REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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KEPCO PHILIPPINES CORPORATION,
Petitioner,

C.T.A. CASE NO. 6679

Members:

\- versus -

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

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

OCT 26 2005

x - x

DECISION

ACOSTA, E. P.J.:

This is a judicial claim seeking the refund of alleged input value-added tax incurred for the calendar year 2001, from petitioner's sale of electricity to the National Power Corporation in the amount of P5,670,275.63. Petitioner likewise prays that respondent be ordered to pay attorney's fees in the amount of at least P500,000.00 and the cost of suit.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal place of business located at Suite 2501-A, 25th Floor, Tektite Tower I, Exchange Road, Ortigas Centre, City of Pasig. It is a value-added tax (VAT) registered taxpayer engaged in the production and sale of electricity as an independent power producer and sells electricity to the National Power Corporation [NPC].

Petitioner, on December 22, 2000, filed with the respondent its Application for Effective Zero-Rating for its sale of electricity to the NPC for the year 2001. This application was duly approved by the respondent.

For the calendar year 2001, petitioner was a duly registered Value-Added Tax (VAT) taxpayer under the jurisdiction of Revenue District Office (RDO) No. 43 of Pasig City.

During the four (4) quarters of 2001, petitioner allegedly incurred expenses representing domestic purchases of goods and services, for which it incurred an input VAT in the amount of P5,670,275.63. The aforementioned expenses allegedly represent costs attributable to its production and sale of electricity to the NPC.

Thus, petitioner filed with the respondent, thru its RDO No. 43, claims for refund of excess input VAT incurred for the four (4) quarters of calendar year 2001 in the total amount of P5,670,275.63 on October 1, 2001, for the first two quarters and on June 24, 2002, for the third and fourth quarters.

Due to respondent's inaction on its claims and to toll the running of the prescriptive period, the instant Petition for Review was filed on April 22, 2003.

In his Answer filed on June 24, 2003, respondent raised the following Special and Affirmative Defenses:

> "6. The claim for refund is still under examination by the respondent's Bureau;
> 7. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund;
> 8. The grant of a claim for refund tanamounts *[sic]* to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
> 9. The taxes sought to be refunded were paid in accordance with the law; the burden of proof to the contrary is upon the petitioner-

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claimant to show with clear and unambiguous provision of law supporting the same."[1]

The parties stipulated the following issues for resolution of the Court:

"1. Whether or not the sale of electricity by a VAT-registered entity, as the Petitioner, to the National Power Corporation (NPC), qualifies as a sale of services subject to a VAT rate of zero percent (0%) or otherwise called a zero-rated VAT transaction.

2. Whether Petitioner, as a VAT-registered entity and during the calendar (taxable) year 2001, actually incurred expenses representing domestic purchases of goods and services and which expenses represent costs attributable to Petitioner's production and sale of electricity to the NPC.

3. Whether or not Petitioner is entitled to the refund of the total amount of P5,670,275.63, representing the input VAT incurred for the four (4) taxable quarters of the calendar(taxable) year 2001 from its sale of electricity to the NPC."[2]

The issues being interrelated and all relate to whether or not petitioner, based on the evidence presented, is entitled to the refund of the amount of P5,670,275.63 allegedly representing unutilized input VAT on domestic purchases of goods and services which are directly attributable to effectively zero-rated sales for the taxable year 2001, shall be discussed jointly.

