REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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CE LUZON GEOTHERMAL POWER COMPANY, INC., Petitioner,	**C.T.A. CASE NO. 7393**
	Members:
- versus -	**ACOSTA,** *Chairperson* **BAUTISTA,** and **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** AUG 26 2009; 10:00am

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DECISION

BAUTISTA, *J.*:

The Petition for Review seeks the refund or issuance of tax credit certificate in the amount of P22,764,594.40, allegedly representing unutilized input VAT from petitioner's domestic purchases of goods and services, services rendered by non-residents, and importation of goods, covering the period from first to fourth quarters of taxable year 2004.

CE Luzon Geothermal Power Company, Inc. (Petitioner) is a corporation duly organized and existing under Philippine law, with principal office at 24th Floor, 6750 Building, Ayala Avenue, Makati City. Petitioner is principally engaged in the business of power generation and subsequent sale of generated power to the Philippine National Oil Company–Energy Development Corporation (PNOC-EDC), pursuant to a Power Purchase

Agreement (PPA).[1] It was issued a Certificate of Accreditation[2] by the Department of Energy (DOE) on June 15, 1994 and registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer, with Tax Identification Number (TIN) 003-924-356-000.[3]

On the other hand, 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. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner filed its Quarterly VAT Returns for taxable year 2004, which reflected the following information:

Period Covered	Date of Filing	Zero-Rated Sales	Input VAT	Exhibit
1st Quarter	April 26, 2004	P 939,531,582.28	P 7,640,716.26	"D"
2nd Quarter	July 26, 2004	1,278,777,054.28	2,879.103.77	"F"
3rd Quarter	October 25, 2004	944,618,618.11	6,887,641.90	"H"
4th Quarter	January 25, 2005	1,523,421,116.17	4,383,880.15	"J"
	TOTAL	**P4,686,348,370.84**	**P 21,791,342.08**	

Petitioner later filed Amended Quarterly VAT Returns for the first, second, and third quarters of taxable year 2004, which indicated the following details:

Period Covered (Quarter)	Date of Filing	Zero-Rated Sales	Excess/Unutilized Input VAT Credits				TOTAL	Exhibit
			Domestic Purchases of Goods other than Capital Goods	Domestic Purchases of Services	Services Rendered by Non-Residents	Importation other than Capital Goods		
First	November 24, 2004	939,531,582.28	705,793.72	7,290,564.59	19,747.32	395,147.00	8,411,252.63	"E"
Second	November 24, 2004	1,278,777,054.28	777,449.47	1,868,151.21	286,776.02	107,487.00	3,039,863.70	"G"
Third	November 24, 2004	944,618,618.11	1,685,621.25	2,862,388.27	147,737.40	2,233,851.00	6,929,597.92	"W"
Fourth	January 25, 2005	1,523,421,116.17	1,004,266.38	2,074,029.23	664,843.01	640,741.53	4,383,880.15	"J"
Total Excess/Unutilized VAT Credits for the 1st to 4th Quarters of CY 2004 (10% of Total Purchases)							**22,764,594.40**	

[1] Exhibit "A"
[2] Exhibit "B"
[3] Exhibit "C"

Petitioner filed its administrative claims for refund of input VAT for the first quarter in the amount of P8,411,252.63 on April 12, 2005,[4] and for the second, third, and fourth quarters in the aggregate amount of P14,353,341.77 on December 14, 2005.[5]

Due to respondent's inaction, petitioner filed the present Petition for Review on December 29, 2005, praying for the refund or issuance of tax credit certificate in the total amount of P22,764,594.40, allegedly representing unutilized input VAT from petitioner's domestic purchases, services rendered by non-residents, and importation of goods for the four quarters of taxable year 2004.

Summons[6] was issued on January 16, 2006, which was received by respondent on January 17, 2006.

In his Answer[7] filed on March 14, 2006, respondent averred the following Special and Affirmative Defenses:

> "5. He reiterates and pleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses.
>
> 6. Petitioner's alleged claim for refund is subject to administrative investigation/examination by respondent;
>
> 7. Taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with the provision of law;
>
> 8. To support its claim for refund, it is imperative for petitioner to prove the following, viz:
>
> a. The registration requirements of a value-added taxpayer in compliance with the pertinent provision of the Tax Code of 1997, as amended, and its implementing revenue regulations;

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[4] Exhibit "Y"
[5] Exhibit "Z"
[6] Docket, p. 48
[7] Docket, pp. 66-72

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 of 1997, as amended;

c. Proof of compliance with the submission of complete documents in support of the administrative claim for refund pursuant to Section 112 (D) of the Tax Code of 1997, as amended, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition *sine qua non* prior to the filing of judicial claim in accordance with the provision of Section 229 of the Tax Code, as amended;

d. That the input taxes of P22,764,594.40 allegedly representing unutilized input VAT from its domestic purchases of goods and services, services rendered by non-residents and importation of goods for the calendar year 2004 were:

   d.i paid by the petitioner;
   d.ii attributable to its zero-rated or effectively zero-rated sales; and
   d.iii such have not been applied against any output tax;

e. That petitioner's claim 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) of the Tax Code of 1997, as amended;

f. That petitioner's domestic purchases of goods and services, services rendered by non-residents and importation of goods were made in the course of its 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 of 1997, as amended;

g. That petitioner has complied with the governing rules and regulations with reference to recovery of tax erroneously or illegally collected as explicitly found in Section 112 (A) and 229 of the Tax Code, as amended.

