REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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AT&T COMMUNICATIONS SERVICES PHILIPPINES, INC., Petitioner,	**C.T.A. CASE NO. 7221**
	Members:
- versus -	**ACOSTA,** *Chairperson* **BAUTISTA,** and **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** DEC 12 2007 2:00 PM

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DECISION

BAUTISTA, J.:

This is a Petition for Review which seeks the refund or issuance of tax credit certificate of the amount of THREE MILLION THREE THOUSAND TWO HUNDRED SIXTY FIVE AND 14/100 PESOS (P3,003,265.14), representing petitioner's alleged unutilized input Value-added taxes (VAT) attributable to zero-rated sales of services for the period covering January 1, 2003 to December 31, 2003.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal place of business at the 18th Floor, BA-Lepanto Building, 8747 Paseo de Roxas, Makati City.[1] It is principally engaged in

[1] Par. 1.1, Joint Stipulation of Facts and Issues, *Rollo*, p. 105.

the business of rendering information, promotional, supportive and liaison services.[2] It is duly registered with the Bureau of Internal Revenue (BIR) as a VAT Taxpayer with Taxpayer Identification (TIN) No. 004-519-384-000.[3]

Respondent is the duly appointed BIR Commissioner, vested by law to decide, approve and grant claims for refund or tax credit of erroneously or excessively paid taxes, including excess or unutilized input VAT payments. He holds office at the 4th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

On January 1, 1999, petitioner entered into a Service Agreement[5] with AT&T Communications Services International, Inc. (AT&T-CSI), whereby compensation for such services is paid in US Dollars.[6]

Petitioner has an Assignment Agreement with AT&T-SI[7] where the latter assigned to petitioner the performance of services AT&T-SI was supposed to provide to Mastercard International Inc. under a Virtual Private Network Services Agreement. AT&T-SI and Mastercard International Inc. are both non-resident foreign corporations. The compensation for such services is likewise paid in US Dollars to be inwardly remitted to the Philippines by AT&T-SI, which acts as the collecting agent of petitioner.[8]

Subsequently, petitioner executed a second Assignment Agreement[9] with AT&T-SI to perform the latter's obligation to Lexmark International, Inc. by providing services to its affiliates in the Philippines, namely: Lexmark Research and Development Corporation and Lexmark International (Philippines), Inc.[10] Lexmark International, Inc. is a non-resident foreign corporation.[11] And its affiliates are both Philippine Economic Zone Authority (PEZA)-

[2] Par. 1.5, Joint Stipulation of Facts and Issues, *Rollo*, p. 106.
[3] Par. 1.3, Joint Stipulation of Facts and Issues, *Rollo*, p. 106.
[4] Par. 1.2, Joint Stipulation of Facts and Issues, *Rollo*, pp. 105-106.
[5] Exhibit "T".
[6] Exhibit "T-1".
[7] Exhibit "U".
[8] Exhibit "U-1".
[9] Exhibit "V".
[10] Exhibit "Y", p. 3, *Rollo*, p. 367.
[11] Exhibit "Y", p. 5, *Rollo*, p. 369.

456

registered enterprises. It pays petitioner's services in US Dollars through telegraphic transfer.[12]

Petitioner filed its Quarterly VAT Returns and Amended Quarterly Returns with the BIR for the taxable period January 1, 2003 to December 31, 2003 as follows:[13]

Date of Filing:	Date of Filing Amended Return:	Period Covered:
April 22, 2003	April 26, 2004	1st Quarter
July 23, 2003	April 15, 2004	2nd Quarter
Oct. 22, 2003	April 15, 2004	3rd Quarter
Jan. 26, 2004	April 15, 2004	4th Quarter

The aforesaid Quarterly VAT Returns reflected the following:

