v-1006 #PS EDM

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

MIRANT SUAL CORPORATION, [Formerly Southern Energy Pangasinan, Inc.],
Petitioner,

~ versus ~

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE No. 7230

x-----------------------------x

MIRANT SUAL CORPORATION, [Formerly Southern Energy Pangasinan, Inc.],
Petitioner,

~ versus ~

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE No. 7299

Members:

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

Promulgated:

JUN 30 2009; 1:30pm

x-----------------------------x

AMENDED DECISION

BAUTISTA, *J.*:

For this Court's resolution is petitioner's **"Motion for Reconsideration"** filed on February 27, 2009, seeking the reconsideration of this Court's Decision dated February 6, 2009, which denied its Petition for Review for insufficiency of evidence.

761

Petitioner is seeking the refund or issuance of a tax credit certificate in the aggregate amount of P166,158,823.50, allegedly representing its unutilized input value-added tax (VAT) paid on domestic purchases of goods and services and the importation of goods attributable to zero-rated sales for the four quarters of 2003. Petitioner's claim is based on Section 112 (A) of the National Internal Revenue Code (NIRC) which provides:

> "Section 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)(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 attributable to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

Based on the foregoing provision, in order for petitioner to be entitled to a refund or tax credit certificate, the following requisites must be complied with:

1. there must be zero-rated or effectively zero-rated sales;
2. input taxes were incurred or paid;
3. the input VAT payments are directly attributable to such zero-rated sales or effectively zero-rated sales;
4. the input VAT payments were not applied against any output VAT liability; and
5. the claim for refund was filed within the two-year prescriptive period.

In the assailed Decision, it was ruled that petitioner's sales of power generation services to the National Power Corporation (NPC), Mirant Philippines Energy Corporation, Mirant Philippines Industrial Power Corporation, and Mirant Philippines Industrial Power II Corporation are subject to zero percent (0%) VAT pursuant to Section 6 of Republic Act No.

762

6136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA). While petitioner was able to prove that it is a generation company, it was unable to prove that it derived sales from power generation since it failed to produce the supporting documents proving the existence of such zero-rated sales.[1] Hence, this Court ruled that since there are no established zero-rated sales for 2003, petitioner is therefore not entitled to a refund of input VAT allegedly attributable thereto as it is a basic requirement under Section 112(A) of the NIRC that there should exist zero-rated sales in order to be entitled to a refund of unutilized input VAT.

In its Motion, petitioner raised the following grounds:

a. The invoices evidencing its zero-rated sales were submitted to and identified in court and do form part of the records of the case;

b. Non-admission of the exhibits under its Supplemental Formal Offer of Evidence is not justified under the circumstances;

c. It presented other pieces of evidence proving its zero-rated sales for taxable year 2003; and

d. The principle that tax refunds are construed strictly against the taxpayer is not meant to supplant the basic tenets of justice and fairness.

To support the aforementioned grounds, petitioner advances the following arguments:

> 1. The Court should apply the ruling of the Supreme Court in the case of *Vda. De Oñate vs. Court of Appeals, G.R. No. 116149, November 23, 1995*, considering that the affidavit of Mr. Jerome Antonio Constantino, an Independent CPA, filed on January 18, 2007, identified, *among others, Exhibits "Z", "Z-1" to "Z-302"* as faithful reproduction of their original. Said Affidavit was marked as *Exhibit "FF"* and identified by the Independent CPA in a hearing held on January 23, 2007.
>
> 2. Its failure to manifest to file a Supplemental Formal Offer of Evidence or attach a Motion for Leave of Court to file the same was an honest mistake for which it begs the indulgence of the Court. In

[1] The photocopies of supporting documents of zero-rated sales (marked as *Exhibits "Z" to "Z-302"*) offered by petitioner were not admitted as evidence in the Resolutions dated April 3, 2008 and June 3, 2008 for failure of its counsel/witness to identify the same during trial.

> fact in compliance with the Court's sanction that it should have asked for leave of court to file a supplemental Formal Offer of Evidence, it filed its Motion for Reconsideration (of the 03 June 2008 Resolution denying admission of Supplemental Offer of Evidence) with Motion to Admit the Supplemental Formal Offer of Evidence on June 26, 2008. Unfortunately, while its Motion for Reconsideration was denied in the September 5, 2008 Resolution, the Court failed to take note of its Motion to Admit the Supplemental Formal Offer of Evidence. Such Motion to Admit the Supplemental Formal Offer of Evidence cured the defect of the Supplemental Formal Offer of Evidence that it filed on April 24, 2008. In the absence of the Court's categorical denial of the said Motion to Admit, the subject of its Supplemental Formal Offer of Evidence becomes part of the evidence of the case.
>
> 3. Apart from invoices, it presented other pieces of evidence, like the Judicial Affidavit of Ms. Corazon Brillantes (*Exhibit "J"*) identified in Court on February 16, 2006, and the other Judicial Affidavit of Ms. Brillantes filed on April 11, 2006 which was identified in Court on April 20, 2006. Moreover, the Court should take judicial notice of its pending judicial claims [CTA EB No. 400 (CTA Case No. 6259); CTA Case No. 6421; CTA Case No. 6630 & 6733; CTA EB Nos. 364 & 387 (CTA Case No. 6958); CTA Case No. 7230 & 7299; CTA Case No. 7470; and CTA Case No. 7620] with the Court for refund of unutilized/excess input taxes for 1999 to 2005 as the pendency of the said cases implies that it has continuously engaged in providing zero-rated sales of services.
>
> 4. The principle of strict construction against the taxpayer of any claim for tax refund/credit may not be translated as a requirement for the strict compliance with the rules of procedure. The Revised Rules of CTA mandate the liberal construction of the CTA rules to promote the objective of securing a just, speedy, and inexpensive determination of every action and proceeding before the Court. The Supreme Court has always professed its bias for doing away with the rigid application of the rules of procedure.

