REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

KEPCO PHILIPPINES CORPORATION, Petitioner,	**C.T.A. CASE NO. 7236**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** OCT 0 4 2007

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DECISION

UY, *J.*:

Before Us is a Petition for Review filed by petitioner Kepco Philippines Corporation against respondent Commissioner of Internal Revenue, seeking for the refund in the amount of P9,378,912.73 representing allegedly input VAT incurred by petitioner for the taxable year 2003, from its sales of electricity to the National Power Corporation (NPC).

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THE FACTS

As culled from the records and as stipulated by the parties in their Joint Stipulation of Facts and Issues,[1] these are the facts of the case.

Petitioner, Kepco Philippines Corporation (KEPCO), 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 in Makati City.[2] Likewise, it is a Value-Added Tax (VAT)-registered taxpayer engaged in the production and sale of electricity as an independent power producer (IPP), and sells electricity solely to the National Power Corporation (NPC).[3]

On the other hand, respondent, Commissioner of Internal Revenue (CIR), is the head of the Bureau of Internal Revenue (BIR) and is vested by law with the power to decide, approve, and grant claims for refund or tax credit of internal revenue taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On December 12, 2002, petitioner filed an application for VAT zero-rate with respondent for its sales of electricity to the National Power Corporation (NPC), which has been duly approved.[4]

For the four (4) quarters of taxable year 2003, petitioner incurred expenses representing domestic purchases of goods and services, for which it incurred an input VAT in the amount of P9,378,912.73. The said expenses represent the cost attributable to its production and sale of electricity to NPC.

[1] Docket, pp. 47-50.
[2] Paragraph 1, Petition for Review, Docket, p. 1.
[3] Paragraph 2, Joint Stipulation of Facts and Issues, Docket, p. 48.
[4] Exhibit "G".

It filed its quarterly VAT Returns[5] on April 25, 2003, July 25, 2003, October 27, 2003, and January 26, 2004, respectively. It declared zero-rated sales in the amount of P3,396,347,163.15, domestic purchases of goods and services in the amount of P93,789,127.32, and related input VAT of P9,378,912.73, broken down as follows:

Exhibit	Taxable Quarter	Zero-rated Sales	Purchases	Input VAT
B	1st Quarter	P 715,057,716.54	P 29,411,004.72	P 2,941,100.47
C	2nd Quarter	896,096,647.33	13,068,885.90	1,306,888.59
D	3rd Quarter	861,278,992.89	24,509,390.80	2,450,939.08
F-2	4th Quarter	923,913,806.39	26,799,845.90	2,679,984.59
	Total	**P3,396,347,163.15**	**P 93,789,127.32**	**P 9,378,912.73**

Petitioner then filed a claim for refund with the BIR through its Revenue District Office No. 43 on March 17, 2005.[6]

Due to respondent's inaction on its claim and in order to preserve its right to file a judicial claim within the two-year prescriptive period, in accordance with Section 229 and in relation to Section 204(C) of the National Internal Revenue Code (NIRC) of 1997, petitioner elevated this case before this Court on April 25, 2005.

On June 14, 2005, respondent filed his Answer,[7] interposing the following Special and Affirmative Defenses:

> "6. The claim for refund is still under examination by the respondent's Bureau;
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> 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 tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;

[5] Exhibits "B", "C", "D", and "E".
[6] Exhibit "H".
[7] Docket, pp. 27-29.

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9. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same."

The issues having been joined, pre-trial was held on September 29, 2005; and thereafter, both parties submitted their Joint Stipulation of Facts and Issues on October 14, 2005, and duly approved in the Resolution dated October 28, 2005.[8]

During trial, petitioner presented its documentary and testimonial evidence, while respondent's counsel submitted the case for decision without presenting any evidence because this case, allegedly, has no report of investigation. The Court directed both parties' counsel to file their respective memorandum.[9] On March 21, 2007, this case was deemed submitted for decision after petitioner filed its memorandum, while respondent failed to file his memorandum within the given period.[10] Hence, this Decision.

ISSUES

In their Joint Stipulations of Facts and Issues, petitioner and respondent interposed the following issues for the consideration of this 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 2003, actually incurred expenses representing domestic purchases of goods and services and which expenses represent costs attributable

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[8] Ibid., at p. 54.
[9] Minutes of hearing held on January 29, 2007, Docket, p. 125.
[10] Resolution dated March 21, 2007, Docket, p. 137.

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to Petitioner's production and sale of electricity to the NPC.

3. Whether or not the Petitioner is entitled to the refund of the total amount of P9,378,912.73, representing the input VAT incurred for the four(4) taxable quarters of the calendar (taxable) year 2003 from its sale of electricity to the NPC.

4. Whether or not Petitioner's claim for refund is substantiated by documentary evidence."[11]

THE COURT'S RULING

Pertinent to the resolution of the issues is Section 112(A) of the NIRC of 1997, which reads:

> "**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."

From the foregoing, in order to be entitled to refund or tax credit of input VAT directly attributable to zero-rated or effectively zero-rated sales, the following requirements must be satisfied:

1) there must be zero-rated or effectively zero-rated sales;

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[11] Docket, pp. 49-50.

2) input taxes were incurred or paid;

3) input taxes are directly attributable to zero-rated or effectively zero-rated sales;

4) input taxes were not applied against any output VAT liability; and

5) the claim for refund was filed within the two-year prescriptive period.

Anent the first requirement, petitioner argues that its sale of electricity to NPC is effectively zero-rated pursuant to Section 108(B)(3) of the NIRC of 1997, as amended, in relation to Section 13 of Republic Act No. 6395, as amended (National Power Corporation Charter), which are quoted hereunder for ready reference, to wit:

> "Section 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**:
>
> xxx xxx xxx
>
> (3) **Services rendered to persons or entities whose exemptions 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**." *(Underscoring Ours)*
>
> "Section 13. *Non-profit Character of the Corporation: Exemption from All Taxes, Duties, 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 investment as well as excess revenues from its operations, 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,**

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> **duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings.**" *(Emphasis Ours)*

The Court agrees with petitioner. The NPC Charter categorically exempts it from payment of all taxes, whether direct or indirect, including VAT. Accordingly, services rendered by a VAT-registered entity, such as herein petitioner, to NPC are effectively subject to zero percent (0%) VAT.

The Supreme Court made a corroborative finding in its Resolution dated June 8, 1993, in the case of ***Maceda vs. Macaraig, Jr.***,[12] in the following manner:

> "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." *(Emphasis Ours)*

It is also worthy to mention that the BIR already approved petitioner's Application for VAT Zero-Rate;[13] further confirming its entitlement to the benefits of zero-rating on its sales to NPC.

In order to prove its reported zero-rated sales of electricity to NPC for the four quarters of 2003 in the amount of P3,396,347,163.15, petitioner presented in evidence the Rehabilitation, Operation, Maintenance and Management (ROMM) Agreement for the 650 MW Malaya Thermal Plant

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[12] 223 SCRA 217 (1993).
[1] . Supra.

Complex,[14] the Accession Undertaking dated July 3, 1995[15], and official receipts.[16] However, this Court notes that only sales in the amount of P1,112,870,425.80 were properly substantiated by VAT official receipts, detailed as follows:

Exhibit	OR Number	Date		Amount
L	505	6-Mar-03	P	74,919,293.45
L-1	506	4-Apr-03		74,824,414.32
L-2	510	5-May-03		67,624,294.05
L-3	512	4-Jun-03		74,806,878.42
L-4	513	23-Jun-03		50,588,559.75
L-5	514	2-Jul-03		72,127,208.90
L-6	515	30-Jul-03		74,813,780.45
L-7	516	30-Jul-03		101,603,408.13
L-8	517	1-Sep-03		72,326,563.31
L-9	518	29-Sep-03		74,824,492.62
L-10	519	30-Sep-03		99,806,523.38
L-11	521	30-Oct-03		74,834,539.02
L-12	522	1-Dec-03		72,431,690.46
L-13	524	22-Dec-03		52,508,943.11
L-14	526	28-Dec-03		74,829,836.43
	Total			**P1,112,870,425.80**

From the foregoing, out of the total declared zero-rated sales to NPC of P3,396,347,163.15, only the sum of P1,112,870,425.80 was duly substantiated by VAT official receipts. Hence, only the input VAT claim proportionate to the substantiated zero-rated sales of P1,112,870,425.80 shall be available for refund. The rate to be applied is based on the volume of sales, computed as follows:

Supported zero-rated sales	P 1,112,870,425.80
Divided by total declared zero-rated sales	P 3,396,347,163.15
Rate of supported zero-rated sales	**32.77%**

[14] Exhibit "I".
[15] Exhibit "I-1".
[16] Exhibits "L", "L-1" to "L-22".

As regards the second and third requisites, We look into the report[17] of the commissioned independent CPA Ms. Lilian S. Linsangan. It states that petitioner's claimed input VAT of P9,378,912.73 should be reduced by P339,975.75, which is the sum of the difference between the input VAT filed per return and input VAT per schedule in the amount of P27,783.66 and input VAT claimed with incomplete documentation and other exceptions on the supporting documents in the amount of P312,192.09.[18] Below is the summary of the exceptions of P312,192.09:

NATURE	EXHIBIT	AMOUNT
a. Purchases of goods without original supplier's VAT invoice as supporting documents	Q6	P 160,664.91
b. Purchases of services without original supplier's VAT official receipts as supporting documents	Q7	4,220.31
c. Purchases of goods and/or services are supported by photocopy of supplier's VAT official receipts and/or invoices	Q8	2,290.78
d. Supplier's VAT official receipts and invoices are not under the name of the Company	Q9	96.05
e. BIR permit numbers of the printers of the suppliers' VAT invoices and/or official receipts are not indicated in the suppliers' VAT invoices and/or official receipts	Q10	1,359.89
f. TIN indicated on the suppliers' VAT invoices are not the same ad the TIN indicated on the corresponding official receipts	Q11	136,470.91
g. OR has no serial number	Q12	208.19
h. Date of supporting documents are not within the period	Q13	6,672.29
i. Supporting documents are not dated or the date cannot be identified	Q14	208.76
TOTAL		**P 312,192.09**

However, after scrutiny of petitioner's supporting documents, input VAT in the total amount of P196,836.55 should be further disallowed for the following reasons:

[17] Exhibit "Q".
[18] Ibid., at pp. 4-5.

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Exh.	Supplier	Invoice/OR Date	Invoice/OR Amount	Input VAT
(a) Input VAT on purchases of goods not supported by an invoice				
Q3 1-37	Belfast Power Gasoline Station	24-Jan-03	P 597.65	P 54.33
Q3 1-81	D' May Photo	13-Jan-03	135.00	12.27
Q3 1-86	C.S. Petron Gas Station	31-Jan-03	56,788.38	5,162.58
Q3 3-47	Trend West Enterprises	14-Mar-03	1,275.00	115.91
Q3 8-15	Kambal Industrial Supply	8-Aug-03	23,673.54	2,152.14
Q3 8-17	Belfast Power Gasoline Station	8-Aug-03	12,915.76	1,174.16
Q3 10-14	Power Systems, Inc.	3-Oct-03	13,700.06	1,245.46
Q3 10-34	Moen Home Living Inc.	29-Sep-03	11,100.00	1,009.09
Q3 10-126	F.A.T. Kee Computer Sys Inc.	21-Oct-03	8,260.01	750.91
Q3 10-168	Bulawan Floating Restaurant	23-Oct-03	3,838.12	348.92
	TOTAL		**P 132,283.52**	**P 12,025.77**
(b) Input VAT on purchases of services not supported by an OR				
Q3 1-03	Globe Telecom	20-Oct-02	P 2,682.90	P 243.90
	Globe Telecom	20-Oct-02	1,486.54	135.14
	Globe Telecom	15-Oct-02	1,468.94	133.54
	Globe Telecom	20-Oct-02	1,361.03	123.73
	Globe Telecom	5-Oct-02	2,536.05	230.55
	Globe Telecom	26-Oct-02	1,613.70	146.70
	Globe Telecom	15-Oct-02	1,805.76	164.16
	Globe Telecom	20-Oct-02	2,165.90	196.90
	Globe Telecom	20-Oct-02	1,443.42	131.22
	Globe Telecom	20-Oct-02	1,169.63	106.33
	Globe Telecom	20-Oct-02	1,706.98	155.18
	Globe Telecom	20-Oct-02	2,444.86	222.26
	Globe Telecom	20-Oct-02	1,363.01	123.91
	Globe Telecom	20-Oct-02	1,556.94	141.54
	Globe Telecom	20-Oct-02	1,341.01	121.91
	Globe Telecom	20-Oct-02	1,390.95	126.45
	Globe Telecom	23-Oct-02	2,604.69	236.79
Q3 1-23	Globe Telecom	20-Nov-02	1,476.53	134.23
	Globe Telecom	9-Dec-02	6,680.96	607.36
	Globe Telecom	20-Nov-02	1,261.92	114.72
	Globe Telecom	20-Nov-02	1,257.96	114.36
	Globe Telecom	20-Nov-02	1,245.97	113.27
	Globe Telecom	20-Nov-02	3,515.38	319.58
	Globe Telecom	20-Nov-02	1,329.46	120.86
	Globe Telecom	20-Nov-02	1,044.23	94.93
	Globe Telecom	20-Nov-02	1,189.98	108.18
	Globe Telecom	5-Nov-02	2,127.95	193.45
	Globe Telecom	5-Nov-02	2,289.43	208.13
	Globe Telecom	20-Nov-02	1,249.05	113.55
	Globe Telecom	20-Nov-02	1,405.91	127.81
	Globe Telecom	9-Nov-02	3,435.96	312.36
	Globe Telecom	9-Dec-02	1,974.83	179.53
	Globe Telecom	9-Dec-02	1,504.36	136.76
	Globe Telecom	9-Dec-02	413.60	37.60
Q3 2-29	Globe Telecom	9-Jan-03	47,046.34	4,276.94
Q3 2-93	St. Francis Transport System	17-Feb-03	38,395.00	3,490.45
Q3 3-103	Globe Telecom	23-Jan-03	36,608.88	3,328.08

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Q3 3-109	Globe Telecom	9-Mar-03	36,003.00	3,273.00
Q3 4-55	Dabbay, Guillermo P.	10-Jun-03	61,111.05	5,555.55
Q3 4-56	Data Hardware & Electrical Supply	10-Apr-03	1,409.98	128.18
Q3 4-78	Bank of Commerce	21-Apr-03	1,100.00	100.00
Q3 4-84	Dabbay, Guillermo P.	10-Jun-03	48,888.84	4,444.44
Q3 4-85	Piedad, Samuel A.	10-Jun-03	51,944.42	4,722.22
Q3 5-33	Pioneer Insurance & Surety Corp.	14-May-03	70,125.00	6,375.00
Q3 5-34	Piedad, Samuel A.	10-Jun-03	51,944.42	4,722.22
Q3 5-93	Piedad, Samuel A.	10-Jun-03	51,944.42	4,722.22
Q3 5-94	Dabbay, Guillermo P.	10-Jun-03	48,888.84	4,444.44
Q3 8-53	Dabbay, Guillermo P.	10-Sep-03	24,444.42	2,222.22
Q3 8-54	Piedad, Samuel A.	10-Sep-03	51,944.42	4,722.22
Q3 8-75	Dabbay, Guillermo P.	10-Sep-03	48,888.84	4,444.44
Q3 8-76	Piedad, Samuel A.	10-Sep-03	51,944.42	4,722.22
Q3 10-01	Piedad, Samuel A.	10-Nov-03	51,944.42	4,722.22
Q3 10-31	Globe Telecom	7-Aug-03	41,212.60	3,746.60
Q3 10-82	Piedad, Samuel A.	10-Nov-03	51,944.42	4,722.22
Q3 10-172	Dabbay, Guillermo P.	10-Nov-03	73,333.37	6,666.67
Q3 10-173	Piedad, Samuel A.	10-Nov-03	51,944.42	4,722.22
Q3 10-174	Globe Telecom	9-Aug-03	15,602.84	1,418.44
	TOTAL		**P1,072,160.15**	**P 97,469.10**

(c) Input VAT on purchases of goods/services not within the period of claim

Q3 1-52	Filway Awards	30-Jan-02	P 949.96	P 86.36
Q3 2-76	Belfast Power Gasoline Station	8-Feb-02	1,881.48	171.04
Q3 4-68	Belfast Power Gasoline Station	1-Apr-04	1,588.51	144.41
Q3 5-74	Pumpcraft Industrial Sales	21-May-02	4,740.00	430.91
	TOTAL		**P 9,159.95**	**P 832.72**

(d) Input VAT on purchases of services supported by an invoice/OR without/with questionable dates

Q3 4-38	Bentrade Asia Company	-	P 9,844.01	P 894.91
Q3 4-39	Bentrade Asia Company	-	9,197.98	836.18
Q3 5-13	Belfast Power Gasoline Station	22-Apr	1,269.30	115.39
Q3 5-60	Onnuri International, Inc.	-	13,500.00	1,227.27
Q3 8-11	Shin Yang Brokerage Corp.	July/Aug 6	138,075.08	12,552.28
Q3 8-22	Shin Yang Brokerage Corp.	03	160,459.20	14,587.20
Q3 8-35	Ebie Auto Supply	31-Jul	960.00	87.27
Q3 10-55	Emigo Trading	-	280,780.00	25,525.45
Q3 10-71	PNCC Skyway Corp.	14-Aug	500.00	45.45
	TOTAL		**P 614,585.57**	**P 55,871.40**

(e) Input VAT on purchases of goods/services not in the name of the company

Q3 2-27	F.A.T. Kee Computer System Inc.	29-Jan-03	P 6,259.99	P 569.09
Q3 4-88	Complex Galleria Inc.	27-Apr-03	1,480.00	134.55
Q3 8-52	Tell Me Trans Corp.	14-Aug-03	393,760.84	35,796.44
Q3 10-07	St. Francis Transport System	3-Oct-03	6,345.51	587.55
Q3 10-21	Anson Emporium Corp.	3-Oct-03	100,000.00	9,090.91
Q3 10-45	The Foodnation Food Services, Inc.	23-Sep-03	1,025.97	93.27
Q3 10-103	Harvard Servicenter	29-Sep-03	26,125.00	2,375.00
Q3 10-137	Development Insurance	16-Oct-03	1,176.01	106.91
Q3 10-163	Ebie Auto Supply	15-Oct-03	289.96	26.36
	TOTAL		**P 536,463.28**	**P 48,780.08**

(f) BIR permit numbers of the printers of the supplier's VAT invoices and/or ORs are not indicated

Q3 1-36	Manila International Airport Authority	17-Jan-03	P 3,960.00	P 360.00
Q3 3-17	Manila International Airport Authority	7-Mar-03	3,960.00	360.00
Q3 3-110	GSIS	31-Mar-03	443,850.00	40,350.00
Q3 3-114	Manila International Airport Authority	10-Feb-03	4,356.00	396.00
Q3 4-80	Manila International Airport Authority	22-Apr-03	3,960.00	360.00
Q3 5-07	Capital Industries, Inc.	8-Apr-03	73,799.09	6,709.09
Q3 5-59	DHL/WWWExpress	25-Jun-03	80.00	7.27
Q3 10-138	Smog Chek Corp.	17-Oct-03	300.00	27.27
	TOTAL		**P 534,265.09**	**P 48,569.63**

(g) TIN indicated on the supplier's VAT invoice is not the same as the TIN on the corresponding OR

Q3 1-35	Trigold Security Agency	22-Jan-03	P 306,994.60	P 27,908.60
Q3 2-23	Trigold Security Agency	7-Feb-03	307,585.74	27,962.34
Q3 2-75	Trigold Security Agency	21-Feb-03	307,526.45	27,956.95
Q3 3-05	Claret's Enterprises	14-Feb-03	5,400.00	490.91
Q3 3-13	Trigold Security Agency	21-Feb-03	306,708.27	27,882.57
Q3 3-91	Trigold Security Agency	21-Mar-03	307,031.45	27,911.95
Q3 5-18	Trigold Security Agency	9-May-03	306,803.53	27,891.23
	TOTAL		**P 1,848,050.04**	**P 168,004.55**

(h) Input VAT on purchases of goods/services supported by an invoice marked as "VAT Exempt"

Q3 2-24	Lubricare Marketing	29-Jan-03	P 25,800.00	P 2,345.45
			P 25,800.00	**P 2,345.45**

(i) Input VAT on purchases of goods/services with invoices that are non-VAT or do not have "VAT" After the TIN

Q3 3-15	Petrotech Consultants, Inc.	11-Mar-03	P 19,800.00	P 1,800.00
Q3 3-16	Seafront Resources Corp.	11-Mar-03	19,800.00	1,800.00
	TOTAL		**P 39,600.00**	**P 3,600.00**

(j) Input VAT erroneously computed

		Claimed	Should be	Difference
Q3 1-09	Omni Workx, Inc.	P 23,413.22	P 23,411.41	P 1.81
Q3 1-24	SGS Phils., Inc.	337.00	306.36	30.64
Q3 3-31	First Imperial Cargo, Inc.	5,274.53	5,160.64	113.89
Q3 3-87	DHL	2,098.72	377.18	1,721.54
Q3 5-03	Data Hardware & Electrical Supply	48.73	16.00	32.73
Q3 5-04	Spectrum Scientific Corporation	46,979.20	45,021.89	1,957.31
Q3 5-53	DHL	616.00	299.27	316.73
Q3 10-25	CAD One International, Inc.	84,344.50	61,461.73	22,882.77
Q3 10-30	Philippine Fuji Xerox Corp.	127.20	123.67	3.53
Q3 10-35	Megamax Concepts, Inc.	1,296.36	1,282.73	13.63
Q3 10-57	MOF Company (Subic) Inc.	11,302.27	11,191.16	111.11
	TOTAL	***P175,837.73***	***P 148,652.04***	***P 27,185.69***

(k) Input VAT included with no supporting documents

Q3 10-104	Eastern Tanay Supermarket	P 25.45
Q3 10-105	Eastern Tanay Supermarket	25.45
	TOTAL	**P 50.90**

TOTAL	**P 464,735.29**

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Therefore, petitioner's valid input VAT attributable to zero-rated sales only amounted to P2,809,765.89, computed as follows:

Total Input VAT Claimed			P	9,378,912.73
Less: Disallowances				
(a) Per verification of the commissioned Independent CPA	P	339,975.75		
(b) Per Court's verification		464,735.29		804,711.04
Validly supported input VAT			P	8,574,201.69
Multiply by rate of supported zero-rated sales				**32.77%**
Valid Input VAT attributable to zero-rated sales			**P**	**2,809,765.89**

Petitioner's VAT returns for the four quarters of 2003 showed that it had no output tax liability against which the claimed input VAT may be credited.[19] Further, in its VAT return for the second quarter of 2005,[20] petitioner deducted the claimed amount of P9,378,912.73 of which the substantiated input VAT of P2,809,765.89 forms part of, as "Any VAT Refund/TCC Claimed" from the total available input tax of P41,541,547.30 as of the end of the second quarter of 2005. Petitioner could not have utilized the input VAT of P2,809,765.89 in the succeeding quarters; thus, complying with the fourth requirement.

Lastly, regarding the fifth requisite, petitioner filed its claim for refund with the BIR on March 17, 2005 and the Petition for Review before this Court on April 25, 2005.[21] Both dates of filing are well within the two-year prescriptive period counted from the dates when petitioner originally filed its First, Second, Third, and Fourth Quarterly VAT Returns[22] on April 25, 2003, July 25, 2003, October 27, 2003, and January 26, 2004, respectively.

[19] Exhibits "B", "C", "D", and "F-2".
[20] Exhibits "J" and "J-1".
[21] April 24, 2005 was a Sunday.
[22] Supra.

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In sum, petitioner has sufficiently proven that it is entitled to a refund of its unutilized input VAT incurred in relation to its effectively zero-rated sales of electricity to NPC for taxable year 2003, but in the reduced amount of P2,809,765.89.

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED to REFUND** to petitioner the reduced amount of **TWO MILLION EIGHT HUNDRED NINE THOUSAND SEVEN HUNDRED SIXTY FIVE PESOS and 89/100 (P2,809,765.89)**, representing unutilized input VAT paid on domestic purchases of goods and services attributable to zero-rated sales for the taxable year 2003.

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. 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 Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

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