REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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MIRANT SUAL CORPORATION (formerly SOUTHERN ENERGY PANGASINAN, INC.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6958

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
JAN 18 2008 ; 3:00 PM

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AMENDED DECISION

CASANOVA, *J.*:

On August 29, 2007, this Court rendered a Decision partially granting petitioner's claim for refund or issuance of a tax credit certificate in the amount of P95,228,409.81 allegedly representing unutilized input VAT paid on its domestic purchases of goods and services attributable to effectively zero-rated sale of services for the four quarters of 2002. Respondent and petitioner received their copy of said Decision on September 6 and 10, 2007, respectively.

On September 17, 2007, respondent filed a "Motion for Partial Reconsideration" of the assailed Decision on the ground that contrary to the finding of this Court, petitioner failed to prove that it has complied with the registration requirements of a value-added taxpayer as provided in the National Internal Revenue Code (NIRC) and applicable regulations. Likewise,

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petitioner allegedly failed to show that its purchases of goods and services were made in the course of its trade or business and that said purchases were properly supported by Value-added Tax (VAT) invoices, official receipts, and other pertinent documents.

On September 25, 2007, petitioner likewise filed a "Motion for Partial Reconsideration" of the subject Decision based on the following grounds:

> "I. The Honorable Court erred in ruling that the petitioner failed to substantiate its claim for input VAT in the amount of P6,824,402.12.
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> II. The Honorable Court erred in ruling that the output VAT of P17,793,418.43 shall be deducted from the substantiated input VAT of P114,501,461.30.
>
> III. The Honorable Court erred in ruling that petitioner's sale of electricity to Mirant (Philippines) Energy Corporation (MPEC) is not effectively VAT zero-rated, thus, the input VAT corresponding to or allocable to sales to MPEC should be disallowed."

Both respondent and petitioner filed an "Opposition" to each other's "Motion for Partial Reconsideration" on October 1 and 23, 2007, respectively.

During the hearing on October 5, 2007, respondent's counsel submitted her motion without further oral arguments and the Court submitted for resolution petitioner's and respondent's "Motion for Partial Reconsideration".

Regarding respondent's "Motion for Partial Reconsideration", this Court finds the same unmeritorious inasmuch as the arguments raised are mere reiterations and in fact had been comprehensively discussed and resolved in the assailed Decision. On the other hand, after a thorough review and

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examination of the pieces of evidence submitted by petitioner and the applicable laws and jurisprudence, the Court partially grants petitioner's claim.

In its first argument, petitioner submits that out of the allegedly unsupported input VAT of P18,333,332.17, it is entitled to the amount of P6,824,402.12. A review of the Independent Certified Public Accountant's Report shows his observations and the breakdown of the amount of P6,824,402.12, as follows:

	Reference	Amount
Input taxes on purchases of goods		
Invoices issued in the former name of the company	Annex 6	P 169,726.88
Input taxes on purchases of services		
ORs issued in the former name of the company	Annex 7	3,589.24
Input taxes claimed on importations		
Supported by bank or BOC Ors issued in the former name of the company	Annex 18	21,292.00
Supported by informal IEDs certified by the BOC and bank or BOC ORs	Annex 16	43,967.00
Supported by IEDs certified by BOC only	Annex 25	17,566.00
Supported by IEDs certified by BOC, photocopied BOC ORs and original bank debit advices	Annex 26	6,568,261.00
TOTAL		**P 6,824,402.12**

The Court noticed that petitioner's claimed amount of 6,824,402.12 did not pass the substantiation requirement, except the amount of P39,987.00.

The invoices issued for the amount mentioned in Annexes 6, 7, and 18 were issued in petitioner's former name. And records indicate that the name of petitioner was changed to Mirant Sual Corporation effective April 26, 2001. Thus, the aforesaid invoices should have been issued in petitioner's present name.

The Court also cannot allow the amount stated in Annex 25. While they are supported by Import Entry Declarations (IEDs) certified by the Bureau of Customs (BOC), no machine validation was found to exist. Hence, there is no way of finding out whether petitioner actually made payments.

Similarly, Annex 26 is supported by invalidated IED's certified by BOC, thus it cannot be considered. Even the photocopied BOC official receipts (ORs) and original bank debit advices cannot be considered, for there is no way of determining their veracity.

Nevertheless, the amount stated in Annex 16 should be allowed in part. From the input tax of P43,967.00, only the amount of P39,987.00 was found to be supported by proper BOC official receipts, broken down as follows:

Exh.	OR Date	Payee	BOC OR Number	Input Tax
DD-170	1/14/2002	Bureau of Customs	92417437	P 1,757.00
DD-174	2/6/2002	Bureau of Customs	92708603	2,818.00
DD-301	2/13/2002	Bureau of Customs	93027697	1,072.00
DD-313	2/21/2002	Bureau of Customs	93131997	1,382.00
DD-317	2/21/2002	Bureau of Customs	93132006	2,469.00
EE-249	5/7/2002	Bureau of Customs	95011436	5,164.00
FF-217	6/4/2002	Bureau of Customs	95686613	1,018.00
EE-48	6/14/2002	Bureau of Customs	93701623	2,382.00
FF-239A	6/27/2002	Bureau of Customs	96144063	3,149.00
FF-536	7/11/2002	Bureau of Customs	96520182	1,120.00
FF-607	8/7/2002	Bureau of Customs	97335341	2,789.00
GG-327	9/2/2002	Bureau of Customs	97789964	1,514.00
GG-486	9/8/2002	Bureau of Customs	97857365	2,400.00
GG-403	9/12/2002	Bureau of Customs	98091883	3,440.00
GG-427	10/10/2002	Bureau of Customs	98737667	2,918.00
GG-447	10/16/2002	Bureau of Customs	98644786	1,522.00
GG-431	10/24/2002	Bureau of Customs	99088796	1,339.00
GG-490	10/24/2002	Bureau of Customs	99088814	1,734.00
Total				P 39,987.00

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Bureau of Customs OR No. 92802193 in the amount of P3,980.00[1] was disallowed because it was issued in the former name of petitioner.

Anent the second issue, petitioner claims that the output VAT in the amount of P17,793,418.43 should not have been deducted from the substantiated input VAT of P114,501,461.30. The aforesaid output VAT had already been set off with the existing input VAT for the First Quarter of 2002 as testified to by Ms. Maria Corazon Juliana Brillantes. In addition to this, the Amended First Quarterly VAT Return shows that an unutilized input VAT in the amount of P346,034,254.80 has been accumulated from the previous quarter from which this amount of output VAT can be applied based on the principle of "first in, first out".

Contrary to petitioner's allegation, records prove that the output VAT of P17,793,418.43 was not deducted from the amount of the whole claimed amount of P132,847,793.47. Accordingly, the output VAT of P17,793,418.43 should be deducted from the substantiated input VAT of P114,501,461.30. As regards the amount of P346,034,254.80 allegedly carried-over from the previous quarter against which the amount of output VAT can be applied based on the principle of "first in, first out", the same cannot be done under the present circumstances. The amount of P346,034,254.80 allegedly carried-over from the previous quarter was not substantiated, which means that the output VAT will be charged against the substantitated input VAT.

Regarding the issue on the sale of electricity to MPEC, the Court agrees that it is zero-rated pursuant to Paragraph 5, Section 6 of Republic Act No.

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[1] Exhibit "DD-193"

9136, also known as the Electric Power Industry Reform Act (EPIRA) of 2001, which provides:

> "SEC. 6. Generation Sector. . .
>
> xxx xxx xxx
>
> Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated."

The Court affirmed the foregoing in **Mindanao 1 Geothermal Partnership vs. Commissioner of Internal Revenue**[2], thus:

> "...it is undisputed that Republic Act No. 9136 otherwise known as the 'Electric Power Industry Reform Act of 2001' provided for VAT zero-rating of sales of generated power by generation companies beginning June 26, 2001. Thus, the pertinent provisions of the National Internal Revenue Code of 1997 are deemed amended by the provisions of RA No. 9136 by modifying the VAT rate applicable to sales of generated power by generation companies from ten (10%) percent to zero (0%) percent.
>
> To qualify for VAT zero-rating under R.A. No. 9136, petitioner must prove that: 1) it is a generation company and 2) it derived sales from power generation."

It is a stipulated fact that petitioner is engaged in the business of power generation and the subsequent sale thereof to the National Power Corporation (NPC) under a Build, Operate, and Transfer (BOT) scheme.[3]

Thus, petitioner's declared zero-rated sales of P 13,385,579,184.65 was fully substantiated. All valid input VAT were attributable to the substantiated zero-rated sales.

To recapitulate, petitioner's valid creditable input tax is P96,747,998.87, computed as follows:

[2] CTA Case No. 6788
[3] Paragraph 1, Joint Stipulation of Facts and Issues, Docket, p. 291

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Claimed Input VAT	P132,834,793.47
Less: Disallowances (*See Annex A*)	18,293,376.17
Net Creditable Input VAT	P114,541,417.30
Less: Output VAT	17,793,418.43
Refundable Excess Input VAT	**P 96,747,998.87**

In the light of the foregoing considerations, the Court finds legal basis to render this Amended Decision pursuant to Section 3, Rule 14 of the Revised Rules of Court of Tax Appeals partially granting petitioner's "Motion for Partial Reconsideration" of the questioned Decision dated August 29, 2007.

WHEREFORE, respondent's "Motion for Partial Reconsideration" is hereby **DENIED** for lack of merit and petitioner's "Motion for Partial Reconsideration" is hereby **PARTIALLY GRANTED.** The Court's Decision promulgated on August 29, 2007 in the instant case is hereby **MODIFIED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or in the alternative, to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the increased amount of P96,747,998.87 representing unutilized input VAT paid on its domestic purchases of goods and services attributable to effectively zero-rated sale of services for the four quarters of 2002.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

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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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division

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SUMMARY OF INPUT VAT DISALLOWANCES

	Reference	Amount
Input taxes on purchases of goods		
Erroneously computed	Annex 2-1, Exhibit V	P 31.00
Supported by VAT invoices without BIR permit number	Annex 2-2, Exhibit V	320,782.74
Supported by photocopied VAT invoices	Annex 2-3, Exhibit V	18,338.29
Supported by documents other than VAT invoices	Annex 2-4, Exhibit V	32,313.21
Supported by VAT invoices with pre-printed TIN only	Annex 2-5, Exhibit V	143,026.64
Supported by non-VAT invoices	Annex 2-6, Exhibit V	10,101.65
Supported by invoices not in the name of the company	Annex 2-7, Exhibit V	16,030.54
Supported by single invoices erroneously presented twice in the summary	Annex 2-8, Exhibit V	5,190.92
Input taxes on purchases of services		
Erroneously computed	Annex 3-1, Exhibit V	68,013.75
Supported by VAT ORs without BIR permit number	Annex 3-2, Exhibit V	26,946.38
Supported by documents other than VAT ORs	Annex 3-3, Exhibit V	863,520.12
Supported by photocopied VAT ORs	Annex 3-4, Exhibit V	2,155.00
Supported by ORs with pre-printed TIN only	Annex 3-5, Exhibit V	280,485.82
Supported by non-VAT ORs	Annex 3-6, Exhibit V	105,800.77
Supported by Ors issued not in the name of the company	Annex 3-7, Exhibit V	15,807.78
Supported by single ORs erroneously presented twice in the summary	Annex 3-8, Exhibit V	2,318.18
Input taxes on local purchases of goods and services		
Without supporting documents	Annex 4, Exhibit V	751,976.37
Input taxes claimed on importations		
Erroneously computed	Annex 5-1, Exhibit V	165,994.55
Without supporting documents	Annex 5-2, Exhibit V	142,745.00
SUBTOTAL		**P 2,971,578.71**
Input taxes on purchases of goods		
Invoices issued in the former name of the company	Annex 6, Exhibit V	P 169,726.88
Supported by undated VAT invoices	Annex 8, Exhibit V	136,031.51
Invoices dated outside the period of claim	Annex 10, Exhibit V	3,450,664.98
Supported by VAT invoices with preprinted "TIN-V"	Annex 28, Exhibit V	89,720.10
Input taxes on purchases of services		
ORs issued in the former name of the company	Annex 7, Exhibit V	3,589.24

Supported by undated VAT ORs	Annex 9, Exhibit V	22,817.55
Invoices dated outside the period of claim	Annex 11, Exhibit V	1,160,993.39
Supported by VAT ORs with preprinted "TIN-V"	Annex 29, Exhibit V	202,996.93
Input taxes claimed on importations		
Supported by photocopied IEDs and bank or BOC ORs dated outside the period of claim	Annex 12, Exhibit V	2,144,317.00
Supported by original bank or BOC ORs only that are dated outside the period of claim	Annex 13, Exhibit V	658,315.66
Supported by informal IED certified by the BOC dated outside the period of claim	Annex 15, Exhibit V	2,173.00
Supported by informal IEDs certified by the BOC and bank or BOC ORs	Annex 16, Exhibit DD-193	3,980.00
Supported by photocopied IEDs dated outside the period of claim and bank or BOC ORs issued in the former name of the company	Annex 17, Exhibit V	21,522.00
Supported by bank or BOC ORs issued in the former name of the company	Annex 18, Exhibit V	21,292.00
Supported by BOC OR issued in the former name of the company & dated outside the period of claim	Annex 19, Exhibit V	323.00
Supported by informal IED certified by the BOC dated outside the period of claim and bank or BOC Ors issued in the former name of the company	Annex 20, Exhibit V	257,872.22
Supported by a photocopied bank OR only	Annex 21, Exhibit V	3,217.00
Supported by undated IED and bank OR	Annex 22, Exhibit V	9,175.00
Supported by undated IED and original bank or BOC Ors	Annex 23, Exhibit V	233,251.00
Supported by IED certified by the BOC and photocopied bank OR dated outside the period of claim	Annex 24, Exhibit V	99,643.00
Supported by IEDs certified by BOC only	Annex 25, Exhibit V	17,566.00
Supported by IEDs certified by BOC, photocopied BOC ORs and original bank debit advices	Annex 26, Exhibit V	6,568,261.00
Different VAT amounts reflected on the IEDs	Annex 27, Exhibit V	44,349.00
SUBTOTAL		**P 15,321,797.46**
TOTAL		**P 18,293,376.17**

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