The instant Motion is meritorious.

As a general rule, the Court shall consider no evidence which has not been formally offered. However, as an exception thereto, evidence not formally offered may be considered if it is duly identified by testimony duly recorded, and is incorporated in the records of the case, as laid down by the Supreme Court in the case of *Vda. De Oñate v. Court of Appeals.*[2]

[2] G.R. No. 116149, 250 SCRA 283, November 23, 1995.

In the recent case of *Dizon v. Court of Tax Appeals*[3], the Supreme Court stated that the *Vda. De Oñate* doctrine still subsists in this jurisdiction.

Here, the said doctrine applies. The supporting documents proving the existence of petitioner's zero-rated sales were marked as *Exhibits "Z" to "Z-302"* and the same were identified by the Commissioned Independent CPA in his Judicial Affidavit dated January 18, 2007. Said Judicial Affidavit was marked as *Exhibit "FF"* and identified by the Commissioned Independent CPA during the January 23, 2007 hearing. In the said hearing, the Commissioned Independent CPA affirmed the truthfulness of all the statements he made in the Affidavit. The Commissioned Independent CPA stated, *among others*, in his Affidavit that the pre-marked documents, including *Exhibits "Z-1" to "Z-302"* are faithful reproductions of the original. While the said Affidavit was not offered as evidence in petitioner's Formal Offer of Evidence filed on February 8, 2008, the same can still be given probative value and considered in the disposition of this case considering that such document was marked as evidence, duly identified by the Commissioned Independent CPA whose testimony was duly recorded, and incorporated in the records of the case.

Hence, the Court shall now determine if petitioner complied with the other requisites for entitlement to a refund or tax credit of input VAT under Section 112(A) of the NIRC.

The Court shall first resolve the timeliness of petitioner's application for refund with the BIR and its appeal to this Court. Below are the dates pertinent to the present case:

CTA Case No.	**Taxable Quarter (Year 2003)**	**Close of Taxable Quarter**	**End of Two(2) Year Period**	**Date of Filing**		**Amount of Claim**
				Administrative Claim	**Judicial Claim**	
7230	1st	3/31/2003	3/31/2005	12/20/2004	4/22/2005	67,527,025.75
7299	2nd	6/30/2003	6/30/2005	12/20/2004	7/22/2005	28,224,476.83
7299	3rd	9/30/2003	9/30/2005	12/20/2004	7/22/2005	21,291,029.84
7299	4th	12/31/2003	12/31/2005	12/20/2004	7/22/2005	49,116,291.08
						P166,158,823.50

[3] G.R. No. 140944, 553 SCRA 111, April 30, 2008.

In the recent case of ***Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.), G.R. No. 172129, September 12, 2008,*** the Supreme Court held that the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund under Section 112(A) of the NIRC of 1997 starts from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.

A review of the records of this case shows that the claim in C.T.A. Case No. 7230 pertains to input VAT incurred for the 1st quarter of calendar year 2003. Counting from March 31, 2003, the end of the 1st quarter of 2003, petitioner had until March 31, 2005 to file its claim both in the administrative and judicial levels. Hence, the administrative claim filed on December 20, 2004 was filed on time. However, the judicial claim/Petition for Review filed on April 22, 2005 was filed out of time.

On the other hand, the claim in C.T.A. Case No. 7299 pertains to input VAT incurred for the 2nd, 3rd and 4th quarters of calendar year 2003. Counting from June 30, September 30 and December 31, 2003, the close of the said quarters, petitioner had until June 30, September 30 and December 31, 2005, respectively, to file its claim both in the administrative and judicial levels. Hence, the administrative claim filed on December 20, 2004 was filed on time. However, the judicial claim/Petition for Review filed on July 22, 2005 as to input VAT incurred for the 2nd quarter of 2003 was filed out of time. Thus, only petitioner's judicial claim for refund with regard to input VAT incurred for the 3rd and 4th quarters of 2003 (which is also part of the Petition for Review filed on July 22, 2005) was timely filed and can be granted if the same is duly substantiated.

The Court shall now determine if petitioner complied with the substantiation requirements of input VAT which it allegedly incurred for the 3rd quarter of 2003 amounting to P21,291,029.84 and for the 4th quarter of 2003 amounting to P49,116,291.08, or the aggregate amount of P70,407,320.92.

Upon examination and verification of the pieces of evidence presented by petitioner, particularly the Summary List of Zero-Rated Sales and its corresponding invoices and official receipts[4], the Court agrees with the findings and observations of the Court-commissioned Independent Certified Public Accountant (ICPA), Mr. Jerome Antonio B. Constantino of Constantino, Guadalquiver & Co., in his Report[5] dated January 18, 2007, which states as follows:

> ***"Findings and Observations***
>
> Based on the procedures we performed, we ascertained that:
>
> 1. The total quarterly zero-rated gross receipts for the calendar year 2003 in the "Summary List of Zero-Rated Sales" amounting to P14,278,025,861.80 is equal to the total zero-rated sales declared in the company's original copy of the pertinent quarterly VAT returns, duly stamped received by the BIR;
>
> 2. The zero-rated sales reported in the "Summary List of Zero-Rated Sales" prepared by the company for the calendar quarters of 2003 consisted of sales of electricity to the National Power Corporation (NPC), Mirant (Philippines) Energy Corporation, Mirant (Philippines) Industrial Power Corporation, and Mirant (Philippines) Industrial Power II Corporation;
>
> 3. These zero-rated sales were properly supported by duplicate original VAT invoices and VAT ORs stamped "zero-rated"; and
>
> 4. No discrepancies between the amounts per VAT ORs/Invoices and the amounts per "Summary List of Zero-Rated Sales" were noted.
>
> We also noted that the photocopies of the documents submitted to this Honorable Court as evidences (i.e. "Summary List of Zero-Rated Sales"/ VATInvoices and VAT ORs) were faithful reproductions of the original documents we have examined which are in the possession of the company and are available for examination by the respondent counsel."

Based on the ICPA's report, petitioner actually had gross receipts from sales of generated power to NPC, Mirant Philippines Energy Corporation, Mirant Philippines Industrial

[4] *Exhibits "Z" to "Z-302".*
[5] *Records*, pp. 525 – 537, *Exhibit "Y"*.

Power Corporation, and Mirant Philippines Industrial Power II Corporation for the 3rd and 4th quarters of 2003 in the amount of P7,216,537,383.73 which were declared in its Quarterly VAT Returns for the same period as follows:

Exhibit	2003	Zero-Rated Sales/Receipts
EE-3	3rd Quarter	P 3,601,959,563.07
EE-4	4th Quarter	3,614,577,820.66
		P 7,216,537,383.73

As discussed in the Court's Decision dated February 6, 2009, such gross receipts qualify for VAT zero-rating, pursuant to Section 6 of Republic Act No. 9136, or the "Electric Power Industry Reform Act of 2001," which states:

> "SEC. 6. Generation Sector. — Generation of electric power, a business affected with public interest shall be competitive and open.
>
> Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.
>
> Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.
>
> Upon the implementation of retail competition and open access, the prices charged by a generation company for the supply of electricity shall not be subject to regulation by the ERC except as otherwise provided in this Act.
>
> **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."** *(Emphasis supplied)*

Moreover, this Court has consistently held that the sale of electricity by a VAT registered taxpayer, like herein petitioner, to the NPC is effectively subject to zero percent (0%) VAT pursuant to Section 108(B)(3) of the NIRC of 1997, as amended, in relation to

f

Section 13 of Republic Act No. 6395, otherwise known as the NPC Charter, which are all quoted hereunder:

> "**SEC. 108.** ***Value-Added Tax on Sale of Services and Use or Lease of Properties.***
>
> xxx xxx xxx
>
> "(B) *Transactions Subject to Zero Percent (0%) Rate.* — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> "(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;*(Underscoring supplied)*.
>
> **Sec. 13. Non-profit Character of the Corporation, Exemption from All Taxes, Duties, Fees, 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 investments, as well as excess revenues from its operation, 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, duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings." *(Emphasis supplied)*

Having resolved that petitioner generated VAT zero-rated receipts in the amount of P7,216,537,383.73 for the 3rd and 4th quarters of 2003, the Court shall now determine the amount of unutilized input VAT attributable thereto.

Petitioner submitted various documents such as suppliers' invoices/official receipts, Bureau of Customs (BOC) Import Entries and Internal Revenue Declarations (IEIRDs) and BOC/bank official receipts (ORs)[6] in support of the following input taxes reported in its Quarterly VAT Returns for the 3rd and 4th quarters of 2003:

Exhibit	2003	Input VAT
EE-3	3rd Quarter	P 21,291,029.84
EE-4	4th Quarter	49,116,291.08
		P 70,407,320.92

[6] *Exhibit "DD"* including sub-markings.

781

The Court-commissioned ICPA examined and verified the supporting documents of petitioner and accordingly classified petitioner's reported input VAT into the following categories:[7]

	Findings	Exhibit	Third Quarter	Fourth Quarter	Amount of Input Tax
1.	Input taxes claimed on local purchases of capital goods and goods-others properly supported by VAT invoices	BB-1	P 3,265,020.27	P 7,185,141.41	P10,450,161.68
2.	Input taxes claimed on local purchases of services properly supported by VAT ORs	BB-3	5,543,607.40	10,739,203.10	16,282,810.50
3.	Input taxes claimed on local purchases of services supported by certified true copy of official receipts and original invoices	BB-6	-	15,518,118.44	15,518,118.44
4.	Input taxes claimed on importation of capital goods and goods-others properly supported by original IEDs and BOC/Bank Ors	BB-7	2,929,594.00	6,550,463.00	9,480,057.00
5.	Input taxes claimed on importation of goods - others supported by original BOC/Bank ORs and photocopied IEDs/IIEDs certified by BOC	BB-8	2,527,908.00	1,408,190.00	3,936,098.00
6.	Input taxes claimed on importation of goods supported by original BOC/Bank Ors	BB-12	8,971.00	3,394.00	12,365.00
7.	Input taxes claimed on importations of goods supported by original BOC/Bank ORs and photocopied IEDs/IIED	BB-17	23,241.00	-	23,241.00
8.	Input tax claimed on importation of services supported by BIR Form 1600	BB-20	2,749,133.28	735,256.51	3,484,389.79
	subtotal		**P17,047,474.95**	**P42,139,766.46**	**P59,187,241.41**
9.	Input taxes claimed on local purchases of capital goods and goods-others properly supported by VAT invoices not dated within the VAT taxable quarter but within the VAT taxable year	BB-2	P 2,051,060.30	P 1,770,908.30	P 3,821,968.60
10.	Input taxes claimed on local purchases of services properly supported by VAT ORs not dated within the VAT-taxable quarter but within the VAT-taxable year	BB-4	106,711.70	374,173.49	480,885.19
11.	Input taxes claimed on local purchases of services supported by ORs with pre-printed TIN Non-VAT and stamped VAT-registered used before June 30, 2003	BB-5	24.00	-	24.00
12.	Input taxes claimed on importation of goods - others and capital supported by photocopied IEDs/IIEDs certified by BOC and original BOC/Bank ORs not dated within the VAT-taxable quarter but within the VAT-taxable year	BB-10	757,690.00	388,511.00	1,146,201.00

[7] *Exhibit "Y".*

13.	Input taxes claimed on importations of goods - others supported by original IEDs and BOC/Bank ORs not dated within the VAT-taxable quarter but within the VAT-taxable year	BB-11	146,797.00	598,613.00	745,410.00
14.	Input taxes claimed on importation of goods supported by original BOC/Bank ORs and photocopied IEDs	BB-13	10,403.00	6,788.00	17,191.00
15.	Input taxes claimed on importations of goods supported by photocopied BOC ORs certified by the BOC	BB-15	1,022.00	-	1,022.00
16.	Input taxes claimed on importation of goods - others supported by photocopied IEDs and BOC ORs certified by BOC	BB-18	67.00		67.00
17.	Input taxes claimed on importations of goods - others supported by photocopied IEDs/IIEDs and BOC ORs certified by BOC not dated within the VAT-taxable quarter but within the VAT-taxable year	BB-19	811.00	252.00	1,063.00
18.	Input taxes claimed on importation of goods supported by photocopied IEDs certified by BOC and photocopied BOC/Bank Ors	BB-42	9,899.00	-	9,899.00
19.	Input taxes claimed on importations of goods supported by photocopied undated BOC ORs certified by other institutions other than the BOC (i.e. banks)	BB-44	129.00	-	129.00
	subtotal		**P 3,084,614.00**	**P 3,139,245.79**	**P 6,223,859.79**
20.	Erroneous computation of input taxes claimed on local purchases of goods	BB-25	-	25,383.07	25,383.07
21.	Erroneous computation of input taxes claimed on local purchases of services	BB-32	382,293.30	4,670.40	386,963.70
	subtotal		**P 382,293.30**	**P 30,053.47**	**P 412,346.77**
22.	Input taxes claimed on importation of goods supported by photocopied IEDs certified by BOC	BB-14	P 57,717.00	-	P 57,717.00
23.	Input taxes claimed on importation of goods supported by photocopied IEDs/IIED and photocopied ORs certified by the BOC	BB-16	62.00	P -	62.00
24.	Input taxes claimed on local purchases of goods which are supported by certified true copies (CTCs) of VAT invoices	BB-53	-	396.41	396.41
25.	Input taxes claimed on importation of goods supported by photocopied IEDs certified by the BOC and BOC ORs certified by institutions other than the BOC (i.e. Landmark)	BB-57	-	272.00	272.00
26.	Input taxes claimed on importation of goods supported by photocopied IEDs certified by the BOC and photocopied undated BOC ORs certified by the BOC (i.e.,, Landmark)	BB-58	1,187.00	-	1,187.00
27.	Input taxes claimed on importation of goods supported by original undated BOC/Bank ORs and photocopied IEDs certified by the BOC	BB-59	48,745.00	12,765.00	61,510.00
	subtotal		**P 107,711.00**	**P 13,433.41**	**P 121,144.41**
28.	Input taxes claimed on local purchases of	BB-22	P 4,904.40		

