REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MAGELLAN COGENERATION, INCORPORATED,
Petitioner,

- versus -

C.T.A. Case No. 5938

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 28 2002

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DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P7,856,552.84 allegedly representing unutilized and/or unapplied input VAT attributable to petitioner's sale of power to the National Power Corporation (NPC) for the period July 1, 1997 to December 31, 1997.

The facts, as culled from the records, are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws, engaged in the construction, operation and maintenance of a power plant and with office address at the 4th Floor, Ortigas Building, Ortigas Avenue, Pasig City *(Item No. 1, Joint Stipulation of Facts, CTA docket, p. 34)*. It is registered with the BIR as a VAT enterprise under VAT Registration No. 043-002-264-834 *(Item No. 3, ibid., CTA docket, p.35)*.

Petitioner was likewise registered with the Board of Investments (BOI) under Certificate of Registration No. 92-455 issued on March 12, 1993. Subsequently, it registered with the Philippine Economic Zone Authority (PEZA) pursuant to the provisions of Republic Act No. 7916, otherwise known as "The Special Economic Zone Act of 1995" as an ECOZONE utilities enterprise under PEZA Certificate of Registration No. 97-01-U issued on August 11, 1997 *(Item No. 4, ibid., CTA docket, p. 35).*

For the period July 1 to December 31, 1997, petitioner generated electricity from its power plant and sold such electricity to the NPC pursuant to its Power Supply and Purchase Agreement with the NPC. According to petitioner, it paid input tax on its purchases of goods and services, which purchases are attributable to its sale of power to NPC. Thus, petitioner's VAT returns reflected the following input VAT:

		Exhibit
July 1 to Sep 30, 1997	P 1,320,880.95	F-1
Oct 1 to Dec 31, 1997	6,535,671.89	G-1
TOTAL INPUT VAT PAID	P 7,856,552.84	

Since NPC is exempt from direct and indirect taxes under its charter, petitioner believes that its sale of power thereto is subject to VAT at zero-rate. And so, on March 26, 1999, petitioner filed with the BIR an administrative claim for refund and/or tax credit of the amount of P7,856,552.84 representing unutilized and/or unapplied input VAT for the period July 1 to December 31, 1997 *(Item No. 5, CTA docket, p. 35).* On September 30, 1999, petitioner filed the instant Petition for Review pursuant to Section 230 [now 229] in relation to 106(a)[now 112(A)] of the Tax Code.

In his Answer filed on November 9, 1999, respondent raised the following Special and Affirmative Defenses:

"6. That the herein petitioner is not entitled to the refund of the amounts prayed for in the instant Petition for Review;

7. That the instant Petition for Review was prematurely filed as petitioner has not exhausted the administrative remedies required by law and jurisprudence on the action of this nature as no decision has as yet been rendered by the respondent ;

8. Such being the case this Honorable Court has no jurisdiction over the Petition for Review."

The issues in the case at bar, as jointly stipulated by the parties, are as follows:

1. Whether or not the sale by petitioner of electricity to the National Power Corporation (NPC) for the period covering July 1 to December 31, 1997 is subject to VAT at zero rate.

2. Whether or not the accumulated input VAT of P7,856,552.84 arising from petitioner's purchases of goods and services for the period covering July 1 to December 31, 1997, which purchases of goods and services, are attributable to the sale of power to NPC for said period, is duly supported by VAT invoices and receipts.

3. Whether or not petitioner's accumulated input VAT of P7,856,552.84 for the period July 1 to December 31, 1997 was applied or utilized against its output VAT in the succeeding taxable quarters.

In asseverating that they are indeed entitled to the refund sought for, petitioner drew its legal basis from the following:

(a) Section 10 of Presidential Decree No. 938 amending Republic Act 6395 which categorically exempts NPC from all forms of taxes, thus:

> **"Sec 10.** *Section 13 of the same Act is hereby further amended to read as follows:*
>
> "**Section 13**. Non Profit Character of the Corporation; Exemption from all Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities.- x x x To enable the Corporation to pay its indebtedness and obligations and in furtherance and 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."

(b) Section 112 (A) and (B) of the Tax Reform Act of 1997 (formerly Section 106(a) and (b) of the NIRC) which allows refunds or tax credits of creditable input tax on zero-rated sales and on inportation of capital goods -

> "**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.
>
> *(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."

(c) Sections 106(A)(2)(c) and 108(B)(3) of the 1997 Tax Reform Act (formerly Sections 100(a)(2)(c) and 102(b)(3) of the NIRC) which subject the sales of VAT registered persons to persons or entities exempted under special laws to zero-percent (0%);

> "**Section 106 (A)(2)(c)**. - The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> *x x x x x x*
>
> *(c)* Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero-rate."
>
> "**Section 108 (B)(3)**. - *Transactions Subject to Zero Percent rate (0%).* - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (1) x x x
> (2) x x x
> (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;"

(d) Memorandum issued by the Secretary of Finance on January 26, 1998 upholding the Supreme Court ruling on the tax-exempt status of the NPC, thus,

x x x x x x

> "In view of the foregoing and using the power of review granted to the Secretary of Finance under Section 4 of Republic Act No. 8424, the DOF upholds the ruling of the Supreme Court that the NPC is exempt under its charter and subsequent laws from all direct and indirect taxes on its purchases of petroleum products and electricity. Thus, the purchases of NPC of electricity from independent power producers are subject to VAT at zero-rate".

Proceeding now to resolve the issues at bar, we commence discussion on the first issue of whether or not petitioner's sale of electricity to NPC is subject to VAT at zero percent. There is nothing novel in this issue as it has already been settled in petitioner's earlier case entitled **Magellan Cogeneration Incorporated vs. Commissioner of Internal Revenue, CTA Case No. 5765, dated February 26, 2002**, where this Court categorically ruled that the sale by petitioner of electricity to NPC is subject to VAT at zero rate. In so ruling, this Court adopted the Supreme Court decision in the case of **Ernesto M. Maceda vs. Catalino Macaraig, GR No. 83291, May 31, 1991** wherein the High Court made a pronouncement that NPC is totally exempt from all kinds of taxes, whether direct or indirect. We also recognized the memorandum issued by the Secretary of Finance affirming the tax-exempt status of the NPC as well as the numerous VAT and BIR rulings on the matter.

Anent the second issue, We rule in the affirmative.

A perusal of the records would reveal that petitioner's accumulated input VAT arising from petitioner's purchases of goods and services as well as its importation of goods are substantiated by pertinent documentary evidence.

Petitioner's domestic purchases of goods and services for the period July 1 to December 31, 1997 were supported by various check vouchers with supporting VAT invoices and/or official receipts *(Exhibits A-1 to A-776)* while its importations were supported by import entry declarations, bills of lading, air waybills, packing lists, suppliers' commercial invoices *(Exhibts B-2 to B-71)* and a certification from Philbank of petitioner's VAT payments *(Exhibit B-1)*.

On the other hand, petitioner's sales as shown in the official receipts *(Exhibit E)* amounted to P44,598,281.16 and P54,121,750.09 for the third and fourth quarters of taxable year 1997, respectively, detailed as follows:

DATE	OFFICIAL RECEIPT NO.		AMOUNT
July 8, 1997	434	P	13,219,830.29
July 9, 1997	435		1,877,994.56
August 4, 1997	436		13,443,128.93
August 5, 1997	437		1,873,106.01
September 4, 1997	438		12,482,546.54
September 8, 1997	439		1,701,674.83
TOTAL SALES FOR THE 3RD QUARTER OF 1997		**P**	**44,598,281.16**
October 3, 1997	440	P	15,587,744.45
October 6, 1997	441		1,884,282.87
November 4, 1997	442		15,582,570.19
November 4, 1997	443		1,859,432.21
December 4, 1997	444		17,353,312.08
December 4, 1997	445		1,854,408.29
TOTAL SALES FOR THE 4th QUARTER OF 1997		**P**	**54,121,750.09**

The aforementioned sales were declared by petitioner in its original Quarterly VAT Returns for the 3rd and 4th quarters of 1997*(Exhibits F & G)* but were not declared in its amended Quarterly VAT Returns *(Exhibits F-1 & G-1)*.

Mr. Rene Amby Reyes of Vicente E. Reyes & Associates, an independent accounting firm, was commissioned by the Court to perform a special audit on petitioner's claim for refund. An amended report dated April 25, 2000 *(Exhibit D)* was submitted to the Court detailing the audit procedures performed and his audit findings. Below is a summary of the independent CPA's findings:

a) The details of information in the supporting suppliers' sales invoices and/or official receipts coincide with the details per summary list of purchases and VAT-inputs, as corrected;

b) The supporting suppliers' sales invoices and/or official receipts for local purchases, are original copies;

c) The supporting papers from importation (i.e., Import Entry Declarations, Suppliers' Invoices, Letters of Credits, etc.), are originals and/or photocopies supported by original certification by the bank on the amount of VAT paid;

d) The 10% VAT-input were properly computed;

e) The VAT-input claimed to be used as tax credit for the third and fourth quarters of 1997 are qualified per our audit and summarized as follows:

		Claimed		Audit		Difference
From local purchases	P	1,440,497.10	P	1,345,539.46	P	94,957.64
From importation	P	5,329,770.00	P	5,329,770.00	P	-
Total	P	6,770,267.10	P	6,675,309.46	P	94,957.64

After further verification, the Court found that the following input VAT, which the independent CPA failed to consider in his report should also be disallowed as some of the invoices purportedly supporting the purchase of goods are devoid of the word TIN and/or V/VAT on its face, contrary to Section 4.108.1 of Revenue Regulation 7-95, and the other receipts were merely provisional, to wit:

SUPPLIER	EXHIBIT	REFERENCE NO.		AMOUNT		INPUT VAT
(a) Invoice or official receipt without TIN and/or "V/VAT"						
SOLIMAN SECURITY SERV.	A-169	14499	P	101,337.85	P	10,133.79
VANGUARD WATCHMAN	A-220	18839		45,618.18		4,581.62
VANGUARD WATCHMAN	A-222	24327		45,818.18		4,581.62
BULACAN TRADING	A-482	801		70,009.09		7,090.91
SOLIMAN SECURITY SERV.	A-485	13051		76,003.40		7,600.34
SOLIMAN SECURITY SERV.	A-488	13052		76,003.40		7,600.34
MECCRON POLYWELD	A-679	445		11,818.18		1,181.82

		Subtotal	**P**	**426,608.28**	**P**	**42,770.44**
(b) Purchase of goods supported by provisional receipts only						
PHIL. PETROCHEMICAL	A-146	14239	P	77,520.00	P	7,752.00
PHIL. PETROCHEMICAL	A-150	14248		77,520.00		7,752.00
		Subtotal	**P**	**155,040.00**	**P**	**15,504.00**
		Total	**P**	**581,648.28**	**P**	**58,274.44**

As to the third issue, petitioner's accumulated input VAT of P 7,856,552.84 for the period July 1 to December 31, 1997 was not applied or utilized against its output VAT in the succeeding taxable quarters because its sales to NPC are all subject to VAT at zero percent (0%) pursuant to Section 102(b)(3) [now Section 108(B)(3)] of the Tax Code. Furthermore, the accumulated input VAT of P 7,856,552.84 although carried-over to the 1st quarter until the 4th quarter of 1998 as shown in their corresponding amended Quarterly VAT Returns (Exhibits G-3, H, I & J) was deducted from the total available input VAT as evidenced by its Quarterly VAT Return for the 1st quarter of 1999 (Exhibit K). The amount of P 22,010,166.52 reflected under the caption "Any Tax Refund/TCC Claimed" represents the total input VAT claimed by petitioner for each of the four (4) quarters of taxable years 1997 and 1998 which is inclusive of the herein claim for refund of P7,856,552.84, broken down as follows:

PERIOD COVERED	EXHIBIT		INPUT VAT ON DOMESTIC PURCHASES		INPUT VAT ON IMPORTATION		TOTAL INPUT VAT
JAN-JUN 1997	CTA CASE NO. 5765					P	1,646,448.91
JUL-SEP 1997	**F-1**	**P**	**916,085.95**	**P**	**404,795.00**		**1,320,880.95**
OCT-DEC 1997	**G-1**		**1,610,696.89**		**4,924,975.00**		**6,535,671.89**

JAN-MAR 1998	G-3	1,780,877.83	2,176,181.00	3,957,058.83
APR-JUN 1998	H	2,139,173.13	961,905.00	3,101,078.13
JUL-SEP 1998	I	1,586,725.70	1,803,554.00	3,390,279.70
OCT-DEC 1998	J	1,866,961.11	191,787.00	2,058,748.11
		TOTAL	P	**22,010,166.52**

In sum, this Court recommends to partially grant petitioner's claim for refund in the reduced amount of P7,703,320.76, computed as follows:

Amount Claimed		P7,856,552.84
Less: Disallowances		
(a) Per independent CPA's verification	P94,957.64	
(b) Per Court's further verification	58,274.44	153,232.08
Amount Refundable		**P7,703,320.76**

WHEREFORE, in view of the foregoing, the petition for review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is ordered to **REFUND** or **ISSUE** a **TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P7,703,320.76 representing its unutilized and unapplied input VAT for the period July 1, 1997 to December 31, 1997.

SO ORDERED.

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

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge