

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

PNB GENERAL INSURERS
COMPANY, INC.,

Petitioner,

- versus -

CTA CASE NO. 7678

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, JJ.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

JUL 02 2010

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DECISION

CASTAÑEDA, JR., J.:

This is an appeal for the reversal and setting aside of the Final Decision on Disputed Assessment of respondent, which denied petitioner's protest of the deficiency tax assessment in the amount of P190,120.62, representing disallowed input taxes for the third and fourth quarters of taxable year 2002.

PNB General Insurers Company, Inc. (Petitioner) is a corporation duly organized and existing under Philippine laws, with principal office address at 2nd Floor, PNB Financial Center, Pres. Diosdado Macapagal Boulevard, Pasay City. Petitioner is a duly licensed non-life insurance corporation. It

falls under the category of "Large Taxpayer" as the term is defined under the National Internal Revenue Code (NIRC) of 1997, as amended.¹

Respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR), the government agency tasked with the duties and functions of assessing and collecting all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals, ordinary courts, and appropriate quasi-judicial agencies. Respondent holds office at the BIR Head Office Building, BIR Road, Diliman, Quezon City.

On February 15, 2005, petitioner received a Preliminary Assessment Notice (PAN)² from the BIR Large Taxpayers Service, which states in part as follows:

"A review of your amended Summary List of Purchases for the **3rd and 4th quarters, CY 2002** disclosed that some of your suppliers were found to have invalid TINs, Non-VAT registered or have not registered with Our Office. Accordingly, the input taxes claimed therefrom are not allowable pursuant to Section 110 113 and 237 of the Tax Code resulting to an assessment of **P129,366.22** inclusive of interest as shown below: xxx"

Total Deficiency from Disallowed Input Tax	P 90,257.60
Add: Interest (up to 3.25.05)	39,108.62
TOTAL VAT DEFICIENCY	<u>P 129,366.22</u>

A Letter³ was submitted by petitioner to the BIR, through Deputy Commissioner Kim S. Jacinto-Henares, on March 2, 2005 to refute the said PAN. 

¹ Pars. 1, 2, and 5, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, pp. 126-127

² Exhibit "A"

³ Exhibit "B"

On May 23, 2005, petitioner received a Formal Letter of Demand⁴ dated March 31, 2005 from respondent, demanding the payment of the following amounts:

Total deficiency from disallowed input tax	P 90,257.60
Add: Interest (up to 5.25.05)	42,123.22
TOTAL VAT DEFICIENCY	<u>P 132,380.82</u>

Petitioner filed a Letter⁵ dated May 24, 2005 to protest the imposed deficiency taxes. The same was received by respondent on May 25, 2005.

A Final Decision on Disputed Assessment⁶ was issued by the BIR Large Taxpayers Service and was received by petitioner on August 14, 2007, with the following adjusted amounts:

DST Deficiency per FAN	P 132,380.82
Add: Interest from 5/26/05 to 7/31/07	57,739.80
VAT DEFICIENCY STILL DUE	<u>P 190,120.62</u>

On September 13, 2007, petitioner filed the instant Petition for Review to appeal the denial by respondent of its letter-protest dated May 24, 2005.

Respondent filed his Answer⁷ on November 27, 2007, interposing the following Arguments and Discussions:

"The power of taxation is an incident of sovereignty as it is inherent in the State belonging as a matter of right to every independent government. It does not need a constitutional conferment. Constitutional provisions do not give rise to the power to tax but merely impose limitations on what would otherwise be an invincible power. No attribute of sovereignty is more pervading and at no point does the power of the government affect more constantly and intimately all the relations of life than through the exactions made under it [CHURCHILL VS. CONCEPCION, 34 Phil. 969 (1916); Cooley, Constitutional Limitations, 6th Ed., p. 587). Indeed 

⁴ Exhibit "C"

⁵ Exhibit "E"

⁶ Exhibit "F"

⁷ Docket, pp. 74-85

taxes are the lifeblood of every independent government, hence taxes must be collected immediately and without delay.

In the language of the Supreme Court, 'the power of taxation is a high prerogative of sovereignty, the relinquishment is never presumed and any reduction or diminution thereof with respect to its mode or its rate, must be strictly construed, and the same must be couched in clear and unmistakable terms in order that it may be applied **[LUZON STEVEDORING CORPORATION vs. COURT OF TAX APPEALS, 163 SCRA 647 (1998)]**.

Petitioner alleges in its petition that it has been deprived of its right to due process.

Respondent asserts otherwise. Due process was observed. In the factual antecedents contained in its petition, petitioner admits that respondent has sent a preliminary assessment notice on 15 February 2005 informing it of respondent's findings in consonance with the provision of the Tax Code of 1997, as amended, more specifically Section 228 thereof which is quoted hereunder:

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The facts of the case will show that from the point in time a preliminary assessment notice was sent to the petitioner up to the time a Final Decision in Disputed Assessment was rendered, petitioner was informed of the details of the assessment. Petitioner was likewise given numerous opportunities to substantiate its dispute to the assessment. These facts negate allegations of petitioner that it was deprived of due process. Neither could petitioner assert in the grounds relied upon in its petition that respondent erred in disallowing petitioner's input taxes due to infractions committed by petitioner's suppliers as the same constitutes an unjust exaction/imposition which is confiscatory in nature. On the contrary, respondent premised its disallowance of the claimed input taxes by petitioner on the provisions of **Sections 110, 113 and 237 of the Tax Code of 1997**, as amended. Respondent's act of denying petitioner's protest of the disallowance of its input taxes on purchases from suppliers found to have invalid TINs, Non-VAT registered or not registered with the BIR, covering the 3rd and 4th quarters of CY 2002 and the consequent imposition of a deficiency tax amounting to Php 190,120.62 inclusive of interest as of July 31, 2007, is likewise anchored on the provision of **Section 4 of RA 8424**, which is quoted hereunder, to wit: 

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Petitioner's prayer for the issuance of a writ of preliminary injunction should be denied.

Respondent vehemently opposes petitioner's prayer for the issuance of a writ of preliminary injunction to enjoin respondent from collecting outright the deficiency Value Added Taxes subject of this case in the amount of Php 190,120.62 and/or suspending the collection of the same pending resolution of the petition/tax appeal.

It is well settled in this jurisdiction that injunction is not available to restrain the collection of taxes. Section 218 of the National Internal Revenue Code of 1997 expressly prohibits court from issuing injunction.

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Respondent further argues that an injunction is a preservative remedy for the protection of a person's substantive rights or interests. It is not a cause of action in itself but a mere provisional remedy, an appendage to the main suit. Pressing necessity requires that it should be resorted to only to avoid injurious consequences which cannot be remedied under any measure of consideration. The application of an injunctive writ rests upon the presence of an emergency or of an exceptional reason before the main cause can be regularly heard. **(RAVAGO vs. ESSO EASTERN MARITIME LTD., et al., G.R. No. 158324, March 14, 2005).**

Taxes being the chief source of revenue for the Government to keep it running must be paid immediately and without delay. A taxpayer who feels aggrieved by the decision or ruling handed down by a revenue officer and appeals from his decision or ruling to the Court of Tax Appeals must pay the tax assessed, except that, if in the opinion of the Court the collection would jeopardize the interest of the Government and/or the taxpayer, it could suspend the collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount of the tax assessed **(COLLECTOR OF INTERNAL REVENUE vs. J.C. YUSECO and THE COURT OF TAX APPEALS, G.R. No. L-12518, October 28, 1961).**

Section 11 of Republic Act 1125, creating the Court of Tax Appeals, clearly provides that any person, association or corporation adversely affected by a decision or ruling of the 

Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling. No appeal taken to the Court of Tax Appeals from the decision of the Collector of Internal Revenue or the Collector of Customs shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law; *Provided, however*, That when in the opinion of the Court the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or file a surety bond for not more than double the amount with the Court.

The foregoing provisions of the law refer and limit only to appeals from decisions or rulings of the Collector of Internal Revenue (now Commissioner), Commissioner of Customs and Provincial or City Boards of Assessment Appeals in the proper cases. Nowhere does the law expressly vest in the Court of Tax Appeals original jurisdiction to issue writs of prohibition and injunction independently of, and apart from, an appealed case. The writ of prohibition and injunction that it may issue under the provisions of Republic Act 1125, to suspend the collection of taxes is merely ancillary to and in furtherance of its appellate jurisdiction. The power to issue the writ exists only in cases appealed to it (**CIR vs. Yuseco and CTA, supra**).

The argument that the assessment cannot as yet be enforced because it is still being contested loses sight of the urgency of the need to collect taxes as 'the lifeblood of the government.' If the payment of taxes could be postponed by simply questioning their validity, the machinery of the state would grind to a halt and all government functions would be paralyzed. (**CIR vs. CEBU PORTLAND CEMENT COMPANY AND CTA, G.R. No. L-29059, December 15, 1987**).

Petitioner's argument that respondent unduly shifted the sovereign or constituent function of enforcing government tax laws is misplaced.

Respondent Commissioner of Internal Revenue's disallowing of the input taxes being claimed by petitioner out of purchases from suppliers/service providers is based on the salient provisions of the NIRC of 1997, particularly Sections 110, 113 and 237 thereof. The disallowed input taxes were the

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result of a thorough verification made by the BIR, after allowing the petitioner opportunity to prove by substantial evidence the veracity and validity of documents issued by their suppliers/service providers, specifically sales invoices and/or official receipts. In this verification, numerous suppliers/service providers were found to have invalid receipts/invoices. Hence, the disallowance of the claimed input taxes by respondent. It does not follow, however, that such disallowance of the claimed input taxes carries with it the implication of unduly shifting to the petitioner the responsibility of imposing government tax laws or being penalized for infractions committed by its suppliers and/or service providers. Neither does it constitute a restraint on *laissez faire* petitioner's right to conduct its business affairs. In the related case of ATLAS CONSOLIDATED MINING & DEVELOPMENT CORPORATION VS. COMMISSIONER OF INTERNAL REVENUE G.R. No. L-26911, January 27, 1981 and COMMISSIONER OF INTERNAL REVENUE VS. ATLAS CONSOLIDATED MINING & DEVELOPMENT CORPORATION AND COURT OF TAX APPEALS, G.R. No. I-26924, January 27, 1981, the Supreme Court had ruled that in claiming deductions for business expenses, the taxpayer must not only prove the business test but must substantially prove by evidence or records the deductions claimed, otherwise, the same will be disallowed. Furthermore, the Supreme Court likewise ruled that the best evidence to prove entitlement to a claimed deduction is the official receipt or sales invoice pertaining to the same business transaction. Petitioner, in the instant petition, and as in the instances when it was given opportunity to prove its entitlement to the claimed input taxes, has failed to prove convincingly its entitlement thereto. Instead, petitioner retorted by alleging that infractions committed by its service providers/suppliers were unduly shifted to it and was unduly penalized therefore. Respondent asserts otherwise. The act of respondent in disallowing the claimed input taxes after discovering that some suppliers/service providers of petitioner had invalid or unmatched TINs, Non-VAT Registered or not registered at all with the BIR was done in view of the material defects on the sales invoices and/or official receipts after verification. Allowing the amounts claimed as input taxes by petitioner based on the face of such official receipts and/or sales invoices despite such material defects would render nugatory the provisions of Sections 110, 113 and 237 of the National Internal Revenue Code of 1997, as amended. Allowing such amounts claimed as input taxes and covered by sales invoices and/or official receipts with material defects would have deleterious effects on the mandatory provisions of the NIRC on the issuance of receipts and/or sales invoices for transactions subject to VAT. The whole VAT-system depends upon the taxpayer's compliance with the issuance of proper official



receipts and sales invoices for every transaction so much so that the government has conducted a public information campaign on the importance of asking for official receipts or sales invoices for all commercial transactions. Petitioner is claiming deductions from his output tax thru input tax, hence, the burden is upon him to prove the validity of claimed input credits. This petitioner failed to do. On its failure, it is not being penalized but simply being imposed output Value Added Tax due.

The term 'input tax' as defined in Section 110 of the Tax Code of 1997 means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property from a VAT-registered person. The basis, therefore, in allowing input tax claimed by a VAT-registered person is the compliance by both parties of the requirements in the Tax Code, otherwise, entitlement to such claim must fail."

The Court set the Pre-Trial Conference on January 31, 2008.⁸

Respondent's Pre-Trial Brief⁹ was filed on January 22, 2008; while Petitioner's Pre-Trial Brief¹⁰ was filed on January 24, 2008.

