REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION
****

SAN ROQUE POWER CORPORATION,
Petitioner,

C.T.A.CASE NO. 6647

Members:

- versus -

CASTAÑEDA, JR., *Chairman*
UY, and
PALANCA-ENRIQUEZ, *JJ.*

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 0 8 2006

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DECISION

UY, *J.*:

This case involves a claim for refund or issuance of a tax credit certificate in the sum of P560,200,283.14 allegedly representing unutilized input value-added tax (VAT) paid on purchases of capital goods and other taxable goods and services for the period January 1, 2001 to December 31, 2001.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at Barangay San Roque, San Manuel, Pangasinan. It was incorporated on October 1997 to design, construct, erect, assemble, own, commission and operate power-generating plants and related facilities pursuant to and under contract with the Government of the Republic of the Philippines, or any subdivision, instrumentality or agency thereof, or any government-owned or controlled corporation, or

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other entity engaged in the development, supply, or distribution of energy. On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, empowered, among others, to act upon and approve claims for refund or tax credit, with office at the BIR National Office Building, Diliman, Quezon City.

As a seller of services, petitioner is duly registered with the Bureau of Internal Revenue (BIR) with TIN/VAT No. 005-017-501. It is likewise registered with the Board of Investments (BOI) on a preferred pioneer status, to engage in the design, construction, erection, assembly, as well as to own, commission, and operate electric power-generating plants and related activities, for which it was issued Certificate of Registration No. 97-356 on February 11, 1998 (*Joint Stipulation of Facts and Issues, Facts Admitted, pars. 4 & 5, Records, p. 157*).

On October 11, 1997, petitioner entered into a Power Purchase Agreement ("PPA") with the National Power Corporation ("NPC") to develop the hydropotential of the Lower Agno River and generate additional power and energy for the Luzon Power Grid, by building the San Roque Multi-Purpose Project located in San Manuel, Pangasinan. The PPA provides, among others, that petitioner shall be responsible for the design, construction, installation, completion, testing and commissioning of the Power Station and shall operate and maintain the same, subject to NPC instructions. During the cooperation period of twenty-five (25) years commencing from the completion date of the Power Station, NPC will take and pay for all electricity available from the Power Station (*Ibid, par. 6, Records, p. 157*). In other words, the electricity to be generated by the Power Station will be sold to and purchased by NPC in its entirety.

Relative to the construction and development of the San Roque Multi-Purpose Project which comprises of the dam, spillway and power plant, petitioner allegedly incurred excess input VAT in the amount of P559,709,337.54 for taxable year 2001. In its Quarterly VAT Returns filed for the same year, petitioner declared the excess input VAT of P559,709,337.54 as follows:

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DATE OF FILING	EXH	2001	OUTPUT VAT (a)	INPUT VAT DOMESTIC PURCHASES (b)	INPUT VAT IMPORTATION OF GOODS (c)	INPUT VAT TOTAL (b) + (c)	INPUT VAT EXCESS (b) + (c) – (a)
Apr. 25, 2001	H	1st qtr	P11,509.09	P85,720,550.03	P 35,861,578.44	P121,582,128.47	P121,570,619.38
Jul. 25, 2001	J	2nd qtr		99,360,017.68	42,654,271.27	142,014,288.95	142,014,288.95
Oct. 23, 2001	L	3rd qtr		89,303,638.66	84,605,797.00	173,909,435.66	173,909,435.66
Jan. 24, 2002	N	4th qtr		94,519,325.55	27,695,668.00	122,214,993.55	122,214,993.55
				P368,903,531.92	P190,817,314.71	P559,720,846.63	P559,709,337.54

However, on March 28, 2003, petitioner simultaneously amended the said returns reflecting an increased unutilized input VAT amount of P560,200,283.14 for the year 2001, detailed as follows:

EXH.	2001	OUTPUT VAT (a)	INPUT VAT DOMESTIC PURCHASES (b)	INPUT VAT IMPORTATION OF GOODS (c)	INPUT VAT TOTAL (b) + (c)	INPUT VAT EXCESS (b) + (c) – (a)
I	1st qtr	P11,509.09	P 86,335,128.41	P 35,861,578.44	P 122,196,706.85	P 122,185,197.76
K	2nd qtr		97,641,517.86	42,654,271.27	140,295,789.13	140,295,789.13
M	3rd qtr		90,938,205.27	84,605,797.00	175,544,002.27	175,544,002.27
O	4th qtr		94,479,625.98	27,695,668.00	122,175,293.98	122,175,293.98
			P 369,394,477.52	P 190,817,314.71	P560,211,792.23	P 560,200,283.14

