

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AT&T COMMUNICATIONS SERVICES
PHILIPPINES, INC.,

Petitioner,

C.T.A. EB NO. 540
(C.T.A. Case No. 7475)

Present:

-versus-

*Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.*

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

JUN 07 2010

11:30 am

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review¹ filed by AT&T Communications Services Philippines, Inc., on October 5, 2009 pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282, assailing the

¹ Rollo, C.T.A. EB No. 540 (C.T.A. Case No. 7475), pp. 8-178, with Annexes.

Decision² promulgated by the Second Division of the Court ("Court in Division") on March 3, 2009, dismissing petitioner's claim for refund or issuance of a tax credit certificate in the amount of P1,585,608.48 representing its unutilized input VAT incurred for the taxable year 2004, for insufficiency of evidence; and its Resolution dated August 28, 2009, denying petitioner's Motion for Reconsideration.

Antecedent Facts

The relevant antecedents are succinctly recited by the Court in Division in its Decision dated March 3, 2009 as follows:

Petitioner, AT&T Communications Services Philippines, Inc., 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. It is registered with the Bureau of Internal Revenue (BIR) as a value-added taxpayer (VAT), with Taxpayer Identification No. (TIN) 004-519-384-000.

Respondent, Commissioner of Internal Revenue, on the other hand, is the duly appointed officer of the BIR, 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 may be served summons and other legal processes at the 5th Floor, BIR National Office Building, Diliman, Quezon City.

Petitioner is principally engaged in the business of rendering information, promotional, supportive, and liaison services as indicated in its Articles of Incorporation. In this regard, petitioner entered into various service agreements, namely:

1. *AT&T Global Intercompany Trading Agreement between petitioner and AT&T Corporation (AT&T-US)* - Under this agreement, petitioner shall provide AT&T-US, a non-resident foreign corporation, various information, promotional, supportive, and liaison services which shall be paid for by AT&T-US in US dollars;

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

2. *Assignment Agreement between petitioner and AT&T-Solutions, Inc. (AT&T-SI) for services to Mastercard International, Inc.* - Under this agreement, AT&T-SI assigned to petitioner the performance of services AT&T-SI was supposed to render 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 agreement also provides that AT&T-SI shall act as the collecting agent of petitioner. Upon receipt of the payments from Mastercard International, Inc., AT&T-SI shall remit the same to petitioner; and
3. *Assignment Agreement between petitioner and AT&T-Solutions, Inc. (AT&T-SI) for services to Lexmark International, Inc.* - Under this agreement, petitioner substituted AT&T-SI in the performance of the latter's duties, liabilities, and obligations in connection with a Global Network Services Agreement between AT&T-SI and its customer, Lexmark International, Inc., a non-resident foreign corporation, particularly, for services to the latter's affiliates in the Philippines. Lexmark International, Inc.'s affiliates, Lexmark Research and Development Corporation and Lexmark International (Philippines), Inc., are located at the Mactan Economic Zone II-SEZ and are PEZA-registered enterprises.

For services rendered pursuant to these agreements, petitioner allegedly generated revenues in the amount of P42,779,056.04 for the period of January 1, 2004 to December 31, 2004. Petitioner believes that the revenues it derived from rendering services to non-resident foreign corporations, which were paid in foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*, qualify for VAT zero-rating under Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended. Likewise, petitioner avers that the revenues pertaining to the services it rendered to entities exempt from VAT by virtue of special laws, such as PEZA-registered enterprises, are subject to zero percent (0%) VAT pursuant to Section 108(B)(3) of the NIRC of 1997, as amended.

During the same period, petitioner claims that it incurred input VAT in the amount of P2,039,531.57 on its domestic purchases of capital goods and other taxable goods and services, as well as importation of capital goods, which was partially applied against its output tax liability in the amount of P453,923.09. The resulting excess input VAT of P1,585,608.48 was allegedly attributable to its zero-rated sales and has not been applied or carried-over to any succeeding quarter(s).



