REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>EN BANC</u>

KEPCO PHILIPPINES CORPORATION, Petitioner,	**C.T.A. EB No. 106** **(C.T.A. Case No. 6100)**
	Present:
- versus -	**ACOSTA,** *P.J.* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 2 4 2006

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DECISION

UY, *J.:*

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed on August 8, 2005 pursuant to Republic Act No. 9282, seeking a review of the decision and resolution of the First Division of the Court of Tax Appeals, in C.T.A. Case No. 6100, entitled "*Kepco Philippines Corporation vs. Commissioner of Internal Revenue*", to wit:

1.) Decision promulgated on February 9, 2005 granting petitioner's claim for refund/issuance of a tax credit certificate but in a reduced amount of P19,720,799.74 representing input Value-Added Tax paid on capital goods purchased during the calendar year 1998; and

2.) Resolution promulgated on June 22, 2005 denying petitioner's Motion for Partial Reconsideration of the aforesaid decision for lack of merit.

The facts as found by the First Division of this Court are undisputed:

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with its principal place of business located at Suite 2501-A, 25th Floor, Tektite Tower 1, Exchange Road, Ortigas Center, City of Pasig. It is a Value-Added Tax (VAT) registered taxpayer engaged in the production and sale of electricity (as an independent power producer), and sells electricity to the National Power Corporation (NPC). Petitioner has filed the appropriate Application for Effective Zero-Rating of its sales of electricity to the NPC with the respondent.

For the four quarters of the calendar year 1998, petitioner allegedly incurred VAT on its importation and domestic purchases of goods and services (including capital goods) in the total amount of P37,250,307.39 allegedly attributable to the production and sale of electricity to the NPC.

On March 30, 2000, petitioner filed with the respondent, through the Revenue District Office (RDO) No. 42, a claim for refund of the input VAT incurred for the calendar year 1998. It likewise filed a request for a ruling with the respondent relative to its claim for refund.

On April 24, 2000, due to the inaction of respondent, a Petition for Review was filed and was raffled to the CTA First Division.

After trial on the merits, the First Division granted petitioner's claim for the refund/issuance of a tax credit certificate but only in a reduced amount of P19,720,799.74 for failure of the petitioner to present substantial and sufficient evidence to support its entire claim. The balance on the claimed input VAT on capital goods amounting to P14,932,627.09 (P34,653,426.83 – P19,720,799.74) was not considered as it covered purchases of items which could not be classified as depreciable assets; hence, the same could not fall within the purview of the term "capital goods". Moreover, the First Division ruled that it could not grant petitioner's claim for refund of input VAT on the purchases of goods and services allegedly attributable to its zero-rated sales absent sufficient proofs that indeed petitioner's input VAT on purchases of goods and services were solely attributable to zero-rated sales. Failure to present its 1998 quarterly VAT returns and all its official receipts relative to the subject transactions further weakened petitioner's stand as the Court could not ascertain the accuracy of its claim.

Petitioner's motion for reconsideration of the said Decision was denied in a Resolution promulgated on June 22, 2005 for lack of merit.

Hence, this Petition for Review *En Banc*.

Petitioner submits the following grounds in support of the instant petition:

I. The Court of Tax Appeals First Division erred in not considering the remaining balance of P14,932,627.09 as capital assets; and

II. The Court of Tax Appeals First Division erred in not considering the P14,932,627.09 as refundable tax credit for zero rated sales to NPC for taxable year 1998.

It is petitioner's principal contention that its entire claim for refund/issuance of tax credit should be granted because the First Division had misappreciated and inadvertently [not] considered important facts and law on the matter since petitioner had presented the Commissioner's Report (Exhibits "L" to "T-2", inclusive), KEPCO Schedule of Input VAT for the year 1998 (Exhibits "U" to "U-51", inclusive) and KEPCO Financial Statement for 1998 (Exhibits "V" and "V-1") which, if taken collectively, could have substantially proven its position that such remaining balance of P14,932,627.09 pertains entirely to capital goods. Moreover, it avers that depreciation deduction is allowed for the exhaustion, wear and tear (including a reasonable allowance for obsolescence) of property used in the trade or business

(Section 34[F][1], National Internal Revenue Code of 1997) which is general and comprehensive in scope.

Petitioner, likewise, insists that it submitted the quarterly VAT returns for taxable year 1998 which were marked as Exhibits "B" to "E" despite the findings of the Court's Division that the same could not be found in the records of the case. Furthermore, petitioner argues that the supposed "missing" or "unaccounted for" official receipts were not used for sale of power/electricity and continues that it never admitted the fact that it sold power and electricity to other entities aside from the NPC considering that such alleged admission was inadvertently made by SGV in its administrative letter not by petitioner. Besides, these official receipts need not be formally offered because they are not for sale of electricity.

For failure of respondent to file his comment thereto within the prescribed period, the case was submitted for resolution per this Court's Resolution dated September 30, 2005.

The petition is not meritorious.

A closer consideration of the allegations in the instant petition for review and its annexes would readily reveal that the grounds raised by petitioner had already been exhaustively discussed by the First Division when it rendered its assailed Decision on February 9, 2005 and Resolution on June 22, 2005.

With respect to the disallowance of its remaining claimed input VAT on capital goods, this Court is constrained to emphasize that there are certain requisites which must first be complied with before the purchased goods or properties can be classified as capital goods or properties pursuant to Section 4.106-1 of Revenue Regulations No. 7-95, to wit: (1) that it is a VAT registered entity; (2) that input taxes claimed were paid on capital goods duly supported by VAT invoices and official receipts; (3) that it did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and (4) that the claim for refund was filed within the two year prescriptive period both in the administrative and judicial levels ***(BASF Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6283, February 10, 2004 [as affirmed by CTA EB Case No. 47, January 5, 2006])***. Failure to completely comply with any of the said requisites would definitely result to the denial of a taxpayer's claim for refund/issuance of tax credit certificate under the provisions of Section 112(B) of the NIRC of 1997. In the present case, records reveal that petitioner miserably failed to comply with all the aforecited mandatory requirements.

Regarding the various documents pertaining to the quarterly VAT returns for taxable year 1998 (Exhibits "B" to "E") and the "missing or unaccounted for" official receipts (attached to its Motion for Partial Reconsideration dated March 11, 2005), the Court *En Banc* agrees with the following pronouncements contained in the assailed Resolution, to wit:

> "Indeed, the said returns were included in petitioner's Formal Offer of Evidence, however, the said returns were not admitted by the Court because they could not be found in the records of the case *(Resolution dated April 12, 2004, Records, pages 588-589)*. During the hearing conducted on May 24, 2004, petitioner manifested that it would file a Motion for Reconsideration within fifteen days from receipt of the order denying the admission of Exhibits A, B and C *(Records, page 591)*. Yet, records reveal that no motion was ever filed by petitioner. Therefore, the said documents were not actually submitted to this Court.
>
> Petitioner also avers that it did not use the alleged "missing" or "unaccounted for" official receipts for its sales to other entities other than the sales to its only client, the NPC. In an attempt to prove that its sales were solely and principally for NPC, petitioner attached to its motion, various official receipts summarized in the accompanying schedules as follows:
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> xxx xxx xxx

The above official receipts cannot be considered by the Court as they were not presented during the trial nor formally offered in evidence.

Rule 132 Sec. 34 of the Rules of Court provides:

> *Offer of Evidence.* – **The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.**

The Supreme Court held that: 'It is settled that courts will only consider as evidence that which has been formally offered. xxx Not having been formally offered, the affidavit and certification cannot be considered as evidence. Thus the trial court as well as the appellate court correctly disregarded them. **If they neglected to offer those documents in evidence, however vital they may be, petitioners only have themselves to blame, not respondent who was not even given a chance to object as the documents were never offered in evidence.**' *(Candido vs. Court of Appeals, 253 SCRA 78 [1996])*

Moreover, the authenticity of the official receipts cannot be ascertained. While the said documents were marked as certified true copies by a certain Julieta B. Macorol, the authenticity thereof can only be determined if the person certifying the same was presented in court to identify them and prove their due execution and authenticity. This is mandated by *Sec. 20, Rule 132* of the Rules of Court:

xxx xxx xxx

Even granting *arguendo* that this Court admits the official receipts, the said documents show that petitioner received income payments not only from NPC but also from other entities. Thus, the claimed input VAT cannot be solely attributed to petitioner's zero-rated sales to NPC. Had petitioner presented its 1998 quarterly VAT returns, this Court could have properly allocated the amount of the input VAT attributable to its zero-rated sales and to its other sales. xxx"

All the foregoing considered and considering also the legal precept that a claim for refund is in the nature of a claim for exemption, and is therefore construed *strictissimi juris* against the taxpayer,[1] the Court *En Banc* finds no reversible error

[1] Commissioner of Internal Revenue vs. Tokyo Shipping, 244 SCRA 332 [1995]

committed by the First Division when it rendered its assailed Decision and Resolution on February 9, 2005 and June 22, 2005, respectively.

WHEREFORE, the instant petition is **DENIED DUE COURSE** and is hereby **DISMISSED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Official Business)
LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice