

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

- versus -

NIPPON EXPRESS (PHILS.)
CORPORATION,

Respondent.

C.T.A. E.B. NO. 505
(C.T.A. CASE NO. 6688)

Present:

ACOSTA, P.J.
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

JUN 11 2010

5:47 pm

X-----X

D E C I S I O N

UY, J.:

This Petition for Review filed before the former Court of Tax Appeals *En Banc*¹ assails the Amended Decision dated March 23, 2009 and Resolution dated June 16, 2009 issued by the Former First Division² of this Court (Court in Division) in CTA Case No. 6688, entitled "Nippon Express (Phils.) Corporation, petitioner vs. Commissioner of Internal Revenue, respondent", an action for the issuance of a tax credit certificate in the amount

¹ Filed through registered mail on July 20, 2009 and duly received by this Court on July 28, 2009.

² Chaired by Presiding Justice Ernesto D. Acosta, with Associate Justice Lovell R. Bautista and Associate Justice Caesar A. Casanova as members.

of ₱ 20,345,824.29 representing excess input tax attributable to effectively zero-rated sales for taxable year 2001.

After trial was held in CTA Case No. 6688, the Court in Division rendered its Decision promulgated on January 26, 2009, denying the petition for insufficiency of evidence.

However, upon the filing of a Motion for Reconsideration by Nippon Express (Philippines) Corporation before the Court in the Division on February 17, 2009, the Court *a quo* rendered the assailed Amended Decision on March 24, 2009³ granting the said Motion and ordering the Commissioner of Internal Revenue to issue a tax credit certificate in favor of respondent in the amount of TEN MILLION NINE HUNDRED TWENTY EIGHT THOUSAND SIX HUNDRED SEVEN and 31/100 PESOS (₱ 10,928,607.31) representing its excess/unutilized input tax for the second, third and fourth quarters of 2001.

Consequently, the Commissioner of Internal Revenue filed a Motion for Reconsideration of the Amended Decision on April 21, 2009 with Comment/ Opposition filed thereto by Nippon Express (Philippines) Corporation on June 1, 2009.

On June 16, 2009,⁴ the Court in Division rendered the assailed Resolution denying herein said Motion for lack of merit.

Thus, the filing of the instant Petition for Review before the former Court *En Banc* of this Court.

³ Docket, pp. 16-20.

⁴ *Ibid*, at pp. 21-27.

THE FACTS

The undisputed factual antecedents of this case,⁵ are as follows:

Petitioner, Commissioner of Internal Revenue, is the duly appointed government officer vested with powers to decide, approve, and grant refunds or tax credits of overpaid internal revenue taxes as provided by law. On the other hand, respondent Nippon Express (Phils.) Corporation is a corporation duly organized and existing under the Republic of the Philippines. It is registered with the Securities and Exchange Commission under Certificate of Registration No. AS095-005669 with principal office address at U-2701 Yuchengco Tower, RCBC Plaza, 6819 Ayala Avenue, Salcedo Village, Makati City. It is registered with the Large Taxpayer District Office of the Bureau of Internal Revenue, Revenue Region No. 8 as a Value Added Tax (VAT) taxpayer.

For the four quarters of 2001, respondent filed its amended quarterly VAT Returns reflecting, among others, the following:

	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter
Taxable Sales	14,349,644.90	14,478,588.90	14,623,673.80	14,818,314.40
Zero Rated Sales	179,816,786.50	185,678,222.63	185,192,495.32	243,475,301.43
Exempt Sales	61,720,628.42	105,263,099.90	3,190,636.94	19,852,036.77
Total Sales	<u>255,887,059.82</u>	<u>305,419,911.43</u>	<u>203,006,806.06</u>	<u>278,145,652.60</u>
Output Tax	<u>1,434,964.349</u>	<u>1,447,858.89</u>	<u>1,462,367.38</u>	<u>1,481,831.44</u>
Less: Input Tax				
Input Tax Carried Over	38,250,534.87	44,966,453.98	36,075,229.92	18,091,438.41
Input Tax for the quarter	8,150,883.60	7,533,798.74	6,757,946.83	9,564,730.63
Available Input Tax	46,401,418.47	52,500,252.72	42,833,176.75	27,662,169.04
Deduction: VAT		14,977,163.91	23,273,370.96	
Refund				
Net Creditable Input Tax	<u>46,401,418.47</u>	<u>37,523,088.81</u>	<u>19,559,805.79</u>	<u>27,662,169.04</u>
Tax Overpayment	<u>44,966,453.98</u>	<u>36,075,229.92</u>	<u>18,097,438.41</u>	<u>26,180,332.60</u>

