REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

MINDANAO I GEOTHERMAL PARTNERSHIP, Petitioner,	**CTA CASE NO. 7801**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUL 10 2012 4:25 p.m.

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AMENDED DECISION

CASTAÑEDA, JR., *J.*:

This relates to the Petition for Review filed on June 27, 2008 praying that judgment be rendered ordering the respondent to refund or issue a tax credit certificate in favor of the petitioner in the amount of P8,471,410.30 allegedly representing the latter's excess and unutilized creditable input taxes attributable to zero-rated sales for the year 2006.

On March 30, 2011, this Court rendered a Decision denying the instant Petition for Review due to insufficiency of evidence. This Court found that petitioner was not able to prove that it is a generation company qualified for VAT zero-rating under Section 108(B)(7) of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (R.A.) No. 9337, and in relation to Section 4.108-3 of Revenue Regulations (R.R.) No. 16-05 and Section 4, Rule 5 of the Implementing Rules and Regulations of R.A. No. 9136. Particularly, petitioner failed to submit its Energy Regulatory Commission (ERC) registration and Certificate of Compliance which will show that it is duly authorized by the ERC to operate facilities used in the generation of electricity.

To rectify its omission, petitioner filed a Motion for New Trial on April 18, 2011, praying that the adverse Decision of March 30, 2011 be vacated and a new trial be allowed in order for it to submit the Certificate of Compliance (COC) issued by the ERC to further prove that it is a generation company and its unutilized and/or excess input tax for the year 2006 are directly attributable to its zero-rated receipts from power generation. It argued that its non-submission was due to its excusable negligence and/or honest mistake in relying in good faith on this Court's previous rulings that the submission of the Certificate of Accreditation issued by the Department of Energy (DOE) is sufficient proof that an entity is a power generation company.

In a Resolution dated August 23, 2011, petitioner's Motion for New Trial was granted in the interest of substantial justice. Hence, petitioner was allowed to present its additional evidence.

Petitioner's presentation of additional evidence ensued. On February 23, 2012, petitioner filed its Formal Offer of Evidence on New Trial. In a Resolution dated March 23, 2012, this Court admitted all the additional evidence offered by petitioner. Thus, on June 5, 2012, the instant case was submitted anew for decision.

This Court is tasked to determine whether or not petitioner is entitled to a refund or issuance of tax credit in the amount of P8,471,410.30, representing petitioner's alleged excess and unutilized input taxes attributable to zero-rated sales for the year 2006.

Petitioner anchors its claim on Section 112 (A) of the National Internal Revenue Code (NIRC) of 1997, as amended, 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: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."

From the foregoing provision of the NIRC, in order for petitioner to be entitled to a refund or tax credit of unutilized input tax attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied: ✓

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 were attributable to zero-rated or effectively zero-rated sales;
4. that the input taxes were not applied against any output tax liability; and
5. that the claim for refund was filed within the two-year prescriptive period.

Aside from the above-mentioned requisites, the present appeal of petitioner must have been filed in accordance with Section 112(C) of the NIRC, as amended by RA 9337.

As regards the first requisite, petitioner claims that its sale of generated power through renewable source of energy, particularly geothermal energy, qualifies for VAT zero-rating pursuant to Section 108(B)(7) of the NIRC, as amended by RA No. 9337, which provides:

> **"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
>
> (7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels."

The foregoing provision of law should be read in conjunction with Section 4.108-3(f) of Revenue Regulations No. 16-2005, which provides: *gr*

"SEC. 4.108-3. Definitions and Specific Rules on Selected Services.—

xxx xxx xxx

(f)Sale of electricity by generation, transmission, and distribution companies shall be subject to 10% VAT on their gross receipts: Provided, That sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels shall be subject to 0% VAT.

"Generation companies" refers to persons or entities authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity. For this purpose, generation of electricity refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of the RA No. 9136 (EPIRA). They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities."

Based on the afore-cited provisions, in order to qualify for VAT zero-rating under Section 108(B)(7) of the NIRC, as amended, petitioner must be able to prove that it is a generation company and that it is engaged in the sale of power or fuel generated through renewable source of energy.