Petitioner duly filed with the BIR separate claims for refund, in the total amount of P559,709,337.54, representing unutilized input taxes as declared in its VAT returns for taxable year 2001, enumerated as follows:

Exhibit	Date Filed	Period Covered	Amount of Claim
EE	July 10, 2001	Jan 1 to Mar 31, 2001	P 121,570,619.38
FF	October 10, 2001	Apr 1 to June 30, 2001	142,014,288.95
GG	February 21, 2002	Jul 1 to Sept. 30, 2001	173,909,435.66
HH	May 9, 2002	Oct. 1 to Dec. 31, 2001	122,214,993.55
			P 559,709,337.54

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In view of the filing of its amended VAT returns for the four quarters of 2001, petitioner filed with the BIR on March 28, 2003 separate amended claims for refund in the aggregate amount of P560,200,283.14 (*Exhibits "II to LL"*). Respondent's inaction on its claims led to the filing of the instant Petition for Review on April 10, 2003 by petitioner.

In his Answer filed on June 9, 2003, respondent presents the following Special and Affirmative Defenses, to wit:

" 7. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the Bureau of Internal Revenue;

8. To support its claim, it is imperative for petitioner to prove the following to wit:

a) The registration requirements of a Value Added Taxpayer pursuant to Section 6 (a) & (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1(a) of Revenue Regulations No. 7-95.

b) That the VAT input taxes of Php 559,709,337.54 allegedly paid by petitioner from its importation and purchases of capital goods and other taxable goods and services were attributable to its zero-rated sales and such tax has not been applied against any output tax.

c) The petitioner's claim for tax credit or refund of the excess Input Value Added Tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 4.106-1 (Re: Refunds or Tax Credits of Input Tax) and Section 4.106-2 (Re: Procedures for Claiming Refunds or Tax Credits of Input Tax) of Revenue Regulations No. 7-95.

d) That petitioner's domestic purchases of services were made in the course of its trade or business, properly supported by invoices or receipts and import entry or other equivalent documents showing that it actually paid VAT in pursuance to Section 4.104-5 (a) & (b) of Revenue Regulation No. 7-95 (Re: Substantiation of Claims for Input Tax Credit).

e) The requirements as enumerated under Section 4.104-2 of the Rev. Reg. 7-95. (Re: Persons who can avail of the Input Tax Credits).

f) That 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.

9. Furthermore and consistent with the settled principle in taxation, claims for refund are construed strictly against claimant as they partake the nature of exemption from tax and it is incumbent upon petitioner to prove that it is entitled thereto under the law. Failure to prove the same is fatal to its claim for tax refund. Exemptions from taxation are highly disfavored in law and he who claims for 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 the vague implications. [Asia Petroleum Co., v. Llamas 49 Phil. 646], (Answer, Records, pp. 105 – 106)."

In their Joint Stipulation of Facts and Issues filed on October 24, 2003, the parties submitted the following issues for Our resolution:

1. Whether or not petitioner has incurred input taxes in the amount of P560,200,283.14, on its purchases of capital goods and other taxable goods and services;

2. Whether or not the accumulated input VAT of P560,200,283.14 arising from petitioner's purchases of capital goods and other taxable goods and services for the period of January 1 to December 31, 2001 are properly substantiated by VAT invoices and receipts.

3. Whether or not petitioner's local purchases and importations of goods, as well as its purchases of services, including its purchases of capital goods, are attributable to Petitioner's VAT zero-rated activity;

4. Whether or not petitioner has applied or utilized its accumulated input VAT incurred in the purchases of capital goods and other taxable goods and services for the period January 1, to December 31, 2001 to the succeeding quarters;

5. Whether or not petitioner is entitled to a tax credit certificate/refund in the amount of P560,200.283.14 representing unutilized input VAT paid on its purchases of capital goods and other taxable goods and services for the period of January 1 to December 31, 2001;

6. Whether or not petitioner's claim for tax credit or refund of excess input VAT was filed within the statutory prescriptive period in accordance with Sections 229 and 112 (D) of the Tax Code, as amended, in relation to Section 4.112-2(c) of Revenue Regulations No. 7-95.

Petitioner anchors its claim on Sections 112(A) and (B) of the National Interna Revenue Code (NIRC) of 1997, which read:

"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,

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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.

"(B) *Capital Goods*. — A VAT registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made."

Section 112(A) of the NIRC of 1997, as aforequoted, allegedly allows the refund/tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales. Petitioner posits that its sale of electricity to NPC is effectively zero-rated pursuant to Section 108(B)(3) of the NIRC of 1997 in relation to Section 13 of Republic Act No. 6395, otherwise known as the NPC Revised Charter.