⁵ As contained in the Decision dated January 26, 2009, Ponencia of Presiding Justice Ernesto D. Acosta, Former First Division, concurred by Associate Justice Lovell R. Bautista and Associate Justice Caesar A. Casanova, CTA Case No. 6688, Records, pp. 546-552.

Respondent filed an administrative claim for refund on April 24, 2003 representing the alleged excess input tax of ₱ 20,345,824.29 attributable to its effectively zero-rated sales with the Large Taxpayers District Office, Revenue Region No. 8 on April 24, 2003, computed as follows:

Output VAT from Taxable Sales (10%)	P 5,827,022.20
Less: Input VAT Attributed to Taxable Sales	1,789,111.32
Input VAT Attributed to 0-rated Sales	<u>24,383,735.17</u>
Refundable Excess Input VAT	(<u>₱ 20,345,824.29</u>)

On April 25, 2003, pending resolution of respondent's administrative claim by petitioner, the former filed before the former First Division of this Court a Petition for Review docketed as CTA Case No. 6688, requesting for the issuance of a tax credit certificate in the amount of ₱ 20,345,824.29 representing excess input tax attributable to effectively zero-rated sales for taxable year 2001.

On January 26, 2009, the Court in Division rendered a Decision denying respondent's claim for the issuance of tax credit certificate in its favor in the amount of ₱ 20,345,824.29 allegedly representing its excess/unutilized input tax attributable to effectively zero-rated sales for taxable year 2001, for insufficiency of evidence.

However, on March 24, 2009, the assailed Amended Decision was rendered granting respondent's Motion for Reconsideration of aforesaid Decision; and ordering petitioner to issue a tax credit certificate in favor of respondent in the amount of ₱ 10,928,607.31 representing its excess/unutilized input tax for the second, third and fourth quarters of 2001.



Finding no valid or cogent reason to either alter or modify the assailed Amended Decision, the Court in Division denied herein petitioner's Motion for Reconsideration in the Resolution dated June 16, 2009.

Hence, this recourse before the Court *En Banc* by the Commissioner of Internal Revenue as petitioner herein, praying that the assailed Amended Decision dated March 24, 2009 and Resolution dated June 16, 2009 of the Court in Division, be reversed and set aside and a new one be issued finding respondent not entitled to the issuance of a tax credit certificate in the amount of ₱ 10,928,607.31 based on the evidence presented and circumstances surrounding the case.

On September 8, 2009, respondent filed its Comment⁶ to the instant Petition for Review. In the Resolution dated September 14, 2009⁷, the Court *En Banc* gave due course to the instant petition and directed both parties to file their respective memorandum. Respondent complied and filed its Memorandum on October 15, 2009⁸; while petitioner posted on October 16, 2009 a Manifestation with Motion⁹ stating that he is adopting all factual and legal arguments contained in the instant Petition for Review as part of his Memorandum and praying that the Resolution dated September 14, 2009 be reconsidered and set-aside.

In the Resolution dated November 11, 2009¹⁰, this case was considered submitted for decision.

⁶ Docket, pp. 36-53.

⁷ Ibid., at p. 55.

⁸ Id., at pp. 56-74.

⁹ Id., at pp. 75-77.

¹⁰ Id., at pp. 79-80.

Hence, this Decision.

THE ISSUE

As raised by petitioner, the sole issue for the Court's consideration is "whether or not respondent was able to prove its zero-rated sales by the presentation and submission of pertinent BIR-registered sales invoices and other related commercial documents, so as to entitle it to the issuance of a tax credit certificate or a refund of the amount of ₱ 10,928,607.31, representing its excess or unutilized input tax credit attributable to its zero-rated sales for the second, third, and fourth quarters of taxable year 2001."

