Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

BONIFACIO VIVENDI WATER CORPORATION (FORMERLY BONIFACIO WATER CORPORATION, Petitioner,	**EB CASE NO. 115** (CTA Case No. 6380)
-versus-	Members: ACOSTA, PJ, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent,	Promulgated: JUN 26 2006

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DECISION

CASANOVA, J.:

This is an appeal to the Court of Tax Appeals *En Banc* by way of a verified Petition for Review, under Section 18, of R.A. 1125 as amended by R.A. 9282, of the Decision dated March 29, 2005 rendered by the Second Division of this Court in CTA Case No. 6380 entitled "Bonifacio Vivendi Water Corporation (Formerly Bonifacio Water Corporation) vs. Commissioner of Internal Revenue" as well as the Resolution dated April 23, 2005 of the said Division.

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

Petitioner is a domestic corporation existing under and by virtue of Philippine laws, with principal office or place of business located at Bonifacio Centre, NDCP Compound, Fort Bonifacio, Taguig, Metro Manila. It is primarily engaged in the collection, purification and distribution of water.

Petitioner is a value-added tax (VAT) taxpayer, registered with the Bureau of Internal Revenue (BIR) with VAT registration/Taxpayer Identification No. 201-403-657-000.

The quarterly VAT returns of petitioner for the 4th quarter of 1999, 1st quarter of 2000, 2nd quarter of 2000, 3rd quarter of 2000 and 4th of 2000 were duly filed with the BIR, declaring the following information:

QUARTER INVOLVED	EXHIBIT	TAXABLE SALES (A)	OUTPUT VAT (B)	INPUT TAX CARRIED OVER FROM PREVIOUS QUARTER (C)	DOMESTIC PURCHASES (D)	INPUT VAT (E)	TOTAL AVAILABLE INPUT VAT (F) = (C)+ (E)	EXCESS INPUT VAT (G) = (B)+ (F)
1999								
4th Qtr.	A	-		25,291,053.62	196,306,597.30	19,630,659.73	44,921,713.35	44,921,713.35
2000								
1st Qtr.	B	-		44,921,713.35	186,000,881.70	18,600,088.17	63,521,801.52	63,521,801.52
2nd Qtr.	C	2,182,615.75	218,261.57	63,521,801.52	151,074,719.10	15,107,471.91	78,629,273.43	78,411,011.86
3rd Qtr.	D	1,505,786.70	150,578.67	78,411,011.86	121,599,043.00	12,159,904.30	90,570,916.16	90,420,337.49
4th Qtr.	E	2,924,127.10	292,412.71	90,420,337.49	96,717,388.90	9,671,738.89	100,092,076.38	99,799,663.67

For the said period, petitioner alleges that its input VAT include, among others, input VAT paid on purchases of capital goods amounting to P65,642,814.65. These purchases supposedly pertain to payment to contractors in connection with the construction of petitioner's Sewage Treatment Plant, Water and Waste System and Water Treatment Plant, broken down as follows:

Quarter	**Input VAT Paid on Purchase of Capital Goods**	**Total Amount**
1999		
4th Quarter	P11,607,748.20	P11,607,748.20
2000		
1st Quarter	P18,281,682.96	
2nd Quarter	14,884,531.96	
3rd Quarter	21,705,122.19	
4th Quarter	(836,270.66)	54,035,066.45

Grand Total		**P65,642,814.65**

On January 22, 2002, petitioner filed with the Revenue District Office No. 44- Pateros and Taguig, Revenue Region No. 8 of the BIR, an administrative claim for refund or issuance of a tax credit certificate in the amount of P65,642,814.65 representing unutilized input VAT on capital goods purchased for the period beginning the 4th quarter of 1999 up to the 4th quarter of 2000.

To toll the running of two-year prescriptive period, the Petition for Review was filed on January 23, 2002.

The issues sought to be resolved by the CTA Second Division are as follows:

1. Whether or not the input taxes claimed by petitioner were paid on capital goods.
2. Whether or not the input taxes have not been applied against output tax liability.
3. Whether or not the claim for refund or issuance of tax credit certificate was seasonably filed.
4. Whether or not the claim for refund or issuance of tax credit certificate is properly substantiated by documentary evidence.

On March 29, 2005, the Second Division rendered the assailed Decision quoted below:

"**WHEREFORE,** in the light of the foregoing, the Petition for Review is **PARTIALLY GRANTED**. The respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the reduced amount of P40,875,208.64, representing unutilized input VAT on capital good for the period from the 4th quarter of 1999 to the 4th quarter of 2000, computed as follows:

Amount Claimed	P65,642,814.65
Less: Disallowance per Court's Evaluation	24,767,606.01
Refundable Amount	**P40,875,208.64**

SO ORDERED."

On April 20, 2005, petitioner filed a "Motion for Partial Reconsideration" while respondent filed his "Motion for Reconsideration" on April 27, 2005. In a Resolution promulgated on August 23, 2005, the Second Division denied respondent's "Motion for Reconsideration" for lack of merit. In the same Resolution, petitioner's "Motion for Partial Reconsideration" was partially granted. Accordingly, respondent CIR was ordered to refund or issue a tax credit certificate in favor of petitioner in the increased amount of P45,446,280.55.

Hence, this Petition for Review *En Banc*, wherein petitioner raised the following grounds in support of the instant petition:

THE SECOND DIVISION OF THIS HONORABLE COURT ERRED IN DISALLOWING THE REFUND OF P20,196,534.10 REPRESENTING INPUT TAXES ON CAPITAL GOODS.

A. THE DISALLOWANCE OF INPUT VAT ON CAPITAL GOODS IN THE AMOUNT OF P17,008,293.31 IS CONTRARY TO THE EVIDENCE ON RECORD AND EXISTING JURISPRUDENCE.

B. THE PARTIAL DISALLOWANCE OF EXPENSES FOR ALLEGEDLY NOT BEING CAPITAL GOODS IS CONTRARY TO THE EVIDENCE ON RECORD.

After a careful and thorough perusal, evaluation and study of the instant Petition for Review, the Court *En Banc* finds no cogent reason to disturb the Decision of the CTA Second Division promulgated on March 29, 2005, and the Resolution dated August 23, 2005. What the instant petition asks is for the Court *En Banc* to view and appreciate the evidence in their own perspective of things, which unfortunately had been resolved and extensively discussed in the assailed Decision and Resolution.

Petitioner, in support of its first ground, argues that it has presented substantial evidence that unequivocally proved petitioner's input VAT on purchases of capital goods from the 4th quarter of 1999 to the 4th quarter of 2000 as well as the fact that petitioner and Bonifacio GDE Corporation are one and the same entity.

We do not agree.

The change of name to Bonifacio GDE Corporation being unauthorized and without approval from the Securities and Exchange Commission, petitioner cannot now seek for a refund of input taxes which are supported by receipts under that name. This is pursuant to Sections 4.104-5 and 4.108-1 of Revenue Regulations No. 7-95 in relation to Sections 113 and 237 of the 1997 Tax Code, reproduced below for easy reference:

> "SEC. 4.104-5. *Substantiation of claims for input tax credit.* — (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Section 108(a) and 238 of the Code [now Sections 113 and 237 of the NIRC]. Input tax on purchases of real property should be supported by a copy of the public instrument i.e. deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with the VAT receipt issued by the seller.
>
> xxx xxx xxx"
>
> "SEC. 4.108-1. *Invoicing Requirements.* — All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show;
>
> 1. the name, TIN and address of seller;
> 2. date of transaction;
> 3. quantity, unit cost and description of merchandise or nature of service;
> 4. <u>the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client</u>;
> 5. the word "zero-rated" imprinted on the invoice covering zero-rated sales; and
> 6. the invoice value or consideration."
>
> "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:

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 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, <u>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</u>: 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.

xxx xxx xxx"

(*Underlining supplied*)

The requisite that the receipt be issued showing the name, business style, if any, and address of the purchaser, customer or client is precise so that when the books of accounts are subjected to a tax audit examination, all entries therein could be shown as adequately supported and proven as legitimate business transactions. The absence of official receipts issued in the taxpayer's name is tantamount to non-compliance with the substantiation requirements provided by law.

Petitioner cannot raise the argument that, "*non-compliance with the invoicing requirements under the 1997 NIRC, as amended, does not automatically result in the denial of a claim for refund or tax credit when the same is supported by substantial evidence*" and that, "*In civil cases, such as claims for refund, strict compliance with technical rules of evidence is not* *required. Moreover, a mere preponderance of evidence will suffice to justify the grant of a claim,"* in addition to its first ground in the instant petition. Taxpayers claiming for a refund or tax credit certificate must comply with the strict and mandatory invoicing and accounting requirements provided under the 1997 NIRC, as amended, and its implementing rules and regulations. Rules and regulations with regard to procedures are implemented not to be ignored or to be taken for granted, but are strictly adhered to for they are developed from the law itself.

With regard to the second ground in support of its petition for review, petitioner is willing to concede to the CTA Second Division's ruling that the following items of expenses are not capital goods:

Supplier	**Description**	**Exhibit**	**Input VAT**
Fort Bonifacio Development Corporation	Lease for Water Treatment Plant, Waste Water Treatment Plant and Elevated Reservoir from April 1999 to August 2000.	O-29	P 549,074.93
Fort Bonifacio Development Corporation	Rental on BCDA lot from 1 September 2000 to 31 November 2001 for the Water Treatment Plant, Waste Water Treatment Plant and Elevated Reservoir.	O-35	107,956.27
Fort Bonifacio Development Corporation	Insurance for turned-over waste water treatment facilities.	O-36	24,644.24
Fort Bonifacio Development Corporation		O-39	13,050.05
Subtotal			**P694,725.49**

However, with respect to the following items, petitioner contests its disallowance as capital goods:

Supplier	Description	Exhibit	Input VAT
Sysmonds Travers Morgan	Remainder of fees disallowed by the Division representing input VAT on expenses for professional services, project management and design, advisory works for operations and management, and contract preparation/supervision.	O-27	P 741,627.43
Sysmonds Travers Morgan	Professional services for project management and design for August 2000.	O-33	385,352.40
Sysmonds Travers Morgan	Professional services.	O-37	1,323,637.77
Sade Compagnie Generale de Travaux	Contacted services and secondment.	O-41	30,754.49
Sade Compagnie Generale de Travaux	Contracted Services for additional service connection.	O-42	12,143.20
Subtotal			**P3,191,517.58**

Petitioner's contention is without merit.

As noted by the Second Division, petitioner's check vouchers show that the amount of $303,600.00 (*Exhibit O-27-d*) was charged to Pre-Operation Expense. Exhibit O-33 with Official Receipt No. 00-00004 represents payment for Professional Services for the month of August 2000 (Project Mgt. Design) and per check voucher, the expense was charged to Accrued Expenses-Management Fee (*Exhibit O-33-b*). Exhibit O-37 with Official Receipt No. 00-00005 shows the payment for provision for services in connection with operations for the year 2000 and per check voucher, the expense was charged to Pre-Operating (*Exhibit O-37-b*). Exhibit O-41 with official Receipt No. 022 relates to payment for "Secondment Week # 35-39" and per check voucher, the expense was charged to Direct Overheard - Contracted Services (*Exhibit O-41-b*). And lastly, Exhibit O-42 with Official Receipt No. 021 is payment for "Addt'l Service re Road 2" and per check voucher, the expense was charged to Direct Overhead - Contracted Services (*Exhibit O-42-b*).

As defined under Section 4.106-1(b) of Revenue Regulations No. 7-95, "***capital goods or properties***" *refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29 (f), used directly or indirectly in the production or sale of taxable goods or services.*" Had petitioner intended the above-mentioned itemized expenses to be part of its Capital Assets as enumerated in its Property, Plant & Equipment Account, then it should have recorded the said expenses therein. Petitioner charged these expenses outright and did not capitalize them in order to be part of its capital assets.

Well entrenched in our jurisprudence is that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption ***(Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., 309 SCRA 87 [1999])***. Accordingly, the claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund ***(Citibank N.A. vs. Court of Appeals, 280 SCRA 459 [1997])***.

WHEREFORE, premises considered, the assailed Decision and Resolution of the Second Division is hereby **AFFIRMED *in toto,*** and the Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)
OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Sec 13, Art. VIII of the 1987 Constitution, it is hereby certified that the conclusions in the above decision was reached in consultation before the case was assigned to the writer of the opinion of the Court.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA JR.
Acting Presiding Justice