REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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NIPPON EXPRESS (PHILIPPINES) CORPORATION,
Petitioner,

C.T.A. CASE NO. 6464

- versus -

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 15 2007; 10:35 Am

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DECISION

CASANOVA, J.:

Before Us is a Petition for Review seeking the issuance of tax credit certificate in the amount of P24,826,667.61 allegedly representing accumulated excess or unutilized input taxes of petitioner for the calendar year 2000, attributable to its zero-rated sales.

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, registered with the Securities and Exchange Commission (SEC) under Certificate of Registration No. AS095-005669, and with principal office at U-2701 Yuchengco Tower, RCBC Plaza, 6819 Ayala Ave., Salcedo Village, Makati City[1].

Likewise, petitioner is registered with the Large Taxpayers District Office of the Bureau of Internal Revenue in Makati City as, among others, a Value-Added Tax (VAT) taxpayer rendering freight forwarding services[2].

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue vested with power to decide, approve, and grant refunds or tax credits of overpaid internal revenue taxes as provided by law and holds office and may be served with summons, orders, pleadings, and other processes at BIR Revenue Region No. 8, 5/F Atrium Bldg., Makati Ave., Makati City[3].

The precedent facts, as culled from the records are as follows:

For the calendar year 2000, petitioner's gross receipts were primarily derived from rendering its services to Philippine Economic Zone Authority (PEZA)-registered clients[4]. Likewise, it incurred total sales of P1,063,357,608.74, which as shown in petitioner's Amended Quarterly Value Added Tax (VAT) Return, is made up of the following:

Taxable Sales		
1st quarter (Annex B, Petition for Review)	P19,416,405.90	
2nd quarter(Annex C, Petition for Review)	21,727,369.30	
3rd quarter(Annex D, Petition for Review)	25,478,221.80	
4th quarter(Annex E, Petition for Review)	19,106,829.00	P 85,728,826.00
Zero-Rated Sales		
1st quarter (Annex B, Petition for Review)	163,837,757.11	
2nd quarter(Annex C, Petition for	189,237,849.49	

[1] Joint Stipulation of Facts and Issues (JSFI), par. 1.0
[2] Annex A, Petition for Review
[3] JSFI, par. 2.0
[4] Petition for Review, par. 4 page 2

Review)		
3rd quarter(Annex D, Petition for Review)	228,507,608.58	
4th quarter(Annex E, Petition for Review)	247,387,949.22	828,971,164.40
Exempt Sales		
1st quarter (Annex B, Petition for Review)	45,234,485.51	
2nd quarter(Annex C, Petition for Review)	27,632,934.35	
3rd quarter(Annex D, Petition for Review)	49,971,632.54	
4th quarter(Annex E, Petition for Review)	25,818,565.94	148,657,618.34
Grand Total		**P1,063,357,608.74**

Also, for the same year, petitioner paid input taxes amounting to P31,846,253.57[5] and apportioning this amount with its total sales above in accordance with Section 112 of the 1997 Tax Code, as amended; the amount of total sales attributable to zero-rated sales would be P24,826,667.61[6].

Under the premise that it is entitled to a refund of the amount of P24,826,667.61, petitioner filed four separate applications for tax credit/refund with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (OSSAC-DOF) on September 24, 2001.

Receiving no resolution from OSSAC-DOF, petitioner filed the instant petition for review on April 24, 2002 pursuant to Section 112 in relation to Section 229 of the 1997 Tax Code, as amended[7].

It is worth mentioning that petitioner received a Preliminary Assessment Notice issued by the respondent dated December 15, 2003[8] and a Formal Letter of

[5] Exhibit A
[6] Ibid
[7] Petition for Review page 5
[8] Exhibit AL-1

Demand dated September 26, 2005[9] to which petitioner protested on November 23, 2005.

For his part, respondent filed his Answer on June 4, 2002 and averred the following special and affirmative defenses:

> "6) The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;
>
> 7) Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35);
>
> 8) One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statue (Asiatic Petroleum vs. Llanes, 49 PHIL. 466; Union Garment Co. vs. Court of Tax Appeals, 4 SCRA 304);
>
> 9) In an action for tax refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;
>
> 10) It is incumbent upon petitioner to show compliance with the provisions of Section 112 and Section 229, both of the National Internal Revenue Code, as amended;
>
> 11.) Taxes paid and collected are presumed to have been made in accordance with the law and regulations, hence not refundable."