Petitioner's Arguments:

In support of the instant Petition for Review, petitioner submits the following arguments:

1. "Under Section 106(D)(1) of the 1997 Tax Code, sale of goods or properties must be supported by sales invoices, while under Section 108(C) of the same Code, sale of services, as in the case of herein respondent, must be supported by official receipts"; and
2. "Tax refunds being in the nature of tax exemption are construed *strictissimi juris* against (respondent)".

Petitioner submits that pursuant to Sections 106(D)(1) and 108(C) of the National Internal Revenue Code (NIRC) of 1997, it is clear that in computing the output tax on the sale of goods or properties, the basis would be the amount appearing in the invoice, while in computing the output tax on sale of services, the basis would be the amount appearing in the official receipt. In other words, sale invoices must support the sale of goods or properties, whereas official receipts must support the sale of services.



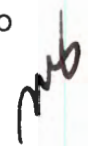
He further explains that official receipts cannot be interchanged with sales invoices as the provisions of law did not provide for any other document which can be used as an alternative to or in lieu of an official receipt.

As a matter of fact, this interpretation was allegedly clarified in Republic Act (R.A.) No. 9337, wherein it can be reasonably concluded that the true intention of the legislature was to make a distinction between the VAT invoice and official receipt. In citing the opinion of the Honorable Justice Lovell R. Bautista of this Court in one case, petitioner argues that the amendments introduced under R.A. No. 9337 manifest the real intent of the lawmakers not to have the invoice and official receipt used interchangeably so that in every sale, an invoice or receipt can be used as proof of a taxpayer's input tax attributable to zero-rated sales of services.

Further, petitioner stresses that since the instant claim involves a claim for refund or issuance of a tax credit certificate, respondent has to prove with the required quantum of evidence. Therefore, the evidence submitted by respondent to prove its zero-rated sales are insufficient to warrant its entitlement to its claim considering that its subject sales involve sales of services, as such, it should be properly supported by official receipts and not by sales invoices.

Respondent's Counter-arguments:

In its Comment/Opposition, respondent counters that the Court in Division was correct in ruling that it has sufficiently established its entitlement for the issuance of a tax credit certificate in its favor amounting to ₱ 10,928,607.31. It points out the following contentions:



1. That petitioner is already estopped to disturb the conclusions/findings of fact by the Court in Division;
2. That respondent has established its zero-rated sales or effectively zero-rated sales transactions; and
3. That cases on claim for tax refund or issuance of tax credit are civil in nature, the quantum of proof required is mere preponderance of evidence.

As petitioner allegedly failed to move for the reconsideration of the Court in Division's earlier findings contained in the Decision dated January 26, 2009 that respondent was able to establish compliance with the requisites provided for under Section 112(A) of the NIRC of 1997, more particularly the requirement that there must be zero-rated or effectively zero-rated sales, such finding has already attained its finality and can no longer be disturbed.

Moreover, respondent argues that there is absolutely no requirement under the law and existing regulations to strengthen the contention that only official receipts can serve as competent evidence to support sales of services. On the contrary, Sections 113 and 237 of the NIRC of 1997, being allegedly the primordial provisions on substantiation requirements, use the disjunctive term "or" between the words "receipt" and "invoice" which only connotes that either of the two documents qualify as evidence of sale, whether of goods or services. Hence, consistent with the cardinal principle of statutory construction, where the words and phrases of a statute are not obscure or ambiguous, the meaning and the intention of the legislature must be determined from the language employed, and where there is no ambiguity in the words, there is no room for construction.



Lastly, respondent contends that R.A. No. 9337 and its amendments which took effect only on November 1, 2005, cannot be given retroactive effect to its prejudice since the subject sales of services were made from January 1, 2001 to December 31, 2001; and therefore, the relevant sales invoices presented and admitted as evidence before the Court in Division were in legal compliance with the invoicing requirements of the law then existing.

