REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

CE CEBU GEOTHERMAL POWER COMPANY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6791

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CE CEBU GEOTHERMAL POWER COMPANY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6836

Members:

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

Promulgated:

MAY 15 2008

4:10 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This case is a consolidation of two separate Petitions for Review which seek the refund of or issuance of tax credit certificate in the amount of **NINETEEN MILLION ONE HUNDRED ONE THOUSAND TWENTY-ONE AND 78/100 PESOS (P19,101,021.78)**, representing petitioner's alleged unutilized excess input value-added tax (VAT) for the period covering September 1, 2001 to December 31, 2002, arising from zero-rated sales by virtue of Republic Act No. 9136 or the "Electric Power Industry Reform Act of 2001" (EPIRA).

CE Cebu Geothermal Power Company, Inc. (petitioner) is a domestic corporation organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal business address at the 24th Floor, 6750 Bldg., Ayala Avenue, Makati City.[1] Petitioner is registered as a VAT taxpayer with the Bureau of Internal Revenue (BIR) with Certificate of Registration No. 96-047-005171 and Taxpayer Identification No. 047-0003-459-879-V.[2]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, vested with authority to administer and enforce national internal revenue laws, including, *inter alia*, the power to grant claims for refund of any internal revenue taxes erroneously or excessively paid, assessed or collected. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

Petitioner is engaged in the business of power generation and the subsequent sale of generated power[4] to its sole customer, Philippine National Oil Company-Energy Development Corporation (PNOC-EDC), by virtue of a Build-Operate Transfer Agreement. On April 16, 1994, petitioner was accredited and certified by the Department of Energy to own and operate a

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[1] Par. 1, Petition for Review, *Rollo*, p. 1.
[2] Par. 6, Joint Stipulation of Facts and Issues, *Rollo*, p. 93; Exhibit "C".
[3] Par. 1, Joint Stipulation of Facts and Issues, *Rollo*, p. 92.
[4] Exhibit "A".

125-Megawatt power plant facility in Barangay Lin-ao, Kananga, Province of Leyte.[5]

On January 29, 1996, petitioner was registered as a VAT taxpayer with the BIR Revenue District Office No. 47, East Makati, in accordance with Section 236 of the National Internal Revenue Code. However, on June 26, 2001, Republic Act (R.A.) No. 9136 took effect, and the relevant provisions of the National Internal Revenue Code of 1997 (1997 Tax Code) were deemed modified.

R.A. No. 9136, also known as the "Electric Power Industry Reform Act of 2001", was enacted by Congress to ordain reforms in the electric power industry, highlighting, among others, the importance of ensuring the reliability, security and affordability of the supply of electric power to end-users. Under the provisions of this Republic Act and its implementing rules and regulations, the delivery and supply of electric energy by generation companies became VAT zero-rated, which previously were subject to ten percent (10%) VAT. In relation thereto, Section 6 of Chapter II and Section 6 of Rule 5 of its Implementing Rules and Regulations state that:

"Republic Act No. 9136

Electric Power Industry Reform Act of 2001 (EPIRA)

CHAPTER II

**Organization and Operation of the
Electric Power Industry**

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[5] Exhibit "B".

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

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

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

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

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

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

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

RULE 5

Generation Sector

xxx xxx xxx

SECTION 6. *Generation Charges and VAT.* —

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(b) Pursuant to the policy of reducing electricity rates to End-users, sales of generated power by a Generation Company

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

The amendment of the 1997 Tax Code modified the VAT rate applicable to sales of generated power by generation companies from ten (10%) percent to zero (0%) percent. Thus, when the EPIRA took effect on June 26, 2001, petitioner adopted the VAT zero-rating of the EPIRA in computing for its VAT payable when it filed its VAT Returns, on the belief that its sales qualify for VAT zero-rating.

