REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NIPPON EXPRESS (PHILIPPINES) CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB NO. 492
(C.T.A. Case No. 7429)

Present:

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

Promulgated:

DEC 15 2009 9:00 a.m.

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D E C I S I O N

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review[1] filed by Nippon Express (Philippines) Corporation on June 10, 2009 pursuant to paragraph 2, Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282 and Rule 8, Section

[1] *Rollo*, C.T.A. EB No. 492 (C.T.A. Case No. 7429), pp. 32-88, with Annexes.

3(b) of the Revised Rules of the Court of Tax Appeals, praying for the Court *En Banc* to:

1. GIVE due course to the instant Petition;
2. SET ASIDE the Decision[2] promulgated on December 5, 2008 and the Resolution promulgated on May 5, 2009 of the Honorable CTA - Second Division ("Court in Division"); and accordingly,
3. RENDER judgment granting petitioner's claim for tax credit in the amount [of] Twenty-Seven Million Eight Hundred Twenty Eight Thousand Seven Hundred Forty Six and 95/100 Pesos (₱27,828,746.95), representing the excess or unused input tax attributable to petitioner's zero-rated sales for the taxable year 2004 and correspondingly,
4. ORDER the issuance of a tax credit certificate for the above amount in favor of the petitioner.
5. In the alternative, ALLOW petitioner to present its official receipts as additional evidence to support its claim for refund.

Antecedent Facts

The relevant antecedents are succinctly recited in the Decision subject of the review as follows:

THE PARTIES

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines. It is registered with the Securities and Exchange Commission under Certificate of Registration No. AS095-005669. Its principal office is at U-2701 Yuchengco Tower, RCBC Plaza,

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[2] Penned by Associate Justice Olga Palanca-Enriquez, with Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy, concurring.

6819 Ayala Avenue, Salcedo Village, Makati City. It is registered with the Large Taxpayer District Office (LTDO) of the Bureau of Internal Revenue, Revenue Region No. 8 (Makati) as a VAT taxpayer.

Respondent Commissioner of Internal Revenue, on the other hand, is the duly appointed government officer vested with the power to decide, approve, and grant refunds or tax credits of overpaid internal revenue taxes as provided by law.

THE FACTS

In their "Joint Stipulation of Facts and Issues", the parties stipulated, as follows:

> "4. Petitioner filed an administrative claim for tax credit of the excess/unused Php27,828,748.95 input taxes attributable to its zero-rated sales with the LTDO, Revenue District No. 8 (Makati City) on 30 March 2005.
>
> 5. Petitioner filed its VAT returns for the first, second, third and fourth quarters of taxable year 2004, as follows:

Return Period	Reference	Filing Date	Tax Type	Form Type
1st Qtr 2005	100400000141952	04-25-2005	VT	2550-Q
1st Qtr 2004	100400000141952	04-26-2004	VT	2550
1st Qtr 2004 (Amended)	100100000149393	05-22-2004	VT	2550
2nd Qtr 2004	100400000178789	07-26-2004	VT	2550
2nd Qtr 2004 (Amended)	100500000720555	10-07-2005	VT	2550
3rd Qtr 2004	100400000273031	10-25-2004	VT	2550
4th Qtr 2004	100500000378693	01-24-2005	VT	2550
4th Qtr 2004 (Amended)	100500000380955	01-22-2005	VT	2550

> 6. Respondent has not yet resolved Petitioner's administrative claim for refund filed on March 30, 2006."

In her Answer, respondent alleged by way of 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 claimed refund or tax credit in the amount of **P27,828,746.95**, as alleged excess VAT input tax paid on its domestic purchases of goods and services attributable to its zero-rated sales, for the four quarters of taxable year 2004 were not fully substantiated by proper documents.

7. Petitioner failed to comply with the substantiation requirements under Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.

8. 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.

9. Petitioner's sales of services to Philippine Economic Zone Authority (PEZA) registered enterprises do not qualify as zero-rate VAT.

