Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION, Petitioner,	**CTA CASE NO. 8587**
	Members:
- ***versus*** –	**Del Rosario, *Chairperson,* Uy, and Mindaro-Grulla, *J.J.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated :** SEP 19 2016 ; 1:25 p.m.

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DECISION

UY, *J.:*

Before this Court is a Petition for Review filed by the Power Sector Assets and Liabilities Management Corporation, petitioner, against the Commissioner of Internal Revenue, respondent, on December 14, 2012, seeking to declare the November 15, 2012 Final Decision on Disputed Assessment (FDDA) as void, and to order the cancellation and withdrawal of deficiency Value-Added Tax (VAT) assessment in the amount of ₱7,642,925,210.78 for taxable year 2009.

THE FACTS

Petitioner Power Sector Assets and Liabilities Management Corporation (PSALM) is a government entity created under Section 49 of Republic Act (RA) No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA), which is mandated to "take ownership of all existing National Power Corporation (NPC) generation assets, liabilities, Independent Power Producer (IPP) contracts, real estate and all other disposable assets" and has the purpose and objective to "manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner". It holds business at the 7th Floor, Bankmer Building, 6756 Ayala Avenue, Makati City.[1]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), authorized to perform the duties of his office, including, among others, the power to decide disputed assessments or other charges and penalties imposed in relation thereto pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended. Respondent holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On July 23, 2012, petitioner received a Formal Letter of Demand (FLD) with Final Assessment Notice (FAN), informing petitioner of its alleged deficiency VAT liability for the taxable year ending December 31, 2009 in the total amount of ₱9,663,536,901.05.[2]

Petitioner protested the assessment on August 22, 2012, requesting that the FAN be withdrawn and cancelled.[3] On November 15, 2012, PSALM received from the BIR, the Final Decision on Disputed Assessment (FDDA) with the finding that petitioner is still liable to pay deficiency VAT in the reduced amount of ₱7,642,925,210.78.[4]

Hence, petitioner filed the instant Petition for Review[5] on December 14, 2012.

Respondent filed an Answer[6] on March 8, 2013, interposing the following special and affirmative defenses:

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[1] Par. 1, Joint Stipulation of Facts (JSF), docket, vol. I, pp. 374-375.
[2] Exhibit "P-1", docket, vol. II, pp. 469-475.
[3] Exhibit "P-2", docket, vol. II, pp. 476-486.
[4] Exhibit "P-3", docket, vol. II, pp. 487-491.
[5] Petition for Review, docket, vol. I, pp. 10-34.
[6] Docket, vol. I, pp. 93-107.

"**PSALM is liable to pay
Value Added Tax (VAT).**

4. It must be recalled that RA No. 9337 which amended certain provisions of the National Internal Revenue Code of 1997 on the value-added tax became effective in November 2005. Said law, among others, placed the power industry under the VAT system. Prior to the effectivity of RA No. 9337, the BIR had issued various confirmatory rulings on the status of tax exemption of certain entities. The National Power Corporation (NPC) was one of the entities issued with such confirmation of tax-exempt status.

5. The NPC enjoys tax exemption from all forms of taxes, direct and indirect. However, such tax exemption privileges of NPC were repealed by Presidential Decree No. 1177 (PD No. 1177). Section 23 of PD No. 1177 allows organizations otherwise exempted by law from the payment of internal revenue taxes to ask for subsidy from the General Fund in the exact amount of taxes/duties due, which shall be automatically considered as both revenue and expenditure in the General Fund. As cited by the Supreme Court in *Maceda vs. Macaraig, Jr.,* there was reason to believe that NPC availed of the subsidy granted to formerly tax exempt GOCCs.

6. Thereafter, E.O. 93, series of 1987, was promulgated specifically to correct the presidential restoration of the grant of tax exemption to some government and private entities pursuant to P.D. 1931, without the benefit of review by the Fiscal Incentives Review Board (FIRB). Thus, all tax and duty incentives granted to the government and private entities were withdrawn except, among others, those covered by the non-impairment clause of the Constitution.

7. Maintaining the tax-exempt status of NPC pursuant to its charter and its availment of the tax subsidy under PD 1177, the FIRB issued on June 24, 1987, Resolution No. 17-87. FIRB Resolution No. 17-87 clarified the coverage of the exemption under Sec. 8 (b) of Commonwealth Act (CA) No. 120 (later, Section 13 of

Republic Act No. 6395) and restored the tax and duty exemption privileges of NPC, but excluded certain transactions from the coverage. Thereafter, the income tax exemption of NPC was repealed by RA No. 8424 or the NIRC of 1997, which imposed the corporate income tax on the taxable income of GOCC's, government agencies or instrumentalities. However, in BIR Ruling No. 18-00 dated January 20, 2000, the BIR clarified that being a public utility, NPC's income is excluded from gross income pursuant to Section 32(B)(7)(b) of the NIRC of 1997. Hence, on the basis of the said ruling, NPC is not paying income taxes on its income arising from its operations as a public utility.

8. It is noteworthy that with the enactment of the Electric Power Industry Reform Act (EPIRA) in 2001, power generation had been declassified from being a public utility. Consequently, the aforementioned BIR Ruling No. 18-00 that ruled for NPC's income tax exemption, was automatically revoked. This is not to mention also that, its income does not automatically accrue to the government but rather accrues to the corporation itself. The Government gets dividends from said corporation only if the corporation has Unappropriated Retained Earnings and after the Board of Directors made valid declarations for dividend payment.

9. Moreover, the previous exemption of NPC from VAT was already *amended* by Section 24 of RA No. 9337, which **expressly repealed** Section 13 of RA No. 6395, or the NPC Charter, insofar as NPC's exemption from VAT is concerned. Stated otherwise, NPC's transactions are no longer exempt from VAT.

10. The EPIRA, as mentioned in the preceding paragraphs, basically provided the legal framework for the restructuring of the electric power industry, including the privatization of the assets of the NPC and the creation of two (2) government-owned-and-controlled corporations (GOCC), namely: the Power Sector Assets and Liabilities and Management Corporation (PSALM, or petitioner in the instant case) and the National Transmission Corporation (TRANSCO).

11. Pursuant to the privatization of the assets of NPC, the EPIRA has, among others defined the specific mandates of PSALM. PSALM is primarily mandated to manage the orderly sale, disposition, and privatization of NPC's generation assets; real estate and other disposable assets; and Independent Power Producer (IPP) contracts, with the objective of liquidating all of NPC financial obligations and stranded contract costs in an optimal manner.

12. Respondent then issued the assailed BIR Ruling No. 20-2002 on 13 May 2002 in order to address the various tax issues pertinent to NPC's privatization, as well as the tax incidence relative to transactions of its successors-in-interest. <u>The said ruling was anchored on the laws prevailing at that time</u>, taking into consideration the policy of the government to optimize the privatization value of NPC's generation assets, real estate and other disposable assets as well as the IPP contracts to the National Government.

13. Based on the said ruling, PSALM and TRANSCO were accorded the *same* tax exemption privileges being enjoyed by NPC on the basis of their mandate as the latter's successors-in-interest structured to carry out NPC's privatization contemplated under the EPIRA law. Stated otherwise, PSALM and TRANSCO enjoyed tax exemption privileges on the basis of their being NPC's successors-in-interest.

14. Reconciling, therefore, the previous discussion stating that NPC's examination was ***amended*** by Section 24 of RA No. 9337, or the EVAT law, which **expressly repealed** Section 13 of RA No. 6395, or the NPC Charter, insofar as NPC's exemption from VAT is concerned, the **exemption privilege accorded to PSALM** under BIR Ruling No. 20-2002 is also **deemed abandoned**.

15. Thus, it is reiterated that <u>with the repeal of NPC's exemption from VAT, all transactions entered into or undertaken either by NPC and/or its **succesors-in-interest**, petitioner included</u>, involving transfer of or disposal of NPC's assets consisting of real properties,

power generation plants and other transferable assets which are mandated to be sold or disposed in accordance with the provisions of the EPIRA law, as well as their authorized activities, <u>shall be subject to the 10% VAT beginning 01 November 2005 and 12% VAT beginning 01 February 2006</u>.

16. Based on the foregoing discussions, the sales made by NPC and/or its successors-in-interest of its power plants in 2009 as well as other incidental activities as stated in the PSALM's petition should properly be subject to VAT.

<u>PSALM's transactions incidental to privatization activities are subject to VAT</u>

17. PSALM's argument that the privatization activities is not in the course of trade or business, and, therefore, *not* subject to VAT does not hold water in view of the provision of Section 105 of the NIRC of 1997, as amended, in relation to Section 24 of **RA No. 9337**, which **expressly repealed** Section 13 of RA No. 6395, or the NPC Charter, insofar as NPC's exemption from VAT is concerned.

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19. It is clear from the afore-quoted provision of law that *incidental transactions,* such as the subject matter of PSALM's petition are well within the definition of the phrase 'in the course of trade or business'.

20. The petitioner cited the case of *Magsaysay Lines, Inc.* but the same case is not on all fours with the instant case for the simple reason that the applicable Tax Code then prevailing was the 1986 Tax Code, as amended. The sole issue that was resolved by the High Court is whether the sale by the National Development Company (NDC) of five (5) of its vessels to the private petitioners in September 1988 is subject to VAT under the Tax Code of 1986, as amended, then prevailing at the

time of sale. More particularly, the Decision was anchored on **Section 99** of the old Tax Code, which states:

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21. Section 105 of the present Tax Code *amended* Section 99 of the old Tax Code. It is crystal clear that in the revised provision, or Section 105 as quoted above, the phrase **'in the course of trade or business'** was expanded and explained, thus it *now* covers incidental transactions. Such was not the situation in the *Magsaysay* case as Section 99 did not expressly cover incidental transactions.

22. Moreover, in the *Magsaysay* case, the conclusion that the sale was not in the course of trade or business was *not* disputed by the Commissioner then. In the instant case, it is respondent's position that the subject sales are *subject* to VAT, incidental transactions being included in the definition of 'in the course of trade or business.'

23. Further, PSALM proceeds from sale of generating assets, proceeds from lease, miscellaneous income, receipt of Net Settlement Surplus from Philippine Electricity Market Corporation, sale of stored fuel to PNOC of the bunked gas funded by DOE/BTras, being incidental to its business of privatization of National Power Corporation assets, is deemed a transaction 'in the course of trade and business'. The term **'incidental'** means depending upon or appertaining to something else primary; something necessary pertaining to, or depending upon another, which is termed the principal; something incidental to the main purpose. Moreover, if the income from the main business activity is subject to value added tax, the incidental income shall also be subject to value added tax. Thus, proceeds from sale of generating assets, proceeds from lease, miscellaneous income, receipt of Net Settlement Surplus from Philippine Electricity Market Corporation, sale of stored fuel to PNOC of the bunked gas funded by DOE/BTras are subject to value added tax.

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<u>The reliance of petitioner to BIR Ruling 20-2002 is misplaced</u>.

24. It must be stressed right off that, BIR Ruling 020-2002 does not serve to provide petitioner a tax exemption which will bar any act of the government to enforce its power to tax.

25. BIR Rulings are based only on a set of facts represented by a taxpayer, and made applicable only to the facts and circumstances thereto, <u>in connection with the applicable laws existing as of the date of the ruling.</u> But this may not be construed as a grant of tax exemption.

26. BIR Ruling 20-2002 was issued on May 13, 2002 to tentatively address the various tax issues pertinent to National Power Corporation's (NPC) privatization as well as the tax incidence relative to transactions of its successors-in-interest.

27. In light of the foregoing discussions taking into consideration the amendatory laws and jurisprudence respondent submits that there is clear basis for respondent's pronouncement that **all BIR-issued rulings, including** the assailed **BIR Ruling No. 20-2002**, recognizing NPC and petitioner's exemptions from income tax on their taxable income and exemption from VAT on their power-related transactions, including transactions incidental thereto, are **deemed revoked**.

28. Failure of petitioner to justify its claim of exemption will not insulate itself from the provision of Section 27 (C) of the NIRC, thus –

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29. Hence, considering that petitioner's income does not <u>automatically</u> accrue to the government, but to the corporation itself it should therefore be subject to tax on all income derived from all economic activities conducted pursuant to the purpose for which it is created,

including transactions arising out of or related to the privatization of the generation assets and properties of National Power Corporation.

The Assessment on Deficiency Value Added Tax was issued in accordance with law, rules and jurisprudence and was fully substantiated by concrete and convincing evidence.

30. It is strongly maintained that petitioner is liable for the VAT deficiency tax assessment for the year 2009 in the aggregate amount of Php 7,642,925,210.78 as shown below.

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31. Contrary to petitioner's asseverations, the assessment issued against it has legal and factual bases. In fact per details of discrepancy, respondent established the following:

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32. Moreover, BIR Records reveal that on 29 June 2012 petitioner voluntarily paid/settled the VAT due Php4,712,488,628.40 representing the 12% VAT on the proceeds from the sale of generation assets amounting to Php39,270,738,570.00. Hence, the deficiency VAT due was lessened from Php 9,663,536,901.05 to Php 7,642,925,210.78.

33. Petitioner's act in paying the assessed value added tax for the year 2009 is conclusive that the assessment was valid and that petitioner admits that it is liable to pay VAT. Hence, petitioner cannot now deny the validity of the VAT assessment.

34. Further, petitioner filed a protest to the Preliminary Assessment Notice as well as to the Formal Letter of Demand with Final Assessment Notices. Hence,

there is no denying that petitioner was informed of the factual and legal bases of the deficiency assessment.

35. The fact that petitioner filed protest means that it was informed of the findings of the Revenue Officer. The protest although erroneous and self-serving was accomplished with meticulous detail trying in vain to overthrow the findings of deficiency value added tax.

36. In view of the foregoing, petitioner is liable to pay the assessed deficiency value added tax. The examiner's assessment should be given full weight and credit, in the absence of proof submitted by petitioner to the contrary. This is in line with the High Court's ruling in several cases wherein the Court said that **tax assessments by tax examiners are prima facie presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.** The case of *Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc.,* where the Court cited 51 Am. Jur. pp. 620-621, states the principle in detail, thus:

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38. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise the presumption of correctness of tax assessment stands.