	goods supported by photocopied VAT invoices			P 309,713.65	P 314,618.05
29.	Input taxes claimed on local purchases of services supported by photocopied VAT ORs	BB-30	14,724.29	103,666.97	118,391.26
30.	Input taxes claimed on local purchases of services supported by documents other than VAT ORs (e.g. invoices, statements of accounts, etc.)	BB-31	14,430.70	404,160.06	418,590.76
31.	Input taxes claimed on local purchases of goods and services without supporting documents	BB-39	422,972.11	2,090,858.90	2,513,831.01
	subtotal		**P 457,031.50**	**P 2,908,399.58**	**P 3,365,431.08**
32.	Input taxes claimed on local purchases of capital goods and goods-others supported by VAT invoices without BIR permit number	BB-21	P 32,479.48	P 50,728.92	P 83,208.40
33.	Input taxes claimed on local purchases of capital goods and goods – others supported by documents other than VAT invoices (e.g. ORs, statements of accounts, delivery receipts, etc.)	BB-23	37,500.69	96,057.85	133,558.54
34.	Input taxes claimed on local purchases of goods supported by single invoices erroneously presented twice in the summary list	BB-24	318.18	51,485.10	51,803.28
35.	Input taxes claimed on local purchases of goods supported by Non-VAT invoices	BB-26	-	6,853.64	6,853.64
36.	Input taxes claimed on local purchases of goods supported by invoices without pre-printed TIN-VAT	BB-27	-	5,760.46	5,760.46
37.	Input taxes claimed on local purchases of goods supported by VAT invoices not in the name of the Company	BB-28	-	1,529.10	1,529.10
38.	Input taxes claimed on local purchases of services supported by VAT ORs without BIR Permit Number	BB-29	84.78	3,068.55	3,153.33
39.	Input taxes claimed on local purchases of services supported by ORs with pre-printed TIN only	BB-33	40,756.56	40,756.56	81,513.12
40.	Input taxes claimed on local purchases of services supported by ORs issued not in the name of the Company	BB-34	-	52.19	52.19
41.	Input taxes claimed on local purchases of services supported by single ORs erroneously presented twice in the summary list	BB-35	1,348.60	75,939.10	77,287.70
42.	Input tax claimed on local purchases of services supported by an OR with pre-printed TIN-NV	BB-38	-	48.79	48.79
43.	Input taxes claimed on importation of goods supported by original undated BOC ORs	BB-40	-	7,022.00	7,022.00

784

44.	Input taxes claimed on importations of goods supported by photocopied IEDs/IIED certified by the BOC not in the name of the Company (i.e. Mirant Pagbilao)	BB-46	-	17,047.00	17,047.00
45.	Input taxes claimed on importation of goods without supporting documents	BB-47	6,250.00	76,039.00	82,289.00
46.	Input taxes claimed on local purchases of goods which are supported by undated VAT invoices	BB-49	9,077.70	66,532.32	75,610.02
47.	Input taxes claimed on local purchases of services supported by undated VAT ORs	BB-50	1,954.55	1,733.64	3,688.19
48.	Input taxes claimed on local purchases of goods which are supported by invoices dated outside the period of claim	BB-51	29,099.39	154,459.84	183,559.23
49.	Input taxes claimed on local purchases of services which are supported by ORs dated outside the period of claim	BB-52	2,448.76	43,600.00	46,048.76
50.	Input taxes claimed on local purchases of goods which are supported by invoices with preprinted "TIN-V"	BB-54	-	40,566.86	40,566.86
51.	Input taxes claimed on local purchases of services which are supported by ORs with preprinted "TIN-V"	BB-55	131,544.38	65,153.47	196,697.85
	subtotal		**P 292,863.07**	**P 804,434.39**	**P 1,097,297.46**
	Total		**P21,371,987.82**	**P49,035,333.10**	**P70,407,320.92**

The input taxes classified under numbers 1 to 8 totalling P59,187,241.41 represent petitioner's valid claims as these are duly supported by the required evidence under Sections 110(A) and 113(A) of the NIRC of 1997 as implemented by Sections 4.104-1, 4.104-5 & 4.108-1 of Revenue Regulations No.7-95, which are all quoted hereunder:

"SEC. 110. Tax Credits. —

(A) Creditable Input Tax. —

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: xxx"

"SEC. 113. Invoicing and Accounting Requirements for VAT-registered Persons. —

(A) Invoicing Requirements.— A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. xxx"

"**SECTION 4.104-1. Credits for input tax**. — 'Input tax' means the value-added tax due from or paid by a VAT-registered person on importation of goods or local purchases of goods or services, including lease or use of property, from another VAT-registered person in the course of his trade or business. It shall also include the transitional or presumptive input tax determined in accordance with Section 105[8] of the Code.

It includes input taxes which can be directly attributed to transactions subject to the value-added tax plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.

Any input tax evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Section 108[9] of the Code, on the following transactions, shall be creditable against the output tax: xxx."

"**SEC. 4.104-5. Substantiation of claims for input tax credit**. —

(a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Section 108(a) and 238 of the Code. Input tax on purchases of real property should be supported by a copy of the public instrument i.e. deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with the VAT receipt issued by the seller.

A cash-register machine tape issued to a VAT registered buyer by a VAT-registered seller from a machine duly registered with the BIR in lieu of the regular sales invoice, shall constitute valid proof of substantiation of tax credit only if the name and TIN of the purchaser is indicated in the receipt and authenticated by a duly authorized representative of the seller.

(b) Input tax on importation shall be supported with the import entry or other equivalent document showing actual payment of VAT on the imported goods.

(c) Presumptive input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.

(d) Input tax on "deemed sale" transactions shall be substantiated with the required invoices.

[8] now Section 111 of the NIRC.
[9] now Section 113 of the NIRC.

(e) Input tax from payments made to non-residents shall be supported by a copy of the VAT declaration/return filed by the resident licensee/lessee in behalf of the non-resident licensor/lessor evidencing remittance of the VAT due."

"**SEC. 4-108-1. Invoicing Requirements** — All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN and address of the seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word "zero-rated" imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration.

In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoices or receipts and this shall be considered as "VAT Invoice". All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax.

If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A "VAT Invoice" shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the Code.

The invoice or receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records." *(Emphasis supplied)*

The input taxes under numbers 9 to 19 in the total amount of P6,223,859.79 shall be reduced by P3,211,531.84[10] representing input VAT covered by invoices or official receipts dated within the 1st and 2nd quarters of 2003, which as stated earlier, had already prescribed.

As to the erroneously computed input taxes under numbers 20 and 21 in the amount of P412,346.77, the excess of the claimed amount over the input tax reflected in the

[10] *See details on Annex A.*

supporting invoice or official receipt shall be disallowed. Thus, out of the input VAT claim of P412,346.77, the overstatement of P118,679.72, as computed below, shall be denied.

Exhibit (ICPA Report)	Payee	Exhibit (Invoice/OR)	Should-be Input VAT	Input VAT Claim	Disallowed Portion
4th Quarter					
BB-25	FAMOUS ELECTRICAL AND CONST SUPPLY	DD-4Q-656, 657	P 7,661.50	P 7,731.00	P 69.50
BB-25	MOTORPLAZA, INC.	DD-4Q-1084, 1085	388.01	426.81	38.80
BB-25	POWER AND IND'L EQUIPMENT SALES	DD-4Q-1283, 1284	1,396.00	1,896.00	500.00
BB-25	TAIPAN ENTERPRISES	DD-4Q-1660, 1661	333.27	4,416.55	4,083.28
BB-25	CITY CENTRAL DEPARTMENT STORE	DD-4Q-2308	1,068.18	1,077.98	9.80
BB-25	JUNNA INDUSTRIAL CORPORATION	DD-4Q-2569, 2567	452.51	504.50	51.99
BB-25	S.K. HARDWARE & GEN. MERCHANDISE	DD-4Q-2900	13.64	259.09	245.45
		subtotal	**P11,313.11**	**P16,311.93**	**P 4,998.82**
3rd Quarter					
BB-32	MOF COMPANY SUBIC INC.	DD-3Q-1855, 1855a	P 583.82	P 829.73	P 245.91
BB-32	MOF COMPANY SUBIC INC.	DD-3Q-1856, 1856a	600.38	4,010.05	3,409.67
BB-32	MOF COMPANY SUBIC INC.	DD-3Q-1857, 1857a	518.96	1,998.97	1,480.01
BB-32	RAMCRETE DEVELOPMENT CORP.	DD-3Q-2128, 2128a	268,181.82	375,454.55	107,272.73
4th Quarter					
BB-32	CNT WORLDWIDE TRANSPORT, INC.	DD-4Q-3435-1, 3437-1	69.44	1,327.45	1,258.01
BB-32	ORIX METRO LEASING AND FINANCE CORP.	DD-4Q-3865, 3866	2,916.25	2,930.82	14.57
		subtotal	**P272,870.67**	**P386,551.57**	**P113,680.90**
		Total	**P284,183.78**	**P402,863.50**	**P118,679.72**

The input taxes under numbers 22 to 27 in the total amount of P121,144.41 shall likewise be denied. Pursuant to Section 4.104-5(b) of Revenue Regulations No. 7-95, input tax on importations shall be supported with the import entry or other equivalent document showing actual payment of VAT on the imported goods. While petitioner submitted BOC

IEIRDs and BOC or bank ORs in support of the input VAT claim of P63,427.41, the same cannot be given credence and probative value as they were merely stamped as "certified true copy" or "certified photocopy" and the Court cannot ascertain whether the certifier named therein is the actual and authorized custodian of the said documents.

As regards the input taxes classified under numbers 28 to 31 in the amount of P3,365,431.08, petitioner presented the following documents to rebut the said findings:

Exh. (ICPA Report)	**Supplier**	**Exh. (Inv./OR)**	**Input VAT 3rd Qtr**	**Input VAT 4th Qtr**	**Input VAT Total**
BB-31	Machinen & Technik, Inc.	II		P 354,954.96	P 354,954.96
BB-39	Metrobank & Trust Co.	JJ		113,522.73	113,522.73
BB-39	Metrobank & Trust Co.	KK		1,135,227.27	1,135,227.27
BB-39	R. a. T. Philippines, Inc.	MM		1,761.60	1,761.60
BB-39	R. a. T. Philippines, Inc.	NN		1,761.60	1,761.60
BB-22	Pilipinas Shell Petroleum Corp.	SS		24,979.02	24,979.02
BB-22	Pilipinas Shell Petroleum Corp.	TT		1,866.95	1,866.95
BB-22	Pilipinas Shell Petroleum Corp.	UU		43,392.71	43,392.71
BB-22	Pilipinas Shell Petroleum Corp.	VV		112,512.21	112,512.21
BB-22	Pilipinas Shell Petroleum Corp.	WW		66,204.41	66,204.41
BB-39	Pilipinas Shell Petroleum Corp.	BB	P 12,154.48		12,154.48
BB-39	Pilipinas Shell Petroleum Corp.	EEE	153,185.16		153,185.16
BB-39	Pilipinas Shell Petroleum Corp.	FFF	10,970.16		10,970.16
BB-39	Pilipinas Shell Petroleum Corp.	GGG	1,160.00		1,160.00
		Total:	**P177,469.80**	**P1,856,183.46**	**P2,033,653.26**

The Court finds the aforementioned documents valid. Thus, out of the P3,247,039.82 input VAT claim, only the amount of P1,213,386.56 *(P3,247,039.82 less P2,033,653.26)* shall be disallowed for being supported by mere photocopies of VAT invoices or receipts in violation of the Best Evidence Rule or there were no ORs to support the purchases of services in violation of Section 110(A)(1)(b) of the NIRC of 1997 in relation to Sections 113(A) and 108(C) of the same Code or there were no documents to support some of the input taxes.

The input taxes classified under numbers 32 to 51 in the total amount of P1,225,716.72 shall be disallowed for failure to meet the substantiation requirements under

Sections 110(A) and 113(A) of the NIRC of 1997 as implemented by Sections 4.104-1, 4.104-5 & 4.108-1 of Revenue Regulations No.7-95.

Based on all the foregoing, the Court rules that out of the P70,407,320.92 input VAT claim for the 3rd and 4th quarters of 2003, only the amount of P64,584,606.67 is duly substantiated which is computed as follows:

Amount of Input VAT Claim for the year 2003		P166,158,823.50
Less: Prescribed Claim - 1st and 2nd Qtrs		95,751,502.58
Unprescribed Claim - 3rd and 4th Qtrs		P 70,407,320.92
Less: Not Properly Substantiated Claim - 3rd & 4th Qtrs		
a. Input taxes covered by invoices or ORs dated within the first and second quarters of 2003		3,211,531.84
b. Overstatement of claimed input taxes		118,679.72
c. Input taxes supported by invoices stamped as "certified true copy" or "certified photocopy"		121,144.41
d. Input taxes classified under Exhibits BB-22, BB-30, BB-31 and BB-39	P 3,365,431.08	
Less: valid claim per this Court's verification	2,033,653.26	1,331,777.82
e. Input taxes classified under Exhibits BB-21, BB-23, BB-24, BB-26, BB-27, BB-28, BB-29, BB-33, BB-34, BB-35, BB-38, BB-40, BB-46, BB-47, BB-49, BB-50, BB-51, BB-52, BB-54 and BB-55		1,097,297.46
Substantiated Claim - 3rd and 4th Quarters 2003		**P 64,526,889.67**

However, a portion of the substantiated input VAT of P64,526,889.67 shall be applied against petitioner's reported output VAT liability for the 3rd and 4th quarters of 2003 in the amounts of P32,467.82[11] and P1,933.23[12], respectively, totaling P34,401.05. Hence, only the remaining input VAT of P64,492,488.62, as computed below, can be attributed to the P7,216,537,383.73 zero-rated sales declared by petitioner for the same period:

Substantiated Input VAT - 3rd and 4th Qtrs 2003	P 64,526,889.67
Less: Output VAT - 3rd and 4th Qtrs 2003	34,401.05
Excess Input VAT - 3rd and 4th Qtrs 2003	**P 64,492,488.62**

[11] *Exhibit "E-3".*
[12] *Exhibit "E-4".*

Although petitioner carried-over the substantiated input VAT of P64,492,488.62 to the succeeding quarters until the 3rd quarter of 2005[13], the same was not applied against any output VAT liability and it was fully deducted as "Any VAT Refund/TCC Claimed"[14] in the 3rd quarter of 2005. Thus, the substantiated claim of P64,492,488.62 was no longer carried-over to the succeeding quarters.

In fine, the Court finds petitioner entitled to a refund or issuance of a tax credit certificate in the amount of P64,492,488.62, representing unutilized excess input VAT incurred in relation to its zero-rated sales of power generation services for the 3rd and 4th quarters of 2003.

WHEREFORE, petitioner's "Motion for Reconsideration" is hereby **PARTIALLY GRANTED** and this Court's Decision dated February 6, 2009 denying petitioner's Petition for Review is hereby **MODIFIED.** The Petition for Review in C.T.A. Case No. 7230 is hereby **DISMISSED** for being filed out of time, while the Petition for Review in C.T.A. Case No. 7299 is hereby **PARTIALLY GRANTED.**

Accordingly, respondent is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of P64,492,488.62, representing the latter's excess input VAT attributable to its zero-rated sales for the 3rd and 4th quarters of taxable year 2003.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

---

[13] *Exhibits "N", "O", "P", "R", "S", "T" and "U".*
[14] *Exhibit "U-2".*

WE CONCUR:

(With Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusion in the above Decision was reached in consultation with the members of the First Division before the case was assigned to the writer of the opinion of the said Division.

ERNESTO D. ACOSTA
Presiding Justice

MIRANT SUAL CORPORATION
(formerly Southern Energy Pangasinan, Inc.)
vs. COMMISSIONER OF INTERNAL REVENUE
CTA CASE NOS. 7230 & 7299
CLAIMED INPUT VAT FOR THE 3RD & 4TH QTRS-2003
BUT COVERED BY INVOICES/ORs DATED WITHIN
THE 1ST & 2ND QTRS-2003