In support of its claim, petitioner submitted and offered its Certificate of Compliance[1] issued by the ERC, Certificate of Accreditation[2] issued by the Department of Energy, Certificate of Registration[3] issued by the Bureau of Internal Revenue, letter[4] issued by PNOC-EDC to petitioner, the letter[5] of DOE to PNOC-EDC, and its invoices and official receipts[6]. gr

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[1] Exhibits JJ, KK and LL
[2] Exhibit B
[3] Exhibit A
[4] Attached to Exhibit H

The foregoing documentary evidence proved that petitioner is a generation company and that it is engaged in the sale of power or fuel generated through renewable sources of energy.

In its Quarterly VAT Returns for calendar year 2006, petitioner reported a total amount of P375,656,506.01 VAT zero-rated sales, detailed as follows:

Exhibit	Quarter	Zero-Rated Sales
D	1st Qtr - Amended	P 194,583,929.00
E	2nd Qtr	181,072,577.01
F	3rd Qtr	
G	4th Qtr	
		P 375,656,506.01

However, a careful scrutiny of the invoices and official receipts[7] issued by petitioner to PNOC-EDC for the year 2006 revealed that out of petitioner's reported zero-rated receipts for the same period in the amount of P375,656,506.01, only the amount of P282,509,173.96 is duly supported by valid VAT zero-rated official receipts, broken down as follows:

Exhibit	Zero-Rated Receipts for the Year 2006				
	Capital & Fixed Operating Cost Recovery Fee			Service Fee	Total
	US$	Exchange Rate*[8]	Peso Equivalent	Php	
AE-1				11,893,219.44	P 11,893,219.44
AE2.1	$1,024,681.19	52.6171	53,915,752.64		53,915,752.64
AE-3.2				11,735,115.00	11,735,115.00
AE-4	1,024,681.19	51.8128	53,091,601.56		53,091,601.56
AE-5.2				11,633,036.96	11,633,036.96
AE-6	1,024,681.19	51.2189	52,483,043.40		52,483,043.40
AF-2				12,568,320.70	12,568,320.70
AF-3.1	808,162.17	51.3597	41,506,966.60		41,506,966.60
AF-4.2				12,632,380.47	12,632,380.47

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[5] Attached to Exhibit H
[6] Exhibits AE-1 to AH-13.3
[7] Exhibits AE-1 to AH-13.3
[8] Based on BSP weighted average rate (http://www.bsp.gov.ph/statistics/spei_new/tab35.htm)

AF-5	756,383.96	52.1273	39,428,253.60		39,428,253.60
AF-6.2				12,783,980.79	12,783,980.79
AF-7	757,401.98	53.1567	40,260,989.83		40,260,989.83
AG-1.2				12,379,225.51	12,379,225.51
AG-2	757,401.98	52.3976	39,686,045.99		39,686,045.99
AG-3.2				12,290,766.17	12,290,766.17
AG-4	755,298.09	51.3618	38,793,469.44		38,793,469.44
AH-1				12,271,571.59	12,271,571.59
AH-7	(3,881,336.26)	49.4670	(191,998,060.77)		(191,998,060.77)
AH-8.1				5,153,495.04	5,153,495.04
Total Substantiated Zero-rated Sales for 2006					**P282,509,173.96**

Consequently, only the portion of the input VAT claim attributable to the substantiated zero-rated receipts of P282,509,173.96 will be considered by this Court for refund. The rate to be applied is based on the total declared amount of zero-rated receipts and is computed as follows:

Substantiated zero-rated receipts	P 282,509,173.96
Divided by total declared zero-rated receipts	375,656,506.01
Rate of Substantiated Zero-Rated Receipts	**75.2041212%**

Anent the second requisite, petitioner presented various suppliers' invoices and official receipts,[9] as well as, the Report[10] of the Court-Commissioned Independent Certified Public Accountant (ICPA), Mr. Michael Aguirre, in support of its claimed unutilized input taxes.