THE COURT EN BANC'S RULING

The crux of the controversy hinges on the proper interpretation of the pertinent provisions of the National Internal Revenue Code (NIRC) of 1997 on the substantiation requirements of claims for refund or issuance of tax credit certificate of creditable input tax attributable to respondent's zero-rated sales for the second, third, and fourth quarters of taxable year 2001.

Based on the factual findings of the Court in Division, respondent Nippon Express (Phils.) Corporation rendered services to PEZA-registered enterprises and non-resident foreign corporation during the year 2001.¹¹ These sales of services fall 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, to quote:

"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.* —
The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

¹¹ Decision dated January 26, 2009, p. 5, CTA Case No. 6688, Records, p. 550.



xxx

xxx

xxx

(2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);

(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"

Pursuant to the above-provision, respondent being engaged in such sale of services to PEZA registered enterprises and non-resident foreign corporation, is indeed subject to zero percent (0%) rate of VAT on its sales of services relative to said exempt entities. Undeniably, respondent's input VAT attributable to its zero rated sales may be rightfully claimed for refund. However, such right of respondent is subject to compliance with the substantiation requirements. Respondent's right to claim for tax refund is based on a tax-refund statute, where the rule on strict interpretation against the taxpayer is applicable, as the claim for refund partakes of the nature of an exemption.¹² Consequently, the provisions regarding zero rated sales of services should be strictly construed against herein respondent.

Section 108(B)(2) and (3) of the NIRC of 1997, as amended, 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 respondent shall, for every sale, issue an invoice or receipt containing specifically required information, to wit:

¹² *CIR vs. Fortune Tobacco Corp.*, 559 SCRA 160.



“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*)

“SEC. 4.108-1. Invoicing Requirements — All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the **name, TIN and address of seller;**
2. **date of transaction;**
3. **quantity, unit cost and description of merchandise or nature of service;**
4. the **name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;**
5. the **word ‘zero rated’** imprinted on the invoice covering zero-rated sales; and
6. the **invoice value or consideration.**

In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.

Only VAT-registered persons are required to print their TIN followed by the word ‘VAT’ in their invoice or receipts and this shall be considered as a ‘VAT Invoice’. All purchases



covered by invoices other than 'VAT Invoice' shall not give rise to any input tax.

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

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."
(Emphasis supplied)

From the foregoing, it is relevant to state that the aforementioned invoicing requirements are mandatory because of the use of the word "shall". It is a well-settled doctrine in statutory construction that the use in a statute of the word "shall", which means "ought to" or "must", expresses what is mandatory. In common parlance and in its ordinary signification, the term "shall" is a word of command, and one which has always or which must be given compulsory meaning, and it is generally imperative or mandatory.¹³

While the foregoing law and regulations appear to make no distinction as to the evidentiary value of an invoice or official receipt; however, it is worthy to note that Section 113 is a general provision which covers all sales of a VAT registered person, whether sale of goods or services. Nevertheless, it does not necessarily follow that the legislature intended to use the same interchangeably considering that there are specific provisions of the NIRC which clearly delineate the difference between the two transactions.

¹³ Philippine Law Dictionary, Third Edition, Moreno, citing the case of *Lacson vs. San Jose-Lacson*, L-23482, August 30, 1968.



In relation thereto, Section 113 must be read in conjunction with Sections 106(A) and (D), and 108(A) and (C) of the NIRC of 1997, as amended, which provide for the manner of determining the output VAT due on the sale of goods or properties and sale of services, respectively. Sections 106(A) and (D) of the NIRC of 1997, as amended, are hereunder quoted as follows:

“SEC. 106. Value-added Tax on Sale of Goods or Properties. —

(A) *Rate and Base of Tax.* — There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

xxx

xxx

xxx

(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).**” (*Emphasis supplied*)

Based on the aforequoted provisions, a ten percent (10%) VAT is imposed upon the **gross selling price** in the sale of goods or properties. And the term **gross selling price** is defined under Section 106(A)(1) of the NIRC of 1997, as amended, as follows:

“The term ‘*gross selling price*’ means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter, or exchange of the goods or properties, excluding the value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price.”