39. Unfortunately, petitioner failed to overcome the presumption of correctness of respondent's assessment.

40. To our mind, petitioner has not pointed out any provision or item in the assessment notice which bears a trace of falsity. Its averments were based on conjectures,

surmises and speculations. These cannot supply the basis for the charge of impropriety in the assessments made.

41. At any rate, it is worthy to stress that the power to tax, an inherent prerogative, has to be availed of to assure the performance of vital state functions. It is the source of the bulk of public funds. To paraphrase a recent decision, a tax being the lifeblood of the government, its prompt and certain availability is of the essence. The state will be deprived of the taxes validly due it and the public will suffer if taxpayers will not be held liable for the proper taxes assessed against them.

42. Well-settled is the principle that taxes are imposed for the support of the government in return for the general advantage and protection which the government affords to taxpayers and their property. Taxes are the lifeblood of the government. It is imperative that the power to impose them be clothed with the implied authority to devise ways and means to accomplish their collection in the most effective manner. Without this implied power the end of government may falter or fail."

During the pre-trial conference held on July 12, 2013, both parties' counsel agreed to file their Joint Stipulation of Facts and Issues, with the additional manifestation of respondent's counsel that she will avail of a mode of discovery and will file a written request for admission.

Subsequently, respondent's counsel filed a Request for Admission on August 1, 2013, requesting petitioner's President, Mr. Emmanuel R. Ledesma, Jr. and Vice-President for Finance, Lourdes S. Alzona, to admit by sworn statement the existence and genuineness of the following documents:

1. Special Allotment Release Order dated June 29, 2012 as well as the following documents attached thereto namely:

    1.1 Certificate of Entitlement to Subsidy;

1.2 Fiscal Incentives Review Board Resolution No. 8-12;
1.3 Letter dated June 28, 2012 addressed to Ms. Trinidad A. Rodriguez from Undersecretary John Phillip P. Sevilla;
1.4 Letter dated June 28, 2012 addressed to the Fiscal Incentives Review Board (FIRB) from Emmanuel R. Ledesma, Jr., President and CEO of petitioner;
1.5 Letter from BIR Commissioner Kim S. Jacinto-Henares dated June 26, 2012;

2. Special Allotment Release Order dated December 28, 2012 as well as the following documents attached thereto namely:

2.1 Letter dated December 28, 2012 addressed to Hon. Florencio V. Abad from Emmanuel R. Ledesma, Jr.;
2.2 Letter dated December 28, 2012 addressed to Ms. Trinidad A. Rodriguez from John Phillip P. Sevilla–Undersecretary and Officer-In-Charge;
2.3 Letter dated December 28, 2012 addressed to Mr. Emmanuel R. Ledesma, Jr. from Undersecretary Mario L. Relampagos; and
2.4 Fiscal Incentives Review Board Resolution No. 17-12.

Petitioner filed its Compliance (Reply to Respondent's Request for Admission) by registered mail on September 6, 2013 with the attached Joint Sworn Statement of Emmanuel R. Ledesma, Jr. and Lourdes S. Alzona, admitting the existence and genuineness of the documents mentioned in items 1.3, 1.5, 2.1, and 2.3 of the Request for Admission. However, the existence and genuineness of the rest of the exhibits were not admitted in the absence of the original in petitioner's file.[7]

On December 11, 2013, the parties submitted their Joint Stipulation of Facts[8], which was approved in the Resolution[9] dated

[7] Docket, vol. I, pp. 341-347.
[8] Docket, vol. I, pp. 374-382.
[9] Docket, vol. I, p. 384.

January 6, 2014. The Court likewise considered Pre-Trial terminated. On January 30, 2014, the Court issued its Pre-Trial Order.[10]

During trial, petitioner presented documentary and testimonial evidence. Petitioner presented and offered the testimonies of Alvin P. Diaz[11], the Acting Director IV of Governance Commission for GOCCs, and Yolanda D. Alfafara[12], Manager of petitioner's Controllership Department. Petitioner likewise presented, marked, identified, and formally offered Exhibits "P-1" to "P-21-1"; which were later admitted by the Court as per Resolution[13] dated August 11, 2014.

For his part, respondent presented and offered the testimonies of Revenue Officer Ma. Theresa V. Carillo[14], Revenue Officer IV assigned at the Large Taxpayers Division-Makati, and Revenue Officer Alfredo S. Ramos[15], Head of the Verification and Allotment Unit of the BIR Revenue Accounting Division. Respondent also formally offered Exhibits "R-1" to "R-16-a", which were later admitted as part of respondent's documentary evidence; except for Exhibits "R-7", "R-7-a", "R-7-b", "R-7-c", "R-13-a", "R-13-b", and "R-13-d", which were denied admission for respondent's failure to submit their originals for comparison.[16]

Respondent then filed his Tender of Excluded Evidence[17] on May 25, 2015, which was noted in the Court's Resolution[18] dated September 28, 2015.

In the Resolution dated October 8, 2015[19], this case was submitted for decision taking into consideration petitioner's Memorandum[20] filed on March 6, 2015 and respondent's Memorandum[21] filed on July 15, 2015.

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[10] Docket, vol. I, pp. 386-394.
[11] Exhibit "P-19", docket, vol. II, pp. 454-468, Transcript of Stenographic Notes (TSN), taken on April 29, 2014.
[12] Exhibit "P-21", docket, vol. II, pp. 730-736, TSN taken on May 9, 2014.
[13] Docket, vol. II, p. 836.
[14] Exhibit "R-15", docket, vol. II, pp. 437-449; TSN taken on September 16, 2014.
[15] Exhibit "R-16", docket, vol. II, pp. 426-430, TSN taken on October 14, 2014.
[16] Resolution dated December 18, 2014, docket, vol. II, pp. 890-891.
[17] Docket, vol. II, pp. 1007-1014.
[18] Docket, vol. II, pp. 1067-1069.
[19] Resolution dated October 8, 2015, docket, vol. II, p. 1071.
[20] Docket, vol. II, pp. 935-958.
[21] Docket, vol. II, pp. 1036-1061.

Hence, this Decision.

THE ISSUES

The following are the issues submitted for the Court's resolution:[22]

1. Whether the Final Decision on Disputed Assessment received by petitioner did not contain the detailed computation of the assessment; and
2. Whether the petitioner is liable for the alleged VAT deficiency assessment totaling Php7,642,925,210.78, inclusive of interest and compromise penalties for taxable year 2009.

THE COURT'S RULING

We resolve the first issue in favor of respondent. The FDDA contains the detailed computation of the assessment.

Petitioner avers that it did not receive the detailed computation supporting the FDDA despite the fact that it is stated that it is an attachment in the said decision. Considering that the amount of assessed deficiency VAT per FLD amounting to ₱9,663,536,901.05 was significantly different with that in the FDDA amounting to ₱7,642,925,210.78, petitioner claims that it was deprived of the opportunity to be informed of the specific amounts and entries comprising the deficiency VAT assessment determined per FDDA.

Petitioner adds that it becomes difficult for petitioner to question respondent's basis for the assessment and to formulate counter-arguments.

Petitioner likewise invokes the pertinent provision of Section 228 of the NIRC of 1997 which requires that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made, otherwise, the assessment shall be void. According to petitioner, the absence of the detailed computation constitutes a failure on the part of respondent to inform petitioner of the facts on

[22] Pre-Trial Order, docket, vol. I, p. 388.

which the latest assessment is made; therefore, respondent's assessment as contained in the FDDA is void.

Respondent, on the other hand, claims that the fact that petitioner filed a Protest means that it was informed of the findings of the Revenue Officer.

The Court finds for respondent.

In the FDDA[23] presented by petitioner, it was mentioned that "Detailed computation of the assessment is attached herewith." However, an examination of the said FDDA shows no attachment pertaining to the alleged detailed computation.

Nevertheless, a perusal of the BIR Records shows the detailed computation attached to the FDDA[24], reflecting petitioner's deficiency VAT assessment in the amount of ₱7,642,925,210.78, computed as follows:

Gross receipts per VAT returns			₱ 41,213,385,227.91
VATable sales		₱41,093,924,987.25	
Sales to government		119,460,240.66	
Zero-rated sales		40,924,293,091.34	
		₱82,137,678,319.25	
Add: Adjustments			
Per Cashflow Statement			
Proceeds from sale of generation assets		₱39,270,738,570.00	
Collection from lease of land	₱ 652,004,950.00		
Collection from sale of power plant	38,618,733,620.00		
Per Audit			
Transfer of coal, diesel and other supplies to IPP		143,545,637.93	
Per income statement			
Miscellaneous income not subjected to VAT			
Photocopying charges to bidders	₱ 142,856.00		
Other Bid Docs	186,300.00		
Others	68,628.00		
Other Service Income	598,142.00	995,926.00	
Share in Net Settlement Surplus erroneously		39,690,961.20	

[23] Exhibit "P-3", Docket, vol. II, pp. 487-491.
[24] BIR Record, pp. 1347-1348.

reported under interest income from PEMC			
Assignment of Banked Gas to DOE		27,439,242,978.00	66,894,214,073.13
Adjusted Taxable Base per Audit			**₱108,107,599,301.04**
Output Tax			₱ 12,972,911,916.13
Less: Input tax			
Excess carried over from previous quarter		₱ 45,296,205.13	
Others from NPC		11,147,869,614.55	
Total		11,193,165,819.68	
Current Input Tax			
Purchase of Capital Goods not exceeding ₱1Million		118,043.16	
Purchase of Capital Goods exceeding P1Million		2,543,456,497.67	
Domestic Purchase of Goods Other Than Capital Goods		1,388,204,808.79	
Importation of goods Other Than Capital Goods		1,016,661,070.22	
Domestic Purchases of Services		2,805,360,712.00	
Services Rendered by Non-Residents		10,680,180.78	
Total Current Input Tax		₱ 7,764,481,312.62	
Total Available Input Tax		₱18,957,647,132.30	
Less: Input Tax closed to expense		(8,362,216.84)	
Input tax carried over to succeeding quarter		(14,009,651,700.16)	
Total Input Tax Applied		₱ 4,939,633,215.30	
Less: Disallowances			
a. Local			
1. Suppliers with the same TIN 000-001-888			
a)	₱ 955,037.25		
b)	237,238.77		
2. Non-VAT suppliers	1,608,691.88		
b. Importation			
1. Double take up of input tax on Importation			
a) Shenhua Coal Trading Co.	59,618,366.92		
b) PT Kaltim Prima Coal	31,876,179.75	94,295,514.57	
Allowable Input Tax per Audit			4,845,337,700.73
VAT Payable			**₱ 8,127,574,215.40**
Less: Creditable VAT Withheld per Returns			5,973,012.04
VAT Still Due			₱ 8,133,547,227.44
Add: Unsupported Creditable VAT Withheld Certificate			5,973,012.04
Basic VAT			**₱ 8,127,574,215.40**
Less: Partial payment per SARO No. 356277-5 dtd. 6-29-2012			4,712,488,628.40
Balance of Basic Tax			**₱ 3,415,085,587.00**
Add: Penalties			
20% interest from 1-26-10 to 6-28-12		₱ 2,282,867,208.16	
20% interest from 1-26-10 to 11-30-12		1,942,700,285.06	
20% interest on output tax collected in 2009 but declared in 2010		2,222,130.56	
Compromise penalty		50,000.00	4,227,839,623.78
Total deficiency VAT			**₱ 7,642,925,210.78**

Pertinent to this issue is Section 228 of the NIRC of 1997, as amended, which provides:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
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> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis supplied)*

The law requires that the taxpayers should be informed of the legal and factual bases of the assessment. However, the assessment notices need not be a full narration of the facts and laws on which the assessment is based. Thus, so long as the parties are notified and given the opportunity to explain their side, the requirements of due process are satisfactorily complied with.[25]

A verification of the FDDA presented by petitioner shows that it contained the factual and legal bases of the deficiency VAT assessment against petitioner. In the FDDA, respondent stated the amounts found due against petitioner and explained each item from where the assessment was derived.

The allegation that petitioner failed to receive a copy of the detailed computation of the amount of deficiency in the FDDA is of no moment considering that the FDDA clearly discussed the legal and factual bases of the significant assessment items involved. Therefore, petitioner was informed of the factual and legal bases on which the deficiency VAT assessment in the FDDA was based.

With the finding that the FDDA is valid, We shall now determine petitioner's alleged deficiency VAT liability for taxable year 2009 by delving into the propriety of the following items:

A. Output Tax	
I. Proceeds from sale of generation assets	₱39,270,738,570.00
II. Transfer of coal, diesel and other supplies to IPP	143,545,637.93
III. Miscellaneous income not subject to VAT	995,926.00
IV. Share in net settlement surplus erroneously reported under interest income from PEMC	39,690,961.20
V. Proceeds from sale of stored fuel/bunked gas to PNOC	27,439,242,978.00
B. Input Tax	
VI. Suppliers with the same TIN 000-001-888	
A. With same TIN	955,037.25
B. With no name and same TIN	237,238.77
VII. Non-VAT suppliers	1,608,691.88
VIII. Double take up of input tax on importation	
A. Shenhua Coal Trading	59,618,366.92
B. PT Kaltim Prima Coal	31,876,179.75
IX. Unsupported creditable VAT withheld	5,973,012.04
X. Deductions from available input tax	
A. Input tax closed to expense	8,362,216.84
B. Input tax carried over to succeeding quarter	14,009,651,700.16
C. Compromise penalties	₱ 50,000.00

[25] *Calma, et al. vs. Court of Appeals, et al.*, G.R. No. 122787, February 9, 1999.

A. Output Tax

I. Proceeds from sale of generation assets;
II. Transfer of coal, diesel and other supplies to IPP;
III. Miscellaneous Income not subject to VAT

Respondent included in the computation of petitioner's VAT liability the proceeds from the sale of generation assets in the amount of ₱39,270,738,570.00[26]; the transfer of coal, diesel and other supplies to IPPs amounting to ₱143,545,637.93; and the Miscellaneous Income in the amount of ₱995,926.00, finding that the same are activities related to or incidental to the privatization activities of petitioner, thus, is subject to VAT pursuant to Sections 105, 106, and/or 108 of the Tax Code, as amended.[27]

Petitioner, on the other hand, claims that it conducts privatization activities because the EPIRA mandates it to do so. Since it is a government undertaking, petitioner avers that its privatization activities are not performed in the ordinary course of trade or business and consequently not subject to VAT.

Petitioner also points out that respondent in BIR Ruling No. 020-2002 dated May 13, 2002 correctly held that petitioner's sale of assets is not being conducted in pursuit of any commercial or profitable activity as to fall within the ambit of a VATable transaction under Sections 105 and 106 of the Tax Code.

Furthermore, petitioner alleges that the Supreme Court, in the case of *Commissioner of Internal Revenue vs. Magsaysay Lines, Inc., et al.*[28], held that the sale of assets of a government entity pursuant to a privatization mandated by law is not a transaction subject to VAT. Such transaction is not undertaken in the course of trade or business, but rather involuntary and made pursuant to the declared policy of government for privatization.

Petitioner further argues that among the generation assets that were sold in 2009 are Tiwi-Makban Geothermal Plant, Amlan Hydroelectric Power Plant, Palinpinon and Tongonan Geothermal Plant; which were all using renewable sources of energy and therefore VAT zero-rated under RA No. 9337.

[26] Exhibit "R-9", Formal Letter of Demand, BIR Records, Folder 1, pp. 634-640.
[27] Exhibit "R-12", BIR Records, Folder 3, pp. 813-820.
[28] G.R. No. 146984, July 28, 2006.

As to the collection from the lease of land, petitioner also alleges that the same is incidental to its privatization activity which should not be subject to VAT.

Respondent counters that with the repeal of NPC's exemption from VAT, all transactions entered into or undertaken either by NPC and/or its successors-in-interest, petitioner included, involving transfer of or disposal of NPC's assets consisting of real properties, power generation plants and other transferable assets which are mandated to be sold or disposed in accordance with the provisions of the EPIRA, as well as their authorized activities, shall be subject to VAT.

Further, respondent asserts that petitioner's claim that the privatization activity is not in the course of trade or business, and therefore, not subject to VAT, does not hold water in view of the provision of Section 105 of the NIRC of 1997, as amended, in relation to Section 24 of RA No. 9337, which expressly repealed Section 13 of RA No. 6395, or the NPC Charter, insofar as NPC's exemption from VAT is concerned.

Respondent likewise contends that petitioner's reliance on BIR Ruling No. 20-2002 is misplaced because the same is deemed revoked by the amendatory laws and jurisprudence. Respondent cites Revenue Memorandum Circular (RMC) No. 11-2012, which allegedly clarified the tax consequences of petitioner's transactions.

It is undisputed that respondent assessed petitioner for deficiency VAT on transactions related to or incidental to its privatization activities, citing as basis Section 105 of the NIRC of 1997, as amended:

> "SEC. 105. *Persons Liable.* – Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
>
> The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services.

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> This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.
>
> The phrase '*in the course of trade or business*' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.
>
> xxx xxx xxx"

It is clear from the foregoing that any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties and renders services shall be subject to VAT imposed in Section 106 or 108 of the NIRC of 1997.

A further reading of Section 105 of the NIRC of 1997 would show that a transaction "in the course of trade or business" includes "transactions incidental thereto".[29]

It is important to note that petitioner was created under Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001. Specifically, Sections 49, 50 and 51 of the EPIRA state:

> "SECTION 49. *Creation of Power Sector Assets and Liabilities Management Corporation.* – There is hereby created a government-owned and -controlled corporation to be known as the 'Power Sector Assets and Liabilities Management Corporation', hereinafter referred to as the 'PSALM Corp.', which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of the NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by the PSALM Corp.

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[29] *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue*, G.R. No. 193301, March 11, 2013 and *Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue*, G.R. No. 194637, March 11, 2013.

within one hundred eighty (180) days from the approval of this Act.

Section 50. *Purpose and Objective, Domicile and Term of Existence.* – The principal purpose of the PSALM Corp. is to manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.

xxx xxx xxx

SECTION 51. *Powers.* – The PSALM Corp. shall, in the performance of its functions and for the attainment of its objective, have the following powers:

(a) To formulate and implement a program for the sale and privatization of the NPC assets and IPP contracts and the liquidation of NPC debts and stranded contract costs, such liquidation to be completed within the term of existence of the PSALM Corp.;

(b) To take title to and possession of, administer and conserve the assets transferred to it; to sell or dispose of the same at such price and under such terms and conditions as it may deem necessary or proper, subject to applicable laws, rules and regulations;

xxx xxx xxx

(e) To liquidate the NPC stranded contract costs, utilizing the proceeds from sales and other property contributed to it, including the proceeds from the universal charge;

(f) To adopt rules and regulations as may be necessary or proper for the orderly conduct of its business or operations;

xxx xxx xxx

(i) To own, hold, acquire, or lease real and personal properties as may be necessary or required in the discharge of its functions;

xxx xxx xxx

(m) To structure the sale, privatization or disposition of NPC assets and IPP contracts and/or their energy output based on such terms and conditions **which shall optimize the value and sale prices of said assets.**" *(Emphasis supplied)*

From the foregoing, it is clear that the primary purpose for the creation of petitioner is for the **orderly sale, disposition and privatization of NPC generation assets, real estate and other disposable assets**, and IPP contracts with the **objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner**.

In this regard, it must be highlighted that petitioner's primary purpose of pursuing the orderly sale, disposition and privatization of NPC generation assets, real estate and other disposable assets and IPP contracts is to liquidate all NPC financial obligations and stranded contract costs in an **OPTIMAL MANNER,** meaning, that it not be for a loss but optimally for a gain.

Accordingly, the proceeds from petitioner's sale of generation assets, the transfer of coal, diesel and other supplies to IPPs, and the Miscellaneous Income derived from activities related to or incidental to the privatization activities of petitioner, being part of its regular conduct or economic activity, which is the primary purpose for which it was created, were properly subjected to VAT.

As to the allegation that BIR Ruling No. 20-2002 correctly held that petitioner's sale of assets is not being conducted in pursuit of any commercial or profitable activity as to fall within the ambit of a VATable transaction under Sections 105 and 106 of the NIRC of 1997, the said ruling cannot be applied in this case.

The pertinently applicable provisions in this case, Sections 106 and 108 of the NIRC of 1997, as amended by RA No. 9337, state:

"SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –

(A) *Rate and Base of Tax.* – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor. xxx

xxx xxx xxx

(1) The term **'goods or properties'** shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include:

(a) Real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business;
(b) The right or the privilege to use patent, copyright, design or model, plan secret formula or process, goodwill, trademark, trade brand or other like property or right;
(c) The right or the privilege to use in the Philippines of any industrial, commercial or scientific equipment;
(d) The right or the privilege to use motion picture films, films, tapes and discs; and
(e) Radio, television, satellite transmission and cable television time.

The term **'gross selling price'** means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price.

xxx xxx xxx

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

(A) *Rate and Base of Tax.* – There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties. xxx

xxx xxx xxx

The phrase **'sale or exchange of services'** means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by xxx lessors of property, whether personal or real xxx **sales of electricity by generation companies, transmission, and distribution companies**; xxx" *(Emphasis supplied)*

The foregoing show that with the enactment of RA No. 9337 on July 1, 2005, the Electric Power Industry was placed under the VAT system, and the sale of electricity by generation companies, transmission and distributions companies became subject to VAT on the basis of Sections 106 and 108 of the Tax Code, as amended.

