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THIRD DIVISION

[G.R. No. 182364, August 03, 2010]

AT&T COMMUNICATIONS SERVICES PHILIPPINES, INC., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

AT&T Communications Services Philippines, Inc. (petitioner) is a domestic corporation primarily engaged in the business of providing information, promotional, supportive and liaison services to foreign corporations such as AT&T Communications Services International Inc., AT&T Solutions, Inc., AT&T Singapore, Pte. Ltd.,, AT&T Global Communications Services, Inc. and Acer, Inc., an enterprise registered with the Philippine Economic Zone Authority (PEZA).

Under Service Agreements forged by petitioner with the above-named corporations, remuneration is paid in U.S. Dollars and inwardly remitted in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP).

For the calendar year 2002, petitioner incurred input VAT when it generated and recorded zero-rated *sales* in connection with its Service Agreements in the peso equivalent of P56,898,744.05. Petitioner also incurred input VAT from *purchases* of capital goods and other taxable goods and services, and importation of capital goods.

Despite the application of petitioner's input VAT against its output VAT, an excess of unutilized input VAT in the amount of P2,050,736.69 remained. As petitioner's unutilized input VAT could not be directly and exclusively attributed to either of its zero-rated sales or its domestic sales, an allocation of the input VAT was made which resulted in the amount of P1,801,826.82 as petitioner's claim attributable to its zero-rated sales.

On March 26, 2004, petitioner filed with the Commissioner of Internal Revenue (respondent) an application for tax refund and/or tax credit of its excess/unutilized input VAT from zero-rated sales in the said amount of P1,801,826.82.[1]

To prevent the running of the prescriptive period, petitioner subsequently filed a petition for review with the Court of Tax Appeals (CTA) which was docketed as CTA Case No. 6907 and lodged before its First Division.

In support of its claim, petitioner presented documents including its Summary of Zero-Rated Sales (Exhibit "DD") with corresponding supporting documents; VAT invoices on which were stamped "zero-rated" and bank credit advices (Exhibits "EE-1" to "EE-56"); copies of Service Agreements (Exhibits "N" to "Q"); and report of the commissioned certified public accountant (Exhibit "AA" to "AA-22").

After petitioner presented its evidence, respondent did not, despite notice, proffer any opposition to it. He was eventually declared to have waived his right to present evidence.

By Decision of February 23, 2007,[2] the CTA First Division, conceding that petitioner's transactions fall under the classification of zero-rated sales, nevertheless denied petitioner's claim "for lack of substantiation," disposing as follows:

> In reiteration, considering that the subject revenues pertain to gross receipts from services rendered by petitioner, **valid VAT 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 2002 in the sum of US$1,102,315.48 with the peso equivalent of P56,898,744.05 cannot qualify for zero-rating for VAT purposes. Consequently, the claimed input VAT payments allegedly attributable thereto in the amount of P1,801,826.82 cannot be granted. It is clear from the provisions of Section 112 (A) of the NIRC of 1997 that there must be zero-rated or effectively zero-rated sales in order that a refund of input VAT could prosper.
>
> x x x x[3] (emphasis and underscoring supplied)

The CTA First Division, relying on Sections 106[4] and 108[5] of the Tax Code, held that since petitioner is engaged in sale of *services*, VAT Official Receipts should have been presented in order to substantiate its claim of zero-rated sales, not VAT invoices which pertain to sale of *goods* or properties.

On petition for review, the CTA *En Banc*, by Decision of February 18, 2008,[6] *affirmed* that of the CTA First Division. Petitioner's motion for reconsideration having been denied by Resolution of April 2, 2008, the present petition for review was filed.

The petition is impressed with merit.

A taxpayer engaged in zero-rated transactions may apply for tax refund or issuance of tax credit certificate for unutilized input VAT, subject to the following requirements: (1)

the taxpayer is engaged in sales which are zero-rated (*i.e.*, export sales) or effectively zero-rated; (2) the taxpayer is VAT-registered; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax; and (5) in case of zero-rated sales under Section 106 (A) (2) (a) (1) and (2), Section 106 (B) and Section 108 (B) (1) and (2), the acceptable foreign currency exchange proceeds thereof have been duly accounted for in accordance with BSP rules and regulations.[7]

Commissioner of Internal Revenue v. Seagate Technology (Philippines)[8] teaches that petitioner, as zero-rated seller, hence, directly and legally liable for VAT, can claim a refund or tax credit certificate.