In its amended Quarterly VAT Returns for the four taxable quarters of 2004 simultaneously filed with the BIR on July 14, 2005, petitioner reflected zero-rated sales in the amount of P42,779,056.04 and unutilized input taxes in the amount of P1,585,609.03 as follows:

<u>Exhibit</u>	<u>Quarter</u>	<u>Taxable Sales</u>	<u>Zero-rated sales</u>	<u>Output VAT</u>	<u>Input VAT</u>	<u>Excess/Unutilized</u>
"C"	1 st	1,269,166.82	9,436,112.34	126,916.66	435,744.46	308,827.80
"E"	2 nd	1,464,315.56	10,536,866.14	146,433.08	485,894.40	339,461.32
"G"	3 rd	1,018,156.64	10,229,599.51	101,815.66	593,674.39	491,858.73
"I"	4 th	787,576.90	12,576,478.05	78,757.69	524,218.87	445,461.18
TOTAL		4,539,215.92	42,779,056.04	453,923.09	2,039,532.12	1,585,609.03

On April 24, 2006, within the two-year prescriptive period, petitioner filed with the BIR an application for refund or tax credit of its unutilized VAT input taxes for the aforesaid taxable period amounting to P1,585,608.48, computed as follows:

A. Computation of input VAT allocated to domestic (taxable) sales:

$$\frac{\text{Domestic Sales}}{\text{Total Sales}} \times \text{Total input VAT for 2004} = \text{Input VAT allocated to domestic (taxable) sales}$$

Thus,

$$\frac{P4,539,215.92}{P47,318,271.96} \times P2,039,531.57 = P195,651.15$$

B. Computation of input VAT allocated to zero-rated sales:

$$\frac{\text{Zero-rated Sales}}{\text{Total Sales}} \times \text{Total input VAT for 2004} = \text{Input VAT allocated to zero-rated sales}$$

Thus,

$$\frac{P42,779,156.04}{P47,318,271.96} \times P2,039,531.57 = P1,843,880.42$$

C. Application of input VAT allocated to domestic (taxable) sales to total output VAT:

Total available output VAT for 2004	P	453,923.09
Less: Input VAT allocated to domestic (taxable) sales		195,651.15
Remaining output VAT	P	258,271.94

D. Application of input VAT allocated to zero-rated sales to remaining output VAT:

Input VAT allocated to zero-rated sales	P	1,843,880.42
Less: Remaining output VAT		258,271.94
Total unutilized input VAT for refund	P	1,585,608.48

As no action has been taken by respondent on its claim, petitioner filed the instant Petition for Review on April 26, 2006 to suspend the running of the prescriptive period prescribed under Section 229 of the NIRC of 1997, as amended, and Section 4.106-2(C) of Revenue Regulations No. 7-95.

Respondent filed an Answer on July 5, 2006. After pre-trial held on September 14, 2006, the parties filed their "Joint Stipulation of Facts and Issues" on October 6, 2006, which was approved by the Court in a Resolution dated October 13, 2006.

During trial, petitioner presented testimonial and documentary evidence in support of its petition. When it was respondent's turn to present evidence, respondent's counsel manifested that the examiner assigned to investigate petitioner's claim was not yet through with his investigation and thus submitted the case for decision based on the pleadings. The Court directed both parties' counsel to file their respective memorandum. Only petitioner filed its Memorandum on May 19, 2008 and this case was deemed submitted for decision on May 23, 2008.³

The Ruling of the Court in Division

On March 3, 2009, the Court in Division dismissed the Petition for Review filed by petitioner on April 26, 2006, praying for the refund or issuance of tax credit certificate of its unutilized input VAT incurred for the taxable year 2004 in the amount of P1,585,608.48.

In the Decision, the Court in Division resolved the following issues stipulated upon by the parties, *viz.*:

1. Whether or not Petitioner's sale of services, in the amount of P42,779,056.04 for the period of 1 January 2004 to 31 December 2004, are zero-rated for VAT purposes.

³ Rollo, pp.52-57.



