Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

MIRANT PAGBILAO CORPORATION (Formerly Southern Energy Quezon, Inc.),	**C.T.A. CASE NO. 6417**
Petitioner,	Members:
- versus -	**CASTAÑEDA JR.,** *Chairperson* **UY,** and **PALANCA ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	AUG 3 0 2006

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AMENDED DECISION

UY, J.:

On August 31, 2005, this Court rendered a Decision partially granting the instant Petition for Review and ordering the respondent to refund or issue a tax credit certificate to petitioner in the reduced amount of P118,749,001.55 representing unutilized input value-added tax paid on domestic purchases of goods and services and importation of goods attributable to zero-rated sales covering the taxable year 2000. Petitioner received a copy of said Decision on September 16, 2005.

Subsequently on September 30, 2005, petitioner filed a Motion For Partial Reconsideration with Motion for Partial New Trial seeking for : (1) a modification of the Decision dated August 31, 2005 partially granting petitioner's claim for refund such that input taxes in the total amount of P1,667,174.22 be included in the order of refund or issuance of tax credit certificate; and consequently, to order the respondent to refund or issue a tax credit certificate in favor of the petitioner in the total amount of P120,416,175.77; and (2) a partial new trial for the presentation of additional evidence to prove input taxes in the amount of P3,310,109.20 and to explain disallowance of the same.

In support thereof, petitioner invokes the following grounds:

" I

THIS HONORABLE COURT ERRED IN DISALLOWING THE TOTAL AMOUNT OF P2,116,851.79, THE AMOUNT DISALLOWED BY THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT (CPA) IN HIS REPORT FOR BEING UNSUBSTANTIATED BY SUFFICIENT DOCUMENTS. THIS HONORABLE COURT FAILED TO CONSIDER EXHIBITS 'V-9853' TO 'V-9877' AMOUNTING TO P810,047.31 WHICH WERE DULY PRESENTED, MARKED AND OFFERED AS EVIDENCE FOR THE PETITIONER TO SUPPORT THE UNUTILIZED INPUT TAXES ORIGINALLY DISALLOWED BY THE INDEPENDENT CPA.

II

THIS HONORABLE COURT ERRED IN DISALLOWING THE AMOUNT OF P836,768.00 OF INPUT TAXES ON IMPORTATION PER ANNEX 1 OF THE DECISION. IN DISALLOWING SAID AMOUNT, THIS HONORABLE COURT TOTALLY DISREGARDED EXHIBITS 'V-2622' TO 'V-2624', 'V-2633' TO 'V-2635', 'V-2741' TO 'V-2742', 'V-4856' TO 'V-4858' AND 'V-5295' TO 'V-5297', ON THE MERE BASIS THAT THE AMOUNT OF INPUT TAXES AS SHOWN IN THE IMPORT ENTRY AND THE INTERNAL REVENUE DECLARATIONS (IERDS) DO NOT MATCH THE AMOUNT OF PAYMENT FOR CUSTOMS DUTIES, INPUT TAXES AND OTHER FEES AS SHOWN IN THE BANK DEBIT ADVICES.

III

THIS HONORABLE COURT ERRED IN DISALLOWING INPUT TAXES IN THE AMOUNT OF P17,459.67 ON THE BASIS THAT THE SUPPORTING DOCUMETNS WERE NOT PRESENTED PER

ANNEX 12 OF THE DECISION. THIS HONORABLE COURT, HOWEVER, FAILED TO CONSIDER EXHIBITS 'V-1367', 'V-6883', 'V-6884', 'V-7021', 'V-7022', 'V-7857', 'V-7858', 'V-4744', 'V-4741', 'V-1975', 'V-1976' AND 'V-1977', IN THE TOTAL AMOUNT OF P17,459.67 WHICH WERE DULY PRESENTED, MARKED AND OFFERED AS EVIDENCE FOR THE PETITIONER TO SUPPORT THE UNUTILIZED INPUT TAXES IT CLAIMED FOR REFUND. THESE WERE SUBMITTED BY THE INDEPENDENT CPA TO THIS HONORABLE COURT.

IV

THIS HONORABLE COURT ERRED IN DISALLOWING INPUT TAXES IN THE AMOUNT OF P2,899.24 PER ANNEX 7 OF THE DECISION. THIS HONORABLE COURT, HOWEVER, FAILED TO CONSIDER EXHIBITS 'V-569' AND 'V-3129' WHICH WERE DULY PRESENTED, MARKED AND OFFERED AS EVIDENCE FOR THE PETITIONER TO SUPPORT THE UNUTILIZED INPUT TAXES IT CLAIMED FOR REFUND. THESE WERE SUBMITTED BY THE INDEPENDENT CPA TO THIS HONORABLE COURT.

V

PETITIONER DISCOVERED AFTER VERIFICATION OF THE COURT DOCKET THAT THE INDEPENDENT CPA INADVERTENTLY FAILED TO MARK AND INCLUDE AS SUPPORTING DOCUMENTS THE OFFICIAL RECEIPTS AND SALES INVOICES THAT SUPPORT THE INPUT TAXES DISALLOWED BY THIS HONORABLE COURT PER ANNEXES 1 AND 12 OF THE DECISION. SAID OMMISSION WAS DUE TO THE MISTAKE AND EXCUSABLE NEGLECT BY THE DULY COMMISSIONED INDEPENDENT CPA. SINCE SAID DOCUMENTS WERE DULY EXAMINED BY THE INDEPENDENT CPA, PETITIONER SHOULD BE ALLOWED TO PRESENT AND SUBMIT THE SAME TO PROVE THAT INPUT TAXES IN THE TOTAL AMOUNT OF P2,834,812.29 ARE PROPERLY SUBSTANTIATED."[1]

Respondent was directed to file his Comment to the instant motion in the Resolution dated October 28, 2005 within ten (10) days from receipt thereof but

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[1] Motion for Partial Reconsideration with Motion for Partial New Trial, Rollo, pp. 388-406, at pp. 389-390.

no comment was filed despite receipt of notice by the Bureau of Internal Revenue, Litigation Division on November 9, 2005. [2]

Subsequently, this Court required petitioner in the Resolution dated May 22, 2006, to submit copies of documentary evidence not attached to petitioner's motion, namely: Exhibits "V-9853" to "V-9877", "V-2622" to "V-2623", "V-2633" to "V-2634", "V-2741" to "V-2742", "V-4856" to "V-4857", and "V-5295" to "V-5296" in order to appropriately resolve the pending motion of petitioner, to obviate the holding of a partial new trial, and to promote the higher interest of substantial justice.

In compliance with said resolution, petitioner submitted copies of "V-2622" to "V-2623", "V-2633" to "V-2634", "V-2741" to "V-2742", "V-4856" to "V-4857", and "V-5295" to "V-5296" on June 15, 2006. Hence, this Amended Decision partially granting petitioner's subject motion.

The first ground assails the Court's disallowance of petitioner's claim for refund in the amount of P2,116,851.79. Petitioner maintains that it was able to adduce evidence before the Court by way of the following: (a) through official receipts and invoices marked as Exhibits "V-9853" to "V-9877" in support of the amount of P810,047.31 out of the P1,472,367.93 unutilized input taxes originally disallowed by its commissioned independent CPA for lack of supporting documents; and (b) through the testimony of its tax manager, Taryn F. Uberita, during the September 1, 2005 **[should be 2003]** hearing, wherein she identified allegedly pertinent documents marked as Exhibits "V-9853" to "V-9877" in

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[2] Notice of Resolution, Rollo, p. 528.

support of the input taxes which were not submitted in time for the commissioned independent CPA's evaluation; including an alleged summary list allegedly marked as Exhibit "C" to prove unutilized input tax in the amount of P810,047.31.

In this regard, a perusal of the Formal Offer of Evidence dated October 6, 2004 discloses that Exhibit "C" refers to the Securities and Exchange Commission Certificate of Filing of Amended Articles of Incorporation dated June 28, 2001. More importantly, petitioner's submission of its Compliance [3] pursuant to this Court's Resolution dated May 22, 2006, directing the submission of the exhibits mentioned in its subject motion, still did not include Exhibits "V-9853" to "V-9877" as supporting documents thereto. Thus, We are constrained to sustain the recommended disallowance by the commissioned independent CPA in the amount of P810,047.31 for lack of supporting documents.

With respect to the second ground, petitioner argues that it correctly determined the input VAT to be claimed in the Import Entry and the Internal Revenue Declarations (IEIRDs) marked as Exhibits "V-2622" to "V-2623", "V-2633" to "V-2634", "V-2741" to "V-2742", "V-4856" to "V-4857" and "V-5295" to "V-5296".

Petitioner further argues that the input taxes on importations shall be supported with import entry or other equivalent document showing actual VAT payment pursuant to Section 4.104-5(b) of Revenue Regulations (RR) No. 7-95. Thus, the IEIRDs are sufficient evidence to prove payment of input taxes on its

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[3] Rollo, pp. 533-544.

importations. The submission of bank debit advice or other documents, in addition to the IEIRDs is required only in case the original or certified true copies of the IEIRDs are not available. The IEIRDs should be admitted and considered by this Court as sufficient evidence of the input taxes paid on importations in the sum of P836,768.00 because petitioner offered in evidence the IEIRDs certified by the CPA as faithful reproduction of the original IEIRDs.

Upon examination of the exhibits referred to by petitioner, this Court sustains the disallowance of input taxes in the amount of P836,768.00.

A careful scrutiny of the bank debit advices marked as Exhibits "V-2624", "V-2635", "V-2743", "V-4858" and "V-5297" shows that the amount of tax payments reflected therein actually represents the sum of the customs duties, value-added tax on importations, and other fees paid by the petitioner for these importations, which explain why the VAT payments reflected in the IEIRDs do not correspond to the amounts shown in the bank debit advices.

As a general rule, input tax on importations should be supported with IEIRDs duly validated for actual payment of the input tax. Nevertheless, resort to other documents may be done to determine payment of input tax. In the instant case, the IEIRDs presented by the petitioner did not show payment of the input taxes. Likewise, the bank debit advices attached to the IEIRDs to supposedly prove payment, likewise failed to attain this purpose. And considering that the amounts in the bank debit advices do not match the amounts in the IEIRDs, this Court is unable to determine whether or not the amount in the IEIRD was paid through the bank debit advice.

Moreover, there were no proper descriptions of the kind of payment in the bank debit advice which made it difficult for the Court to determine to which payee, and to what kind of payment, did the bank debit advices pertain to. Correspondingly, petitioner's claim for refund of input taxes in the amount of P836,768.00 should remain disallowed for lack of proof of payment.

Going to the third ground, petitioner asserts that Exhibits "V-1367", "V-6883", "V-6884", "V-7021", "V-7022", "V-7857", "V-7858", "V-4744", "V-4741", "V-1975", "V-1976" and "V-1977" attached to the CPA Report, were presented, marked and offered as evidence to establish petitioner's unutilized input taxes of P17,459.67. Thus, the amount of P17,459.67 should be allowed as input tax refund or tax credit.

Upon verification of petitioner's claim, only the input taxes in the amount of P4,740.18 was substantiated and should form part of petitioner's refundable amount, to wit:

Exhibits	Supplier	Amount
"V-1367"	Ostrea Mineral Laboratories	P2,092.00
"V-6883" to "V-6884"	Shop Rite Center	385.45
"V-4741"; "V-4744"	Azurem Construction	2,262.73
Total		**P4,740.18**

The following input taxes in the aggregate amount of P12,719.49 should be disallowed:

Supplier	Amount	Reason
Wolf Dev't Corp.	P2,020.90	No supporting documents because "V-1975" to "V-1977" are support for P2,323.30 claimed input tax
Tri-amp Corp.	10,670.46	No supporting documents because"V-7021"to "V-7022" refer to another purchase with the same amount of input VAT "V-6883 to "V-6884"
Cargohaus Inc.	28.13	No supporting document because"V-7857" to "V-7858"

		pertain to input VAT in the amount of P44.67. These exhibits are copies of Exhibits "V-7859" to "V-7860".
Total	**P12,719.49**	

With regard to the fourth ground, petitioner submits that the input taxes on purchases and services in the amount of P2,899.24 were duly substantiated by VAT sales invoices and merits a refund. The official receipt issued by Con-Pac Warehousing Incorporated marked and identified as Exhibit "V-569" is the proper supporting document for the warehousing services received by petitioner. Likewise, the sales invoice issued by Famous Electrical and Construction Supply, also marked and identified as Exhibit "V-3129" is the proper supporting document for petitioner's purchase of goods.

Based on the foregoing documents, this Court is persuaded that the input taxes in the amount of P2,899.24 should be allowed:

Exhibits	Supplier	Amount
"V-569" to "V-570"	Con-Pac Warehousing, Inc.	P 717.42
"V-3129"	Famous Electrical & Construction	2,181.82
Total		**P2,899.24**

Finally, as to the fifth ground, petitioner asserts that it cannot be faulted for the commissioned independent CPA's inadvertence in omitting to mark and include VAT official receipts and invoices in support of the input taxes of P3,310,109.20.[4] Petitioner furnished the commissioned independent CPA with all the original copies of the documents and photocopies thereof during the audit and verification of the documents substantiating the amount of input taxes subject of refund. The mistake and excusable neglect arising from petitioner's

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[4] Rollo, p. 405.

reliance on the completeness of the CPA Report and its attached documents warrant a partial new trial under Sections 1 and 7 of Rule 37 of the Rules of Court.

This Court is not convinced.

Mistake is defined as the unintentional act, omission, or error arising from ignorance, surprise, imposition, or misplaced confidence while excusable negligence means a failure to take the proper steps at the proper time, not in consequence of the party's own carelessness, inattention or willful disregard of the process of the court but in consequence of some unexpected or unavoidable hindrance or accident, or reliance on the care and vigilance of his counsel or on promises made by the adverse party.[5] The mere existence of mistake and excusable negligence is not sufficient to justify partial new trial. It must be shown that any of such grounds could not have been guarded against by ordinary prudence and that the aggrieved party's rights have been impaired.[6]

In the case at bench, petitioner cannot feign mistake or excusable negligence to invoke partial new trial due to the commissioned independent CPA's failure to substantiate unutilized input tax in the amount of P3,310,109.20. The disputed CPA report was presented and testified to by the Commissioned CPA Ruben Rubio with the presence of the parties' counsels and was formally offered by the petitioner before this Court.[7] Petitioner, through its counsel, was afforded the opportunity to call the attention of the Court and rectify the mistakes or negligence of the commissioned independent CPA, but it did not. Clearly then,

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[5] Black's Law Dictionary.
[6] Willard B. Riano, Fundamental of Civil Procedure, 2005 Edition, p. 621.
[7] Rollo, pp. 268 and 270.

the mistake and negligence referred to by petitioner do not warrant a partial new trial.

Petitioner further argues that upon discovery of the inaccuracy of the CPA's Report, this Court should have not immediately disallowed the amount of P3,310,109.20 but required petitioner to present additional evidence under Section 11 of Rule 32 of the Revise Rules of Court, which reads:

> "**SEC. 11. Hearing upon report.** –Upon the expiration of the period of ten (10) days referred to in the preceding section, the report shall be set for hearing after which the court shall issue an order adopting, modifying, or rejecting the report in whole or in part, or recommitting it with instructions, or requiring the parties to present further evidence before the commissioner or the court."

The Court disagrees.

It is pointless to require petitioner to submit additional documents in support of the unutilized input tax of P3,310,109.20 in view of its admission that VAT official receipts and invoices were not even pre-marked and proffered before this Court. The VAT official receipts or invoices and the CPA Report are essential in ascertaining the validity of the taxpayer's claim for a refund or credit as ruled in ***Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue***[8] where this Court ratiocinated that:

> "The importance of the presentation of the sales invoices in spite of the submission of the CPA Report was aptly explained in the assailed Resolution, portion of which reads as follows:
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> 'xxx It is worth stressing that under CTA Circular 1-95, as amended, the "voluminous" documents supporting the claim for refund, should have been pre-marked and submitted to the court after the independent auditor shall have examined and compared

[8] As cited in CTA EB No. 49, May 17, 2005.

> them with the originals. Without these pre-marked documents, the court cannot verify the correctness of the independent auditor's conclusion. x x x The method of individual presentation of each and every receipt, invoice or account for marking, identification and comparison with the originals thereof need not be done before the Court or Clerk of Court anymore after the introduction of the summary and CPA certification. It is enough that the receipts, invoices, vouchers or other documents covering the said accounts or payments to be introduced in evidence must be premarked by the party concerned and submitted to the Court in order to be made accessible to the adverse party who desires to check and verify the correctness of the summary and CPA certification'."

During the interim of the proceedings of the case, specifically from the time of the presentation of the CPA Report during the May 7, 2003 hearing and before issuance of the Court's Decision on August 31, 2005, petitioner, through its counsel, failed to duly coordinate with the CPA nor inform this Court of the absence of the pre-marking and non-submission of VAT official receipts and invoices in support of the amount of P3,310,109.20 input tax. A party who fails to file opportunely its objections to the report of the commissioner or referee, such that the record does not disclose the objections thereto, questions relating to the report cannot be reviewed and cannot escape the legal consequences thereon.[9] Petitioner cannot shift the blame to this Court for non-compliance with Sections 10 and 11 of Rule 32 of the Rules of Court.

Once again, it bears stressing that tax refunds partake of the nature of tax exemptions which are to be strictly construed against the claimants and liberally against the taxing authority.[10] Thus, the onus of proof rests upon the petitioner

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[9] De La Rama Steamship Co. vs. National Development Co. 35 SCRA 567.
[10] BPI Leasing Corporation vs. Court of Appeals, 416 SCRA 4.

being the party who makes the allegation[11] of entitlement to a refund of the claimed amount.

In the light of the foregoing considerations, the Court finds legal basis to render this Amended Decision pursuant to Section 3, Rule 14 of the Revised Rules of the Court of Tax Appeals partially granting petitioner's motion for partial reconsideration of the assailed Decision dated August 31, 2005. However, petitioner's motion for new trial is **DENIED.**

WHEREFORE, petitioner's Motion for Partial Reconsideration is hereby **PARTIALLY GRANTED** and this Court's Decision promulgated on August 31, 2005 in the instant case is hereby **MODIFIED** partially granting the amount of P7,639.42, in addition to the original amount of P118,749,001.55 awarded herein.

Accordingly, respondent is hereby **ORDERED to REFUND** or in the alternative, **to ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner the aggregate amount of **P118,756,640.97** representing unutilized input taxes paid on its domestic purchases of goods, services and importation of goods attributable to zero-rated sales for the taxable year 2000.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[11] Rufina Patis Factory vs. Alusitain, 434 SCRA 418.

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Amended 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