On January 30, 2008, petitioner filed a Motion to Suspend Collection of Disputed Tax Liability.¹¹ In a Resolution¹² dated February 7, 2008, the Court granted the same subject to the filing of an acceptable surety bond in an amount double the alleged tax liability of petitioner. Petitioner's surety bond was disapproved in a Resolution¹³ dated March 3, 2008 for reasons stated therein. However, upon petitioner's Motion for Reconsideration (with *Je*

⁸ Docket, p. 88

⁹ Docket, pp. 89-93

¹⁰ Docket, pp. 95-101

¹¹ Docket, pp. 106-112

¹² Docket, pp. 116-117

¹³ Docket, p. 155

Manifestation of Compliance)¹⁴ filed on March 24, 2008, the Court granted the same in a Resolution¹⁵ dated April 11, 2008.

The parties' Joint Stipulation of Facts and Issues¹⁶ was filed on February 15, 2008 and was approved in a Resolution¹⁷ dated February 28, 2008.

After presentation of its evidence, the Formal Offer of Petitioner's Exhibits¹⁸ was filed on November 4, 2008. Respondent filed his Comment on Petitioner's Formal Offer of Exhibits¹⁹ on November 12, 2008. The Court resolved the same in a Resolution²⁰ dated December 8, 2008.

On April 13, 2009, counsel for respondent manifested that he is waiving respondent's right to present evidence in view of the unavailability of his witness.²¹

In a Resolution²² dated July 8, 2009, the case was submitted for decision, taking into consideration the Memorandum for the Petitioner²³ filed on June 30, 2009, sans respondent's Memorandum.

The lone jointly stipulated issue²⁴ submitted for this Court's resolution is as follows:

- "1. Whether or not the disputed deficiency tax assessment imposed by respondent Commissioner of Internal Revenue against petitioner is valid." 

¹⁴ Docket, pp. 158-162

¹⁵ Docket, p. 169

¹⁶ Docket, pp. 126-129

¹⁷ Docket, p. 133

¹⁸ Docket, pp. 273-287

¹⁹ Docket, pp. 361-363

²⁰ Docket, pp. 366-367

²¹ Docket, p. 383

²² Docket, p. 414

²³ Docket, pp. 392-413

²⁴ Docket, p. 128

Invoking Sections 110, 113, and 237 of the NIRC of 1997, respondent disallowed petitioner's claimed input taxes for the third and fourth quarters of 2002, resulting in a deficiency VAT assessment of P132,380.82, broken down in the Formal Letter of Demand and Assessment Notice as follows:

Total deficiency from disallowed input tax	P 90,257.60
Add: Interest (up to 5.25.05)	42,123.22
TOTAL VAT DEFICIENCY	P 132,380.82

It must be pointed out that while respondent denied petitioner's protest of the deficiency VAT assessment in his Final Decision on Disputed Assessment, respondent erroneously lumped into one the amounts of basic deficiency VAT of P90,257.60 and deficiency interest of P42,123.22 as "DST deficiency per FAN" and the interest for the amount of P132,380.82 was computed to be P57,739.80 from May 26, 2005 to July 31, 2007, detailed as follows:

DST Deficiency per FAN	P 132,380.82
Add: Interest from 05/26/05 to 07/31/07	57,739.80
VAT Deficiency Still Due	P 190,120.62

By not separating the previous amount of tax due, respondent wrongly computed the interest charges from May 26, 2005 to July 31, 2007 by using the tax base of P132,380.82 instead of the original tax base of P90,257.60.

Likewise, in the Formal Letter of Demand, the deficiency tax base was denominated as "Total deficiency from disallowed input tax" while in the Final Decision on Disputed Assessment, the deficiency tax base was erroneously indicated as "DST²⁵ Deficiency per FAN." *je*

²⁵ Documentary Stamp Tax

Be that as it may, the Court shall determine the validity of the deficiency VAT assessment of P90,257.60, resulting from respondent's disallowance of the following input taxes claimed by petitioner for the third and fourth quarters of 2002²⁶:

REASON FOR DISALLOWANCE	AMOUNT
Disallowed input tax from suppliers with unmatched TIN per ITS but with VAT invoices/ORs	P 12,031.18
Disallowed input tax from suppliers with unverified TIN per ITS	6,541.27
Disallowed input taxes per verification of suppliers invoices/Ors with violation of VAT invoicing requirements	71,685.15
TOTAL	P 90,257.60