						INPUT VAT		
Exhibit No.	**Date Filed**	**Qtr Involved**	**Zero-Rated Sales**	**Taxable Sales**	**Output VAT**	**Carried-Over from Previous Quarter**	**This Quarter**	**Excess Input VAT**
					(a)	**(b)**	**(c)**	**(a) - (b+c)**
C	22-Apr-03	1st Qtr.	P14,062,193.88	P 1,812,238.62	P 181,225.82	P2,050,736.69	P 410,520.07	P(2,280,030.94)
E	23-Jul-03	2nd Qtr.	20,944,145.09	1,366,846.71	136,685.80	2,280,030.94	528,406.00	(2,671,751.14)
G	22-Oct-03	3rd Qtr.	15,438,937.87	511,719.77	51,142.10	2,671,751.14	1,529,216.44	(4,149,825.48)
I	26-Jan-04	4th Qtr.	13,801,920.63	214,602.85	21,454.86	4,149,825.48	1,142,017.33	(5,270,387.95)

On February 5, 2004, petitioner filed its first Amended Quarterly VAT Return for the Fourth Quarter of taxable year 2003[14], showing the following information:

						INPUT VAT		
Exhibit No.	**Date Filed**	**Qtr Involved**	**Zero-Rated Sales**	**Taxable Sales**	**Output VAT**	**Carried-Over from Previous Quarter**	**This Quarter**	**Excess Input VAT**
					(a)	**(b)**	**(c)**	**(a) - (b+c)**
J	05-Feb-04	4th Qtr.	P13,801,920.63	P 214,602.85	P 21,454.86	P4,149,825.48	P1,108,191.32	P(5,236,561.94)

On April 26, 2004, petitioner filed its final Amended Quarterly VAT Returns for the First to Fourth Quarters of the taxable year 2003, disclosing the following:

[12] Exhibit "Y", *Rollo*, p. 369.
[13] Pars. 1.6.1-1.6.4, Joint Stipulation of Facts and Issues, *Rollo*, pp. 106-107.
[14] Exhibit "J".

Exhibit No.	Qtr Involved	Zero-Rated Sales	Taxable Sales	Output VAT	INPUT VAT			
					Carried-Over from Previous Quarter	This Quarter	VAT Refund/TCC Claimed	Excess Input VAT
				(a)	(b)	(c)	(d)	(a) -](b+c) - (d)]
D	1st Qtr.	P 14,062,193.88	P 1,812,238.62	P 181,225.82	P 2,050,736.69	P 410,520.07	P1,801,826.82	P (478,204.12)
F	2nd Qtr.	20,944,145.09	1,366,846.71	136,685.80	478,204.12	528,406.00	-	(869,924.32)
H	3rd Qtr.	15,438,937.87	511,719.77	51,142.10	869,924.32	1,529,216.44	-	(2,347,998.66)
K	4th Qtr.	13,801,920.63	214,602.85	21,454.86	2,347,998.66	1,108,191.32		(3,434,735.12)
	Total	**P 64,247,197.47**	**P 3,905,407.95**	**P 390,508.58**		**P 3,576,333.83**		

According to petitioner, for the aforesaid taxable period, it had a total zero-rated sales amounting to P64,247,197.47 which was paid to it by non-resident foreign clients and PEZA-registered enterprises in US Dollars inwardly remitted in accordance with existing rules and regulations of the Bangko Sentral ng Pilipinas (BSP). Petitioner applied against its VAT output tax payable in the amount of P390,508.58, the VAT input taxes of P3,576,333.83, incurred for the purchases of capital goods and other taxable goods and services, as well as importation of capital goods used in its business operations; resulting in excess and unutilized VAT input taxes of P3,185,825.25. Such excess/unutilized VAT input tax has not been applied nor carried over to any succeeding quarters, and are duly supported by VAT invoices and/or official receipts.[15]

Petitioner further explained that since the entire amount of unutilized VAT input taxes for the calendar year ending December 31, 2003 is not exclusively and directly attributable to either of its zero-rated sales or its domestic sales, it made an allocation of said unutilized VAT input taxes; resulting in the amount of P3,003,265.14, which represents the VAT input taxes allocable to petitioner's zero-rated sales. The computation is as follows:[16]

[15] Par. 14, Petition for Review, *Rollo*, p. 9.
[16] Par. 15, Petition for Review, *Rollo*, pp. 9-10.

458

VAT input taxes attributable to zero-rated sales = $\frac{\text{Zero-rated Sales}}{\text{Total sales}}$ x Total unutilized VAT input taxes

Thus:

P3,003,265.14 = $\frac{\text{P64,247,197.47}}{\text{P68,152,605.42}}$ x 3,185,825.25

On April 13, 2005, within the two-year prescriptive period, petitioner filed with the BIR an application for refund and/or tax credit of its unutilized VAT input taxes for the aforesaid taxable period amounting to P3,003,265.14.[17]

Since no action has been taken by respondent, petitioner filed this Petition for Review on April 20, 2005, in order to suspend the running of the prescriptive period prescribed by Section 229 of the 1997 NIRC, as amended.

On June 29, 2005, respondent filed his Answer[18] raising the following Special and Affirmative Defenses:

> "3. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
>
> 4. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;
>
> 5. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;
>
> 6. Petitioner's claim for refund or issuance of tax credit certificate in the amount of P3,003,265.14, as alleged unutilized input VAT paid on its domestic purchases of goods and services for the period January 1, 2003 to December 31, 2003 were not fully substantiated/documented;
>
> 7. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit;
>
> 8. Petitioner's sales of goods and services to various alleged clients do not qualify as zero-rate VAT;

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[17] Par. 16, Petition for Review, *Rollo*, pp. 10-12.
[18] *Rollo*, pp. 83-84.

459

9. It is incumbent upon the latter to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the 1997 NIRC, as amended, otherwise, its failure to prove the same is fatal to its claim for refund;

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (***Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95***) and as such, they are looked upon with disfavor (***Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211***)."

To support its claim, petitioner presented testimonial and documentary evidence, while respondent did not present any. Both parties then moved for the presentation of their respective Memorandum.

On August 14, 2007, petitioner filed its Memorandum without respondent filing any. Subsequently, on August 21, 2007, the case was submitted for decision.

The parties jointly stipulated the following issues for this Court's resolution:

"1. Whether or not Petitioner's sales of services, in the amount of P64,247,197.47 for the period of 1 January 2003 to 31 December 2003, are zero-rated for VAT purposes.

2. Whether or not Petitioner's zero-rated sales for the period of 1 January 2003 to 31 December 2003 were paid for in acceptable foreign currency inwardly remitted and duly accounted for in accordance with the regulations of the Bangko Sentral ng Pilipinas.

3. Whether or not the amount of P3,003,265.14 representing unutilized/excess input VAT paid by petitioner for the period of 1 January 2003 to 31 December 2003 is attributable to its zero-rated sales.

4. Whether or not the amount of P3,003,265.14, representing unutilized/excess input VAT attributable to petitioner's zero-rated sales and paid by Petitioner for the period of 1 January 2003 to 31 December 2003, was not utilized or applied against its output VAT liabilities for the subsequent taxable quarters.

5. Whether or not Petitioner's claim for refund or alleged unutilized input VAT for the period of 1 January 2003 to 31 December 2003 is substantiated by documentary evidence.

6. Whether or not Petitioner is entitled to the refund or issuance of a tax credit certificate in the amount of P3,003,265.14 representing unutilized/excess input VAT paid by Petitioner for the period of 1 January 2003 to 31 December 2003."

460

The above issues boil down to the principal issue of whether or not petitioner is entitled to refund or issuance of tax credit certificate for its unutilized/excess VAT input tax attributable to its zero-rated sales.

Petitioner anchors its claim on Section 110(B) in relation to Section 112(A) of the National Internal Revenue Code of 1997 (1997 NIRC), as amended, to wit:

> "**SEC. 110.** ***Tax Credits.—***
>
> xxx
>
> **(B)** ***Excess Output or Input Tax.*** **–** If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."
>
> "**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 the taxpayer is engaged in zero-rated or effectively zero-rated sales 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."

From the aforequoted provisions, in order to be entitled to a refund/tax credit of unutilized input VAT arising from zero-rated transactions, the following requisites must be complied with:

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

461

4. that the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and
5. that the claim for refund was filed within the two-year prescriptive period.

On the first requisite, petitioner maintains that the services it rendered to AT&T-US, AT&T-SI, and other non-resident foreign corporations qualified as zero-rated VAT transactions under Section 108(B)(2) and (3) of the 1997 NIRC, as amended; Section 4.102-2(b)(2) and (3) of Revenue Regulations (RR) No. 7-95[19], as amended; and Section 3(1)(b) and 3(3) of Revenue Memorandum Circular (RMC) No. 74-99[20], dated October 15, 1999.

In support of its allegations, petitioner presented various documents to prove its reported 2003 zero-rated sales of services in the amount of P64,247,197.47, such as its Summary of Zero-Rated Sales for the taxable period ended December 31, 2003[21]; sales invoices with stamped "zero-rated" and bank credit advices[22]; Service Agreement with AT&T-CSI[23]; Certificate of Authentication with attached Assignment Agreement with AT&T-SI[24]; Letter of Assignment to AT&T Communications Philippines Inc.[25]; and report of the commissioned Independent Certified Public Accountant (CPA) dated June 13, 2006[26].

An examination of the said documents shows that the amount of P64,247,197.47 treated by petitioner as zero-rated sales, as verified by the independent CPA, consisted of sales of services to non-resident foreign corporations, as well as to PEZA-registered enterprises which was paid for in US Dollars in the amount of US$1,191,064.44 and accounted for in accordance with the rules and regulations of the BSP. These sales of services amounting to P64,247,197.47 fall within those transactions referred to as subject to

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[19] The Consolidated Value-Added Tax Regulations
[20] "Tax Treatment of sales of goods, property and services made by a supplier from the Customs Territory to PEZA registered enterprises, and sale transactions made by PEZA registered enterprises within and without the ECOZONE".
[21] Exhibit "AA".
[22] Exhibits "AA-1" to "AA-42-a".
[23] Exhibit "T".
[24] Exhibit "U".
[25] Exhibit "V".
[26] Exhibit "Z".

zero percent (0%) VAT under Sections 108(B)(2) and (3) of the 1997 NIRC, as amended, to quote:

> "SEC.108. **Value-added Tax on Sale of Services and Use or Lease of Properties.–**
>
> 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
>
> (2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;"

However, Sections 108(B)(2) and (3) of the 1997 NIRC, as amended must be read in relation to Section 113 of the same Code and Section 4.108-1 of Revenue Regulations No. 7-95, which prescribe that a VAT-registered person like petitioner, shall for every sale, issue an invoice or receipt which must contain specifically required information. The afore-cited provisions are quoted hereunder for ready reference, 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**." (*Emphasis supplied*)
>
> "**SECTION 4.108-1. Invoicing Requirements — All VAT-registered persons shall, for every sale** or lease of goods or properties or services,

463

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**.

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." (*Emphasis supplied*)

While the foregoing law and regulations appear to make no distinction as to the evidentiary value of an invoice or official receipt; however, the same must be taken together with Sections 106(A) and (D), as well as Sections 108(A) and (C) of the 1997 NIRC, as amended, which provide for the manner of determining the output VAT due on the sale of goods or properties and sale of services, respectively. The above-cited provisions are hereby 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

(D) Determination of the Tax. –

464

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

From the foregoing, in the case of sale of goods or properties, a ten percent (10%) VAT is imposed upon the ***gross selling price.*** And this is defined under Section 106(A)(1) 2nd paragraph of the 1997 NIRC, 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."

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 thereof was actually received. It is for this reason that the afore-cited Section 106(D) of the 1997 NIRC, as amended, 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, in the case of sale of services, the 10% VAT is computed based on ***gross receipts*** pursuant to Section 108(A) of the 1997 NIRC, as quoted hereunder:

> "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." (*Emphasis supplied*)

The term "gross receipts" is defined under Section 108(A) of the 1997 NIRC, 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."

Plainly, from the foregoing, the VAT on the sale of services accrues upon ***actual or constructive receipt of the consideration*** irrespective of whether or not the service has

4165

been rendered. In addition to this, Section 108(C) of the 1997 NIRC, as amended, 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.

In other words, the VAT law and regulations require that ***sales invoices*** must support the ***sale of goods or properties*** whereas ***official receipts*** must substantiate the ***sale of services***. It is further required that invoices and official receipts must contain all the necessary information such as the taxpayer's TIN, the BIR authority to print or BIR permit number, and the imprinted word "zero-rated" in the case of zero-rated sales transactions.

The invoicing requirements under Section 113 of the NIRC of 1997 and RR 7-95 are mandatory because of the use of the word "shall". It is a well-settled doctrine in statutory construction that the use in a statute of the word "shall", which means "ought to" or "must", expresses what is mandatory. In common parlance and in its ordinary signification, the term "shall" is a word of command, and one which has or which must be given compulsory meaning, and it is generally imperative or mandatory.[27]

In order to be entitled to the instant claim, petitioner must show proof of compliance with the substantiation requirements as mandated by law and regulations. Revenue Memorandum Circular No. 42-2003 clarified the issue relative to the result of failure of a claimant to comply with certain invoicing requirements. Under said RMC, failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input VAT by the purchaser-claimant. Thus, if the claim for refund/issuance of tax credit certificate is based on the existence of zero-rated sales by the taxpayer but said taxpayer fails to comply with the invoicing requirements in the issuance of sales invoice the claim for tax credit/ refund of VAT on its purchases shall be denied.

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[27] Statutory Construction by Ruben Agpalo, 3rd Edition 1995, p. 262.

466

Considering that the subject revenues pertain to gross receipts from services rendered by petitioner, valid official receipts and not mere sales invoices should have been submitted in support thereof. Without proper VAT official receipts, the foreign currency payments received by petitioner from services rendered for the four (4) quarters of taxable year 2003 in the sum of US$1,191,064.44 with the peso equivalent of P64,247,197.47 cannot qualify for zero-rating for VAT purposes. Consequently, the claimed input VAT payments allegedly attributable thereto in the amount of P3,003,265.14 cannot be granted. It is clear from the provisions of Section 112(A) of the 1997 NIRC, as amended, that there must be zero-rated sales or effectively zero-rated sales in order for a refund claim of input VAT could prosper.

Noteworthy is the legal principle that a claim for tax refund is in the nature of tax exemption. Laws granting tax exemption are construed *stricticissimi juris* against the taxpayer and liberally in favor of the taxing authority. Taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and he who thus seeks to be privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted[28]. Petitioner has a burden of proof to establish the factual basis of its claim for tax refund. This, the petitioner failed to do.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

[28] Sea-Land Services, Inc. vs. Court of Appeals, 223 SCRA 316.

467

WE CONCUR:

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

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
Chairperson, First Division

408

REPUBLIC OF THE PHILIPPINES
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AT&T COMMUNICATIONS SERVICES PHILIPPINES, INC., *Petitioner,*	**CTA CASE No. 7221**
	Members:
- versus -	**ACOSTA,** ***Chairman*** **BAUTISTA, CASANOVA,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: DEC 12 2007, 2:17 pm

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DISSENTING OPINION

It is with due respect to my esteemed colleagues that I express my dissent as regards the finding that without official receipts, the foreign currency payments received by petitioner for services rendered it during the four quarters of 2003 in the amount of US$1,191,064.44 (₱64,247,197.48) cannot qualify for zero-rating under Section 108 (B)(2) and (3) of the National Internal Revenue Code.

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.

A reading of the pertinent provisions of the NIRC, namely ***Sections 113 and 237*** disclose that invoices can be validly used interchangeably with official receipts. These provisions read:

> ***"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*
>
> ***"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*

Under ***Section 237***, 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, a VAT-registered person is mandated to ***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

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470

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 connote 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. The claimant may therefore present either an invoice or a receipt and it should not have any negative repercussion on its claim.

Section 112 (A) of the same code also lends statutory corroboration to my opinion that failure to submit official receipts should not automatically result in the denial of the claim for refund. The language of this provision 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 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.

In ***Commissioner of Internal Revenue vs. Manila Mining Corporation***,[1] the Supreme Court defined an invoice and a receipt as:

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[1] *G.R. No. 153204. August 31, 2005.*

471

> "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.
>
> "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.

And held that:

> "For a judicial claim for refund to prosper, however, respondent (claimant) must not only prove that it is a VAT registered entity and that it filed its claims within the prescriptive period. It must also ***substantiate*** the input VAT paid by purchase ***invoices or official receipts***."

It should be noted that the Supreme Court made no differentiation between an invoice and an official receipt. It held that the Manila Mining's sale of goods, in that case, gold in particular, to the Central Bank, as export sales, may be substantiated by either an invoice or an official receipt. According to the Supreme Court these ***sales invoices or receipts*** issued by the supplier are necessary to substantiate the actual amount or quantity of goods sold and their selling price, taken collectively are the best means to prove the input VAT payments. It was only unfortunate that in the Manila Mining case, neither sales invoice nor official receipts was submitted to the Court.

In the landmark case of ***Commissioner of Internal Revenue vs. Seagate Technology (Philippines),***[2] the Supreme Court stressed the need to focus only on the legally mandated requirements for claims for VAT refund and explained that, *A VAT-registered status, as well as compliance with the invoicing requirements (Section 113 (A) of the Tax Code), is sufficient for the effective zero rating of the transactions of a*

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[2] *G.R. No. 153866, February 11, 2005*

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472

taxpayer. The nature of its business and transactions can easily be perused from, as already clearly indicated in, its VAT registration papers and photocopied documents attached thereto.

The Court must therefore, 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 pertinent laws, as well as jurisprudence, 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.

As found by the majority, petitioner presented various documents to prove its reported 2003 zero-rated sales of services in the amount of ₱64,247,197,47, such as its Summary of zero-rated sales for the taxable period ended December 31, 2003[3]; sales invoices with stamped "zero-rated" and bank credit advices[4]; Service Agreement with AT&T Communications Services International, Inc. (AT&T-CSI)[5]; Certificate of Authentication with attached Assignment Agreement with AT&T Solutions, Inc. (AT&T-SI)[6]; Letter of Assignment to AT&T Communications Philippines, Inc.[7]; and the report of the commissioned Independent Certified Public Accountant (ICPA) dated June 13, 2006[8].

All these documents prove that the amount ₱64,247,197.47 consisted of sales of services to non-resident foreign corporations, as well as to PEZA-registered enterprises, which were paid for in US Dollars in the amount of $1,191,064.44 and were accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas. Therefore, these sales of services fall within the transactions referred to as subject to zero-percent (0%) VAT under Sections 108 (B)(2) and (3) of the NIRC.

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[3] Exhibit "AA"
[4] Exhibit "AA-1" and "AA-42-a"
[5] Exhibit "T"
[6] Exhibit "U"
[7] Exhibit "V"
[8] Exhibit "Z"

473

Accordingly, the denial of the instant claim for the sole reason that invoices and not official receipts were presented to substantiate the same has no basis in law.

ERNESTO D. ACOSTA
Presiding Justice