REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

MIRANT PAGBILAO CORPORATION (formerly Southern Energy Quezon, Inc.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NOS. 6628 & 6732

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

JUL 3 1 2006

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DECISION

CASTAÑEDA, JR., J.:

1These two consolidated cases involve a claim for the refund or issuance of a tax credit certificate in the amount of P121,309,855.09 allegedly representing unutilized input taxes paid on domestic purchases of goods and services as well as importation of goods which are attributable to zero-rated sales for the four taxable quarters of 2001.

THE FACTS

Petitioner is a domestic corporation organized and existing under and by virtue of Philippine laws, with principal office at Pagbilao Grande Island, Pagbilao Quezon, while respondent is the Commissioner of Internal Revenue duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund or tax credit as provided by law, with office at the BIR National Office Building, Diliman, Quezon City.

Petitioner is principally engaged in the business of power generation and subsequent sale thereof to the National Power Corporation ("NPC") under a Build, Operate, Transfer ("BOT") scheme. It is registered as a value-added tax ("VAT") taxpayer in accordance with Section 107 of the Tax Code [now Section 236 of the National Internal Revenue Code of 1997], with BIR Certificate of Registration bearing RDO Control No. 96-600-002498 and Taxpayer Identification No. 001-726-870.[1] Petitioner was originally registered with the Securities and Exchange Commission ("SEC") under the name "Hopewell Power (Philippines), Corporation" which was subsequently changed to "Southern Energy Quezon, Inc." on September 22, 1999. On June 28, 2001, petitioner's name was again changed from "Southern Energy Quezon, Inc." to "Mirant Pagbilao Corporation".[2]

On December 6, 2000, Petitioner filed with the BIR Revenue District Office No. 60 at Lucena City an Application for Effective Zero-Rate for the

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[1] Pars. 1 and 2, Jointly Stipulated Facts, Records, p. 235
[2] Par. 3, Jointly Stipulated Fact, Records, p. 235

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supply of electricity to the National Power Corporation which was subsequently approved.[3]

Petitioner filed with the Bureau of Internal Revenue ("BIR") its VAT returns for the first, second, third and fourth quarters of 2001 on the respective dates of April 20, 2001, July 25, 2001, October 25, 2001 and January 25, 2002. However, on August 27, 2001, petitioner filed amended VAT returns for the first and second quarters of 2001. Below are the details of the said VAT returns:

	QUARTER					
	1st	**1st** *(amended)*	**2nd**	**2nd** ***(amended)***	**3rd**	**4th**
	(Exhibit K)	*(Exhibit G)*	*(Exhibit L)*	*(Exhibit H)*	*(Exhibit I)*	*(Exhibit J)*
Zero Rated Sales	P 2,882,029,412.85	P 2,882,029,412.85	P2,986,459,818.81	P2,986,459,818.81	P3,059,230,866.14	P3,101,956,580.68
Taxable Sales	64,778.10	64,778.10	NIL	NIL	484,545.50	NIL
Output Taxes	6,477.81	6,477.81	NIL	NIL	48,454.55	NIL
Input Taxes Carried Over from Previous Quarter	209,182,671.91	209,282,299.18	225,896,122.68	225,995,749.95	179,180,445.24	207,048,115.09
Input Taxes on Domestic Purchases	9,635,572.58	9,635,572.58	20,282,810.13	20,282,810.13	19,183,464.40	38,073,281.34
Input Taxes on Importation	7,084,356.00	7,084,356.00	8,891,365.00	8,891,365.00	8,732,660.00	9,481,278.00
Total available input taxes	225,902,600.49	226,002,227.76	255,070,297.81	255,169,925.08	207,096,569.64	254,602,674.43
VAT Refund/TCC Claimed	-	-	75,989,479.84	75,989,479.84	-	-
Net Creditable	225,902,600.49	226,002,227.76	179,080,817.97	179,180,445.24	207,096,569.64	254,602,674.43
Excess Input taxes	225,896,122.68	225,995,749.95	179,080,817.97	179,180,445.24	207,048,115.09	254,602,674.43

Pursuant to the procedure prescribed in Revenue Regulations No. 7-95, as amended, petitioner filed an administrative claim for refund of unutilized input VAT with the Bureau of Internal Revenue on March 19, 2003 in the total amount of P121,309,855.09 for the calendar year 2001.[4]

