**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## FORMER EN BANC

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**COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

- versus -

**NIPPON EXPRESS (PHILS.) CORPORATION,**
Respondent.

**C.T.A. E.B. NO. 505**
**(C.T.A. CASE NO. 6688)**

Present:

**ACOSTA,** *P.J.*
**CASTAÑEDA, JR.,**
**BAUTISTA,**
**UY,**
**CASANOVA,** *and*
**PALANCA-ENRIQUEZ,** *JJ.*

**Promulgated:**

SEP 2 2 2010

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# AMENDED DECISION

**UY, *J.*:**

This resolves respondent's Motion for Reconsideration[1] filed on July 8, 2010 seeking a reconsideration of the Court *En Banc's* Decision dated June 11, 2010 which granted the instant Petition for Review and effectively reversed and set aside the Amended Decision dated March 24, 2009 and the Resolution dated June 16, 2009, both rendered by the Former First Division of this Court in C.T.A. Case No. 6688. The dispositive portion of the said Decision reads:

> "**WHEREFORE**, premises considered, the instant Petition For Review is hereby **GRANTED.** The Amended Decision dated March 24, 2009 and the Resolution dated June 16, 2009 of the Court in Division are **REVERSED** and **SET ASIDE**. Accordingly, respondent (petitioner in this case) Nippon Express (Phils.) Corporation's claim

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[1] Motion for Reconsideration, Docket, pp. 108-127.

> for the refund or issuance of a tax credit certificate in its favor allegedly representing its excess or unutilized input tax credit attributable to its zero-rated sales for taxable year 2001 is hereby **DENIED** for lack of merit."[2]

Respondent raises the following arguments in support of the instant Motion for Reconsideration:

(1) "Petitioner is estopped from raising issues belatedly in the appeal";

(2) "Sections 106 and 108 of the Tax Code do not deal with substantiation requirements for claims for refund of excess input VAT arising from zero-rated sales";

(3) "There is no distinction as to the evidentiary value of an official receipt and sales invoice insofar as substantiation of zero-rated sales is concerned";

(4) "Documents, other than official receipts, are admissible and competent to prove Respondent's zero-rated sales";

(5) "Nothing in the law or regulations provides for the outright denial of a claim for tax credit/refund for failure to comply with the invoicing requirements";

(6) "Without necessarily conceding the foregoing arguments, there are reasonable grounds for Respondent's failure to present official receipts for its zero-rated sales"; and

(7) "Without necessarily conceding the foregoing arguments, Respondent should be allowed to present existing official receipts to substantiate its zero-rated sales".

On the other hand, petitioner counters in the Comment/Opposition[3] posted on August 12, 2010 and received by this Court on August 20, 2010 that the Court *En Banc* correctly denied respondent's claim for refund for failure to comply with the substantiation requirements, not only for input taxes but also for output taxes, where the claim is based on zero-rated sales or exemptions since this will determine

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[2] Decision, Docket, pp. 83-104, at p. 104.
[3] Comment/Opposition (To Respondent's Motion for Reconsideration), Docket, pp. 130-139.

the creditable or unutilized input taxes that are available for refund. Moreover, petitioner maintains that official receipts cannot be used interchangeably with sales invoices since the applicable tax provisions specify that an official receipt shall cover sales of services, and do not provide for any other document which can be used as an alternative to or in lieu of an official receipt. Thus, the evidence submitted by respondent to prove its zero-rated sales are insufficient to warrant its entitlement to the claimed refund or issuance of a tax credit certificate considering that its sales involve sales of services, which should be properly supported by official receipts, and not by sales invoices. In conclusion, petitioner contends that since the instant motion merely raises the same arguments already ruled and passed upon by this Court in the assailed Decision, the same should be considered as a *pro forma* motion which must be outrightly denied.

At the outset, it is worthy to mention that the ruling in the assailed Decision is based on the interpretation of pertinent provisions of the National Internal Revenue Code (NIRC) of 1997 with respect to substantiation requirements of claims for refund or issuance of tax credit certificate of creditable input tax attributable to respondent's zero-rated sales for the second, third, and fourth quarters of taxable year 2001, more particularly, the distinction between the evidentiary value of a sales invoice with that of an official receipt.

As viewed by the majority of the members of the Former Court *En Banc*, the VAT law and regulations require that ***sales invoices*** must support the ***sale of goods or properties***, while ***official receipts*** must substantiate the ***sale of services***. Such position has been consistently applied even prior to the effectivity of

Republic Act No. 9337 on November 1, 2005[4], which provided the amendments, among others, to Section 113 of the NIRC of 1997 clarifying said distinction.

For clarity, We quote the pertinent provisions of Section 113 (A) under Republic Act 8242 or the NIRC of 1997 and under the amendatory law, Republic Act 9337, to wit:

| Under R.A. No. 8424 | As amended by R.A. No. 9337 |
|---|---|
| **SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. —**<br><br>**(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:<br><br>(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and<br><br>(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. | **SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. —**<br><br>**(A) Invoicing Requirements.** — A VAT-registered person shall issue:<br><br>(1) A VAT invoice for every sale, barter or exchange of goods or properties; and<br><br>(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services. |

Recently however, the Supreme Court rendered its Decision in the case of ***AT&T Communications Services Philippines, Inc. vs. Commissioner of***

[4] An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237, And 288 of the National Internal Revenue Code of 1997, As Amended, And For Other Purposes.

***Internal Revenue, G.R. No. 182364, penned by Honorable Conchita Carpio Morales, promulgated on August 3, 2010***, with the following pronouncement:

> "Section 113 of the Tax Code does not create a distinction between a sales invoice and an official receipt.
>
> xxx xxx xxx
>
> Parenthetically, to determine the validity of petitioner's claim as to unutilized input VAT, an invoice would suffice provided the requirements under Sections 113 and 237 of the Tax Code are met.
>
> Sales invoices are recognized commercial documents to facilitate trade or credit transactions. They are proofs that a business transaction has been concluded; hence, should not be considered bereft of probative value. Only the preponderance of evidence threshold as applied in ordinary in ordinary civil cases is needed to substantiate a claim for tax refund proper."

It bears stressing that the aforesaid case involves a claim for refund and/or tax credit of the taxpayer-claimant's excess/unutilized input VAT from zero-rated sales **for the calendar year 2002**; hence, long before the effectivity of the amendatory law, R.A. No. 9337. Thus, the interpretation therein pertains to the original pertinent provisions of Section 113 (A) under Republic Act No. 8242.

Similarly in the instant case, considering that respondent's claimed amount of P10,928,607.31 representing excess or unutilized input tax covers the 2$^{nd}$, 3$^{rd}$, and 4$^{th}$ Quarters of calendar year 2001, the above-cited case is applicable herein.

Applying the foregoing latest pronouncements on the subject matter, the Court *En Banc* shall make no distinction between sales invoices and official receipts in the substantiation requirements pertaining to respondent's claim for refund of excess/unutilized input VAT arising from zero-rated or effectively zero-rated sales prior to the effectivity of R.A. No. 9337, on November 1, 2005, where such distinction was finally clarified.

Consequently, prior thereto and in accordance with the ruling of the Supreme Court in the ***AT&T* case**, We shall make no distinction made between a sales invoice and an official receipt, as both evidence can be used interchangeably in support of one's claim for refund or issuance of a tax credit certificate representing excess/unutilized input VAT arising from zero-rated or effectively zero-rated sales of goods and/or services.

**WHEREFORE**, in light of the foregoing considerations, respondent's Motion for Reconsideration is hereby **GRANTED.** The assailed Decision in the present case promulgated on June 11, 2010 is hereby **REVERSED** and **SET ASIDE**.

Accordingly, the Amended Decision dated March 24, 2009 and the Resolution dated June 16, 2009 of the Former First Division of this Court in C.T.A. Case No. 6688 are hereby **AFFIRMED in TOTO**.

**SO ORDERED**.

**ERLINDA P. UY**
Associate Justice

**WE CONCUR:**

**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 Amended 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