REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AT & T COMMUNICATIONS SERVICES PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 291
(C.T.A. Case No. 6907)

Present:

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

Promulgated:

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DECISION

CASTAÑEDA, JR., J.:

This Petition for Review under Section 11 of Republic Act ("R.A.") 9282 seeks the reversal of the Decision dated February 23, 2007 issued by the Court in Division denying the amount of P1,801,826.82 in CTA Case

No. 6907, and instead prays for the refund or issuance of a tax credit certificate in the amount of P2,050,736.69 allegedly representing its unutilized input Value Added Tax ("VAT") attributable to zero-rated sales for the year 2002. Likewise assailed is the Resolution dated June 19, 2007 denying its Motion for Reconsideration for lack of merit.

The material antecedent facts are:

> Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal place of business at the 18th Floor, BA-Lepanto Building, 8747 Paseo de Roxas, Makati City. It is principally engaged in the business of rendering information, promotional, supportive and liaison services, particularly to AT & T Communications Services International, Inc. (AT&T-US), AT&T Solutions, Inc. (AT&T-SI), and to its other affiliates, all of which are non-resident foreign corporations and are not engaged in trade or business in the Philippines, as well as to Subic Bay Freeport Enterprises. It is duly registered with the Bureau of Internal Revenue as a value-added tax (VAT) Taxpayer with Taxpayer Identification No. 050-004-519-384 as shown in its BIR Certificate of Registration dated January 1, 1996.
>
> Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested by law to decide, approve and grant claims for refund or tax credit of erroneously or excessively paid taxes, including excess or unutilized input VAT payments, with office address at 4th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.
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> On January 1, 1999, petitioner entered into a Service Agreement (Exhibit "N") with AT&T-US whereby compensation for such services is paid in US Dollars (Exhibit "N-1").
>
> Likewise, on July 21, 1999, petitioner entered into an Assignment Agreement (Exhibit "O") with AT&T-SI wherein services are also paid in US dollars. As part of such agreement, petitioner is required to render services to Acer Information Products (Philippines), Inc., a Subic Bay Freeport Enterprise, which services shall be paid for in US Dollars to be inwardly remitted to the Philippines by AT&T Singapore acting as collecting agent.
>
> Subsequently, petitioner filed its Quarterly VAT Returns and its Amended Quarterly Returns with the BIR for the period January 1, 2002 to December 31, 2002, within the period prescribed by law on the following dates:

Period	Exhibit	Date of Filing
1st Quarter	"D"	April 17, 2002
2nd Quarter	"G"	July 9, 2002
3rd Quarter	"J"	October 24, 2002
4th Quarter	"L"	January 27, 2003

Amended Quarterly VAT Returns

Period	Exhibit	Date of Filing
1st Quarter	"E" & "F"	October 24, 2002; April 22, 2003
2nd Quarter	"H" & "I"	October 24, 2002; April 22, 2003
3rd Quarter	"K"	April 22, 2003
4th Quarter	"M"	April 22, 2003

According to petitioner, for the period January 1, 2002 to December 31, 2002, it paid VAT input taxes of P2,836,770.71 on its domestic purchases of capital goods and other taxable goods and services, and importation of capital goods, which amounted to P28,367,712.52. During the same year, petitioner likewise claimed that it generated and recorded zero-rated sales from the above-described services in the aggregate amount of P56,898,744.05, which was paid to petitioner in US Dollars inwardly remitted in accordance with existing rules and regulations of the Bangko Sentral ng Pilipinas (BSP). On the other hand, the VAT input taxes of P2,836,770.71, which have been incurred for the purchases of capital goods and other taxable goods and services, as well as importation of capital goods used in the business operations of petitioner, have been applied against the VAT output tax payable in the amount of P786,034.02, resulting in an excess and unutilized VAT input tax of P2,050,736.69, which have not been applied nor carried over to any succeeding quarter(s), and are duly supported by VAT invoices and/or official receipts. The following are the details:

Taxable Quarters	Total Domestic Purchases	Input VAT Payments	Zero-rated Sales	Domestic Sales of Taxable Services	VAT Output Tax Due
1st Exhs. "E" & "F"	P11,828,776.24	P1,182,877.71	P 19,613,455.23	P3,351,504.85	P335,153.29
2nd Exhs. "H" and "I"	5,042,780.90	504,278.14	9,120,971.54	1,031,147.98	103,025.36
3rd Exh. "K"	4,325,645.55	432,561.67	12,351,060.35	1,406,553.58	140,656.23
4th Exh. "M"	7,170,509.82	717,053.19	15,813,256.93	2,071,960.22	207,199,14
	P28,367,712.51	P2,836,770.71	P56,898,744.05	P7,860,166.63	P786,034.02

Total Input VAT Tax Payments	P2,836,770.71
Total Output VAT Due	(786,034.02)
Excess and unutilized VAT Input Tax	P2,050,736.69

Going further, petitioner explained that since the entire amount of unutilized VAT input taxes for calendar year ending December 31, 2002 could not be directly and exclusively attributed to either of its zero-rated sales or its domestic sales, an allocation of the said VAT input taxes were made, resulting in the amount of P1,801,826.82 as the VAT input taxes allocable to its zero-rated sales, computed as follows:

$$\frac{\text{Domestic Sales}}{\text{domestic sales}} \times \text{Total unutilized Vat input taxes} = \text{VAT input taxes allocated to Total Sales}$$

Thus,

$$\frac{\text{P7,860,166.62}}{\text{P64,758,910.67}} \times \text{P2,050,736.69} = \text{P248,909.87}$$

Then,

Total unutilized VAT input taxes	P2,050,736.69
Less: VAT input taxes allocated to domestic sales	248,909.87
Allowable VAT input taxes attributable to zero-rated sales	P1,801,826.82[1]

On the basis of its alleged entitlement to the unutilized input VAT paid for the calendar year ending December 31, 2002, the petitioner filed an application for refund and/or tax credit with the Bureau of Internal Revenue ("BIR") District Office No. 50, South Makati, on March 26, 2004.

The BIR's inaction on its claim for refund prompted petitioner to file a Petition for Review docketed as CTA Case No. 6907 with the Court in Division, on March 31, 2004. Je

[1] Rollo, pp. 300-303.

In the Decision dated February 23, 2007, the Court in Division dismissed the Petition due to petitioner's failure to substantiate the amount of its alleged claim.

Dissatisfied, the petitioner moved for the reconsideration of the Decision dated February 23, 2007 which was denied in the Resolution dated June 19, 2007.

Unfazed, the petitioner appealed with the Court En Banc interposing the following assignment of errors committed by the Court in Division:

I. THE 1997 TAX CODE DOES NOT LIMIT THE PROOF OF INPUT OR OUTPUT VAT TO A SINGLE DOCUMENT. THERE IS NO DISTINCTION OF THE EVIDENTIARY VALUE OF THE SUPPORTING DOCUMENTS.

II. THE USE OF THE VAT OFFICIAL RECEIPT AS PROOF OF PAYMENT OF THE SALE OF SERVICE LOSES ITS SIGNIFICANCE DUE TO THE REQUIREMENT THAT PETITIONER PROVE THE VALIDITY OF ITS INWARD REMITTANCES.

III. PETITIONER PRESENTED SUBSTANTIAL EVIDENCE THAT UNEQUIVOCALLY PROVED PETITIONER'S ZERO-RATED TRANSACTIONS FOR THE YEAR 2002.

IV. IN CIVIL CASES, SUCH AS CLAIMS FOR REFUND OR ISSUANCE OF A TCC, A MERE PREPONDERANCE OF EVIDENCE WILL SUFFICE TO JUSTIFY THE GRANT OF CLAIM[2]

The respondent failed to file her Comment to the Petition within the period fixed by the Court.

Being interrelated, the first, second and fourth issues shall be discussed in seriatim. In essence, these issues revolve on whether or not

[2] Rollo, p.23.

a taxpayer is required to proffer proof of VAT invoices to substantiate sale of goods, and by official receipts the sale of services.

The Petitioner argues that the Court in Division erred in denying petitioner's claim for refund due to its failure to submit VAT official receipts in support of its sale of services. The 1997 NIRC, as amended does not limit the proof of input or output VAT to a single document. The disjunctive term "or" used to dissociate the wordings "invoices" from "receipts" simply means that these documents are used without distinction as shown in Sections 113 and 237 of the 1997 NIRC, as amended.

In the same manner, nowhere is it stated in Sections 106 and 108 of the 1997 NIRC, as amended that only VAT invoices maybe utilized to prove sales of goods, while VAT official receipts may be used to substantiate sale of services. These provisions refer to the basic rules on the imposition and computation of VAT on the sale of goods or services.

In several instances, the respondent has allowed taxpayers to prove input or output VAT with the use of either VAT invoices or official receipts.

The respondent never raised any such issue in the administrative level, or before this Court. Thus, there should be no bar admitting petitioner's VAT invoices, together with its other pieces of evidence in proving its entitlement to a refund.

The petitioner also maintains that in civil cases, such as in this case, a mere preponderance of evidence will suffice to justify the grant of the claim for refund. There is no provision in the Rules of Court which states that only certain documents are competent to prove the existence of input and output VAT, domestic purchases or export sales.

Petitioner further alleges that the zero-rated sales do not result to any output VAT on sales to its foreign customers. Thus, there is no need to determine the output VAT due thereon using the VAT official receipts required by Section 108 of the 1997 NIRC, as amended. Also, there is no danger that petitioner's customers shall be able to utilize, as their input VAT, unsubstantiated or non-existent output VAT. Being foreign corporations located overseas, such customers cannot use any output VAT generated by petitioner in its operations. Hence, the Court in Division erred in requiring VAT official receipts as additional proof of the sales and output VAT, if any, generated by petitioner. Logically, there is no need to apply Section 108 to the instant case.

Petitioner's contentions deserve scant consideration.

Sections 113 and 237 of the 1997 NIRC, as amended, prescribe the issuance of a VAT invoice or official receipt, as follows:

> SEC. 113. **Invoicing and Accounting Requirements for VAT-registered persons.** –

(A) *Invoicing Requirements.* – A VAT registered person shall, for every sale, issue and invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the <u>invoice or receipt</u>:

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. xxx (Underscoring Ours for emphasis).

xxx xxx xxx

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 of 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 is 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 of the purchaser.

At a glance, Sections 113 and 237 of the 1997 NIRC, as amended bear no distinction between a VAT invoice and/or official receipt, however, these provisions should be read in conjunction with Sections 106 and 108 of the same Code which provide the manner of determining the output VAT on the sale of goods and services, reading:

SEC. 106. **Value-added Tax on Sale of Goods or Properties.** – *Jr*

(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.

(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 or properties.

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). (Underscoring Ours for emphasis).

For every sale of goods or properties, the law imposes a ten (10%) output VAT on the gross selling price thereof; while in the case of sale of services, the 10% VAT is based on the gross receipts.

The gross selling price is defined vis-à-vis with gross receipts under Sections 106(A)(1) 2nd paragraph and 108(A) of the 1997 NIRC, as amended, respectively as follows:

SEC. 106. **Value-added Tax on Sale of Goods or Properties. -**

xxx

(A) *Rate and Base of Tax.* –

(1) The term "*goods or properties*" shall mean xxx

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.

SEC. 108. **Value-added tax on Sale of Services and Use or Lease of Properties.** –

(A) **Rate and Base of Tax**. - 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 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. xxx

The law mandates that the VAT on the sale of goods or properties accrues upon the consummation of sale, regardless of whether or not the consideration thereof was actually received. This serves as basis why the tax shall be computed by multiplying the total amount indicated in the VAT invoice by one-eleventh(1/11).[3] On the other hand, the VAT on the sale of services arises upon actual or constructive receipt of the consideration, irrespective of whether or not there is performance of the service. This is the reason why the sale of services shall be computed by multiplying the total amount indicated in the VAT official receipt by one-eleventh (1/11).[4]

For the same transaction, the output VAT of the seller becomes the input VAT of the purchaser, and this explains why the law requires that the

[3] Section 106(D) of the 1997 NIRC, as amended.
[4] Section 108 (C) of the 1997 NIRC, as amended.

document used as proof to establish output VAT is the same document made as reference in ascertaining the input VAT pursuant to Section 110 of the 1997 NIRC, as amended which provides:

> SEC.110.**Tax Credits**. –
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> (A) *Creditable Input Tax*. –
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> (1)Any input tax evidenced by a VAT invoice of 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:
> (i) For sale; or
> (ii) For conversion into or intended or form part of a finished product for sale including packaging materials;
> (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, except automobiles, aircraft and yachts.
> (b) <u>Purchase of services on which a value-added tax has been actually paid.</u>
> (2) The input tax on domestic purchase of goods or properties shall be creditable:
> <u>(a) To the purchaser upon consummation of sale and on importation of goods or properties; and</u>
> (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
>
> <u>However, in the case of purchaser 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.</u> (Underscoring Ours for emphasis).

Otherwise stated, the input VAT on domestic purchases of goods or properties is allowed as tax credit to the purchaser upon consummation of sale which means upon the issuance by the seller of the VAT invoices evidencing the sale of goods or properties. The input VAT on the purchases of services shall be available as tax credit to the purchaser upon gc the issuance by the seller of the VAT official receipt evidencing receipt of the payment for services performed or yet to be performed.

Apparently, the sale of goods should be evidenced by VAT invoices, and the sale of services by official receipts.