9. Excess input tax over output tax should be carried over to the succeeding quarter/s. However, input tax attributed to capital goods purchases or to zero-rated sales may be *opted* to be refunded or credited against other internal revenue taxes. This is provided under

Section 110 (B) of the Tax Code of 1997, as amended, which states in part:

> 'xxx If *the input tax exceeds the output tax, the excess* ***shall be*** *carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person* ***may at his <u>option</u>*** *be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112. xxx'* (underscoring supplied)

Likewise, Section 110 (C) of the Tax Code of 1997, as amended, provides:

> '*Determination of Creditable Input Tax – The sum of the excess input tax carried over from the preceding month or quarter and the input tax creditable to a VAT-registered person during the taxable month or quarter* ***shall be*** *<u>reduced</u> by the amount of claim for refund or tax credit for value-added tax and other adjustments, xxx'* (underscoring supplied)

10. 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 v. Manila Jockey Club, Inc., 98 Phil. 670)*;

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

Petitioner filed its Pre-Trial Brief[8] on April 3, 2006; while respondent filed his Pre-Trial Brief (For the Respondent)[9] on April 4, 2006. On April 7, 2006, the parties were ordered to submit their Joint Stipulation of Facts and Issues within fifteen days thereafter. On April 26, 2006, the parties filed their Joint Stipulation of Facts and Issues[10], which was approved in a Resolution[11] dated April 28, 2006.

[8] Docket, pp. 75-87
[9] Docket, pp. 88-93
[10] Docket, pp. 97-101
[11] Docket, p. 103

Pursuant to Section 5(b) of Rule 6 of the Revised Rules of Court of Tax Appeals, respondent transmitted the BIR Records to this Court on July 6, 2006.[12]

Petitioner filed a Motion for the Commissioning of an Independent Certified Public Accountant[13] on October 30, 2006, and a Submission (Re: Motion for the Commissioning of an Independent Certified Public Accountant)[14] on November 6, 2006; which was granted in a Resolution[15] dated December 5, 2006. Accordingly, Mr. Jerome Antonio B. Constantino was commissioned as the Independent Certified Public Accountant (CPA), pursuant to Rules 12 and 13 of the Revised Rules of the Court of Tax Appeals. On December 18, 2006, the Court-commissioned Independent CPA submitted his Report[16].

After petitioner's presentation of evidence, it filed its Formal Offer of Evidence[17] on November 12, 2007, submitting Exhibits "A" to "NN", inclusive of submarkings. In a Resolution[18] dated January 22, 2008, the afore-mentioned exhibits were admitted, except for Exhibit "I" for failure of petitioner's witness to identify the same in Court.

On June 17, 2008, respondent's counsel manifested that he is waiving respondent's right to present evidence since there was no report of investigation. In a Resolution[19] dated June 23, 2008, the parties were ordered to file their respective Memorandum within thirty days from June 17, 2008.

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[12] Docket, p. 115
[13] Docket, pp. 152-154
[14] Docket, pp. 157-161
[15] Docket, p. 172
[16] Docket, pp. 173-185
[17] Docket, pp. 226-247
[18] Docket, pp. 467-468
[19] Docket, p. 497

In a Resolution[20] dated August 26, 2008, the case was submitted for decision, taking into consideration the parties' Memoranda[21], both filed on August 15, 2008. Hence, this Decision.

The parties submitted the following issues[22] for this Court's resolution:

"1. Whether or not Petitioner is registered as a VAT taxpayer pursuant to the provisions of the Tax Code, as amended.

2. Whether or not Petitioner has complied with the invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the Tax Code, as amended.

3. Whether or not Petitioner has complied with the submission of complete documents in support of its administrative claim for refund pursuant to Section 112 (D) of the Tax Code, as amended.

4. Whether or not the input taxes of P22,764,594.40 allegedly representing unutilized input VAT from its domestic purchases of goods and services, services rendered by non-residents and importation of goods for the calendar year 2004 were:

   a. paid by the Petitioner;
   b. attributable to its zero-rated or effectively zero-rated sales; and,
   c. such have not been applied against any output tax.

5. Whether or not Petitioner's claim for tax credit or refund of the unutilized input 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) of the Tax Code, as amended.

6. Whether or not Petitioner's alleged domestic purchases of goods and services, services rendered by non-residents and importation of goods were made in the course of its trade or business and whether or not the same are 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.

