REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

HYDRO-ELECTRIC DEVELOPMENT CORPORATION, Petitioner,	**C.T.A. CASE NO. 7263**
	Members:
- versus -	**ACOSTA,** *Chairperson* **BAUTISTA,** and **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** AUG 20 2008 1:10pm

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DECISION

CASANOVA, J.:

Nature of the Case

The Petition for Review seeks for the issuance of tax credit certificate or refund for the unutilized value-added tax (VAT) for the period January 2003 to December 2003 in the amount of P2,209,934.38 arising from its domestic purchases of goods and services subject to VAT which are attributable to its VAT zero-rated sales of power generation services to the National Power Corporation (NPC) and are automatically zero-rated pursuant to EPIRA.

Statement of the Facts

Petitioner, Hydro Electric Development Corporation, is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at 214 Obulan, Ambuklao Road, Beckel, La Trinidad, Benguet. It is registered with the Bureau of Internal Revenue under Revenue District No. 9 – Cordillera Administrative Region with Tax Identification No. 000-309-914 and a Value Added Tax Payer as evidenced by Certificate of Registration dated April 10, 2003.[1]

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue, who is duly appointed and empowered to perform the duties of his office, including among others, the duty to act and approve claims for refund or tax credit certificate as provided by law, with office address at the BIR National Office Building, BIR Road, Diliman, Quezon City.[2]

Petitioner, for the four quarters of taxable year 2003, filed its Quarterly VAT Returns on April 15, 2003, July 18, 2003, October 20, 2003, and January 20, 2004, respectively.[3]

With a validity period from June 11, 2003 to December 31, 2003, petitioner has been issued an approved application for zero-rating.[4]

Then, on March 31, 2005, petitioner filed through counsel an administrative claim for refund/application for tax credit certificate of its unutilized input VAT for the period January 2003 to November 2003 in the amount of P946,409.45.[5] Petitioner again filed, on April 11, 2005, a similar claim of its unutilized input VAT for the month of December 2003 in the amount of P1,263,524.93.[6]

Due to the inaction of the respondent on petitioner's claim and the two-year prescriptive period was about to lapse, hence this Petition for Review filed on June 1, 2005.[7]

Respondent in his Answer[8] by way of special and/or affirmative defenses averred among others:

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[1] Paragraph 1, Page 2, Joint Stipulation of Facts and Issues; Page 79, CTA Records
[2] Paragraph 2, Page 3, Joint Stipulation of Facts and Issues; Page 80, CTA Records
[3] Paragraph 7, Page 3, Memorandum for the Petitioner; Page 573, CTA Records
[4] Paragraph 10, Page 4, Joint Stipulation of Facts and Issues; Page 81, CTA Records
[5] Paragraph 7, Page 3, Petition for Review; Page 3, CTA Records
[6] Paragraph 8, Pages 3-4, Petition for Review; Pages 3-4, CTA Records
[7] Paragraph 19, Page 9, Petition for Review; Page 9, CTA Records
[8] Paragraphs 5, 6, 7, 8, and 9, Pages 2-4, Answer; Pages 54-56, CTA Records

5. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;

6. Petitioner's claim for refund is subject to administrative investigation/examination by the respondent;

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 the Revenue Regulations No. 6-97 in relation to Section 4. 107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

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 Tax Code as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving the 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 Tax Code, as amended. It is worthy of emphasis that Section 112 (D) of the Tax Code, as amended, 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 P2,209,934.38 allegedly paid by the petitioner on its purchases of goods and services for the taxable year 2003 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 Section 229 of the Tax Code, as amended;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade and 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 Tax Code as amended, 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 the Revenue Regulations 7-95. (Re: Persons who can avail of the Input Tax Credit)

8. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish the right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications (Asiatic Petroleum Co. {P.I.} v. Llanes, 49 Phil 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil 670)

9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

The parties, on October 26, 2005, entered their Joint Stipulation of Facts and Issues[9], which was approved by this Court in a Resolution dated November 07, 2005.[10]

Petitioner presented its evidence during trial. Respondent, on the other hand, was considered to have waived his right to present evidence in a Resolution dated August 23, 2007.[11] Thus, the case was submitted for decision on October 9, 2007, taking into consideration the memorandum filed by the petitioner on October 05, 2007, *sans* respondent's Memorandum.

The Issues

The issues to be resolved by this Court:[12]

[9] Page 78, CTA Records
[10] Page 83, CTA Records
[11] Page 566, CTA Records
[12] Page 4, Joint Stipulation of Facts and Issues; Page 81, CTA Records

I. Whether or not petitioner's sale of electricity to NPC is effectively zero-rated;

II. Whether or not petitioner filed its claim for refund within the two (2) year prescriptive period;

III. Whether or not petitioner's input VAT are properly supported;

IV. Whether or not petitioner is entitled for [a] refund.

The Court's Ruling

Claim for refund within the two-year prescriptive period

Section 112 (A) of the National Internal Revenue Code (NIRC) of 1997 provides that a VAT-registered person, whose sales are zero-rated or effectively zero-rated, may apply for the issuance of a tax credit certificate or refund of creditable input VAT which arises from its domestic purchases of goods and services subject to VAT, within two years after the close of the taxable quarter when the sales were made. However, Section 112 (A) should be construed with the first paragraph of Section 114 (A), in relation to Section 229 of the same Code, thus:

> "**Section. 114.** *Return and Payment of Value-added Tax –*
>
> (A) *In General.—* Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis."
>
> "**Section. 229.** *Recovery of Tax Erroneously or Illegally Collected.—* No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment:** Provided, however, That the Commissioner may, even without written claim therefore, refund or credit any tax, where on the

> face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (Emphasis supplied)

In not a few cases did this Court held, that the two-year prescriptive period for the filing of a claim for VAT refund or tax credit should not be counted from the close of the quarter, but from the date of filing of the VAT Return for it is only during that date, that the VAT liability or refundability can be determined.[13] The Supreme Court affirmed in this wise:

> "It is true that unlike corporate income tax, which is reported and paid on installment every quarter but is eventually subjected to a final adjustment at the end of the taxable year, VAT is computed and paid on a purely quarterly basis without need for a final adjustment at the end of the taxable year. However, it is also equally true that until and unless the VAT-registered taxpayer prepares and submits to the BIR its quarterly VAT return, there is no way of knowing with certainty just how much input VAT the taxpayer may apply against its output VAT; how much output VAT it is due to pay for the quarter or how much excess input VAT it may carry-over to the following quarter; or how much of its input VAT it may claim as refund/ credit. xxx.
>
> xxx, it is more practical and reasonable to count the two-year prescriptive period for filing a claim for refund/credit of input VAT on zero-rated sales from the date of filing of the return and payment of the tax due which, according to the law then existing, should be made within 20 days from the end of each quarter."[14]

Further, in the computation of the two-year period, a year is equivalent to 365 days regardless of whether it is a regular year or a leap year.[15] A calendar month is "a month designated in the calendar without regard to the number of days it may contain."[16]

However, as borne by the records, petitioner's claim for tax refund or issuance of tax credit certificate does not fall entirely within the two-year prescriptive period.

For the first quarter, petitioner merely proffered its Amended Quarterly VAT Return.[17] Without the introduction of the VAT Return originally filed for the first quarter, this Court cannot ascertain whether petitioner's claim for the said quarter in the amount of P67,481.01 was timely filed.

[13] July 20, 1998 Resolution in Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue
[14] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 141104 & 148763, June 8, 2007
[15] National Marketing Corporation vs. Tecson, 139 Phil. 584 (1960), citing People vs. Del Rosario, 97 Phil 70, 71 (1955)
[16] Gutierrez vs. Carpio, 53 Phil. 334 (1929)
[17] Exhibit H

Hence, the claim for the first quarter of taxable 2003 should be disallowed.

As to claims for the 2nd, 3rd and 4th quarters,[18] petitioner tendered its amended VAT Returns all filed on March 31, 2005. Unlike the claim for the first quarter, the submission of the original VAT Returns are no longer necessary. Even granting that petitioner's second quarterly VAT return was filed before the last day prescribed by law, which is July 25, 2003, still the same falls within the two-year prescriptive period, or until July 25, 2005, within which to file its claim.

Since the administrative claim and the Petition for Review were filed on March 31, 2005 and June 1, 2005, respectively, the claims for the 2nd, 3rd and 4th quarters in the respective amounts of P335,611.02, P199,981.70 and P1,606,860.65 are well within the two-year prescriptive period.

Sale of electricity to NPC is effectively zero-rated

Citing the charter of the NPC[19], Section 13 provides:

> **Section 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 investment 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:
>
> (a.) from the payment of all forms of taxes, duties, fees, imposts, as well as the costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings. x x x

Further, in **Maceda vs. Macaraig, Jr.**[20], the Supreme Court affirmed the NPC's tax exemption:

> The NPC is a non-profit public corporation created for the general good and welfare, wholly owned by the government of the Republic of the Philippines. From the very beginning of its corporate existence, the NPC enjoyed preferential tax treatment, to enable the Corporation to pay the

[18] Exhibit Q, Z and II
[19] Republic Act 6395, as amended by Presidential Decree 380
[20] G.R. No. 88291, May 31, 1991

indebtedness and obligation and in furtherance and effective implementation of the policy enunciated in Section one of "Republic Act No. 6395" which provides:

> **Section 1.** *Declaration of Policy.* - Congress hereby declares that (1) the comprehensive development, utilization and conservation of Philippine water resources for all beneficial uses, including power generation, and (2) the total electrification of the Philippines through the development of power from all sources to meet the need of rural electrification are primary objectives of the nation which shall be pursued coordinately and supported by all instrumentalities and agencies of the government including its financial institutions.

xxx xxx xxx

It is noted that in the earlier law, R.A. No. 358 the exemption was worded in general terms, as to cover "all taxes, duties, fees, imposts, charges, etc. x x x" However, the amendment under Republic Act No. 6395 enumerated the details covered by the exemptions. Subsequently, P.D. No. 380, made ever more specific the details of the exemption of NPC to cover, among others, both direct and indirect taxes on all petroleum products used in its operation. Presidential Decree No. 938 amended the tax exemption by simplifying the same law in general terms. It succinctly exempts NPC from *"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.

The use of the phrase "all forms" of taxes demonstrate the intention of the law to give NPC all the tax exemptions it has been enjoying before. The rationale for this exemption is that being non-profit the NPC "shall devote all its returns from its capital investment as well as excess revenues of its operation, for expansion. x x x

xxx xxx xxx

It is evident from the provisions of P.D. No. 938 that its purpose of to maintain the tax exemption of NPC from all form of taxes including indirect taxes as provided for under R.A. No. 6395 and P.D. No. 380 if it is to attain its goals.

Nevertheless, petitioner must prove that it actually sells electricity to NPC in order for such sales to be qualified as effectively zero-rated under Section 108(B)(3) of the NIRC of 1997, as amended, which states:

> **Sec. 108.** *Value-added Tax on Sale of Services and Use or Lease of Properties. –*
>
> (A) Rate and base of tax. - xxx

(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:

(1) xxx

(2) 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.

However, Section 108 (B)(3) must be read with Section 113 of the same Code, as implemented by Section 4.108-1 of Revenue Regulations No.7-95, thus:

"**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."

"**Section 4.108-1.** *Invoicing Requirements* – All VAT registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN and address of seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word "zero-rated" imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration.

xxx xxx xxx

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or receipts and this shall be considered as a "VAT Invoice". All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax."

If the taxable person is engage in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A "VAT Invoice" shall be issued only for sales of goods, properties or services subject to VAT imposed in Section 100 and 102 of the Code. xxx"

Further, in the approved Application for VAT Zero-Rate[21] issued by the respondent to the petitioner, the phrase *"Zero-rated sales must be indicated in the invoice/receipt."* is signified therein.

Thus, based on the foregoing law and regulations, as well as, petitioner's approved Application for VAT Zero-Rate, it is imperative that petitioner must issue VAT invoices/official receipts which are duly registered and contain all the necessary information such as petitioner's TIN-VAT number and the imprinted word "zero-rated" in order that its sales of electricity to NPC shall qualify for VAT zero-rating.

Input VAT must be properly supported.

Petitioner declared the following zero-rated sales for the taxable year 2003:

Qtr Involved	Exhibit No.	Zero-Rated Sales
1st	H	P 16,842,639.78
2nd	Q	52,067,403.62
3rd	Z	149,633,477.53
4th	II	74,819,191.14
Total		**P 293,362,712.07**

Based on the examination of the Court-commissioned Independent CPA, Mr. Ronaldo De Vera, on petitioner's documentary evidence, such as summary of zero-rated sales, VAT invoices and official receipts,[22] out of the total reported zero-rated sales amounting to P293,362,712.07, only the amount of P231,238,283.72, representing petitioner's sale of electricity to NPC, was considered as zero-rated sales. While the remaining amount of

[21] Paragraph 10, Page 4, Joint Stipulation of Facts and Issues; Page 81, CTA Records
[22] Exhibits TT, TT-1 to TT-26, and TT-1a toTT-26a

P62,124,428.35, relating to petitioner's sale of electricity to various companies, other than NPC, was treated as exempt sales, thus:

Qtr. Involved	Reported Zero-Rated Sales	Substantiated Zero-Rated Sales per ICPA	Exempt Sales
1st	P 16,842,639.78	P 11,912,325.83	P 4,930,313.95
2nd	52,067,403.62	40,092,788.67	11,974,614.95
3rd	149,633,477.53	122,021,973.02	27,611,504.51
4th	74,819,191.14	57,211,196.20	17,607,994.94
Total	**P 293,362,712.07**	**P 231,238,283.72**	**P 62,124,428.35**

Section 6 of the EPIRA Law[23] provides that "sales of generated power by generation companies shall be value-added tax zero-rated." By modifying the VAT rate applicable to sales of generated power by generation companies from ten percent (10%) to zero percent (0%), the relevant provisions of the Tax Code are deemed amended by the EPIRA Law.

However, based on the official receipts offered by the petitioner, only the following 2003 zero-rated sales to NPC were established, to wit:

Exhibit No.	OR No.	OR Date	Amount
TT-7/TT-7a	3616	04/30/03	P 915,310.21
TT-9/TT-9a	3622	05/30/03	1,128,409.13
TT-10/TT-10a	3621	05/30/03	157,793.86
TT-11/TT-11a	3626	06/26/03	430,380.02
TT-12/TT-12a	3627	06/26/03	3,778,370.58
TT-13/TT-13a	3631	07/25/03	34,139,759.14
TT-14/TT-14a	3630	07/25/03	458,075.94
TT-15/TT-15a	3637	08/28/03	33,883,812.06
TT-17/TT-17a	3640	09/25/03	44,161,003.97
TT-18/TT-18a	3639	09/25/03	460,991.30
TT-19/TT-19a	3644	10/27/03	42,605,115.69
TT-20/TT-20a	3643	10/27/03	455,889.42
TT-21/TT-21a	3646	11/27/03	32,881,796.47
TT-22/TT-22a	3647	11/27/03	450,058.70
TT-23/TT-23a	3650	12/29/03	15,462,805.43
TT-24/TT-24a	3649	12/29/03	390,658.24
Total			**P 211,760,230.16**

[23] Effective June 26, 2001

The Court notes that the claim for the first quarter of 2003 was disallowed for reason of prescription. However, the total zero-rated sales concerning the first quarter of 2003 amounting to P11,912,325.83 shall not be entirely disallowed. OR No. 3616[24] dated April 30, 2003 is inside the coverage of second quarter of 2003, thus, within the two-year prescriptive period.

On the other hand, for failure to comply with the invoicing requirements under Section 4.108.1 of Revenue Regulations No. 7-95, OR No. 3636[25] dated August 28, 2003 shall be disallowed for the words "zero-rated" were not imprinted on the official receipt covering zero-rated sales. In addition, OR Nos. 4553[26] and 4552[27] shall be denied, as well, for it was dated January 26, 2004, a date which is beyond the period of claim. Hence, the total disallowed zero-rated sales amounted to P19,478,053.56.

The Independent CPA considered the sales amounting to P62,124,428.35 as exempt sales. Yet the official receipts presented bear the words "zero-rated sales". Thus, such should be considered as zero-rated sales and not as exempt sales.

Nonetheless, out of the P62,124,428.35, only the amount of P42,927,095.74 shall be considered as zero-rated sales and the remaining amount of P19,197,332.61 shall be disallowed for being not properly substantiated by official receipts, to wit:

	Customer	Exhibit No.	Amount
a.	**Sales for the first quarter**	SS-1 to SS-13	**P 4,930,313.95**
b.	**Sale of service without supporting Official Receipts**		
	Benguet Electric Cooperative	SS-14	1,189.49
	Davao Light & Power Co. Inc.	SS-15	1,037,226.05
	Davao Light & Power Co. Inc.	SS-20	967,777.34
	Davao Light & Power Co. Inc.	SS-21	939,230.72
	Davao Light & Power Co. Inc.	SS-26	1,082,726.66
	Benguet Electric Cooperative		983.18
	Davao Light & Power Co. Inc.	SS-39	766,277.76
	Davao Light & Power Co. Inc.	SS-46	953,988.11
	Davao Light & Power Co. Inc.	SS-52a	534,480.62
	Davao Light & Power Co. Inc.	SS-57a	1,075,859.14
	Philex Mining Corp.	SS-61	299,751.73

[24] Exhibit TT-7
[25] Exhibit TT-16
[26] Exhibit TT-25
[27] Exhibit TT-26

	Davao Light & Power Co. Inc.	SS-66a	1,100,152.80
	Sub-total		**8,759,643.60**
c.	**Supporting ORs not legible**		
	Benguet Electric Cooperative	SS-48	102,861.18
	San Fernando Electric Light & Power Co., Inc.	SS-56	2,620,456.09
	Benguet Electric Cooperative	SS-58	109,681.99
	Benguet Electric Cooperative	SS-59	145,308.72
	Sub-total		**2,978,307.98**
d.	**OR date is out of period of claim**		
	Philex Mining Corp.	SS-55	1,502,519.51
	San Fernando Electric Light & Power Co., Inc.	SS-65	1,026,547.57
	Sub-total		**2,529,067.08**
	TOTAL		**P 19,197,332.61**

Since the input taxes sought to be refunded in the amount of P2,209,934.38 is attributable to petitioner's declared zero-rated sales of P293,362,712.07, the valid input VAT should be allocated against the supported zero-rated sales.

Inasmuch as only the amount of P254,687,325.90 (P211,760,230.16 + P42,927,095.74) was proven as zero-rated sales, it is but proper to apportion the input taxes equivalent thereto. Thus, the rate to be applied will be based on the total volume of declared zero-rated sales, computed as follows:

Substantiated zero-rated sales	254,687,325.90
Divided by the total declared zero-rated sales	293,362,712.07
Rate of supported zero-rated sales	**86.82%**

Derived from various purchases of goods and services for the year 2003, petitioner has alleged unutilized input VAT in the aggregate amount of P2,209,934.38, as follows:

Qtr Involved	Exhibit No.	Zero-Rated Sales	VAT Sales	Output VAT	Carried Over	Input VAT	Excess Input VAT
1st	H	P 16,842,639.78	P8,341,496.70	P834,149.67		P 901,630.68	P 67,481.01
2nd	Q	52,067,403.62	5,794,831.70	579,483.17	P67,481.01	915,094.19	403,092.03
3rd	Z	149,633,477.53	4,462,960.30	446,296.03	403,092.03	646,277.73	603,073.73
4th	II	74,819,191.14	4,056,866.60	405,686.66	603,073.73	2,012,547.31	**2,209,934.38**
		P293,362,712.07	**P22,656,155.30**	**P2,265,615.53**		**P4,475,549.91**	

Based on the Independent CPA's report,[28] the amount of the petitioner's claim that was substantiated by proper documents and were, therefore, valid for tax refund/tax credit amounts to P1,479,077.87, thus:

Qtr Involved	Input VAT per Return	Input VAT Disallowed in Audit	Input VAT Allowed per Audit	Output VAT	Input VAT Ascertained to be valid for Tax refund/credit
1st	P 901,630.68	P 40,731.05	P 860,899.63	P 834,149.67	P 26,749.96
2nd	915,094.19	22,713.66	892,380.53	579,483.17	312,897.36
3rd	646,277.73	115,000.09	531,277.64	446,296.03	84,981.61
4th	2,012,547.31	552,411.71	1,460,135.60	405,686.66	1,054,448.94
	P 4,475,549.91	**P 730,856.51**	**P 3,744,693.40**	**P 2,265,615.53**	**P 1,479,077.87**

The input VAT ascertained to be valid for tax refund/credit relating to the first quarter amounting to P26,749.96 was previously disallowed for reason of prescription.

However, of the total disallowances on the 2nd, 3rd and 4th quarters arrived at by the Independent CPA in the amount of P690,125.46 (P730,856.51 less P40,731.05), only the amount of P127,760.38 representing petitioner's disallowed input VAT on purchased of goods and services should be disallowed, the remaining amount of P562,365.08 previously disallowed by the independent CPA should be allowed for the presence of documents properly supporting the claimed input VAT, thus:

Period Covered	Per ICPA	Per Court's Verification	Discrepancies
April	12,104.04	12,104.04	-
May	5,328.15	5,328.15	-
June	5,281.47	5,281.47	-
July	2,738.05	2,738.05	-
August	30,563.52	18,613.79	11,949.73
September	81,698.53	14,046.17	67,652.36
October	66,143.96	7,299.36	58,844.60
November	195,173.98	5,720.23	189,453.75
December	291,093.76	56,629.12	234,464.64
Total	**690,125.46**	**127,760.38**	**562,365.08**

[28] Page 3, Exhibit NN

However, further verification and examination of the records disclose that the additional amount of P1,025,807.01 should be disapproved for failure to properly document the same, to wit:

	Findings	Input VAT
a)	Input VAT on purchase of services supported by documents other than VAT ORs	134,644.93
b)	Input VAT on purchase of goods supported by documents other than VAT Invoices	90,485.06
c)	Input VAT on purchase of services which are supported by TIN-VAT OR dated not within the period of claim	19,393.71
d)	Input VAT on purchase of goods which are supported by TIN-VAT Invoice dated not within the period of claim	98,600.91
e)	Input VAT on purchase of services supported by VAT OR issued not in the Company's name	512,043.13
f)	Input VAT on purchase of goods supported by VAT Invoice issued not in the Company's name	7,322.73
g)	Input VAT on purchase of services supported by TIN-NON VAT OR.	10,911.99
h)	Input VAT on purchase of goods supported by TIN-NON VAT Invoices	9,270.44
i)	Input VAT on purchase of services supported by OR but the word "VAT" was not imprinted thereon	12,888.77
j)	Input VAT on purchase of goods supported by Invoice but the word "VAT" was not imprinted thereon	22,624.11
k)	Input VAT on purchases of goods and services without supporting documents	59,281.31
l)	Overclaimed Input VAT on purchases of goods and services.	47,020.35
m)	VAT Invoice supporting purchase of goods that was not formally offered as evidence	794.57
n)	Input VAT on purchases of goods claimed twice	272.73
o)	Input VAT on purchase of goods supported by "TAN-VAT" Invoice	252.27
	TOTAL	**1,025,807.01**

Thus, the input taxes that the petitioner were able to support, with proper VAT invoices and/or official receipts, only amounts to P988,885.98, as follows:

Claimed Input Tax for Refund			P2,209,934.38
Less: Disallowances per Commissioned Independent CPA's Report			
Second Quarter 2003	P(22,713.66)		
Third Quarter 2003	(115,000.09)		
Fourth Quarter 2003	(552,411.71)		
Total	P(690,125.46)		
Adjustment on disallowances made by Commissioned ICPA as per this Court's further verification *(Annex A)*	562,365.08	P(127,760.38)	
Input VAT for the first quarter disallowed due to prescription		(67,481.01)	

Additional disallowances per this Court's further verification *(Annex B)*	(1,025,807.01)	(1,221,048.40)
Total Substantiated Amount		**P 988,885.98**

Consequently, an allocation of the above substantiated input VAT to the verified zero-rated sales would result to P858,516.49, computed as follows:

Substantiated Input VAT	P	988,885.98
x Rate of supported zero-rated sales		86.82%
Input VAT attributable to zero-rated sales	**P**	**858,516.49**

Entitlement for a refund.

Nonetheless, before petitioner can validly claim for a refund or tax credit, it is imperative to prove that the claimed input taxes were not carried over or applied against any output liability in the succeeding quarters.

Petitioner proffered its Amended Monthly VAT Return[29] for the month of January 2004. The return shows that there was no input tax carried over from the previous quarter.[30] However, the said document was insufficient to prove as to input taxes applied against any output VAT liability for the succeeding quarters.

It bears stressing that prior to the filing of the January 2004 Amended Monthly VAT Return which was filed on March 21, 2005, petitioner, as the law requires, should have already filed its VAT Returns for the four taxable quarters of 2004. These VAT returns should have been introduced by the petitioner in order to establish that the claimed input taxes were not actually applied in the said periods.

Thus, for failure of the petitioner to sufficiently prove that the substantiated input taxes of P858,516.49 was not applied against any output VAT liability in the succeeding quarters, the same cannot be granted.

[29] Exhibit LL
[30] Exhibit LL-5

WHEREFORE, premises considered, this Court hereby **DENIES** the Petition for Review for insufficiency of evidence.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division