Petitioner is a VAT-registered entity with Certificate of Registration No. OCN 3RC0000154314 dated January 1, 1997.[3] As a VAT- registered entity, petitioner filed its Quarterly VAT Returns for the four quarters of taxable year 2001 declaring, among others, the following information:

QUARTER INVOLVED	EXHIBIT	DATE FILED	ZERO-RATED SALES	INPUT TAXES
1st Qtr.	B[4]	5/30/01	P 647,453,136.79	P 682,991.08
2nd Qtr.	C	7/25/01	846,401,571.38	1,406,628.80
3rd Qtr.	D	10/25/01	827,316,739.27	1,135,229.24
4th Qtr.	E[5]	2/20/02	1,109,819,954.72	2,445,426.51
	Totals		P3,430,991,402.16	P5,670,275.63

[1] *Records, pages 50-51*
[2] *Joint Stipulation of Issues, Records, page 90*
[3] *Exhibit A*
[4] *Amended 1st Quarterly VAT Return*
[5] *Amended 4th Quarterly VAT Return*

Believing that it is entitled to the refund of input VAT attributable to the above-declared zero-rated sales of electricity to NPC, petitioner filed four separate applications for refund of input VAT with the respondent on two occasions. The first two applications[6] were made on October 1, 2001, for input VAT paid for the first and second quarters of taxable year 2001 in the sum of P2,089,619.88 (P682,991.08 + P1,406,628.80). The second two applications were made on June 24, 2002 for input VAT paid for the third and fourth quarters of 2001[7] in the total amount of P3,580,655.75 (P1,135,229.24 + P2,445,426.51).

Petitioner's claim for refund is anchored on *Section 108(B)(3) of the National Internal Revenue Code of 1997*.

The issue of whether the sale of electricity to the National Power Corporation (NPC) qualifies as a sale of services subject to VAT at zero-percent rate (0%) has already been resolved by this Court in favor of the independent power producer, such as petitioner, in a number of cases. The recent decisions regarding the matter are *Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.], vs. Commissioner of Internal Revenue, CTA Case No. 6417, August 31, 2005 and Kepco Philippines Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6287, August 31, 2005*.

The governing law is *Section 108(B)(3) of the National Internal Revenue Code in relation to Section 13 of Republic Act No. 6395 (The Revised NPC Charter)*, as amended by *Presidential Decree Nos. 380 and 938*. To quote:

> **"SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* —**
> "(A) *Rate and base of tax.* — 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:

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[6] *Exhibits G & H*
[7] *Exhibits I & J*

> "(1) xxx
> "(2) 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, Fees, 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 investments, as well as excess revenues from its operation, 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, supersedeas bonds, in any court or administrative proceedings.**" *(Emphasis supplied)*.

Clearly from the foregoing, NPC is an entity with a special charter, which categorically makes it exempt from payment of all taxes, whether direct or indirect, including VAT. Hence, by virtue of the said charter, services rendered by a VAT registered entity, like herein petitioner, to NPC are effectively subject to zero percent (0%) VAT.[8]

Moreover, in the case of ***Maceda vs. Macaraig, Jr., 223 SCRA 217,*** the Supreme Court affirmed NPC's tax exemption, thus:

> "A chronological review of the NPC laws will show that it has been the lawmaker's intention that the NPC was to be completely tax-exempt from all forms of taxes – direct or indirect.
>
> xxx xxx xxx
>
> One common theme in all these laws is that the NPC must be enabled to pay its indebtedness which, as of P.D. No. 938 was P12 Billion in total domestic indebtedness, at any one time, and US$4 Billion in total foreign loans at any one time. The NPC must be and has to be exempt from all forms of taxes if this goal is to be achieved."

Further, that petitioner filed and was granted by respondent an Application for Effective Zero-Rating for its sale of electricity to the NPC for the taxable year 2001, is among the stipulated facts by the parties.

Thus, petitioner's sale of electricity to NPC is subject to VAT at zero-percent (0%). However, before petitioner may be entitled to the claim for refund, it must substantiate its claim by compliance with the requisites laid down by law and its implementing rules and regulations:

(1) Section 112(B) of the 1997 National Internal Revenue Code which provides:

> **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.

