REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

MIRANT NAVOTAS CORPORATION (formerly SOUTHERN ENERGY NAVOTAS, INC.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NOS. 6637 and 6729

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

JAN 12 2007 11:00 AM

x - x

DECISION

CASANOVA, C., J.:

Before Us is a consolidation of two (2) Petitions for Review both seeking the refund or issuance of a tax credit certificate in the total amount of P9,135,112.24 allegedly representing petitioner's unutilized input value-added tax ("VAT") paid on its domestic purchases of goods and services and importation of goods attributable to zero-rated sales of power generation services to the National Power Corporation for the four quarters of taxable year 2001.

Petitioner is a domestic corporation duly organized and existing by virtue of Philippine laws, with principal office located at 5th Floor, CTC Building, 2232 Roxas Boulevard, Pasay City[1]. It was originally registered with the Securities and Exchange Commission ("SEC") under the name "Hopewell Energy (Philippines) Corporation" which was subsequently changed to "Southern Energy Navotas, Inc.," on June 17, 1999, which was again changed to Mirant Navotas Corporation on June 18, 2001.[2]

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 with the Bureau of Internal Revenue ("BIR") as a VAT taxpayer in accordance with Section 107 of the Tax Code,[3] evidenced by its BIR Certificate of Registration bearing RDO Control No. 2001-00029 and Taxpayer Identification No. 000-361-230-000.[4]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes, with office address at BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner, on December 6, 2000, filed with the BIR Revenue District Office No. 51 at Pasay City, an Application for Effective Zero-Rate for the supply of electricity to the National Power Corporation, which was subsequently approved.[5]

For the four quarters of taxable year 2001, petitioner filed its quarterly VAT returns, including amendments thereto, with the BIR reflecting zero-rated sales in the amount of P299,065,927.28, taxable sales in the amount of P3,636.36 with the related output VAT of P363.64 and excess input taxes in the amount of P9,135,112.24, broken down as follows:

[1] Par. 1, Admitted Facts, Records, page 74
[2] Par. 3, Jointly Stipulated Facts, Records, page 75
[3] now Section 236 of the National Internal Revenue Code of 1997, as amended
[4] Pars. 1 & 2, Jointly Stipulated Facts, Records, page 75
[5] Par. 4, Jointly Stipulated Facts, Records, page 75

					INPUT VAT		
Exh	Year 2001	Zero-rated Sales	Taxable Sales	Output VAT	Domestic Purchases	Importation of Goods	Excess
C	1st qtr	P 86,818,363.14			P 464,072.40	P 823,086.56	P1,287,158.96
D	2nd qtr	69,992,640.09			871,433.69	4,174,726.27	5,046,159.96
F	3rd qtr	71,535,828.65	P3,636.36	P363.64	766,947.92	966,536.00	1,733,120.28
J	4th qtr	70,719,095.40			679,969.04	388,704.00	1,068,673.04
		P299,065,927.28	P3,636.36	P363.64	P2,782,423.05	P6,353,052.83	P9,135,112.24

Pursuant to the procedure prescribed in Revenue Regulations No. 7-95, as amended, petitioner filed on March 18, 2003, an administrative claim for refund or issuance of a tax credit certificate corresponding to its reported unutilized input VAT for the four quarters of 2001 in the amount of P9,135,112.24 allegedly attributable to its zero-rated sales for the same period.[6]

Petitioner filed with this Court its claim for refund or issuance of a tax credit certificate of unutilized input VAT in the amount of P1,287,158.96 for the first quarter of 2001 on March 31, 2003 and docketed as CTA Case No. 6637. On July 22, 2003, petitioner filed its claim amounting to P7,847,953.28 covering the second, third and fourth quarters of 2001 and docketed as CTA Case No. 6729.

On July 30, 2003, petitioner filed a Motion to consolidate CTA Case Nos. 6637 and 6729 considering that both cases involve the same parties and issues and so as to make efficient use of the time and resources of the parties and this Court. This Court, through Resolution promulgated on August 11, 2003, confirmed the grant of petitioner's Motion made in open court on August 1, 2003.

Petitioner has relied on the pronouncement made by the Supreme Court in *Ernesto M. Maceda vs. Hon. Catalino Macaraig* (G.R. No. 88291, May 31, 1991) confirming the exemption of NPC from the payment of all taxes, duties, fees and imposts, whether direct or indirect, pursuant to Republic Act No. 6395, as amended, otherwise known as the NPC

[6] Exhibit I

Charter as well as the provisions of Sections 108(B)(3) and 112(A) of the National Internal Revenue Code ("NIRC") of 1997.

In Answer, respondent interposed the following Special and Affirmative Defenses,[7] to wit:

> "4. Assuming without admitting that petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue;
>
> 5. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;
>
> 6. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;
>
> 7. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit;
>
> 8. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended as well as the requirements provided for in Revenue Regulations No. 5-87 as amended by Revenue Regulations No. 3-88; and
>
> 9. Claims for refund are construed strictly against the claimant for the same partake [of] the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).

This case was submitted for decision on August 16, 2006 sans the memorandum of respondent.

The parties have jointly stipulated on the following issues for the resolution of this Court:

I.

> 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;

[7] Records, pages 24-25

II.

Whether or not petitioner incurred and reported unutilized creditable input VAT for the four quarters of calendar year 2001 arising from its domestic purchases of goods and services and importation of goods amounting to P9,135,112.24 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;

III.

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

IV.

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

V.

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 P9,135,112.24.

The issue of whether or not the power generation services rendered by petitioner to NPC are subject to zero percent (0%) VAT pursuant to Section 108 (B) of the NIRC of 1997 has already been resolved by this Court in the affirmative in a number of similar cases.[8]

Being principally engaged in the business of power generation, petitioner's subsequent sale thereof to the NPC under a Build, Operate, Transfer ("BOT") scheme[9] makes the power generation services it rendered subject to zero percent (0%) VAT pursuant to Section 108 (B)(3) of the NIRC of 1997, as amended, which provides:

[8] Mirant (Phils.) Mobile Corp. (formerly Southern Energy Mobile, Inc.) vs. Commissioner of Internal Revenue, CTA Case Nos. 5939 & 5969, January 15, 2002; Mirant Navotas Corp. (formerly Southern Energy Navotas, Inc.) vs. Commissioner of Internal Revenue, CTA Case Nos. 5936 & 5968, January 16, 2002; Mirant (Navotas II) Corp. (formerly Southern Energy Navotas II Power, Inc.) vs. Commissioner of Internal Revenue, CTA Case Nos. 5944 & 5963, January 21, 2002; Mirant Pagbilao Corp. (formerly Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 6041, March 5, 2002; Mirant Navotas Corporation (formerly Southern Energy Navotas Corporation, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 6459, April 21, 2005; Mirant (Navotas II) Corporation (formerly Southern Energy Navotas II Power, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 6418, April 11, 2006

[9] Paragraph 1, Jointly Stipulated Facts, Records, page 76

"SEC. *108. Value-added Tax on Sale of Services and Use or Lease of Properties.* –

xxx xxx 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:

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." *(Underscoring Ours)*

In relation thereto, Section 13 of Republic Act No. 6395 (NPC Charter), as amended, reads:

"Section 13. Non-profit Character of the Corporation: Exemption from All Taxes, Duties, 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 operations, 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, in any court or administrative proceedings."

Pursuant to the above-quoted provision in NPC's special charter, it is without dispute that NPC is categorically exempt from payment of all taxes, whether direct or indirect, including VAT. Hence, services rendered by VAT registered persons, such as petitioner herein, to NPC are effectively subject to zero percent (0%) VAT. In fact, the Supreme Court in the case of *Ernesto M. Maceda vs. Catalino Macaraig, Jr., et al,* 197 SCRA 771, May 31, 1991, affirmed NPC's tax exemption, thus:

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

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. xxx." However, the amendment under Republic Act No. 6395 enumerated the details covered by the exemption. Subsequently, P.D. No. 380, made even 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".
>
> xxx xxx xxx
>
> The use of the phrase "all forms" of taxes demonstrate the intention of the law to give NPC all 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 investments as well as excess revenues from its operation, for expansion. xxx
>
> It is evident from the provisions of P.D. No. 938 that its purpose is to maintain the tax exemption of NPC from *all forms* 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."

Moreover, no less than the respondent himself recognized NPC's tax-exempt character when it approved petitioner's Application for Effective Zero-Rate though it was with a proviso that such approval is valid only for sale of electricity from January 2, 2001 to December 31, 2001.[10]

The remaining issues being interrelated, shall be discussed jointly.

The various VAT invoices and/or official receipts issued by petitioner to NPC for the same period[11] show that the declared zero-rated sales amount of P299,065,927.28 actually represent petitioner's sales of electricity to the NPC as correctly noted by the commissioned auditing firm, SGV & Co., in its final report dated January 14, 2004[12], to wit:

> ***"Findings and Observations***
>
> *Based on the procedures we performed, we ascertained that:*
>
> 1. *The zero-rated sales reported in the "Summary of Zero-Rated Sales" prepared by the Company for the four quarters of 2001, consisted of sales of electricity to the National Power Corporation (NPC);*

[10] Exhibit H
[11] Exhibits BB-1 to BB-48
[12] Exhibit S-2

> 2. *The gross revenues per "Summary of Zero-Rated Sales" agree with the gross revenues per VAT invoices;*
>
> 3. *We noted a difference between the gross revenues per "Summary of Zero-Rated Sales"/VAT Invoices and the amount per VAT Ors. We noted that the difference represents the 1% Expanded Withholding Tax (EWT) withheld by NPC and the cable cost charged by NPC as presented under the "Reconciliation of Zero-Rated Sales (OR vs. Summary List)". (Annexes 1 and 2); and*
>
> 4. *These sales were properly supported by original VAT Invoices and VAT Ors stamped "Zero-Rated".*
>
> *We also noted that the photocopies of the documents submitted to this Honorable Court as evidences (e.g., "Summary of Zero-Rated Sales", VAT invoices and VAT Ors) were faithful reproductions of the original documents we have examined."*

Having established that its sales of electricity to NPC in the amount of P299,065,927.28 is subject to 0% VAT, petitioner can therefore claim for a refund or issuance of a tax credit certificate of the reported unutilized input taxes attributable thereto in the amount of P9,135,112.24 pursuant to Section 112(A) of the NIRC of 1997, as amended, provided that said amount was not carried over to the succeeding taxable quarter(s) and applied against any of the petitioner's output VAT liability.

Based on the evidence presented, petitioner's quarterly VAT returns for taxable year 2001 proved that the claimed input VAT of P9,135,112.24 is already net of petitioner's output VAT liability of P363.64 for the same period.[13] Although petitioner carried-over the claimed amount of P9,135,112.24 in its VAT returns for the succeeding quarters until the second quarter of 2003,[14] the same was included in the amount of P9,135,475.88 deducted as "Any VAT Refund/TCC Claimed"[15] from the "Total Available Input Tax" of P13,632,124.32 reflected in its VAT return for the second quarter of 2003. In other words, petitioner's claimed input VAT of P9,135,112.24 did not form part of the excess input VAT amount of P4,496,648.44 which was declared to be carried-over to the third quarter of 2003.

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[13] Exhibits C, D, F & J
[14] Exhibits K, L, M, N, O & P
[15] Exhibit P-2

Thus, We now proceed to the issue of whether or not the input VAT amount of P9,135,112.24 was incurred by petitioner and duly substantiated by proper VAT invoices or official receipts, the commissioned auditing firm, SGV & Co., in its final report dated January 14, 2004[16], noted the following findings:

Findings	*1st Quarter*	*2nd Quarter*	*3rd Quarter*	*4th Quarter*	*Total*
I. Input Taxes on Purchases of Services:					
*1. Supported by an OR without "TIN-V" **(Exhibit A)***	-	-	*2,681.82*	-	*2,681.82*
*2. Supported by VAT Ors Issued by the Insurance Agents on Insurance Premiums **(Exhibit B)***	*6,898.86*	*157.62*	*348.64*	-	*7,405.12*
*3. Supported by VAT Ors Not Issued in the Company's Name **(Exhibit O)***	*270.00*	*3,423.51*	-	-	*3,693.51*
*4. Supported by Documents Other than VAT Ors **(Exhibit H)***	*2,976.65*	*26,192.48*	*14,239.85*	*661.98*	*44,070.96*
*5. Input Taxes Claimed Twice **(Exhibit L)***	*85.00*	-	*7,500.00*	-	*7,585.00*

[16] Exhibits S-4 to S-28

*6. Erroneously Computed Input Taxes **(Exhibit G)***	*4,169.91*	*1,298.28*	*-*	*5.61*	*5,473.80*
II. Input Taxes on Purchases of Goods:					
*1. Supported by Invoices with pre-printed "TIN-NV" **(Exhibit F)***	*-*	*-*	*-*	*17,750.01*	*17,750.01*
*2. Supported by Invoices with TIN only **(Exhibit D)***	*-*	*-*	*-*	*2,076.37*	*2,076.37*
*3. Supported by VAT Invoices Not Issued in The Company's Name **(Exhibit N)***	*1,863.64*	*2,114.11*	*879.11*	*1,730.07*	*6,586.93*
*4. Supported by a Document Other than a VAT Invoice **(Exhibit I)***	*-*	*4,995.46*	*-*	*-*	*4,995.46*
*III. Input Taxes Without Supporting Documents **(Exhibit J)***	*279,573.46*	*135,043.83*	*19,813.08*	*3,163.65*	*437,594.02*
Total	***295,837.52***	***173,225.29***	***45,462.50***	***25,387.69***	***539,913.00***

This Court holds that the above input taxes of P539,913.00 should be disallowed for failure to meet the substantiation requirements under Section 110 in relation to Section 113 of the NIRC of 1997, as implemented by Sections 4.104-11, 4.104-5 and 4.108-1 of Revenue Regulations No. 7-95.

In addition, the SGV & Co., in its final report, 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 ₱56,516.28 were claimed on purchases of goods for which the dates of the related VAT Invoices fall outside the period of claim. **(Exhibit K)***
>
>   ***We were able to ascertain that there were no double claiming relative to these input taxes.** The input taxes were claimed only in the first and second quarters of 2001, and were not claimed in any quarters of 2000.*
>
> 2. *Input tax amounting to ₱2,717.46 was claimed on a purchase of service for which the date of the related VAT OR falls outside the period of claim. **(See Exhibit P)***
>
>   ***We were able to ascertain that there were no double claiming relative to this input tax.** This input tax was claimed only in the fourth quarter of 2001, and was not claimed in any quarters of 2002.*
>
> 3. *Input taxes amounting to ₱370,533.79 were claimed on purchases of services which are supported by VAT ORs issued in the name of Hopewell Energy (Philippines) Corporation and Southern Energy Navotas, Inc. (SENI), former names of the Company[1]. The VAT ORs were issued after June 18, 2001. **(See Exhibit C)***
>
> 4. *Input taxes amounting to ₱98,199.11 were claimed on purchases of services which are supported by original BOC ORs and/or photocopied IEDs issued in the Company's name. The payments for these input taxes were advanced by the Company's brokers or forwarders and later on reimbursed by the Company. However, per Summary List of Local Purchases of Goods and Services, these input taxes were presented as emanating from purchases of services from forwarders or brokers. Notably, the ORs and invoices of the forwarders or brokers were used as reference by the Company in the Summary List of Local Purchases of Goods and Services. **(See Exhibit M)***
>
> 5. *Input taxes amounting to P212,834.13 were claimed on purchases of goods which are supported by VAT invoices issued in the name of Southern Energy Navotas, Inc. (SENI), former name of the Company[2]. The VAT Invoices were issued after June 18, 2001. **(See Exhibit E)***

6. *Input taxes amounting to P13,774.00 were claimed on importations which are supported by original BOC ORs only.* ***(See Exhibit Q)***

7. *Input taxes amounting to P866,308.00 were claimed on importations which are supported by original Bank ORs (e.g., LB ORs, UCPB ORs) only.* ***(See Exhibit R)"***

Relative to the first and second observations pertaining to the claimed input taxes paid on purchases of goods and services in the respective amounts of P56,516.28 and P2,717.46 totaling P59,233.74, the same shall be denied because dates of the related VAT invoices and 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, December 15, 2004.***[17] We quote:

> "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.* —
> >
> > xxx xxx xxx
> >
> > "(2) The input tax on domestic <u>purchase of goods</u> or properties shall be creditable:
> >
> > "(a) To the purchaser <u>upon consummation</u> of sale and on importation of goods or properties; and
> >
> > "However, in the case of <u>purchase of services</u>, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee <u>upon payment</u> of the compensation, rental, royalty or fee.

[17]Also cited in the case of Mirant (Navotas II) Corporation (formerly Southern Energy Navotas II Power, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 6418, April 11, 2006.

> 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."

Going to the third and fifth observations relative to the claimed input taxes in the amounts of P370,533.79 and P212,834.13 totaling P583,367.92 on petitioner's purchases of services and goods for which the corresponding VAT ORs and invoices issued after June 18, 2001 were under the former names of petitioner, Southern Energy Navotas, Inc. (SENI) and Hopewell Energy (Philippines) Corporation,[18] the same must also be denied. It is to be noted that petitioner's change of name from SENI [formerly Hopewell Energy (Philippines) Corporation] to Mirant Navotas Corporation was approved on June 18, 2001 under its Amended Articles of Incorporation filed with the SEC on June 11, 2001.[19] Hence, there is no reason why petitioner could not have notified its suppliers as regards its new name and

[18] Observation Nos. 3 & 5, Exhibit S-6
[19] Exhibit B

correspondingly asked for VAT invoices or official receipts bearing its new name, Mirant Navotas Corporation, as regards its purchase transactions after June 18, 2001.

With respect to the fourth observation, as shown in Exhibit S-2, the claimed input VAT amount of P98,199.11 is broken down as follows:

PAYEE	TIN	REFERENCE (Invoice No.)	INPUT TAX CLAIMED
FIRST QUARTER			
MOF COMPANY (SUBIC), INC.	004-075-125-NV	4915	15,954.00
SAGAWA EXPRESS PHILIPPINES, INC.	005-012-398-000-V	14247	10,674.00
SUB-TOTAL			**26,628.00**
SECOND QUARTER			
SAGAWA EXPRESS PHILIPPINES, INC.	005-012-398-000-V	87156474	57,838.00
SAGAWA EXPRESS PHILIPPINES, INC.	005-012-398-000-V	7897568	12,854.00
SUB-TOTAL			**70,692.00**
THIRD QUARTER			
MERCURY DRUG CORPORATION	400-000-388-474-V	519231	879.11
SUB-TOTAL			**879.11**
GRAND TOTAL			**98,199.11**

Records disclose that the above input taxes of P26,628.00 and P70,692.00 totalling P97,320.00, arose from petitioner's purchases of services from forwarders or brokers. However, out of the input VAT of P97,320.00, only the amount of P68,512.00 duly supported by VAT official receipts from the forwarder/broker represents petitioner's valid claim pursuant to Section 110(A)(1)(b) of the NIRC of 1997, thus:

Exhibit	Payee	Input Tax Claimed
V-199	SAGAWA EXPRESS PHILIPPINES, INC.	P 10,674.00
W-228	SAGAWA EXPRESS PHILIPPINES, INC.	57,838.00
	Total:	P 68,512.00

The remaining input taxes of P28,808.00 (P97,320.00 less P68,512.00) which do not have corresponding valid VAT official receipts from the forwarder/broker shall also be denied:

Payee		Input Tax Claimed
MOF COMPANY (SUBIC), INC		P 15,954.00
SAGAWA EXPRESS PHILIPPINES, INC.		12,854.00
	Total:	P 28,808.00

As to the input VAT amount of P879.11, the same represents petitioner's valid claim as it was paid upon petitioner's purchase of goods from Mercury Drug Corporation and duly substantiated by a valid VAT invoice.

With reference to the sixth and seventh observations relating to petitioner's claimed input VAT paid on importation in the amounts of P13,774.00 and P866,308.00 totalling P880,082.00, this Court finds that the amount of P599,378.00 represents petitioner's valid claim pursuant to Section 4.104-5(b) of Revenue Regulations No. 7-95, which states that:

> SECTION 4.104-5. **Substantiation of claims for input tax credit-xxx**
>
> xxx xxx xxx
>
> (b) Input tax on importations shall be supported with the import entry or **other equivalent document showing actual payment of VAT on the imported goods.**

The original official receipts from the Bureau of Customs ("BOC") or Land Bank of the Philippines showing petitioner's actual payment of P599,378.00 input VAT constitute sufficient compliance with the foregoing regulations. However, the remaining input VAT of P280,704.00 detailed below should be denied because petitioner failed to present import entries, BOC or bank's official receipts or any other document proving actual payment thereof:

and importation of goods attributable to its effectively zero-rated sales of power generation services to the National Power Corporation for the taxable year 2001.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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 cases were assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division