REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

JIDECO MANUFACTURING PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 53
(CTA Case No.6552)

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

Promulgated:

JUN 07 2005 [signature]

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DECISION

CASTAÑEDA, JR., *J.*:

This is an appeal pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282 from the Decision of the then Court of Tax Appeals in C.T.A. Case No. 6552 dated September 16, 2004 and the Resolution of the First Division of the Court of Tax Appeals (CTA) dated December 9, 2004. The CTA denied petitioner's claim for refund or issuance of a tax credit certificate in the amount of P11,926,474.76 allegedly representing unutilized input Value-Added Tax (VAT) on purchases of capital goods for the third and fourth quarters of 2000 and second quarter of 2001.

The facts of case are as follows:

Petitioner entered into a contract with Western Philippine Corporation (WPC) for the construction of petitioner's factory plant located at Lima Technology Center, Special Economic Zone, Lipa City. WPC will furnish all labor, materials, equipment and supplies and perform all the operations necessary for the construction, design and completion of the factory plant for the contract price of P222,047,148.01 inclusive of VAT.

Petitioner made payments to WPC during the third and fourth quarters of year 2000 and second quarter of year 2001 inclusive of VAT net of 1% withholding tax.

On October 23, 2002, petitioner filed an administrative claim for refund of the alleged unutilized input VAT payments amounting to 11,926,474.76 on capital goods purchased. As the two-year prescriptive period was about to lapse, petitioner filed its Petition for Review with this Court on October 24, 2002.

The Court denied petitioner's claim for refund holding that:

"Considering that the output VAT of WPC on the subject transactions becomes the input VAT of petitioner, Section 110(A)(2) of the NIRC of 1997 requires that the claimed input VAT be substantiated by VAT official receipts, thus:

> 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:
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> xxx xxx xxx
>
> (b) Purchase of services on which a value-added tax has been actually paid.
>
> xxx xxx xxx
>
> (2) The input tax 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 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**.

It must be pointed out that at first glance it appears that the word "or" in Section 110(A)(1) indicates an alternative. However, a further reading of the above Section 110(A)(1)(b) and Section 110(A)(2)(a) 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 invoice evidencing the sale of goods or 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 the issuance by the seller of the VAT official receipt evidencing receipt of the payment for services performed or yet to be performed.**

The above provisions are in harmony with the provisions of Section 106(A) & (D) as well as Section 108(A) & (C) of the 1997 Tax Code, which provide for 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. 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 the 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 of services, as in the case at bar, the 10% VAT is computed based on gross receipts under Section 108(a) earlier defined. Therefore, 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. And 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).

But in order to be considered as valid VAT official receipts, the same must contain all the information required under Section 113 of the NIRC of 1997, to wit:

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.

A scrutiny of the official receipts (Exhibits J-1, K-1, L-1, M-1, N-1, O-1, & P-1) supporting petitioner's claimed input VAT discloses that the same failed to comply with the invoicing requirements under Section 113 of the NIRC of 1997. The said official receipts do not contain the required taxpayer's identification number (TIN) followed by the word "VAT" but the old taxpayer's account number (TAN). Consequently, the said official receipts cannot be considered as valid VAT official receipts and the payments indicated therein should not give rise to any input tax.

While petitioner submitted the sales invoices issued by WPC which contained all the necessary information required under the aforequoted provisions of law, the same shall not be considered as valid proof of the claimed input VAT. As we have earlier emphasized, the subject transactions pertain to purchases of services, which under Section (A) (1) and (2) in relation to Section 108 (c) of the NIRC of 1997 must be substantiated by VAT official receipts. The presentation of the VAT official receipts presupposes that the claimed input VAT was actually remitted to the Bureau of Internal Revenue.

Moreover, this court noted that the official receipts bear BIR Permit Number dated April 11, 1991. Inasmuch as the Transitory Provisions of Revenue Regulations No. 7-95 allowed the use of unused invoices/official receipts by taxpayers who changed status from NON-VAT to VAT or from VAT to NON-VAT only up to June 30, 1996 subject to the compliance of certain requirements, with more reason that the official receipts in question cannot be considered as valid proof of the claimed input VAT.

xxx xxx xxx

Moreover, we have already laid down in previous similar cases, the more recent of which is the case of Rohm Apollo Semiconductor Philippines, Inc. vs. Honorable Commissioner of Internal Revenue, CTA Case No. 6534, May 27, 2004, the requisites which a taxpayer must comply, in claiming for a refund/tax credit of unutilized input VAT payments on capital goods purchased pursuant to Section 112(B) of the NIRC of 1997 in relation to Section 4.104-5 of Revenue Regulations No. 7-95, as follows:

1.) That it is a VAT registered entity;
2.) That it paid input VAT on capital goods purchased;
3.) That its input VAT payments on capital goods are duly supported by VAT invoices and/or official receipts;
4.) That it did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and
5.) That the claim for refund was filed within the two-year prescriptive period both in the administrative and judicial levels.

As earlier noted, petitioner met all of the above requirements **except for the second and third requisites.** Petitioner unsuccessfully proved that it made input VAT payments on capital goods purchases as it failed to present proper VAT official receipts. As a result thereof, petitioner's claim must fail."

Petitioner filed a Motion for Reconsideration which was denied in a Resolution rendered by the First Division of this Court promulgated on December 9, 2004.

Hence this petition.

ASSIGNED ERRORS

I.

THE COURT A QUO ERRED WHEN IT RULED THAT THE VAT SALES INVOICES ISSUED BY WESTERN PHILIPPINE CORPORATION (WPC) TO PETITIONER WAS NOT SUFFICIENT PROOF OF PETITIONER'S PAYMENT OF INPUT VAT TO WPC;

II.

THE COURT A QUO ERRED WHEN IT DENIED PETITIONER'S CLAIM FOR REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE AMOUNT OF P11,926,474.76 REPRESENTING UNUTILIZED INPUT VALUE-ADDED TAX (VAT) ON PURCHASES OF CAPITAL GOODS FOR THE 3RD AND 4TH QUARTERS OF TAXABLE YEAR 2000 AND 2ND QUARTER OF TAXABLE YEAR 2001.

Petitioner argues that it complied with all of the requirements in claiming a refund or tax credit of unutilized VAT payments on capital goods purchased pursuant to Section 112 (B) of the National Internal Revenue Code (NIRC) of 1997 in relation to Section 4.104-5 of Revenue Regulations No. 7-95, namely:

1) that it is a VAT registered entity;
2) that it paid input VAT on capital goods purchased;

3) that its input VAT payments on capital goods are duly supported by VAT invoices and/or official receipts;
4) that it did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and
5) that the claim for refund was filed within the two-year prescriptive period both in the administrative and judicial levels. *(Rohm Apollo Semiconductor Philippines, Inc. vs. Honorable Commissioner of Internal Revenue, CTA Case No. 6534, May 27, 2004)*

According to the petitioner:

"Petitioner has established to the satisfaction of the court a quo the fact that petitioner is a VAT registered taxpayer under Bureau of Internal Revenue Certificate of Registration OCN 99-590-000844-0; that the claimed input VAT, which arose from the purchase of capital goods, was not applied against any output tax of petitioner as clearly shown by its amended VAT return for the third quarter of 2001 where the claimed input taxes were deducted under "Any VAT Refund/TCC Claimed"; and finally, that both the administrative and judicial claims for refund were filed within the two-year prescriptive period. The court a quo, however, denied petitioner's claim for refund for petitioner's alleged failure to satisfy the second and third requirements enumerated above.

Petitioner, most respectfully begs to disagree with the conclusions of the court a quo and humbly submits that the VAT sales invoices and official receipts issued by WPC to Petitioner substantially complied with the second and third requirements enumerated above."

In support of its assigned errors, petitioner cited the case of *Seagate Technology (Philippines) vs. Commissioner of Internal Revenue, CTA Case No. 5999, April 23, 2001* alleging that:

"xxx the CTA therein reduced the amount of claim for Seagate for the latter's failure to **submit the invoices issued by Western Philippine Corporation.** Hence, a reading of the CTA's decision in the above-mentioned case will lead no other conclusion but that Seagate's claim for refund would not have been reduced had WPC's sales invoices been presented by Seagate. It must be noted that while Seagate's case involved the refund of input taxes paid in relation to the construction of its building, the CTA then never made a distinction as to whether the vatable sales of WPC involved a sale of goods or services. Petitioner most respectfully submits that this should be the proper construction of the provisions of the NIRC relative to the value-added tax."

Petitioner argues that it has proven through the VAT sales invoices issued by WPC that it paid the necessary value-added tax on the payments to WPC for the construction of Petitioner's building and that the invoices contained all the necessary information required under Section 113 of the NIRC which provides:

> 1) *Invoicing Requirements*. - A VAT-registered person shall, for every sale, issue an invoice **<u>or</u>** 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.

Petitioner avers that the afore-quoted provision contained the disjunctive term **<u>or</u>** between the words VAT invoice and official receipts clearly suggesting the use of the alternative. The VAT law never made any distinction as to the use of VAT sales invoice and VAT official receipts but allowed the use of either irrespective of whether the transaction involved a sale of goods, services or use or lease of properties. Where the law does not distinguish the court should not distinguish. While the distinction may actually exist in practice, petitioner submits that such distinction does not have basis in law.

Furthermore, the petitioner submits that the VAT sales invoices, which contained the necessary requirements for purposes of claiming input tax credit, when taken together with the official receipts and the Certificate of Registration of WPC clearly establishes the fact that petitioner paid the corresponding value-added tax to WPC. Thus, the value added tax passed on by WPC to petitioner should be allowed as creditable input tax credit in petitioner's books.

Lastly, petitioner concludes that the obligation to issue a sales invoice for the sale of goods or to issue an official receipt is imposed only on the sellers. Accordingly, purchasers like petitioner herein, should not be faulted in the event that the seller issues a sales invoice for a sale of services as in the case at bar. Petitioner submits that purchasers of goods or services on which a value-added tax has been paid may substantiate the input tax paid either with a VAT official receipt or a VAT sales invoice since Section 110 of the NIRC does not require a purchaser to distinguish from a purchase of goods or a purchase of properties.

The Petition for Review is bereft of merit.

As pointed out in the assailed Decision, the National Internal Revenue Code (NIRC) of 1997 has separate provisions for Value-added tax on sale of goods or properties (Sec. 106) and Value-added tax on sale of services and use or lease of properties (Sec. 108), thus:

> "For the sale of goods or properties, the 10% 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 regardless of whether or not the consideration therefor was actually received. It is for this reason the (sic) 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).
>
> In the case of sale of services, as in the case at bar, the 10% VAT is computed based on gross receipts under Section 108(A) earlier defined. Therefore, the VAT on the sale of services accrues upon actual or constructive receipt of the consideration irrespective of whether or not service has been rendered. And 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)."

The pertinent provisions referred to in the foregoing portion of the assailed decision are quoted hereunder for purposes of clarity:

> "Sec. 106. **Value-added tax on sale of goods or properties**. -
>
> (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 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.
>
> The phrase "sale or exchange of services" means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors or property, whether personal or real; xxx xxx xxx.

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.
>
> (B) xxx 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). (Underscoring supplied)

Based on the language of Section 108, the following matters have been clearly set forth:

1) Fees paid to Construction Contractors are payments for the "sale or exchange of services" [Sec. 108 (A)];

2) VAT on sales of services shall be based on the total amount indicated in the "**official receipt**" [Sec 108 (C)].

There is no dispute that the construction of petitioner's factory plant by WPC is considered as a sale of service. The inclusion of the services performed or rendered by construction and service contractors in the definition of the phrase "sale or exchange of services" undeniably makes the contract entered into by the petitioner and WPC as a contract for a "sale or exchange of services" which pursuant to Section 108(C) requires the issuance of official receipts.

The law itself specified that an official receipt shall cover sales of services. It did not provide for any other document which can be used as an alternative to or in lieu of an official receipt. Hence, petitioner's argument that the sales invoices issued by WPC are sufficient to meet the invoicing requirements under Section 113 of the NIRC of 1997 has no basis in law, consequently, it cannot be sustained. Section 113 of the NIRC, which provides that "a VAT-registered person shall for every sale, issue an invoice <u>or</u> receipt, is a general provision on VAT invoicing requirements as opposed to Sec. 106 and Sec. 108 which are special provisions intended to govern VAT on sale of goods or properties and VAT on sale of services and use or lease of properties. Well-settled is the rule that between a general provision and a special provision of law, the special provision prevails. The same conclusion holds true against petitioner's contention that Section 110 of the NIRC dealing with tax credits in relation to Section 113 of the same Code uses the disjunctive term "or" which indicates that a sales invoice can be used as an alternative to an official receipt when claiming tax credit for purchases of services.

Petitioner implied that since Section 110 is a later provision in the NIRC than Section 108, that it constitutes the latest expression of the legislative intent. Petitioner's view is disproved by Section 237 of the NIRC which reiterates that in sales of services, an official receipt shall be issued, thus:

> "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." (Emphasis and underscoring supplied)

Section 237 made specific reference to "the receipt" issued to cover any of the following payments: rentals; commissions; compensations; or fees which are all considered as items of gross receipts as defined in Section 108 of the NIRC covering VAT on sale of services and use or lease of properties.

The Court En Banc quotes with approval the ruling of the Court *a quo* expressed in its Decision denying petitioner's claim:

> "A scrutiny of the official receipts (Exhibits J-1, K-1, L-1, M-1, N-1, O-1 & P-1) supporting petitioner's claimed input VAT discloses that the same failed to comply with the invoicing requirements under Section 113 of the NIRC of 1997. The said official receipts do not contain the required taxpayer's identification number (TIN) followed by the word "VAT" but the old taxpayer's account number (TAN). Consequently, the said official receipts cannot be considered as valid VAT official receipts and the payments indicated therein should not give rise to any input tax.
>
> While petitioner submitted the sales invoices issued by WPC which contained all the necessary information required under the aforequoted provisions of law, the same shall not be considered as valid proof of the claimed input VAT. As we have earlier emphasized, the subject transactions pertain to purchases of services, which under

> Section 110(A)(1) and (2) in relation to Section 108(C) of the NIRC of 1997 must be substantiated by VAT official receipts. The presentation of the VAT official receipts presupposes that the claimed input VAT was actually remitted to the Bureau of Internal Revenue.
>
> Moreover, this court noted that the official receipts bear BIR Permit Number dated April 11, 1991. Inasmuch as the Transitory Provisions of Revenue Regulations No. 7-95 allowed the use of unused invoices/official receipts by taxpayers who changed status from NON-VAT to VAT or from VAT to NON-VAT only up to June 30, 1996 subject to the compliance of certain requirements, with more reason that the official receipts in question cannot be considered as valid proof of the claimed input VAT."

Moreover, the ratiocination of the First Division of this Court in its Resolution promulgated on December 9, 2004 denying petitioner's Motion for Reconsideration dealt squarely with petitioner's argument that it is the obligation of the seller to issue the proper official receipt, thus:

> "Anent petitioner's contention that if at all, the parties that should be penalized for the issuance by WPC of the official receipts which did not conform to the requirements under the law should be WPC and the concerned revenue official from the Revenue District Office having jurisdiction over the place of business of WPC, which approved the printing of the official receipts, We find the same without merit.
>
> First, it must be pointed out that the subject official receipts were approved by the BIR for printing in 1991 which was prior to WPC's VAT registration on June 29, 1994 (*Exhibit 7*). Considering so, the BIR authority to print was validly issued in 1991 by the concerned revenue official.
>
> Second, petitioner, being a VAT registered entity, has the duty to demand from its suppliers valid VAT sales invoices (for purchases of goods) or VAT official receipts (for purchases of services) in order that the corresponding input VAT on its purchases maybe credited or refunded in accordance with Section 110(A)(1) and (2) in relation to Section 113 of the NIRC of 1997. Since petitioner failed to do so, this Court has no other recourse but to deny its claim. It must be stressed that while the refund/tax credit of unutilized input VAT on capital goods purchased is a right given to a VAT registered taxpayer like herein petitioner, however, such privilege is not without requisites that must be complied with in order that the same maybe granted."

WHEREFORE, the assailed Decision of the then Court of Tax Appeals is hereby **AFFIRMED**. Accordingly, the Petition for Review is **DISMISSED** for lack of merit.

SO ORDERED.

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

We Concur:

(on leave)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(on leave)
OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals *En Banc* in accordance with Section 13, Article VIII of the Constitution.

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