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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**G.R. No. 222436**
	Present:
- versus -	CARPIO, *J.*, Chairperson, PERALTA, PERLAS-BERNABE, CAGUIOA, and REYES, JR., *JJ.*
EURO-PHILIPPINES AIRLINE SERVICES, INC., Respondent.	Promulgated: 23 JUL 2018

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DECISION

REYES, JR., *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, seeking to set aside the Decision[2] dated July 14, 2015 and Resolution[3] dated December 22, 2015 of the Court of Tax Appeals (CTA) *En Banc* in case CTA EB Case No. 1106 affirming the Decision of the CTA Special First Division which cancelled and withdrew the assessments for deficiency value-added tax, as well as interest and surcharges.

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1 *Rollo*, pp. 12-25.

2 Penned by Court of Tax Appeals Associate Justice Cielito Mindaro-Grulla, with Associate Justices Roman G. Del Rosario, Juanito C. Catanela, Jr., Jonell R. Bautista, Erlinda P. Uy, Caesar A. Cassanova, Esperanza Fabon-Victorino, and Ma. Belen M. Ringpis Liban, concurring; id. at 31-48.

3 Id. at 31.

THE ANTECEDENTS

Respondent Euro-Philippines Airline Services, Inc. (Euro-Phil) is an exclusive passenger sales agent of British Airways, PLC, an off-line international airline in the Philippines to service the latter's passengers in the Philippines.[4]

Euro-Phil received a Formal Assessment Notice (FAN)[5] dated September 13, 2010 from petitioner Commissioner of Internal Revenue (CIR) on 14 September 2010 in the aggregate amount of ₱4,271,228,20.00 consisting of assessment of Value Added Tax (VAT), among others, for the taxable year ending March 31, 2007 with Details of Discrepancies.[6]

On 29 September 2010, Euro-Phil filed a final protest on CIR.[7]

Following the lapse of the 180-day period within which to resolve the protest, Euro-Phil filed a petition for review before the Court of Tax Appeals Special First Division (CTA-First Division) praying, among others, for the cancellation of the FAN issued by CIR for deficiency VAT. Euro-Phil argued therein that the receipts that are supposedly subject to 12% VAT actually pertained to "services rendered to persons engaged exclusively in international air transport" hence, zero-rated.[8]

The CTA- Special First Division rendered a Decision[9] on 25 July 2013 finding Euro-Phil is rendering services to persons engaged in international air transport operations and, as such, is zero-rated under Section 108 of the NIRC of 1997. The said decision disposed thus:[10]

> **WHEREFORE,** the instant Petition for Review is **PARTIALLY GRANTED**. The assessments for deficiency value-added tax and documentary stamp tax, as well as the interests and surcharges, for the taxable year ending March 31, 2007 are hereby **CANCELLED** and **WITHDRAWN** for lack of legal basis.
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> x x x x
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> **SO ORDERED**."[11]

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4 Id. at 13.
5 Id. at 55-56.
6 Id. at 58-69.
7 Id. at 15.
8 Id.
9 Id. at 86-114.
10 Id. at 113-114.
11 Id. at 114.

CIR filed a Motion for Partial Reconsideration of the said Decision covering only the value-added tax that was denied therein. Such motion was denied for lack of merit in a Resolution dated 18 November 2013.[12]

CIR then appealed before the CTA *En Banc* alleging that CTA Special First Division erred in not holding that Euro-Phil's services is subject to 12 % VAT.[13]

The CTA *En Banc* rendered a Decision[14] denying the petition and sustaining the CTA Special First Division with which CTA Presiding Justice Roman G. Del Rosario (Justice Del Rosario) concurred with Dissenting Opinion.[15] The said decision disposed thus:

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **DENIED.** Accordingly, the Decision and the Resolution, dated July 25, 2013 and November 18, 2013, respectively, are hereby **AFFIRMED.**
>
> **SO ORDERED.**[16]

CIR moved for reconsideration of the said decision insisting that the presentation of VAT official receipts with the words "zero-rated" imprinted thereon is indispensable to cancel the value-added tax (VAT) assessment against Euro-Phil.[17] However, it was denied in a Resolution[18] dated December 22, 2015 with a dissenting opinion[19] from CTA Presiding Justice (Justice del Rosario), to quote as follows, pertinent to the issue of VAT:

> In the case at bar, respondent is assessed for deficiency VAT for services it rendered as passenger sales agent of British Airways PLC. Respondent invokes that services rendered by VAT-registered persons to persons engaged in international air transport operations is subject to zero percent (0%) rate, pursuant to Section 108 of the National Internal Revenue Code (NIRC) of 1997, as amended.
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> To reiterate, it is not enough for respondent to invoke Section 108 of the NIRC of 1997, as amended. Respondent has likewise the burden to show compliance with the invoicing requirements laid down in Section

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12 Id. at 43.
13 Id. at 116-124.
14 Id. at 31-48.
15 Dissenting Opinion of CTA Presiding Justice Roman G. del Rosario; id. at 53-54
16 Id. at 47.
17 Id. at 50.
18 Id. at 49-52.
19 Id. at 53-54.

> 113 of the NIRC of 1997, as amended, to be entitled to zero rating. Needless to say, unless appropriately refuted, tax assessments by tax examiners are presumed correct and made in good faith.
>
> In fine, the issue of compliance with Section 113 of the NIRC of 1997, as amended, is vital in the disposition of the present controversy which the Court should consider, lest an indispensable requirement for the availment of VAT zero-rating is blatantly ignored.
>
> For all the foregoing, I VOTE to grant petitioner's Motion for Reconsideration and UPHOLD the VAT assessment."[20]

Hence, this petition with CIR adopting Justice Del Rosario's dissent and that Euro-Phil had to comply with the invoicing requirements to be entitled to zero rating of VAT.[21] CIR also takes exception to the doctrine of "issues cannot be raised the first time on appeal."

The Issues

1. Whether or not the issue of non-compliance of the invoicing requirements by Euro-Phil must be recognized despite being raised only on appeal; and

2. Whether or not the Court of Tax Appeals *En Banc* erred in finding that the transaction sale made by respondent is entitled to the benefit of zero-rated VAT despite its failure to comply with invoicing requirements as mandated by law.

Our Ruling

The petition is denied.

The CTA *En Banc* did not commit any reversible error.

Euro-Phil contends that CIR raised new matters in its Petition for Review with the CTA En Banc and does it again in this Petition for Review which should not be allowed by this Court.

We agree.

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20 Id. at 51-54.
21 Id. at 19-24.

In the case of *Aguinaldo Industries Corporation (Fishing Nets Division) vs. Commissioner of Internal Revenue and the Court of Tax Appeals*,[22] this doctrine was explained by this Court as follows:

> To allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level would be to sanction a procedure whereby the court – which is supposed to review administrative determinations would not review, but determine and decide for the first time, a question not raised at the administrative forum. This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal.[23]

Here, it is not disputed that CIR raised the issue that the alleged failure to present VAT official receipts with the imprinted words "zero rated" adopting the dissent of Justice Del Rosario, only at the latter stage of the appeal on Motion for Reconsideration of the CTA *En Banc's* decision. Accordingly, with the doctrine that issues may not be raised for the first time on appeal, CIR should not be allowed by this Court to raise this matter.

Moreover, while the issue arose from the dissent of Justice Del Rosario, the law is clear on the matter. Section 108 of the NIRC of 1997 imposes zero percent (0%) value-added tax on services performed in the Philippines by VAT-registered persons to persons engaged in international air transport operations, as it thus provides:

> **Section 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –**
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> (A) x x x x
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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.**
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> (1) x x x x
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> x x x x

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22 197 Phil. 822 (1982).

23 Id. at 828-829.

> **(4) Services rendered to persons engaged in** international shipping or **International air-transport operations**, including leases of property for use thereof;
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> x x x x

Here, there is no dispute that Euro-Phil is VAT registered. Next, it is also not disputed that the services rendered by Euro-Phil was to a person engaged in international air-transport operations. Thus, by application, Section 108 of the NIRC of 1997 subjects the services of Euro-Phil to British Airways PLC, to the rate of zero percent VAT.

While CIR contends that the dissenting opinion of Justice del Rosario that Euro-Phil's failure to present and offer any proof to show that it has complied with the invoicing requirements, deems its sale of services to British Airways PLC subject to 12% VAT, it does not negate the established fact that British Airways PLC is engaged in international air-transport operations.

Moreover, as dictated by Section 113 of the NIRC of 1997, on the said provisions on the "Consequences of Issuing Erroneous VAT Invoice of VAT Official Receipt,[24]nowhere therein is a presumption created by law that the non-imprintment of the word "zero rated" deems the transaction subject to 12 % VAT. In addition, Section 4. 113-4 of Revenue Regulations 16-2005,[25] Consolidated Value-Added Tax Regulations of 2005, also does not

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[24] SEC. 113 **Invoicing and Accounting Requirements.** – x x x x

(D) *Consequences of Issuing Erroneous VAT Invoice or VAT Official Receipt.* –

(1) If a person who is not a VAT-registered person issues an invoice or receipt showing his Taxpayer Identification Number (TIN), followed by the word "VAT":

(a) The issuer shall, in addition to any liability to other percentage taxes, be liable to:

(i) The tax imposed in Section 106 or 108 without the benefit of any input tax credit; and

(ii) A fifty percent (50%) surcharge under Section 248 (B) of this Code;

(b) The VAT shall, if other requisite information required under Subsection (B) hereof is shown on the invoice or receipt, be recognized as an input tax credit to the purchaser under Section 110 of this Code.

(2) If a VAT-registered person issues a VAT invoice or VAT official receipt for a VAT-exempt transaction, but fails to display prominently on the invoice or receipt the term 'VAT-exempt sale', the issuer shall be liable to account for the tax imposed in Section 106 or 108 as if Section 109 did not apply.

"(E) x x x x

[25] **Sec. 4. 113-4.** ***Consequences of Issuing Erroneous VAT Invoice or VAT Official Receipt.***—

state that the non-imprintment of the word "zero rated" deems the transaction subject to 12 % VAT. Thus, in this case, failure to comply with invoicing requirements as mandated by law does not deem the transaction subject to 12% VAT.

In view of the foregoing considerations, the Court finds that the CTA *En Banc* did not commit any reversible error.

WHEREFORE, the Petition for Review is **DENIED**. The Decision[26] dated July 14, 2015 and Resolution[27] dated December 22, 2015 of the Court of Tax Appeals (CTA) En Banc in CTA EB Case No. 1106 is **AFFIRMED**.

SO ORDERED.

ANDRES B. REYES, JR.
Associate Justice

(A) **Issuance of a VAT Invoice or VAT Receipt by a non-VAT person.** – If a person who is not VAT-Registered issues an invoice or receipt showing his TIN, followed by the word "VAT", the erroneous issuance shall result to the following:

(1) The non-VAT person shall be liable to:

(i) the percentage taxes applicable to his transactions;
(ii) VAT due on the transactions under Sec. 106 or 108 of the Tax Code, without the benefit of any input tax credit; and
(iii) A 50% surcharge under Sec. 248 (B) of the Tax Code;

(2) VAT shall be recognized as an input tax credit to the purchaser under Sec. 110 of the Tax Code, provided the requisite information required under Subsection 4.113 (B) of these Regulations is shown on the invoice receipt.

(B) Issuance of a VAT Invoice or VAT Receipt on an Exempt Transaction by a VAT-registered Person – If a VAT-registered person issues a VAT invoice or VAT official receipt for a VAT-exempt transaction, but fails to display prominently on the invoice or receipt the words "VAT-exempt sale", the transaction shall become taxable and the issuer shall be liable to pay VAT thereon. The purchaser shall be entitled to claim an input tax credit on his purchase.

26 *Rollo*, p. 31.
27 Id. at 49-51.

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice
See Concurring Opinion.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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)