REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

TEEKAY SHIPPING PHILIPPINES, INC., *Petitioner,*	**C.T.A. CASE NO. 7533**
	Members:
-versus-	CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** OCT 15 2008 2:15 p.m.

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D E C I S I O N

PALANCA-ENRIQUEZ, J.:

Pursuant to *Section 112 (A) of the National Internal Revenue Code of 1997* (hereafter "NIRC of 1997"), as amended, petitioner filed a claim for refund of its creditable input VAT attributable to its zero-rated export sales. To do so, however, petitioner must be able to show that its input VAT paid and output VAT transactions are properly substantiated. Failure to show proof of proper documentation is fatal to one's claim for refund or credit. The law provides for some statutory and procedural requirements which have to be complied with; otherwise, the claim cannot be granted.

THE CASE

This is a Petition for Review filed by Teekay Shipping Philippines, Inc., (hereafter "petitioner") which seeks the refund of its alleged unutilized input value-added tax (VAT) in the amount of P538,096.82 for the period July 1, 2004 to December 31, 2004.

THE PARTIES

Petitioner is a domestic corporation, with principal office at 3rd Floor, Alvion Center, Thailand (formerly Rada Street), Legaspi Village, Makati City. It is registered with the Securities and Exchange Commission (SEC) under SEC Registration No. 160723 *(Exhibit "T")*. Its primary purpose is to carry on, conduct and engage in the business of crewing and manning domestic and international ships, and to act as ships' agent, ships' husbanding agents, charterers, ships' and shipping brokers, managers of ships and shipping property, and shipowners' agent, and therefore, to contract for the acquisition, procurement, and engagement of all equipment, supplies and services necessary for the outfitting and operation of ships.

On the other hand, respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR) under the National Internal Revenue Code (NIRC), and is sued in her official capacity. She is a duly appointed public official, pursuant to Executive Order No. 292 (1987), as amended.

THE FACTS

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

Petitioner filed its Quarterly VAT Return for the Third Quarter on October 19, 2004 *(Exhibit "O")*, and for the Fourth Quarter of 2004 on April 19, 2005 *(Exhibit "R")*.

On July 11, 2006, petitioner filed with the RDO No. 47 an application for VAT refund of its unutilized VAT paid for the period of January 1, 2004 to December 31, 2004 amounting to P844,707.19, pursuant to *Section 112(A) of the NIRC of 1997* and *Revenue Regulations No. 16-2005*, which is inclusive of the amount of P250,936.28 for the VAT paid for the Third Quarter of 2004, and P332,160.54 for the Fourth Quarter of 2004 *(Exhibit "F")*.

On October 19, 2006, in view of respondent's inaction, petitioner elevated its claim for refund before this Court by way of a Petition for Review.

In her Answer filed on December 14, 2006, respondent alleged by way of special and affirmative defenses that assuming without admitting that petitioner filed a claim for refund, the same is subject to investigation

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by the Bureau of Internal Revenue; petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected; that taxes paid and collected are presumed to have been made in accordance with laws and regulations, hence, not refundable; it is incumbent upon the petitioner to show that it has complied with the provisions of *Section 204(C), in relation to Section 229 of the Tax Code, as amended*, upon which its claim for refund is premised; in an action for tax refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge said burden is fatal to the claim; and claims for refund are construed strictly against the claimant.

Petitioner presented Carlos R. Contreras, the Court-Commissioned Independent CPA, and Wilma G. Herrera, Finance and Accounting Manager, as witnesses, and formally offered *Exhibits "A"* to *"Z"*, inclusive of their submarkings, which were admitted by the Court in a Resolution dated February 1, 2008.

On April 2, 2008, respondent submitted the case for decision, without presenting any evidence. Thereafter, the Court ordered both parties to file their simultaneous memoranda, within forty (40) days from notice, afterwhich the case shall be deemed submitted for decision.

On May 12, 2008, petitioner filed its Memorandum. However, respondent failed to comply, despite notice. Hence, the case was deemed submitted for decision on June 20, 2008.

ISSUE

As stipulated by the parties, the sole issue for this Court's consideration is:

> WHETHER OR NOT PETITIONER IS ENTITLED TO A TAX REFUND OF ITS ALLEGED UNUTILIZED INPUT VALUE-ADDED TAX FOR THE PERIOD COVERING JULY 1, 2004 TO DECEMBER 31, 2004, IN THE TOTAL AMOUNT OF P538,096.82.

THE COURT'S RULING

The Petition is bereft of merit.

Section 112(A) of the NIRC of 1997, as amended, provides:

> "**SEC. 112.** ***Refunds or Tax Credits of Input Tax. -***
>
> (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

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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."

It is clear from the aforequoted provision, that to be entitled to a refund/tax credit of unutilized input VAT, the following requisites must be satisfied:

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 or effectively zero-rated sales;
4) that the input taxes were not applied against any output VAT liability; and
5) that the claim for refund was filed within the two-year prescriptive period.

As regards the first requisite, petitioner claims that its direct export sales of vessel manning services is zero-rated, pursuant to *Section 108(B)(4) of the NIRC of 1997, as amended*, which provides:

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

xxx xxx

(B) ***Transactions Subject to Zero Percent (0%) Rate.*** – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

xxx xxx

(4) Services rendered to vessels engaged exclusively in international shipping; and

xxx xxx."

Petitioner alleges that on January 1, 2004, it entered into a Contractor Services Agreement with Teekay Shipping Limited (Bahamas) *(Exhibit "B-1"),* and on July 27, 2004, it executed a Service Level Agreement-Manning with Teekay Marine Pty. Ltd. *(Exhibit "B-2")*, wherein, in both contracts, petitioner agreed to exclusively provide vessel manning services, such as qualified officers in accordance with international regulations, ensuring adequate training of shore staff, and retaining at all times a qualified management staff as to maintain a level of expertise to provide vessel manning services.

In support thereof, petitioner presented various documentary evidence, such as Summary List of Zero-Rated Sales and Remittances *(Exhibit "B")*, service contracts *(Exhibits "B-1" and " B-2")*, sales invoice *(Exhibit "B-1A")*, debit/credit memos *(Exhibits "B-2A" to "B-14A")*, bank credit advices *(Exhibits "B-1B" to "B-5B", "B-7B", "B-8B", "B-10B" to "B-19B"),* and bank statements *(Exhibits "B-21C" to "B-24C")*, Certification from Petitioner's Finance and Accounting Manager, Wilma G. Herrera *(Exhibit "S"),* and 2004 income tax return *(Exhibit "X")*.

While petitioner's sale of vessel manning services may fall within those transactions referred to as subject to zero percent VAT under *Section 108(B)(4) of the NIRC of 1997, as amended,* and petitioner may be allowed to claim tax refund/credit of its input tax of zero-rated sales under *Section 112 of the NIRC of 1997, as amended*; however, certain invoicing requirements must be faithfully complied with before such claim for refund or credit can be granted.

Invoicing and Accounting Requirements

Invoicing and accounting requirements for VAT-registered persons are provided for under *Section 113 of the NIRC of 1997*, *as amended*, which states, as follows:

> "**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, *Section 4.108-1 of Revenue Regulations No. 7-95 (The Consolidated Value-Added Tax Regulations)* enumerates the information that must appear on the face of the receipts or invoices issued for sales of goods by all VAT-registered persons, pertinent portions of which state:

> "**SEC. 4.108-1.** ***Invoicing Requirements.*** — All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:
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> 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.
>
> In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.
>
> 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.
>
> If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A 'VAT Invoice' shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the Code.
>
> The invoice or receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records."

Although the aforequoted law and regulations appear to make no distinction as to the evidentiary value of an invoice or official receipt;

however, the same must be harmonized together with *Section 106(A) and (D)*, the provision pertaining to value-added tax on sale of goods or properties, and with *Section 108(A) and (C) of the NIRC of 1997*, which pertains to the value-added tax on sale of service and use or lease of properties, which read, as follows, respectively:

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

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A simple reading of the above provisions of the *NIRC of 1997, as amended*, shows that in determining the output VAT due on the sale of goods or properties, the 10% VAT is imposed on the ***gross selling price,*** which is defined under *Section 106(A) of the NIRC of 1997, as amended,* 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.
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> 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 xxx."

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 was actually received. It is for this reason that said *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***, which is defined under *Section 108(A) of the NIRC of 1997, as amended*, 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."

Pursuant to the above provisions, the VAT on the sale of services accrues upon ***actual or constructive receipt of the consideration,*** regardless of whether or not the service has been rendered. Accordingly, *Section 108(C)* 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.

Also, *Section 11 of RA 9337,* which took effect on July 1, 2005, and which amends *Section 113 of the NIRC of 1997*, explicitly provides that a VAT-registered person shall issue a VAT invoice for every sale, barter or exchange of goods; and a VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

Thusly, the laws and regulations require that the sale of goods or properties must be supported by sales invoices; while the sale of services must be supported by official receipts. This requirement is mandatory in nature and consequently, non-compliance therewith is fatal to one's claim for credit or refund of its input taxes. The relevance of the said requirement is obvious: the presentation of invoices and/or receipts will prove the existence and nature of transactions and will be a basis for computation of taxes. The law does not only require the substantiation of invoices or receipts for input taxes, but more importantly for output taxes especially for those claiming zero-rated sales, as this will determine the creditable or unutilized input taxes that are available for refund. To sum, the invoicing requirements do not only pertain to documents required to prove input taxes, but rather the same also require the presentation of proper documents to prove the existence and/or non-existence of output taxes.

In addition thereto, the invoices and official receipts must be registered with the BIR and must contain, *inter alia*, the taxpayer's TIN, followed by the word "VAT" and the imprinted word "zero-rated" in case of zero-rated sales.

After a careful examination of petitioner's documentary evidence, the Court finds that petitioner failed to submit valid VAT official receipts to support its claim. We rule that non-compliance with the invoicing requirements is fatal to its claim for refund or credit. Without VAT official receipts, petitioner's alleged zero-rated receipts from manning services rendered to international vessels cannot qualify for VAT zero-rating. Furthermore, petitioner did not declare any amount of zero-rated sales/receipts in its VAT returns for the third and fourth quarters of 2004

(Exhibits "O", "R" & "R-1"), as required under *Section 114(A) of the NIRC of 1997,* as amended. Hence, for failure of petitioner to prove that it has zero-rated sales/receipts, the claimed input VAT payments allegedly attributable thereto in the amount of P538,096.82 cannot be granted.

The foregoing conclusion renders unnecessary discussion on petitioner's compliance with the other requisites for refund/tax credit of its alleged unutilized input VAT attributable to zero-rated or effectively zero-rated sales.

Basic as a hornbook principle in taxation is that petitioner, as taxpayer claimant, has the burden of proof to show that it is entitled to the refund of the amount claimed, as refundable, because taxes are presumed to have been collected in accordance with laws and regulations on the matter. The burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund *(Commissioner of Internal Revenue vs. Tokyo Shipping Co. Ltd., 244 SCRA 336)*. Petitioner failed in this regard.

For having failed to sustain the burden placed upon it by presenting proof that it is entitled to its claim, the Court has no alternative, but to deny the claim for tax refund.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

A T T E S T A T I O N

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, Second Division

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