2. Whether or not Petitioner's zero-rated sales for the period of 1 January 2004 to 31 December 2004 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 P1,585,608.48, representing unutilized/excess input VAT paid by Petitioner for the period of 1 January 2004 to 31 December 2004, is attributable to its zero-rated sales.
4. Whether or not the amount P1,585,608.48, representing unutilized/excess input VAT attributable to zero-rated sales paid by Petitioner for the period of 1 January 2004 to 31 December 2004, was not utilized or applied against its output VAT liabilities for the subsequent taxable quarters.
5. Whether or not Petitioner is entitled to the refund or issuance of a tax credit certificate in the amount of P1,585,608.48 representing unutilized/excess input VAT paid by Petitioner for the period of 1 January 2004 to 31 December 2004.
 - a. Whether Petitioner's operations are akin to that of a regional operating headquarters or not.
6. Whether Petitioner's right to claim its excess/unutilized input VAT for the first quarter of 2004 has prescribed.⁴

The Court in Division ruled that pursuant to Section 110(B) and 112(A) of the NIRC of 1997, as amended, the following requisites must be satisfied in order to be entitled to a refund or tax credit of unutilized input VAT arising from zero-rated or effectively zero-rated transactions, *viz.*:

1. There must be zero-rated or effectively zero-rated sales;
2. Input taxes were incurred or paid;
3. Input taxes were not applied against any output VAT liability during and in the succeeding quarters; and

⁴ *Id.*, at pp. 57-58.

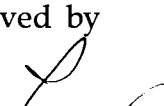


4. The claim for refund was filed within the two-year prescriptive period.

The Court in Division declared that petitioner's sales of services to non-resident foreign corporation and PEZA-registered enterprises, which were paid in US dollars and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* ("BSP"), fell within those transactions referred to as subject to zero percent VAT under Section 108(B)(2) and (3) of the NIRC of 1997.

Nonetheless, it pointed out that Section 108(B)(2) and (3) of the NIRC of 1997 must be read in conjunction with 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 containing specifically the information required therein. It also held that while the law and regulations appear to make no distinction as to the evidentiary value of an invoice or official receipt, Sections 106(A) and (D), and 108(A) and (C) of the NIRC of 1997 provide for the manner of determining the output VAT due on the sale of goods or properties and sale of services, respectively. Thus, it is required that the sales invoices supporting the sale of goods and properties, and the official receipts substantiating the sale of services be likewise registered with the BIR and must contain, among other information, the taxpayer's TIN-VAT and the imprinted word "zero-rated" in the case of zero-rated sales transactions.

In denying the claim, the Court in Division held that since 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 2004 in the sum of US\$764,700.43, with the peso equivalent of P42,779,056.04, cannot qualify for zero-rating for VAT purposes. Consequently, it ruled that the claimed input VAT payments allegedly attributable thereto in the amount of P1,585,608.48 cannot be granted.

The Court in Division deemed it unnecessary to determine petitioner's compliance with the remaining requisites since it failed to comply with the substantiation requirements pursuant to Revenue Memorandum Circular No. 42-2003.

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

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for insufficiency of evidence.

SO ORDERED.

Aggrieved, petitioner filed a "Motion for Reconsideration" on March 19, 2009. The same was denied for lack of merit by the Court in Division in its Resolution promulgated on August 28, 2009.

The Issues

Hence, the instant Petition for Review filed on October 5, 2009, where petitioner alleges the following:

THE SECOND DIVISION ERRED BY DECIDING QUESTIONS OF SUBSTANCE IN A MANNER THAT IS NOT IN ACCORD WITH LAW AND JURISPRUDENCE, IN THAT:

- I. THE 1997 TAX CODE DOES NOT RESTRICT THE EVIDENCE OF INPUT OR OUTPUT VAT. VAT INVOICES OR RECEIPTS MAY BE USED INTERCHANGEABLY TO SUBSTANTIATE VAT.
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- II. RESPONDENT DOES NOT DISTINGUISH BETWEEN THE EVIDENTIARY VALUE OF A VAT INVOICE AND A VAT OR. EITHER DOCUMENT IS VALID PROOF OF VAT TRANSACTIONS.
- III. THE RULING THAT THE VAT OR MUST BE SUBMITTED AS PROOF OF PAYMENT OF THE SALE OF SERVICE IS ILLOGICAL DUE TO THE JURISPRUDENTIAL REQUIREMENT THAT PETITIONER SHOULD PROVE THE VALIDITY OF ITS INWARD REMITTANCES.
- IV. PETITIONER PRESENTED SUBSTANTIAL EVIDENCE THAT UNEQUIVOCALLY PROVES PETITIONER'S ZERO-RATED TRANSACTIONS FOR THE CY 2004.
- V. IN CIVIL CASES, SUCH AS CLAIMS FOR REFUND OR ISSUANCE OF A TCC [TAX CREDIT CERTIFICATE], A MERE PREPONDERANCE OF EVIDENCE WILL SUFFICE TO JUSTIFY THE GRANT OF THE CLAIM.⁵

Petitioner's Arguments

Petitioner asseverates that from the organization and wordings of the NIRC of 1997, Sections 106(D) and 108(C) do not set down exclusionary rules or controlling provisions for the substantiation of VAT. Sections 113(A) and 237 of the same Code which specifically deal with the invoicing requirements for transactions subject to VAT, are not qualified by Sections 106(D)(1) and 108(C) to the extent that only VAT official receipts can prove sales of services, while only VAT invoices can prove sales of goods. Also Sections 113 and 237 state that VAT-registered persons or entities must issue "duly registered receipts or sales commercial invoices;" the use of the disjunctive term, thus connotes that either document can be issued for such sales.

⁵ *Id.*, at pp. 16-17.

Petitioner cites cases disposed of by this Court enumerating the requirements for claims for refund of excess/unutilized input taxes based on zero-rated sales, which however, do not include whether a VAT official receipt or VAT invoice should be used to prove zero-rated sales. Further, petitioner contends that even the Supreme Court in a number of cases enunciated that invoices, official receipts and other competent documents can be used to establish the existence of zero-rated sales.

Petitioner also asserts that based on respondent's various regulations and rulings, which were issued to implement the VAT provisions of the NIRC of 1997, they show that VAT invoices or VAT official receipts may be used to substantiate transactions subject to VAT regardless of whether goods or services are sold. It implies that such documents are used interchangeably by the respondent, provided that the invoicing requirements are supplied by the document used by the taxpayer. In fact, respondent never raised such issue in the administrative level or before this Court. Thus, it posits that there should be no bar to admitting the VAT invoices, together with other pieces of evidence, in proving its entitlement to refund.

Petitioner likewise claims that based on the Report of the Court-commissioned Independent Certified Public Accountant ("CPA"), its zero-rated sales were properly supported by duplicate original VAT invoices with the words "Zero-rated," "TIN-V," and the BIR permit to print indicated therein, and bank credit advices from Citibank N.A. It argues that bank credit advices are considered by this Court as credible evidence to prove that inward remittances were made in foreign currency and duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*, as well as proof that it has received the



compensation for its services. Thus, it is clear that petitioner's sales fall within the definition of zero-rated sales as provided in the NIRC of 1997.

Petitioner further maintains that regardless of whether it submitted VAT official receipts or VAT invoices, it has in fact, presented all other evidence necessary for proving that the transactions to which the questioned invoices pertain are all zero-rated transactions duly paid for in acceptable foreign currency. It points out that it is required to prove, among others: (1) that it made export sales; (2) that the foreign currency exchange proceeds had been duly accounted for in accordance with the regulations of the BSP; and (3) that its input VAT from domestic purchases is fully substantiated. The evidence required to prove these facts, however, is not limited to its sales invoices and/or official receipts. Since respondent did not present any controverting evidence thereto, petitioner has shown that its reported sales and purchases are fully substantiated by the documentary evidence on record.

