amended, explicitly requires that a VAT sales invoice must support the sale of goods or properties, while a VAT official receipt must support the sale of services. Section 113(A)(1) and (2) provides thus:

> "SEC. 113. Invoicing and Accounting Requirements for VAT-registered Persons. –
>
> (A) Invoicing Requirements. – A VAT-registered person shall issue:
>
> > (1) A VAT invoice for every sales, barter or exchange of goods or properties; and
> >
> > (2) A VAT official receipt for very lease of goods or properties; and for every sale barter or exchange of services."

The provisions of Section 113(A)(1) and (2) of the NIRC of 1997, as amended, are in harmony with the provisions of Section 106(A) as well as Section 108(A) 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 sale of goods or properties, the 12% 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 113(A)(1) provides that the sale of goods must be supported by a **VAT invoice**.

In the case of sale of services, the 12% 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."

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 113(A)(2) provides that the sale of services must be supported by a **VAT official receipt**.

Clearly, there is a distinction as regards the evidentiary value of an invoice and an official receipt because under our VAT law, while both sale of goods or properties and sale of services are taxable at the rate of 12%, the same however, differ in terms of their taxable base. As aforestated, in the case of domestic purchases of goods or properties, the taxable base is determined "upon consummation of sale"; while in the case of purchases of services, the taxable base is determined "upon payment of compensation or fee". Hence, an invoice which is defined as "*a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services*"[1] must support the taxpayer's sale of goods or properties and an official receipt, defined as "*a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer*" must support the taxpayer's sale of services.

In the case of *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*[2], the Supreme Court affirmed that there is a fine distinction between a VAT invoice and a VAT official receipt. "VAT invoice and VAT official receipt should not be confused as referring to one and the same thing. Certainly, neither does the law intend the two to be used alternatively."

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[1] Commissioner of Internal Revenue vs. Manila Mining Corporation, G.R. No. 153204, August 31, 2005.
[2] G.R. No. 181585, November 24, 2010.

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. This can be gleaned from the provisions of Section 110(A) of the NIRC of 1997, as amended, which enumerates the transactions upon which the related input taxes may be claimed as tax credits, to wit:

"SEC. 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:

(1) For sale; or

(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or

(iii) For use as supplies in the course of business; or

(iv) For use as materials supplied in the sale of service; or

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

(b) **Purchase of services on which a value-added tax has actually been paid.**

(2) **The input tax on domestic purchase** or importation **of goods or properties by a VAT-registered person shall be creditable:**

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

> (b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.
>
> *Provided*, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000): *Provided, however*, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, finally*, **That 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**." [boldfacing supplied]

Since the input VAT of ₱143,499,437.11, subject of petitioner's Motion for Reconsideration, pertains to its domestic purchases of services from Hewlett-Packard Phils. Corporation, the same must be supported by VAT official receipts which must contain all the information required under Section 113(B) of the NIRC of 1997, as amended, including the separate indication of the VAT. Inasmuch as the official receipts issued by Hewlett-Packard Phils. Corporation to petitioner did not separately show the amount of VAT, the disallowance of the claimed input VAT of ₱143,499,437.11 shall remain. Contrary to petitioner's position, the separate indication of the VAT in the sales invoices corresponding to the official receipts issued by Hewlett-Packard Phils. Corporation cannot be considered sufficient compliance with the law. To reiterate, an invoice and an official receipt cannot be used interchangeably as evidence to prove a particular transaction.

To reiterate, statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to VAT are in the nature of such exemptions.[3] As such, petitioner, being the claimant, should be

[3] *Panasonic Communication Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue*, G .R. No. 178090, February 8, 2010.

more vigilant in observing tax laws granting exemptions and shall not pass the burden of compliance to its suppliers.

There being no compelling reason to disturb the ruling of the Court in the assailed Amended Decision of June 22, 2016, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice