REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

AT&T COMMUNICATIONS SERVICES PHILIPPINES, INC. **Petitioner,**	**CTA CASE NO. 6907**
	Members:
- versus -	**ACOSTA, *Chairperson* BAUTISTA, and CASANOVA, *JJ.***
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, **Respondent.**	APR 20 2011; 1:23 p.m.

X- X

AMENDED DECISION

CASANOVA, *J.*:

This is an appeal before the Court of Tax Appeals (CTA) First Division by way of verified Petition for Review seeking the refund or issuance of tax credit certificate in the amount of P1,801,826.82 allegedly representing excess and/or unutilized input VAT of petitioner attributable to zero-rated sales of services for the taxable year 2002.

The material antecedent facts, as culled from the records of the case are as follows:

> AT&T Communications Services Philippines, Inc. (Petitioner) is a domestic corporation primarily engaged in the business of providing information, promotional, supportive and liaison services to foreign corporations such as AT&T Communications Services International, Inc. (AT&T-US) and AT&T Solutions, Inc. (AT&T–SI), Mastercard International, Inc. (by virtue of assignment from AT&T Solutions, Inc.), and Acer, Inc. (by virtue of assignment letters from AT&T

Singapore, Pte. Ltd. (AT&T Singapore) and AT&T Global Communications Services, Inc. (AT&T Global) and Wistron Infocomm Philippines Corporation, both allegedly PEZA-registered enterprises.

Respondent is the duly appointed Commissioner of Bureau of International 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 Value Added Tax (VAT) payments. He may be served with summons and other legal processes of this Honorable Court at the 4th Floor, BIR national Office Building, Diliman, Quezon City.

Under Service Agreements forged by petitioner with the above-named corporations, remuneration is paid in U.S. Dollars and inwardly remitted in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP).

For the calendar year 2002, petitioner incurred input VAT when it generated and recorded zero-rated sales in connection with its Service Agreements in the aggregate peso equivalent of P56,898,744.05. Petitioner also incurred input VAT from purchases of capital goods and other taxable goods and services, and importation of capital goods.

Despite the application of petitioner's input VAT against its output VAT, an excess of unutilized input VAT in the amount of P2,050,736.69 remained. As petitioner's unutilized input VAT could not be directly and exclusively attributed to either of its zero-rated sales or its domestic sales, an allocation of the input VAT was made which resulted in the amount of P 1,801,826.82 as petitioner's claim attributed to its zero-rated sales.

On March 26, 2004, petitioner filed with the Commissioner of Internal Revenue (respondent) an application for tax refund and/or tax credit of its excess/unutilized input VAT from zero-rated sales for the calendar year ending December 31, 2002 in the said amount of P1,801,826.82.

To prevent the running of the prescriptive period, petitioner subsequently filed, on March 31, 2004, a petition for review with the Court of Tax Appeals (CTA) which was docketed as CTA Case No. 6907 and lodged before its First Division.

In support of its claim, petitioner presented documents including its Summary of Zero-Rated Sales (Exhibit "DD") with corresponding supporting documents for the four quarters of 2002; VAT invoices on which were stamped "zero-rated" and bank credit advices (Exhibits "EE-1" to "EE-56"; service agreements with nonresident foreign clients (Exhibits "N" to "Q"); and report of the commissioned certified public accountant (Exhibits "A" to "AA-22").

Respondent filed, on May 20, 2004, his Answer through registered mail.

After petitioner presented its evidence, respondent did not, despite notice, proffer any opposition to it. He was eventually declared to have waived his right to present evidence.

By Decision of February 23, 2007, the CTA Former First Division, conceding that petitioner's transactions fall under the classification of zero-rated sales, nevertheless denied petitioner's claim 'for lack of substantiation,' disposing as follows:

> In reiteration, considering that the subject revenues pertain to gross receipts from services rendered by the petitioner, **valid VAT official receipts** and not mere sales invoices **should have been submitted** in support thereof. Without proper VAT official receipts, the foreign currency payments received by petitioner from services rendered for the four (4) quarters of taxable year 2002 in the sum of US $1,102,315.48 with the peso equivalent of P56,898,744.05 cannot qualify for zero-rating for VAT purposes. Consequently, the claimed input VAT payments allegedly attributable thereto in the amount of P1,801,826.82 cannot be granted. It is clear from the provisions of Section 112(A) of the NIRC of 1997 that there must be zero-rated or effectively zero-rated sales in order that a refund of input VAT could prosper.
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> Therefore, petitioner is not entitled to a refund or issuance of tax credit certificate for its unutilized input VAT attributable to its zero-rated sales in view of its failure to comply with the mandatory substantiation requirement prescribed under the law with respect to its zero-rated sales.
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> Having arrived at this conclusion, We find it unnecessary to pass upon the other incidental issues raised in this petition for being moot and academic.
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> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **DENIED** for lack of substantiation.
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> **SO ORDERED.**

On Petition for Review, the CTA *En Banc*, by Decision of February 18, 2008, affirmed the Decision of the CTA Former First Division and subsequently its Motion for Reconsideration was likewise denied by Resolution of April 2, 2008.

Thus, petitioner appealed the denial of its claim to the Supreme Court. In its Decision[1] dated August 3, 2010, the Supreme Court reversed the ruling of the CTA *En Banc* and granted petitioner's claim for refund or tax credit of unutilized input VAT attributable or allocable to zero-rated sales. The Supreme Court held:

"Section 113 of the Tax Code does not create a distinction between a sales invoice and an official receipt.

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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 civil cases is needed to substantiate a claim for tax refund proper.

IN FINE, the Court finds that petitioner has complied with the substantiation requirements to prove entitlement to refund/tax credit. The Court is not a trier of facts, however, hence the need to remand the case to the CTA for determination and computation of petitioner's refund/tax credit.

WHEREFORE, the petition is **GRANTED**. The Decision of February 18, 2008 of the Court of Tax Appeals *En Banc* is **REVERSED** and **SET ASIDE**. Let the case be **REMANDED** to the Court of Appeals First Division for the determination of petitioner's tax credit/refund."[2]

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[1] Supreme Court Decision dated August 3, 2010, Docket, pp. 883-890.
[2] *Id.*, pp. 887-889.

In compliance with the order of the Supreme Court, the CTA Special First Division, in a Resolution dated October 1, 2010[3], set the case for hearing on November 4, 2010 to clarify other matters. Upon motion of the parties, the Court granted them thirty (30) days from the date of the hearing within which to file their respective Memorandum. Petitioner filed its Memorandum[4] on December 6, 2010 while respondent failed to file her Memorandum[5].

After a careful and thorough evaluation and consideration of the records of the case, this Court sees no reason to depart from its earlier ruling, as affirmed by the CTA *En Banc*, which denied the claim for tax refund/credit of the petitioner on the ground that it failed to comply with the substantiation requirements set forth in the 1997 Tax Code.

In its Memorandum[6], petitioner argued that it was able to prove its entitlement to a tax refund by complying with the substantiation requirements provided under the law. It stated that the Supreme Court has affirmed its position on the matter, granting its claim for refund and leaving to the CTA First Division the determination or computation of the amount to be refunded.

While it is true that the Supreme Court, in its Decision dated August 3, 2010, held that VAT invoices sufficiently proved petitioner's claim for refund, thereby holding that there is no distinction between a VAT receipt and a VAT invoice in relation to the mandatory substantiation requirement prescribed under the law for claims of VAT refund, it is worthy to note that the recent case of *Kepco Philippines Corporation v. Commissioner of Internal Revenue*[7] (Kepco), promulgated on November 24, 2010, explicitly ruled otherwise.

In the Kepco case, in deciding whether or not the CTA *En Banc* abused its discretion when it made a distinction between invoices and official receipts as supporting documents to claim for an input VAT refund, the Supreme Court held that there is indeed a distinction between a VAT invoice and a VAT

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[3] Docket, pp. 893-894
[4] *Id.* pp. 914-945.
[5] Verification of Records, *Id.* P. 946
[6] *Id.* Note 4.
[7] GR No. 181858, November 24, 2010.

receipt and that the law does not intend that the two be used interchangeably. The Supreme Court held:

> "Kepco further argues that under Section 113 (A) of the 1197 NIRC, invoices and official receipts are used interchangeably for purposes of substantiating input VAT. Hence, it claims that the CTA should have accepted its substantiation of input VAT on (1) P64,509.50 on purchases of goods with official receipts and (2) P256,689.98 on purchases of services with invoices.
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> The Court is not persuaded.
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> Under the law, a *VAT invoice* is necessary for every sale, barter or exchange of goods or properties while a *VAT official receipt* properly pertains to every lease of goods or properties, and for every sale, barter or exchange of services. In *Commissioner of Internal Revenue v. Manila Mining Corporation,* the Court distinguished an invoice from a receipt, thus:
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>> A "sales or commercial invoice" is 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.
>>
>> A "receipt" on the other hand is 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.
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> In other words, the VAT invoice is the seller's best proof of the sale of the goods or services to the buyer while the VAT receipt is the buyer's best evidence of the payment of goods or services received from the seller. Even though VAT invoices and receipts, taken collectively, are necessary to substantiate the actual amount or quantity of goods sold and their selling price *(proof of transaction)*, and the best means to prove the input VAT payments *(proof of payment)*. Hence, VAT invoice and VAT 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."[8]

The distinction between a VAT invoice and a VAT receipt in relation to substantiation requirements for claims for refund of input VAT is clearly

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[8] *Id.*

provided in Section 113 of the National Internal Revenue Code (NIRC), as amended by Republic Act (RA) No. 9337[9]. The said provision states:

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

This distinction between the two documents has been present even before the effectivity of RA 9337. A reading of Sections 106 and 108 of the 1997 NIRC will show, albeit indirectly, that there is indeed a difference in the two evidentiary documents. Section 106 provides that for sale of goods and properties output VAT is computed on the gross selling price while, on the other hand, Section 108 provides that for sale of services, it is the gross receipts which serves as the basis for the computation of output VAT. From the foregoing, it is clear that the intention of the law is to have different documents to support the two transactions; sales invoice for sale of goods and properties and official receipt for sale of services. This intention is manifest in the Senate Deliberation of RA 9337, in the interpellation between the Senate President and Senator Recto, the pertinent portion of which states:

The President:

> Mr. Sponsor, is it not better if we delegate these matters of strict implementation to the BIR rather than define it here in the law which might be difficult to change later on should there be a need to change it? These are matters of implementation and administration. If

[9] 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 (2005).

> we provide appropriate standards, maybe we can delegate these implementation provisions to the Bureau of Internal Revenue. Would that be an acceptable idea to the sponsor?
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> Senator Recto:
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> To improve the system, Mr. President, I think that we are better off putting it in the law insofar as a VAT invoice is for goods; a receipt is for services. And then it should be clear in the law that if one is selling an exempt product, it should be exempt; if one is selling a zero-rated product, it should be zero-rated; if one is selling at 10%, it should be 10% so that it is clear to the consumer, to the taxpayer, how much taxes he paid. That is found in Europe.

Premises considered, this Court adheres to the recent ruling of the Supreme Court in the Kepco case that there is indeed a distinction between a VAT invoice and a VAT official receipt in relation to the substantiation requirements set forth by the law for the claim for refund of excess and/or unutilized input VAT. And as petitioner clearly failed to comply with such requirements, this Court rules that the present claim for tax refund should not be granted.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of substantiation.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

C E R T I F I C A T I O N

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
Chairman, First Division