REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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TAKENAKA CORPORATION – PHILIPPINE BRANCH,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6886

Members:

ACOSTA, *Chairperson*
BAUTISTA, *and*
CASANOVA, *JJ.*

Promulgated:

NOV 04 2008 ; 1100 pm

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DECISION

BAUTISTA, *J.*:

This instant case seeks the refund or issuance of a tax credit certificate in the total amount of P197,833,899.80, representing petitioner's alleged unutilized and unapplied input value-added tax (VAT) paid on its domestic purchases of goods and/or services directly attributable to its zero-rated sales for taxable year 2002.

Petitioner is a foreign corporation duly organized and existing under the laws of Japan and duly licensed to transact business in the Philippines. It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, evidenced by its Certificate of Registration bearing Taxpayer Identification No. (TIN) 005-301-571-000.[1]

For the purpose of constructing the Ninoy Aquino International Airport Terminal III (NAIA-IPT3), petitioner, as a sub-contractor, entered into an On-shore Construction Contract with the Philippine International Air Terminal Co., Inc. (PIATCO).[2] PIATCO is a corporation

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[1] Pars. 1 and 2, Joint Stipulation of Facts and Issues (JSFI), *Rollo*, p. 149.
[2] Par. 3, JSFI, *Rollo*, p. 149.

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duly organized and existing under the laws of the Philippines and was duly registered with Philippine Economic Zone Authority (PEZA) as an Ecozone Developer/Operator under Republic Act No. 7916 (*An Act Providing for the Legal Framework and Mechanisms for the Creation, Operation, Administration and Coordination of Special Economic Zone in the Philippines Creating for this Purpose the Philippine Economic Zone Authority and for Other Purpose*).[3]

Petitioner filed with the BIR its Quarterly VAT Returns on April 24, 2002, July 22, 2002, October 22, 2002 and January 22, 2003 for the first, second, third, and fourth quarters of taxable year 2002, respectively.[4] Subsequently, petitioner amended several times its Quarterly VAT Returns for the aforesaid quarters. On the respective final amended Quarterly VAT Returns, the following were indicated thereon:

Exh.	Year 2002	Zero-rated Sales/Receipts	Taxable Sales	Output VAT	Input VAT	
					This Quarter	Excess
Q	1st qtr	P 854,160,170.42	P 5,292,340.00	P 529,234.00	P 52,044,766.05	P 51,515,532.05
II	2nd qtr	599,459,273.90			60,588,638.09	60,588,638.09
DDD	3rd qtr	480,168,744.90			55,234,736.15	55,234,736.15
VVV	4th qtr	304,283,710.15			30,494,993.51	30,494,993.51
TOTAL		P2,238,071,899.37	P 5,292,340.00	P 529,234.00	P198,363,133.80	P197,833,899.80

On January 13, 2003, the BIR issued VAT Ruling No. 011-03 which states that the sale of goods and services rendered by petitioner to PIATCO are subject to zero percent (0%) VAT and requires no prior approval for zero rating based on Revenue Memorandum Circular 74-99.[5]

On April 11, 2003, petitioner filed its claim for tax refund covering the aforesaid period before the BIR Revenue District Office No. 51, Pasay City Branch.[6]

Up to this date, the BIR failed to act on the administrative claim for refund or issuance of tax credit certificate.[7] Hence, the instant *Petition for Review* filed on March 10, 2004.

[3] Par. 4, JSFI, *Rollo*, p. 149
[4] Exhibits "M", "DD", "XX", and "QQQ".
[5] Par. 80, JSFI, *Rollo*, p. 166.
[6] Par. 77, JSFI, *Rollo*, p. 166.

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In his *Answer* posted on May 3, 2004, respondent interposed the following Special and Affirmative Defenses:

> "4. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.
>
> 5. Sales of goods, properties or services to PEZA registered enterprises do not qualify as zero-rated (0%) sale.
>
> 6. Well-settled is the rule that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances and rulings that override, instead of remaining consistent and in harmony with the law which they seek to apply and implement (**Philippine Bank of Communications vs. Commissioner of Internal Revenue, G.R. No. 112024, 302 SCRA 241, January 28, 1999**).
>
> 7. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.
>
> 8. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.
>
> 9. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended as well as the requirements provided for in Revenue Regulations No. 5-87 as amended by Revenue Regulations No. 3-88 and Revenue Regulations No. 7-95, as amended.
>
> 10. 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, G.R. No. L-13509, January 30, 1970, 31 SCRA 95)** and as such, they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121**)."

During trial, petitioner presented documentary and testimonial evidence, while respondent failed to present any. On February 18, 2008, the instant case was submitted for decision considering the *Memorandum* and *Supplemental Memorandum* filed by petitioner on January 22, 2007 and February 13, 2008, respectively, without respondent's *Memorandum.*

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[7] Par. 79, JSFI, *Rollo*, p. 166.

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As jointly stipulated by the parties, the issues this Court is tasked to resolve are:

"1. Whether or not the petitioner is entitled to its claim for refund or the issuance of a Tax Credit Certificate (TCC) on its unutilized input tax for taxable year 2002 amounting to P197,833,899.80.

2. Whether or not the petitioner's sales of services to PEZA-registered enterprise qualify as zero-rated sales."

The Court will first resolve the second issue.

Petitioner claims that its sales of services to PEZA-registered enterprises, such as PIATCO, qualify as zero-rated sales, pursuant to Sections 108(B)(3), 110(B) and 112(A) of the National Internal Revenue Code (NIRC) of 1997, Section 3 of Revenue Memorandum Circular No. 74-99[8], and VAT Review Committee Ruling No. 011-2003[9], which are hereunder quoted for easy reference:

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

xxx xxx xxx

(B) Transactions Subject to Zero Percent (0%) Rate. —

xxx xxx xxx

(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;"

"**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

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[8] dated October 15, 1999.
[9] dated January 13, 2003.

the transactions, it shall be allocated proportionately on the basis of the volume of sales."

"**REVENUE MEMORANDUM CIRCULAR NO. 74-99**

Section 3. Tax Treatment Of Sales Made By A VAT Registered Supplier from the Customs Territory, To A PEZA Registered Enterprise. —

xxx xxx xxx

(3) 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."

"**VAT COMMITTEE RULING NO. 11-2003, January 13, 2003**

Therefore, sale of goods and services rendered by Takenaka to PIATCO are subject to the zero percent (0%) VAT and requires no prior approval for zero rating based on RMC 74-99. Accordingly, Takenaka is entitled to refund or the issuance of a tax credit certificate (TCC) covering all its accumulated VAT input taxes in relation to its services rendered to PIATCO and from its purchase of goods and services from duly registered VAT taxpayers, duly supported by a VAT invoice or official receipt conforming with the requirements of Section 113 and 237 of the Tax Code of 1997; provided that the application for refund or issuance of a Tax Credit Certificate (TCC) is made within two years after the close of the taxable quarter when the sales were made."

Based on the foregoing, services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subject the supply of such services to zero percent (0%) rate. Thus, petitioner's sale of services to PIATCO, a PEZA-registered entity (evidenced by the PEZA Certificate of Registration No. EZ-98-01) is subject to VAT at zero percent without a need of prior application for zero-rating.

The Court will now proceed to the first issue.

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In order to be entitled to a refund or tax credit certificate of input VAT due or paid attributable to zero-rated or effectively zero-rated sales, petitioner must comply with the following requisites:

1. there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input VAT payments are directly attributable to zero-rated sales or effectively zero-rated sales;
4. that the input VAT payments were not applied against any output VAT liability; and
5. that the claim for refund was filed within the two-year prescriptive period.

Anent the first requisite, petitioner must not only show that its sales were effectively zero-rated but that it complied with the substantiation requirement prescribed in Section 113 of the NIRC of 1997, as amended and Section 4.108-1 of Revenue Regulations No. 7-95, which require that a VAT-registered person like petitioner, shall for every sale, issue an invoice or 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, 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, 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.

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> 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, nevertheless, the same must be taken in relation to Sections 106(A) and (D) as well as Sections 108(A) and (C) of the NIRC of 1997, as amended, which provide the manner of determining the output VAT due on the sale of goods or properties and sale of services, respectively.

For the sale of goods or properties, the 10% VAT is imposed upon the ***gross selling price***, which is defined under Section 106(A) of the NIRC of 1997, 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***, whether or not the consideration thereof was actually received. It is for this reason that Section 106(D) 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***, which is defined under Section 108(A) of the NIRC of 1997, 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."

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Clearly, from the foregoing, the VAT on the sale of services accrues upon ***actual or constructive receipt of the consideration***, 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.

In fine, the VAT law and regulations require that sales invoices must support the sale of goods or properties, whereas official receipts must support the sale of services. It is further mandated that the invoice and official receipt must be registered with the BIR and must contain, among other information, the taxpayer's TIN followed by the term "VAT" and the imprinted word "zero-rated" in the case of zero-rated sales transactions.

Inasmuch as the subject revenue pertains to gross receipts from services rendered by petitioner, valid VAT official receipts and not mere sales invoices must be submitted in support thereof.

A careful evaluation of petitioner's amended VAT Returns for the four quarters of taxable year 2002, showed the following zero-rated sales/receipts in the amount of P2,238,071,899.37:

Exhibit	Year 2002	Zero Rated Sales/Receipts
Q	1st quarter	P 854,160,170.42
II	2nd quarter	599,459,273.90
DDD	3rd quarter	480,168,744.90
VVV	4th quarter	304,283,710.15
	Total:	**P 2,238,071,899.37**

However, out of the P2,238,071,899.37 reported zero-rated sales/receipts for the four quarters of taxable year 2002, only the amount of P605,232,005.87 pertaining to the first quarter of taxable year 2002 was duly supported by VAT zero-rated official receipts, as summarized by the Court-commissioned Independent Certified Public Accountant (ICPA) in *Exhibits "GGGG-1", "GGGG-2", "GGGG-3", and "GGGG-4"*. Below is the breakdown of the amount of P605,232,005.87, to wit:

Zero-Rated Sales/Receipts Per VAT Return (1st quarter 2002)	Supporting Official Receipt		
	Exhibit	Date	Serial Number
P 55,055,628.11	GGGG-1-5	1/7/2002	079
189,317,811.00	GGGG-1-6	1/8/2002	080
171,523,629.06	GGGG-1-7	2/13/2002	083
189,334,937.70	GGGG-1-8	2/27/2002	084
P 605,232,005.87			

Hence, only the reported amount of P605,232,005.87 for the first quarter of taxable year 2002 shall qualify for VAT zero-rating. The remaining reported zero-rated sales/receipts for the first, second, third and fourth quarters of taxable year 2002 in the respective amounts of P248,928,164.55, P599,459,273.90, P480,168,744.90 and P304,283,710.15, or a total of P1,632,839,893.50, which were merely supported by sales invoices[10] shall be denied VAT zero-rating. While petitioner's witness, Ms. Myra Celeste O. Dabalos, testified that petitioner did not issue official receipts for the amount of P1,632,839,893.50 because it was offset against the advances received by PIATCO prior to taxable year 2002[11], the Court finds such testimony, unsupported by documentary proof, as insufficient to establish petitioner's claim.

After having resolved that only the amount of P605,232,005.87 out of the P2,238,071,899.37 gross sales/receipts reported by petitioner for taxable year 2002 qualifies for VAT zero-rating, it is important to now determine the amount of input VAT attributable to said zero-rated sales/receipts.

In its amended VAT Returns for the four quarters of taxable year 2002, petitioner reflected the following input taxes in the total amount of P198,363,133.80:

Exhibit	Year 2002	Input VAT
Q	1st quarter	P 52,044,766.05
II	2nd quarter	60,588,638.09
DDD	3rd quarter	55,234,736.15
VVV	4th quarter	30,494,993.51
	Total	**P 198,363,133.80**

[10] Exhibits "GGG 1-1" to "GGGG 1-4", "GGGG 2-1" to "GGGG 2-3", "GGGG 3-1" to "GGGG 3-3", "GGGG 4-1" to "GGGG 4-3".
[11] Exhibit "PPPP", page 6.

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Upon verification of the monthly VAT listings, suppliers' invoices and official receipts[12] supporting the above input taxes, the ICPA noted the following exceptions[13]:

Item	Nature	Exhibit Reference	Amount
1	Input VAT on purchases of services not claimed in the same quarter when the supporting VAT ORs are dated.	FFFF-1	178,855.76
2	Input VAT on purchases of services not supported by VAT ORs.	FFFF-2	102,309.71
3	Input VAT on purchases of services paid in foreign currency overclaimed due to the use of foreign exchange rate higher than the prevailing interbank reference rate (IRR).	FFFF-3	70,159.73
4	Input VAT on purchases of goods not claimed in the same quarter when the supporting VAT ORs are dated.	FFFF-4	67,543.75
5	Input VAT on purchases of goods supported by official receipts without "BIR permit to print"	FFFF-5	17,072.73
6	Input VAT on purchases of services supported by invoices without "BIR permit to print"	FFFF-6	13,522.73
7	Input VAT on purchases of goods paid in foreign currency overclaimed due to the use of foreign exchange rate higher than the prevailing interbank reference rate (IRR).	FFFF-7	6,765.10
8	Input VAT on purchases of services without supporting documents.	FFFF-8	2,144.11
9	Input VAT on purchases of goods without supporting documents.	FFFF-9	1,739.22
10	Input VAT on purchases of services with supporting documents not in the name of the Company.	FFFF-10	1,518.36
11	Input VAT on purchases of goods supported by VAT invoices not in the name of the Company.	FFFF-11	568.68
			P462,199.88

Upon further verification of the aforesaid data, this Court agrees with the findings of the ICPA. Thus, out of the reported input taxes of P198,363,133.80, only the amount of P197,900,933.92 was properly substantiated in accordance with the invoicing requirements under Sections 110(A) and 113(A) of the NIRC of 1997, as amended, and as implemented by Sections 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations No. 7-95.

Furthermore, considering that petitioner's Returns reflected an output tax liability of P529,234.00, the same shall be deducted from the substantiated input taxes of

[12] Exhibits "EEEE–1–1" to "EEEE–12–135".
[13] Exhibit "HHHH", pages 3 to 4.

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P197,900,933.92. The resulting net input taxes of P197,371,699.92 shall then be allocated between the declared zero-rated sales/receipts of P2,238,071,899.37 and the substantiated zero-rated sales/receipts of P605,232,005.87, as follows:

Substantiated Excess Input VAT		P197,371,699.92
Multiply by Ratio of:		
Substantiated Zero-Rated Receipts	P 605,232,005.87	
Declared Zero-Rated Receipts	P2,238,071,899.37	0.270426
Excess Input VAT Attributable to Substantiated Zero-Rated Receipts		**P 53,374,366.52**

Therefore, only the input VAT of P53,374,366.52 can be attributed to petitioner's substantiated zero-rated receipts for the four quarters of taxable year 2002.

Since petitioner did not indicate any amount of "Input Tax Carried Over from Previous Quarter" in its Quarterly VAT Return for the succeeding first quarter of taxable year 2003[14], the excess input VAT of P53,374,366.52 remained unutilized or unapplied against any output liability.

Finally, as to whether or not the subject claim was timely filed, it has been held that the two-year prescriptive period for the filing of claims for VAT refund is reckoned from the date of filing of the corresponding Quarterly VAT Returns[15]. The subject claim covers the first, second, third, and fourth quarters of taxable year 2002 for which petitioner originally filed its VAT Returns on April 24, 2002, July 22, 2002, October 22, 2002 and January 22, 2003, respectively.[16] Counting from these dates, both the administrative claim filed on April 11, 2003[17] and the *Petition for Review* filed on March 10, 2004 are well within the two-year prescriptive period.

IN VIEW OF THE FOREGOING, petitioner's claim for refund or issuance of tax credit certificate is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of

[14] Exhibit "IIII-1".
[15] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 141104 and 148763, June 8, 2007.
[16] Exhibits "M", "DD", "XX", "QQQ".
[17] Exhibit "WWW-1".

petitioner in the reduced amount of P53,374,366.52, representing unapplied or unutilized input taxes for the four quarters of taxable year 2002.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(With Concurring and 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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

TAKENAKA CORPORATION PHILIPPINE BRANCH,
Petitioner,

~versus~

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 6886

Members:

ACOSTA, *P.J.*,
BAUTISTA, *and*
CASANOVA, *J.J.*

Promulgated:
NOV 04 2008 ; 1:00 pm

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CONCURRING AND DISSENTING OPINION

I am in conformity with the majority in deciding to grant petitioner's claim for refund or issuance of tax credit certificate in the amount of P53,374,366.52, representing the unutilized input taxes incurred on domestic purchases goods and services attributable to zero-rated sales for taxable year 2002.

However, I disagree to the denial of petitioner's claim in the amount of P143,997,333.40[1] on the ground that the related zero-rated sales thereof were not supported by official receipts, disregarding the evidentiary value of the sales invoices[2] supporting such zero-rated sales. It is the opinion of the majority that the VAT law and regulations require sales invoices to support the sale of goods or

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[1] Difference between the Substantiated Excess Input VAT of P197,371,699.92 and the Excess Input VAT attributable to Substantiated Zero-Rated Receipts of P53,374,366.52.

[2] Exhibits "GGGG-2-1", "GGGG-2-2", "GGGG-2-3", "GGGG-3-1", "GGGG-3-2", "GGGG-3-3", "GGGG-4-1", "GGGG-4-2", "GGGG-4-3" duly admitted in a Resolution dated January 15, 2008.

