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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
AUG 17 2018

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NIPPON EXPRESS (PHILIPPINES) CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

G.R. No. 191495

Present:

VELASCO, JR., *J., Chairperson,*
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, *JJ.*

Promulgated:

July 23, 2018

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DECISION

MARTIRES, *J.*:

In a claim for refund under Section 112 of the National Internal Revenue Code *(NIRC),* the claimant must show that: *(1)* it is engaged in zero-rated sales of goods or services; and *(2)* it paid input VAT that are attributable to such zero-rated sales. Otherwise stated, the claimant must prove that it made a *purchase* of taxable goods or services for which it paid VAT (input), and later on engaged in the *sale* of goods or services subject to VAT (output) but at zero rate. There is a refundable sum when the amount of input (VAT (attributable to zero-rated sale) is higher than the claimant's output VAT during one taxable period (quarter).

The issue in the present petition concerns the proof that the claimant, petitioner Nippon Express (Philippines) Corporation *(Nippon Express),* is engaged in zero-rated sales of services (not goods or properties).

THE FACTS

Petitioner Nippon Express repaired to the Court via its petition for review on certiorari under Rule 45 of the Rules of Court to assail the 15 December 2009 Decision of the Court of Tax Appeals *(CTA)* En Banc in CTA EB No. 492. The CTA En Banc affirmed the ruling of the CTA Second Division in CTA Case No. 7429 denying the refund claim of Nippon Express.

The present controversy stemmed from an application for the issuance of a tax credit certificate *(TCC)* of Nippon Express' excess or unutilized input tax attributable to its zero-rated sales for all four taxable quarters in 2004 pursuant to Section 112 of the National Internal Revenue Code *(NIRC)*.

The Antecedents

Nippon Express is a domestic corporation registered with the Large Taxpayer District Office *(LTDO)* of the Bureau of Internal Revenue *(BIR)*, Revenue Region No. 8–Makati, as a Value Added Tax *(VAT)* taxpayer.[1]

On **30 March 2005**, Nippon Express filed with the LTDO, Revenue Region No. 8, an application for tax credit of its excess/unused input taxes attributable to zero-rated sales for the taxable year 2004 in the total amount of ₱27,828,748.95.

By reason of the inaction by the BIR, Nippon Express filed a Petition for Review before the CTA on **31 March 2006**.[2] In its Answer, respondent Commissioner of Internal Revenue *(CIR)* interposed the defense, among others, that Nippon Express' excess input VAT paid for its domestic purchases of goods and services attributable to zero-rated sales for the four quarters of taxable year 2004 was not fully substantiated by proper documents.[3]

The Ruling of the CTA Division

After trial, the CTA Division *(the court)* found that Nippon Express' evidentiary proof of its zero-rated sale of services to PEZA-registered entities consisted of documents other than official receipts. Invoking

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1 *Rollo*, pp. 94-95, see Decision, dated 15 December 2009, promulgated by CTA En Banc in CTA EB No. 492, pp. 2-3.

2 Id. at 80.

3 Id. at 96.

Section 113 of the NIRC, as amended by Section 11 of Republic Act *(R.A.)* No. 9337, the court held the view that the law provided for invoicing requirements of VAT-registered persons to issue a VAT invoice for every sale, barter or exchange of goods or properties, and a VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services. Noting that Nippon Express is engaged in the business of providing services, the court denied the latter's claim for failure to submit the required VAT official receipts as proof of zero-rated sales. The dispositive portion of the CTA Division's Decision, dated 5 December 2008, reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit.
>
> **SO ORDERED.**[4]

Aggrieved, Nippon Express moved for reconsideration or new trial but was rebuffed by the CTA Division in its Resolution[5] of 5 May 2009. Hence, Nippon Express filed on 10 June 2009 a petition for review with the CTA En Banc.

The Petition for Review before the CTA En Banc

In its appeal before the CTA En Banc, Nippon Express alleged that it had fully complied with the invoicing requirements when it submitted sales invoices to support its claim of zero-rated sales. Nippon argued that there is nothing in the tax laws and regulations that requires the sale of goods or properties to be supported only by sales invoices, or the sale of services by official receipts only. Thus, as Nippon Express put it, the CTA Division erred in holding that the sales invoices and their supporting documents are insufficient to prove Nippon Express' zero-rated sales.

The Ruling of the CTA En Banc

As stated at the outset, the CTA En Banc affirmed the decision of the CTA Division. The CTA En Banc disposed as follows:

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4 Id. at 142.

5 Id. at 145-150.

> "**WHEREFORE**, the Petition for Review is **DISMISSED**. Accordingly, the impugned Decision of the Court in Division dated December 5, 2008 and its Resolution promulgated on May 5, 2009 in CTA Case No. 7429 are **AFFIRMED**.
>
> **SO ORDERED.**"[6]

Worth mentioning is the lone dissent registered by Presiding Justice *(PJ)* Ernesto D. Acosta who opined that an official receipt is not the only acceptable evidence to prove zero-rated sales of services. He ratiocinated:

> **Sections 113 and 237 of the 1997 National Internal Revenue Code (NIRC)** x x x made use of the disjunctive term "or" which connotes that either act qualifies as two different evidences of input VAT. x x x It is indicative of the intention of the lawmakers to use the same interchangeably in the sale of goods or services.
>
> This is bolstered by the fact that Section 113 of the 1997 NIRC has been amended by Section 11 of Republic Act (RA) No. 9337, wherein the amendatory provisions of the law categorically required that VAT invoice shall be issued for sale of goods while VAT official receipt for the sale of services, which is absent in the amended law. Since this amendment took effect on July 1, 2005, the same cannot be applied in the instant case which involves a claim for refund for taxable year 2004. RA 9337 cannot apply retroactively to the prejudice of petitioner given the well-entrenched principle that statutes, including administrative rules and regulations operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication.
>
> Equally relevant are **Section 110 of the 1997 NIRC** and **Section 4.106-5 of Revenue Regulations No. 7-95**. x x x A reading of both provisions would show the intention to accept other evidence to substantiate claims for VAT refund, particularly the use of either a VAT invoice or official receipt.[7]

Nippon Express opted to forego the filing of a motion for reconsideration; hence, the direct appeal before the Court.

The Present Petition for Review

In its petition, Nippon Express reiterated its stance that nowhere is it expressly stated in the laws or implementing regulations that *only* official receipts can support the sale of *services*, or that *only* sales invoices can support the sale of *goods* or *properties*. Nippon Express also adopted at length the dissenting opinion of PJ Acosta, *viz* the use of the disjunctive term "or" in Section 237 of the NIRC connoting the interchangeable nature of

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[6] Id. at 111.
[7] Id. at 113-115.

either VAT invoice or official receipt as evidence of sale of goods or services; the lack of any statutory basis for the exclusivity of official receipts as proof of sale of service; and the non-retroactivity of R.A. No. 9337, enacted in 2005, to the petitioner's case.

In addition, Nippon Express posed the query on whether it may still be allowed to submit official receipts, in addition to those already produced during trial, in order to prove the existence of its zero-rated sales.

By way of Comment,[8] the CIR impugns the petition as it essentially seeks the re-evaluation of the evidence presented during trial which cannot be done in a petition for review under Rule 45. Likewise, the CIR argues that the evidence of the sale of service, as the CTA held, is none other than an official receipt. In contrast, the sales invoice is the evidence of a sale of goods. Since the petitioner's transactions involve sales of services, they should have been properly supported by official receipts and not merely by sales invoices.

THE COURT'S RULING

We deny the petition.

I.

The judicial claim of Nippon Express was belatedly filed. The thirty (30)-day period of appeal is mandatory and jurisdictional, hence, the CTA did not acquire jurisdiction over Nippon Express' judicial claim.

First, we observe that much of the CTA's discussion in the assailed decision dwelt on the substantiation of the petitioner's claim for refund of unutilized creditable input VAT. It did not touch on the subject of the court's jurisdiction over the petition for review filed before it by Nippon Express. Neither did the CIR bring the matter to the attention of the court *a quo*.

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[8] Id. at 205-224.

Nonetheless, even if not raised in the present petition, the Court is not prevented from considering the issue on the court's jurisdiction consistent with the well-settled principle that when a case is on appeal, the Court has the authority to review matters not specifically raised or assigned as error if their consideration is necessary in reaching a just conclusion of the case.[9] The matter of jurisdiction cannot be waived because it is conferred by law and is not dependent on the consent or objection or the acts or omissions of the parties or any one of them.[10] Besides, courts have the power to *motu proprio* dismiss an action over which it has no jurisdiction pursuant to Section 1, Rule 9 of the Revised Rules of Court.[11]

Concerning the claim for refund of excess or unutilized creditable input VAT attributable to zero-rated sales, the pertinent law is Section 112 of the NIRC[12] which reads:

> 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:
>
> x x x x
>
> (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**. (emphases supplied)

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[9] See *Aichi Forging Company of Asia v. CTA*, G.R. No. 193625, 30 August 2017, citing *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. CIR*, 757 Phil. 54, 69 (2015); *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. CIR*, 727 Phil. 487, 499 (2014).

[10] Id., citing *Nippon Express (Philippines) Corporation v. CIR*, 706 Phil. 442, 450-451 (2013).

[11] SECTION 1. *Defenses and objections not 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. (emphasis supplied)

[12] Before the amendments introduced by R.A. No. 9337 and R.A. No. 9361. R.A. No. 9337 took effect on 1 November 2005; R.A. No. 9361 on 28 November 2006. Recently, R.A. No. 10963 (or the TRAIN Law) amended Section 112 of the NIRC. Notably, the 120-day period was shortened to ninety (90) days.

Under the aforequoted provision, a VAT-registered taxpayer who has excess and unutilized creditable input VAT attributable to zero-rated sales may file an application for cash refund or issuance of TCC (administrative claim) before the CIR who has primary jurisdiction to decide such application.[13] The period within which to file the administrative claim is two (2) years reckoned from the close of the taxable quarter when the pertinent zero-rated sales were made.

From the submission of complete documents to support the administrative claim, the CIR is given a 120-day period to decide. In case of whole or partial denial of or inaction on the administrative claim, the taxpayer may bring his judicial claim, through a petition for review, before the CTA who has exclusive and appellate jurisdiction.[14] The period to appeal is **thirty (30) days** counted from the receipt of the decision or inaction by the CIR.

The 30-day period is further emphasized in Section 11 of R.A. No. 1125, as amended by R.A. No. 9282, or the CTA charter, which reads:

> SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA **within thirty (30) days** after the receipt of such decision or ruling or **after the expiration of the period** fixed by law for action as referred to in Section 7(a)(2) herein. (emphases supplied)

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[13] Based on the second paragraph of Section 4 of the NIRC which states:
Section 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

[14] Based on Section 7 (a) of R.A. No. 1125, as amended by R.A. No. 9282. It reads:
Sec. 7. Jurisdiction. - The CTA shall exercise:
a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; x x x

In the seminal cases of *Commissioner of Internal Revenue (Commissioner) v. Aichi Forging Company of Asia, Inc.*[15] and *Commissioner v. San Roque Power Corporation/Taganito Mining Corporation v. Commissioner/Philex Mining Corporation v. Commissioner (San Roque),*[16] the Court interpreted the 30-day period of appeal as **mandatory** and **jurisdictional**. Thus, noncompliance with the mandatory 30-day period renders the petition before the CTA void. The ruling in said cases as to the mandatory and jurisdictional character of the 30-day period of appeal was reiterated in a litany of cases thereafter.

Pertinently, the CTA law expressly provides that when the CIR fails to take action on the administrative claim, the "inaction shall be deemed a denial" of the application for tax refund or credit. The taxpayer-claimant must strictly comply with the mandatory period by filing an appeal with the CTA within thirty days from such inaction, otherwise, the court cannot validly acquire jurisdiction over it.

In this case, Nippon Express timely filed its administrative claim on **30 March 2005**, or within the two-year prescriptive period. Counted from such date of submission of the claim with supporting documents, the CIR had 120 days, or until 28 July 2005, the last day of the 120-day period, to decide the claim. As the records reveal, the CIR did not act on the application of Nippon Express. Thus, in accordance with law and the cited jurisprudence, the claimant, Nippon Express, had thirty days from such inaction "deemed a denial," or until 27 August 2005, the last day of the 30-day period, within which to appeal to the CTA.

However, Nippon Express filed its petition for review with the CTA only on **31 March 2006**, or **two hundred forty-six (246) days** from the inaction by the CIR. In other words, the petition of Nippon Express was belatedly filed with the CTA and, following the doctrine above, the court ought to have dismissed it for lack of jurisdiction.

The present case is similar to the case of Philex Mining Corporation *(Philex)* in the consolidated cases of *San Roque.* In that case, Philex: (1) filed on 21 October 2005 its original VAT return for the third quarter of taxable year 2005; (2) filed on 20 March 2006 its administrative claim for refund or credit; (3) filed on 17 October 2007, its petition for review with the CTA.[17] As in this case, the CIR did not act on Philex's claim.

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[15] 646 Phil. 710 (2010).
[16] 703 Phil. 310 (2013).
[17] Id. at 361.

The Court considered Philex to have timely filed its administrative claim on 20 March 2006, or within the two-year period; but, its petition for review with the CTA on 17 October 2007, was late by 426 days. Thus, the Court ruled that the CTA Division did not acquire jurisdiction.

Due to the lack of jurisdiction of the CTA over the Nippon Express petition before it, all the proceedings held in that court must be void. The rule is that where there is want of jurisdiction over a subject matter, the judgment is rendered null and void.[18] It follows that the decision and the resolution of the CTA Division, as well as the decision rendered by the CTA En Banc on appeal, should be vacated or set aside.

As noted previously, Nippon Express asked leave from this Court to allow it to submit in evidence the official receipts of its zero-rated sales in addition to the sales invoices and other documents already presented before the CTA. Considering our finding as to the CTA's lack of jurisdiction, it is thus futile to even consider or allow such official receipts of Nippon Express.

II.

In view of the lack of jurisdiction of the CTA, we shall clarify and resolve, if only for academic purposes, the focal issue presented in this petition, i.e., whether the sales **invoices** and documents other than official receipts are proper in substantiating zero-rated sales of **services** in connection with a claim for refund under Section 112 of the NIRC.

Substantiation requirements to be entitled to refund or tax credit under Sec. 112, NIRC

As stated in our introduction, the burden of a claimant who seeks a refund of his excess or unutilized creditable input VAT pursuant to Section 112 of the NIRC is two-fold: *(1)* prove payment of input VAT to suppliers; and *(2)* prove zero-rated sales to purchasers. Additionally, the taxpayer-claimant has to show that the VAT payment made, called input VAT, is attributable to his zero-rated sales.

Be it noted that under the law on VAT, as contained in Title IV of the NIRC, there are three known taxable transactions, namely: *(i)* sale of goods or properties (Section 106); *(ii)* importation (Section 107); and *(iii)* sale of

[18] *Aichi Forging Company of Asia v. CTA*, supra note 9, citing *Paulino v. Court of Appeals*, 735 Phil. 448, 459 (2014).

services and lease of properties (Section 108). Both sale transactions in Section 106 and 108 are qualified by the phrase 'in the course of trade or business,' whereas importation in Section 107 is not.

At this juncture, it is imperative to point out that the law had set apart the sale of goods or properties, as contained in Section 106, from the sale of services in Section 108.

In establishing the fact that taxable transactions like sale of goods or properties or sale of services were made, the law provided for invoicing and accounting requirements, to wit:

> **Section 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.
>
> (B) *Accounting Requirements.* – Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance.
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> x x x x
>
> **Section 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 (₱25.00) 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 the case of sales, receipts or transfers in the amount of One hundred pesos (₱100.00) or more, or regardless of the 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 Identification Number (TIN) of the purchaser.

> The original of each **receipt** *or* **invoice** shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such **invoice** *or* **receipt** was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period. (emphases supplied)

The CTA En Banc held the view that while Sections 113 and 237 used the disjunctive term "or," it must not be interpreted as giving a taxpayer an unconfined choice to select between issuing an invoice or an official receipt.[19] To the court *a quo*, sales invoices must support sales of goods or properties while official receipts must support sales of services.[20]

We agree.

Actually, the issue is no longer novel.

In *AT&T Communications Services Philippines, Inc. v. Commissioner (AT&T),*[21] we interpreted Sections 106 and 108 in conjunction with Sections 113 and 237 of the NIRC relative to the significance of the difference between a sales invoice and an official receipt as evidence for zero-rated transactions. For better appreciation, we simply quote the pertinent discussion, *viz:*

> Although it appears under [Section 113] that there is no clear distinction on the evidentiary value of an invoice or official receipt, it is worthy to note that the said provision is a general provision which covers all sales of a VAT registered person, whether sale of goods or services. It does not necessarily follow that the legislature intended to use the same interchangeably. The Court therefore cannot conclude that the general provision of Section 113 of the NIRC of 1997, as amended, intended that the invoice and official receipt can be used for either sale of goods or services, because there are specific provisions of the Tax Code which clearly delineates the difference between the two transactions.
>
> In this instance, Section 108 of the NIRC of 1997, as amended, provides:
>
> > SEC. 108. ***Value-added Tax on Sale of Services*** and Use or Lease of Properties.-
> >
> > x x x x
> >
> > (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). (emphases supplied)

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19 *Rollo*, p. 22.
20 Id. at 24.
21 747 Phil. 337 (2014).

Comparatively, Section 106 of the same Code covers sale of goods, thus:

> SEC. 106. ***Value-added Tax on Sale of Goods or Properties***,-
>
> x x x x
>
> (D) Determination of the Tax. – The tax shall be computed by multiplying the total amount indicated in the ***invoice*** by one-eleventh (1/11). (emphases supplied)

Apparently, the construction of the statute shows that the legislature intended to distinguish the use of an invoice from an official receipt. It is more logical therefore to conclude that subsections of a statute under the same heading should be construed as having relevance to its heading. The legislature separately categorized VAT on sale of goods from VAT on sale of services, not only by its treatment with regard to tax but also with respect to substantiation requirements. Having been grouped under Section 108, its subparagraphs, (A) to (C), and Section 106, its subparagraphs (A) to (D), have significant relations with each other.

x x x x

Settled is the rule that every part of the statute must be considered with the other parts. Accordingly, the whole of Section 108 should be read in conjunction with Sections 113 and 237 so as to give life to all the provisions intended for the sale of services. There is no conflict between the provisions of the law that cover sale of services that are subject to zero rated sales; thus, it should be read altogether to reveal the true legislative intent.[22]

Contrary to the petitioner's position, invoices and official receipts are not used interchangeably for purposes of substantiating input VAT;[23] or, for that matter, output VAT. Nippon Express cites *Commissioner v. Manila Mining Corporation (Manila Mining)*[24] as its authority in arguing that the law made no distinction between an invoice and an official receipt. We have read said case and therein found just quite the opposite. The *Manila Mining* case in fact recognized a difference between the two, to wit:

> A "sales or commercial invoice" is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services.

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22 Id. at 356-357.
23 *KEPCO v. CIR*, 650 Phil. 525, 542 (2010).
24 505 Phil. 650 (2005).

> A "receipt" on the other hand is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer.[25]

At this point, it is worth mentioning that the VAT law at issue in *Manila Mining* was Presidential Decree No. 1158 (National Internal Revenue Code of 1977). That a distinction between an invoice and receipt was recognized even as against the NIRC of 1977 as the legal backdrop is authority enough to dispel any notion harbored by the petitioner that a distinction between the two, with the legal effects that follow, arose only after the enactment of R.A. No. 9337. For emphasis, even prior to the enactment of R.A. No. 9337, which clearly delineates the invoice and official receipt, our Tax Code has already made the distinction.[26]

The *Manila Mining* case proceeded to state –

> 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.[27]

While the words "invoice" and "receipt" in said decision are seemingly used without distinction, it cannot be rightfully interpreted as allowing either document as substantiation for any kind of taxable sale, whether of goods/properties or of services. A closer reading of *Manila Mining* indeed shows that the question on whether an invoice is the proper documentary proof of a sale of goods or properties to the exclusion of an official receipt, and vice versa, official receipt as the proof of sale of services to the exclusion of an invoice, was not the pivotal issue.

It was in *Kepco Philippines Corporation v. Commissioner (Kepco)*[28] that the Court was directly confronted with the adequacy of a sales invoice as proof of the purchase of services and official receipt as evidence of the purchase of goods. The Court initially cited the distinction between an invoice and an official receipt as expressed in the *Manila Mining* case. We then declared for the first time that a *VAT invoice* is necessary for every sale, barter or exchange of goods or properties while a *VAT official receipt* properly pertains to every lease of goods or properties, and for every sale, barter or exchange of services. Thus, we held that a VAT invoice and a VAT receipt should not be confused as referring to one and the same thing; the law did not intend the two to be used alternatively. We stated:

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25 Id. at 665.

26 *AT&T Communications Services Philippines, Inc. v. CIR*, supra note 21 at 335.

27 Supra note 24 at 666.

28 Supra note 23.

> [T]he VAT invoice is the seller's best proof of the sale of the goods or services to the buyer while the VAT receipt is the buyer's best evidence of the payment of goods or services received from the seller. Even though VAT invoices and receipts are normally issued by the supplier/seller alone, the said invoices and receipts, taken collectively, are necessary to substantiate the actual amount or quantity of goods sold and their selling price (*proof of transaction*), and the best means to prove the input VAT payments (*proof of payment*). Hence, VAT invoice and VAT receipt should not be confused as referring to one and the same thing. Certainly, neither does the law intend the two to be used alternatively.[29]

In *Kepco*, the taxpayer tried to substantiate its input VAT on purchases of goods with *official receipts* and on purchases of services with *invoices.* The claim was appropriately denied for not complying with the required standard of substantiation. The Court reasoned that the invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims. Unmistakably, the indispensability of an official receipt to substantiate a sale of service had already been illustrated jurisprudentially as early as *Kepco.*

The doctrinal teaching in *Kepco* was further reiterated and applied in subsequent cases.

Thus, in *Luzon Hydro Corp. v. Commissioner*,[30] the claim for refund/tax credit was denied because the proof for the zero-rated sale consisted of secondary evidence like financial statements.

Subsequently, in *AT&T*,[31] the Court rejected the petitioner's assertion that there is no distinction in the evidentiary value of the supporting documents; hence, invoices or receipts may be used interchangeably to substantiate VAT. Apparently, the taxpayer-claimant presented a number of bank credit advice in lieu of valid VAT official receipts to demonstrate its zero-rated sales of services. The CTA denied the claim; we sustained the denial.

Then, in *Takenaka Corporation-Philippine Branch v. Commissioner*,[32] the proofs for zero-rated sales of services were sales invoices. The claim was likewise denied.

Most recently, in *Team Energy Corporation v. Commissioner of Internal Revenue/Republic of the Philippines v. Team Energy Corporation*,[33] we sustained the CTA En Banc's disallowance of the petitioner's claim for

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29 Id. at 542.
30 721 Phil. 202 (2013).
31 Supra note 21.
32 G.R. No. 193321, 19 October 2016, 806 SCRA 485.
33 G.R. Nos. 197663 & 197770, 14 March 2018.

input taxes after finding that the claimed input taxes on local purchase of goods were supported by documents other than VAT invoices; and, similarly, on local purchase of services, by documents other than VAT official receipts.

Irrefutably, when a VAT-taxpayer claims to have zero-rated sales of services, it must substantiate the same through valid VAT official receipts, not any other document, not even a sales invoice which properly pertains to a sale of goods or properties.

In this case, the documentary proofs presented by Nippon Express to substantiate its zero-rated sales of services consisted of sales invoices and other secondary evidence like transfer slips, credit memos, cargo manifests, and credit notes.[34] It is very clear that these are inadequate to support the petitioner's sales of services. Consequently, the CTA, albeit without jurisdiction, correctly ruled that Nippon Express is not entitled to its claim.

In sum, the CTA did not acquire jurisdiction over Nippon Express' judicial claim considering that its petition was filed beyond the mandatory 30-day period of appeal. Logically, there is no reason to allow the petitioner to submit further evidence by way of official receipts to substantiate its zero-rated sales of services. Likewise, there is no need to pass upon the issue on whether sales invoices or documents other than official receipts can support a sale of service considering the CTA's lack of jurisdiction. Even so, we find that VAT official receipts are indispensable to prove sales of services by a VAT-registered taxpayer. Consequently, the petitioner is not entitled to the claimed refund or TCC.

WHEREFORE, for lack of jurisdiction, the 5 December 2008 Decision and 5 May 2009 Resolution of the Court of Tax Appeals Second Division in CTA Case No. 7429, and the 15 December 2009 Decision of the Court of Tax Appeals En Banc in CTA-EB Case No. 492, are hereby **VACATED** and **SET ASIDE**.

SO ORDERED.

SAMUEL R. MARTIRES
Associate Justice

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[34] Petition for Review, *rollo*, p. 57; see also Decision of the CTA Second Division, dated 5 December 2008, *rollo*, p.137.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. No. 296,
The Judiciary Act of 1948, as amended)

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
AUG 17 2018