The details of its Returns are as follows:

		3rd Qtr-2001 (Exhibit G-9)	4th Qtr-2001 (Exhibit H)	1st Qtr-2002 (Exhibit I)	2nd Qtr-2002 (Exhibit KKK)	3rd Qtr-2002 (Exhibit LLL)	4th Qtr-2002 (Exhibit OOO)
	Taxable Sales	370,010,144.56	-	-	-	-	-
	Zero-rated Sales/ Receipts	-	544,278,562.87	531,476,804.82	518,556,299.41	539,224,676.85	55[illegible],705,3[illegible]86.43
	Total Sales/ Receipts	370,010,144.56	544,278,562.87	531,476,804.82	518,556,299.41	539,224,676.85	55[illegible],705,3[illegible]86.43
	Output Tax	19,293,602.29	-	-	-	-	-
Less:	Input Tax						
	Carried over from previous quarter.	-	827,896.24	2,990,129.85	4,544,726.91	5,907,711.64	[illegible],501,8[illegible]48.78
	Domestic Purchases	1,101,854.65	2,102,223.01	1,289,890.35	1,362,984.73	1,362,948.51	[illegible],409,1[illegible]10.25
	Domestic Purchases-Services	-	-	-	-	919,671.86	[illegible],186,2[illegible]37.46
	Services rendered by Non-resident	-	-	-	-	104,030.77	[illegible],206,7[illegible]12.30
	Importation of Goods	487,905.30	60,010.60	264,706.71	-	207,486.00	[illegible],797,1[illegible]13.00
	Total Available Input Tax	1,589,759.95	2,990,129.85	4,544,726.91	5,907,711.64	8,501,848.78	1[illegible],101,0[illegible]21.79
	VAT Payable/ (Excess Input Tax)	17,703,842.34	(2,990,129.85)	(4,544,726.91)	(5,907,711.64)	(8,501,848.78)	(1[illegible],101,0[illegible]21.79)
Less:	Tax Credits/ Payments						
	Monthly VAT Payments	6,482,627.77	-	-	-	-	-
	Creditable VAT withheld	11,576,161.38	-	-	-	-	-
	Total	18,058,789.15	-	-	-	-	-
	Tax Payable/ (Overpayment)	**(354,946.81)**	**(2,990,129.85)**	**(4,544,726.91)**	**(5,907,711.64)**	**(8,501,848.78)**	**(1[illegible],101,0[illegible]21.79)**

On November 12, 2001, petitioner filed an Amended Quarterly VAT Return for the Third Quarter of 2001. On September 24, 2003, petitioner again filed an Amended Quarterly VAT Returns for the Second and Third Quarters of 2002. Finally, on April 24, 2003, petitioner amended its Quarterly VAT Return for the Fourth Quarter of 2002. The Amended Returns reflect the following details:

		Final Amended 3rd Qtr-2001 (Exhibit G)	4th Qtr-2001 (Exhibit H)	1st Qtr-2002 (Exhibit I)	Final Amended 2nd Qtr-2002 (Exhibit J)	Final Amended 3rd Qtr-2002 (Exhibit K)	Final Amended 4th Qtr-2002 (Exhibit L)
	Taxable Sales	192,936,022.90	-	-	-	-	-
	Zero-rated Sales/ Receipts	357,606,988.20	544,278,562.87	531,476,804.82	520,800,306.58	522,124,257.00	633,525,402.19
	Total Sales/ Receipts	550,543,011.10	544,278,562.87	531,476,804.82	520,800,306.58	522,124,257.00	633,525,402.19
	Output Tax	19,293,602.29	-	-	-	-	-
Less:	Input Tax						
	Carried over from previous quarter	-	827,896.24	2,990,129.85	4,544,726.91	5,907,711.64	8,501,848.78
	Domestic Purchases	1,101,854.65	2,102,223.01	1,289,890.35	649,065.04	1,362,948.51	1,409,110.25
	Domestic Purchases- Services	-	-	-	451,439.84	919,671.86	6,186,237.46
	Services rendered by Non-resident	-	-	-	59,270.85	104,030.77	1,206,712.30
	Importation of Goods	487,905.30	60,010.60	264,706.71	203,209.00	207,486.00	1,797,113.00
	Total Available Input tax	1,589,759.95	2,990,129.85	4,544,726.91	5,907,711.64	8,501,848.78	19,101,021.79
	VAT Payable/ (Excess Input Tax)	17,703,842.34	(2,990,129.85)	(4,544,726.91)	(5,907,711.64)	(8,501,848.78)	(19,101,021.79)
Less:	Tax Credits/ Payments						
	Monthly VAT Payments	6,955,577.20	-	-	-	-	-
	Creditable VAT withheld	11,576,161.38	-	-	-	-	-
	Total	18,531,738.58	-	-	-	-	-
	Tax Payable/ (Overpayment)	**(827,896.24)**	**(2,990,129.85)**	**(4,544,726.91)**	**(5,907,711.64)**	**(8,501,848.78)**	**(19,101,021.79)**

On September 26, 2003, petitioner filed an administrative claim for refund or issuance of tax credit certificate in the amount of P827,896.24, representing alleged excess input VAT for the Third Quarter of 2001.[6]

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[6] Exhibit "E".

