REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

DOHLE SHIPMANAGEMENT PHILS. CORP., Petitioner,	**CTA CASE NO. 8960**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 22 2017 9:22 Am

x - x

RESOLUTION

CASTAÑEDA, JR., *J*.:

For the Court's resolution is respondent's **Motion for Partial Reconsideration**, filed through registered mail on January 6, 2017 and received by the Court on January 25, 2017, with petitioner's **Comment (on Respondent's Motion for Partial Reconsideration)**, filed on February 23, 2017.

Respondent moves for the reconsideration of the Decision promulgated on December 16, 2016 (assailed Decision), the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱7,196,472.58** representing unutilized excess input VAT attributable to

petitioner's zero-rated sales/receipts for the four quarters of calendar year 2012.

SO ORDERED."

Respondent seeks to reconsider and set aside the assailed Decision insofar as it partially granted petitioner's claim for input Value-Added Tax (VAT) in the reduced amount of ₱7,196,472.58, based on the following grounds:

1. Petitioner's invoices and official receipts in support of its claimed unutilized input VAT, wherein this Court granted the amount of ₱7,196,472.58, representing its unutilized excess input VAT attributable to its zero-rated sales/receipts for the four quarters of calendar year (CY) 2012, failed to comply with the mandatory invoicing requirements under Section 113(A) (B) of the 1997 National Internal Revenue Code (NIRC), in relation to Section 237 of the same Code and as implemented under Sections 4.110-8 and 4.113-1 of Revenue Regulations (RR) No. 16-05 and Revenue Memorandum Circular (RMC) No. 42-2003;

2. Petitioner's documentary exhibits [i.e. invoices and official receipts, certifications of inward remittances issued by Rizal Commercial Banking Corporation and Metropolitan Bank and Trust Company and Securities and Exchange Commission (SEC) Certificate of Non-Registration of Company] which are presented in court as evidence to support its judicial claim for input VAT refund are hearsay evidence, hence, these documents have no probative value; and

3. Petitioner's claim for refund is strictly construed against it for the same partakes the nature of tax exemption.

On the other hand, petitioner states that respondent's motion is pro-forma and does not merit any consideration. Petitioner alleges that respondent's sweeping statement that its invoices and receipts failed to comply with the invoicing requirements under the law and the regulations is hardly specific. It claims that its evidence clearly established that the input taxes incurred or paid by it for the period January to December 2012 are duly substantiated and supported by official receipts and/or invoices. Petitioner further argues that its witnesses duly identified its documentary evidence. It further asserts that the issuance of the documents was clearly within the personal knowledge of petitioner's witnesses. Thus, petitioner's evidence cannot be considered hearsay evidence. Petitioner also points out that its voluminous documentary evidence was duly presented under Rule 13 of the rules of this Court on the appointment of an Independent Certified Public Accountant (ICPA) and his examination of documents. The report of the ICPA was then duly presented to and considered by this Court.

Respondent's Motion has no merit.

At the outset, it must be noted that the foregoing issues are mostly mere reiteration of the issues and arguments previously set forth in respondent's Memorandum[1] filed before this Court, and which the latter had already considered, weighed, and resolved before it rendered the assailed Decision now sought to be reconsidered. Nevertheless, the Court will discuss the same for emphasis.

Respondent contends that in claim for VAT refund, the law requires strict compliance with the substantiation requirements not only for input taxes but also for output taxes especially in instances where the claim is based on zero-rated sales or exemptions, as this will determine the creditable or unutilized input taxes that are available for refund. And in ascertaining proper compliance with the invoicing and substantiation requirements of the 1997 Tax Code, it is important that the provisions of Sections 113(A) (B) and 237 of the 1997 NIRC, in relation to Sections 4.110-1, 4.110-8 and 4.113 of RR No. 16-05 be considered.

Respondent argues, among others, that the invoices and official receipts do not indicate in full the required information, more specifically the following: (a) the term "zero-rated sale" was not clearly written or printed prominently on the said invoices or official receipts; (b) the said invoices or official receipts do not clearly indicate the breakdown of the sale price between its taxable and zero-rated components; (c) the name, business style, address and Tax Identification Number (TIN) of its purchaser, customer or client were not clearly indicated in the said invoices or official receipts in

[1] Docket, Vol. II, pp. 740-747.

blatant violation of the mandatory invoicing requirements provided under the law and relevant rules and regulations.

It is worthy to note that the Court had already scrutinized and examined petitioner's relevant supporting documents such as invoices and official receipts vis-à-vis its compliance with the mandatory invoicing requirements laid down under Section 113(A) (B) in relation to Section 237 of the 1997 NIRC, as implemented under Sections 4.110-8 and 4.113-1 of RR No. 16-05, as follows:

> "In relation to the second requisite, Sections 113(A)(2), (B)(1), (2)(c) and (3) of the 1997 NIRC, as implemented by Sections 4.113-1(A)(2), B(1) and (2)(c) of Revenue Regulations (RR) No. 16-05, as amended, provide that a VAT taxpayer, like herein petitioner, shall for every lease of goods or properties and for every sale, barter or exchange of services, issue a VAT official receipt which must contain the following information:
>
> > 'SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* —
> >
> > (A) *Invoicing Requirements.* — A VAT-registered person shall issue:
> >
> > xxx xxx xxx
> >
> > (2) A **VAT official receipt** for every lease of goods or properties, and **for every sale, barter or exchange of services.**
> >
> > (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:
> >
> > (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
> >
> > (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: *Provided,* That:

xxx xxx xxx

(c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;

xxx xxx xxx

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and' (*Emphasis supplied*)

'SECTION. 4.113-1. *Invoicing Requirements.* —

(A) A VAT-registered person shall issue: —

xxx xxx xxx

(2) A **VAT official receipt** for every lease of goods or properties, and **for every sale, barter or exchange of services.**

Only VAT-registered persons are required to print their **TIN followed by the word 'VAT' in their invoice or official receipts.** Said documents shall be considered as a 'VAT Invoice' or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official 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.

(B) ***Information contained in VAT invoice or VAT official receipt.*** — The following information shall be indicated in VAT invoice or VAT official receipt: *gr*

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; Provided, That:

xxx xxx xxx

(c) If the sale is subject to zero percent (0%) VAT, the term '**zero-rated sale**' shall be written or printed prominently on the invoice or receipt;' (*Emphasis supplied*)

Pursuant to the foregoing provisions, the foreign currency remittances referred to under Section 108(B)(2) of the 1997 NIRC must likewise be supported by VAT zero-rated official receipts.

For services rendered to DIOM for the four quarters of CY 2012, petitioner received US dollar payments with peso equivalent of ₱225,805,159.32 as evidenced by the various sales invoices and VAT zero-rated official receipts issued by petitioner to DIOM, and by bank certifications of inward remittances issued by Rizal Commercial Banking Corporation (RCBC) and Metropolitan Bank & Trust Company (Metrobank) xxx.

xxx xxx xxx

However, the Court noted that part of the revenues for the month of December included courier charges, salaries, and travel expenses in the total amount of ₱501,912.61 for which petitioner failed to submit the corresponding invoices, VAT zero-rated official receipts, and proof of inward remittance. Hence, the same shall be denied VAT zero-rating.

Accordingly, out of the total amount of ₱225,805,159.32 sales/receipts derived by petitioner from services rendered to DIOM in CY 2012 per the above schedule, only the amount of ₱225,303,246.71 qualifies for VAT zero-rating under Section 108(B)(2) of the 1997 NIRC xxx

xxx xxx xxx

> After resolving that petitioner had VAT zero-rated sales/receipts for the four quarters of CY 2012 in the total amount of ₱225,303,246.71, the Court shall proceed to determine whether petitioner incurred or paid input taxes in connection thereto and if said input taxes were not applied against any output VAT liability of petitioner.
>
> xxx xxx xxx
>
> After careful scrutiny of the Independent CPA Report and petitioner's supporting documents, the Court finds that out of the ₱1,021,342.21 input VAT claim on domestic purchases of goods other than capital goods and ₱10,140,132.96 input VAT claim on domestic purchases of services totaling ₱11,161,475.17, the amount of ₱1,094,126.24 should be disallowed for not being properly substantiated by VAT invoices or receipts as prescribed under Sections 110(A) and 113(A) and (B) of the 1997, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of Revenue Regulations No. 16-05, as amended. xxx
>
> xxx xxx xxx."

Indeed, the Court, upon examination of relevant supporting documents found out that petitioner was able to prove its entitlement to the claim for refund or issuance of tax credit certificate (TCC) for its unutilized excess input taxes attributable to its zero-rated sales for the four quarters of CY 2012 in the reduced amount of ₱7,196,472.58.

Respondent also asserts that petitioner's documentary exhibits should not have been given probative value for being hearsay evidence pursuant to Section 36, Rule 130 of the Rules of Court. He claims that petitioner's witnesses have no personal knowledge on the issuance of its documentary exhibits such as VAT invoices and official receipts, certifications of inward remittances issued by Rizal Commercial Banking Corporation and Metropolitan Bank and Trust Company and SEC Certificate of Non-Registration of Company, which were prepared by another person other than the witnesses presented by petitioner. As such, there is a need for petitioner to present the signatory of those documents, or any person who had a hand in the preparation thereof. Thus, any other attempt on the part of petitioner to pass as absolute truth the contents of the said records are considered hearsay evidence.

This argument, however, is bereft of merit.

In the case of *AT&T Communications Services Philippines Inc. vs. Commissioner of Internal Revenue*[2], the Supreme Court ruled that sales invoices have probative value, as follows:

> "Sales invoices are recognized commercial documents to facilitate trade or credit transactions. They are proofs that a business transaction has been concluded, hence, should not be considered bereft of probative value. xxx"

Further, in the case of *Seaoil Petroleum Corporation vs. Autocorp Group and Rodriguez*[3], the Supreme Court recognized the probative value of invoices and other commercial documents, as follows:

> "xxx A sales invoice is a commercial document. Commercial documents or papers are those used by merchants or businessmen to promote or facilitate trade or credit transactions. Business forms, *e.g.,* order slip, delivery charge invoice and the like, are commonly recognized in ordinary commercial transactions as valid between the parties and, at the very least, they serve as an acknowledgment that a business transaction has in fact transpired. These documents are not mere scraps of paper bereft of probative value, but vital pieces of evidence of commercial transactions. They are written memorials of the details of the consummation of contracts."

Thus, there is no merit on respondent's contention that sales invoices, official receipts, and the like have no probative value. They are in fact recognized in ordinary commercial transactions and should not be considered bereft of probative value. *fr*

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[2] G.R. No. 182364, August 3, 2010.
[3] G.R. No. 164326, October 17, 2008.

SO ORDERED.

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

I CONCUR:

CAESAR A. CASANOVA
Associate Justice

Furthermore, the Court notes that it was only in the instant motion that respondent raised the allegation that petitioner's documentary exhibits are hearsay evidence. Respondent did not raise the said allegation during the presentation of the exhibits and the witnesses who testified on the same.[4] There is likewise nothing in respondent's memorandum which would show that he is questioning the probative value of petitioner's exhibits. Thus, the issue on hearsay evidence appears to be a mere afterthought of respondent in his attempt to obtain a reversal of the ruling in the assailed Decision.

Contrary to respondent's allegation, a perusal of the records shows that the documents alleged by respondent to be hearsay evidence were substantially identified by the Independent Certified Public Accountant, Myra Celeste O. Dabalos, and petitioner's Finance Manager, Mr. Ronaldo C. Avelino. Accordingly, the Court finds respondent's allegation bereft of merit.

The Court recognizes, as it always has, that the burden of proof to establish entitlement to refund is on the claimant taxpayer. Being in the nature of a claim for exemption, refund is construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power. This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim.[5] Consequently, once the requirements laid down under the 1997 NIRC and other pertinent tax laws and regulations have been met, a claimant should be considered successful in discharging its burden of proving its right to refund.

In this case, the Court finds that petitioner has established its claim for tax refund or issuance of TCC in the reduced amount of ₱7,196,472.58, representing its unutilized excess input VAT attributable to its zero-rated sales/receipts for the four quarters of CY 2012. As such, the Court finds no cogent reason to reverse the assailed Decision dated December 16, 2016.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration** is **DENIED** for lack of merit.

[4] Transcript of Stenographic Notes dated June 24, 2015, pp. 3-12.
[5] *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.