LIST OF DISALLOWED INPUT TAX FROM SUPPLIERS WITH UNMATCHED TIN PER ITS BUT WITH VAT SIS/ORs

Name of Suppliers	TIN	Input Tax		
		3rd Qtr	4th Qtr	Total
Goldcrest Marketing	000-291-943	P 163.36	P 80.25	P 243.61
Jamandre Car Service Inc	000-250-315	545.45		545.45
Neuspeed Auto Repair Shop/Amie C. Barreto	149-790-786	-	2,485.35	2,485.35
Oro Asian Automotive/Alonzo T. Chiong	002-456-005	4,279.82	-	4,279.82
Zelors Supermarket	000-075-773	30.18	-	30.18
Anflo Motor Corp.	000-293-026	684.94	-	684.94
Coco Huts Rest.	110-290-002	-	30.55	30.55
Oro Villa Rest.	128-321-575	-	197.72	197.72
Toyota Iloilo Inc.	004-486-747	-	3,533.56	3,533.56
TOTAL		P 5,703.75	P 6,327.43	P 12,031.18

LIST OF DISALLOWED INPUT TAX FROM SUPPLIERS UNVERIFIED REGISTRATION WITH THE ITS

Name of Suppliers	REASON FOR DISALLOWANCE	Input Tax		
		3rd Qtr	4th Qtr	Total
Gemini Adjustment Co	No business tax registration	P 4,935.00	-	P 4,935.00
Sure Deal Marketing	No business tax registration	1,606.27	-	1,606.27
TOTAL		P 6,541.27		P 6,541.27

LIST OF DISALLOWED INPUT TAX FROM SUPPLIERS WITH VIOLATION OF THE VAT INVOICING REQUIREMENTS

Name of Suppliers	REASON FOR DISALLOWANCE	Input Tax		
		3rd Qtr	4th Qtr	Total
Kar Asia Inc.	No OR		P 1,472.75	P 1,472.75
Pro Bag Ent.	Authority to print 5-16-95		2,545.45	2,545.45
Ichidien Insurance Agency	Over claim of input tax	P 67,666.95		67,666.95
TOTAL		P 67,666.95	P 4,018.20	P 71,685.15

²⁶ Exhibit A-1; BIR Records, pp. 26 and 27

Petitioner argued that its claim for input VAT was in accord and made pursuant to Sections 110, 113, and 237 of the NIRC of 1997, as amended.

Pertaining to the disallowance on input tax from suppliers with unmatched and unverified TIN per BIR's Integrated Tax System (ITS) but with Sales Invoices/Official Receipts (SIs/ORs), petitioner alleged that most of these suppliers were able to submit their Certificates of Registration.²⁷ For suppliers Toyota Iloilo, Inc. and Jamandre Car Services, Inc., petitioner asserted that a three zero digit allowance at the end of the TIN were added, which as testified to by its witness, Nemia G. Lucas, was the usual practice in BIR and is acceptable in business tax transaction/payments. As to the non-submission of the other suppliers of their TINs/Certificate of Registration, petitioner asserted that what is required under Section 113 of the NIRC of 1997 is for VAT-registered person to issue an invoice or receipt indicating it is a VAT entity followed by its TIN and the total cost/amount of goods or services and indicating as well the amount of VAT; hence, the sales invoices and official receipts submitted by the above-enumerated suppliers contained and properly complied with the invoicing requirements under Section 113 of the said Code.

Petitioner further contended that the Repair Order No. 61625²⁸ issued by Kar Asia, Inc. showed the TIN, the name of the entity, the business style and address, the description of the transaction, the total amount charged/paid, and that the business is a VAT-registered entity; hence, had substantially complied with the requirements under Section 113 of the NIRC of 1997, as *je*

²⁷ Exhibits "U", "V", and "W"

²⁸ Exhibit "R-1"

amended. The same holds true with Delivery Receipt No. 2712²⁹ issued by Probag Enterprises.

This Court partially rules in favor of petitioner.

A VAT invoice or official receipt constitutes sufficient proof of creditable input VAT on domestic purchases of goods or services as provided for under Section 110(A) of the NIRC of 1997, which states in part:

"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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(b) Purchase of services on which a value-added tax has been actually paid.

(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

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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." (*Emphasis supplied*)

It must be pointed out that at first glance it appears that the word "or" in Section 110(A)(1) indicates an alternative. However, 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 

²⁹ Exhibit "S"

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 issuance by the seller of the VAT official receipt evidencing receipt of the payment for services performed or yet to be performed.

Section 110(A)(1) and (2) of the NIRC of 1997 is in harmony with Section 106(A) and (D), as well as Section 108(A) and (C) of the same Code; which provide for the manner of determining the output VAT due on the sale of goods or properties and sale of services, respectively. The foregoing laws are quoted for clarity, to wit:

"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.

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(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)."*

"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. 

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(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)." (*Emphasis supplied*)

For the sale of goods or properties, the ten percent (10%) VAT is imposed upon the gross selling price, which is defined by Section 106(A) of the NIRC of 1997 as follows:

"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."

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 that 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, the 10% VAT is computed based on gross receipts, pursuant to Section 108(A) of the NIRC of 1997, as follows:

"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."

Clearly, 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).

Considering that for the same transaction, the output VAT of the seller becomes the input VAT of the purchaser, the law requires that the input VAT be substantiated by the very same document on which the output VAT was based. Accordingly, the input VAT on purchases of goods must be supported by VAT sales invoices; while the input VAT on purchases of services must be supported by VAT official receipts.

In *Commissioner of Internal Revenue vs. Manila Mining Corporation*³⁰, the Supreme Court noted the distinction between an invoice and an official receipt, in this wise:

“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.”

Moreover, in *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*³¹, the Highest Tribunal recognized that a duly executed VAT invoice or official receipt is sufficient evidence to support a claim for input tax credit, to wit: 

³⁰ G.R. No. 153204, August 31, 2005

³¹ G.R. No. 172129, September 12, 2008

**"OR No. 0189 by itself sufficiently proves
payment of VAT**

The CA, citing Sec. 110(A)(1)(B) of the NIRC, held that OR No. 0189 constituted sufficient proof of payment of creditable input VAT for the progress billings from Mitsubishi for the period covering April 7, 1993 to September 6, 1996. Sec. 110(A)(1)(B) of the NIRC pertinently provides:

Section 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:

(a) Purchase or importation of goods:

xxx

xxx

xxx

(b) **Purchase of services on which a value-added tax has been actually paid.** (Emphasis ours.)

Without necessarily saying that the BIR is precluded from requiring additional evidence to prove that input tax had indeed paid or, in fine, that the taxpayer is indeed entitled to a tax refund or credit for input VAT, we agree with the CA's above disposition. As the Court distinctly notes, the law considers a **duly-executed VAT invoice or OR referred to in the above provision as sufficient evidence to support a claim for input tax credit.** xxx" (Emphasis supplied)

In order to be considered as valid VAT invoices or official receipts, the same must contain all the information required under Section 113(A) 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."

Corollary thereto, the pertinent portions of Section 4.108-1 of Revenue

Regulations No. 7-95, read as follows:

"SECTION 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. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word 'zero-rated' imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration.

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Only VAT-registered persons are required to print their **TIN followed by the word 'VAT' in their invoice or receipts** and this shall be considered as a '**VAT Invoice**'. **All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax.**" (*Emphasis supplied*)

Such invoice or receipt must be duly registered with the Bureau of Internal Revenue, as prescribed under Section 237 of the NIRC of 1997, which states:

"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: xxx" (*Emphasis supplied*) 

In the present case, out of the disallowed input VAT of P90,257.60, petitioner was able to substantiate by proper VAT invoices or official receipts, input taxes totaling P81,057.60, detailed as follows:

	Supplier	Exh.	Date	Inv/ OR#	Input VAT		
					3 rd Qtr	4 th Qtr	Total
1.	Input VAT on domestic purchases of goods supported by VAT invoices						
	Goldcrest Marketing Corporation	"G"	9/4/2002	152696	P -	P 80.25	P 80.25
	Oro Asian Automotive Center Corporation	"J-1"	8/8/2002	27888	2,050.00		2,050.00
	Feloris Supermarket, Inc.	"K"	9/5/2002	15705	30.18		30.18
	Anflo Motor Corporation	"L-1"	6/17/2002	4162	684.94		684.94
	Sure Deal Marketing	"Q-1"	7/5/2002	17092	1,333.55		1,333.55
	Subtotal				P 4,098.67	P 80.25	P 4,178.92
2.	Input VAT on domestic purchases of services supported by VAT ORs						
	JII Car Care Center (Jamandre Car Services, Inc.)	"H-3"	8/28/2002	44502	P 545.45	P	P 545.45
	Oro Villa Restaurant	"N"	08/26/2002	2637		197.72	
	Toyota Iloilo, Inc.	"O-2"	12/27/2002	65280		3,533.56	
	Gemini Adjustment Company	"P-1"	7/4/2002	8626	4,935.00		4,935.00
	Ichdien Insurance Agency	"T-3"	7/24/2002	051			
		"T-4"	8/16/2002	136	67,666.95		67,666.95
	Subtotal				P 73,147.40	P 3,731.28	P 76,878.68
	Total				P 77,246.07	P 3,811.53	P 81,057.60

As to respondent's assertion that the above input taxes should be disallowed on the ground that the suppliers have unmatched TIN or unverified registration per the BIR's ITS, this Court finds the said allegation untenable as it is unsupported by documentary proof.

Consequently, only the remaining input VAT of P9,200.00, which failed to meet the invoicing requirements under the law shall be disallowed. Below is the breakdown of the amount of P9,200.00: 

	Supplier	Exh.	Date	OR/Other Ref No.	Input VAT		
					3rd Qtr	4th Qtr	Total
1.	Input tax on purchase of services supported by OR issued not in the name of petitioner						
	Coco Huts Restaurant	"M"	8/27/2002	1845	P	P 30.55	P 30.55
2.	Input tax on purchase of services supported by OR with printed TIN without the word "VAT"						
	Neuspeed Auto Repair Shop	"I-1"	11/7/2002	2540		2,485.35	2,485.35
3.	Input tax on purchases of goods and services supported by documents (i.e., Repair Order, Delivery Receipt) instead of VAT invoices or official receipts						
	Probag Enterprises	"S"	12/03/02	2712		2,545.45	2,545.45
	Kar Asia, Inc.	"R-1"				1,472.75	1,472.75
4.	Input tax on purchases of goods or services without supporting VAT invoices or ORs						
	Oro Asian Automotive Center Corporation						-
	Disallowed per Assessment			P 4,279.82			-
	Less: Substantiated Amount			2,050.00	2,229.82		2,229.82
	Sure Deal Marketing						-
	Disallowed per Assessment			P 1,606.27			-
	Less: Substantiated Amount			1,333.55	272.72		272.72
	Goldcrest Marketing						-
	Disallowed per Assessment			P 243.61			-
	Less: Substantiated Amount			80.25	163.36		163.36
	Total				P 2,665.90	P 6,534.10	P 9,200.00

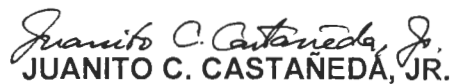
WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the reduced amount of **ELEVEN THOUSAND FIVE HUNDRED PESOS (P11,500.00)**, representing its deficiency VAT for the third and fourth quarters of taxable year 2002, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

	3rd Qtr 2002	4th Qtr 2002	Total
Total Deficiency VAT from disallowed input tax	P 2,665.90	P 6,534.10	P 9,200.00
Add: 25% Surcharge	666.48	1,633.52	2,300.00
Total Amount Due	P 3,332.38	P 8,167.62	P 11,500.00

In addition, petitioner is hereby **ORDERED TO PAY** respondent: (a) deficiency interest at the rate of twenty percent (20%) *per annum* on the basic 

deficiency VAT for the third and fourth quarters of 2002 in the amounts of P2,665.90 and P6,534.10 computed from October 25, 2002 and January 25, 2003, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997; and (b) delinquency interest at the rate of twenty percent (20%) *per annum* on the total amount of P11,500.00 and on the 20% deficiency interest which have accrued as aforestated in (a) computed from August 14, 2007 until full payment thereof, pursuant to Section 249(C)(3) of the NIRC of 1997.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:


ERLINDA P. UY
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

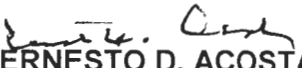
ATTESTATION

I attest 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.


JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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