Thereafter, it filed the corresponding Petition for Review on September 30, 2003 in order to comply with the prescriptive period required in Section 112(A) of the National Internal Revenue Code of 1997.

Its administrative claim for refund or issuance of tax credit certificate for the Fourth Quarter of 2001 and all quarters of 2002, in the amount of P18,273,125.54 was filed on December 18, 2003.[7] The corresponding Petition for Review was filed on December 19, 2003.

Respondent interposed the following Special and Affirmative Defenses in his Answer[8]:

> "3. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
>
> 4. Petitioner's claim for refund is subject to the administrative investigation/examination by the respondent;
>
> 5. 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 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**

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[7] Exhibit "F".
[8] CTA Case No. 6791.

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 P827,896.24 allegedly paid by the petitioner on its purchase of goods and services for the third quarter of taxable year 2001 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 Section 112 (A) and (D) and 229 of the Tax Code, as amended;

f. That petitioner's domestic purchases of goods and services were made in the course of trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal, showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code as amended, and in pursuance to Section 4.104-5 (a) & (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 Credits);

6. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. 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 vs. Manila Jockey Club, Inc. 98 Phil. 670);

7. Claims for refunds are construed strictly against the claimant for the same partake the nature of exemption from taxation."

Petitioner pleaded the same Special and Affirmative Defenses in CTA Case No. 6836, except for the claimed amount of tax refund in No. 6(d) which is P18,273,125.54 instead, allegedly paid by petitioner on its purchases of goods and services and importation of goods for the Fourth Quarter of 2001 and the four quarters of 2002.

Petitioner presented various testimonial and documentary evidence mainly to prove compliance with the accounting and invoicing requirements for the granting of its claim. Petitioner likewise moved for the commissioning of an Independent Certified Public Accountant (ICPA) to help determine the veracity of its application for refund, which the Court granted on February 16, 2005.[9]

Respondent presented documentary evidence to show that he investigated the claim for refund and that due process was accorded petitioner in denying its claim.[10]

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[9] Minutes of the February 16, 2005 hearing, *Rollo*, p. 122.
[10] Exhibits "1", "2" and "3, BIR Records, pp. 224, 277, and 285, respectively.

On November 20, 2007, the case was submitted for decision after both parties filed their respective Memorandum.

The issues[11] as stipulated by the parties are as follows:

> "1. Whether or not the Petitioner generated zero-rated sales for the third and fourth quarters of taxable year 2001 and for each of the four quarters of taxable year 2002 as a result of the applicability of the EPIRA law;
>
> 2. Whether or not Petitioner incurred unutilized input VAT, as a result of its VAT zero-rated sales, as follows: for the third quarter of taxable year 2001 in the amount of P827,896.24; for the fourth quarter of taxable year 2001 and for all the four quarters of taxable year 2002 in the amount of P18,273,125.54;
>
> 3. Whether or not the unutilized input VAT sought to be refunded herein were applied against any output VAT liability in succeeding taxable quarters in 2001 and 2002 and thereafter;
>
> 4. Whether or not the claims for refund of the unutilized input VAT for the third and fourth quarters of taxable year 2001 and for all the four quarters of taxable year 2002 with the Bureau of Internal Revenue were filed by Petitioner within the two-year period provided by law.
>
> 5. Whether or not both the present Petitions for Review filed by the petitioner with this Honorable Court were filed within the two-year period provided by law."

The Court will address the issues *in seriatim*.

In order to resolve the issue of whether petitioner generated zero-rated sales for the Third and Fourth Quarters of taxable year 2001 and for each of the four quarters of taxable year 2002, petitioner must first qualify for VAT zero-rating under R.A. No. 9136 by proving that: (1) it is a generation company; and (2) it derived sales from power generation. gr

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[11] Joint Stipulation of Facts and Issues, *Rollo*, p. 94.

Petitioner presented its Certificate of Accreditation[12] issued by the Department of Energy, which states that petitioner is engaged in the sale of power generation services to PNOC-EDC under a Build-Operate-Transfer Agreement. Petitioner also submitted to the Court its VAT invoices and official receipts[13], together with its VAT Returns for the Third Quarter of taxable year 2001 to the Fourth Quarter of taxable year 2002.[14] These showed that there were sales generated from PNOC-EDC for the period of September 1, 2001 to December 31, 2002 amounting to P3,109,812,321.66. From these documents, it is clear that petitioner complied with the two requirements stated above.

However, petitioner is not entitled to the full amount applied for due to certain reportorial discrepancies in its zero-rated sales. A comparison of the total amount of zero-rated sales for the Third Quarter of taxable year 2001 to the Fourth Quarter of 2002, as reflected in the Quarterly VAT Returns and Schedule of Official Receipts Issued to PNOC-EDC[15] and the amount supported by petitioner's invoices and official receipts, disclosed the following difference:

Gross Receipts from the Sales of Generated Power		**July 1, 2001 to December 31, 2002**
VAT Returns		
Subjected to the 10% VAT	P 192,936,022.90	
Treated as Zero-rated Sales	3,109,812,321.66	P 3,302,748,344.56
Schedule of Official Receipts		3,097,418,262.49
Variance		**P 205,330,082.07**

[12] Exhibit "B".
[13] Exhibits "Z-1 to Z-18" and "BB-1 to BB-54".
[14] Exhibits "G", "H", "I", "J", "K", and "L".
[15] Annex "2" of Exhibit "MM".

Out of the reported sales per VAT returns in the amount of P3,109,812,321.66, the amount of P3,097,418,262.49 can be used as initial basis in claiming for refund since it is this amount that was substantiated by official receipts. Nonetheless, this amount shall be further reduced because petitioner's documents indicate that some official receipts were not imprinted with the word "zero-rated", in violation of Section 113(A) of the 1997 Tax Code and Section 4.108-1 of Revenue Regulations No. 7-95, which states

> "**SEC. 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 also engaged 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 xxx xxx"

Out of P3,097,418,262.49, the amount of P78,661,646.28[16] shall be deducted because this is supported by official receipts without the word "zero-rated" imprinted thereon. After the deduction, the Court arrives at the amount of P2,821,754,992.64, the computation of which is as follows:

Gross Receipts per Schedule of ORs		P3,097,418,262.49
Less: Amount Treated as Taxable Sales	P197,001,623.57	
Zero-Rated Sales supported by ORs without the word "zero-rated"	78,661,646.28	275,663,269.85
Substantiated Zero-Rated Sales		P2,821,754,992.64

From the foregoing, although petitioner's declared sales were reduced, the said sales still qualify for zero-rating under the EPIRA; hence, the Court decides the first issue in the affirmative.

Going now to the second issue of whether or not petitioner incurred unutilized input VAT in the amount of P827,896.24, for the Third Quarter of taxable year 2001, and of P18,273,125.54, for the Fourth Quarter of taxable year 2001 and all quarters of taxable year 2002, this Court considered petitioner's Summary List of Purchases for the Period July 1, 2001 to December 31, 2002[17] and suppliers' invoices/official receipts[18]. Based on the

[16] Annex "2", OR Nos. 216 and 217, *Rollo*, p. 665.
[17] Exhibits "CC-1 to CC-25".
[18] Exhibits ""DD-1 to DD-3383".

review and validation made by *SGV & Co.*, petitioner did incur unutilized input VAT but not in the full amount of P19,101,021.78. Out of this sum, only the amount of P14,183,430.64 was duly substantiated and the remaining amount of P4,917,591.14 should be disallowed due to the following reasons:

	FINDINGS	REFERENCE (Exhibit Y)	INPUT VAT
a)	Importation of goods supported by original copy of IERD and original BOC OR but not issued in the name of the Company.	Annex 7	21,438.00
b)	Domestic purchases of goods supported by pre-printed TIN-V invoices after July 31, 1991 but before January 1, 1996.	Annex 8	46,526.21
c)	Domestic purchases of services supported by pre-printed TIN-V ORs after July 31, 1991 but before January 1, 1996.	Annex 9	194,554.57
d)	Domestic purchases of goods supported by documents other than a VAT Invoice.	Annex 10	104,742.30
e)	Domestic purchases of services supported by documents other than a VAT OR.	Annex 11	15,216.40
f)	Domestic purchases of goods supported by VAT Invoices but are not original copies.	Annex 12	304,512.13
g)	Domestic purchases of services supported by VAT OR but are not original copies.	Annex 13	24,149.90
h)	Domestic purchases of goods supported by original VAT Invoices not issued in the name of the Company.	Annex 14	55,606.75
i)	Domestic purchases of services supported by original VAT ORs not issued in the name of the Company.	Annex 15	4,817.45
j)	Domestic purchases of goods supported by a tape receipt without the Company's name and/or TIN.	Annex 16	2,144.97
k)	Domestic purchases of goods supported by a VAT Invoice but no date indicated.	Annex 17	9,642.35
l)	Domestic purchases of services supported by a VAT OR but no date indicated.	Annex 18	15,308.79
m)	Domestic purchases of goods supported by zero-rated VAT Invoice.	Annex 19	15,108.19
n)	Domestic purchases of goods supported by VAT Invoices not dated within the taxable year.	Annex 20	56,245.55
o)	Domestic purchases of services supported by VAT ORs not dated within the taxable year.	Annex 21	47,061.51
p)	Domestic purchases of goods supported by invoices with TIN # only, TIN-V, TAN-V/VAT, TIN-NV/NONVAT, stamped/handwritten TIN-V/VAT (printed after January 1, 1996).	Annex 22	141,643.05
q)	Domestic purchases of services supported by ORs with TIN # only, TIN-V, TAN-V/VAT, TIN-NV/NONVAT, stamped/handwritten TIN-V/VAT (printed after January 1, 1996).	Annex 23	360,871.73
r)	Domestic purchases of services supported by a TIN-NV/NON VAT ORs but stamped with "VAT/TIN-VAT" or the word "NON" was erased.	Annex 24	149,122.28
s)	Over-claimed input tax on purchases of goods and services due to erroneous computation.	Annex 25	12,120.18

t)	Input tax claimed on purchase of vehicles with engine displacement of more than 2000cc.	Annex 26	272,727.30
u)	Input tax on payments to insurance companies for DST and local taxes.	Annex 27	239.74
v)	Input tax overstatement arising from the effect of foreign exchange translation/adjustment on foreign currency denominated purchases.	Annex 28	11.93
w)	Input tax on payment to travel agencies for airfare, security fare, terminal fee and other charges.	Annex 29	1,358.00
x)	Input taxes claimed on purchases of goods and services without supporting documents.	Annex 32	3,062,361.86
	TOTAL		**4,917,591.14**

After a further examination of the documents supporting the input taxes claimed, this Court also found out that input taxes in the sum of P633,206.17 cannot be allowed for the following reasons:

	Vendor's Name	**REFERENCE**	**INPUT VAT**
a)	**Input VAT on domestic purchases of goods which are outside the period of claim (Included in Annex 4-1 of Exhibit Y)**		
	Coca Cola Bottlers Philippines, Inc.	3485116	48.00
	Williams Commercial Company Inc.	75691	71.80
	Williams Commercial Company Inc.		50.09
	Williams Commercial Company Inc.	75874	1[illegible]5.91
	EBR Marketing Corp.	20078	2[illegible]1.91
	King's Baragain Center	108400	53.64
	King's Baragain Center	108275	1[illegible]5.45
	Mercury Drug Corp.	21365	40.60
	Mercury Drug Corp.	21222	1[illegible]5.00
	Mercury Drug Corp.	21241	60.95
	Monark Equipment Corp.	260521	4,4[illegible]2.09
	Monark Equipment Corp.	261308	2,4[illegible]3.66
	Serv-well Drugstore	61852	2,9[illegible]2.17
	Serv-well Drugstore	61853	1,8[illegible]5.93
	Cogon Family Bakeshop	59730	50.54
	Mercury Drug Corp.	21405	46.93