To bolster its claim on the dispensability of VAT invoices and official receipts, petitioner's posture is anchored in the case of *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*[5] where the Supreme Court ruled that the evidence of input VAT may be proven by other export documents, rather than the supporting documents for the zero-rated export sales.

We disagree.

Petitioner's reliance in the Intel case is misplaced. The two cases delve on distinct set of fact and issues. In the herein case, the petitioner raises the issue of whether or not its zero-rated transactions are evidenced by VAT official receipts. On the other hand, the Intel case focuses on the relevance of the authority to print. Pertinent excerpts of the Intel case are as follows:

> On the latter point, the Court disagrees with the CTA and CA. As correctly argued by petitioner, there is no law or BIR rule or regulation requiring petitioner's authority from the BIR to print its sales invoices (BIR authority to print) to be reflected or indicated therein. xxx
>
> It is clear from the foregoing that while entities engaged in business are required to secure from the BIR an authority to print receipts or invoices and <u>to issue duly registered receipts or invoices</u>, it is

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[5] G.R. 166732, April 27, 2007.

> not required that the BIR authority to print be reflected or indicated therein. Only the following items are required to be indicated in the receipts or invoices x xx (Underscoring Ours for emphasis).[6]

Indubitably, a taxpayer is required to issue invoices or receipts involving transactions subject to VAT.

According to petitioner, the use of the VAT official receipts as proof of payment of the sale of service loses its significance due to the requirement that it was able to establish the validity of its inward remittances. The independent Certified Public Accountant's ("CPA") Report dated July 14, 2005 also verified that the zero-rated sales declared by the petitioner for calendar year 2002 were properly supported by original VAT invoices with the wordings, "zero-rated" imprinted therein as well as Bank Credit Advices.

Bank Credit Advices from Citibank N.A. show that the inward remittances were made to petitioner in foreign currency in the aggregate amount of US$1,102,315.48(P56,898,744.05) from JP Morgan Chase Bank – New York, U.S.A., Citibank – London, U.K., and Citibank N.A. – New York, U.S.A. Payment for the four invoices addressed to Acer, Inc. is evidenced by a Bank Credit Advice showing an incoming foreign payment from AT & T- Singapore.

In a litany of cases, this Court considered Bank Credit Advices as credible evidence to prove that inward remittances were made in foreign

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[6] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.

currency, duly accounted for in accordance with Bangko Sentral ng Pilipinas("BSP") rules and regulations. Such being the case, it is clear that petitioner's sales qualify within the purview of the definition of zero-rated sales under the 1997 NIRC, as amended. The Bank Credit Advices likewise prove that petitioner has received the compensation for its services.

We are not persuaded.

Proofs of inward remittances cannot be issued in lieu of VAT official receipts to demonstrate petitioner's zero-rated transactions. Under Section 113 of the 1997 NIRC, as amended, irrespective of the nature of transaction, be it taxable, exempt or zero-rated sale, the law mandates that the taxpayer *"for every sale, issue an invoice or receipt."* Thus, the enumerated zero-rated transactions under Sections 106 and 108 are those which are duly covered by VAT invoices (in the case of sales of goods), and official receipts (in the case of sales of services).

Petitioner asserts that the testimony of the commissioned independent CPA corroborated its declared zero-rated sales consisting of sales of services to non-residents evidenced by original VAT invoices imprinted with the word, "zero-rated" and by the Bank Credit Advices. Moreover, petitioner's invoices, credit memos and other documents evidencing its zero-rated sales of services for the year 2002 reflecting BIR's authority to print as well as petitioner's name, address and TIN. The

Bank Credit Advices satisfy the evidentiary requirement in proving petitioner's zero-rated sales for the year 2002.

Petitioner's stance is unmeritorious.

As earlier discussed, the issuance of VAT official receipts is required to validate sale of services. Documents other than VAT official receipts such as invoices are only corroborative evidence, and may not conclusively establish the existence of petitioner's sale of services. This Court finds no reason to modify the ruling of the Division which aptly made the following observation:

> **An examination of the documents presented in this case shows that petitioner really incurred zero- rated sales. However, they were not supported by official receipts as required by law.**[7]

Thus, the Court in Division correctly denied the refund or the issuance of tax credit certificate of petitioner's claimed input VAT.

WHEREFORE, premises considered, the Petition is hereby **DISMISSED.** The Decision dated February 23, 2007 and the Resolution dated June 19, 2007 are hereby **AFFIRMED.**

SO ORDERED.

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

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[7] Rollo, p. 312.

WE CONCUR:

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ERNESTO D. ACOSTA
Presiding Justice