REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. EB No. 439
(C.T.A. Case No. 6489)

-versus-

GST PHILIPPINES, INC.,
Respondent.

GST PHILIPPINES INCORPORATED,
Petitioner,

C.T.A. EB No. 443
(C.T.A. Case No. 6489)

-versus-

COMMISSIONER OF INTERNAL,
Respondent.

Present:

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

Promulgated: JUN 1 9 2009 [signature] 2:00 p.m.

X- x

D E C I S I O N

CASTAÑEDA, JR., J.:

THE CASE

For review are consolidated Petitions for Review assailing the Court in Division's Decision dated August 7, 2007 and the Amended Decision dated November 13, 2008. [initials]

THE FACTS

GST Philippines Incorporated ("GST"), a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines is a VAT registered taxpayer evidenced by Bureau of Internal Revenue ("BIR") Certificate of Registration bearing RDO Control No. 94-500-000023-V and Taxpayer Identification Number ("TIN") 500-000-155-645.[1] It is primarily engaged in the business of manufacturing, processing, selling and dealing in all kinds of iron, steel or other metals, and all or any products or articles consisting or partly consisting of iron, steel or other metals, such as but not limited to grinding balls, rods, structural steel, any and all kinds of industrial machineries and equipment and any and all processes and products and any all other analogous or related objects.[2]

The Commissioner of Internal Revenue ("Commissioner"), an official is authorized to perform, among others, decide disputed assessments, refund of internal revenue taxes, fees or other charges, penalties, or other matters arising under the 1997 National Internal Revenue Code ("NIRC"), or other laws administered by the BIR.

During the second, third and fourth quarters of taxable year 2000, entire quarters of taxable year 2001, and first quarter of taxable year 2002,

---

[1] Joint Stipulation of Facts and Issues, Docket, C.T.A Case No. 6489, pp. 177-178.
[2] Ibid.

GST forged into zero-rated sales transaction agreements with customers such as VAT-registered and Board of Investment ("BOI") registered exporters Philex Mining Corporation ("Philex Mining"), Philex Gold Philippines, Inc. ("Philex Gold") and Lepanto Consolidated Mining Company ("Lepanto Mining").[3] It likewise entered into zero-rated sales transaction agreements with Philippine Associated Smelting and Refining Corporation ("PASAR"), a Philippine Economic Zone Authority ("PEZA") registered entity and export sales with Toyo Grinding Balls, Padaeng Industry Public Co., Ltd., Malex Industrial Products, Aichelin Company Ltd., Butterworth Motorworks, CSR Building Materials Sdn Bhd, UAC Berhad, GSI Luchinni, Tak Mining Co., Ltd. and Hume Cemboard Berhad.[4]

GST filed quarterly VAT Returns within the period prescribed by law.[5]

Convinced that it is entitled to unutilized input VAT, on October 4, 2001 and May 10, 2002, GST commenced administrative actions with the BIR seeking a refund in the amounts of P9,750,104.19 covering the period of April 1, 2000 to June 30, 2001 and P7,192,026.29 for July 1, 2001 to March 31, 2002, respectively.[6]

---

[3] Joint Stipulation of Facts and Issues, Docket, C.T.A. Case No. 6489, p. 176.
[4] Docket, C.T.A. Case No. 6489, p. 295 & 310.
[5] Joint Stipulation of Facts and Issues, Docket, C.T.A. Case No. 6489, p. 178
[6] Joint Stipulation of Facts and Issues, Docket, C.T.A. Case No. 6489, p. 178.

Due to BIR's inaction on its claim for refund, GST sought redress before the Division by filing a Petition for Review docketed as C.T.A Case No. 6489 on June 24, 2002 and an Amended Petition for Review on October 29, 2004.[7]

In ruling for GST, the Division issued a Decision dated August 7, 2007, the dispositive portion of which provides:

> xxx xxx xxx **WHEREFORE**, this instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED to REFUND or ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **NINE MILLION TWO HUNDRED THIRTY NINE THOUSAND ONE HUNDRED FORTY SIX PESOS and 82/100 (P9,239,146.82)** representing unutilized input VAT paid on domestic purchases and importation of goods attributable to zero-rated sales for the period of April 1, 2000 to March 31, 2002.
>
> **SO ORDERED.**[8]

Dissatisfied, both GST and Commissioner moved to partially reconsider the Division's Decision dated August 7, 2007. However, in its Amended Decision dated November 13, 2008, the Division partially reconsidered GST's claim for refund and directed the Commissioner to refund or issue a tax credit certificate in the amount of P9,332,676.29 representing unutilized input VAT paid on domestic purchases and importation of goods attributable to zero-rated sales for the period April 1, 2000 to March 31, 2002, the decretal portion of which reads: *Jc*

---

[7] Docket, C.T.A. Case No. 6489, pp. 289-302, 306 & 310.
[8] Docket, C.T.A Case No. 6489, p. 434.

> "**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED to REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **NINE MILLION THREE HUNDRED THIRTY TWO THOUSAND SIX HUNDRED SEVENTY SIX PESOS and 29/100 (P9,332,676.29)**, representing unutilized input VAT paid on domestic purchases and importation of goods attributable to zero-rated sales for the period of April 1, 2000 to March 31, 2002.
>
> **SO ORDERED."**[9]

Based on the findings of the Division, out of GST's declared zero-rated sales of P280,156,225.96, only the amount of P196,018,147.10 are duly documented. Inasmuch as only a portion of GST's declared zero-rated sales is duly substantiated, only the portion of the input VAT claimed attributable to the substantiated zero-rated sales will be considered for refund. The Division also concluded that GST's valid creditable input tax is P12,314,223.50. In view of the refundable input VAT of P12,314,223.50 and the tax credit certificate issued by the Commissioner in the amount of P2,981,547.21, GST is entitled to a refund of the unutilized input VAT of P9,332,676.29.

Unfazed, on December 9, 2008 and January 5, 2009, the Commissioner and GST each separately appealed to the Court *en banc* by way of Petitions for Review docketed as C.T.A. EB Case Nos. 439 and 443, respectively. *ge*

---

[9] Docket, C.T.A. Case No. 6489, pp. 643-650. Penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justice Lovell R. Bautista and Associate Justice Caesar A. Casanova.

On March 19, 2009, the Court *en banc* ordered the consolidation of C.T.A EB Case Nos. 439 and 443 because these cases stem from the same Amended Decision dated November 13, 2008.[10]

After the parties filed their Memorandum, the case was submitted for decision.

THE ISSUES

In C.T.A. EB Case No. 443, GST interposes the following grounds:

A

> The Final Certifications from the Board of Investments ("BOI") support the Provisional Certifications which were previously offered as evidence; and should be considered as evidence.
>
> Petitioner has clearly substantiated the Input VAT in the Aggregate Amount of Php1,671,902.49.[11]

While in C.T.A. EB Case No. 439, the Commissioner raises the sole ground that:

> WHETHER OR NOT RESPONDENT IS ENTITLED TO A REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE IN THE AMOUNT OF P9,332,676.29 REPRESENTING ALLEGED UNUTILIZED INPUT VAT PAID ON DOMESTIC PURCHASES AND IMPORTATION OF GOODS ALLEGEDLY ATTRIBUTABLE TO ZERO-RATED SALES OF THE PERIOD 1 APRIL 2000 TO 31 MARCH 2002.[12]

---

[10] See Rollo, C.T.A EB Case No. 443, p. 125.
[11] Rollo, C.T.A. EB Case No. 443, p.18.
[12] Rollo, C.T.A. EB Case No. 439,p. 5.

GST'S ARGUMENTS

GST contends that in the Decision dated August 7, 2007, the Division erred in disallowing its zero-rated export sales with Philex Mining, Philex Gold, and Lepanto Consolidated amounting to P86,006,387.36 simply on the bases that Board of Investments ("BOI") certifications for taxable year 2000 marked as Exhibits "U", "R" and "W" were merely provisional, and the final certifications issued by the same agency were not formally offered as evidence. Contrary to the findings of the Court, GST asserts that BOI final certifications supplement or confirm the contents of the provisional certifications which were previously offered before the Division, and should be treated as evidence.

GST further argues that BOI provisional and final certifications are public documents. The issuance of the certifications is an act of the BOI, an agency attached to the Department Trade and Industry ("DTI") which is part of the Executive Department. As public documents, the certifications are prima facie evidence. Moreover, these certifications are official acts of public officers of the Philippines which the Court should take mandatory judicial notice. The Court should take judicial notice of the fact that Philex Mining, Philex Gold and Lepanto Mining exported 100% of their total sale volume/value for the calendar year 2000.

GST asseverates that these final certifications formed part of the records of the case, CTA-Division's docket and should have been considered as evidence because proceedings in this Court shall not be governed strictly by technical rules of evidence.

GST also points out that it has clearly substantiated the input VAT in the aggregate amount of P1,671,902.49 evidenced by invoices and official receipts which were examined by the independent certified public accountant. It sought to reconsider the amounts of P559,358.95 representing input VAT on purchases of services; P310,495.16 pertaining to input VAT on technical fees paid to GSI Technologies, USA; and P802,048.38 relating to input VAT paid on purchase of goods and services.

GST alleges that the Division erroneously disallowed input VAT of P559,358.95 on purchases of services because this amount is substantiated by VAT official receipts ("ORs") marked as Exhibits "DD", "EE", "FF', "GG', "HH", "II", "JJ" and "KK", and not merely by other documents such as account summary, statement account, provisional receipt, invoice or monthly billing.

GST further asserts that the Division mistakenly denied the amount of P802,048.38 representing input VAT paid on purchase of goods and services. GST emphasizes the fact that all of its purchase of goods and services were substantiated, baring a few isolated cases pointed out in

Schedule 10 of the independent certified public accountant's report either by VAT invoices or official receipts. In effect, the Division found GST's input VAT in the sizeable amount of P802,048.38 to be unsupported in spite of the admission of Exhibits "DD", "EE", "FF", "GG", "HH", "II", "JJ" and "KK" and the independent certified public accountant's findings that its unsubstantiated input VAT amounted only to P18,163.72. Again, while the Division is not bound by the findings of the independent certified public accountant, the difference of P783,884.66 (P802,048.38-P18,163.72) is simply too glaring to ignore. GST is requesting the Court *en banc* to take a second look at the evidence presented particularly Exhibits "DD", "EE", "FF', "GG', "HH", "II", "JJ" and "KK".

According to GST, the Division likewise failed to consider the amount of P310,495.16 pertaining to input VAT on technical fees paid to GSI Technologies, U.S.A. because it was merely evidenced by bank remittances attached to VAT returns marked as Exhibits "C", "D", "F", "G", "H" and "J", and not by sales invoices or official receipts. GST reiterates that the proceedings in the Court of Tax Appeals should not be governed strictly by technical rules of evidence.

COMMISSIONER OF INTERNAL REVENUE'S ARGUMENTS

The Commissioner counters that the Division correctly ruled that the BOI final certifications cannot be considered for the reason that they were not formally offered as evidence.

The Commissioner also maintains that GST failed to establish the following: a) the purchases of goods and services were made in the course of its trade and business; b) the purchases were properly supported by VAT invoices and/or official receipts and other documents such as entries made in its subsidiary purchase journal proving that it actually paid VAT; c) the claimed input VAT payments were directly attributable to its zero-rated sales; and d) the proceeds of the export sales were inwardly remitted and duly accounted for in accordance with Bangko Sentral ng Pilipinas ("BSP") rules and regulations.

In an administrative claim for refund or tax credit of input taxes attributable to zero-rated sales, a VAT registered person must submit complete documents to support its application for administrative claim for refund pursuant to Section 112 (D) of the 1997 NIRC. Otherwise, there will be no sufficient compliance with the filing of an administrative claim for refund which is a condition sine qua non prior to the filing of judicial claim in accordance with Section 229 of the 1997 NIRC. Due to insufficiency of evidence to support GST's claim for refund or tax credit of excess input VAT attributable to zero-rated sales for the covered period, the Division is devoid of jurisdiction over the instant case.

It was only before the Division that GST submitted and presented various pieces of evidence allegedly supporting its claim for refund. Matters not raised in the administrative level cannot be raised for the first time on appeal.

THE COURT'S RULING

BOI FINAL CERTIFICATIONS OF ZERO-RATED EXPORT SALES TO PHILEX MINING, PHILEX GOLD AND LEPANTO CONSOLIDATED ARE INADMISSIBLE

Documentary evidence should be formally offered to be taken cognizance by the courts pursuant to Section 34, Rule 132 of the Rules of Court which states:

> Rule 132
>
> PRESENTATION OF EVIDENCE
>
> xxx xxx xxx
>
> C. OFFER AND OBJECTION
>
> SEC. 34. Offer of evidence. – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified. Jr

Citing the case of *Vda de Oñate v. Court of Appeals*[13], the Supreme Court in the case of *Dizon vs. Court of Tax Appeals*[14] explained the distinction between formal offer of evidence and identification of documents as follows:

> xxx xxx xxx, it is clear that for evidence to be considered, the same must be formally offered. Corollarily, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered a part of the evidence of a party. In *Interpacific Transit, Inc. v. Aviles* [186 SCRA 385], we had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.[15]

The offer of evidence is imperative because it is the duty of the court to rest its findings of fact and its judgment only and strictly upon the evidence offered by the parties. Otherwise, document not offered is merely a scrap of paper bereft of probative weight. Mere identification of documents and the markings thereof as exhibits do not confer any evidentiary weight unless formally offered.[16]

---

[13] G.R. No. 116149, November 23, 1995, 250 SCRA 283, 287.
[14] G.R. No. 140944, April 30, 2008, 553 SCRA 111.
[15] Ibid.
[16] *Heirs of the Deceased Carmen Cruz-Zamora vs. Mutilwood International, Inc.,* G.R. No. 146428, January 19, 2009.

However, the *Dizon* case likewise stated when a document may be admissible even if the same was not formally offered, *viz*:

> However, in People v. Napat-a[179 SCRA 403] citing *People v. Mate* [103 SCRA 484], **we relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requisites are present, viz: first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case.** [17] (Emphasis supplied.)

In this case, the BOI final certifications of zero-rated sales by GST to Philex Mining, Philex Gold, and Lepanto Consolidated were not formally offered. Although the final certifications formed part of the records of the case, these cases were not duly identified by testimony. Thus, the BOI final certifications of zero-rated sales to Philex Mining, Philex Gold and Lepanto Consolidated are inadmissible.

The Court in Division correctly ruled that BOI certifications identified as exhibits "U", "R" and "W" cannot be given weight as they are merely provisional which means that it cannot be ascertained whether or not Philex Mining, Philex Gold and Lepanto as BOI registered companies exported 100% of their products for taxable year 2000. Je

[17] *Dizon vs. Court of Tax Appeals, supra.*

UNSUBSTANTIATED INPUT VAT ON GST'S DOMESTIC PURCHASES OF SERVICES AND GOODS

The substantiation of input VAT on the purchase of goods and services is governed by Section 110 of the 1997 NIRC, in relation to Sections 106 and 108 of the same Code which read:

> "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: xxx xxx xxx
>
> "(2) The input tax on domestic purchase of goods or properties shall be creditable:
>
> "(a) To the purchaser upon consummation of sale and on importation of goods or properties; and xxx xxx xxx
> However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.
>
> xxx xxx xxx
>
> "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.
>
> "(1) The term '*goods or properties*' shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include:
>
> xxx xxx xxx

Jc

"(D) *Determination of the Tax.* –

"(1) The tax shall be computed by multiplying the total amount indicated in the **invoice** by one-eleventh (1/11).

xxx xxx xxx

"SEC. 108. ***Value-added Tax on Sale of Services and Use or Lease of Properties.* –**

"(A) Rate and Base of Tax.– **There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services,** including the use or lease of properties.

"The phrase '*sale or exchange of services*' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including xxx xxx xxx

"The term '*gross receipts*' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and 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.

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) (Emphasis supplied.)

xxx xxx xxx

The VAT on the sale of goods or properties accrues upon the ***consummation of sale*** regardless of whether or not the consideration thereof was actually received. It is for this reason that the afore-cited Section 106(D) of the 1997 NIRC provides that the tax shall be computed by multiplying the total amount indicated in the ***invoice*** by one-eleventh

(1/11). On the other hand, the VAT on the sale of services arises upon ***actual or constructive receipt of the consideration*** irrespective of whether or not the service has been rendered. In addition to this, Section 108(C) of the 1997 NIRC provides that the tax on the sale of services shall be computed by multiplying the total amount indicated in the ***official receipt*** by 1/11.[18]

Irrespective of the nature of the transaction, be it taxable, exempt, or zero-rated sale, the taxpayer shall issue VAT invoices in the case of sales of goods, and official receipts in the case of sales of services.[19]

In the case of *AT & T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*[20], this Court explained the relevance of substantiating sales of services by official receipts and sales of goods by invoices:

> For every **sale of services, VAT shall be computed on the basis of gross receipts indicated in the official receipt**. The sale transaction becomes subject to VAT upon the actual or constructive receipt of the consideration whether or not the service has been rendered.

---

[18] *Nippon Express Philippines, Inc. vs. Commissioner of Internal Revenue*, C.T.A. EB Case No. 335, August 20, 2008.
[19] *AT & T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, Resolution, C.T.A. EB No. 291, April 2, 2008.
[20] *AT & T Communications Services Philippines vs. Commissioner of Internal Revenue*, C.T.A. EB No. 381, September 24, 2008. See also Northern Mindanao Power Corporation vs. Commissioner of Internal Revenue, C.T.A. EB 312, July 18, 2008 and *Team Sual Corporation (formerly "Mirant Sual Corporation" and "Southern Energy Pangasinan, Inc.") vs. Commissioner of Internal Revenue*, C.T.A. EB Case No. 400, March 11, 2009.

In the same transaction, the output VAT of the seller becomes the input VAT of the purchaser.

This is to avoid the situation where the government could end up refunding a tax which was not even paid. It should be noted that the seller will only become liable to pay the output VAT upon receipt of payment from the purchaser. If we are to use sales invoice in the sale of services, an absurd situation will arise when the purchaser of the service can claim tax credit representing input VAT even before there is payment of the output VAT by the seller on the sale pertaining to the same transaction. As a matter of fact if the seller is not paid on the transaction, the seller of service would legally not have to pay output tax while the purchaser may legally claim input tax credit thereon. The government ends up refunding a tax which has not been paid at all. Hence, to avoid this, official receipt for the sale of services is an absolute requirement.

While the use of official receipt as proof of sale of services and sales invoice for sale of goods has already been recognized in NIRC of 1997 prior to its amendment, it was even clarified in the subsequent law under Republic Act (RA) No. 9337. In fact, during the Senate deliberation of Senate Bill No. 1950 which later on became RA No. 9337, it can be reasonably concluded that the true intendment of the legislature is to make a distinction between the VAT invoice and official receipt. The pertinent portion of the Senate deliberation provides:

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 we provide appropriate standards, maybe we can delegate these implementation provisions to the Bureau Internal Revenue. Would that be an acceptable idea to the sponsor?

Senator Recto: 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. (Emphasis supplied.)

Clearly, official receipt cannot be interchanged with sales invoice. The law itself specified that an official receipt shall cover sales of services. It did not provide for any other document which can be used as an alternative to or in lieu of an official receipt.[21] *gr*

[21] Ibid.

The invoices or official receipts shall contain information issued for sales of goods and services by all VAT registered persons in accordance with Section 113 of the 1997 NIRC and Section 4.108-1 of Revenue Regulations No. 7-95[22], to wit:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>
> "(A) *Invoicing Requirements.* –xxx xxx xxx
> "(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
>
> VAT INVOICE OR RECEIPT
>
> SEC. 4.108-1. Invoicing Requirements – All VAT-registered person 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.

[22] Consolidated Value-Added Tax Regulations dated December 9, 1995.

Non-compliance with the invoicing requirements results to a denial of a claim for refund or tax credit of input tax on purchases of goods and services pursuant to Revenue Memorandum Circular No. 42-03[23]:

> 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.
>
> 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. 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.'[24] (Emphasis Supplied)

Concerning the input VAT of P559,358.95 representing GST's domestic purchases of services, this amount is merely supported by account summary, statement of account, provisional receipt, invoice and

[23] Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit, & Duty Drawback Center, Department of Finance (OSS) by Direct Exporters.
[24] See *Nippon Express Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.

monthly billing, and not the required official receipts. Thus, the Division correctly disallowed the same.

As to the amount of P310,495.16 representing input VAT on technical fees paid to GSI Technologies, U.S.A., the Court in Division aptly made the following findings in its Amended Decision dated November 13, 2008 which states:

> Upon taking a second look at the supporting documents of petitioner's taxable sales, the Independent CPA noted the following:
>
> "Instead of using BIR Form 1600, the Company included in its VAT returns the withholding VAT remitted in behalf of GS Technologies, USA representing technical fees of 1% payable to GS Technologies. The corresponding withholding VAT remitted was claimed as part of the Company's input tax credits in the following month. Payments made by the Company to GS Technologies, USA totaled Ph3,514,001.41 covering the period from April 1, 2000 to March 31, 2002. These payments are not covered by Sales Invoices or Official receipts but supported by Bank remittances."
>
> xxx xxx xxx
>
> Moreover, Section 4.105-5(e) of Revenue Regulations No. 7-95 provides an additional document to substantiate the payment of input VAT from payments made to non-residents, wit:
>
> "**SECTION 4.104.-5. Substantiation of claims for input tax credit. –**
>
> xxx xxx xxx
>
> (e) Input tax from payments made to non-residents shall be supported by a copy of the VAT declaration/return filed by the resident licensee/lessee in behalf of the nonresident licensor/lessor evidencing remittance of the VAT due."[25]

---

[25] Rollo, C.T.A. EB Case No. 439, pp. 44-45.

Indubitably, the Division correctly denied the input VAT of P310,495.16 pertaining to technical fees paid to GSI Technologies, USA.

With regard to the alleged input VAT payment of P802,048.38, the Division appropriately denied this amount due to absence of any supporting document.

We disagree with the Commissioner's posture that GST's failure to proffer documentary evidence in the administrative level divested the Division of jurisdiction.

Records reveal that when GST formally offered its documentary evidence with the Division on July 13, 2005 and April 4, 2008, the Commissioner either filed no comment or manifested no objections to the same.[26] Hence, the Commissioner cannot question at this stage the Court's jurisdiction over the instant case, specifically on its authority to rule on the probative value of GST's proffered documentary evidence.

The other arguments alleged by the Commissioner were exhaustively discussed in the assailed Amended Decision.

WHEREFORE, premises considered, the consolidated Petitions for Review are hereby **DENIED.** The Amended Decision dated November 13, 2008 is **AFFIRMED.**

[26] Docket, C.T.A. Case No. 6489, pp. 344 & 589.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
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