In other words, the VAT on the sale of goods or properties accrues upon the **consummation of sale** regardless of whether or not the consideration thereof was actually received. For this reason, Section 106(D) of the NIRC of 1997, as amended, provides that the tax shall be computed by multiplying the total amount indicated in the **invoice** by one-eleventh (1/11).

On the other hand, the 10% VAT is computed based on **gross receipts** in the sale of services pursuant to Section 108(A) of the NIRC of 1997, as amended, as quoted hereunder:

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

(A) Rate and Base of Tax. — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.” *(Emphasis supplied)*

The term “gross receipts” is defined under Section 108(A) of the NIRC of 1997, as amended, as follows:

“The term ‘*gross receipts*’ means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.”

Plainly, the VAT on the sale of services accrues upon **actual or constructive receipt of the consideration** irrespective of whether or not the service has been performed or still to be performed for another person.



In addition, Section 108(C) of the NIRC of 1997, as amended, provides that the tax on the sale of services shall be computed by multiplying the total amount indicated in the **official receipt** by 1/11.

In other words, the VAT law and regulations require that **sales invoices** must support the **sale of goods or properties**; while **official receipts** must substantiate the **sale of services**. Invoices and official receipts must also be 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 the case at bench, considering that respondent is engaged in the sale of services, its transactions should be evidenced by official receipts, as prescribed by law, which is the only acceptable proof to establish its zero rated sale of services. Thus, respondent should have produced and presented the corresponding official receipts to prove the sale of services to its clients during the subject period covered in the present case. The sales invoices issued and presented by respondent are insufficient to meet the prescribed invoicing requirements.

Without proper VAT official receipts issued to its clients, the payments received by respondent from services rendered to PEZA-registered enterprises and non-resident foreign corporation for taxable year 2001, cannot qualify for zero-rating for VAT purposes. Therefore, the claimed input VAT payments allegedly attributable thereto cannot be granted.



Section 112(A) of the NIRC of 1997 clearly requires that there must be zero-rated or effectively zero-rated sales in order for a refund claim of input VAT to prosper, quoted hereunder for ready reference:

"SEC. 112. Refunds or Tax Credits of Input Tax. -

(A) *Zero-rated or Effectively Zero-rated Sales.* - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

In light of the foregoing considerations, We are thus constrained to reverse the assailed Amended Decision which granted herein respondent's claim for the issuance of a tax credit certificate allegedly representing its excess/unutilized input tax for the second, third and fourth quarters of taxable year 2001.

Noteworthy is the legal principle that a claim for tax refund is in the nature of tax exemption. Laws granting tax exemption are construed *stricticissimi juris* against the taxpayer and liberally in favor of the taxing authority. Taxation is the rule and exemption is the exception. The law does



not look with favor on tax exemptions and he who thus seeks to be privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted. Respondent has a burden of proof to establish the factual basis of its claim for tax refund, which it failed to do.¹⁴

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. The Amended Decision dated March 24, 2009 and the Resolution dated June 16, 2009 of the Court in Division are **REVERSED** and **SET ASIDE**. Accordingly, respondent Nippon Express (Phils.) Corporation's claim for the refund or issuance of a tax credit certificate in its favor allegedly representing its excess or unutilized input tax credit attributable to its zero-rated sales for taxable year 2001 is hereby **DENIED** for lack of merit.

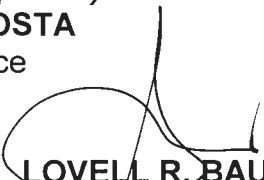
SO ORDERED.


ERLINDA P. JUY
Associate Justice

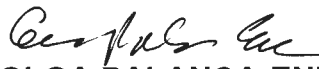
WE CONCUR:


(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTANEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice

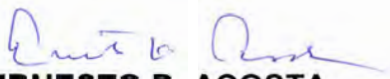

(I concur with the Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

¹⁴ *Sea-Land Services, Inc. vs. Court of Appeals*, 359 SCRA 441.

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.



ERNESTO D. ACOSTA
Presiding Justice

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

FORMER EN BANC

**COMMISSIONER OF INTERNAL
REVENUE,**

Petitioner,

CTA EB NO. 505

(CTA Case No. 6688)

Present:

Acosta, *PJ*,
Castañeda,
Bautista,
Uy,
Casanova, *and*
Palanca-Enriquez, *JJ*.

~ versus ~

**NIPPON EXPRESS (PHILS.)
CORPORATION,**

Respondent.

Promulgated:

JUN 11 2010

X ----- X

DISSENTING OPINION

With due respect to the opinion of my esteemed colleagues, I maintain my stand that the official receipt is not the only acceptable evidence to prove zero-rated sale of service in order that refund of unutilized input tax attributable thereto can be granted because it can also be proven by other documents such as sales invoices.

It is to be stressed that neither does Section 112 (A) of the National Internal Revenue Code (NIRC), which is the authority for the “*Refunds or Tax Credits of Input Tax*”, mention any particular evidence to support the zero-rated sales as a requirement to grant refund or tax credit of input tax attributable thereto, nor Sections 113 and 237 of the NIRC, which are the primordial provisions on substantiation requirements, provide that the acceptable evidence to substantiate a claim for refund involving sale of service are official receipts only. On the contrary,

fu

both provisions of Sections 113 and 237 mandate a person to issue an invoice or receipt for every sale. The use of the disjunctive term “or” in the afore-cited provisions connote that either source document qualifies as two different evidences of sale-purchase transaction. It is indicative of the intention of the lawmakers to use the same interchangeably in the sale of goods or services. Prevalent is the rule in statutory construction that where the law does not distinguish, the courts should make no distinction. *Ubi lex non distinguit nec nos distinguere debemos.*¹

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. Noteworthy that both Sections do not deal with substantiation requirements, but concern about the levy, assessment and collection, as well as, the computation of the value-added tax on sale of goods and properties, and services. Settled is that 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.² Hence, what is not clearly provided in the law cannot be extended to those matters outside its scope.³

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

¹ Mendoza, et al. vs. COMELEC, et al., G. R. No. 149736, December 17, 2002.

² Binay vs. Sandiganbayan, GR No. 120681-83, October 1, 1999.

³ Statutory Construction by Ruben Agpalo, Fifth Ed. (2003) page 125.

⁴ G.R. No. 153204. August 31, 2005.



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 sale of service. After all, the pertinent laws as well as jurisprudence, made no pronouncement as to the use of official receipt as the exclusive and sole determinative piece of evidence to prove sale of service to the exclusion of all other proofs equally relevant and competent, like the sales invoice. The sales invoices, like the official receipts are material, relevant and competent evidence inasmuch as they directly prove the amount of sales.

Equally important to note that tax cases are civil in nature. In civil cases the quantum of proof required is by mere preponderance of evidence.⁵ 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.⁶ Since respondent was able to prove the existence of its zero-rated sale of service by sales invoices, transfer slips, credit memos, certificate of PEZA registration, certifications of non-registration of corporation with the Philippine Securities and Exchange Commission, 2001 quarterly VAT returns and the reports of the commissioned independent CPA, making its side more conclusive and credible than the BIR, there is no reason to require it to further

⁵ Section 1, Rule 133, Revised Rules of Court.

⁶ Municipality of Moncada vs. Cajuigan, 21 Phil. 184.



produce its official receipts. It is to be noted that both the sales invoice and official receipt are registered with the Bureau of Internal Revenue and are evidence of the commercial transaction that happened.

It is worthy to echo the ruling of the Supreme Court in the case of *BPI-Family Savings Bank, Inc., vs. Court of Appeals, Court of Tax Appeals, and the Commissioner of Internal Revenue*⁷ that 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.

Therefore, I vote to deny the instant Petition for Review. The Amended Decision dated March 24, 2009 and the Resolution dated June 16, 2009 of the Court of Tax Appeals First Division should be affirmed *in toto*.


ERNESTO D. ACOSTA
Presiding Justice

I Concur:


CAESAR A. CASANOVA
Associate Justice

⁷ G.R. No. 122480, April 12, 2000.