Clearly, the enactment of R.A. No. 9337 subjected the electric power industry's main business activities Value Added Tax or VAT. Therefore, by classifying petitioner's income from its main business activity as subject to VAT, it follows that its incidental income shall likewise be subject to VAT."[30]

In other words, RA No. 9337 now subjects petitioner's income from its main and incidental activities to VAT. Accordingly, BIR Ruling No. 20-2002, which was issued prior to the enactment of RA No. 9337, cannot be applied in this case.

Considering that Section 106 imposes VAT on "all kinds of goods and properties" sold in the Philippines, the proceeds and income derived by petitioner from its sale of generation assets and from transfer of coal, diesel and other supplies to IPP should be properly subjected to VAT.

IV. Share in Net Settlement Surplus erroneously reported under Interest Income from PEMC

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[30] CTA EB No. 1282 (CTA Case No. 8475), May 17, 2016.

Respondent also finds that petitioner received the amount of ₱39,690,961.20 pertaining to the Net Settlement Surplus from the Philippine Electricity Market Corporation (PEMC), which was erroneously charged to Interest Income and should be subject to VAT pursuant to Section 108 of the NIRC of 1997, as amended.

On the other hand, petitioner claims that these items pertain to the miscellaneous income related to petitioner's participation in electricity trading in the PEMC. From the identified interest income in the PAN from PEMC of ₱39,971,268.00, only ₱280,306.41 pertains to interest for the late payment/remittance made by PEMC for the energy traded by petitioner at the Wholesale Electricity Spot Market (WESM).

The difference of ₱39,690,961.20 allegedly accounts for petitioner's share in the Net Settlement Surplus for November 26, 2008 to December 25, 2008, which PEMC remitted to petitioner. According to petitioner, the amount is not subject to VAT because they did not arise from sale of goods and services in the ordinary course of trade or business.

Petitioner cites the definition of Net Settlement Surplus in Section 1.3 of the Rules for the Distribution of Net Settlement surplus, as approved by Energy Regulatory Commission (ERC) Resolution 6, Series of 2009,[31] as follows:

> "The settlement surplus or deficit remaining after all market transactions have been accounted for, including the assignment of transmission line rentals to Network Service Providers. This surplus or deficit is assumed to be attributable to economic rentals arising from other binding constraints, and accounted for in accordance with the WESM Rules provision on the Treatment of Net Settlement Surplus."

Petitioner explains that the Net Settlement Surplus is distributed or flowed back to WESM participants on a pro-rata basis from the surplus in the collection of PEMC.

Being a surplus flowback, it is allegedly not an income but a

[31] Exhibit "P-9", Docket, vol. II, pp. 670-686.

mere return of overpayment of the shared economic rentals in the grid paid for by purchasers of energy in the WESM. Consequently, it is not income from a selling activity and should not be subject to VAT.

As to this item, the Court finds that petitioner failed to present supporting evidence to prove that the said amount of Net Settlement Surplus is indeed a mere return of overpayment by the purchasers of energy in the WESM for the shared economic rentals in the grid.

Notably, if it is a mere return of overpayment, then why did petitioner charge it as income in its Income Statement.

As provided in Section 2.2 of the Rules for the Distribution of Net Settlement Surplus[32], the Net Settlement Surplus is the result of the *Collectibles* less the *Payables*. Under the said provision, *Collectibles* is the total amount to be collected by the Market Operator (PESM) from the trading participants for energy transactions in the market (including loss and congestion charges for both spot and bilateral quantities) for all nodes at trading interval k, while the *Payables* is the total amount to be paid by the Market Operator to the trading participant for energy transactions in the market for the trading interval k.

While petitioner presented the Notice issued by the WESM to prove that part of the amount remitted to petitioner is its share in the Energy Net Settlement Surplus, there was no evidence to prove as to what transaction the Net Settlement Surplus came from. Petitioner wants to convince this Court that the Net Settlement Surplus is a mere return of overpayment. However, there was no evidence to prove that this overpayment came from petitioner, an overpayment which is merely returned to it by way of Net Settlement Surplus distribution so as not to consider the said amount pertaining to Net Settlement Surplus as part of its income.

Since the Net Settlement Surplus is an income/remittance related to petitioner's participation in its trade of electricity in WESM, which can be considered as related to or incidental to its business activity of selling electricity, the Court finds the same subject to VAT.

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[32] Exhibit "P-9", Docket, vol. II, pp. 672-686.

V. Proceeds from sale Assignment of Banked Gas to DOE

In the FDDA, respondent finds that Note 14 of the Audited Financial Statement of petitioner reflects a decrease in the Stored fuel-Ilijan natural gas of ₱27,439,242,978.00 in 2009 due to the sale to PNOC of a portion of the banked gas funded by the Department of Energy (DOE)/Btr. Respondent mentions that it was the Republic of the Philippines through the DOE which sold the banked gas to PNOC for ₱14.4 Billion, as reflected in the transferred transaction from NPC to petitioner under the EPIRA. NPC merely dropped from its books the ₱27,439,242,978.00 value of banked gas, and the corresponding obligation of DOE, and NPC/petitioner was relieved of its remaining liabilities to DOE as a result of the subrogation agreement and assignment of such banked gas; hence, the asset account was closed out.

Respondent concludes that the assignment of the banked gas to the DOE by the NPC/petitioner, and the relief of the latter's remaining liabilities to DOE as a result of the subrogation agreement is considered as deemed sale transaction which is subject to VAT pursuant to Section 106(B)(2)(b) of the NIRC of 1997, as amended.

Petitioner opposes the said finding and argues that the proceeds from the assignment of Banked Gas to the Department of Energy is an isolated transaction and definitely not a sale in the course of trade or business that should be subjected to VAT.

Petitioner presented the Memorandum of Agreement[33] executed by and among the Republic of the Philippines (through the DOE), NPC and petitioner, as well as the September 28, 2009 Deed of Sale between the DOE and the Philippine National Oil Company (PNOC).[34] These documents allegedly prove that petitioner did not receive any proceed in any of the transactions relating to the Banked Gas and that its disposition cannot be considered as a sale or transfer in the course of trade or business of petitioner.

Section 106(B)(2)(b) of the NIRC of 1997, as amended, is instructive and it pertinently reads:

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[33] Exhibit "P-11", Docket, vol. II, pp. 700-705.
[34] Exhibit "P-10", Docket, vol. II, pp. 687-699.

"SEC. 106. *Value-added Tax on Sale of Goods or Properties:*

xxx xxx xxx

(B) *Transactions Deemed Sale.* – The following transactions shall be deemed sale:

(1) xxx xxx xxx
(2) Distribution or transfer to:
(a) xxx xxx xxx
(b) Creditors in payment of debt; xxx"

Perusal of the Memorandum of Agreement shows that NPC and petitioner transferred all the rights of ownership over the Banked Gas to the Republic of the Philippines through the DOE. It further reveals that by virtue of the subrogation to the Republic of the Philippines of the rights of NPC with regard to the Banked Gas, NPC and petitioner were relieved of their liabilities to DOE under Administrative Order No. 381 for the Subrogated Banked Gas to the extent that NPC/petitioner has not drawn and utilized the Subrogated Banked Gas.

Clearly, there is a transfer of the Banked Gas from NPC/petitioner to the DOE which resulted in the extinguishment of NPC/petitioner's liabilities to DOE. Therefore, the transaction is well within the purview of Section 106(B)(2)(b) of the NIRC of 1997, as amended, which subjects to VAT the transaction involving transfer or distribution to creditors in payment of debt.

With regard to petitioner's allegation that the transfer is an isolated transaction and definitely not a sale in the course of trade or business that should be subjected to VAT, the Court does not agree.

As mentioned earlier, the primary purpose for the creation of petitioner is for the **orderly sale, disposition and privatization of NPC generation assets, real estate and other disposable assets**, and IPP contracts with the **objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner**.

This includes the recognition by petitioner of NPC's pre-existing obligations and the Republic of the Philippine's rights to the

Subrogated Banked Gas under pre-existing contracts (Support, Assignment and Payment Agreement and Administrative Order No. 381), including the right of subrogation to the Subrogated Banked Gas.

Considering that the transaction is pursuant to petitioner's primary purpose of pursuing the disposition of NPC's assets and liquidation of NPC's liabilities, the Court finds that the transaction is incidental to or related to the conduct of its trade or business. Thus, respondent is correct in subjecting the transaction to VAT.

B. Input Tax:

Disallowed Input Taxes and Unsupported Creditable VAT Withheld

Respondent disallowed petitioner's input taxes in the aggregate amount of ₱94,295,514.57 and creditable VAT withheld of ₱5,973,012.04 due to the following reasons:

A. Disallowed Input Taxes	
1. Suppliers with the same TIN 000-001-888	
A. With same TIN	₱ 955,037.25
B. With no name and same TIN	237,238.77
2. Non-VAT suppliers	1,608,691.88
3. Double take up of input tax on importation	
A. Shenhua Coal Trading	59,618,366.92
B. PT Kaltim Prima Coal	31,876,179.75
Total Disallowed input taxes	**₱ 94,295,514.57**
B. Unsupported creditable VAT withheld	₱ 5,973,012.04

Respondent disallowed the input taxes of ₱955,037.25 from suppliers with same TIN 000-001-888, as well as the input taxes of ₱267,238.77 pertaining to cost centers per Summary List of Purchases (SLP) with the same TIN, for petitioner's failure to comply with the invoicing requirements prescribed under Section 113(B)(1) of the NIRC of 1997, as amended, in relation to Section 110 of the same Code. Likewise, the input taxes from non-VAT suppliers in the amount of ₱1,608,691.88 were disallowed pursuant to Section 110 of the NIRC of 1997, as amended.

According to petitioner, it religiously complies with the invoicing requirements of the NIRC of 1997, as amended, and then it presented the following evidence to refute respondent's contentions:

	Exhibit No.
Schedule analysis of the various suppliers with their correct TIN indicated	P-12
Schedule analysis of the various suppliers purportedly having the same TIN, duly identified with their business name and with corresponding TIN	P-13
Purchase Transaction - Reconciliation of Listing For Enforcement (List of Non-VAT Suppliers given to PSALM by NPC)	P-14

The Court finds these schedules self-serving, thus, deserve scant consideration. Further, the basis of respondent's assessment was failure of petitioner to present supporting documents in accordance with Section 113(B)(1) of the NIRC of 1997, as amended. Despite petitioner's claim of religious compliance with the invoicing requirements, it however failed to demonstrate such fact in Court. Petitioner did not provide the necessary documents to support the above-mentioned schedules. Hence, the Court cannot ascertain whether petitioner complied with the invoicing requirements as assessed by respondent. Consequently, the disallowances shall be sustained.

As to the creditable VAT withheld of ₱5,973,012.04, the same was disallowed by respondent for being unsupported. Inasmuch as petitioner still failed to submit before this Court the required supporting documents, the disallowance shall remain.

Respondent also found that there was a double take up of input taxes on importations from Shenhua Coal Trading Company in the amount of ₱59,618,366.92 and from PT Kaltim Prima Coal in the amount of ₱31,876,179.75, both claimed as part of the Summary List of Importations (SLI) and SLP, hence, these were disallowed pursuant to Section 110 of the NIRC of 1997, as amended.

Petitioner admitted to the double take up of input tax on importation from PT Kaltim Prima Coal amounting to ₱31,876,179.75 as acknowledged by Mr. Alvin P. Diaz, Acting Director IV of the Governance Commission for Government Owned and Controlled Corporations and the former Manager for Budget and Property Monitoring Department of petitioner, through his Amended Judicial Affidavit.[35] Therefore, the disallowance is correct.

[35] Exhibit "P-19", 46A, Docket, vol. II, p. 466.

Meanwhile, petitioner maintains that there is no double take up of input taxes in the amount of ₱59,618,366.92 on importation from Shenhua Coal Trading as can be established by NPC/petitioner's SLP and SLI[36].

An examination of the SLI shows that there was an importation from Shenhua for the month of May 2009 with corresponding input VAT amounting to ₱59,618,366.92 purportedly supported by Import Entry No. 27138063 and paid via Official Receipt No. 1701 dated May 26, 2009. It is noted that the same amount of input VAT was claimed by petitioner in the SLP, albeit the supplier indicated in the SLP for such transaction is Bartech Limited and not Shenhua.

From the examination of the schedules, it would appear that there was no double take up of input VAT in the amount of ₱59,618,366.92 since the same amount were noted coming from two different suppliers. However, the Court is not convinced since there was no proof presented by petitioner showing that there was, indeed, separate transactions from Shenhua and Bartech to justify the claim of input VAT from each, and that the same amount of input VAT for each transaction was merely a coincidence. As a result, the Court cannot ascertain the veracity of petitioner's claims.

It must be noted that under Section 8 of RA No. 1125, the CTA is categorically described as a court of record. As cases filed before it are litigated *de novo*, party-litigants should prove every minute aspect of their cases.[37] Hence, petitioner must present all of the relevant supporting documents to prove and strengthen its claims, thereby sufficiently refuting respondent's assessments.

As such, the Court upholds respondent's disallowance of the foregoing items.

Petitioner's total allowable input tax to be applied against its output tax liability

Respondent's computation of allowable input tax excluded the (a) Input tax closed to expense – ₱8,362,216.84, and (b) Input tax carried over to succeeding quarter – ₱14,009,651,700.16.

[36] Exhibit "P-15", Docket, vol. II, pp. 720-729.
[37] *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008.

Petitioner contends that the FLD or the Details of Discrepancy did not explain the basis for the limitation of application of input tax.

An examination of the computation of the available input tax in the FLD shows that respondent merely laid down the total input tax declarations of petitioner for taxable year 2009, with the corresponding deductions.

Based on petitioner's Quarterly VAT Returns for taxable year 2009[38], the input tax closed to expense pertains to Line 23B – Input Tax on sale to government closed to expense, totaling ₱8,362,216.84, as deduction from available input tax. Hence, petitioner cannot question the nature of such deduction since it itself declared such amount to be deductible from available input tax.

Nevertheless, the Court finds it imperative to make a definitive determination of petitioner's allowable input tax considering the findings of the disallowances as discussed earlier.

In its Quarterly VAT Returns for taxable year 2009, petitioner reported total current input tax of ₱7,764,481,312.62, composed of the following:

Purchase of Capital Goods not exceeding P1Million	₱ 118,043.16
Purchase of Capital Goods exceeding P1Million	2,543,456,497.67
Domestic Purchase of Goods Other Than Capital Goods	1,388,204,808.79
Importation of goods Other Than Capital Goods	1,016,661,070.22
Domestic Purchases of Services	2,805,360,712.00
Services Rendered by Non-Residents	10,680,180.78
Total Current Input Tax	**₱ 7,764,481,312.62**

Out of the reported current input tax of ₱7,764,481,312.62, only the amount of ₱7,670,185,798.05 is considered valid input tax, as determined below:

Total Current Input Tax		₱ 7,764,481,312.62
Less: Disallowances		
a. Local		
1. Suppliers with the same TIN 000-001-888		
a)	₱ 955,037.25	
b)	237,238.77	
2. Non-VAT suppliers	1,608,691.88	

[38] BIR Records, Folder 1, pp. 224 to 234.

b. Importation		
1. Double take up of input tax on importation		
a) Shenhua Coal Trading Company	59,618,366.92	
b) PT Kaltim Prima Coal	31,876,179.75	94,295,514.57
Total Valid Input Tax		**₱7,670,185,798.05**

However, not all of the valid input tax pertaining to the current transactions of ₱7,670,185,798.05 is allowable as tax credit. It is to be noted that petitioner's sales were made to both government and non-government entities. As such, the VAT treatment as regards sales to Government or any of its political subdivisions, instrumentalities or agencies, including GOCCs, is distinct from the VAT treatment of non-governmental sales.

As regards its sales to government entities, Section 114(C) of the NIRC of 1997, as amended, and Section 4.114-2 of Revenue Regulations No. 04-07, require the government or any of its political subdivisions, instrumentalities or agencies including government-owned or -controlled corporations to deduct and withhold a final VAT due at the rate of five percent (5%) from its income payments to the seller of goods and/or services. The 5% final VAT withholding rate shall represent the net VAT payable of the seller of goods and/or services. The remaining seven percent (7%) effectively accounts for the standard input VAT for sales of goods or services to government or any of its political subdivisions, instrumentalities or agencies including GOCCs, in lieu of the actual input VAT directly attributable or ratably apportioned to such sales to the government. Should the actual input VAT exceed the standard input VAT of 7% of gross payments, the excess may form part of the sellers' expense or cost, *i.e.,* as deductible expense from its gross income. However, if the actual input tax is less than the standard input VAT of 7% of gross payments, the difference shall be closed to expense or cost which effectively becomes an income of the seller of goods and/or services.

As already mentioned, petitioner's valid input tax for the current transaction amounts to ₱7,670,185,798.05. Considering that petitioner's sales for taxable year 2009 were made to both government and non-government entities which were subject to VAT at zero percent (0%) and twelve percent (12%) rates, the valid input tax of ₱7,670,185,798.05, must be allocated accordingly, thus:

	Sales	**Input VAT Allocation**
VAT Sales	₱ 41,093,924,987.25	₱ 3,837,435,465.34
Zero-Rated Sales	40,924,293,091.34	3,821,594,889.06

Sales to Government	119,460,240.66	11,155,443.65
Total	**₱82,137,678,319.25**	**₱7,670,185,798.05**

As also stated earlier, petitioner's 7% standard input VAT may be credited against petitioner's output VAT in lieu of the actual input VAT directly attributable to such sales to the government. Since petitioner's 7% standard input VAT, which is ₱8,362,216.85 (₱119,460,240.66 x 7%) is less than the valid actual input VAT attributable to sales to the government of ₱11,155,443.65, petitioner's allowable input tax on the current transactions shall be limited only to ₱7,667,392,571.25, and only the amount of ₱18,860,558,390.93 shall be considered as total allowable input tax for taxable year 2009 which shall be applied against petitioner's output tax liability, to wit:

		Allowable Input Tax
VAT Sales		₱ 3,837,435,465.34
Zero-Rated Sales		3,821,594,889.06
Sales to Government (Standard Input VAT)		8,362,216.85
Total Allowable input tax on current transactions		**7,667,392,571.25**
Add: Excess carried over from previous quarter	₱ 45,296,205.13	
Others from NPC	11,147,869,614.55	11,193,165,819.68
Total Allowable Input Tax		**₱18,860,558,390.93**

The difference of ₱2,793,226.80, as determined below, shall form part of petitioner's cost or expense or must be treated as deduction from its gross income:

Actual valid Input tax attributable to sales to government	₱ 11,155,443.65
Standard Input VAT	8,362,216.85
Input tax on sales to government closed to expense	**₱2,793,226.80**

As for the input tax carried over to succeeding quarter amounting to ₱14,009,651,700.16 per Line 29 of the Fourth Quarter VAT Return, the Court could only surmise that the VAT overpayment carried over to the succeeding year was disallowed in order to recapture the tax benefit realized by petitioner in carrying the said amount to the succeeding year.

However, it was improper for respondent to disallow the said VAT overpayment because any tax benefit derived by petitioner from the carry-over of the said amount redounds to the succeeding year 2010. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.

In sum, the Court finds petitioner not subject to the deficiency VAT assessed considering that it has sufficient input tax credits to cover its output tax liability, as determined below:

Gross receipts per VAT returns		₱ 41,213,385,227.91
VATable sales	₱41,093,924,987.25	
Sales to government	119,460,240.66	
Zero-rated sales	40,924,293,091.34	
Total Sales	₱82,137,678,319.25	
Add: Adjustments		
Proceeds from sale of generation assets	₱39,270,738,570.00	
Transfer of coal, diesel and other supplies to IPP	143,545,637.93	
Miscellaneous income not subjected to VAT	995,926.00	
Share in Net Settlement Surplus erroneously reported under interest income from PEMC	39,690,961.20	
Assignment of Banked Gas to DOE	₱27,439,242,978.00	66,894,214,073.13
Adjusted Taxable Base		**₱108,107,599,301.04**
Output Tax		₱ 12,972,911,916.13
Less: Input Tax Credits		18,860,558,390.93
Excess Input Tax		**₱ (5,887,646,474.80)**

C. Compromise Penalty

In the deficiency VAT assessment, respondent imposed compromise penalty of ₱50,000.00 against petitioner. Pursuant to Revenue Memorandum Order (RMO) No. 01-90, as amended by RMO No. 19-07, compromise penalties are only suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[39] Absent any showing that petitioner consented to the compromise penalties, the same should not be imposed. Accordingly, this Court holds that respondent's imposition of compromise penalties, without the consent of petitioner, cannot be sustained.

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[39] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., et al.*, G.R. No. L-35266, January 21, 1991.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the deficiency value-added tax assessment in the amount of ₱7,642,925,210.78 for taxable year 2009 is hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(Inhibited)
ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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.

ROMAN G. DEL ROSARIO
Chairpersion
Presiding Justice