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properties, and the official receipts to support the sale of services. Thus, the majority concluded that inasmuch as the subject revenue pertains to gross receipts from services rendered by petitioner, valid VAT official receipts and not mere sales invoices must be submitted in support thereof.

Sections 113 and 237 of the 1997 National Internal Revenue Code (NIRC) are the primordial provisions on substantiation requirements. Nowhere can you find that the acceptable evidence to substantiate a claim for refund when it involve sale of services are official receipts only. A reading of the aforesaid pertinent provisions of the NIRC will disclose that invoices can be validly used interchangeably with official receipts, to quote:

> "**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 xxx 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 show the name, business style, if any, and address of the purchaser; customer or client: Provided

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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."

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.

From the above, a VAT-registered person must issue an invoice or receipt for every sale of goods or services. The use of the disjunctive term "or" in the afore-cited provisions connote that either act qualifies as two different evidences of input VAT.[3] It is indicative of the intention of the lawmakers to use the same interchangeably in the sale of goods or services. The taxpayer-claimant, herein petitioner, may therefore present either an invoice or a receipt to support its sales of services and it should not have any negative repercussion on its claim because both are evidence of receipt of income.

In **Commissioner of Internal Revenue vs. Manila Mining Corporation**,[4] the Supreme Court made no differentiation of the evidentiary value between an invoice and 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***, and taken collectively are the best means to prove the input VAT payments."

It is therefore clear that the Court must not differentiate between the evidentiary value of an invoice, and official receipt to prove the fact of petitioner's sales of services. After all, the pertinent laws, rules and regulations, as well as

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[3] 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).

[4] G.R. No. 153204. August 31, 2005.

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jurisprudence, made no pronouncement as to the use of official receipts to substantiate sales of services; and invoices to support sales of goods, to the exclusion of all other proofs equally relevant and competent. On the contrary, official receipts and invoices are used in the law interchangeably.

Section 112 (A) of the NIRC, which provides the provisions for the "*Refunds or Tax Credits of Input Tax*", lends corroboration to the above view. It clearly grants to all VAT-registered enterprises engaged in zero-rated transactions the right to claim a refund of their creditable input tax due or paid to the extent that such input tax has not been applied against output tax within a period of two (2) years after the close of the taxable quarter. The said provision of law did not mention any particular evidence to support the sales of services as a requirement to grant a claim for refund or tax credit contrary to the majority view.

Interpreting **Sections 106 (A) and (D) and 108 (A) and (C) of the 1997 NIRC** as the source for the rule, *i.e.* sale of services should be supported by official receipts and sale of goods by invoices, would be stretching the meaning of the law beyond what it intends. Both sections do not deal with substantiation requirements. As already mentioned, the relevant provisions of the law and revenue regulations on substantiation requirement, made no distinction as to the evidentiary value of an invoice or official receipt.

It is an elementary rule in statutory construction that when the words and phrases of a statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says.[5] Hence, what is not clearly provided in the law cannot be extended to those matters outside its scope.[6]

[5] Binay vs. Sandiganbayan, GR No. 120681-83, October 1, 1999.
[6] Statutory Construction by Ruben Agpalo, Fifth Ed. (2003) page 125.

The Court must 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 laws and regulations 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.

Prevalent is the rule in statutory construction is that where the law does not distinguish, the courts should make no distinction. *Ubi lex non distinguit nec nos distinguire debemos.*[7]

The sales invoices are still material, relevant and competent inasmuch as they still directly prove the amount of sales made by the petitioner. The term "admissibility" refers to the question of whether or not the evidence is to be considered, while "competency" refers to whether or not the evidence is expressly excluded by law or the rules. Apparently, the subject invoices satisfy the above standards in both counts.

Lastly, it must be noted that tax cases are civil in nature. And under **Section 1, Rule 133, Revised Rules of Court**, in civil cases, the quantum of evidence required to sustain the proponent of an issue is by mere preponderance of evidence. In **Municipality of Moncada vs. Cajuigan**,[8] the Supreme Court explained that the phrase "preponderance of evidence" denotes the weight, credit and value of the aggregate on either side. This means that the testimony adduced by one side is more credible and conclusive than that of the other.

Applying the aforecited jurisprudence, if petitioner can prove the existence of its zero-rated sales aside from official receipts by producing other evidence such as invoices, making its side more conclusive and credible than the respondent, there is no reason to require petitioner to further produce its official receipts. Both

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[7] Mendoza, et al. vs. COMELEC, et al., G. R. No. 149736, December 17, 2002.
[8] 21 Phil. 184.

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documents are registered with the Bureau of Internal Revenue and are evidence of the commercial transaction that happened.

As stated by the Supreme Court[9]:

> "[S]ubstantial justice, equity and fair play are on the side of petitioner. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. **If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes.** Indeed, the State must lead by its own example of honor, dignity and uprightness." *(Emphasis Supplied)*

The government has no right to hold money that does not belong to it, especially given the unmistakable bias of our tax laws in severely penalizing delinquent taxpayers with surcharges, interests and at times fines or imprisonment. For while taxes are the lifeblood of the government, the Court must likewise be sensitive of its responsibility to apply the principles of justice, equity and fairness as its guide in its delicate task of weighing evidence and deciding tax cases.

For all the foregoing, I stand on my position that official receipt is not the only acceptable evidence to prove zero-rated sales of services that would qualify the refund of unutilized input VAT attributable thereto because it can also be proven by sales invoices.

Records of this case disclose that out of the P2,238,071,899.37 declared zero-rated sales[10], the majority considered only the amount of P605,232,005.87 as substantiated zero-rated sales since it is supported by official receipts[11] and disallowed the sales of P1,632,839,893.50 for zero-rating, for not having been supported by official receipts; thereby, coming up with the refundable amount of

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[9] BPI-Family Savings Bank, Inc., vs. Court of Appeals, Court of Tax Appeals, and the Commissioner of Internal Revenue, 330 SCRA 507
[10] Exhibits "Q", "II", "DDD" and "VVV".
[11] Exhibits "GGGG-1-5", "GGGG-1-6", "GGGG-1-7" and "GGGG-1-8".

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P53,374,366.52.[12] The said amount of sales disallowed for zero-rating is actually supported by sales invoices[13] taking into account the adjustments reflected in the "Breakdown of Sales/Receipts"[14] per quarter of taxable year 2002, summarized as follows:

Quarter	Invoice Amount *(in Philippine Peso)*	Exhibit	Adjustment *(in Philippine Peso)*	Progress Billing/ Receivable *(PhP)*	Exhibit
First	263,495,893.00	GGGG-1-4	14,567,728.45	248,928,164.55	GGGG-1
Second	259,585,770.25	GGGG-2-1	17,295,153.00	242,290,617.25	GGGG-2
	193,729,276.30	GGGG-2-2	21,739,202.45	171,990,073.85	GGGG-2
	200,397,594.20	GGGG-2-3	15,219,011.40	185,178,582.80	GGGG-2
Third	195,708,131.00	GGGG-3-1	12,385,710.50	183,322,420.50	GGGG-3
	235,062,666.00	GGGG-3-2	71,299,961.45	163,762,704.55	GGGG-3
	155,461,057.00	GGGG-3-3	22,377,437.15	133,083,619.85	GGGG-3
Fourth	196,833,280.00	GGGG-4-1	26,618,079.45	170,215,200.55	GGGG-4
	101,564,228.00	GGGG-4-2	9,289,185.50	92,275,042.50	GGGG-4
	61,510,732.00	GGGG-4-3	19,717,264.90	41,793,467.10	GGGG-4
TOTAL				**1,632,839,893.50**	

The denial by the majority of the substantiated claim input tax of P143,997,333.40[15] on the ground that the related zero-rated sales of services amounting to P1,632,839,893.50 are not supported by official receipts, disregarding the probative value of the sales invoices which are equally important evidence, is not in conformity with the law.

ERNESTO D. ACOSTA
Presiding Justice

[12] Allocation of the net input taxes of P197,371,699.92 between the declared zero-rated sales of P2,238,071,899.37 and the substantiated zero-rated sales of P605,232,005.87.
[13] Exhibits "GGGG-2-1", "GGGG-2-2", "GGGG-2-3", "GGGG-3-1", "GGGG-3-2", "GGGG-3-3", "GGGG-4-1", "GGGG-4-2", "GGGG-4-3".
[14] Exhibits "GGGG-1", "GGGG-2", "GGGG-3", and "GGGG-4".
[15] Difference between the Substantiated Excess Input VAT of P197,371,699.92 and the Excess Input VAT attributable to Substantiated Zero-Rated Receipts of P53,374,366.52; or the allocation of the net input taxes of P197,371,699.92 between the declared zero-rated sales of P2,238,071,899.37 and the zero-rated sales of P1,632,839,893.50 supported by sales invoices.

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