<u>Sec. 108(B)(3) of the NIRC reads:</u>

"SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.*

xxx xxx xxx

"(B) *Transactions Subject to Zero Percent (0%) Rate.* — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

xxx xxx xxx

"(3) <u>Services rendered to persons or entities whose exemption under special laws</u> or international agreements to which the Philippines is a signatory <u>effectively subjects the supply of such services to zero percent (0%) rate</u>". *(Underlining supplied)*

<u>Sec. 13 of R.A. 6395 provides:</u>

"Sec. 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

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> 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)*

Petitioner stresses that Republic Act (R.A.) No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001, which took effect on June 26, 2001, specifically Section 6 thereof, as well as its Implementing Rules and Regulations (IRR) which took effect on March 22, 2002, likewise confirm the zero-rated nature of the sale of generated power by generation companies to NPC. Section 6 of R.A. No. 9136 and the corresponding IRR provide, respectively:

> SEC. 6. *Generation Sector.* - x x x
>
> xxx xxx xxx
>
> Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated.
>
> Rule 5. Generation Sector. -
>
> xxx 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 DOF, through the BIR, shall issue the necessary revenue regulation within sixty (60) calendar days from effectivity of these Rules.

Petitioner further points out that the respondent, through the Chief of Audit Information, Tax Exemption and Incentive Division, had approved its application for zero-rating for the period January 1, 2001 to December 31, 2001 *(Joint Stipulation of Facts, Facts Admitted, par. 9, Records, p. 158)*.

As consistently held by this Court in previous similar cases, 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 in accordance with Section 108(B)(3) of the NIRC of 1997.

Moreover, the Supreme Court in its Resolution dated June 8, 1993, affirmed NPC's tax exemption in the case of *Maceda vs. Macaraig, Jr.,* stating 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 (*223 SCRA 217*)."

However, a cursory examination of petitioner's amended quarterly VAT returns for 2001 (*Exhibits "I, K, M, and O"*) reveals that it had no record of zero-rated or effectively zero-rated sales. It is clear from the provisions of Section 112(A) of the NIRC of 1997 that in order to claim for a refund/tax credit of input VAT, there must be zero-rated sales or effectively zero-rated sales to which the input VAT sought to be refunded are attributable. Consequently, petitioner's claimed input VAT which are allegedly attributable to effectively zero-rated sales cannot be granted.

With respect to petitioner's claim for refund/tax credit of input VAT attributable to capital goods purchases, petitioner has to prove the following:

1.) That it is a VAT registered entity;

2.) That input taxes claimed were paid on capital goods duly supported by VAT invoices and official receipts;

3.) That it did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and

4.) That the claim for refund was filed within the two-year prescriptive period both in the administrative and judicial levels *(BASF Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6283, February 10, 2004, affirmed on January 5, 2006 in CTA E.B. No. 47)*

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Based on the evidence presented by petitioner, only the first, third and fourth requisites were proven. Petitioner however failed to comply with the second requirement necessitating that its input taxes as substantiated by VAT invoices and official receipts, cover the purchase of capital goods. We shall elaborate.

The fact that petitioner is a VAT registered entity is admitted (*par. 4, Facts Admitted, Joint Stipulation of Facts, Records, p. 157*). It was also established that the instant claim of P560,200,823.14 is already net of the P11,509.09 output tax declared by petitioner in its amended VAT return for the first quarter of 2001. Moreover, the entire amount of P560,200,283.14 was deducted by petitioner from the total available input tax reflected in its amended VAT returns for the last two quarters of 2001 and first two quarters of 2002 (*Exhibits M-6, O-6, OO-1 & QQ-1*). This means that the claimed input taxes of P560,200,283.14 did not form part of the excess input taxes of P83,692,257.83 as of the second quarter of 2002 that was to be carried-over to the succeeding quarters. Further, petitioner's claim for refund/tax credit certificate of excess input VAT was filed within the two-year prescriptive period reckoned from the dates of filing of the corresponding quarterly VAT returns.

For the first, second, third and fourth quarters of 2001, petitioner filed its VAT returns on April 25, 2001, July 25, 2001, October 23, 2001 and January 24, 2002 respectively (*Exhibits "H, J, L and N"*). These returns were all subsequently amended on March 28, 2003 (*Exhibits "I, K, M and O"*). On the other hand, petitioner originally filed its separate claims for refund on July 10, 2001, October 10, 2001, February 21, 2002 and May 9, 2002 for the first, second, third and fourth quarters of 2001, respectively, (*Exhibits "EE, FF, GG and HH"*) and subsequently filed amended claims for all quarters on March 28, 2003 (*Exhibits "II, JJ, KK and LL"*). Moreover, the Petition for Review was filed on April 10, 2003. Counting from the respective dates when petitioner originally filed its VAT returns for the first, second, third and fourth quarters of 2001, the administrative claims for refund (original and amended) and the Petition for Review fall within the two-year prescriptive period.

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With respect to petitioner's claim that its input VAT pertains to capital goods purchases, it maintains that since its existence and sole purpose is for the production of electricity for sale to NPC, all input VAT incurred by and passed on to petitioner to build and construct the San Roque Multi-Purpose Project, such as the engineering and procurement services, the building of the dam and spillway and design services, are in the nature of input taxes paid on capital goods pursuant to Section 4.106-1 of Revenue Regulations No. 7-95, which states:

> **SEC. 4.106-1. Refunds or tax credits of input tax.** – x x x
>
> xxx xxx xxx
>
> **(b) Capital Goods** – x x x
>
> xxx xxx xxx
>
> "*Capital goods or properties*" refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29(f), used directly or indirectly in the production or sale of taxable goods or services. (Underlining supplied).

According to petitioner, the pertinent rules on Property, Plant and Equipment based on International Accounting Standards (IAS) 16, provide, to wit:

> "***6. Definitions***
>
> *Property, plant and equipment are tangible assets that:*
>
> *(a) are held by an enterprise for use in the production or supply of goods or services, for rental to others, or for administrative purposes; and*
>
> *(b) are expected to be used during more than one period.*
>
> *xxx.*
>
> *Cost is the amount of cash or cash equivalents paid or the fair value of the other consideration given to acquire an asset at the time of its acquisition or construction.*
>
> *xxx.*
> ***Recognition of Property, Plant and Equipment***
>
> *7. An item of property, plant and equipment should be recognized as an asset when:*

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(a) it is probable that future economic benefits associated with the asset will flow to the enterprise; and
(b) the cost of the asset to the enterprise can be measured reliably.

xxx.

Initial Measurement of Property, Plant and Equipment

14. An item of property, plant and equipment which qualifies for recognition as an asset should initially be measured at its cost.

Components of Cost

15. The cost of an item of property, plant and equipment comprises its purchase price, including import duties and non-refundable purchase taxes, and any directly attributable costs of bringing the asset to working condition for its intended use; any trade discounts and rebates are deducted in arriving at the purchase price. Examples of directly attributable costs are:

(a) the cost of site preparation;
(b) initial delivery and handling costs;
(c) installation costs;
(d) professional fees such as for architects and engineers; and
(e) the estimated cost of dismantling and removing the asset and restoring the site, to the extent that it is recognized as a provision under IAS37, Provisions "Contingent Liabilities and Contingent Assets."

We agree with petitioner that its power plant and related facilities such as the dam and spillway can be classified as capital assets under Property, Plant and Equipment account. Therefore, all costs directly related to the building and construction thereof such as engineering and design services can be capitalized.

Nevertheless, petitioner did not submit documents such as schedule of capital goods purchased, detailed general ledger and audited financial statements to show which of the subject purchases actually formed part of its Property, Plant and Equipment account.

It must be emphasized that petitioner's instant claim relates to both capital and ordinary goods/services purchased by petitioner for the year 2001. Petitioner should have submitted documents specifically identifying the purchased goods/services related to the claimed input VAT which were included in its Property, Plant and Equipment account.

Pursuant to Section 4.106-1(b) of Revenue Regulations No. 7-95, in order that the items purchased can be classified as capital goods or properties, petitioner must show that:

1) the goods or properties have economic useful life of more than one year; 2) such goods or properties are treated as depreciable assets under Section 29(f) [now 34F of the NIRC of 1997]; and 3) they are used directly or indirectly in the production or sale of taxable goods or services.

While petitioner's power plant and related facilities such as the dam and spillway have economic useful life of more than one year and will be used directly or indirectly by petitioner in its power generation and sale of electricity to NPC, petitioner failed to prove that the related construction costs were capitalized in its books of accounts and subjected to depreciation.

Tax refunds, like exemptions, are construed strictly against the taxpayer. Petitioner as claimant, has the burden of proof to establish the factual basis of its claim for tax credit or refund ***(Citibank, N.A. vs. Court of Appeals and the Commissioner of Internal Revenue, 280 SCRA 459)***. Failure in this regard, petitioner's claim must fail.

IN VIEW OF THE FOREGOING, petitioner's claim for refund or issuance of a tax credit certificate in the amount of P560,200,283.14 allegedly representing unutilized input VAT paid purchases of capital goods and other taxable goods and services for the period January 1, 2001 to December 31, 2001 is hereby ***DENIED*** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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ATTESTATION

I attest 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTANEDA, JR.
Associate Justice
Chairman

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 Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice

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