Petitioner filed a "Motion to Commission an Independent Auditing Firm" on November 13, 2002 due to the voluminous evidences it is planning to present and this Court granted the same on January 9, 2003.

Both petitioner and respondent submitted documentary and testimonial evidence during the hearing of this case as well as rebuttal and sur-rebuttal evidence.

[9] Exhibit AM-1

In a Resolution dated January 15, 2007, this case was submitted for decision after considering petitioner's and respondent's "Memorandum".

The lone issue jointly stipulated by the parties is:

Whether or not petitioner is entitled to recover the P24,826,667.61 claimed as excess input VAT credits for calendar year 2000 arising from its constructive export sales to PEZA-registered entities?

The applicable law in the case at bar is Section 112 of the 1997 Tax Code, as amended, to wit:

"Section 112. Refunds or tax credits of input tax. -

xxx xxx xxx

(A) Zero-rated or effectively zero-rated sales. – Any VAT-registered person, whose sales are zero rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax; Provided, however, that in the case of zero rated sales under Section 106 (A)(2)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, that where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales;"

Pursuant to the above provision, in order to be entitled to the issuance of tax credit certificate/refund of unutilized input VAT, petitioner must prove compliance with the following requisites:

1. There must be zero-rated or effectively zero-rated sales;
2. That input taxes were incurred or paid;

3. That such input taxes are directly attributable to zero-rated sales or effectively zero-rated sales;
4. That the input taxes were not applied against any output VAT liability during and in the succeeding quarters;
5. That the claim for refund was filed within the two-year prescriptive period.

Anent the first requisite, it is petitioner's contention that the services it rendered to PEZA-registered enterprises are subject to zero percent (0%) VAT and consequently, the input tax attributable to its zero-rated sales in the amount of P24,826,667.61, being unutilized for the year 2000, is a proper subject of a claim for the issuance of tax credit certificate pursuant to Section 106(B)(3) of the 1997 Tax Code, as amended in conjunction to Section 3 of Revenue Memorandum Circular No. 74-99 dated October 15, 1999.

In support of its allegations, petitioner submitted to this Court the independent report of the commissioned Certified Public Accountant (CPA)[10], Certification issued by PEZA[11]; and sales invoices, transfer slips, credit memo, cargo manifest, and credit notes[12].

We abide to petitioner's contention that its sales of services to PEZA-registered enterprises are subject to VAT at zero percent (0%) rate. This is clear and well settled from Section 108(B)(3) of the 1997 Tax Code, as amended and Revenue Memorandum Circular No. 74-99.

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[10] Exhibit C
[11] Exhibit AP-1
[12] Exhibit AA-1 to 89594, AG-1 to 529 with sub-markings, AH-1 to 6, AI-1 to 3, AJ-1 to 92 and AK-1 to 26

However, the entitlement to the issuance of tax credit certificates/refund arising from unutilized input VAT attributable to zero rated sales extend beyond having zero rated sales alone. There are still invoicing and substantiation requirements that have to be complied with mandatorily. Corollary hereto, Section 113 and 237 of the 1997 Tax Code, as amended provides for the basic invoicing and substantiation requirements.

A reading of the said laws would show that both require the use/issuance by a VAT-registered taxpayer of "invoice or receipt". The use of the disjunctive word "or" seems to convey that the words "invoice" and "receipt" have the same meaning and can be used alternatively.

However, it bears stressing that there are still laws, which are relevant at this point in clearing the difference between invoice and receipts. These laws are Sections 106(A) and (D) and Sections 108 (A) and (C) of the 1997 Tax Code as amended. The foregoing laws are quoted as follows:

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

(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.

xxx xxx xxx

(C) Determination of the Tax. –

(1) The tax shall be computed by multiplying the total amount 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.

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)

xxx xxx xxx"

(Emphasis supplied)

Clearly, the aforecited provisions expound that when we compute the VAT on the sale of goods or properties, the basis would be the amount appearing in the invoice whereas when we compute the VAT on the sale of services, the basis would be the amount appearing in the official receipts. This goes to show that sales invoices must support the sale of goods and properties while official receipts must support the sale of services.

Relating Sections 106, 108 with 113 of the 1997 Tax Code, as amended, the latter provision provides that *"a VAT registered person shall, for every sale, issue a duly registered VAT invoice or receipt for every sale or transaction". Considering so, the sales of services referred to under Section 108 as being subject to zero percent (0%) rate are those covered by duly registered VAT official receipts. Without the VAT official receipts evidencing its zero-rated revenues, the input VAT payment alleged to be directly attributable thereto cannot be refunded*[13].

In the case at bar, after careful scrutiny of the evidence submitted to this Court, it appears that the documents supporting petitioner's valid zero-rated sales as

[13] American Express International, Inc., Philippine Branch vs. CIR, CTA EB No. 103, March 3, 2006

verified by the commissioned independent CPA consisted only of **sales invoices, transfer slips and credit memos**[14].

We find the evidence submitted by petitioner to prove its zero rated sales insufficient as to entitle it to the issuance of tax credit certificate. **Petitioner's sales are sales of services and should be supported by official receipts.**

Without the VAT official receipts evidencing its zero-rated revenues, the input VAT payment alleged to be directly attributable thereto cannot be refunded or tax credit certificates cannot be issued in accordance with Revenue Memorandum Circular (RMC) No. 42-2003. RMC No. 42-2003 clarified the issue relative to the failure of a claimant to comply with certain invoicing requirements. Pertinently, said Circular provides:

> "A-13. Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.
>
> <u>If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g., failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales.</u> Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer." (Underlining Supplied)

Petitioner failed to comply with the substantiation/invoicing requiremen hence it follows that it likewise failed to comply with the first requisite mandated under Section 112 of the 1997 Tax Code, as amended. Thus this Court is left witl

[14] Exhibits AA-1 to 89594

no recourse but to deny petitioner's claim. Consequently at this point discussing the other requisites under Section 112 of the 1997 Tax Code, as amended shall be moot and academic.

Finally, this Court reiterates that tax refunds are in the nature of tax exemptions. Such exemptions are strictly construed against the taxpayer, being highly disfavored and almost said to be "odious to the law"[15]. Thus, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund[16]. In the instant case, petitioner failed to sufficiently substantiate its claim for the issuance of tax credit certificates.

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for failure to comply with the substantiation requirement.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

[15] Commissioner of Internal Revenue vs. Solidbank, 416 SCRA 461
[16] Philippine Geothermal, Inc. vs. CIR, 465 SCRA 317

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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
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NIPPON EXPRESS (PHILIPPINES) CORPORATION,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE No. 6464

Members:

ACOSTA, *Chairman*
BAUTISTA,
CASANOVA, *JJ.*

Promulgated:
JUN 1 5 2007 10:35 am

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Dissenting Opinion

The applicable statutes rather than limiting the documentary requirements to just the official receipts, specifically enjoin and acknowledge the production of an invoice to prove the fact of a VAT-related transaction. And in the instant case, the claim was denied because petitioner merely submitted sales invoices, transfer slips and credit memos, as supporting documents. Hence, it is with due respect that I dissent to the majority opinion.

The bases of the denial of the Petition for Review are the following provisions:

> "**SEC. 106. Value-added Tax on Sale of Goods or Properties. —**
>
> (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.
>
> xxx xxx xxx
>
> (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 of properties.

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)."

"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."

xxx xxx xxx

"SEC. 237. Issuance of Receipts or Sales of 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 case of sales, receipts or transfers in the amount of One Hundred Pesos (P100.00) or more, 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's Identification Number (TIN) of the purchaser. xxx".

However, a reading of the above-quoted provisions, discloses that official receipts can be validly used interchangeably with invoices. The law makes use of these terms without distinction, even the majority subscribe to this observation.

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Under the above-quoted, *Section 237* of the National Internal Revenue Code (NIRC), all persons subject to an internal revenue tax are required to ***issue duly registered receipts or sales or commercial invoices*** for each sale, or transfer of merchandise or for services rendered valued at Twenty five pesos (P25.00) or more. And under *Section 113* of the same code, on Invoicing and Accounting Requirements for VAT-Registered Persons also mandates that a VAT-registered person ***issue an invoice or receipt*** for every sale.

Aside from these two NIRC provisions, *Section 110* of the same code and *Section 4.106-5 of Revenue Regulations No. 7-95* likewise show the intention to accept other evidence to substantiate claims for VAT refund, particularly the use of either a VAT invoice or receipt. Section 110 provides that any input tax ***evidenced by a VAT invoice or official receipt,*** issued in accordance with Section 113 shall be creditable against the output tax. On the other hand, Section 4.106-5 provides that input tax should be ***supported by an invoice or receipt.***

From the aforesaid provisions, a VAT-registered person must not only issue an invoice or receipt for every sale but more importantly, ***the creditable input tax may be evidenced by either a VAT invoice or official receipt.*** The use of the disjunctive term "or" in the afore-cited provisions connotes that either act qualifies as two different evidences of input VAT. In fact, the word "or" has been defined as *a disjunctive particle used to express an alternative or to give a choice of one among two or more things (**Black's Law Dictionary**, 6th Edition, 1990, page 1095).* It is indicative of the intention of the Revenue Bureau and the lawmakers to use the same interchangeably in the sale of goods or services. Clearly, the claimant may present either an invoice or a receipt and it should not have any negative repercussion on its claim.

From the above, a claim should not be denied on the basis of a taxpayer's failure to present official receipts, if there are other pieces of evidence in support of its claim. The majority's ratiocination that based on Sections 106 and 108 of the NIRC, the basis in computing output tax on the sale of goods and properties would be the amount appearing in the *invoice,* on the other hand, when computing for the output tax on the sale of services, the basis would be the amount appearing in the *official receipts*, and the concomitant conclusion that the sale of goods or properties must be supported by sales invoices ONLY, while the sale of services, as in this case, must be supported by official receipts ONLY, is erroneous.

Moreover, I find the above rather oppressive for being without basis in law. The majority failed to consider that the substantive and main condition of the Tax Code was effectively complied with and adequately proven before this Court by the petitioner.

Section 112 (A) of the 1997 NIRC lends statutory corroboration to my opinion that failure to submit official receipts should not automatically result in the denial of the claim for refund. It states:

> "(A) **Zero-rated or Effectively Zero-rated Sales.** – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1),(2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

The language of the afore-mentioned law confirms that all VAT-registered enterprises engaged in zero-rated transactions are permitted to demand a refund of their creditable input tax due or paid to the extent that such input tax remains unapplied

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against output tax for the period of two (2) years after the close of the taxable quarter. Furthermore, nowhere in the said provision can it be found that the failure to present official receipts would amount to the denial of the claim for refund.

The Court must not differentiate between the evidentiary value of an invoice, an official receipt and other documentary evidence to prove the fact of petitioner's sale of services. After all, the laws and regulations made no pronouncement as to the use of a VAT official receipt as the exclusive and sole determinative piece of evidence to the exclusion of all other proofs equally relevant and competent.

The elementary rule in statutory construction is that where the law does not distinguish, the courts should make no distinction. *Ubi lex non distinguit nec nos distinguire debemos.*[1]

The sales invoices are still material, relevant and competent inasmuch as they still directly prove the amount of sales made by the petitioner. The term "admissibility" refers to the question of whether or not the evidence is to be considered, while "competency" refers to whether or not the evidence is expressly excluded by law or the rules. Apparently, the subject invoices satisfy the above standards in both counts.

Lastly, it must be noted that tax cases are civil in nature. And under *Section 1, Rule 133, Rules of Court,* in civil cases, the quantum of evidence required to sustain the proponent of an issue is by mere preponderance of evidence. In ***Municipality of Moncada vs. Cajuigan,***[2] the Supreme Court explained that the phrase "preponderance of evidence" denotes the weight, credit and value of the aggregate on either side. This means that the testimony adduced by one side is more credible and conclusive than that of the other.

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[1] *Mendoza, et. al. vs. COMELEC, et. al., G. R. No. 149736, December 17, 2002*
[2] *21 Phil. 184*

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To reiterate, I disagree to the majority opinion holding petitioner not entitled to the issuance of a tax credit certificate for its accumulated excess or unutilized input taxes, attributable to its zero-rated sales for the year 2000, because there is no basis to distinguish between the evidentiary value of an official receipt or an invoice with regard to the instant claim.

ERNESTO D. ACOSTA
Presiding Justice