Due to respondent's inaction thereon, petitioner elevated its claim before this Court through the filing of two (2) separate Petitions for Review on March 31, 2003 and July 23, 2003 docked as CTA Case No. 6628 and CTA Case No. 6732, respectively:

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[3] Par. 4, Jointly Stipulated Facts, Records, p. 235
[4] Par. 9, Jointly Stipulated Facts, Records, p. 236

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CTA Case No.	Date of Filing of Petition for Review	Period Covered	Claimed Input VAT
6628	March 31, 2003	Jan. 1, 2001 – Mar. 31, 2001	P 16,713,450.77
6732	July 23, 2003	Apr. 1, 2001 – Dec. 31, 2001	104,596,404.32
			P121,309,855.09

On July 29, 2003, petitioner filed a motion for the consolidation of the above cases considering that the same involve the same parties and issues. The Court granted the said motion in open court on July 30, 2003, followed by a confirming resolution dated August 7, 2003.[5]

THE ISSUES

The parties presented the following issues for this Court's resolution:

1. Whether or not the power generation services rendered by petitioner to NPC are subject to zero percent (0%) VAT pursuant to Section 108(B)(3) of the Tax Code;

2. Whether or not petitioner has unutilized creditable input VAT for the four quarters of CY 2001 arising from its domestic purchases of goods and services and importation of goods amounting to P121,309,855.09 that can be a proper object of a claim for refund pursuant to Sections 108(B)(3) and Section 112(A) of the Tax Code;

3. Whether or not the unutilized creditable input taxes for the four quarters of calendar year 2001 are substantiated by proper invoices and official receipts;

4. Whether or not the unutilized creditable input VAT payments for the four quarters of calendar year 2001 were carried over to and utilized in the succeeding taxable quarter(s) or applied against any of the output VAT liability of the petitioner; and

5. Whether or not petitioner is entitled to a refund and/or issuance of tax credit certificate for the unutilized input VAT payments in the amount of P121,309,855.09.

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[5] Records, pp. 110-114, CTA Case No. 6628

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THIS COURT'S RULING

Being interrelated, the first and second issues shall be discussed jointly.

Petitioner anchors its claim on Sections 112(A) of the National Internal Revenue Code (NIRC) of 1997, which reads as follows:

> "**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 where 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.

Section 112(A) of the NIRC of 1997, as aforequoted, allows the refund/tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales. Petitioner posits that its sale of electricity to NPC is effectively zero-rated pursuant to Section 108(B)(3) of the NIRC of 1997, as amended, in relation to Section 13 of Republic Act No. 6395, otherwise known as the NPC Charter, which are all quoted hereunder for easy reference:

> "**SEC. 108.** ***Value-Added Tax on Sale of Services and Use or Lease of Properties***.-
>
> xxx xxx xxx

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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:

xxx xxx xxx

"(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate. *(Underlining supplied).*

"**Sec. 13. Non-profit Character of the Corporation, Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities**. — The corporation shall be non-profit and shall devote all its returns from its capital investments, as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance of effective implementation of the policy enunciated in Section One of this Act, the Corporation, including its subsidiaries, is hereby **declared exempt from the payment of all forms of taxes**, duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings." *(Emphasis supplied)*

We agree with petitioner. This Court has consistently held that NPC is an entity with a special charter, which categorically makes it exempt from payment of all taxes, whether direct or indirect, including VAT. Hence, by virtue of the said charter, services rendered by a VAT registered entity like herein petitioner to NPC are effectively subject to zero percent (0%) VAT in accordance with Section 108(B)(3) of the NIRC of 1997.

Moreover, the Supreme Court in its Resolution dated June 8, 1993, affirmed NPC's tax exemption in the case of ***Maceda vs. Macaraig, Jr., 223 SCRA 217,*** to wit*:*

"A chronological review of the NPC laws will show that it has been the lawmaker's intention that the NPC was to be completely tax-exempt from all forms of taxes — direct or indirect.

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> One common theme in all these laws is that the NPC must be enabled to pay its indebtedness which, as of P.D. No. 938 was P12 Billion in total domestic indebtedness, at any one time, and US$4 Billion in total foreign loans at any one time. The NPC must be and has to be exempt from all forms of taxes if this goal is to be achieved."