(2) Sections 4.106-1 of Revenue Regulations No. 7-95 which states:

> "**SEC. 4.106-1. Refunds or tax credits of input tax.** — (a) Zero-rates sales of goods and properties or services – Only a VAT-registered person may be given a tax credit certificate or refund of VAT paid corresponding to the zero-rated sales of goods, properties or services, excluding the presumptive input tax and to the extent that such input tax has not been applied against the output tax. The application should be made within the two (2) years after the close of the taxable quarter when the sales were made.
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> xxx xxx xxx

(3) Section 4.104-5 of Revenue Regulations No. 7-95 quoted hereunder:

> "**SEC. 4.104-5. Substantiation of claims for input tax credit.** — (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 xxx".

In the case of *Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.] vs. Commissioner of Internal Revenue, CTA Case No. 6417, August 31, 2005*, this Court had the opportunity to again enumerate the requirements in order

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[6] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6287, August 31, 2005*

to be entitled to the refund of input VAT on purchases of goods and services attributable to zero-rated sales:

1. Both the administrative and judicial claims for refund were filed within the two year prescriptive period;
2. The claimed input VAT payments are directly attributable to zero-rated sales;
3. The claimed input VAT payments are duly supported by VAT invoices or official receipts and;
4. The claimed input VAT payments were not applied against any output tax carried over to the succeeding month(s).

Were the administrative and judicial claims for refund filed within the two-year prescriptive period?

For purposes of computing the two-year prescriptive period, the counting should be reckoned from the date of the filing of the corresponding original quarterly VAT return.[9]

The instant claim covers the four quarters of taxable year 2001. For the first quarter, petitioner merely presented its Amended Quarterly VAT Return. Without the presentation of the VAT return originally filed by petitioner for the said quarter, the Court cannot ascertain whether petitioner's claim for the 1st quarter in the amount of P682,991.08 was timely filed. Hence, the Court deems it proper to disallow the amount of P682,991.08 from the total claim of P5,670,275.63.

Anent the claims for the second and third quarters, records reveal that the corresponding original VAT returns were filed on July 25, 2001 and October 25, 2001, respectively. Counting from these dates, petitioner had until July 25, 2003 and October 27, 2003[10] within which to file its claim for the said quarters both in the administrative and judicial levels. Since the administrative claim for refund was filed on October 1, 2001 for the 2nd quarter and June 24, 2002 for the 3rd quarter and the

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[9] *Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.] vs. Commissioner of Internal Revenue, supra*
[10] *October 25, 2003 being a Saturday*

Petition for Review on April 22, 2003, the claims for refund for the 2nd and 3rd quarters in the respective amounts of P1,406,628.80 and P1,135,229.24 fall within the two-year prescriptive period.

Regarding the claim for the 4th quarter in the amount of P2,445,426.51, petitioner presented its amended VAT return filed on February 20, 2002. Unlike the claim for the first quarter, the submission of the original VAT return is no longer necessary because even if petitioner filed its 4th quarterly VAT return earlier than the supposed date of filing, which is January 25, 2002, the same falls within the two-year period.

Based on the foregoing, petitioner partially complied with the first requirement.

Were the claimed input VAT payments directly attributable to zero-rated sales?

As to the second requisite, petitioner presented in evidence the Rehabilitation, Operation, Maintenance and Management Agreement between the National Power Corporation and Korea Electric Power Corporation and the Accession Undertaking of petitioner[11]. Petitioner likewise presented the various official receipts it issued to the National Power Corporation as follows:

Exhibit	Date Issued	Amount
O	3/7/2001	P 74,805,719.27
O-1	4/6/2001	74,809,416.27
O-2	6/5/2001	74,783,865.75
O-3	5/4/2001	67,339,449.22
O-4	7/4/2001	72,324,894.68
O-5	8/7/2001	74,432,437.91
O-6	9/6/2001	72,253,521.24
O-7	10/8/2001	74,713,164.44
O-8	11/7/2001	73,918,480.44
O-9	12/5/2001	71,483,260.05
	Total	*** P730,864,209.27**

[11] *Exhibits K & K-1*

* Two official receipts (*Exhibits O-10 & O-11*) are denied for dates were in 2002.

In its Quarterly VAT Returns, petitioner declared zero-rated sales in the aggregate amount of P3,430,991,402.16, broken down as follows:

1st Quarter	P 647,453,136.79
2nd Quarter	846,401,571.38
3rd Quarter	827,316,739.27
4th Quarter	1,109,819,954.72
Total	**P3,430,991,402.16**

From the foregoing, it can easily be seen that petitioner failed to substantiate all its declared zero-rated sales. Hence, the Court is constrained to allocate the input taxes against the substantiated zero-rated sales. Petitioner's total claim for refund of P5,670,275.63 input VAT is attributable to zero-rated sales in the amount of P3,430,991,402.16. However, since petitioner was able to substantiate zero-rated sales in the aggregate amount of P730,864,209.27 then only an aliquot portion of the total input VAT thereto may be subject of a refund pursuant to Section 112 of the 1997 National Internal Revenue Code and Section 12 of Revenue Regulations No. 5-87, computed as follows:

Substantiated Zero-rated Sales	P 730,864,209.27
Divided by Total Declared Zero-rated Sales	P3,430,991,402.16
Ratio of Substantiated Sales to Total Declared Sales	21%

Therefore, only 21% of the allowable input VAT may be a proper subject of a claim for refund.

Were the claimed input VAT payments duly supported by VAT invoices or official receipts?

Based on the findings of the commissioned independent CPA[12], the following amounts should be disallowed:

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[12] *Exhibit P*

	Annex	Total
Amount of Input VAT claimed	A	P5,670,275.64
• Invoices and/or statements of account and/or official receipts subject to overseas communication tax	B	(104,987.50)
• Input VAT recognized for unpaid service Invoices and/or statements of accounts	C	(58,559.23)
• Erroneous amounts indicated in the Schedule of Input VAT as compared to related invoices or statements of account or official receipts resulting to net overstatement of the Input VAT Claim	D	(10,431.28)
• Erroneous rate used for input VAT recognized and recorded in the books	E	817.36
		P5,497,114.99

Likewise, after careful scrutiny, the Court also notes that the following input VAT payments in the sum of P199,993.55 were not duly supported by valid VAT invoices or official receipts in accordance with *Section 4.104-5 of Revenue Regulations No. 7-95 in relation to Sections 113 and 237 of the NIRC of 1997*, to wit:

Exhibit	Supplier	Reference Number	Tax Base	Input VAT
(a) Purchase of goods/services not in the name of KEPCO				
P-18-F	Photoline Entrp	OR 9884	P 105.50	P 10.55
P-18-N	Allied Seal Auto Supply	SI 252728	3,627.27	362.73
P-19-OO	NE Measures	OR 187	1,272.70	127.27
P-19-P	Tanay Hardware & Const.	SI 8196	690.91	69.09
P-19-PP	Hi-Octane Motorist Center	OR 38820	398.20	39.82
P-19-QQ	Hi-Octane Motorist Center	OR 01918	300.00	30.00
P-20-AA	Ruvyrich Trading	SI 7704	68.18	6.82
P-20-C	MF Trading	SI 12158	127.60	12.76
P-20-Z	Ruvyrich Trading	SI 6602	540.91	54.09
P-21-B	Allied Seal Auto Supply	SI 258031	1,818.18	181.82
P-21-C	Black Sea Marine Services	SI 646	1,318.18	131.82
P-23-K	Christine Auto Supply	SI 18315	581.80	58.18
P-24-B	Data Hardware	SI 09890	136.36	13.64
P-26-S	Pililla Shell Filing Station	SI 123686	528.00	52.80
P-26-T	Pililla Shell Filing Station	SI 123839	539.00	53.90
P-26-U	Pililla Shell Filing Station	SI 124254	550.00	55.00
P-28-LL	Maya Parts Enterprises	SI 280324	1,927.30	192.73
P-28-S	Robinson's		81.59	8.16
P-29-I	Pililla Shell Filing Station	SI 125489	454.50	45.45

P-29-J	Pililla Shell Filing Station	SI 125578	454.50	45.45
P-30-K	Milwaukee Builders Center	SI 1113	54.09	5.41
P-32-AA	CG&E Shell Service	SI 32053	545.40	54.54
P-32-CC	Shell Station	SI 4516/7179	1,272.80	127.28
P-32-EE	Cityfill Service Station	SI 171616	181.80	18.18
P-33-CCC	Allied Seat Auto	SI 268762	972.80	97.28
P-34-A	Hi-Octane Motorist Center	SI 34649	454.50	45.45
P-35-AA	MIA Caltex	SI 221784	454.50	45.45
P-35-S	Alabang Gas & Service	SI 126540	181.80	18.18
P-35-T	Alabang Gas & Service	SI 101467	272.70	27.27
P-35-X	Gashouse Mdsg	SI 80551	636.40	63.64
P-35-Y	Harvard Service Center	SI 586131	454.50	45.45
P-35-Z	MS Petron Service Station	SI 293345	636.40	63.64
P-38-FFF	Gashouse Mdsg	SI 176027	636.40	63.64
P-38-GGG	Gashouse Mdsg	SI 191100	454.55	45.46
P-38-HHH	Gashouse Mdsg	SI 56678	454.55	45.46
P-38-III	Harvard Service Center	SI 102067	454.55	45.46
P-38-WW	Edsa/Boni Serv Ctr	OR 572916	90.90	9.09
P-38-XX	Edsa/Boni Serv Ctr	OR 602281	454.50	45.45
P-38-Z	Caltex South Serv Rd	SI 549503	309.10	30.91
P-40-A	Allied Seat Auto	SI 272409	1,054.50	105.45
P-41-O	F. Fernando Auto Supply	SI 200742	90.90	9.09
P-41-P	NE Manzures Aircon	SI2145	272.70	27.27
P-41-Q	Powerway Mktg	SI 1910	90.90	9.09
P-41-R	Powerway Mktg	SI 1909	3,318.30	331.83
P-42-C	Bulawan Floating Restaurant	OR 1734	672.70	67.27
P-42-G	Caltex Service Station	SI 232803	636.40	63.64
P-42-QQ	Gashouse Mdsg	SI 126666	454.50	45.45
P-43-HH	Photo Shoppe & Gen Mdse	SI 68293	209.10	20.91
P-43-NN	Quisao Hardware	SI 16417	909.10	90.91
P-43-OO	Quisao Hardware	SI 15783	69.10	6.91
	Subtotal		**P 32,271.12**	**P 3,227.11**

(b) Purchase of goods/services supported only by statement of account or billing statement

P-18-B	Globe Telecom	Various	P 25,911.10	P 2,591.11
P-18-MM	PLDT	1900396537	30,452.30	3,045.23
P-18-S	PLDT	Various	5,181.60	518.16
P-20-A	PLDT	Various	5,181.80	518.18
P-20-L	Globe Telecom	Various	4,701.90	470.19
P-21-BB	Globe Telecom	Various	6,317.70	631.77
P-21-G	PLDT	Various	35,852.90	3,585.29
P-21-K	Globe Telecom	Various	24,869.30	2,486.93
P-23-D	Fairways & Bluewater Resort		109,090.90	10,909.09
P-23-I	PLDT	Various	3,359.90	335.99
P-23-V	PLDT	Various	19,005.20	1,900.52
P-24-D	Globe Telecom	Various	6,802.20	680.22
P-25-B	PLDT	Various	5,449.20	544.92
P-26-Y	Globe Telecom	Various	7,427.80	742.78
P-27-A	PLDT	Various	5,358.40	535.84
P-28-V	Globe Telecom	Various	26,530.70	2,653.07
P-29-F	Globe Telecom	Various	8,727.40	872.74
P-29-Y	PLDT	Various	5,592.00	559.20
P-31-H	Globe Telecom	Various	19,996.40	1,999.64

P-31-II	PLDT	Various	35,472.70	3,547.27
P-32-B	PLDT	Various	5,699.20	569.92
P-34-VV	PLDT	Various	5,479.20	547.92
P-37-B	Globe Telecom	Various	27,313.50	2,731.35
P-37-FF	PLDT	Various	5,479.00	547.90
P-38-C	Globe Telecom	21827836	1,219.10	121.91
P-41-DD	Eastern Telecoms		351.30	35.13
P-41-T	PLDT	Various	5,538.40	553.84
P-42-DD	Eastern Telecoms	Various	2,878.70	287.87
P-42-WW	INFOCOM	B-722493	30,000.00	3,000.00
P-42-XX	INFOCOM	B-681872	30,000.00	3,000.00
P-43-BB	PLDT	Various	130,050.00	13,005.00
P-43-CC	PLDT	Various	66,578.40	6,657.84
P-43-DD	PLDT	Various	48,025.60	4,802.56
P-43-EE	PLDT	Various	5,526.80	552.68
P-43-FF	PLDT	Various	46,503.00	4,650.30
P-43-J	MAPFRE Asian Insurance	SA 6750017	16,787.50	1,678.75
	Subtotal		**P 818,711.10**	**P81,871.11**

(c) Purchase of goods/services supported by NONVAT invoice, TAN official receipt

P-31-PP	Caltex North Point	SI 036571	P 450.50	P 45.45
P-26-LL	Filipinas Fabricators & Sales	OR 985	120,788.20	12,078.82
	Subtotal		**P 121,242.70**	**P 12,124.27**
	Total		**P 972,224.92**	**P 97,222.49**

Out of the total claimed input VAT payments of P5,670,275.63, only the amount of P4,716,901.41 are fully substantiated for VAT purposes, computed as follows:

Total Claim for Refund			P5,670,275.63
Less: Disallowances			
(a) Per commissioned independent CPA's verification		P173,160.65	
(b) Per Court's further verification			
i. Without Original Quarterly VAT Return	P682,991.08		
ii. Invalid documents for VAT purposes	97,222.49	780,213.57	953,374.22
Validly Supported Input VAT			**P4,716,901.41**

Were the claimed input VAT payments unapplied against any output tax carried over to the succeeding month(s)?

Petitioner deducted from the total available input VAT the claim for refund for the first and second quarters of taxable year 2001 in the sum of P2,089,619.88 as shown in its second Quarterly Value-Added Tax Return for taxable year 2002.[13] Likewise, the claim for refund for the third and fourth quarters of taxable year 2001 in the total amount of P3,580,655.75 was deducted from the total available input VAT as shown in petitioner's 3rd Quarterly VAT Return for taxable year 2002.[14] Thus, petitioner was able to fully establish that the input taxes remained unapplied against any output tax.

In fine, the Court finds petitioner to have sufficiently proven its claim in the amount of P990,549.30, computed as follows:

Validly Supported Input VAT	P4,716,901.41
Multiply by Ratio of Substantiated Sales to Total Declared Sales	21%
Refundable Amount	P 990,549.30

With regard to petitioner's claim for attorney's fees and cost of suit the same cannot be granted. Although as a general rule the prevailing party as a matter of course shall be allowed to recover costs, *Section 1 of Rule 142 of the Revised Rules of Court*, provides that no cost shall be adjudged against the Republic of the Philippines unless otherwise provided for by law. The Court hereby finds that there is no basis in law for the claim of attorney's fees and costs prayed for by petitioner.

WHEREFORE, petitioner's claim for refund is **PARTIALLY GRANTED.** Respondent is hereby **ORDERED to REFUND** the petitioner the reduced amount of P990,549.30 representing unutilized input value-added tax for taxable year 2001.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

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[13] *Exhibit L*
[14] *Exhibit M*

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Chairperson, First Division
Presiding Justice