

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

**HYDRO-ELECTRIC DEVELOPMENT
CORPORATION,**

Petitioner,

- versus -

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

C.T.A. CASE NO. 7263

Members:

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

Promulgated:

MAR 12 2010 ; 1:35 pm

X ----- X

AMENDED DECISION

CASANOVA, JJ:

For this Court's resolution is petitioner's *Motion for Reconsideration* filed on September 12, 2008, seeking the reconsideration of this Court's *Decision* dated August 20, 2008, which denied the *Petition for Review* due to insufficiency of evidence.

In its *Motion for Reconsideration*, petitioner enumerated a lengthy assignment of errors, which are quoted as follows:

"I.

The denial of petitioner's claim for refund on the basis that petitioner had not established that its claimed input taxes were not carried over or applied against any output tax liability in the succeeding quarters has no basis in law and fact. Petitioner established that the input taxes subject of refund cover the taxable year 2003 were not carried over as input tax in its January 2004 VAT return. Unless the Respondent raised the issue of the said input taxes being carried forward to 2004 and unless contrary proof is presented by 

Respondent there is no reason to present other evidences which will establish the same fact.

II.

The disallowance of certain invoices forming part of petitioner's zero-rated sales on the basis that the same failed to comply with on Revenue Regulations (RR) No. 7-95 and Section 4.108-1 of said RR constitutes as an expansion of the requirements of the 1997 Tax Code on the issuance of official receipts and invoices found in Section 113 and 237 of the said code. Such additional requirements imposed by the RR and the sanction imposed by the Honorable Court of Tax Appeals find no basis in the tax code and is beyond the express intent of legislature. Such an interpretation if pursued would result in the violation of the constitutional mandate of separation of powers.

III.

The entire sale of generated electricity made by petitioner is subject to VAT at zero percent (0%). The apportionment of petitioner's proven zero-rated sales to its input taxes has no basis in law. Petitioner is entitled to 100% of the total of its input taxes duly substantiated and not only to 86.82%."

Petitioner likewise attached documents as annexes to its *Motion for Reconsideration*, particularly, certified photocopies of its Monthly Value-added Tax (VAT) Declarations and Quarterly VAT Returns for taxable year 2004, in support of the first assigned error.

In a *Resolution* promulgated on May 28, 2009, this Court found the second and third assigned errors unmeritorious, but allowed petitioner to present and to formally offer to the Court the said documents attached to its *Motion* for evaluation and consideration. Consequently, the resolution of the first assigned error was held in abeyance.

The case was then set for the presentation and for the marking of petitioner's additional documentary evidence. Petitioner presented Exhibits "XX" to "III", inclusive of submarkings, which are either originals or certified true copies 

of the original documents.

Petitioner filed its *Additional Formal Offer of Evidence* on July 21, 2009, submitting Exhibits "XX" to "III", inclusive of submarkings, which are hereby admitted.

After the presentation and formal offer of its additional evidence, petitioner filed a *Manifestation with Motion for Clarification* purportedly to seek clarification of the *Resolution* dated May 28, 2009, which held in abeyance the resolution of its *Motion for Reconsideration* until it submits and formally offers the documentary evidence it attached to the said *Motion for Reconsideration* and which it seeks to be admitted into evidence. Inasmuch as it had already formally offered the said evidence, the prayer for clarification is rendered moot.

Hence, this *Amended Decision*.

Since the second and third assigned errors were already found by this Court as untenable in the *Resolution* dated May 28, 2009, only the afore-quoted first ground will be resolved.

In the assailed *Decision*, this Court found that only the amount of P858,516.49 was duly substantiated by VAT invoices or receipts and timely filed within the two-year prescriptive period, out of petitioner's total claim in the amount of P2,209,934.38, representing unutilized input VAT on its domestic purchases of goods and services, which are attributable to its VAT zero-rated sales of power generation services to the National Power Corporation (NPC) for the period covering January 2003 to December 2003.¹

The Court, however, still denied the substantiated input VAT claim of P858,516.49, on the ground that the amended Monthly VAT Declaration for 

¹ Docket, p. 615

January 2004 submitted by petitioner was insufficient to prove that the input VAT claim of P858,516.49 was not applied against any output VAT in the succeeding quarters. The pertinent portions of the subject *Decision* are hereunder quoted for easy reference, to wit:

“Nonetheless, before petitioner can validly claim for a refund or tax credit, it is imperative to prove that the claimed input taxes were not carried over or applied against any output liability in the succeeding quarters.

Petitioner proffered its Amended Monthly VAT Return for the month of January 2004. The return shows that there was no input tax carried over from the previous quarter. However, the said document was insufficient to prove as to input taxes applied against any output VAT liability for the succeeding quarters.

It bears stressing that prior to the filing of the January 2004 Amended Monthly VAT Return which was filed on March 21, 2005, petitioner, as the law requires, should have already filed its VAT Returns for the four taxable quarters of 2004. These VAT returns should have been introduced by the petitioner in order to establish that the claimed input taxes were not actually applied in the said periods.

Thus, for failure of the petitioner to sufficiently prove that the substantiated input taxes of P858,516.49 was not applied against any output VAT liability in the succeeding quarters, the same cannot be granted.”

On July 21, 2009, petitioner formally offered in evidence its amended Monthly VAT Declarations² for the months of February, April, May, July, August, October, and November 2004 and Quarterly VAT Returns³ for the first, second, third, and fourth quarters of 2004, previously attached to its *Motion*.

A perusal of these documents, together with the previously presented amended Monthly VAT Declaration⁴ for January 2004, shows that no amount of “Input Tax Carried Over from Previous Quarter” was reflected in each of the 

² Exhibits “YY”, “AAA”, “BBB”, “DDD”, “EEE”, “GGG”, and “HHH”

³ Exhibits “ZZ”, “CCC”, “FFF”, and “III”

⁴ Exhibits “LL” and “LL-5”

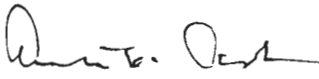
Returns⁵; thus, sufficiently establishing that the substantiated input VAT claim of P858,516.49 for taxable year 2003 was not applied or credited against any output VAT in the succeeding quarters. Accordingly, the Court finds petitioner entitled to the refund of the amount of P858,516.49, representing the latter's unutilized input VAT attributable to effectively zero-rated sales of electricity to NPC for the second, third, and fourth quarters of 2003.

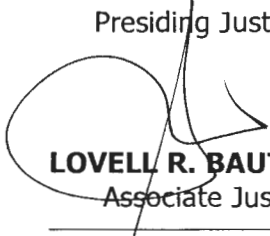
WHEREFORE, premises considered, petitioner's *Motion for Reconsideration* is hereby **PARTIALLY GRANTED** and this Court's *Decision* dated August 20, 2008 is hereby **MODIFIED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **EIGHT HUNDRED FIFTY-EIGHT THOUSAND FIVE HUNDRED SIXTEEN PESOS AND 49/100 (P858,516.49)** in favor of petitioner, representing petitioner's unutilized input VAT attributable to effectively zero-rated sales of electricity to the National Power Corporation for the second, third, and fourth quarters of 2003.

SO ORDERED.


CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

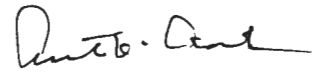

ERNESTO D. ACOSTA
Presiding Justice


LOVELL R. BAUTISTA
Associate Justice

⁵ Exhibits "YY-2", "ZZ-3", "AAA-2", "BBB-2", "CCC-3", "DDD-2", "EEE-2", "FFF-3", "GGG-2", "HHH-2", and "III-3"

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