The ICPA noted the following exceptions[11] on input VAT amounting to **P778,502.00**, *viz*:

> "a) ***Decreased by P503,710.88/Annex H.1A.*** *These input VAT claims paid/incurred from the purchases of goods are not supported by original/valid sale invoices and official receipts. No original or certified true copy documents were found/presented during the audit. For*

[9] Exhibits AA.1 to AA.107.2, AB.1 to AB.122.2, AC.1 to AC.89.2, AD.1 to AD.178.2
[10] Exhibit T
[11] Exhibit T, ICPA Report, page 6

purposes of refund, the said amount cannot be considered valid because the originals of the invoices and supporting proof of payment or official receipts were not available during the review.

***b) Decreased by P112,148.19/Annex H.1B**. This amount represents input VAT claims from purchases of goods without original invoices. Although supported by official receipts, purchase of goods requires original invoice of the supplier to claim the input VAT credit. As a rule, VAT on purchases/sales of goods is recognized based on the gross selling price which the purchases pays or is obligated to pay to the seller in consideration of the sale.*

***c) Decreased by P113,332.40/Annex H.2**. This amount represents input VAT claims from purchases of services which are supported by valid 2006 invoices but paid in 2007 as indicated in the date of the official receipts. As a rule VAT on purchases/sales of services is recognized when paid/collected and not when accrued in the books.*

***d) Decreased of P39,899.40/Annex H.3**. This input VAT is computed from purchase of services without original/valid supporting documents broken down as follows:*

- *P32,707.65 representing input VAT claims without original/valid official receipts only; and*
- *P7,191.75 representing input VAT without both original/valid invoices and official receipts.*

For VAT purposes, these amounts are disallowed since no original/valid copy of proof of payment or official receipts were presented during the audit.

***e) Decreased of P9,411.13/Annex H.4-H.5**. This amount is the net effect of the input VAT computed using incorrect foreign exchange rates and VAT rate.*

In addition, I noted input VAT amounting to P47,781.50 relative to purchases of services with supporting *original/valid official receipts but the original/valid invoices were not available (Annex H.6) during the audit. I have not considered these as exceptions since the original official receipts suffice to support the input tax on purchases of services."*

This Court finds the exceptions noted by the ICPA to be in order. Furthermore, upon further scrutiny of the supporting documents presented by petitioner, this Court finds that additional input VAT amounting to **P138,613.23** will be disallowed for the following reasons:

Exceptions	Exhibit	Supplier	Input VAT
Purchase of service supported by Invoice instead of OR	"AA-63"	Ansuico Incorporated	P 6,600.00
Purchases supported by "TIN-V" OR	"AB-31.2"	Red Ball Express Ansuico Inc.	12,000.00
	"AB-72.2"	Red Ball Express Ansuico Inc.	2,400.00
	"AC-2.2"	Red Ball Express Ansuico Inc.	12,000.00
	"AC-3.2"	Red Ball Express Ansuico Inc.	5,880.00
	"AD-33.3"	Red Ball Express Ansuico Inc.	7,200.00
	"AD-34.3"	Red Ball Express Ansuico Inc.	7,200.00
	"AD-35.3"	Red Ball Express Ansuico Inc.	66,000.00
Purchases Supported by "TIN-V" Invoice	"AB-35"	Davao Central Warehouse	2,440.17
	"AB-82"	Davao Central Warehouse	1,770.89
	"AC-8"	Davao Central Warehouse	1,930.13
	"AC-22"	Davao Central Warehouse	1,814.58
	"AC-51"	Davao Central Warehouse	2,051.90
	"AC-52"	Davao Central Warehouse	1,462.99
	"AD-9"	Davao Central Warehouse	1,732.88
	"AD-104"	Davao Central Warehouse	987.33
	"AD-105"	Davao Central Warehouse	765.49
	"AD-106"	Davao Central Warehouse	2,169.81
Out-of-Period claim (OR Dated 1/5/2007)	"AD-178"	Wide Wide World Express	2,207.06
TOTAL			**P 138,613.23**

Thus, out of the P8,471,410.30 excess input VAT being claimed by petitioner, only the amount of **P7,554,295.07**, as computed below, is duly substantiated in accordance with Sections 110(A) and 113(A) of the NIRC of

1997, as amended, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of RR No. 16-2005:

Claimed Input VAT		P 8,471,410.30
Less: Exceptions		
Per ICPA	P 778,502.00	
Per this Court's findings	138,613.23	917,115.23
Substantiated Excess Input VAT		**P 7,554,295.07**

Accordingly, an allocation of the above substantiated input VAT to the verified zero-rated sales that have been accounted for would result to a refundable amount of **P5,681,141.22**, computed as follows:

Substantiated Input VAT	P 7,554,295.07
x Rate of substantiated zero-rated sales	75.2041212%
Input VAT attributable to zero-rated sales	**P 5,681,141.22**

As regards the fourth requisite, a perusal of petitioner's Quarterly VAT Returns for the year 2006 shows that the present claim is already net of petitioner's output VAT liability for the same year, as shown below:

Exhibit	Quarter	VAT Sales	Output VAT	Input VAT	Excess Input VAT
D	1st Qtr - Amended	P 4,623,665.42	P 554,839.85	P 3,450,087.30	P 2,895,247.45
E	2nd Qtr	5,180,819.36	621,698.32	2,750,598.37	2,128,900.05
F	3rd Qtr	5,118,199.92	614,183.99	1,820,852.88	1,206,668.89
G	4th Qtr	4,288,032.17	514,563.86	2,755,157.77	2,240,593.91
		P19,210,716.87	**P2,305,286.02**	**P 10,776,696.32**	**P 8,471,410.30**

Moreover, petitioner's Quarterly VAT Returns for the 1st quarter of 2007[12] and 2008[13] show that no amount of input taxes carried over from previous quarter was indicated, thus, petitioner could not have possibly utilized the input VAT of P5,681,141.22 in any other succeeding quarters. Jr

[12] Exhibit I-1
[13] Exhibit M

Finally, as to the required timely filing of the administrative claim and the Petition for Review, this Court reiterates its ruling in the earlier Decision dated March 30, 2011, to wit:

> "The present claim pertains to input VAT incurred during the four quarters of 2006. Reckoned from March 31, 2006, June 30, 2006, September 30, 2006 and December 31, 2006, the close of each taxable quarter covering taxable year 2006, petitioner had until March 31, 2008, June 30, 2008, September 30, 2008 and December 31, 2008 within which to file its claim. Therefore, petitioner's administrative claim for refund filed with the Bureau of Internal Revenue on February 5, 2008 was filed on time.
>
> As to the judicial claim filed by petitioner on June 27, 2008, this Court likewise finds the same to have been filed on time. The High Tribunal in the case of Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc. held that Section 112(D) of the NIRC clearly provides that the Revenue Commissioner has 120 days, from the date of submission of complete documents in support of the application for tax refund, within which to grant or deny the claim. In case of full or partial denial by the Revenue Commissioner, the taxpayer's recourse is to file an appeal before this Court within 30 days from receipt of the decision of the Revenue Commissioner. However, if after the 120-day period the Commissioner of Internal Revenue fails to act on the application for refund/tax credit, the remedy of the taxpayer is to appeal the inaction of the Revenue Commissioner to the Court of Tax Appeals within 30 days.
>
> Based on the above ruling, it is clear that respondent has 120 days from the submission of complete documents supporting petitioner's claim within which to decide on the refund claim. In case of denial or inaction of respondent, petitioner then has thirty days within which to file an appeal before this Court.
>
> In the present case, petitioner filed the administrative claim on February 5, 2008; counting 120 days from the filing of the said administrative claim, respondent had until June 4, 2008, within which to decide. Since respondent did not act on petitioner's administrative claim, petitioner had until July 4, 2008, within which to file its appeal before this Court, as provided under Section 112(D) of the NIRC of 1997. *Ja*

Since petitioner filed its judicial claim on June 27, 2008, which is well within the thirty-day period to appeal before this Court, this Court finds the judicial claim of petitioner to have been filed on time.

Considering the foregoing, this Court finds that petitioner is entitled to a refund or issuance of a tax credit certificate for the unutilized input taxes attributable to its zero-rated sales for the four quarters of 2006 in the reduced amount of P5,681,141.22.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby ordered to refund or issue a tax credit certificate in favor of petitioner in the amount of P5,681,141.22, representing the latter's excess or unutilized input tax attributable to zero-rated sales for the year 2006.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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 Chairperson'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.

ERNESTO D. ACOSTA
Presiding Justice