Mercury Drug Corp.	21391	38.69
Mercury Drug Corp.	21197	23.93
Mercury Drug Corp.	21409	10.58
Mercury Drug Corp.	21463	58.33
Mercury Drug Corp.	21324	21.45
Mercury Drug Corp.	21272	72.44
Mercury Drug Corp.	21323	28.47
Mercury Drug Corp.	21347	21.01
Tradepoints Inc.	4196	1,500.00
Zenith Wire and Conduit Inc.	7065	153,030.63
Gendiesel Phils., Inc.	6380	1,219.82
Instrumentation & Cntrl. Specialist	7493	1,090.91
Mercury Drug Corp.	21431	7.91
		169,988.84

b) Input VAT on domestic purchases of services which are outside the period of claim (Included in Annex 4-2 of Exhibit Y)

Dunkin' Donuts	147524	57.27
Holiday Plaza Hotel	39041	207.27
Trigs Food Corporation	5514	131.82
Trigs Food Corporation	5520	133.64
NCH Phils., Inc.	71142	720.00
Inter-Ocean	37520	11,040.91
		12,290.91

c) Input VAT on domestic purchases of goods without supporting documents (Included in Annex 4-1 of Exhibit Y)

Vizad's Boutique	79.27
Amzen Industries	4,436.35
EBR Marketing Corp.	200.00
Amzen Industries	3,245.38
Amzen Industries	7,854.53

GE Energy Parts, Inc.	6,461.00
Industrial & Environmental Sol. Inc.	6,604.00
Industrial & Environmental Sol. Inc.	5,527.00
Kato Engineering	72,303.00
Fisher-Rosemount Singapore	8,380.00
Kato Engineering	233,808.00
HV Techno LLC	13,065.00
	361,963.54

d) **Input VAT on domestic purchases of services without supporting documents (Included in Annex 4-2 of Exhibit Y)**

Stargate Steelers, Inc.	6,033.82
Globe Telecom GMC	4,833.33
Standard Insurance Co., Inc.	44.91
Standard Insurance Co., Inc.	44.55
Standard Insurance Co., Inc.	44.55
Standard Insurance Co., Inc.	44.55
Standard Insurance Co., Inc.	87.27
Standard Insurance Co., Inc.	87.27
House of Travel	534.63
	11,754.88

e) **Importation of goods supported by a photocopy of IEIRD without machine validation and the corresponding ORs were not presented (Included in Annexes 5 & 6 of Exhibit Y)**

Maxwell Engineering	01-1264	4,404.00
GE Energy Parts, Inc.	02-1802	27,245.00
Waukesha Electric Systems	9390-01	45,559.00
		77,208.00
TOTAL		**633,206.1**

The above disallowances were not included in the exception of the commissioned auditor which only disallowed P4,917,591.14. Therefore, only the input taxes in the sum of P13,550,224.47 are validly supported by VAT invoices and/or official receipts, to wit:

Total Input VAT claimed		P 19,101,021.78
Less: Disallowance		
Based on Commissioned ICPA's Summary Report	P 4,917,591.14	
Per Court's further verification	633,206.17	5,550,797.31
Substantiated Input VAT		**P13,550,224.47**

Consequently, of the substantiated input VAT of P13,550,224.47, only the input VAT of P12,295,087.16 can be attributed to the duly substantiated zero-rated sales of P2,821,754,992.64, computed as follows:

Substantiated Zero-Rated Sales	P2,821,754,992.64
Divided by Total Reported Zero-Rated Sales	3,109,812,321.66
Multiplied by Substantiated Excess Input VAT	13,550,224.47
Input VAT attributable to Substantiated Zero-Rated Sales	**P 12,295,087.16**

As to the issue of whether petitioner's unutilized input VAT were applied against any output VAT liability in succeeding taxable quarters after the Third Quarter of taxable year 2001, this Court again rules in petitioner's favor.

Petitioner's VAT Returns reveal that petitioner indeed carried-over the claimed input VAT to the succeeding taxable quarters until the Third and Fourth Quarters of taxable year 2003. Despite this, the input VAT was still unutilized because there was no output VAT due from petitioner during these quarters. Petitioner's Quarterly VAT Returns for the Third and Fourth Quarters of taxable year 2003 also show that it deducted the claimed input VAT of P827,896.24[19] and P18,273,125.55[20], respectively, as "Any VAT Refund/TCC Claimed" from the "Total Available Input Tax." Hence, the substantiated claim

[19] Exhibit "T-4".
[20] Exhibit "U-4".

of P12,295,087.16 was no longer included as part of the excess input tax of P31,044,177.60 as of the First Quarter of taxable year 2004 that was to be carried-over to the succeeding quarters.[21]

Finally, on the issue of whether petitioner's administrative and judicial claims were seasonably filed, the Court also finds for petitioner. This Court has repeatedly ruled that the two-year period for the filing of a VAT refund claim is counted from the filing of the corresponding Quarterly VAT Return.[22] In the case of ***Jideco Manufacturing Philippines, Inc. vs. Commissioner of Internal Revenue***[23], this Court explained the rationale for the said rule in the following manner:

> "xxx in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5296*, the two-year prescriptive period for the filing of claims for VAT refund should be reckoned from the date of filing of the corresponding quarterly VAT returns in order to harmonize the provisions of Section 112(B) of the NIRC of 1997 with Sections 114(A) and 229 of the same Code, viz:
>
> xxx xxx xxx
>
> In the cases of *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Appeals, G.R. No. 83736, dated January 15, 1992* and *ACCRA Investments Corporation vs. Commissioner of Internal Revenue, 204 SCRA 957,* **the Supreme Court held that the two (2)-year period should be counted from the filing of the final income tax return, because it is only during that date that the exact tax liability or refundability of the tax can be determined. In the same manner, it is only after the filing of the quarterly VAT return that we can determine the VAT liability or refundability of VAT. It should be noted that the basic requirement is that VAT refund can only be granted to the extent that the input taxes have not been applied against output tax. All these matters can only be determined if a return is filed. It is**

[21] Exhibit "V-4".
[22] *Jideco Manufacturing Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA EB No. 53, June 7, 2005.
[23] C.T.A. CASE No. 6552, September 16, 2004.

logical therefore, that the two-year period should not immediately be counted from the close of the quarter but from the prescribed date of filing of the VAT return." (*Emphasis supplied*)

In the present case, petitioner filed its VAT Returns, administrative claims and Petitions for Review on the following dates:

Period	Exhibit	Date Return is Filed	Date Admin. Claim is Filed	Date Judicial Claim is Filed
CTA Case No. 6791				
3rd qtr. of 2001	Exhibit "G-9"	October 25, 2001	September 26, 2003	September 30, 2003
CTA Case No. 6836				
4th qtr. of 2001	Exhibit "H-2	January 10, 2002	December 18, 2003	December 19, 2003
1st qtr. of 2002	Exhibit "I-2"	April 10, 2002		
2nd qtr. of 2002	Exhibit "K3"	July 24, 2002		
3rd qtr. of 2002	Exhibit "L3"	October 25, 2002		
4th qtr. of 2002	Exhibit "O3"	January 27, 2003		

Clearly, both the administrative and judicial claims were filed well within the two-year prescriptive period provided by law.

In sum, since petitioner has complied with the requirements for tax refund claim provided in 1997 Tax Code and applicable jurisprudence, this Court finds petitioner entitled to the refund of its unutilized input VAT, but in the reduced amount of P12,295,087.16, computed as follows:

Amount of Claimed Input VAT		P19,101,021.78
Less: Disallowances		
Per the ICPA's Summary Report	P 4,917,591.14	
Per the Court's further verification	633,206.17	5,550,797.31
Substantiated Input VAT		P13,550,224.47
Multiply by Ratio of Substantiated Zero-Rated	P2,821,754,992.64	
Sales to the Total Reported Zero-Rated Sales	÷P3,109,812,321.66	90.7371475%
Refundable Input VAT		**P12,295,087.16**

WHEREFORE, the consolidated Petitions for Review are hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **TWELVE MILLION TWO HUNDRED NINETY-FIVE**

THOUSAND EIGHTY SEVEN PESOS and 16/100 (P12,295,087.16), representing petitioner's excess and unutilized input VAT for the period covering September 1, 2001 to December 31, 2002.

SO ORDERED.

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 case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice