REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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TOLEDO POWER COMPANY,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASES NOS. 7233 & 7294

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

Promulgated:

DEC 15 2009 3:42pm

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DECISION

CASANOVA, *J.*:

Pursuant to Republic Act No. 9136, or otherwise known as the *Electric Power Industry Reform Act of 2001* (EPIRA Law), the *Petitions for Review* seek for refund or issuance of tax credit certificate of unutilized input value-added tax (VAT) from domestic purchases of taxable goods and services, and importation of goods attributed to zero-rated sales for the 1st and 2nd quarters of taxable year 2003 in the aggregate amount of P6,032,630.94.

Petitioner, Toledo Power Company, is a general partnership duly organized and existing under Philippine laws, with principal office at Sangi, Toledo City, Cebu.[1] It is registered with the Bureau of Internal Revenue (BIR) as

[1] Joint Stipulations of Facts and Issues (JSFI), Admitted Facts, par. 1; Division Docket, p. 133

a Value-Added Tax (VAT) taxpayer with Tax Identification Number 003-883-626 and BIR Certificate of Registration bearing RDO Control No. 94-083-000300.[2]

Respondent 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, Agham Road, Diliman, Quezon City.[3]

On April 25, 2003, within the legally prescribed period, petitioner filed its Quarterly VAT Return for the 1st quarter of taxable year 2003.[4] Likewise, on July 25, 2003, within the legally prescribed period, petitioner filed its Quarterly VAT Return for the 2nd quarter of the year 2003.[5]

On December 23, 2004, pursuant to the procedure prescribed in Revenue Regulations No. 7-95, as amended, petitioner filed with the BIR RDO No. 83 an administrative claim for refund of unutilized input VAT for the four (4) quarters of 2003 in the total amount of P15,838,539.48.[6]

To date, respondent has not favorably acted upon said administrative claim for refund.[7] Hence, the *Petition for Review*[8] filed on April 22, 2005, docketed as *CTA Case No. 7233*, praying for the refund or issuance of tax credit

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[2] JSFI, Jointly Stipulated Facts, par. 2; Division Docket., p. 134
[3] JSFI, Admitted Facts, par. 2; Division Docket, p. 133
[4] JSFI, Jointly Stipulated Facts, par. 3; Division Docket, p. 134
[5] JSFI, Jointly Stipulated Facts, par. 4; Division Docket, p. 135
[6] JSFI, Admitted Facts, par. 6; Division Docket, p. 134
[7] JSFI, Admitted Facts, par. 7; Division Docket, p. 134
[8] CTA Case No. 7233, Division Docket, pp. 1-5

certificate in the amount of P3,907,783.80 representing unutilized input VAT from its domestic purchases of taxable goods and services, and importation of goods attributable to zero-rated sales for the 1st quarter of 2003.

On June 28, 2005, respondent filed its *Answer*[9], interposing the following *Affirmative Defenses*, viz:

> 4. Petitioner's claim for refund is subject to administrative investigation by the Bureau of Internal Revenue. And, opportunity must be given to the internal revenue branch to investigate and confirm the veracity of the claims of the taxpayer;
>
> 5. Moreover, tax refunds are in the nature of tax exemptions and as such they are regarded as in derogation of sovereign authority and to be construed *stricticissimi juris* against the person or entity claiming the exemption;
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> 6. Accordingly, the claimants of said refunds bear the burden of proving the factual basis of their claims as taxes are presumed to have been collected in accordance with law;
>
> 7. Petitioner must prove compliance with all the requisites for claiming a VAT refund or credit; and
>
> 8. Likewise, petitioner must prove that the claim was filed within the prescriptive period provided in Section 204 (c) and 229 of the Tax Code.

On July 22, 2005, petitioner filed another *Petition for Review*[10], which was docketed as *CTA Case No. 7294*, praying for refund or issuance of tax credit certificate in the amount of P2,124,847.14 representing unutilized input VAT

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[9] CTA Case No. 7233, Division Docket, pp. 89-92
[10] CTA Case No. 7294, Division Docket, pp. 1-6

from its domestic purchases of taxable goods and services, and importation of goods attributable to zero-rated sales for the 2nd quarter of 2003.

On August 24, 2005, petitioner filed a *Motion for Consolidation*[11].

On September 8, 2005, respondent filed its *Answer*[12] for *CTA Case No. 7294*, setting forth the following *Special and Affirmative Defenses*, viz:

> 4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by respondent's Bureau;
>
> 5. Petitioner utterly failed to demonstrate that the total amount of P2,124,847.14 claimed as refundable VAT input taxes, were erroneously or illegally collected, and that the same are properly documented;
>
> 6. Taxes paid and collected are presumed to have been made in accordance with law, hence not refundable;
>
> 7. In an action for tax refund, the burden is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund;
>
> 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; and
>
> 9. Well-settled is the rule that claims for refund/tax credit are construed in *strictissimi juris* against the taxpayer as they partake the nature of exemption from tax.

In a *Resolution*[13] dated September 22, 2005, confirming the order of the Court on September 16, 2005,[14] petitioner's *Motion for Consolidation* filed on

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[11] CTA Case No. 7294, Division Docket, pp. 109-110
[12] CTA Case No. 7294, Division Docket, pp. 85-87
[13] CTA Cases Nos. 7233 & 7294, Division Docket, p. 113
[14] Division Docket, p. 112

August 24, 2005 was granted. Hence, *CTA Case No. 7294* was ordered to be consolidated with *CTA Case No. 7233*.

Pre-Trial was held on October 28, 2005.[15] The parties' *Joint Stipulation of Facts and Issues*[16] filed on November 14, 2005 was approved in a *Resolution*[17] dated December 2, 2005; accordingly, Pre-Trial was considered terminated and the parties were ordered to proceed with the trial.

Petitioner filed a *Motion for the Commissioning of an Independent Certified Public Accountant*,[18] on March 30, 2007, praying for Mr. Emmanuel Y. Mendoza to be commissioned as the Independent Certified Public Accountant (CPA). On April 24, 2007, Mr. Mendoza was commissioned as the Independent CPA and undertook to submit his report within thirty days.[19]

The Independent CPA submitted its *Report*[20] dated May 24, 2007; the *Updated Report*[21] on July 10, 2007; and the *Final and Consolidated Report*[22] on August 10, 2007.

Petitioner presented as witnesses, namely: Taryn F. Uberita, as its Assistant Manager-Accounts Payable Officer; Reymonda Aida B. Obrero, as its Senior Accounting Manager; and Mr. Emmanuel Y. Mendoza, as the Court-commissioned Independent CPA.

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[15] Division Docket, p. 137
[16] Division Docket, pp. 133-136
[17] Division Docket, p. 139
[18] Division Docket, pp.456-458
[19] Division Docket, p. 462
[20] Exhibit "CC"
[21] Exhibit "QQ"
[22] Exhibit "SS"

On July 16, 2008, petitioner filed its *Formal Offer of Evidence*[23], while respondent filed its *Comment (Re: Petitioner's Formal Offer of Evidence)*[24] on July 17, 2008. The Court resolved the same in a *Resolution*[25] dated August 5, 2008.

In a *Resolution*[26] dated October 14, 2008, upon oral manifestation of respondent's counsel during the hearing on October 9, 2008, that there was no report of investigation submitted by the Revenue District Office and that she is submitting the case for decision based on the pleadings, the parties were given a period of thirty days therefrom within which to file their respective Memoranda.

Respondent filed its *Memorandum*[27] on November 5, 2008, while petitioner filed its *Memorandum*[28] filed on December 8, 2008.

In a *Resolution*[29] dated December 23, 2008, the case was submitted for decision; hence, this Decision.

The following are the parties' *Jointly Stipulated Issues*, to wit:

1. Whether or not the power generation services rendered by petitioner to NPC, CEBECO, Atlas Consolidated Mining and Development Corporation, and Atlas Fertilizer Corporation are subject to zero-percent (0%) VAT pursuant to the EPIRA and its implementing rules and regulations;

[23] Division Docket, pp. 538-559
[24] Division Docket, pp. 560-562
[25] Division Docket, pp. 564-565
[26] Division Docket, p. 569
[27] Division Docket, pp. 571-585
[28] Division Docket, pp. 591-611
[29] Division Docket, p. 612

2. Whether or not petitioner has unutilized input VAT for the first and second quarters of calendar year 2003 in the total amount of P6,032,630.94 arising from its domestic purchases of taxable goods and services and importation of goods;

3. Whether or not the unutilized input VAT are attributable to its zero-rated sales of electricity to NPC, CEBECO, Atlas Consolidated Mining and Development Corporation and Atlas Fertilizer Corporation;

4. Whether or not the administrative claim for refund was seasonably filed;

5. Whether or not the unutilized creditable input taxes for the first and second quarters of calendar year 2003 are properly substantiated by invoices and official receipts;

6. Whether or not the unutilized input VAT payments for the first and second quarters of calendar year 2003 were carried over to and utilized in the succeeding taxable quarter(s) or applied against any of the output VAT liability of the petitioner; and

7. 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 P6,032,630.94.

The issues may be simplified into a principal issue of whether or not petitioner is entitled to the issuance of a tax credit certificate or refund of unutilized input VAT for the first and second quarters of the taxable year 2003 in the amount of P6,032,630.94.

Section 112(A) the National Internal Revenue Code (NIRC) of 1997, as amended, states:

SEC.112. *Refunds or Tax Credits of Input Tax—*

> (A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two(2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sales and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

From the foregoing, in order to be entitled to a refund or tax credit of unutilized input tax, petitioner must prove the following:

1. there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes are attributable to zero-rated or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability; and
5. that the claim for refund was filed within the two-year prescriptive period.

Petitioner asserts that it is engaged in the business of power generation and the subsequent sale thereof to the National Power Corporation (NPC), Cebu Electric Cooperative III (CEBECO), Atlas Consolidated Mining and Development

Corporation and Atlas Fertilizer Corporation. Thus, petitioner maintains that such sale of electricity is zero-rated for VAT purposes pursuant to the EPIRA Law.

It is well-settled that effective June 26, 2001, sales of generated power by generation companies achieved VAT zero-rated status by virtue of Section 4(x), in relation to Section 6 of the EPIRA Law, and Section 6, Rule 5 of the IRR promulgated by the Department of Energy. The said provisions are quoted hereunder for easy reference:

> "**Section 4.** *Definition of Terms. –*
>
> (x) 'Generation Company' refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity;"
>
> xxx
>
> "**Section 6.** *Generation Sector. –* xxx
>
> 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**."
>
> "**Rule 5. Generation Sector**
>
> xxx
>
> **Section 6.** *Generation Charges and VAT.*
>
> xxx
>
> (b) Pursuant to the policy of reducing electricity rates to the End-users, **sales of generated power by a Generation Company 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 the stages of sale until it reaches the End-user. The DOF, through the BIR, shall issue the necessary revenue regulation within sixty (60) days from effectivity of these Rules." *(Emphasis supplied)*

In the case of ***Visayas Geothermal Power Company vs. Commissioner of Internal Revenue***[30], it was held:

"...Section 6 of the EPIRA Law provides that "sales of generated power by generation companies shall be value-added tax zero-rated". Thus, effective June 26, 2001, the pertinent provisions of the Tax Code are deemed amended by the EPIRA Law by modifying the VAT rate applicable to sales of generated companies from ten (10%) percent to zero (0%) percent.

As to whether petitioner generated zero-rated sales for the subject period, it must establish the following requisites: 1) it is a generation company, and 2) it derived sales from power generation."

Hence, to qualify for VAT zero-rating, petitioner must prove that it is a generation company and that it derived its sales from power generation.

In addition, Section 4, Rule 5 of the "Rules and Regulations to Implement Republic Act No. 9136, Entitled "Electric Power Industry Reform Act of 2001", provides:

"**Section 4.** Obligations of a Generation Company.

(a) A COC[31] shall be secured from the ERC before commercial operation of a new Generation Facility. The COC shall stipulate all obligations of a Generation Company consistent with this Section and such other operating guidelines as ERC

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[30] CTA Case No. 6790 and 6838, dated January 18, 2007
[31] Certificate of Compliance

> may establish. The ERC shall establish and publish the standards and requirements for issuance of a COC. A COC shall be issued upon compliance with such standards and requirements.
>
> (i) A Person owning an existing Generation Facility or a Generation Facility under construction, shall submit within ninety (90) days from effectivity of these Rules to ERC, when applicable, a certificate of DOE/NPC accreditation, a three (3) year operation history, a general company profile and other information that ERC may require. Upon making a complete submission to the ERC, such Person shall be issued a COC by the ERC to operate such existing Generation Facility."

Based on the evidence on record, attached to the instant *Petition for Review* is a Letter for the Submission of Documents to the Energy Regulatory Commission (ERC) for the Issuance of Certificate of Compliance[32] dated June 20, 2002. However, petitioner failed to submit the approved Certificate of Compliance, thus the same merely proved that petitioner had an application with the ERC for the issuance of a COC.

Further, albeit in its Application for VAT Refund or Issuance of Tax Credit Certificate[33] dated December 20, 2004 to respondent that in support of the application petitioner enclosed a copy of an ERC Registration and Compliance, the same was not made of record to the case nor offered to this Court.

To recapitulate, petitioner must be "authorized by the ERC to operate facilities used in the generation of electricity" in order to prove that it is a generation company. However, as discussed above, petitioner failed to do so.

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[32] Annex B, Division Docket, p. 55; JSFI, Jointly Stipulated Facts, par. 1
[33] Division Docket, p. 76

Hence, its sale of generated power cannot qualify for VAT zero-rating under the EPIRA Law.

With respect to it sale of generated power to NPC, Section 108 (B)(3) of the NIRC of 1997, as amended, in relation to Section 13 of Republic Act No. 6395, as amended, otherwise known as the NPC Charter, declared it exempt from the payment of all forms of taxes, duties, fees and imposts. To wit:

> **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***;* *(Emphasis supplied).*
>
> "**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."

Further, as affirmed by the Supreme Court in the case of **Ernesto M. Maceda vs. Catalino Macaraig, Jr. et al,**[34] stating 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
>
> 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...'. 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.'
>
> The use of the phrase 'all forms' of taxes demonstrate the intention of the law to give NPC all tax exemption 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 xxx 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."

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[34] 197 SCRA 771

Clearly, NPC is an entity with a special charter, which categorically makes it exempt from payment of all taxes, whether direct or indirect, including VAT. By virtue thereof, the services rendered by a VAT registered entity to NPC are effectively subject to zero percent (0%) VAT.

As part of its documentary evidence, petitioner submitted its VAT invoices[35] and official receipts[36], with its Quarterly VAT Returns for the 1st and 2nd quarters of taxable year 2003 showing zero-rated sales amounting to P497,485,846.32, detailed as follows:

Exhibit No.	**Period Covered (2003)**	**Zero-Rated Sales**
A	1st qtr	P 132,824,216.20
B	2nd qtr	364,661,630.12
Total		**P 497,485,846.32**

After perusal of the records, of the P497,485,846.32 declared as zero-rated sales, the amount of P279,204,594.20 pertains to petitioner's sales to companies other than NPC which shall be denied VAT zero-rating for petitioner's failure to present Certificate of Compliance from the ERC, as stated earlier, broken down as follows:

Exhibit	Inv./OR No.	Date	Sold to	Amount
NN-3	1443	2/3/2003	CEBECO III	P 13,567,687.60
OO-2	462	3/5/2003	Visayan Electric Co.	8,517,748.84
	1417	12/4/2002	CEBECO III	13,843,696.34
	1454	3/5/2003	CEBECO III	13,081,237.94

[35] Exhibits "OO-1" to "OO-7"
[36] Exhibits "NN-1" to "NN-3"

OO-3/OO-3a	472/470	4/3/2003	Visayan Electric Co.	60,114,116.27
OO-4	468	3/31/2003	CEBECO III	11,887,312.70
OO-4	468	3/31/2003	CEBECO III	263,445.45
OO-5	478	6/6/2003	Visayan Electric Co.	64,432,741.95
OO-6	476	6/2/2003	CEBECO III	13,885,974.66
	1482		CEBECO	13,709,061.62
	1487		VECO	65,551,570.83
	1468	4/3/2003	CEBECO III	350,000.00
			Total	**P279,204,594.20**

Hence, from the remaining sales of P218,281,252.12, which pertains to electricity sold to NPC, the amount of P27,779,000.00[37] duly covered by official receipt shall be subject to zero-percent VAT while the amount of P190,502,252.12 shall be denied VAT zero-rating for the following reasons:

1) Supported by an undated official receipt				
Exhibit	**OR No.**	**Date**	**Sold to**	**Amount**
NN-2	1438	-	NPC	P 28,695,523.97
2) Without supporting official receipt				
SS, Annex C-4			NPC	27,339,321.51
3) Supported only by an invoice				
Exhibit	**Inv. No.**	**Date**	**Sold to**	
OO-7	464	3/18/2003	NPC	134,467,406.64
			Total	**P190,502,252.12**

After resolving that petitioner had VAT zero-rated sales for the 1st and 2nd quarter of 2003 in the decreased amount of P27,779,000.00, the Court is now tasked to determine the amount of VAT attributable thereto.

In support of the following input taxes reported in its Quarterly VAT Returns for the first and second quarters of 2003:

[37] Exhibit "NN-1"

. Exhibit No.	Period Covered	Input Tax
A	1st qtr 2003	P 3,963,690.10
B	2nd qtr 2003	2,230,419.14
Total		**P 6,194,109.24**

petitioner submitted various suppliers' invoices, official receipts, Bureau of Customs (BOC) Import Entries and Internal Revenue Declarations (IEIRDs), BOC and bank official receipts.[38]

The Court-Commissioned ICPA, Mr. Emmanuel Mendoza of M&Q CPA, summarized his findings as follows[39]:

	Findings	Reference (Exhibit "SS")	Input Tax	Total
1	**Input VAT on domestic purchases of services supported by VAT ORs.**			
	1st qtr	Annex A-1	P778,698.44	
	2nd qtr	Annex A-16	767,716.00	**P 1,546,414.44**
2	**Input VAT on domestic purchases of goods supported by VAT invoices.**			
	1st qtr	Annex A-2	841,775.67	
	2nd qtr	Annex A-17	797,729.29	**1,639,504.96**
3	**Input VAT on domestic purchases of services supported by documents other than ORs.**			
	1st qtr	Annex A-3	30,724.20	
	2nd qtr	Annex A-18	3,652.71	**34,376.91**
4	**Input VAT on domestic purchases of goods supported by documents other than invoices.**			
	1st qtr	Annex A-4	7,785.27	
	2nd qtr	Annex A-19	2,780.25	**10,565.52**
5	**Input VAT on domestic purchases of goods supported by invoices with no BIR permit number on the authority to print.**			
	1st qtr	Annex A-5	33,447.51	
	2nd qtr	Annex A-20	38,636.67	**72,084.18**
6	**Input VAT on domestic services supported by ORs with pre-printed "TIN" only.**			
	1st qtr	Annex A-6	1,400.00	**1,400.00**
7	**Input VAT on domestic services supported by ORs with pre-printed "TIN" and "Non VAT/NV".**			
	2nd qtr	Annex-21	2,000.00	**2,000.00**

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[38] Exhibits "HH-1" to "HH-794" and "II-1" to "II-414a", as summarized in Exhibit "SS", Annexes A-1 to A-25

[39] Annexes A-1 to A-25 and pages 4 to 7 of Exhibit "SS"

8	**Input VAT on domestic purchases of services supported by ORs dated before the taxable year of claim.**			
	1st qtr	Annex A-7	340,762.67	**340,762.67**
9	**Input VAT on domestic purchases of goods supported by invoices dated before the taxable year of claim.**			
	1st qtr	Annex A-8	816,802.84	
	2nd qtr	Annex A-22	8,432.73	**825,235.57**
10	**Importation of goods supported by ORs issued by BOC.**			
	1st qtr	Annex A-14	16,712.00	**16,712.00**
11	**Importation of goods supported by BOC IEIRD and ORs issued by BOC.**			
	1st qtr	Annex A-12	471,234.00	
	2nd qtr	Annex A-24	11,295.00	**482,529.00**
12	**Input VAT on domestic purchases of goods/services with no available supporting documents.**			
	1st qtr	Annex A-11	151,018.39	
	2nd qtr	Annex A-23	4,172.49	**155,190.88**
13	**Importation of goods supported by BOC IEIRD.**			
	1st qtr	Annex A-13	439,175.00	**439,175.00**
14	**Input VAT on domestic purchases of services supported by photocopied ORs.**			
	1st qtr	Annex A-9	19,709.27	**19,709.27**
15	**Input VAT on domestic purchases of goods supported by photocopied invoices**			
	1st qtr	Annex -10	13,909.84	**13,909.84**
16	**Input VAT on importation of goods supported by photocopied BOC IEIRD.**			
	2nd qtr	Annex A-25	594,004.00	**594,004.00**
17	**Importation of goods with no supporting documents.**			
	1st qtr	Annex A-15	535.00	**535.00**
	TOTAL			**P 6,194,109.24**

Finding the report of the Court-commissioned Independent CPA to be in order, the amount of P4,124,335.40 (*item nos. 1, 2, 10, 11 and 13*) is ascertained to be properly substantiated, while the amount of P2,069,773.84 should be denied for the grounds above-stated. To recapitulate, the disallowances are as follows:

Findings	**Disallowances**
Input VAT on domestic purchases of services supported by documents other than ORs.	P 34,376.91
Input VAT on domestic purchases of goods supported by documents other than invoices.	10,565.52
Input VAT on domestic purchases of goods supported by invoices with no BIR permit number on the authority to print.	72,084.18

Input VAT on domestic services supported by ORs with pre-printed "TIN" only.	1,400.00
Input VAT on domestic services supported by ORs with pre-printed "TIN" and "Non VAT/NV".	2,000.00
Input VAT on domestic purchases of services supported by ORs dated before the taxable year of claim.	340,762.67
Input VAT on domestic purchases of goods supported by invoices dated before the taxable year of claim.	825,235.57
Input VAT on domestic purchases of goods/services with no available supporting documents.	155,190.88
Input VAT on domestic purchases of services supported by photocopied ORs.	19,709.27
Input VAT on domestic purchases of goods supported by photocopied invoices	13,909.84
Input VAT on importation of goods supported by photocopied BOC IEIRD.	594,004.00
Importation of goods with no supporting documents.	535.00
TOTAL	**P 2,069,773.84**

In addition, the input VAT claim should be further decreased by P642,671.21 due to the following reasons:

	FINDINGS	**Exhibit No.**	**Input VAT**	**Total**
1	**Input VAT on domestic purchases of goods/services supported by "TIN V" Invoice/ORs.**			
	Stitches & Wear Industries	HH-76	P24,243.64	
	Liang Chi Industry Phils. Inc.	HH-174	8,480.91	
	Mic's Parts Supply	HH-181	3,990.91	
	Philippine Packings & Seals Corp.	HH-189	164.50	
	Stitches & Wear Industries	II-65	4,063.64	
	AFC Fertilizer & Chemicals Inc.	II-79	745.45	
	AFC Fertilizer & Chemicals Inc.	II-80	745.45	
	AFC Fertilizer & Chemicals Inc.	II-81	745.45	
	Mic's Parts Supply	II-249	763.64	
	Mic's Parts Supply	II-250	154.55	
	Mic's Parts Supply	II-251	1,363.64	
	Mic's Parts Supply	II-252	545.45	
	Philippine Packings & Seals Corp.	II-280	1,617.68	
	San-Vic Coco Lumber	II-296	916.36	**P 48,541.27**
2	**Input VAT on domestic purchases of services/goods supported by OR/invoice issued not in the name of the petitioner.**			
	Globe Telecom	HH-31	4,585.16	
	Globe Telecom	HH-32	4,585.16	
	Globe Telecom	HH-34	4,600.00	
	Traders Hotel	HH-81	577.27	
	United Bearing Industrial Corp.	HH-214	396.36	
	Globe Telecom	II-40	4,600.00	**19,343.95**
3	**Input VAT on domestic purchases of goods/services supported by undated invoice/OR.**			
	R.K. Estaquio Enterprises	II-286	21,136.36	**21,136.36**
4	**Input VAT on domestic purchases of goods/services supported by invoice/OR dated not within the period of claim.**			
	Ford Alabang	II-36	2,894.40	
	Laya Mananghaya & Co.	II-50	6,633.20	
	Power Steel Fabricators	II-281	54.55	**9,582.15**

5	**Input VAT on domestic purchases of services/goods supported by "TIN" OR/invoice.**			
	Mapfre Asian Insurance Corp.	II-52	1,209.00	
	Mapfre Asian Insurance Corp.	II-53	805.93	**2,014.93**
6	**Input VAT on domestic purchases of services supported by documents other than VAT OR.**			
	Prime Eastern Chemical Industries	II-285	9,090.91	
	Speedmaster Marketing	II-317	3,333.64	**12,424.55**
7	**Input VAT on importation of goods supported by ORs issued by BOC but dated outside the period of claim.**			
	OR No.98131792	HH-779	5,545.00	
	OR No.98143911	HH-780	11,081.00	
	OR No.96765121	HH-769	10,872.00	
	OR No.98164981	HH-770	9,440.00	
	OR No.98150385	HH-771	28,047.00	
	OR No.98122753	HH-772	195,081.00	
	SN No.37288386	HH-773	62,339.00	
	SN No.37288422	HH-775	91,292.00	
	SN No.37288377	HH-776	76,551.00	
	SN No.37288431	HH-777	39,380.00	**529,628.00**
	TOTAL			**P 642,671.21**

Thus, petitioner was able to support by proper VAT invoices and/or official receipts input taxes in the amount of P3,481,664.19, computed as follows:

Reported Input VAT		P 6,194,109.24
Less: Disallowances		
Per CPA Findings	P 2,069,773.84	
Per this Court's Findings	642,671.21	2,712,445.05
Substantiated Input VAT		**P 3,481,664.19**

However, portion of the substantiated input VAT of P3,481,664.19 shall be applied against petitioner's reported output VAT liability of P161,478.30, broken down as follows:

Exhibit No.	**Period Covered**	**Output Tax**
A	1st qtr 2003	P 55,906.30
B	2nd qtr 2003	105,572.00
Total		**P 161,478.30**

Hence, only the remaining input VAT of P3,320,185.89 can be attributed to the entire zero-rated sales declared by petitioner in the amount of

P497,485,846.32 and only the input VAT of P185,395.11 is attributable to the substantiated zero-rated sales of P27,779,000.00, as computed below:

Substantiated Input VAT	P3,481,664.19
Less: Output VAT	161,478.30
Excess Input VAT	**P3,320,185.89**

Substantiated Zero-Rated Sales	P 27,779,000.00
Divided by Total Reported Zero-Rated Sales	÷ 497,485,846.32
Multiplied by Substantiated Excess Input VAT	x 3,320,185.89
Input VAT attributable to Substantiated Zero-rated Sales	**P 185,395.11**

As evidenced by its Quarterly VAT Returns[40] from the 3rd quarter of 2003 to 4th quarter of 2005, petitioner was able to prove that the input VAT of P185,395.11 was not applied against any output VAT in the succeeding quarters.

Finally, petitioner's claim for refund was timely filed within the two-year prescriptive period both in the administrative and judicial levels. The reckoning of the two-year prescriptive period for the filing of claim for VAT refund starts from the date of filing of the corresponding quarterly VAT return. Counting from April 25, 2003[41] and from July 25, 2003[42], the date when petitioner filed its Quarterly VAT Returns for the 1st and 2nd quarter of 2003, respectively, both the administrative claim filed on December 23, 2004[43] and the Petition for Review filed on April 22, 2005[44] and July 22, 2005[45], were well within the two-year prescriptive period.

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[40] Exhibits "D" to "O"
[41] Exhibit "A"
[42] Exhibit "N-12"
[43] Annex "E", Petition for Review; Paragraph 12, Division Docket, CTA Case No.7233, p. 4
[44] CTA Case No. 7233, Division Docket, pp. 1-6

WHEREFORE, premises considered, the consolidated *Petitions for Review* are hereby **PARTIALLY GRANTED** in the reduced amount of P185,395.11. Accordingly, respondent is **ORDERED** to refund or issue a tax credit certificate in the amount of P185,395.11 in favor of petitioner representing its unutilized input VAT for the 1st and 2nd quarters of taxable year 2003.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With 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

[45] CTA Case No.7294, Division Docket, pp. 1-6

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

TOLEDO POWER COMPANY,
Petitioner,

~ *versus* ~

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 7233 & 7294

Members:

Acosta, *PJ,*
Bautista, *and*
Casanova, *JJ.*

Promulgated:

DEC 1 5 2009 ; 3:42 pm

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CONCURRING AND DISSENTING OPINION

I agree that petitioner's sales to companies other than National Power Corporation (NPC), specifically to CEBECO III and Visayan Electric Co. amounting to P279,204,594.20, out of the P497,485,846.32[1] declared zero-rated sales in the quarterly VAT returns for the first and second quarters of 2003, cannot qualify for VAT zero-rating under Republic Act No. 9136, otherwise known as the Electric Industry Reform Act of 2001 (EPIRA Law) for its failure to present the approved Certificate of Compliance from Energy Regulatory Commission.

I likewise agree that petitioner sales of generated power to NPC qualify for VAT zero-rating pursuant to Section 108(B)(3) of the National Internal Revenue Code of 1997 in relation to Section 13 of Republic Act No. 6395, otherwise known as the NPC Charter. However, I disagree that only P27,779,000.00, out of the total of

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[1] P132,824,216.20 *(which composed the P83,813,845.48 sales to NPC and P49,010,370.72 sales to CEBECO III and VECO)* for the first quarter of 2003; and P364,661,630.12 *(which composed the P134,467,406.64 sales to NPC and P230,194,223.48 sales to CEBECO III and VECO)* for the second quarter of 2003.

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P218,281,252.12 sales to NPC will be allowed for zero percent VAT. While it is correct to disallow the P28,695,523.97 sales to NPC due to the fact that the official receipt supporting thereof is not dated and the sales amounting to P27,339,321.51 due to lack of supporting documents, however, I cannot agree to disallow for VAT zero-rating the amount of P134,467,406.64 sales to NPC for the second quarter of 2003 for the simple reason that it is only supported by an invoice, and not by official receipt.

Sections 113 and 237 of the 1997 National Internal Revenue Code (NIRC) are the primordial provisions on substantiation requirements. Nowhere can you find that the acceptable evidence to substantiate a claim for refund when it involves sale of services are official receipts only. On the contrary, the said provisions made use of the disjunctive term "or" which connotes that either act qualifies as two different evidences of input VAT. In fact, the word "or" has been defined as a disjunctive particle used to express an alternative or to give a choice of one among two or more things.[2] It is indicative of the intention of the lawmakers to use the same interchangeably in the sale of goods or services.

This is bolstered by the fact that Section 113 of the 1997 NIRC has been amended by Section 11 of Republic Act (RA) No. 9337, wherein the amendatory provisions of the law categorically required that VAT invoice shall be issued for sale of goods while VAT official receipt for the sale of service, which is absent in the amended law. Since this amendment took effect on July 1, 2005, the same cannot be applied in the instant case which involves a claim for refund for taxable year 2004. RA 9337 cannot apply retroactively to the prejudice of petitioner given the well-

[2] Black's Law Dictionary, 6th Edition, 1990, page 1095.

entrenched principle that statutes, including administrative rules and regulations operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication.[3]

Equally relevant are **Section 110 of the 1997 NIRC** and **Section 4.106-5 of Revenue Regulations No. 7-95**. Section 110 provides that any input tax evidenced by a VAT invoice or official receipt, issued in accordance with Section 113 shall be creditable against the output tax. On the other hand, Section 4.106-5 provides that input tax should be supported by an invoice or receipt. A reading of both provisions would show the intention to accept other evidence to substantiate claims for VAT refund, particularly the use of either a VAT invoice or official receipt.

To corroborate, **Section 112 (A) of the 1997 NIRC** merely provides that all VAT-registered enterprises engaged in zero-rated transactions are permitted to demand a refund of their creditable input tax due or paid to the extent that such input tax remains unapplied against output tax for the period of two (2) years after the close of the taxable quarter. No further rule is provided in the said section.

Interpreting **Sections 106 (A) and (D) and 108 (A) and (C) of the 1997 NIRC** as the source for the rule, *i.e.* sale of services should be supported by official receipts and sale of goods by invoices, would be stretching the meaning of the law beyond what it intends. Both sections do not deal with substantiation requirements.

Clearly then, all the relevant provisions of 1997 NIRC and revenue regulations on substantiation requirement, which are applicable to the case at hand, did not provide for the rule that the sale of goods and sale of services must be exclusively

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[3] BPI Leasing Corporation vs. The Honorable Court of Appeals, G.R. No. 127624, November 18, 2003.

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supported by official receipts and invoices, respectively, and the same has made no distinction as to the evidentiary value of an invoice or official receipts.

It is an elementary rule in statutory construction that when the words and phrases of a statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says.[4] Hence, what is not clearly provided in the law cannot be extended to those matters outside its scope.[5]

The Court must not differentiate between the evidentiary value of an invoice, an official receipt and other documentary evidence to prove the fact of petitioner's sale of services. After all, the 1997 NIRC and its implementing regulations made no pronouncement as to the use of a VAT official receipt as the exclusive and sole determinative piece of evidence to the exclusion of all other proofs equally relevant and competent. The sales invoices are still material, relevant and competent evidence inasmuch as they still directly prove the amount of sales made by the petitioner. Prevalent is the rule in statutory construction is that where the law does not distinguish, the courts should make no distinction. *Ubi lex non distinguit nec nos distinguire debemos*.[6]

Likewise, it is worthy to note that tax cases are civil in nature. And under **Section 1, Rule 133, Revised Rules of Court**, in civil cases, the quantum of evidence required to sustain the proponent of an issue is by mere preponderance of evidence. In

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[4] Binay vs. Sandiganbayan, GR No. 120681-83, October 1, 1999.
[5] Statutory Construction by Ruben Agpolo, Fifth Ed. (2003) page 125.
[6] Mendoza, et al. vs. COMELEC, et al., G. R. No. 149736, December 17, 2002.

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Municipality of Moncada vs. Cajuigan,[7] the Supreme Court explained that the phrase "preponderance of evidence" denotes the weight, credit and value of the aggregate on either side. This means that the testimony adduced by one side is more credible and conclusive than that of the other.

Applying the aforecited jurisprudence, if petitioner can prove the existence of its zero-rated sales aside from official receipts by producing other evidence such as sales invoices, making its side more conclusive and credible than the respondent, there is no reason to require petitioner to further produce its official receipts. Both documents are registered with the Bureau of Internal Revenue and are evidence of the commercial transaction that happened.

As aptly stated by the Supreme Court[8]:

> "[S]ubstantial justice, equity and fair play are on the side of petitioner. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. **If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes**. Indeed, the State must lead by its own example of honor, dignity and uprightness."

The government has no right to hold money that does not belong to it, especially given the unmistakable bias of our tax laws in severely penalizing delinquent taxpayers with surcharges, interests and at times fines or imprisonment. For while taxes are the lifeblood of the government, the Court must likewise be sensitive of its responsibility to apply the principles of justice, equity and fairness as its guide in its delicate task of weighing evidence and deciding tax cases.

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[7] 21 Phil. 184.
[8] BPI-Family Savings Bank, Inc., vs. Court of Appeals, Court of Tax Appeals, and the Commissioner of Internal Revenue, G.R. No. 122480, April 12, 2000; 330 SCRA 507.

Thus, the majority cannot simply ignore the evidentiary value of an invoice since the official receipt is not the only acceptable evidence to prove zero-rated sales of generated power to NPC that would qualify the refund of unutilized input VAT attributable thereto.

Another point that I would like to take exception with the majority view is that the two-year prescriptive period provided in Section 112(A) of the NIRC cannot be used to determine the timeliness of the filing of the Petitions for Review. Contrary to this, I may respectfully quote the pertinent provisions of Section 112 of the NIRC, *viz*:

> Sec. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* Any VAT registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.
>
> xxx xxx xxx
>
> (D) Period Within Which Refund or Tax Credit of Input Taxes shall be Made. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

The above provisions of the law states that a VAT-registered person may apply for the issuance of a tax credit certificate or refund of input tax attributable to zero-

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rated sales within two years after the close of the taxable quarter when the sales were made and that the said taxpayer may appeal to this Court within thirty (30) days from receipt of the decision of the Commissioner denying the claim or after the expiration of the one hundred twenty day waiting period without action on the part of the Commissioner of Internal Revenue. Therefore, it is clear that the two-year prescriptive period applies only to administrative claim for refund since the law has provided for a different period within which the affected taxpayer may elevate its claim to this Court.

Thus, petitioner's administrative application for refund of input tax on December 23, 2004 was filed within the two-year prescriptive reckoned from the date of filing of the quarterly VAT returns for the first and second quarters of 2003 on April 25, 2003 and July 25, 2003, respectively, pursuant to Section 112(A) of the NIRC.

From December 23, 2004, the date petitioner applied for refund with the BIR and presumably the date petitioner submitted the supporting documents together with the aforesaid application for refund, the Commissioner of Internal Revenue has one hundred twenty days or until April 22, 2005 within which to decide on the claim. After the lapse of the one hundred twenty day period, petitioner may elevate its claim with this Court within 30 days starting from April 23, 2005 to May 22, 2005 pursuant to Section 112(D) of the NIRC.

Here, the Petition for Review (docketed as CTA Case No. 7233) filed on April 22, 2005 which pertains to petitioner's claimed input tax for the first quarter of 2003 is premature in view of the fact that petitioner elevated its claim before the 120-day

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period has ended. There was therefore violation of the doctrine of exhaustion of administrative remedy. However, considering that non-exhaustion of administrative remedies is not jurisdictional and renders only the action premature, *i.e.*, the claimed cause of action is not ripe for judicial determination and for that reason a party has no cause of action to ventilate in court[9] and considering further that respondent did not raise as a defense the premature invocation by petitioner of the court's intervention at the time when he filed his Answer to the Petition for Review, the said defense is therefore waived pursuant to Section 1, Rule 9 of the Rules of Court.[10] Thus, this Court can entertain petitioner's Petition for Review docketed as CTA Case No. 7233.

With respect to the other Petition for Review (docketed as CTA Case No. 7294) filed on July 22, 2005, the same was made beyond the thirty day period allowed by the provision of Section 112(D) of the NIRC. Hence, this Court has no jurisdiction to entertain the subject matter of the said case.

Having said that this Court has no jurisdiction to entertain the subject matter of CTA Case No. 7294, petitioner may be entitled for refund of its duly substantiated input tax attributable to zero-rated sales to NPC for the first quarter of 2003, which is the subject of CTA Case No. 7233.

Out of the total input tax of P3,963,690.10 reported for the first quarter of 2003, petitioner was able to substantiate the amount of P2,075,180.14.[11] I disagree

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[9] Carale vs. Abarintos, G.R. No. 120704, March 3, 1997.

[10] Rule 9. Effect of Failure to Plead: Section 1. Defenses and objections not pleaded. – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

[11] P3,963,690.10 reported input tax for the first quarter of 2003 less disallowed input tax of P1,958,837.43 consisting of the following: (I)based on the findings of the Commissioned Independent CPA: a)P33,447.51

with the majority in disallowing the P30,724.20 input tax on domestic purchases of services supported by documents other than ORs and the P7,785.27 input tax on purchases of goods supported by documents other than invoices[12] because the NIRC does not provide for the rule that the sale of goods and sale of services must be exclusively supported by official receipts and invoices, respectively. This Court must not differentiate between the evidentiary value of an invoice, an official receipt and other documentary evidence to prove the fact of transactions subject to VAT.

Also, I cannot subscribe to their view to disallow the P33,447.51 input tax on purchases of goods supported by invoices with no BIR permit number on the authority to print[13] and to disallow the P36,879.96 input tax on purchases of goods/services supported by "TIN V" invoice/ORs.[14] In the case of ***Intel Technology Philippines vs. Commissioner of Internal Revenue,***[15] the Supreme Court held that the provisions of law (referring to Sections 113, 237 and 238 of the NIRC) and implementing revenue regulations neither provide that failure to reflect or indicate in the invoices or receipts the BIR authority to print would result in the outright invalidation of these invoices or receipts, nor, is it provided therein that such omission or failure would result in the outright denial of a claim for tax credit/refund. The disallowance of

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input tax on purchases of goods supported by invoices with no BIR permit number; b)P1,400 input tax on services supported by ORs with pre-printed "TIN" only; c) P340,762.67 input tax on purchases of services supported by ORs dated before the taxable year of claim; d) P816,802.84 input tax on purchases of goods supported by invoices dated before the taxable year of claim; e) P151,018.39 input tax on purchases of goods/services with no available supporting documents; f) P19,709.27 input tax on purchases of services supported by photocopied ORs; g) P13,909.84 input tax on purchases of goods supported by photocopied invoices; and P535 input tax on importation of goods with no supporting documents; and (II) additional disallowances made by the Court: a) P14,743.95 input taxes on purchases of services/goods supported by OR/invoice issued not in the name of the petitioner [Exhibits HH-31, HH-32, HH-34, HH-81 and HH214] and P529,628.00 input tax on importation of goods supported by ORs issued by BOC but dated outside the period of claim.

[12] Annexes A-3 and A-4, Exhibit SS.
[13] Annex A-5, Exhibit SS.
[14] Exhibits HH-76, HH-174, HH-181, and HH-189.
[15] G.R. No. 166732, April 27, 2007.

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P36,879.96 input tax on purchases of goods/services supported by "TIN V" invoice/ORs likewise has no legal basis since the NIRC and its implementing regulations neither provide that failure to reflect or indicate in the invoices or receipts the word "TIN-VAT", *since what is only written in this case is "TIN-V"*, would result in the outright invalidation of these invoices or receipts, nor, is it provided therein that such omission or failure would result in the outright denial of a claim for tax credit/refund applying the aforesaid case of Intel.

Therefore, petitioner is entitled for a refund or issuance of tax credit certificate in the amount of P9,655,079.92, computed as follows:

Substantiated Input Tax	P2,075,180.14
Less: Output Tax for the first quarter of 2003	55,906.30
Substantiated Excess Input Tax	P2,019,273.84
Multiply by the ratio of:	
substantiated zero-rated sales	P 27,779,000.00
over total zero-rated sales declared in the first quarter	P132,824,216.20
Input tax attributable to substantiated zero-rated sales	**P9,655,079.92**

In view thereof, I vote to deny the Petition for Review docketed as CTA Case No. 7294 due to lack of jurisdiction and to partially grant the Petition for Review docketed as CTA Case No. 7233. Respondent should be ordered to refund or issue tax credit certificate in favor of petitioner in the reduced amount of P9,655,079.92 representing the substantiated unutilized/excess input tax attributable to zero-rated sales for the first quarter of 2003.

ERNESTO D. ACOSTA
Presiding Justice