> Zero-rated transactions generally refer to the export sale of goods and supply of services. The tax rate is set at zero. When applied to the tax base, such rate obviously results in no tax chargeable against the purchaser. The **seller** of such transactions charges no output tax but can claim a refund or a tax credit certificate for the VAT previously charged by suppliers. x x x
>
> Applying the destination principle to the exportation of goods, automatic zero rating is primarily intended to be enjoyed by the **seller** who is directly and legally liable for the VAT, making such seller internationally competitive by allowing the refund or credit of input taxes that are attributable to export sales. (emphasis and underscoring supplied)

Revenue Regulation No. 3-88 amending Revenue Regulation No. 5-87 provides the requirements in claiming tax credits/refunds:

> Sec. 2. Section 16 of Revenue Regulations 5-87 is hereby amended to read as follows: x x x
>
> (c) Claims for tax credits/refunds - Application for Tax Credit/Refund of Value-Added Tax Paid (BIR Form No. 2552) shall be filed with the Revenue District Office of the city or municipality where the principal place of business of the applicant is located or directly with the Commissioner, Attention: VAT Division.
>
> A photocopy of the **purchase invoice or receipt evidencing the value added tax paid** shall be submitted together with the application. The original copy of the said invoice/receipt, however shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or refund. x x x (emphasis and underscoring supplied)

Section 113 of the Tax Code does not create a distinction between a sales invoice and an official receipt.

> 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, italics and underscoring supplied)

Section 110 of the 1997 Tax Code in fact provides:

> Section 110. Tax Credits -
>
> A. Creditable Input Tax. -
>
> > (1) **Any input tax evidenced by a VAT invoice *or* official receipt issued in accordance with Section 113** hereof on the following transactions shall be creditable against the output tax:
> >
> > (b) Purchase of services on which a value-added tax has actually been paid. (emphasis, italics and underscoring supplied)

Parenthetically, to determine the validity of petitioner's claim as to unutilized input VAT, an invoice would suffice provided the requirements under Sections 113 and 237 of the Tax Code are met.

Sales invoices are recognized commercial documents to facilitate trade or credit transactions. They are proofs that a business transaction has been concluded, hence, should not be considered bereft of probative value.[9] Only the preponderance of evidence threshold as applied in ordinary civil cases is needed to substantiate a claim for tax refund proper.[10]

IN FINE, the Court finds that petitioner has complied with the substantiation requirements to prove entitlement to refund/tax credit. The Court is not a trier of facts, however, hence the need to remand the case to the CTA for determination and computation of petitioner's refund/tax credit.

WHEREFORE, the petition is **GRANTED**. The Decision of February 18, 2008 of the Court of Tax Appeals *En Banc* is **REVERSED** and **SET ASIDE**. Let the case be **REMANDED** to the Court of Tax Appeals First Division for the determination of petitioner's tax credit/refund.

SO ORDERED.

Brion, Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

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[*] Designated as Additional Member, per Special Order No. 843 (May 17, 2010), in view of the vacancy occasioned by the retirement of Chief Justice Reynato S. Puno.

[1] *Rollo*, p. 19.

[2] Penned by Associate Justice Caesar A. Casanova with the dissent of Presiding Justice Ernesto D. Acosta and the concurrence of Associate Justice Lovell R. Bautista, id. at 172-186.

[3] Id. at 184-185.

[4] Sec. 106. *Value-added Tax on Sale of Goods or Properties* - x x x

(D) Determination of the Tax -

(1) The tax shall be computed by multiplying the total amount in the invoice by one-eleventh (1/11).

[5] Sec. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties*. -

(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).

[6] *Rollo*, pp. 63-82.

[7] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007. 522 SCRA 657.

[8] G.R. No. 153866, February 11, 2005, 451 SCRA 132, 143-144.

[9] *Seaoil Petroleum Corporation v. Autocorp Group*, G.R. No. 164326, October 17, 2008, 569 SCRA 387, 396.

[10] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, G.R. No. 172129, September 12, 2008, 565 SCRA 154, 166.