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[20] Docket, p. 549
[21] Docket, pp. 508-521 and 523-548
[22] Joint Stipulation of Facts and Issues, docket, pp. 99-100

7. Whether or not Petitioner has complied with the governing rules and regulations with reference to recovery of tax erroneously or illegally collected as explicitly found in Sections 112(A) and 229 of the Tax Code, as amended.

8. Whether or not the claimed input tax were carried over to the succeeding quarter/s of the Petitioner's VAT returns.

9. Whether or not Petitioner is entitled to a refund or issuance of a tax credit certificate for the total amount of P22,764,594.40 allegedly representing unutilized input VAT from its domestic purchases of goods and services, services rendered by non-residents and importation of goods for the first to fourth quarters of taxable year 2004."

The above-enumerated issues can be summarized into a single issue, to wit:

"Whether or not petitioner is entitled to the refund or issuance of tax credit certificate in the amount of P22,764,594.40, representing unutilized input VAT covering the period from the first quarter to the fourth quarter of taxable year 2004."

Pertinent to the resolution of the foregoing issue are Sections 110(B) and 112(A) of the National Internal Revenue Code (NIRC) of 1997, which read as follows:

"**SEC. 110. Tax Credits.** –

xxx xxx xxx

(B) Excess Output or Input Tax. – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provision of Section 112."

"**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."

From the foregoing, in order to be entitled to a refund or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales, petitioner must comply with the following requisites:

1. that 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 counted from the close of the taxable quarter when the sales were made.

Petitioner maintains that its sales of electricity as a power generation company, qualify for VAT zero-rating in accordance with paragraph 5, Section 6 of Republic Act (R.A.) No. 9136, also known as the "Electric Power Industry Reform Act of 2001 (EPIRA)" and Rule 5, Section 6 of the Implementing Rules and Regulations of R.A. No. 9136, which provide:

"Republic Act No. 9136
Electric Power Industry Reform Act of 2001 (EPIRA)

xxx xxx xxx

SEC. 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.* —

xxx xxx xxx

(b) **Pursuant to the policy of reducing electricity rates to 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 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." (*Emphasis supplied*)

Petitioner further cites the case of **Visayas Geothermal Power Company vs. Commissioner of Internal Revenue**[23], where this Court ruled:

> "Anent the first issue, 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 power by generation companies from ten (10%) percent to zero (0%) percent." *(Emphasis supplied)*

Indeed, with the enactment of R.A. No. 9136, related provisions of the NIRC of 1997 were deemed amended by modifying the VAT rate applicable to sales of generated power by generation companies from ten percent (10%) to zero percent (0%).

However, in order to qualify for VAT zero-rating under R.A. No. 9136, petitioner must be able to establish that: (1) it is a generation company; and (2) it derived sales from power generation.

Records prove that petitioner owns and operates a 180-megawatt power plant facility located in Mahanagdong, Province of Leyte, which has been accredited by the Department of Energy, as a Block Power Production Facility (BPPF) since June 15, 1994[24]. As such, it is engaged in the business of power generation and subsequent sale of generated power to PNOC-EDC.

Likewise, for the period covering January 1, 2004 to December 31, 2004, petitioner generated gross receipts from power generation services rendered to PNOC-EDC in the total amount of P4,686,348,370.84, which was declared in its Quarterly VAT Returns for the same period, as shown below:

Exhibit	**Period Covered (2004)**	**Zero-Rated Sales/Receipts**
E	First Quarter	P 939,531,582.28
G	Second Quarter	1,278,777,054.28

[23] CTA Case Nos. 6790 and 6838, January 18, 2007
[24] Exhibit "B"

W	Third Quarter	944,618,618.11
J	Fourth Quarter	1,523,421,116.17
		P4,686,348,370.84

The Court finds however that there is a marked discrepancy between the total zero-rated receipts of P4,611,412,034.37 reflected in the official receipts issued by petitioner to PNOC-EDC[25], and the total zero-rated receipts of P4,686,348,370.84 declared by petitioner in its 2004 Quarterly VAT Returns. The Independent CPA explained the discrepancy and clarified that it was merely caused by the two percent (2%) expanded withholding tax deducted by PNOC-EDC and the foreign exchange rate differential, thus:

OR Amount	P 4,611,412,034.37
Withholding Tax	75,033,354.51
Forex	(97,018.03)
Total Sales	**P4,686,348,370.85**[26]

Consequently, petitioner's sale of electricity as a power generation company amounting to P4,686,348,370.84 qualifies for VAT zero-rating.

After declaring that petitioner's gross receipts from power generation services rendered to PNOC-EDC for the four quarters of 2004 in the amount of P4,686,348,370.84 qualify for VAT zero-rating, the Court now proceeds to determine the amount of input VAT attributable thereto.

Petitioner submitted various suppliers' invoices, official receipts, Bureau of Customs (BOC) Import Entries and Internal Revenue Declarations (IEIRDs), BOC and bank official receipts[27] in support of its claimed unutilized input taxes reflected in its Quarterly VAT Returns for the four quarters of 2004, in the amount of P22,764,594.40, broken down as follows:

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[25] Exhibits "II-1" to "II-40", as summarized in Exhibit "HH"
[26] Exhibit "EE", page 4; Difference is due to rounding off
[27] Exhibit "KK", as summarized in Exhibit "MM"

Exhibit	Period Covered (2004)	Input VAT
E	First Quarter	P 8,411,252.63
G	Second Quarter	3,039,863.70
W	Third Quarter	6,929,597.92
J	Fourth Quarter	4,383,880.15
TOTAL		P22,764,594.40

Upon perusal of the said documents, the Court-commissioned Independent CPA summarized his findings as follows:[28]

Findings	Reference (Annex to Exhibit MM)	Input VAT	Total
A. Supported by VAT Invoices/Receipts/IEIRDs/BIR Form 1600			
1 Properly supported purchase and importation of goods and services.			
1st qtr	L-1Q-OK	P 6,974,793.01	
2nd qtr	L-2Q-OK	2,390,413.38	
3rd qtr	L-3Q-OK	5,186,313.56	
4th qtr	L-4Q-OK	2,869,675.45	P 17,421,195.40
2 Domestic purchase of goods and services supported by a TIN No. VAT No., VAT No. TIN No., VAT Reg. TIN, TIN VAT No. Invoice or OR.			
1st qtr	L-1Q-OK-1	150,573.63	
2nd qtr	L-2Q-OK-1	76,123.35	
3rd qtr	L-3Q-OK-1	79,069.91	
4th qtr	L-4Q-OK-1	38,765.14	344,532.03
3 Domestic purchase of goods supported by a VAT Invoice not dated within the VAT-taxable quarter but within the VAT-taxable year.			
2nd qtr	L-2Q-A2	41,424.10	
3rd qtr	L-3Q-A2	223,589.45	
4th qtr	L-4Q-A2	260,422.70	525,436.25
4 Domestic purchases of goods supported by Invoice pre-printed with TIN-V after July 31, 1991 but before January 1, 1996.			
1st qtr	L-1Q-A12	5,760.00	
2nd qtr	L-2Q-A12	3,185.00	
3rd qtr	L-3Q-A12	2,572.27	
4th qtr	L-4Q-A12	13,444.86	24,962.13
5 Domestic purchase of goods supported only by a certified true copy of the VAT Invoice.			
4th qtr	L-4Q-A18	3,045.45	3,045.45
6 Domestic purchase of service supported by a VAT OR not dated within the VAT-taxable quarter but within the VAT-taxable year.			
1st qtr	L-1Q-B2	229,220.75	
2nd qtr	L-2Q-B2	129,340.08	
3rd qtr	L-3Q-B2	90,650.55	
4th qtr	L-4Q-B2	12,792.78	462,004.16
7 Domestic purchases of services supported by OR pre-printed with TIN-V after July 31, 1991 but before January 1, 1996.			
1st qtr	L-1Q-B12	2,897.98	
2nd qtr	L-2Q-B12	1,959.22	
3rd qtr	L-3Q-B12	15,033.28	19,890.48

[28] Exhibit "MM"

8	**Domestic purchase of services supported only by a certified true copy of the VAT OR.**			
	4th qtr	L-4Q-B18	258.00	258.00
9	**Importation of goods supported by original IEIRD and BOC/LBP OR not dated within the VAT taxable quarter but within the VAT taxable year.**			
	2nd qtr	L-2Q-C2	97,941.13	
	3rd qtr	L-3Q-C2	207,968.97	
	4th qtr	L-4Q-C2	466,971.18	772,881.28
10	**Input tax on OCT (Overseas Communication Tax) included in payments to telecommunications service providers.**			
	1st qtr	L-1Q-G3	183.88	
	2nd qtr	L-2Q-G3	3.11	
	3rd qtr	L-3Q-G3	2.97	
	4th qtr	L-4Q-G3	2.49	192.45
11	**Input tax on purchase of petroleum products (diesel, gasoline).**			
	1st qtr	L-1Q-G4	15,227.04	
	2nd qtr	L-2-G4	3,983.61	
	4th qtr	L-4Q-G4	121.36	19,332.01
12	**Input tax on DST and local taxes included in payments to purchase of services.**			
	1st qtr	L-1Q-G7	0.92	
	2nd qtr	L-2Q-G7	66.82	67.74
	SUB-TOTAL			**P 19,593,797.38**
B. Other Findings				
1	**Domestic purchases of goods supported by documents other than VAT Invoice.**			
	2nd qtr	L-2Q-A1	844.72	
	3rd qtr	L-3Q-A1	7,884.09	
	4th qtr	L-4Q-A1	1,202.52	9,931.33
2	**Domestic purchases of goods supported by VAT Invoice but not an original copy.**			
	1st qtr	L-1Q-A3	50,798.91	
	2nd qtr	L-2Q-A3	9,540.00	
	4th qtr	L-4Q-A3	272.73	60,611.64
3	**Domestic purchases of goods supported by a VAT invoice not issued in the name of the Company (i.e., issued in employee's name).**			
	2nd qtr	L-2Q-A4	1,726.74	1,726.74
4	**Domestic purchase of goods supported by a VAT invoice issued in the name of Calenergy/CE Cebu/VGPC (whichever is applicable).**			
	1st qtr	L-1Q-A5	108.65	
	2nd qtr	L-2Q-A5	266.08	
	3rd qtr	L-3Q-A5	378.25	752.98
5	**Domestic purchase of goods supported by a TIN-NV/NON VAT Invoice but stamped with "VAT"/"TIN-VAT" or the word "NON" was erased.**			
	4th qtr	L-4Q-A6	10,500.00	10,500.00
6	**Domestic purchase of goods supported by TIN # only; TIN-NV/NON VAT Invoice, stamped/handwritten TIN-V/VAT.**			
	1st qtr	L-1Q-A7	2,334.54	
	2nd qtr	L-2Q-A7	6,084.30	
	3rd qtr	L-3Q-A7	38,468.09	
	4th qtr	L-4Q-A7	100,980.35	147,867.28
7	**Domestic purchase of goods supported by a VAT Invoice but without invoice date.**			
	1st qtr	L-1Q-A10	53.87	
	2nd qtr	L-2Q-A10	160.19	214.06

8	**Domestic purchase of goods supported by a VAT Invoice not dated within the VAT-taxable year.**			
	1st qtr	L-1Q-A14	209,290.89	
	2nd qtr	L-2Q-A14	3,030.97	
	3rd qtr	L-2Q-A14	54.55	212,376.41
9	**Domestic purchase of goods supported by a VAT Invoice with changes in the name of the Company.**			
	3rd qtr	L-3Q-A15	80.18	
	4th qtr	L-4Q-A15	100.00	180.18
10	**Domestic purchase of goods supported by a VAT Invoice but is not BIR-registered.**			
	1st qtr	L-1Q-A17	12,565.09	
	3rd qtr	L-3Q-A17	1,390.01	13,955.10
11	**Domestic purchases of services supported by documents other than VAT OR.**			
	2nd qtr	L-2Q-B1	5,604.58	
	3rd qtr	L-3Q-B1	27,387.53	
	4th qtr	L-4Q-B1	4,363.63	37,355.74
12	**Domestic purchases of services supported by VAT OR but not an original copy.**			
	1st qtr	L-1Q-B3	14,074.27	
	2nd qtr	L-2Q-B3	61,070.56	75,144.83
13	**Domestic purchase of services supported by a VAT OR issued in the name of Calenergy/CE Cebu/VGPC (whichever is applicable).**			
	4th qtr	L-4Q-B5	370.27	370.27
14	**Domestic purchase of services supported by TIN # only; TIN-NV/NON VAT OR; stamped/handwritten TIN-V/VAT.**			
	1st qtr	L-1Q-B7	4,150.00	4,150.00
15	**Domestic purchase of services supported by a VAT OR not dated within the VAT-taxable year.**			
	1st qtr	L-1Q-B14	150.91	
	4th qtr	L-4Q-B14	40,052.78	40,203.69
16	**Domestic purchase of services supported by a VAT OR with changes in the name of the Company.**			
	1st qtr	L-1Q-B15	1,228.04	
	4th qtr	L-4Q-B15	27.27	1,255.31
17	**Domestic purchase of services supported by a VAT OR but is not BIR-registered.**			
	1st qtr	L-1Q-B17	39,754.61	
	2nd qtr	L-2Q-B17	39,905.20	
	3rd qtr	L-3Q-B17	31,175.10	
	4th qtr	L-4Q-B17	46,262.08	157,096.99
18	**Importation of goods supported by documents other than original copy of the IEIRD**			
	4th qtr	L-4Q-C1	84,244.25	84,244.25
19	**Importation of goods supported by an original IEIRD and BOC OR not dated within the year.**			
	1st qtr	L-1Q-C3	392,345.00	
	3rd qtr	L-3Q-C3	368,595.00	760,940.00
20	**Importation of goods with supporting documents not in the name of the company.**			
	4th qtr	L-4Q-C4	34,900.00	34,900.00
21	**Importation of goods supported by a photocopy of IEIRD and an original BOC/LBP OR.**			
	4th qtr	L-4Q-C6	24,166.00	24,166.00
22	**Importation of goods supported by original BOC and/or LBP OR only.**			
	3rd qtr	L-3Q-C7	24,858.65	24,858.65

23	**Overclaimed input tax on domestic purchases of goods/services due to erroneous computation.**			
	1st qtr	L-1Q-E1	47.44	
	2nd qtr	L-2Q-E1	54.49	
	3rd qtr	L-3Q-E1	13.08	
	4th qtr	L-4Q-E1	4.99	120.00
24	**Effect of forex on foreign currency denominated purchases of goods and services - overstatement**			
	1st qtr	L-1Q-J1	861.56	
	2nd qtr	L-2Q-J1	6,116.91	
	3rd qtr	L-3Q-J1	2,785.14	
	4th qtr	L-4Q-J1	307.94	10,071.55
25	**Supporting documents not available**			
	1st qtr	L-1Q-F	161,239.33	
	2nd qtr	L-2Q-F	42,544.00	
	3rd qtr	L-3Q-F	148,604.60	
	4th qtr	L-4Q-F	266,560.21	618,948.14
	SUB-TOTAL			**2,331,941.14**
C. Additional Information				
1	**Domestic purchase of goods supported by invoice pre-printed with TIN-V after January 1, 1996**			
	1st qtr	L-1Q-A7-1	8,316.52	
	2nd qtr	L-2Q-A7-1	5,482.66	
	3rd qtr	L-3Q-A7-1	24,643.81	
	4th qtr	L-4Q-A7-1	6,667.76	45,110.75
2	**Domestic purchase of services supported by OR pre-printed with TIN-V after January 1, 1996**			
	1st qtr	L-1Q-B7-1	135,275.78	
	2nd qtr	L-2Q-B7-1	112,992.50	
	3rd qtr	L-3Q-B7-1	448,078.89	
	4th qtr	L-4Q-B7-1	97,397.97	793,745.14
	SUB-TOTAL			**838,855.89**
	GRAND TOTAL			**P 22,764,594.41**

After careful examination of the Report of the Independent CPA, the Court finds the same to be in order. Accordingly, the items under the heading "A. Supported by VAT Invoices/Receipts/IEIRDs/BIR Form 1600" particularly items A.4, A.5, A.7, A.8, A.10, A.11, A.12, and all items under the headings "B. Other Findings", and "C. Additional Information", except items B.21, B.22 and the amount of P4,349.25[29] of B.18, should be denied for the grounds above-stated. To recapitulate, the said disallowances amounting to P3,185,171.39 are as follows:

[29] See Annex "1" of the Decision

Disallowances per Independent CPA's Report	Input VAT
Domestic purchases of goods supported by Invoice pre-printed with TIN-V after July 31, 1991 but before January 1, 1996.	P 24,962.13
Domestic purchase of goods supported only by a certified true copy of the VAT Invoice.	3,045.45
Domestic purchases of services supported by OR pre-printed with TIN-V after July 31, 1991 but before January 1, 1996.	19,890.48
Domestic purchase of services supported only by a certified true copy of the VAT OR.	258.00
Input tax on OCT (Overseas Communication Tax) included in payments to telecommunications service providers.	192.45
Input tax on purchase of petroleum products (diesel, gasoline).	19,332.01
Input tax on DST and local taxes included in payments to purchase of services.	67.74
Domestic purchases of goods supported by documents other than VAT Invoice.	9,931.33
Domestic purchases of goods supported by VAT Invoice but not an original copy.	60,611.64
Domestic purchases of goods supported by a VAT invoice not issued in the name of the Company (i.e., issued in employee's name).	1,726.74
Domestic purchase of goods supported by a VAT invoice issued in the name of Calenergy/CE Cebu/VGPC (whichever is applicable).	752.98
Domestic purchase of goods supported by a TIN-NV/NON VAT Invoice but stamped with "VAT"/"TIN-VAT" or the word "NON" was erased.	10,500.00
Domestic purchase of goods supported by TIN # only; TIN-NV/NON VAT Invoice, stamped/handwritten TIN-V/VAT.	147,867.28
Domestic purchase of goods supported by a VAT Invoice but without invoice date.	214.06
Domestic purchase of goods supported by a VAT Invoice not dated within the VAT-taxable year.	212,376.41
Domestic purchase of goods supported by a VAT Invoice with changes in the name of the Company.	180.18
Domestic purchase of goods supported by a VAT Invoice but is not BIR-registered.	13,955.10
Domestic purchases of services supported by documents other than VAT OR.	37,355.74
Domestic purchases of services supported by VAT OR but not an original copy.	75,144.83
Domestic purchase of services supported by a VAT OR issued in the name of Calenergy/CE Cebu/VGPC (whichever is applicable).	370.27
Domestic purchase of services supported by TIN # only; TIN-NV/NON VAT OR; stamped/handwritten TIN-V/VAT.	4,150.00
Domestic purchase of services supported by a VAT OR not dated within the VAT-taxable year.	40,203.69
Domestic purchase of services supported by a VAT OR with changes in the name of the Company.	1,255.31
Domestic purchase of services supported by a VAT OR but is not BIR-registered.	157,096.99
Importation of goods supported by documents other than original copy of the IEIRD	79,895.00

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Importation of goods supported by an original IEIRD and BOC OR not dated within the year.	760,940.00
Importation of goods with supporting documents not in the name of the company.	34,900.00
Overclaimed input tax on domestic purchases of goods/services due to erroneous computation.	120.00
Effect of forex on foreign currency denominated purchases of goods and services - overstatement	10,071.55
Supporting documents not available	618,948.14
Domestic purchase of goods supported by invoice pre-printed with TIN-V after January 1, 1996	45,110.75
Domestic purchase of services supported by OR pre-printed with TIN-V after January 1, 1996	793,745.14
TOTAL	**P3,185,171.39**

In addition, the Court finds that the input VAT claim should be further decreased by P315,400.22, due to the following reasons:

	Findings	Reference	Input VAT	Total
1	**Input VAT on purchase of goods/services supported by VAT invoice/OR issued not in the name of petitioner.**			
	SGV & Co.	L-1Q-499	P 11,100.00	
	SGV & Co.	L-1Q-500	17,000.00	
	SGV & Co.	L-1Q-501	11,600.00	
	SGV & Co.	L-1Q-502	11,000.00	
	Mercury Drug Corp.	L-1Q-291	1,698.77	
	Mercury Drug Corp.	L-1Q-294	138.29	
	Mercury Drug Corp.	L-1Q-294	75.40	
	Mercury Drug Corp.	L-1Q-296	49.71	
	Brodeth Marketing	L-2Q-36	90,908.34	
	Serv-Well Drugstore	L-2Q-569	79.60	
	Serv-Well Drugstore	L-2Q-570	36.36	
	Serv-Well Drugstore	L-2Q-571	21.09	
	Serv-Well Drugstore	L-2Q-572	63.27	
	PLDT	L-2Q-504a	5,484.13	
	Serv-Well Drugstore	L-2Q-555	55.91	
	Serv-Well Drugstore	L-2Q-558	112.64	
	Serv-Well Drugstore	L-2Q-563	26.27	
	Toyota Cebu City, Inc.	L-2Q-595	8,797.45	
	Toyota Cebu City, Inc.	L-2Q-596	693.45	
	Gaisano Ormoc	L-3Q-511	399.28	
	Imperial Palace Suites	L-4Q-381	1,363.64	
	Imperial Palace Suites	L-4Q-382	2,727.27	**P163,430.87**
2	**Input VAT on purchase of goods supported by zero-rated sales invoice.**			
	Crest Sun Industrial Products, Inc.	L-2Q-185	2,664.00	
	Crest Sun Industrial Products, Inc.	L-3Q-336	1,332.00	
	Crest Sun Industrial Products, Inc.	L-3Q-337	666.00	
	Crest Sun Industrial Products, Inc.	L-3Q-338	842.54	
	Crest Sun Industrial Products, Inc.	L-4Q-167	1,665.00	**7,169.54**

3	**Input VAT on purchase of goods/services supported by VAT invoice/OR without BIR authority to print.**			
	Ayala Aon Risk Services, Inc.	L-2Q-688	34,522.97	
	Southern Industrial Gases Phils., Inc.	L-3Q-1049	1,527.27	
	Southern Industrial Gases Phils., Inc.	L-3Q-1051	2,625.45	
	Ayala Aon Risk Services, Inc.	L-3Q-1297	627.69	**39,303.38**
4	**Input VAT on purchase of goods supported by documents other than VAT invoice.**			
	Metrowide Commodities Corp.	L-2Q-420a	1,477.27	
	Master Automated Systems, Inc.	L-2Q-402a	962.82	
	Cebu Power Exponents Services, Inc.	L-3Q-82	325.09	
	Elson's Convenience Store	L-3Q-438	177.27	
	Elson's Convenience Store	L-3Q-441	141.27	**3,083.72**
5	**Input VAT on purchase of services supported by documents other than VAT OR.**			
	Trigs Food Corp.	L-3Q-1081	200.00	
	Airlift Asia Inc.	L-4Q-761	5,500.00	
	Airlift Asia Inc.	L-4Q-757	3,875.23	**9,575.23**
6	**Input VAT on purchase of goods/services with no supporting documents.**			
	Codilla's Auto Parts Center		90.91	
	Sals Bar & Restaurant		90.91	**181.82**
7	**Input tax on purchase of petroleum products (diesel, gasoline).**			
	Codilla's Auto Parts Center	L-1Q-79 to 92	95.36	
	Codilla's Auto Parts Center	L-1Q-93 to 106	1,675.91	
	Codilla's Auto Parts Center	L-1Q-107 to 119	31.09	
	Codilla's Auto Parts Center	L-1Q-120 to 138	142.55	
	Codilla's Auto Parts Center	L-1Q-68 to 78	126.20	
	Codilla's Auto Parts Center	L-2Q-155 to 167	97.09	
	Codilla's Auto Parts Center	L-2Q-168 to 177	33.25	
	Codilla's Auto Parts Center	L-2Q-145 to 154	475.18	
	Codilla's Auto Parts Center	L-3Q-288 to 299	66.82	
	Codilla's Auto Parts Center	L-3Q-300 to 312	315.43	
	Codilla's Auto Parts Center	L-3Q-313 to 328	990.73	
	Codilla's Auto Parts Center	L-4Q-131 to 145	61.18	
	Codilla's Auto Parts Center	L-4Q-146 to 154	81.55	
	Codilla's Auto Parts Center	L-4Q-155 to 163	28.36	**4,220.70**
8	**Input VAT on purchase of goods/services with supporting documents not properly marked.**			
	Techno Mech Industrial Corp.		1,399.09	**1,399.09**
9	**Input VAT on purchase of goods/services dated not within the period of claim.**			
	Cebu Doctor's Hospital	L-3Q-69	2,143.46	**2,143.46**
10	**Input VAT on importation of goods supported by IEIRD without machine validation.**			
	Omni Controls Inc.	L-3Q-1391	36,168.97	
	Emerson Process Management	L-4Q-749	22,041.30	