Finally, petitioner submits that since claims for refund are still, in essence, civil cases, the quantum of evidence that is required to sustain its claim is a mere preponderance of evidence. It avers that the Court in Division should have applied the standard of evidence required only under Section 8 of Republic Act No. 1125, as amended by Republic Act No. 9282, which provides that "such proceedings shall not be governed strictly by technical rules of evidence." It posits then that even in the absence of documents or exhibits defined as the "best-evidence," such is not exclusionary and merely affects the weight of the evidence; it should not operate to exclude the other documentary exhibits, as well as the Report rendered by the Court-commissioned Independent CPA. Further, petitioner argues that its zero-rated sales



are not the subject matter of the case, but rather its claim for refund of its unutilized input VAT for 2004, which was duly substantiated in accordance with the invoicing requirements. Considering that it has clearly proven its right to the claimed refund, the denial of the claim in its entirety based on purely technical grounds is to unduly deprive it of a right granted by law and constitutes deprivation of its property.

The Ruling of the Court En Banc

The Petition for Review has no merit.

Statute sets certain rules to assist the court in making an informed decision, and a literal application of any part of a statute is to be rejected if it will operate unjustly, lead to absurd results, or contradict the evident meaning of the statute taken as a whole.⁶

The Court in Division found that petitioner's sales of services to non-resident foreign corporations and PEZA-registered enterprises in the amount of P42,779,056.04 fell within those transactions referred to as subject to zero-percent VAT under Section 108(B)(2) and (3) of the NIRC of 1997, as amended, which provides:

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

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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:

xxx xxx xxx

⁶ In Re Allen, 2 Phil. 630, 643, October 29, 1903.



(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;

xxx xxx xxx

The Court in Division pointed out, however, that the afore-quoted provision must be read in conjunction with Section 113 of the same Code, in relation to Section 4.108-1 of Revenue Regulations No. 7-95, 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.

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
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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 invoices or receipts and this shall be considered as a "VAT Invoice." All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax.

If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A "VAT Invoice" shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the Code.

The invoice or receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

Corollary thereto, Sections 106(A) and (D), and 108(A) and (C) prescribe the following:

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.

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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).

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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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(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).

The Court *En Banc*, in unison with the pronouncement of the Court in Division, therefore emphasizes that in order for a claim for refund or issuance of a tax credit certificate to prosper, the claimant 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. The invoice or receipt shall further comply with the information required under Sections 113 and 237 of the NIRC of 1997.

From the records of the case, petitioner presented the following: (1) Schedule of Zero-Rated Sales for the taxable period ended December 31, 2004; (2) sales invoices with stamped “zero-rated,” and bank credit advices; (3) Service Agreement with AT&T-US; (4) Certificate of Authentication with attached Assignment Agreement with AT&T-SI; (5) Letter of Assignment to AT&T Communications Philippines, Inc.; and (6) the Report of the Court-commissioned Independent CPA dated March 14, 2007.



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However, as determined by the Court in Division whose findings of facts are generally entitled to the highest respect and are conclusive upon the Court *En Banc*, petitioner being engaged in the sale of services, and as mandated by law, should have submitted official receipts, and not mere sales invoices, to comply with the preceding requirements.

The law expressly requires the issuance of either an invoice or receipt for every sale by a VAT-registered person. It may be true that the use of the disjunctive word "*or*" in the aforementioned provisions is to express an alternative or a choice;⁷ 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 mandates of the law.

Thus, albeit the words "invoice" and "receipt" are used without distinction, it is noteworthy that the NIRC of 1997, 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, Section 106 of the 1997 NIRC provides that the tax shall be computed by multiplying the total amount indicated in the *invoice* by one-eleventh (1/11). 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.

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. The VAT

⁷ Black's Law Dictionary, 6th Edition, 1990, p. 1095.



on the sale of services accrues upon actual or constructive receipt of the consideration, whether or not the service has been rendered. 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).⁸

It may not be amiss to note that while petitioner invokes Section 108(B)(2) and (3) of the NIRC of 1997 to support its zero-rated sale of services, it particularly left out the succeeding provision – Section 108(C) – which provides for the computation of the tax as indicated in the official receipt.