Likewise, no less than the respondent himself approved petitioner's application for the zero-rating of its sales to NPC covering the period from January 2, 2001 to December 31, 2001.[6]

Further, petitioner was able to establish through the various invoices and official receipts it issued to NPC *(Exhibits II to II-139)* that it actually derived revenues from its sale of power generation services to NPC for the four quarters of 2001. Considering that its sales are effectively zero-rated for VAT purposes pursuant to Section 108(B)(3) of the NIRC of 1997, as amended, the reported unutilized input taxes in the amount of P121,309,855.09 which are allegedly attributable thereto may be proper subject of a claim for refund or issuance of a tax credit certificate in accordance with Section 112(A) of the NIRC of 1997, as quoted earlier.

Proceeding now to the third issue of whether or not the reported unutilized input taxes for the four quarters of calendar year 2001 in the amount of P121,309,855.09 is substantiated by proper invoices and official receipts, the commissioned auditing firm, SGV & Co., in its addendum report dated May 24, 2004 *(Exhibits X to X-72; see also TSN dated May 27, 2004),* summarized its findings as follows:

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[6] Exhibit E

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Findings	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Per This Addendum:					
I. Input Taxes Claimed on Purchases of Services:					
1. Supported by Documents Other than VAT ORs (i.e., VAT Invoice, Storage Receipt, Storage and Delivery Receipt, Billing Statement, Statement of Account, Cargo Charges Receipt) ***(Annex A-1)***	45,845.77	1,306.68	1,326.24	14,566.55	63,045.24
2. Erroneously Computed ***(Annex B-1)***	39,210.93	23,433.77	23,500.59	41,850.33	127,995.62
3. Supported by VAT ORs Issued by the Insurance Agent (on Insurance Premiums) ***(Annex C-1)***	-	194.00	392.00	1,613.61	2,199.61
4. Supported by VAT ORs Issued Not in the Company's Name ***(Exhibit D-1)***	28,136.05	-	-	350.55	28,486.60
5. Supported by Photocopied VAT ORs ***(Exhibit E-1)***	-	-	1,485.73	640.74	2,126.47
6. Supported by an OR Without TIN ***(Exhibit F-1)***	-	75.45	-	-	75.45
7. Supported by a VAT OR with Pre-printed "Zero-rated" ***(Exhibit G-1)***	-	-	29.13	-	29.13
II. Input Taxes Claimed on Purchases of Goods:					
1. Supported by Documents Other than VAT Invoices (i.e., VAT OR and Cash Slip) ***(Exhibit H-1)***	-	1,710.46	-	1,489.33	3,199.79
2. Supported by Invoices with Pre-printed TIN only ***(Exhibit I-1)***	-	3,002.47	5,521.82	-	8,524.29
3. Supported by VAT Invoices Issued Not in the Company's Name ***(Exhibit J-1)***	-	-	685.45	1,103.96	1,789.41
4. Supported by Photocopied VAT Invoices ***(Exhibit K-1)***	-	-	-	2,462.12	2,462.12

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5. *Erroneously Computed* ***(Exhibit L-1)***	-	*30.68*	-	-	*30.68*
6. *Supported by Invoices with Pre-printed "TAN-VAT"* ***(Exhibit M-1)***	-	-	-	*8,803.63*	*8,803.63*
7. *Supported by Invoices with Pre-printed "VAT No." only* ***(Exhibit N-1)***	-	-	-	*1,581.00*	*1,581.00*
8. *Supported by Invoices Without BIR Permit* ***(Exhibit R-1)***	-	-	*45,865.80*	-	*45,865.80*
9. *Supported by Invoices with Pre-printed "VAT Exempt" or "Zero VAT"* ***(Exhibit S-1)***	-	*21,258.89*	-	-	*21,258.89*
10. *Supported by an Invoice with Pre-printed TIN-V Printed after January 1, 1996* ***(Exhibit T-1)***	-	*3,363.64*	-	-	*3,363.64*
III. Input Taxes Claimed on Importation of Goods:					
1. *Supported by BOC ORs Only* ***(Exhibit O-1)***	*1,545.00*	-	-	-	*1,545.00*
2. *Supported by Certified (by the custom broker) Informal IEDs (Exhibit P-1)*	*736.00*	*2,701.00*	*3,160.00*	*3,740.00*	*10,337.00*
3. *Supported by Certified [by the Commission on Audit (COA)/Customs Operations Officer] IEDs* ***(Exhibit U-1)***	*21,165.00*	-	-	-	*21,165.00*
IV. Input Taxes Claimed on Purchases of Goods and Services and on Importation of Goods Without Supporting Documents Available ***(Exhibit Q-1)***	*276,552.13*	*104,851.98*	*559,978.89*	*377,406.85*	*1,318,789.85*
Total	***413,190.88***	***161,898.34***	***641,976.33***	***455,608.67***	***1,672,674.21***

After a circumspect study of the evidence on record, this Court agrees with the findings of the commissioned independent CPA, save for the amount of P1,318,789.85 *(item IV of the Findings)*. The input taxes of P353,884.36

(P1,672,674.21 less P1,318,789.85) should be disallowed for not being supported by proper VAT invoices or official receipts in accordance with Section 4.104-5 of Revenue Regulations No. 7-95 in relation to Sections 110 and 113 of the NIRC of 1997, as amended.

The SGV & Co. excepted the claimed amount of P1,318,789.85 for having no supporting documents. However, petitioner presented before this Court supporting documents to rebut the said findings. Nevertheless, out of the total input taxes of P1,318,789.85, petitioner was able to present to this Court documents pertaining only to the amount of P298,748.16. The first set of documents *(Exhibits OO to NNN)* relates to the input taxes of P195,501.00 and the second set of documents *(Exhibits OOO to XXX)* corresponds to the input taxes of P103,247.16. All these documents were presented for marking and comparison before the Clerk of Court on November 10, 2004 and February 4, 2005, respectively, and the same were found to be faithful reproduction of the originals. The said documents formed part of the evidence formally offered by petitioner and subsequently admitted by this Court.

Upon examination, We find the first set of documents valid except for the documents marked as Exhibits FFF, FFF-1, NNN and NNN-1 supporting the claimed input taxes of P5,291.00 and P33,547.00. The official receipt issued by Land Bank of the Philippines which was marked as Exhibit FFF and the official receipt issued by United Coconut Planters Bank marked as Exhibit NNN do not reflect any VAT payment made by petitioner. Section 4.104-5(b) of Revenue Regulations No. 7-95 provides that "the input tax on importations

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shall be supported with the import entry or other equivalent document showing actual payment of VAT on the imported goods".

Regarding the second set of documents, this Court finds that only the input tax of P10,623.00 evidenced by an official receipt *(Exhibit XXX)* which was issued by the Land Bank of the Philippines can be granted and the balance amounting to P92,624.16 *(P103,247.16 less P10,623.00)* which are all supported by official receipts *(Exhibit PPP to WWW)* issued by the insurance agent shall be denied on the ground that the said receipts were not issued by the insurance company itself contrary to Section 113 in relation to Section 108(A) of the NIRC of 1997, as amended, as well as Section 4.108-1 of Revenue Regulation 7-95.

In its addendum report, the commissioned CPA likewise made the following additional observations:

> *Moreover, we would like to mention the following **observations** for the additional information of the Honorable Court.*
>
> 1. *Input taxes amounting to P247,859.57 were claimed on purchases of services for which the date of the related VAT ORs fall outside the period of claim (i.e., Fourth Quarter of 2000, First Quarter of 2002).* ***(See Annex 1-A)***
>
>   ***We were able to ascertain that there were no double claiming relative to these input taxes.*** *These input taxes were claimed only in the first and second quarters of 2001 (for input taxes supported by VAT ORs issued in 2000) and fourth quarter of 2001 (for input taxes issued in 2002) and were not claimed in CY 2000 and 2002.*
>
> 2. *Input taxes amounting to P12,666,112.43 were claimed on purchases of services which were supported by VAT ORs issued under the former names of the Company, i.e., Hopewell Power (Phils.), Corp. (HPPC) and Southern Energy Quezon, Inc. (SEQI).* ***(See Annex 2-A)***

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3. *Input taxes amounting to P3,733,870.85 were claimed on purchases of goods, which were supported by VAT invoices issued under the former names of the Company, i.e., HPPC and SEQI.* ***(See Annex 3-A)***

4. *Input taxes amounting to P2,256,117.40 were claimed on purchases of goods for which the date of the related VAT Invoices fall outside the period of claim (e.g., second, third, fourth quarters of 2000 and second quarter of 1999).* ***(See Annex 4-A)***

   We were able to ascertain that there were no double claiming relative to these input taxes. *These input taxes were claimed only in CY 2001, and were not claimed in CY 1999 and 2000.*

5. *Input tax amounting to P23,580.48 was claimed on a purchase of goods supported by a certified (by supplier) true copy of a VAT invoice.* ***(See Annex 5-A)***

6. *Input taxes amounting to P934,863.00 were claimed on importation of goods for which the date of the related IEDs and BOC ORs fall outside the period of claim (i.e., December 2000).* ***(See Annex 6-A)***

   We were able to ascertain that there was no double claiming relative to these input taxes. *These input taxes were claimed only in the first quarter of 2001, and were not claimed in the fourth quarter of 2000.*

7. *Input taxes amounting to P10,543,008.00 were claimed on importation of goods supported by Bank ORs and IEDs but the Bank ORs and/or IEDs were issued under the former names of the Company, i.e., HPPC and SEQI.* ***(See Annex 7-A)***

8. *Input taxes amounting to P940,053.00 were claimed on importation of goods which were supported by Bank Debit Advices showing the actual payment of VAT and by Certified (by the custom broker) IEDs.* ***(See Annex 8-A)***

9. *Input taxes amounting to P791,387.36 were claimed on purchases of services which were originally supported by VAT ORs without BIR permit. However, upon availability of the supplier's VAT ORs with BIR permit, the supplier replaced all VAT ORs without BIR permit with VAT ORs with BIR permit printed July 26, 2003. Accordingly, such input*

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> *taxes amounting to P791,387.36 are now supported by VAT ORs with BIR permit.* ***(See Annex 9-A)"***

Relative to the first and fourth observations made by SGV & Co. relating to the claimed input taxes paid on purchases of services and goods in the respective amounts of P247,859.57 and P2,256,117.40, the same shall be denied because the date of the related VAT invoices or official receipts fall outside the period of claim. Petitioner should have declared these input taxes in the corresponding taxable quarters when payments for the services were made as evidenced by VAT official receipts and when purchases of goods were consummated as evidenced by VAT invoices as held by this Court in the case of ***Lepanto Consolidated Mining Co. vs. Commissioner of Internal Revenue, CTA Case Nos. 6368 & 6480,***[7] thus:

> "We agree with the respondent.
>
> The alleged unutilized input VAT of P5,820,863.87 should be denied since the supporting invoices and official receipts thereof bore dates which were earlier than the period of petitioner's claim. Section 110(A)(2) of the 1997 Tax Code provides:
>
> > "Sec. 110. *Tax Credits.* -
> >
> > A. *Creditable Input Tax.* -
> >
> > 2. The input tax on domestic purchase of goods or properties shall be creditable:
> >
> > (a) To the purchaser upon consummation of sale and on importation of goods or properties; and
> >
> > However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or

[7] December 15, 2004

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> licensee upon payment of the compensation, rental, royalty or fee."
>
> It is clear from the above-quoted provisions of law that for purchases of goods, the corresponding input value added taxes of which is creditable to the purchaser upon consummation of sale, that is, upon the issuance of the corresponding invoice. On the other hand, for purchases of services, the corresponding input value added taxes of which is creditable to the purchaser upon payment of compensation, rental, royalty, or fee, that is, upon the date of official receipt. Section 110(A) is explicit. It states "upon consummation", in the case of domestic purchases of goods, and "upon payment", in the case of purchases of services. It does not provide any qualification, such as "upon delivery of invoice or official receipt" which is the main thesis of petitioner's contention.
>
> In a resolution of the case entitled ***Telecommunications Technologies Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6168, promulgated on July 28, 2004,*** this Court elucidated that "the input VAT on domestic purchases of goods or properties shall be allowed as tax credit to the purchaser upon consummation of sale, which means upon issuance by the seller of the VAT sales invoices evidencing the sale of goods/properties. On the other hand, the input VAT on purchases of services shall be available as tax credit to the purchaser only upon payment of the compensation or fee, *i.e.,* upon issuance by the seller of the VAT official receipt evidencing receipts of the payment for services performed or yet to be performed."
>
> Thus, it is indubitable on the part of the petitioner to declare the input value added taxes on domestic purchases of goods and services at the end of the corresponding taxable quarter where purchases of goods were consummated, as evidenced by VAT invoice and for payment of services, as evidenced by VAT official receipt.
>
> Therefore, the amount of input VAT of P5,820,863.87 which is supported by VAT invoices and official receipts dated earlier than the period of petitioner's claims can no longer be claimed for refund pursuant to Section 110(A) in relation with Section 112(A) of the 1997 National Internal Revenue Code."

With respect to the sixth observation made by SGV & Co. pertaining to the P934,863.00 input taxes on importation of goods for which the date of the

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Import Entry Declarations ("IEDs") and Bureau of Customs ("BOC") Official Receipts ("ORs") fall outside the period of claim, the same must be denied pursuant to Section 110 (A)(2)(b), of the NIRC of 1997, as amended, in relation to Section 4.104-5 (b) of Revenue Regulations No. 7-95, which are all quoted herein below:

> "SEC. 110. *Tax Credits.* -
>
> "(A) *Creditable Input Tax.* -
>
> "(2) The input tax on domestic purchase of goods or properties shall be creditable:
>
> "(a) To the purchaser upon consummation of sale and on importation of goods or properties; and
>
> "(b) <u>To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs</u>."
>
> **"SEC. 4.104-5. Substantiation of claims for input tax credit.** -
>
> xxx xxx xxx
>
> (b) <u>Input tax on importations shall be supported with the import entry or other equivalent document showing actual payment of VAT on the imported goods</u>." *(Underlining Ours)*

Evidently, the input taxes on importation of goods or properties should have been declared in the corresponding taxable quarter when the value-added tax on the said importation were paid evidenced by an import entry or other equivalent document showing actual payment of VAT on the imported goods or properties.

With respect to the second, third and seventh observations, this Court finds this portion of the claim valid since the supporting VAT ORs, VAT invoices, Bank ORs and IEDs which were issued under the former names of

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the petitioner are still attributable and creditable to it, although presently it has a different name.

Regarding the fifth observation relating to the claimed input VAT on purchase of goods in the amount of P23,580.48 which was supported by a VAT invoice, certified as true copy by the supplier, the same must be denied since the authenticity of the supporting VAT invoice cannot be determined.

As to the eight and ninth observations pertaining to the claimed input taxes of P940,053.00 and P791,387.36, this Court finds the same to be refundable for having complied with the substantiation requirements under Section 4.104-5 (b) of Revenue Regulations No. 7-95.

In sum, out of the total claimed input taxes of P121,309,855.09, petitioner was able to substantiate the amount of P116,331,423.43, computed as follows:

Total Claimed Unutilized Input Taxes				**P 121,309,855.09**
Less: Disallowances:				
1 As per Findings of the Commissioned Independent CPA		P 1,672,674.21		
Less: Substantiated amount for the 1st set of documents (P195,501.00 less P5,291.00 and P33,547.00)	P 156,663.00			
Substantiated amount for the 2nd set of documents (P103,247.16 less P92,624.16)	10,623.00	156,663.00	**P 1,516,011.21**	
2 Input taxes on purchases of services for which The related VAT Ors fall outside the period of Claim			**247,859.57**	
3 Input taxes on purchases of goods for which The date of the related VAT invoices fall outside The period of claim			**2,256,117.40**	
4 Input taxes on importation of goods for which The date of the IEDs and BOC Ors fall outside The period of claim			**934,863.00**	

5	Input taxes on purchase of goods supported by a certified true copy of a VAT invoice	23,580.48	4,978,431.66
	Total Substantiated Amount of Input Taxes		**P 116,331,423.43**

Proceeding to the last issue, it was established that petitioner's claimed unutilized input taxes for taxable year 2001 in the amount of P121,309,855.09 was not applied against any output tax. Although the amount of P121,309,855.09 was carried-over to the succeeding quarters until the second quarter of 2003 *(Exhibits M, N, O, P,Q and R)*, the same was deducted as "Any VAT Refund/TCC Claimed" from the total available input tax P237,777,007.57 as of the second quarter of 2003. In other words, the subject claim no longer formed part of the excess input VAT of P116,407,542.12 as of the second quarter of 2003 which was to be carried-over/applied to the succeeding third quarter of 2003.

Finally, records show that petitioner's administrative claim for refund filed on March 19, 2003 and the two Petitions for Review docketed as CTA Case Nos. 6628 and 6732 filed on March 31, 2003 and July 23, 2003, respectively, were well within the two-year prescriptive period reckoned from the date of filing the corresponding Quarterly VAT Returns for taxable year 2001 ***(JIDECO Manufacturing Philippines Inc., vs. Commissioner of Internal Revenue, CTA Case No. 6552, September 16, 2004)***.

IN VIEW OF ALL THE FOREGOING, the Petition for Review is hereby *PARTIALLY GRANTED.* Accordingly, respondent is **ORDERED TO REFUND**, or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of P116,331,423.43 representing unutilized input taxes paid

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on its domestic purchases of goods and services and importation of goods attributable to zero-rated sales for the four taxable quarters of 2001.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman

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CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice

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