Emerson Process Management	L-4Q-753	26,682.14	**84,892.41**
TOTAL			**P315,400.22**

Based on the foregoing, petitioner was able to support by proper VAT invoices and/or official receipts the input taxes in the amount of P19,264,022.79, in accordance with Sections 110(A) and 113(A) of the NIRC of 1997, and Sections 4.104-5[30] and 4.108-1[31] of Revenue Regulations No. 7-95.

The substantiated input taxes in the amount of P19,264,022.79 is computed as follows:

[30] **SECTION 4.104-5.** *Substantiation of claims for input tax credits.* – (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Section 108 (a) and 238 of the Code. Input tax on purchase of real property should be supported by a copy of the public instrument *i.e.,* deed of sale, deed of conditional sale, contract/agreement to sell, *etc.,* together with the VAT receipt issued by the seller.

A cash-register machine tape issued to a VAT-registered buyer by a VAT-registered seller from a machine duly registered with the BIR in lieu of the regular sales invoice, shall constitute valid proof of substantiation of tax credit only if the name and TIN of the purchaser is indicated in the receipt and authenticated by a duly authorized representative of the seller.

(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.

(c) Presumptive input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.

(d) Input tax on 'deemed sale' transactions shall be substantiated with the required invoices.

(e) Input tax from payments made to non-resident shall be supported by a copy of the VAT declaration/return filed by the resident licensee/lessee in behalf of the non-resident licensor/lessor evidencing remittance of the VAT due.

[31] **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.

In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.

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 Sections 100 and 102 of the Code.

The invoice or receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

Claimed Input VAT			P 22,764,594.40
Less:	Disallowances		
	Per ICPA	P 3,185,171.39	
	Per Court's verification	315,400.22	3,500,571.61
Substantiated Input VAT			**P19,264,022.79**

As regards the fourth requisite, a perusal of petitioner's Quarterly VAT Returns for the four quarters of 2004[32], shows that it has no output tax liability against which the substantiated input VAT of P19,264,022.79 may be applied or credited. Petitioner may have carried over the amount of P19,264,022.79 to the succeeding quarters of 2005[33], and until such time when such input VAT was deducted from petitioner's VAT Returns for the second and fourth quarters of 2005; the same however remained unutilized as petitioner had no output VAT liability for the said period. Moreover, the substantiated input VAT of P19,264,022.79 formed part of the P25,631,948.43 and P14,353,341.77 deducted as "Any VAT Refund/TCC Claimed" in the VAT Returns for the second and fourth quarters of 2005, respectively. *Ergo*, the input VAT of P19,264,022.79 was no longer carried over to the succeeding first quarter of 2006.[34]

Finally, petitioner's claim for refund was timely filed within the two-year prescriptive period, both in the administrative and judicial levels. In the recent case entitled **Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)**[35], the Supreme Court held that the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund under Section 112(A) of the NIRC of 1997 starts from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT, regardless of

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[32] Exhibits "E", "G", "W", and "J"
[33] Exhibits "L", "N", "P", and "R"
[34] Exhibit "S"
[35] G.R. No. 172129, September 12, 2008

whether said tax was paid or not. The pertinent portions of the High Court's Decision are as follows:

> "The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Sec. 112 (A) of the NIRC pertinently reads:
>
> > (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 <u>when the sales were made</u>, apply for the issuance of a tax credit certificate or refund of creditable input tax <u>due or paid</u> attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax. . . (Emphasis ours.)
>
> **<u>The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not</u>**. As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112 (A), '[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued.' Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. **<u>The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid.</u>** xxx" (*Emphasis supplied*)

Counting from March 31, 2004, June 30, 2004, September 30, 2004 and December 31, 2004, which are the close of the first, second, third, and fourth quarters of taxable year 2004, respectively; petitioner's administrative claims filed on April 12, 2005[36] and December 14, 2005[37], and the Petition for Review filed on December 29, 2005 were all well within the two-year prescriptive period.

[36] Exhibit "Y"
[37] Exhibit "Z"

In summary, the Court finds petitioner entitled to the refund or issuance of tax credit certificate in the reduced amount of P19,264,022.79, representing unutilized input VAT for the four quarters of taxable year 2004.

WHEREFORE, petitioner's claim for refund or issuance of tax credit certificate is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of P19,264,022.79, representing its excess/unutilized input VAT for the period covering the four quarters of taxable year 2004.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
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
Chairperson, First Division