Therefore, it is to be stressed that 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.⁹ Irrefragably, sales invoices must support sales of goods or properties while official receipts must support sales of services.

Further, it is well to note that the aforementioned provisions do not provide for any document that can be used as an alternative to, or in lieu of, an invoice and official receipt.¹⁰

The majority of the Court *En Banc* aptly penned 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

⁸ Jideco Manufacturing Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. EB No. 53 (C.T.A. Case No. 6552), June 7, 2005.

⁹ AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 6907, February 23, 2007.

¹⁰ Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue, C.T.A. EB No. 467 (C.T.A. Case No. 7189), October 9, 2009.

services, an absurd situation will arise when the purchaser of the service can claim tax credit representing input VAT even before there is payment 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*)

Considering that in a claim for refund or issuance of a tax credit certificate attributable to zero-rated sales, what is to be closely scrutinized is the 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 evidence presented by petitioner were not sufficient documentary proofs in lieu of what is mandated in the NIRC of 1997, as amended.

Further, under Item A-13 of Revenue Memorandum Circular No. 42-2003,¹² the failure of a taxpayer claiming for tax refund/credit to comply with the invoicing requirements *i.e.* the issuance of the proper document for the consummation of the sale, will result in the disallowance of the claim for input VAT, *viz.*:

A-13. Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.

If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g., failure to indicate

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 Entitled "Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters."



the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer. (Boldfacing supplied)

Since petitioner's arguments are bereft of merit, the Court *En Banc* likewise agrees with the Court in Division that the determination of petitioner's compliance with the other requisites is unnecessary.

In futility, petitioner contends that its zero-rated sales are not the subject matter of the case, but rather its claim for refund of its unutilized input VAT for 2004, which it asserts are duly substantiated in accordance with the invoicing requirements.

The Court *En Banc* finds the same without merit.

There can be no dispute that the taxpayer-claimant has the burden of proving the legal and factual bases of its claim for tax credit or refund; it therefore falls upon petitioner to first establish that its sales qualify for VAT zero-rating under the existing laws (legal basis), and then to present sufficient evidence that said sales were actually made and resulted in refundable or creditable input VAT in the amount being claimed (factual basis).¹³

On a final note, the Court *En Banc*, consistent with the principle that "taxes are the lifeblood of the nation," must emphasize that claimants of tax refunds bear the burden of proving the factual basis of their claims, for tax refunds are in the

¹³ Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.



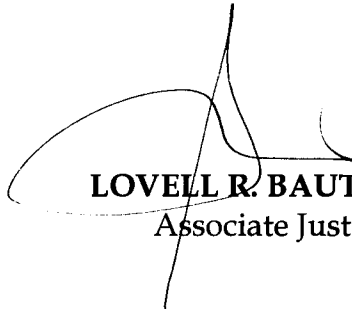
nature of tax exemptions, and the statutes of which are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.

To simply allow petitioner to prevail and compel a tax refund or credit without proving its claim would not be proper. As an important facet of the government, such cannot be left to the sole control and discretion of the taxpayer.¹⁴

In fine, petitioner failed to comply with the clear provisions of the NIRC of 1997, as amended; thus, the Court *En Banc* finds no compelling reason to warrant a modification of the assailed Decision and Resolution.

WHEREFORE, the Petition for Review is hereby **DISMISSED**. Accordingly, the impugned Decision of the Court in Division dated March 3, 2009 and its Resolution promulgated on August 28, 2009 in C.T.A. Case No. 7475 are hereby **AFFIRMED**.

SO ORDERED.



LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:



(With Dissenting and Concurring Opinion)
ERNESTO D. ACOSTA
Presiding Justice



JUANITO C. CASTANEDA, JR.
Associate Justice

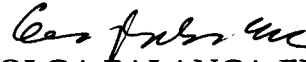


ERLINDA P. UY
Associate Justice

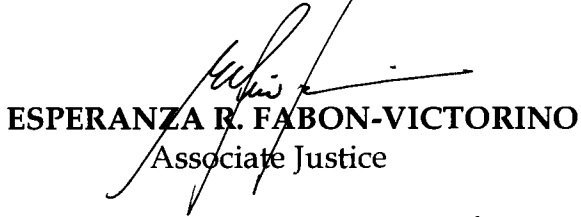
¹⁴ San Carlos Milling Corporation Co., Inc. v. Commissioner of Internal Revenue, G.R. No. 103379, November 23, 1993, 228 SCRA 13.