10. 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 Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

11. Claims for refund are construed strictly against the claimant for the same partakes 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)***.

Petitioner presented Normita L. Villaruz, the Managing Partner of Villaruz, Villaruz & Co., the Court-Commissioned Independent Certified Public Accountant (ICPA); and Virgincita B. Alapan, its Assistant Finance Manager, as witnesses; and documentary evidence marked as *Exhibits "A" to "V"*, inclusive of their submarkings, which were admitted by the Court in the Resolutions dated August 7, 2007 and January 28, 2008.

On the other hand, respondent submitted the case for decision without presenting any evidence. Thereafter, both parties were granted thirty (30) days from May 14, 2008 to file their simultaneous memoranda. Upon motion of petitioner, petitioner was granted an extension of fifteen (15) days from June 13, 2008 or until June 28, 2008 to file its memorandum in a Resolution dated June 17, 2008.

On June 30, 2008, petitioner filed its "Memorandum for the Petitioner".

On July 3, 2008, for failure of respondent to file her memorandum, the case was deemed submitted for decision.[3]

The Ruling of the Court in Division

The following issues were stipulated by the parties for resolution by the Court in Division:

I

WHETHER OR NOT PETITIONER'S ALLEGED SALES OF SERVICES TO VARIOUS PHILIPPINE ECONOMIC ZONE (PEZA) REGISTERED ENTERPRISES ARE ZERO-RATED FOR VAT PURPOSES UNDER SECTION 108(B)(2)(3) OF THE 1997 TAX CODE.

II

WHETHER OR NOT PETITIONER'S CLAIM FOR REFUND/TAX CREDIT IN THE AMOUNT OF PHP27,828,746.95, AS ALLEGED EXCESS CREDITABLE INPUT VAT PAID ON ITS DOMESTIC PURCHASES OF TAXABLE GOODS AND SERVICES ATTRIBUTABLE TO ITS ZERO-RATED SALES, FOR THE FOUR (4) QUARTERS OF TAXABLE YEAR 2004 WERE DULY SUBSTANTIATED BY PROPER INVOICES OR RECEIPTS, IN ACCORDANCE WITH THE TAX CODE.

III

WHETHER OR NOT THE AMOUNT OF PHP27,828,746.95, BEING CLAIMED BY PETITIONER AS ALLEGED EXCESS CREDITABLE INPUT VAT PAID ON ITS DOMESTIC PURCHASES OF TAXABLE GOODS AND SERVICES, ARE ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE FOUR (4) QUARTERS OF TAXABLE YEAR 2004.

IV

WHETHER OR NOT PETITIONER HAS CARRIED OVER TO THE SUCCEEDING TAXABLE QUARTERS/YEARS THE ALLEGED EXCESS CREDITABLE INPUT VAT PAID ON ITS DOMESTIC PURCHASES OF TAXABLE GOODS AND SERVICES ATTRIBUTABLE TO ITS ZERO-

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[3] *Rollo*, pp. 64-66.

RATED SALES, FOR THE FOUR (4) QUARTERS OF TAXABLE YEAR 2004 AND APPLIED THE SAME TO ITS OUTPUT VAT LIABILITY FOR THE SAID PERIOD.

V

WHETHER OR NOT PETITIONER IS ENTITLED TO THE CLAIMED REFUND IN THE AMOUNT OF PHP27,828,746.95, AS ALLEGED EXCESS CREDITABLE INPUT VAT PAID ON ITS DOMESTIC PURCHASES OF TAXABLE GOODS AND SERVICES ATTRIBUTABLE TO ITS ZERO-RATED SALES, FOR THE FOUR (4) QUARTERS OF TAXABLE YEAR 2004.[4]

The Court in Division integrated the preceding issues into the principal issue of whether or not petitioner is entitled to a refund or issuance of a tax credit certificate in the amount of ₱27,828,746.95, representing unutilized input VAT attributable to its zero-rated sales for taxable year 2004.

