REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

VISAYAS GEOTHERMAL POWER COMPANY, Petitioner,	**C.T.A. CASE NO. 7559**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** APR 1 7 2009 11:00 a.m.

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DECISION

UY, *J*.:

This is a Petition for Review filed by petitioner, Visayas Geothermal Power Company, against respondent, Commissioner of Internal Revenue, seeking the refund or issuance of a tax credit certificate in the amount of P14,160,807.95 allegedly representing petitioner's unutilized input value-added tax (VAT) from its domestic purchases of non-capital goods and services, services rendered by non-residents, and importations of non-capital goods for the first to fourth quarters of taxable year 2005.

THE FACTS

Petitioner Visayas Geothermal Power Company is a special purpose limited partnership duly organized and existing under Philippines laws, with Taxpayer Identification No. (TIN) 003-832-538-VAT[1] and principal office at Milagro, Ormoc City, Province of Leyte.[2] It is principally engaged in the business of power generation through geothermal energy and the subsequent sale of generated power to the Philippine National Oil Company–Energy Development Corporation (PNOC-EDC), pursuant to an Energy Conversion Agreement.[3]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of the said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.[4]

Petitioner filed with the BIR its Original Quarterly VAT Returns for the first to fourth quarters of taxable year 2005 on the following dates:[5]

Taxable Quarter	Date of Filing of Original Return
1st	April 25, 2005
2nd	July 25, 2005
3rd	October 25, 2005
4th	January 20, 2006

[1] Certificate of Registration, Exhibit "C", Docket, p. 461.
[2] Par. 1, Petition for Review, Docket, p. 1.
[3] Par. 3, Petition for Review, Docket, p.2; Annex "B", Petition for Review, Docket, pp. 18-76.
[4] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 163.
[5] Par. 2, Admitted Facts, JSFI, Docket, pp. 163-164.

However, petitioner amended its Quarterly VAT Returns and reflected therein an excess or unutilized VAT credits, arising from its domestic purchases of non-capital goods and services, services rendered by non-residents, and importation of non-capital goods, detailed as follows:[6]

Taxable Quarter	Date of Filing of Amended Return	Excess/Unutilized VAT Credits				Total
		Domestic Purchases - Goods other than Capital Goods	Domestic Purchases - Services	Services Rendered by Non-Residents	Importation - Goods other than Capital Goods	
1st	11/18/05	318,985.97	5,484,269.71	-	15,830.00	5,819,085.68
2nd	11/18/05	402,569.87	1,770,122.20	-	306,305.00	2,478,997.07
3rd	11/18/05	584,207.59	1,544,120.96	104,032.71	113,526.00	2,345,887.26
4th	07/14/06	1,018,936.20	1,919,888.09	395,763.65	182,250.00	3,516,837.94
Total		**2,324,699.63**	**10,718,400.96**	**499,796.36**	**617,911.00**	**14,160,807.95**

On December 6, 2006, petitioner filed an administrative claim for refund of the amount of P14,160,807.95[7] with the BIR District Office No. 89, Ormoc City, on the belief that it is entitled to recover excess and unutilized input VAT payments for the four quarters of taxable year 2005, pursuant to Republic Act (R.A.) No. 9136, and its Implementing Rules and Regulations, which treat sales of generated power subject to VAT at zero (0%) percent rate starting June 26, 2001.

The BIR's inaction on its claim for refund prompted petitioner to seek recourse before this Court on January 3, 2007, praying for the refund or the issuance of tax credit certificate in the amount of P14,160,807.95 covering the four quarters of taxable year 2005.

[6] Par. 3, Admitted Facts, JSFI, Docket, p. 164.
[7] Par. 4, Admitted Facts, JSFI, Ibid.; Exhibit "L", Docket, pp. 495-496.

In the Answer filed on March 1, 2007,[8] respondent raises the following Special and Affirmative Defenses:

"4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

5. The amount of P14,160,807.95 being claimed by petitioner as alleged unutilized input VAT from its domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods for the first to fourth quarters of taxable year 2005 was not properly documented;

6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

7. To support its claim, it is imperative for petitioner to prove the following, viz.:

   a. The registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-a (a) of Revenue Regulations No. 7-95, and Section 236 of the National Internal Revenue Code of 1997 (NIRC of 1997);

   b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the NIRC of 1997;

   c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition *sine qua non* prior to the filing of judicial claim in accordance with the provision of Section 229 of the NIRC of 1997. It is worthy of emphasis that Section 112(D) of the NIRC of 1997

[8] Docket, pp. 102-108.

requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review;

d. That the input taxes of P20,546,004.87 allegedly paid by petitioner on its domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods for the first to fourth quarters of taxable year 2005 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the NIRC of 1997;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase journal, showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the NIRC of 1997, and in pursuance to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (RE: Substantiation of Claims for Input Tax Credit);

g. The requirements as enumerated under Section 4.104-2 of Revenue Regulations 7-95. (Re: Persons who can avail of the Input Tax Credits).

8. The Petition for Review is premature. Since petitioner did not submit complete documents in support of its

administrative claim for refund as indicated under Section 112 (D) of the NIRC of 1997, the 120-day period starts to run on 6 December 2006, the date when it filed its administrative claim for refund. The said period is yet to expire on 5 April 2007. Hence, the 30-day period within which to file the petition for review before this Honorable Court is yet to expire on 5 May 2007. This being so, this Honorable Court has no jurisdiction to act on the instant petition for review.

9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and as such, they are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211*)."

During trial, only petitioner presented its evidence while respondent's counsel, Atty. Clarissa Virtudes-Babaran, manifested that she will not be presenting evidence on behalf of respondent and this case was deemed submitted for decision in the Resolution dated July 24, 2008,[9] taking into consideration both parties' respective Memorandum.[10]

THE ISSUES

In their Joint Stipulation of Facts and Issues filed on June 4, 2007,[11] the parties submitted the following issues for this Court's resolution:

"1. Whether or not Petitioner is entitled to the refund in the amount of Fourteen Million One Hundred Sixty Thousand Eight Hundred Seven and 95/100 Pesos (P14,160,807.95) representing its alleged unutilized input Value Added Tax ('VAT') for the 1st to 4th quarters of 2005;

2. Whether or not the input VAT amount of Fourteen Million One Hundred Sixty Thousand Eight Hundred Seven and 95/100 Pesos (P14,160,807.95) allegedly paid by Petitioner from its domestic purchases of non-capital goods and

[9] Ibid., at p. 582.
[10] Petitioner filed its Memorandum on June 19, 2008 and Reply Memorandum on August 29, 2008 (admitted on September 4, 2008), while respondent filed his Memorandum on July 21, 2008, Docket, pp. 547-564, 586-603, 565-579, respectively.
[11] Id., at pp. 163-167.

services, services rendered by non-residents and importation of non-capital goods was attributable to its zero-rated sales and such input VAT has not been applied against any output tax;

3. Whether or not the administrative claims for refund were filed within the period allowed under the law; and

4. Whether or not Petitioner's domestic purchases of goods and services during the 1^{st} to 4^{th} quarters of 2005 were made in the course of its trade or business."

The foregoing stipulated issues may be summarized into one central issue: whether or not, based on the evidence presented, petitioner is entitled to its claim for refund or issuance of a tax credit certificate amounting to P14,160,807.95, representing unutilized input VAT for taxable year 2005.

Petitioner's arguments:

Petitioner anchors its claim on Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, and argues that its purported input taxes on its purchases of goods and services attributable to zero-rated sales are refundable. It also submits that R.A. No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001 (EPIRA)",[12] as well as its Implementing Rules and Regulations (IRR),[13] confirm the zero-rated nature of the sale of generated power by generation companies.

And lastly, petitioner further posits that with Republic Act (R.A.) No. 9337, which took effect on November 1, 2005, in relation to Section 108(B)(7) of the NIRC of 1997, its sales of electricity which were produced through renewable sources of energy, remains zero-rated.

[12] Took effect on June 26, 2001.
[13] Took effect on March 22, 2002.

Respondent's counter-arguments:

Respondent, on the other hand, contends that to be entitled to a refund of unutilized input VAT, it is imperative that petitioner complies with the registration requirements specified under Sections 6(a) and (b) of Revenue Regulations (R.R.) No. 6-97, in relation to Section 4.107-1(a) of R.R. No. 7-95, and Section 236 of the NIRC of 1997, as amended. Likewise, petitioner must show that its purchases of goods and services were undertaken in the course of its trade and business, and that the same purchases are duly substantiated by VAT invoices and/or receipts and other documentary evidence such as entries made in its subsidiary purchase journal showing actual payment of input VAT, pursuant to Sections 110(A)(2) and 113 of the NIRC of 1997, as amended, and Section 4.104-5 (a) and (b) of R.R. No. 7-95.

Moreover, respondent claims that due observance of Section 2(c)(1)(2)(4) of R.R. No. 3-88 is required. As petitioner allegedly failed to show proof that there was compliance with the prescribed checklist requirements involving claims for VAT refund under Revenue Memorandum Order (RMO) No. 53-98; there is no sufficient compliance with the filing of its administrative claim for refund which is a condition *sine qua non* prior to the filing of an appeal before the judicial level as required under Section 229 of the NIRC of 1997, as amended.

Finally, Section 112(D) of the NIRC of 1997, as amended, mandates the submission of all documents, in support of the VAT refund application filed with the BIR, in order for the 120-day audit period to be operative, and before the taxpayer could avail of judicial remedies. Petitioner's failure to comply therein allegedly divests this Court of any jurisdiction to take cognizance of this instant Petition.

THE COURT'S RULING

At the outset, it is well settled that power generation services are no longer subject to ten percent (10%) VAT as provided under the NIRC of 1997, but are now subject to zero percent (0%) VAT pursuant to Chapter II, Section 6 of Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA) and Rule 5, Section 6 of its implementing rules and regulations.[14]

Said provisions read as follows:

Republic Act No. 9136, Electric Power Industry Reform Act of 2001 (EPIRA)

CHAPTER II
Organization and Operation of the
Electric Power Industry
xxx xxx xxx

"SEC. 6. *Generation Sector* – Generation of electric power, a business affected with public interest shall be competitive and open.

Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.

Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.

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[14] Panay Power Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6807, Decision dated October 30, 2006, with Writ of Execution issued on December 12, 2008 (affirmed in CTA EB Case No. 286, Decision dated October 18, 2007; and in G.R. No. 180170, Resolution dated June 23, 2008, with Entry of Judgment dated August 27, 2008).

Upon the implementation of retail competition and open access, the prices charged by a generation company for the supply of electricity shall not be subject to regulation by the ERC except as otherwise provided in this Act.

Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated.

The ERC shall, in determining the existence of market power abuse or anti-competitive behavior, require from generation companies the submission of their financial statements (*Emphasis and underscoring supplied)*"

"Rules and Regulations to Implement Republic Act No. 9136, entitled 'Electric Power Industry Reform Act of 2001"

"RULE 5
Generation Sector
xxx xxx xxx

SECTION 6. Generation Charges and VAT. —

xxx xxx xxx

(b) Pursuant to the policy of reducing electricity rates to End-users, sales of generated power by a Generation Company shall, from the effectivity of the Act, be zero-rated for the purpose of imposition of value-added tax. Towards this end, the imposition of zero percent (0%) VAT shall apply to the sale of generated power by a Generation Company through all stages of sale until it reaches the End-user. The DOF, through the BIR, shall issue the necessary revenue regulation within sixty (60) calendar days from effectivity of these rules."

The EPIRA law was formulated by the legislature to ordain reforms in the electric power industry, highlighting, among others, the importance of ensuring the reliability, security and affordability of the supply of electric power to end-users. And under the aforequoted provisions of the EPIRA law and its implementing rules and regulations, the delivery and supply of electric energy by generation companies became VAT zero-rated, which prior thereto (on June 26, 2001), were subject to 10% VAT.

The stipulated issues presented before Us are factual as these pertain to petitioner's compliance with substantiation requirements of its claim for refund or issuance of a tax credit certificate arising from its alleged unutilized input VAT for the four quarters of taxable year 2005 amounting to P14,160,807.95. We shall discuss them jointly for convenience and brevity.

Pertinent thereto are the provisions of Sections 110 and 112 of the NIRC of 1997, to wit:

"**SEC. 110.** ***Tax Credits.*** —

xxx xxx xxx

(B) ***Excess Output or Input Tax.*** – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."

"**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."

Based on the afore-quoted provisions, in order to be entitled to a refund or issuance of a tax credit certificate of its unutilized input VAT, the following requisites must be satisfied by the claimant-taxpayer:

1. there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes are directly attributable to zero-rated sales or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and
5. that the claim for the refund was filed within the two-year prescriptive period.[15]

In order to qualify for VAT zero-rating, petitioner must prove that: (1) it is a generation company, and (2) it derived sales from power generation.

In this instant case, petitioner presented its Certificate of Accreditation issued by the DOE[16] showing that it is indeed engaged in the sale of power generation services to PNOC-EDC by virtue of the Energy Conversion Agreement entered into between PNOC-EDC and petitioner's predecessor-in-interest, Magma Power Company[17]. Based on the documents submitted, for the period covering January 1, 2004 to December 31, 2005, petitioner generated gross receipts from power generation services rendered to PNOC-EDC in the total amount of P3,278,918,070.76, which amount is properly

[15] Hazama Philippines, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 232, September 4, 2007, Southern Philippines Power Corporation vs. Commissioner of Internal Revenue, CTA EB No. 214, July 31, 2007 and American Express International, Inc.-Philippine Branch vs. Commissioner of Internal Revenue, CTA EB No. 197, May 23, 2007.
[16] Exhibit "B", Docket, p. 460.
[17] Exhibit "D", Docket, p. 461.

declared in its Quarterly VAT Returns for the first quarter to the fourth quarter of taxable year 2005[18]. Likewise, petitioner's VAT invoices and/or official receipts[19] duly support said fees.

Having shown that it is a generation company and that it derived sales from power generation for taxable year 2005, petitioner's alleged total unutilized input VAT in the amount of P20,213,044.50 may be a proper subject of a claim for refund. As earlier dicussed, sales of power generation services are subject to VAT at zero percent rate, and as such are classified as zero-rated sales under R.A. No. 9136.

However, after a thorough examination of the documents offered in evidence and the Report submitted by the Court-commissioned Independent CPA (ICPA) to validate petitioner's compliance with the substantiation requirements of input tax claimed for the period covering January 1, 2005 to December 31, 2005, this Court finds that out of the total claim for refund of P14,160,807.95, only the amount of **P7,699,366.37** was duly substantiated by the required evidence as provided under Sections 110(A) and 113(A) of the NIRC of 1997, and as implemented by Sections 4.104-1, 4.104-5, and 4.108-1 of R.R. No. 7-95. The remaining amount of **P6,461,441.58** (P14,160,807.95-P7,699,366.37) should be denied due to the following reasons:

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[18] Exhibits "Y", "AA", "CC", and "EE", Docket, pp. 500, 502, 504, and 506, respectively.
[19] Exhibits "NN-1 to 14" and "PP-1 to 35".

	Findings	Reference (Annex to Exhibit LL)	Input VAT	Total
1	**Domestic purchase of goods supported by a VAT Invoice issued in the Company's name but without the Company's TIN and/or address or with TIN and/or address changed/added on the support but without countersign.**			
	1st qtr	V-1Q-A13	P 50,771.62	
	2nd qtr	V-2Q-A13	20,377.81	
	3rd qtr	V-3Q-A13	20,305.74	
	4th qtr	V-4Q-A13	26,638.90	118,094.07
2	**Domestic purchase of goods supported by a VAT OR issued in the Company's name but without the Company's TIN and/or address or with TIN and/or address changed/added on the support but without countersign.**			
	1st qtr	V-1Q-B13	4,006,929.62	
	2nd qtr	V-2Q-B13	115,497.92	
	3rd qtr	V-3Q-B13	875,437.07	
	4th qtr	V-4Q-B13	100,579.84	5,098,444.45
3	**Domestic purchase of goods supported by TIN-V invoice.**			
	1st qtr	V-1Q-A12	787.28	
	2nd qtr	V-2Q-A12	10,733.67	
	3rd qtr	V-3Q-A12	3,357.17	
	4th qtr	V-2Q-A12	1,289.60	16,167.72
4	**Domestic purchases of goods supported by non VAT invoice but stamped as "VAT registered as of November 1, 2005" issued within the period November 1, 2005 to December 31, 2005.**			
	4th qtr	V-2Q-A12-1	25,047.28	25,047.28
5	**Domestic purchase of services supported by TIN-V OR.**			
	1st qtr	V-1Q-B12	115,133.16	
	2nd qtr	V-2Q-B12	171,713.70	
	3rd qtr	V-3Q-B12	78,751.86	
	4th qtr	V-4Q-B12	14,851.95	380,450.67
6	**Domestic purchase of goods supported by documents other than a VAT Invoice.**			
	1st qtr	V-1Q-A1	6,333.80	
	2nd qtr	V-2Q-A1	6,115.97	
	3rd qtr	V-3Q-A1	7,541.10	
	4th qtr	V-4Q-A1	1,197.22	21,188.09
7	**Domestic purchase of goods supported by VAT Invoice but not an original copy.**			
	1st qtr	V-1Q-A3	1,188.63	
	2nd qtr	V-2Q-A3	15,207.43	
	3rd qtr	V-3Q-A3	6,371.83	
	4th qtr	V-4Q-A3	29,007.95	51,775.84
8	**Domestic purchases of goods supported by a VAT invoice not issued in the name of the Company.**			
	1st qtr	V-1Q-A4	183.95	
	3rd qtr	V-2Q-A4	490.77	674.72
9	**Domestic purchases of goods supported by a VAT invoice issued in the name of Calenergy/ CE Cebu/ CE Luzon.**			
	1st qtr	V-1Q-A5	363.64	
	2nd qtr	V-2Q-A5	17,840.40	
	3rd qtr	V-3Q-A5	206.80	
	4th qtr	V-4Q-A5	18,499.33	36,910.17
10	**Domestic purchases of goods supported by TIN # only; TIN-NV/ NON VAT Invoice; stamped/ handwritten TIN-V/VAT.**			
	1st qtr	V-1Q-A7	9,235.09	
	3rd qtr	V-3Q-A7	1,260.91	
	4th qtr	V-4Q-A7	6,621.04	17,117.04

11	**Domestic purchase of goods supported by tape receipt without the Company's name and TIN.**			
	1st qtr	V-1Q-A8	83.64	83.64
12	**Domestic purchases of goods supported by VAT invoice but without invoice date.**			
	3rd qtr	V-3Q-A10	59.36	
	4th qtr	V-4Q-A10	2,072.27	2,131.63
13	**Domestic purchases of goods supported by VAT invoice not dated within the VAT-taxable year.**			
	1st qtr	V-1Q-A14	101,041.29	
	2nd qtr	V-2Q-A14	306.33	101,347.62
14	**Domestic purchases of goods supported by a VAT Invoice with changes in the name of the Company.**			
	2nd qtr	V-2Q-A15	1,852.37	
	3rd qtr	V-3Q-A15	19.78	1,872.15
15	**Domestic purchases of goods supported by TIN # only; TAN-V; TAN VAT; TIN-NV/Non VAT stamped/ handwritten TIN-V/VAT tape receipt.**			
	1st qtr	V-1Q-A16	363.55	
	3rd qtr	V-3Q-A16	448.65	
	4th qtr	V-4Q-A16	847.85	1,660.05
16	**Domestic purchase of goods supported by a VAT invoice but is not BIR-registered.**			
	1st qtr	V-1Q-A17	3,270.00	
	2nd qtr	V-2Q-A17	300.70	
	3rd qtr	V-3Q-A17	6,678.52	10,249.22
17	**Domestic purchases of services supported by documents other than a VAT OR.**			
	1st qtr	V-1Q-B1	31,416.20	
	2nd qtr	V-2Q-B1	230.33	
	3rd qtr	V-3Q-B1	31,834.15	
	4th qtr	V-4Q-B1	4,563.29	68,043.97
18	**Domestic purchases of services supported by a VAT OR but not an original copy.**			
	1st qtr	V-1Q-B3	2,043.02	
	2nd qtr	V-2Q-B3	620.27	
	3rd qtr	V-3Q-B3	225.63	2,888.92
19	**Domestic purchases of services supported by a VAT OR not issued in the name of the Company.**			
	4th qtr	V-4Q-B4	2,786.40	2,786.40
20	**Domestic purchases of services supported by a VAT OR issued in the name of Calenergy/ CE Cebu/ CE Luzon.**			
	1st qtr	V-1Q-B5	1,227.84	
	2nd qtr	V-2Q-B5	202.50	1,430.34
21	**Domestic purchases of services supported by a TIN # only; TIN-NV/NON VAT OR; stamped/handwritten TIN-V/VAT.**			
	2nd qtr	V-2Q-B7	763.64	
	4th qtr	V-4Q-B7	4,499.56	5,263.20
22	**Domestic purchases of services supported by a VAT OR but without OR date.**			
	1st qtr	V-1Q-B10	145.45	
	2nd qtr	V-3Q-B10	484.36	629.81
23	**Domestic purchases of services supported by a VAT OR not dated within the VAT taxable year.**			
	1st qtr	V-1Q-B14	2,761.82	
	3rd qtr	V-3Q-B14	100.00	
	4th qtr	V-4Q-B14	5,450.61	8,312.43
24	**Domestic purchases of services supported by TIN # only; TAN-V; TAN VAT; TIN-NV/Non VAT stamped/ handwritten TIN-V/VAT tape receipt.**			
	3rd qtr	V-3Q-B16	4,666.66	4,666.66
25	**Importation of goods supported by original IEIRD and BOC OR not dated within the year.**			
	2nd qtr	V-2Q-C3	63,900.00	63,900.00

26	**Importation of goods with supporting documents not issued in the name of the Company.**			
	3rd qtr	V-3Q-C4	7,200.00	7,200.00
27	**Over-claimed input tax on domestic purchases of goods/services due to erroneous computation.**			
	1st qtr	V-1Q-E1	246.54	
	2nd qtr	V-2Q-E1	733.33	
	3rd qtr	V-3Q-E1	17.86	
	4th qtr	V-4Q-E1	5.28	1,003.01
28	**Effect of foreign currency denominated purchases of goods and services-overstatement.**			
	1st qtr	V-1Q-J1	7,439.01	
	2nd qtr	V-2Q-J1	1,886.18	
	3rd qtr	V-3Q-J1	27,712.92	
	4th qtr	V-4Q-J1	5,792.51	42,830.62
29	**Supporting documents not available.**			
	1st qtr	V-1Q-F	28,153.07	
	2nd qtr	V-2Q-F	243,303.74	
	3rd qtr	V-3Q-F	26,179.63	
	4th qtr	V-4Q-F	71,635.42	369,271.86
TOTAL				**P 6,461,441.58**

Records show that while petitioner carried over its excess input tax credits for taxable year 2005 amounting to P15,188,062.24 to the succeeding quarters of taxable year 2006, the same remained unutilized since petitioner had no output VAT liability for that same taxable period against which the claimed input VAT may be applied or credited.[20] Moreover, petitioner deducted the amount of P14,160,807.95 in its VAT Return for the fourth quarter of taxable year 2006, specifically, under Line 23D as "VAT Refund/TCC claimed".[21] Hence, the subject claim no longer formed part of the excess input VAT of P20,556,825.92 as of the fourth quarter of taxable year 2006 which was to be carried over/applied to the succeeding first quarter of taxable year 2007.

Lastly, as to the timeliness of the filing of the instant claim, the Supreme Court recently held in the case of ***Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy***

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[20] Exhibits "FF," "GG" "HH" and "II", Docket, pp. 507-510.
[21] Exhibit "II", Docket, p. 510.

Quezon, Inc.)[22] that Section 112(A) of the NIRC of 1997 provides for the period within which to file the claim for refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales. The pertinent portion of the High Court's Decision reads:

> "The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Sec. 112(A) of the NIRC pertinently reads:
>
> > (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 <u>when the sales were made</u>, apply for the issuance of a tax credit certificate or refund of creditable input tax <u>due or paid</u> attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: xxx. (Emphasis ours.)
>
> **The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not**. As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112(A), '[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued.' Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. **The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid**. xxx" (*Emphasis Ours*)

The present claim involves petitioner's input VAT incurred for the first to the fourth quarter of taxable year 2005. Counting from the close of each of

[22] G.R. No. 172129, September 12, 2008.

the said taxable quarters, petitioner had until the following dates within which to file its claim both in the administrative and judicial levels:

Taxable Quarter		Last Day to File Claim for Refund
2005	**End Date**	
1st quarter	March 31, 2005	March 31, 2007
2nd quarter	June 30, 2005	June 30, 2007
3rd quarter	September 30, 2005	September 30, 2007
4th quarter	December 31, 2005	December 31, 2007

Clearly, considering that the administrative claim for the four quarters of taxable year 2005 was filed on December 6, 2006,[23] while the Petition for Review covering the said claim was filed on January 3, 2007, both the administrative and judicial claims were filed within the two-year prescriptive period reckoned from March 31, 2005 or the close of the first quarter of taxable year 2005, which is the earliest quarter covered by the instant Petition.

In fine, this Court finds petitioner to have sufficiently proven its entitlement to the refund or the issuance of tax credit certificate in its favor for its unutilized and unapplied input VAT covering the taxable period of 2005 but only in the reduced amount of P7,699,366.37.

WHEREFORE, in view of the foregoing considerations, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or, in the alternative, **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the reduced amount of **SEVEN MILLION SIX HUNDRED NINETY NINE THOUSAND THREE HUNDRED SIXTY SIX PESOS AND 37/100** (P7,699,366.37) representing unutilized input VAT paid on domestic purchases of non-capital goods and services, services rendered

[23] Exhibit "L", Docket, pp. 495-496.

by non-residents, and importations of non-capital goods for the first to fourth quarters of taxable year 2005.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, 2nd Division