CAESAR A. CASANOVA
Associate Justice



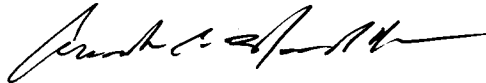
OLGA PALANCA-ENRIQUEZ
Associate Justice



ESPERANZA R. FABON-VICTORINO
Associate Justice



CIELITO N. MINDARO-GRULLA
Associate Justice



AMELIA R. COTANGCO-MANALASTAS
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AT&T COMMUNICATIONS SERVICES
PHILIPPINES, INC.,

Petitioner,

C.T.A. EB NO. 540
(C.T.A. CASE NO. 7475)

Members:

- versus -

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

ACOSTA, PJ,
CASTAÑEDA, JR.
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA *and*,
COTANGCO-MANALASTAS, JJ.

Promulgated:

JUN 07 2010

11:26 am

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DISSENTING AND CONCURRING OPINION

With all due respect, I would like to express my reservations on the majority's ruling which instantly found unmeritorious petitioner's claim for refund or issuance of a tax credit certificate in the amount of P1,585,608.48, representing its unutilized input VAT attributable to zero-rated sales for taxable year 2004.

The dismissal by the majority is based on insufficiency of evidence, after finding that petitioner's zero-rated sales were not supported by official receipts and disregarding the evidentiary value of the sales invoices supporting such zero-rated sales, in view of their opinion that the VAT law and BIR regulations

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require sales invoices to support the sale of goods or properties and official receipts to support the sale of services.

In addition, considering that the majority opinion did not anymore delve on the issue of jurisdiction in the disposition of this case, an academic discussion pertinent to the requisites set forth by Sections 112A and 112D of the 1997 National Internal Revenue Code (NIRC) is suggested.

On the outset, Sections 113 and 237 of the 1997 NIRC are the primordial provisions on substantiation requirements with regard Value-Added Taxes.

Notably, nowhere in said provisions does it state that the only acceptable evidence to substantiate a claim for refund involving sale of services are official receipts.

A cursory reading of the aforesaid pertinent provisions of the NIRC will disclose that invoices can be validly used interchangeably with official receipts, 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."

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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 case of sales, receipts or transfers in the amount of One Hundred Pesos (P100.00) or

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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."

According to 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. Section 113 of the same code, on the other hand, provides that a VAT-registered person is mandated to issue an invoice or receipt for every sale.

Clearly, both provisions require a VAT-registered person to 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.¹ It is indicative of the intention of the lawmakers to use the same interchangeably on the sale of goods or services.

Furthermore, Section 112 (A) of the 1997 NIRC, which lays down the provisions for the "Refunds or Tax Credits of Input Tax", also bolsters the same argument. The provision 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. It made no mention of any specific evidence to support the sales of services as a requirement to grant a claim for refund or tax credit contrary to the majority view.

¹ 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).

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Simply put therefore, the taxpayer or herein petitioner, may present either an invoice or a receipt to support its sales of services and such should not prevent petitioner from its claim considering that both are evidence of receipt of income.

In the case of *Commissioner of Internal Revenue vs. Manila Mining Corporation*,² the Supreme Court made no differentiation in the evidentiary value of 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."*

Applying therefore the afore-cited jurisprudence in this case, petitioner, by proving the existence of its zero-rated sales through other evidence, such as, but not limited to, invoices, making its allegations conclusive and credible than the respondent, has no reason to further produce its official receipts. Anyway, both official receipts and invoices are registered with the Bureau of Internal Revenue and are evidence of the commercial transaction that occurred.

Contrary to the majority's 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. Thus, 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.³ Hence, what is not clearly provided in the law cannot be extended to those matters outside its scope.⁴

² G.R. No. 153204. August 31, 2005.

³ *Binay vs. Sandiganbayan*, GR No. 120681-83, October 1, 1999.

⁴ Statutory Construction by Ruben Agpalo, Fifth Ed. (2003) page 125.

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In summary therefore, since the pertinent laws, rules and regulations, as well as 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, the Court, therefore, must not differentiate between the evidentiary value of an invoice, and an official receipt to prove the fact of petitioner's sales of services. After all, official receipts and invoices are used in the law interchangeably.

Considering that the sales invoices are still material, relevant and competent inasmuch as they still directly prove the amount of sales made by the petitioner, the Court is duty-bound to accept them.

Accordingly, records of this case show that all the zero-rated sales of petitioner, in the amount of P42, 779, 056.04, were disallowed for not having been supported by official receipts; thus denying all the claim of petitioner. The said amount of sales disallowed for zero-rating is actually supported by sales invoices taking into account the report and verification made by the Independent Certified Public Account commissioned by the Court and reflected in the "Schedule of Zero-rated Sales and Collections (Exhibit DD)"⁵ summarized as follows:

Period	Amount
First Quarter	P 9,436,112.34
Second Quarter	10,536,866.14
Third Quarter	10,229,599.51
Fourth Quarter	12,576,478.05
TOTAL	P42,779,056.04

Applying the foregoing in this case, the denial by the majority of the substantiated claim input tax of P1,585,609.03, on the ground that the related zero-rated sales of petitioner amounting to P42, 779, 056.04 are not supported by

⁵ Rollo, p. 364,



official receipts, disregarding the probative value of the sales invoices which are equally important evidence, is not in conformity with the law.

For the above reasons, I stand by my position that official receipt and sales invoices may be used interchangeably as acceptable evidence to prove zero-rated sales of services in a claim for refund of unutilized input VAT.

Contrary to the silence of the majority with regard the issue of jurisdiction, I wish to express my opinion, for academic purposes only, that the instant Petition for Review was prematurely filed, however, still actionable by the Court considering respondent's waiver of said defense.

Sections 112 (A) and (D) of the 1997 NIRC provide the basis and procedure for refunds or tax credits of input tax attributable to zero-rated sales, viz:

Section 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 the volume of sales.

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(D) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - **In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from**



the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis Ours).

Applying the foregoing in the instant case, petitioner's filing of its administrative claim for refund or issuance of a tax credit certificate for its 2004 excess input VAT attributable to zero-rated sales on April 24, 2006 is found to be well within the two (2) year period required under Section 112(A) of the 1997 NIRC. However, petitioner's judicial claim for refund was filed on April 26, 2006, barely two (2) days from the date when it filed its administrative claim with respondent, hence, an obvious contravention of the 120-day period to file the judicial claim under Section 112(D). Therefore, the Petition for Review is considered premature, thus a violation of the doctrine of exhaustion of administrative remedies.

Notable, however, that respondent did not register his objection thereto, such defense, therefore, is considered waived pursuant to Section 1, Rule 9 of the Rules of Court, to wit:

Sec. 1. *Defenses and objections pleaded.* – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.



Settled is the rule that before one resorts to the courts, the administrative remedy provided by law must first be exhausted.⁶ A party seeking an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to court action.⁷

The non exhaustion of administrative remedies renders the action premature, *i.e.*, the claimed cause of action is not ripe for judicial determination and for that reason a party has no cause of action to ventilate in court.⁸ The premature invocation of court's intervention is fatal to one's cause of action. Conversely, if there is a waiver or estoppel of such defense, *just as in this case*, the Court has jurisdiction over the case to determine petitioner's claim.


ERNESTO D. ACOSTA
Presiding Justice

⁶ *Rufino Lopez & Sons, Inc. vs. Court of Tax Appeals*, 100 Phil 580.

⁷ *Commissioner of Internal Revenue vs. Rosemarie Acosta*, G.R. No. 154068, August 3, 2007.

⁸ *Carale vs. Abarintos*, G.R. No. 120704, March 3, 1997.