Exhibit No. (Per ICPA Report)	Payee	Exhibit No. (Invoice/OR)	Date	Disallowed Input VAT 3rd Qtr	4th Qtr	Total
BB-2	various			2,051,060.30		2,051,060.30
BB-2	Less: Core Automotive Resources, Inc.	DD-3Q-281, 281a	8-Jul-03	(364.04)		(364.04)
BB-2	Nueva Fortuna Merchandising	DD-3Q-682	22-Jul-03	(30.00)		(30.00)
BB-2	Ace Diesel Parts Supply	DD-4Q-56, 57	9-Jun-03		27.00	27.00
BB-2	Ace Diesel Parts Supply	DD-4Q-100, 101	3-Jan-03		407.00	407.00
BB-2	Bearing Center and Machinery, Inc.	DD-4Q-232, 233	13-May-03		164.34	164.34
BB-2	Bitstop, Inc.	DD-4Q-276, 277	2-Jun-03		263.64	263.64
BB-2	Bitstop, Inc.	DD-4Q-278, 279	11-Jun-03		909.09	909.09
BB-2	Bitstop, Inc.	DD-4Q-284, 285	30-May-03		78,000.00	78,000.00
BB-2	Eagle Star Industrial Sales Corp.	DD-4Q-479, 477	3-Jun-03		545.46	545.46
BB-2	Fabricast Industries, Inc.	DD-4Q-540, 541	12-Feb-03		181.82	181.82
BB-2	Federal Phil-Nippon Flow-Control, Inc.	DD-4Q-667, 668	17-Feb-03		714.00	714.00
BB-2	FH Commercial Inc.	DD-4Q-686, 687	21-Jun-03		660.00	660.00
BB-2	John Dave Const. & Supply and Gen. Mdse.	DD-4Q-836, 837	18-Jun-03		3,818.19	3,818.19
BB-2	Junna Industrial Corporation	DD-4Q-907, 908	17-Jun-03		2,962.35	2,962.35
BB-2	Le Price International Corp.	DD-4Q-972,973	27-May-03		3,475.00	3,475.00
BB-2	Nueva Fortuna Merchandising	DD-4Q-1110,1111	21-May-03		3.80	3.80
BB-2	RS Components Limited (Phils.)	DD-4Q-1362,1363	20-May-03		1,112.05	1,112.05
BB-2	RS Components Limited (Phils.)	DD-4Q-1373-1	17-Feb-03		4,956.87	4,956.87
BB-2	Universal Aquarius, Inc.	DD-4Q-1745, 1746	9-Jun-03		5,895.91	5,895.91
BB-2	Uptown Industrial Sales	DD-4Q-1081,1802	5-May-03		2,064.00	2,064.00
BB-2	Abstract Industrial Sales	DD-4Q-1935,1935	20-Jun-03		170.00	170.00
BB-2	Caltex	DD-4Q-2147,2147	11-Jun-03		13,627.80	13,627.80

MIRANT SUAL CORPORATION
(formerly Southern Energy Pangasinan, Inc.)
vs. COMMISSIONER OF INTERNAL REVENUE
CTA CASE NOS. 7230 & 7299
CLAIMED INPUT VAT FOR THE 3RD & 4TH QTRS-2003
BUT COVERED BY INVOICES/ORs DATED WITHIN
THE 1ST & 2ND QTRS-2003

Exhibit No. (Per ICPA Report)	Payee	Exhibit No. (Invoice/OR)	Date	Disallowed Input VAT 3rd Qtr	4th Qtr	Total
BB-2	various			2,051,060.30		2,051,060.30
BB-2	Less: Core Automotive Resources, Inc.	DD-3Q-281, 281a	8-Jul-03	(364.04)		(364.04)
BB-2	Nueva Fortuna Merchandising	DD-3Q-682	22-Jul-03	(30.00)		(30.00)
BB-2	Ace Diesel Parts Supply	DD-4Q-56, 57	9-Jun-03		27.00	27.00
BB-2	Ace Diesel Parts Supply	DD-4Q-100, 101	3-Jan-03		407.00	407.00
BB-2	Bearing Center and Machinery, Inc.	DD-4Q-232, 233	13-May-03		164.34	164.34
BB-2	Bitstop, Inc.	DD-4Q-276, 277	2-Jun-03		263.64	263.64
BB-2	Bitstop, Inc.	DD-4Q-278, 279	11-Jun-03		909.09	909.09
BB-2	Bitstop, Inc.	DD-4Q-284, 285	30-May-03		78,000.00	78,000.00
BB-2	Eagle Star Industrial Sales Corp.	DD-4Q-479, 477	3-Jun-03		545.46	545.46
BB-2	Fabricast Industries, Inc.	DD-4Q-540, 541	12-Feb-03		181.82	181.82
BB-2	Federal Phil-Nippon Flow-Control, Inc.	DD-4Q-667, 668	17-Feb-03		714.00	714.00
BB-2	FH Commercial Inc.	DD-4Q-686, 687	21-Jun-03		660.00	660.00
BB-2	John Dave Const. & Supply and Gen. Mdse.	DD-4Q-836, 837	18-Jun-03		3,818.19	3,818.19
BB-2	Junna Industrial Corporation	DD-4Q-907, 908	17-Jun-03		2,962.35	2,962.35
BB-2	Le Price International Corp.	DD-4Q-972,973	27-May-03		3,475.00	3,475.00
BB-2	Nueva Fortuna Merchandising	DD-4Q-1110,1111	21-May-03		3.80	3.80
BB-2	RS Components Limited (Phils.)	DD-4Q-1362,1363	20-May-03		1,112.05	1,112.05
BB-2	RS Components Limited (Phils.)	DD-4Q-1373-1	17-Feb-03		4,956.87	4,956.87
BB-2	Universal Aquarius, Inc.	DD-4Q-1745, 1746	9-Jun-03		5,895.91	5,895.91
BB-2	Uptown Industrial Sales	DD-4Q-1081,1802	5-May-03		2,064.00	2,064.00
BB-2	Abstract Industrial Sales	DD-4Q-1935,1935	20-Jun-03		170.00	170.00
BB-2	Caltex	DD-4Q-2147,2147	11-Jun-03		13,627.80	13,627.80