It ruled that pursuant for Section 108 (B)(2) and (3) of the National Internal Revenue Code ("NIRC") of 1997, as amended, and Section 3(3) of Revenue Memorandum Circular ("RMC") No. 74-99 dated October 15, 1999, petitioner's alleged sales in the total amount of P1,079,734,740.46 derived from freight forwarding services rendered to PEZA-registered entities are subject to 0% VAT. Consequently, petitioner is not liable to pay any output VAT thereon, and the reported unutilized input VAT attributable thereto may be the proper subject of a claim for refund or issuance of a tax credit certificate, under Section 112 (A) of the NIRC of 1997, as amended.

It emphasized, however, that Section 108 of the NIRC of 1997, as amended, should be read in conjunction with Sections 113 and 237 of the same Code, which provide the invoicing and accounting requirements for VAT-registered persons. It

[4] *Rollo*, pp. 66-68.

stressed that the invoicing requirements not only pertain to the documents required to prove input taxes, but also requires the presentation of proper documents to prove the existence and/or non-existence of output taxes.

Upon evaluation of petitioner's evidence, the Court in Division found that the documents supporting petitioner's zero-rated sales consisted of documents, other than official receipts. In denying the claim, it ruled that petitioner being engaged in the sale of services, should produce official receipts to prove the alleged zero-rated sales of services to PEZA-registered entities. It held that the distinction in the substantiation requirements between the sale of goods and services are expressly provided under Section 11 of Republic Act No. 9337[5], amending Section 113 of the NIRC of 1997, as amended. The provision expressly provides for the invoicing requirements of VAT-registered person to issue a VAT invoice for every sale, barter or exchange of goods or properties, and a VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services. Withal, the payments received by petitioner for providing services to PEZA-registered entities cannot qualify for zero-rating for VAT purposes.

Accordingly, the Court in Division disposed of the case as follows:

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

Aggrieved, petitioner filed a "Motion for Reconsideration" on December 24, 2009 and a "Supplemental Motion for Reconsideration/New Trial" on February 10,

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[5] An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as amended, and for other purposes.

2009, which were denied for lack of merit by the Court in Division in its Resolution promulgated on May 5, 2009.

The Issues

Hence, the instant Petition for Review filed on June 10, 2009, where petitioner alleges the following:

a. The Honorable CTA - Second Division erred in finding that the sales invoices and their supporting documents issued by the Petitioner to its PEZA-registered entities and other foreign clients are not sufficient to prove its alleged zero-rated sales and hence, not entitled to a refund of input taxes.

b. The Honorable CTA - Second Division erred in finding that Petitioner's Supplemental Motion for Reconsideration/New Trial has no merit.[6]

Petitioner's Arguments

Petitioner asseverates that it has fully complied with the invoicing requirements and that the sales invoices presented and duly admitted by the Court in Division have fully complied with the tax laws and regulations. It contends that nothing in the tax laws and its regulations require that sale of goods or properties should be supported by sales invoices only or that sale of services should be supported by official receipts only. There is no statutory provision which states that sale of goods which is not supported by an invoice or sale of services which is not supported by an official receipt is ineffectual or is not valid.

Petitioner also asserts that the 1997 NIRC, its implementing Regulations and jurisprudence allow other documentary evidence such as audited financial

[6] *Rollo*, p. 40.

statements, books of accounts, summary of export sales, airway bills, export declarations, to prove zero-rated sales. Hence, petitioner's VAT returns, sales invoices, transfer slips and credit memos and other related schedules and reports, including the formal report issued by the Independent Certified Public Accountant, are sufficient to prove the zero-rated sales it made for the year 2004.

Petitioner likewise submits that the amendment introduced by Republic Act ("RA") No. 9337 to the 1997 NIRC, which requires the issuance of sales invoice for every sale of goods and the issuance of official receipt for every sale of services cannot be given retroactive effect to its prejudice. RA No. 9337 became effective only on November 1, 2005, thus, the amendment of the "invoicing requirements" is not applicable to its sales from January 1 to December 31, 2004.

Lastly, petitioner argues that even assuming for the sake of argument that the Court in Division is correct, petitioner should at least be allowed to introduce its existing official receipts to support its zero-rated sales, in the interest of justice and equity.

Respondent's Counter-arguments

For his part, respondent points out that although Sections 113 and 237 of the 1997 NIRC use the words "invoice" and "receipt" without distinction, nevertheless, there are separate provisions which must be read in relation thereto: Section 106 for VAT on sale of goods or properties, and Section 108 for VAT on sales of services and use or lease of properties. Thus, he avers that clearly, an official receipt cannot be interchanged with a sales invoice.

Respondent also posits that the use of official receipt as proof of sale of services and sales invoice for sale of goods is not only recognized by the 1997 NIRC prior to its amendment, but is even clarified in the subsequent law under RA No. 9337.

The Ruling of the Court En Banc

The Petition for Review has no merit.

The first and fundamental duty of the courts is the application of the law according to its express terms; construction and interpretation being called for only when such literal application is impossible or inadequate without them.[7]

Petitioner founded its claim on Sections 108 (B)(2) and (3) in relation to Section 112 (A) of the 1997 NIRC, as amended, and on Section 3 of Revenue Memorandum Circular (RMC) No. 74-99, scilicet:

> **SEC. 108.** *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
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> xxx xxx xxx
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> (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:
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> xxx xxx 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);
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> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the

[7] Lizarraga Hermanos v. Yap Tico, March 27, 1913, 24 Phil. 504. See Pacific Oxygen & Acetylene Co. v. Central Bank of the Philippines, No. L-21881, March 1, 1968, 22 SCRA 917.

Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;

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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 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 volume of sales.

SEC. 3. *Tax Treatment of Sales Made by a VAT Registered Supplier from the Customs Territory, to a PEZA Registered Enterprise.* –

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6. In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to ART. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the "Cross Border Doctrine" of the VAT system.

This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of the issuance of this Circular.

Corollary thereto, Section 113 (A) in relation to Section 237 of the NIRC of 1997, as amended, and Section 4.108-1 of Revenue Regulations No. 7-95, provide:

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.

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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: Provided, however, That in the case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or 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 Identification Number (TIN) of the purchaser.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to an internal revenue tax from compliance with the provisions of this Section.

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:

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.

Hence, for petitioner's claim for issuance of tax credit certificate to prosper, it must substantiate its claim arising from its unutilized input VAT attributed to its zero rated sales by sales invoices or official receipts, as the case may be. This, petitioner failed to do.

From the afore-quoted provisions, the law requires the issuance of either an invoice or receipt for every sale by a VAT-registered person. The invoice or receipt shall contain the information required under Sections 113 and 237 of the NIRC of 1997, as amended. The use of the disjunctive word *"or"* in the aforementioned sections is to express an alternative or a choice.[8] However, it must not be interpreted as giving a taxpayer an unconfined choice to select between issuing an invoice or an official receipt in contrast to the other provisions of the law. While the words "invoice" and "receipt" are used without distinction, it is noteworthy that the NIRC of 1997, as amended, provides separate provisions for the VAT on sale of goods or properties (Section 106) and for the VAT on sale of services and use or lease of properties (Section 108).

For the sale of goods or properties, the VAT is imposed upon the gross selling price which means that the VAT on the sale of goods or properties accrues upon the consummation of sale, whether or not the consideration was actually received already by the seller. It is for this reason that Section 106 (D) (1) provides that the tax shall be computed by multiplying the total amount indicated in the invoice by one-eleventh (1/11), 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

[8] Black's Law Dictionary, 6th Edition, 1990, page 1095.

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). *(Boldfacing supplied)*

On the other hand, in the case of sale of services, as in the instant case, the VAT is computed based on gross receipts as indicated under Section 108 (A). Therefore, the VAT on the sale of services accrues upon actual or constructive receipt of the consideration, whether or not the service has been rendered. Furthermore, Section 108 (C) of the same Code 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);[9] thus:

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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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.

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[9] Jideco Manufacturing Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. EB No. 53 (CTA Case No. 6552), June 7, 2005.

> (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). *(Boldfacing supplied)*

In other words, in the computation of the output tax on the sale of goods or properties, the basis would be the amount appearing in the invoice, while in the computation of the output tax on sale of services, the basis would be the amount appearing in the official receipts.[10] Irrefragably, sales invoices must support sales of goods or properties while official receipts must support sales of services. It is well to note that the afore-quoted provisions do not provide for any document that can be used as an alternative to, or in lieu of, an invoice and official receipt. In addition, said provisions were already in effect prior to Republic Act No. 9337.

Considering that in a claim for issuance of a tax credit certificate attributable to zero-rated sales, what is to be closely scrutinized is its documentary substantiation, and since petitioner has not established by sufficient evidence its entitlement thereto in accordance with the foregoing requirements, then its claim should be denied. The sales invoices and other commercial documents were not sufficient documentary proofs in lieu of what is mandated in the NIRC of 1997, as amended.

The majority of the Court *En Banc* explained the rationale for requiring the presentation of official receipts in sales of services, thus:

> **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

[10] AT&T Communications Services Phil., Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 6907, February 23, 2007.

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 (R.A.) No. 9337. In fact, during the Senate deliberation of Senate Bill No. 1950 which later on became R.A. 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.

Clearly, official receipt cannot be interchanged with sales invoice. Accordingly, the requirement of issuing a duly registered VAT official receipt with the imprinted word "zero-rated" is mandatory under the law and cannot be substituted especially for input VAT refund purposes.

> **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.**[11] *(Boldfacing supplied)*

As for petitioner's alternative prayer that it be allowed to introduce official receipts in a proceeding called for such purpose if only to prove the existence of its zero-rated sales in addition to the evidence already introduced before the Court in Division, the same cannot be granted.

The Court in Division had succinctly stressed that petitioner's Motion for Reconsideration/New Trial was not appropriate as its plea does not fall under any of the prescribed grounds for new trial since the non-presentation of the required documentary evidence does not constitute excusable negligence or mistake, as contemplated in the rules. Furthermore, this is not the first case which petitioner brought before the Court and the Court had consistently ruled that the non-presentation of the official receipts to prove alleged zero-rated sales of services to its clients which are PEZA-registered entities are fatal to its claim for refund.

Litigation is not a "trial and error" proceeding. To allow a party to submit such evidence which could have been offered with the exercise of due diligence goes against the orderly administration of justice; more so when a decision has already been rendered.[12] Otherwise, all that a losing party would do to salvage his case would be to invoke neglect or mistake as a ground for reversing or setting aside the adverse judgment, thereby putting no end to litigation.

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[11] AT & T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 381 (C.T.A. Case No. 7221), September 24, 2008. Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez concurring and Presiding Justice Ernesto D. Acosta dissenting.

[12] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 159490, February 18, 2008, 546 SCRA 150.

In fine, no reversible error was committed by the Court in Division in its assailed Decision in holding that petitioner's claimed input VAT payments in the amount of ₱27,828,746.95, allegedly attributable to its sales of services for taxable year 2004 cannot be refunded. After all, it has been the consistent holding, in this jurisdiction, that tax refunds partake the nature of tax exemptions. As such, they are regarded as a derogation of sovereign authority and is to be construed in *strictissimi juris* against the person or entity claiming the exemption.[13] In an action for refund, therefore, the burden of proof is upon the claimant to establish a right to refund. Claimant's failure to discharge its burden will result in the denial of the claim for refund.

WHEREFORE, the Petition for Review is **DISMISSED.** Accordingly, the impugned Decision of the Court in Division dated December 5, 2008 and its Resolution promulgated on May 5, 2009 in C.T.A. Case No. 7429 are **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

[13] Far East Bank and Trust Company v. Commissioner of Internal Revenue, G.R. No. 138919, 488 SCRA 473, May 2, 2006.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice