REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

SCHNEIDER ELECTRIC INDUSTRIES, S.A. (Formerly Schneider Electric, S.A.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6786

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SCHNEIDER ELECTRIC INDUSTRIES, S.A. (Formerly Schneider Electric, S.A.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7091

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
NOV 2 7 2008
2:05 p.m.

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DECISION

UY, *J.*:

In these consolidated Petitions for Review, petitioner Schneider Electric Industries, S.A. seeks refund or issuance of a tax credit certificate from respondent Commissioner of Internal Revenue the total amount of P9,018,082.33, allegedly representing unutilized creditable value-added taxes

(VAT) withheld for the third (3^{rd}) quarter of taxable year 2001 up to the fourth (4^{th}) quarter of taxable year 2002, broken down as follows:

CTA Case No.	Period Covered	Amount of Claim
6786	3rd qtr 2001 to 2nd qtr 2002	P 4,513,483.92
7091	3rd and 4th qtrs 2002	P 4,504,598.41[1]
Total		P 9,018,082.33

THE FACTS

Culled from the parties' Joint Stipulation of Facts and Issues[2] and the records of these consolidated cases, the facts are as follows:

Petitioner is the Philippine Branch of a foreign corporation organized and existing under the laws of France, with an amended license to do business in the Philippines under SEC License No. A1997-2663 issued by the Securities and Exchange Commission (SEC).[3] It is engaged in the business of project management, construction, supply, and installation of electrical equipment,[4] and duly registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer and with Taxpayer Identification No. (TIN) 005-179-971-000. Petitioner's office address is at 4^{th} Floor, Room 401 Golden Rock Building, 168 Salcedo Street, Legaspi Village, Makati City.[5]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue vested under the appropriate laws with the authority to carry out all the functions, duties, and responsibilities of the said Office, including among others, the duty to act on and approve claims for refund or tax credit of

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1 Erroneously indicated as P4,513,483.92 in the prayer of the Petition for Review docketed as CTA Case No. 7091.
2 Joint Stipulation of Facts and Issues (JSFI) filed on August 3, 2004, CTA Case No. 6786, Docket, pp. 141-143.
3 Par. 1, JSFI, CTA Case No. 6786, Docket, p. 141.
4 Par. 8, Joint Stipulation of Facts and Issues (JSFI), CTA Case No. 7091, Docket, p. 133.
5 Par. 2, JSFI, CTA Case No. 6786, Docket, p. 141.

overpaid or erroneously collected internal revenue taxes as provided by law. Respondent holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[6]

Petitioner entered into a contract with National Power Corporation (NPC), a government-owned or controlled corporation, for furnishing, delivering, installing, testing and commissioning complete of 230KV and 500KV substation equipment, including line protection and communication systems for Dasmarinas Substation, San Jose Substation, and Ilijan Power Plant (Contract No. Sp98.DSTSS.Lw-0219 [Schedules I & II]).[7]

Petitioner filed with the BIR its Quarterly VAT Returns for the period covering the 2nd quarter of taxable year 2001 up to the 2nd quarter of taxable year 2002 on the following dates:[8]

Period	Date Filed
2nd quarter-2001	July 25, 2001
3rd quarter-2001	October 25, 2001
4th quarter-2001	January 25, 2002
1st quarter-2002	April 25, 2002
2nd quarter-2002	July 25, 2002

Petitioner also filed its Monthly and Quarterly Returns for the 3rd and 4th quarters of taxable year 2002 on the following dates:[9]

Type of Return	Date Filed
Monthly VAT Declaration for July 2002	August 20, 2002
Monthly VAT Declaration for August 2002	September 19, 2002
Quarterly VAT Return for the 3rd quarter 2002	October 25, 2002
Monthly VAT Declaration for October 2002	November 15, 2002

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6 Par. 3, JSFI, CTA Case No. 6786, Docket, p. 141; Par. 2, JSFI, CTA Case No. 7091, Docket, p. 132.
7 Par. 4, JSFI, CTA Case No. 6786, Docket, p. 142; Exhibits "C" and "D", respectively, Docket, pp. 306-339.
8 Par. 5, JSFI, CTA Case No. 6786, Docket, p. 142.
9 Par. 6, JSFI, CTA Case No. 7091, Docket, p. 133.

Monthly VAT Declaration for November 2002	December 20, 2002
Quarterly VAT Return for the 4th quarter 2002	January 27, 2003

On September 25, 2003 and September 29, 2004, petitioner filed with the BIR the claims for refund/tax credit on its unutilized creditable VAT withheld for the period covering the 3rd quarter of taxable year 2001 up to the 2nd quarter of taxable year 2002 and for the period covering the 3rd and 4th quarters of taxable year 2002.[10]

Due to respondent's inaction on both petitioner's claims and in order to toll the running of the two-year prescriptive period, petitioner filed two (2) separate Petitions for Review before this Court, namely:

Case No.	Date of Filing of Petition for Review	Period Covered	Amount Claimed
6786	September 29, 2003	3rd quarter of 2001 to 2nd quarter of 2002	P 4,513,483.92
7091	October 25, 2004	3rd and 4th quarters of 2002	4,504,598.41[11]
			P 9,018,082.33

On November 11, 2003, respondent filed through registered mail his Answer in CTA Case No. 6786, raising the following Special and Affirmative Defenses:

> "4. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
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> 5. Petitioner's alleged claim for refund/issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;
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> 6. Petitioner's claim for refund or issuance of tax credit certificate in the aggregate amount of P4,513,483.92 representing alleged unutilized creditable VAT withheld for the third and fourth quarters of taxable year 2001 and first and

[10] Par. 8, JSFI, CTA Case No. 6786, Docket, p. 142; Par. 7, JSFI, CTA Case No. 7091, Docket, p. 133.
[11] Erroneously indicated as P4,513,483.92 in the Prayer of the Petition for Review.

second quarters of taxable year 2002 was not fully substantiated;

7. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended;

8. Claims for refund are construed strictly against the claimant for the same partakes of the nature of exemption from taxation (**Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95**) and as such, they are looked upon with disfavor (**Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121**);

9. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence not refundable;

10. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit."[12]

Likewise, on January 12, 2005, respondent filed his Answer in CTA Case No. 7091, raising the following Special and Affirmative Defenses:

"4. Claims for refund are strictly construed against the taxpayer as the same partake the nature of a tax exemption;

5. The taxpayer has the burden to show that the taxes were erroneously or illegally paid. Failure on the part of the Petitioner to prove the same is fatal to its cause of action;

6. The Petitioner must prove that the amount of creditable withholding VAT being claimed as refund was not unutilized;

7. The Petitioner should prove its legal basis for claiming the amount being refunded."

On July 31, 2006, petitioner then moved for the consolidation of the said cases considering that the same involved the same parties and issues, and similar questions of facts and law. The Court granted the said motion in

[12] Answer, CTA Case No. 6786, Docket, pp. 65-66.

the Resolution dated August 9, 2006.[13] Thus, CTA Case No. 7091 was ordered consolidated with CTA Case No. 6786, the case bearing the lower docket number.

During trial, petitioner presented its documentary and testimonial evidence, while counsel for the respondent manifested that there was no investigation conducted by the BIR on petitioner's claim and respondent thus waived the right to present evidence.[14] And on January 17, 2008, this case was deemed submitted for decision after petitioner filed through registered mail its Memorandum on December 17, 2007, sans respondent's Memorandum.

Hence, this Decision.

THE ISSUES

The parties presented the following issues for this Court's resolution:

<u>CTA CASE NO. 6786</u>

> "1. Whether or not the NPC withheld 8.5% creditable VAT, on its payment to petitioner for the public works contracts in the third and fourth quarters of taxable year 2001 and the second quarter of taxable year 2002, and 6% creditable VAT on its payments to petitioner for other services rendered in the first quarter of taxable year 2002, pursuant to Section 114(C) of the National Internal Revenue Code of 1997, as amended;
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> 2. Whether or not the petitioner has unutilized creditable VAT withheld in the total amount of P4,513,483.92 which entitles it to a claim for refund and/or issuance of tax credit."

<u>CTA CASE NO. 7091</u>

> "1. Whether or not the NPC withheld 8.5% creditable VAT on its payments to the petitioner for the 3rd and 4th quarters of

[13] CTA Case No. 6786, Docket, pp. 426-427.
[14] Minutes of the hearing held on September 17, 2007, Docket, p. 645.

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taxable year 2002, pursuant to Section 114(C) of the Tax Code of 1997.

2. Whether or not petitioner has creditable withholding VAT in the amount of P4,504,598.41 that remains unutilized because its accumulated input VAT from the previous quarters was more than enough to offset its output VAT.

3. Whether or not the petitioner is entitled to a refund/TCC on its unutilized creditable withholding VAT in the amount of P4,504,598.41, in accordance with Section 204 and 229 of the Tax Code of 1997 in relation to Revenue Regulations No. 10-93."

The aforequoted issues may be simplified into one issue, to wit: whether or not petitioner has unutilized creditable VAT withheld for the 3rd and 4th quarters of taxable year 2001, and for the four quarters of taxable year 2002 in the total amount of P9,018,082.33,[15] which entitles it to claim refund or issuance of tax credit certificate in its favor.

THIS COURT'S RULING

Petitioner based its claim on Sections 114(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, to wit:

"**SEC.114. *Return and Payment of Value-added Tax.—***

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(C) *Withholding of Creditable Value-added Tax.* – The government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods from sellers and services rendered by contractors which are subject to the value-added tax imposed in Section 106 and 108 of this Code, deduct and withhold the value-added tax due at the rate of three percent (3%) of the gross payment for the purchase of goods and six percent (6%) on gross receipts for services rendered by contractors on every sale or installment payment which shall be creditable against the value-added tax liability of the seller or contractor : *Provided,*

[15] P4,513,483.92 (CTA Case No. 6786) + P4,504,598.41 (CTA Case No. 7091).

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however, That in the case of government public works contractors, the withholding rate shall be eight and one-half percent (8.5%): *Provided, further,* That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For this purpose, the payor or person in control of the payment shall be considered as the withholding agent.

The value-added tax withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made."

Corollary thereto, Section 108 of the same Code provides:

"**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.

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 construction and service contractors; xxx"

Likewise, Section 8 of Revenue Regulations No. 10-93 states:

"**SECTION 8.** ***Nature of Tax Withheld.*** **—** The amount of tax herein withheld and paid as evidenced by the Certificate of Value Added Tax Withheld on Government Payments (BIR Form) shall be creditable against the value-added tax liability of the payee/seller of goods or services, provided that the payments received from which the taxes were deducted and withheld are included in the tax return/declaration as part of his declared sales or receipts."

It is clear from the foregoing provisions that the creditable VAT withheld by NPC to petitioner shall be creditable against the latter's output VAT liability when it is shown that: (1) the creditable VAT withheld is duly supported by a Certificate of Creditable VAT Withheld on Government Payments; and (2) the gross sales (in case of sale of goods) or receipts (in

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the case of sale of service) corresponding to the creditable VAT withheld were declared as part of petitioners declared sales/gross receipts.[16] However, in case the taxpayer has no more output VAT liability against which the creditable VAT withheld may be applied or credited, such creditable VAT withheld constitutes excessively or erroneously paid tax which is refundable under Section 204(C) in relation to Section 229 of the NIRC of 1997, as amended. To quote:

> "**SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** – The Commissioner may —
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> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund."
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> "**SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.*** — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

[16] Schneider Electric, S.A. vs. Commissioner of Internal Revenue, CTA Case No. 6036, August 8, 2002, with Entry of Judgment dated October 25, 2002; Ironcon Builders and Development Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 6502, January 5, 2006, affirmed in CTA EB Case No. 235, August 9, 2007.

> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Based on petitioner's Quarterly VAT Returns[17] for the 3rd and 4th quarters of taxable year 2001 up to the 4th quarter of taxable year 2002, petitioner's VAT transactions for the same period may be summarized as follows:

Taxable Sales		P 117,988,213.10
Output Tax		11,798,821.31
Less:	Input Tax	
	Carried Over from Previous Quarter	11,412,688.19
	Domestic Purchases for the Quarter	15,390,932.52
	Total Available Input Tax	26,803,620.71
VAT Payable/ (Excess Input Tax)		P (15,004,799.40)
Less:	Tax Credits/Payments	
	Creditable VAT Withheld	9,018,082.33
VAT Payable/(Overpayment)		**P (24,022,881.73)**

The above summary indicates that petitioner's accumulated input VAT of P26,803,620.71 on its domestic purchases of goods and services was more than enough to offset its output VAT liability in the amount of P11,798,821.31; thereby, leaving the creditable VAT withheld of P9,018,082.33 unutilized which can be subject of a claim for refund under Sections 204(C) and 229, in relation to Sections 104(C) and 108(A) of the NIRC of 1997, as amended.

However, in order to be entitled to a refund of the unutilized creditable VAT withheld in the aggregate amount of P9,018,082.33, petitioner must

[17] Exhibits "F" to "I" (for CTA Case No. 6786), Docket, pp. 352-373; Exhibits "E" and "I" (for CTA Case No. 7091), Docket, pp. 520 and 537.

comply with the following requisites:

1. Both the administrative and judicial claims for refund must be filed within the two-year prescriptive period; and

2. The claim must be duly substantiated by documentary evidence.

Petitioner duly complied with the first requirement. Pursuant to Sections 204(C) and 229, in relation to Section 114(A) of the NIRC of 1997, as amended, the reckoning of the two-year reglementary period for the filing of a claim for refund commences from the date of filing of the corresponding Quarterly VAT Return. Counting from October 25, 2001,[18] the date when petitioner filed its Quarterly VAT Return for the 3rd quarter of taxable year 2001, both the administrative claim filed on September 25, 2003 and the Petition for Review filed on September 29, 2003,[19] fell within the two-year prescriptive period. Likewise, counting from the date when petitioner filed its Quarterly VAT Return for the 3rd quarter of taxable year 2002 on October 25, 2002,[20] both the administrative claim filed on September 29, 2004 and the Petition for Review filed on October 25, 2004,[21] were well within the two-year prescriptive period.

Anent the second requisite, it is necessary to determine whether or not petitioner was able to substantiate the items reflected in its Quarterly VAT Returns, namely: (1) output tax; (2) input tax; and (3) creditable VAT withheld.[22]

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[18] Exhibit "F", CTA Case No. 6786.
[19] CTA Case No. 6786.
[20] Exhibit "E", CTA Case No. 7091.
[21] CTA Case No. 7091.
[22] Technirail S.A. – Philippine Branch vs. Commissioner of Internal Revenue, CTA Case No. 6416, March 16, 2007, with Entry of Judgment dated April 14, 2007.

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1. Output Tax

Upon examination of petitioner's output tax as reflected in its VAT Returns vis-à-vis the Summary List of Sales[23], Schedule of Output Taxes and Summary of Entries[24] and related invoices and official receipts,[25] the Court-commissioned Independent Certified Public Accountant (ICPA) noted that petitioner's declared output taxes on sale of services from the 3rd quarter of taxable year 2001 to the 2nd quarter of taxable year 2002 amounted to P4,629,095.22; whereas, the output tax reported in petitioner's VAT Returns amounted to P5,308,450.91. These findings resulted in an unaccounted difference in output VAT of P679,355.69,[26] which this Court finds to be correct. Considering that petitioner did not file Amended VAT Returns for the 3rd quarter of taxable year 2001 to the 2nd quarter of taxable year 2002 to effect the downward adjustment of P679,355.50, the Court shall consider the output tax of P5,308,450.91 as the final and binding figure.

With regard to the 3rd and 4th quarters of taxable year 2002, the ICPA ascertained that the output tax reflected in the Quarterly VAT Returns in the amount of P6,490,370.40 matches with the output tax reflected in the Books of the Branch and with the Schedule of Output Taxes.[27]

In sum, petitioner had a total amount of output tax liability commencing from the 3rd quarter of taxable year 2001 to the 4th quarter of taxable year 2002 amounting to P11,798,821.31.

2. Input Tax

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[23] Exhibits "V-1" to "V-3", CTA Case No. 6786.
[24] Exhibits "P-1" to "P-14", CTA Case No. 7091.
[25] Exhibits "X-1" to "X-89", CTA Case No. 6786; Exhibits "Q-1" to "Q-84", CTA Case No. 7091.
[26] Page 7, Exhibit "U", CTA Case No. 6786.
[27] Exhibit "N-3", CTA Case No. 7091.

Petitioner's total available input VAT from the 3rd quarter of taxable year 2001 up to the 4th quarter of taxable year 2002 amounted to P26,803,620.71, consisting of the input VAT carried-over from the previous quarter in the amount of P11,412,688.19 and input VAT incurred during the last two quarters of taxable year 2001 and the four quarters of taxable year 2002 in the amount of P15,390,932.52.

In order to be creditable against petitioner's output VAT liability, the total input VAT of P26,803,620.71 must be supported by proper VAT invoices (in cases where the input taxes pertain to purchase of goods) and VAT official receipts (in cases where the input taxes pertain to purchase of services).

This Court has consistently ruled that the input VAT on domestic purchases of goods or properties shall be allowed as tax credit to the purchaser upon consummation of sale and importation of goods and properties, meaning upon the issuance by the seller of the VAT invoice to evidence the sale of goods or properties. On the other hand, the input VAT on purchases of services shall be available as tax credit to the purchaser only upon payment of the compensation or fee, which means upon issuance by the seller of the VAT official receipt evidencing receipt of the payment for services performed or yet to be performed.[28]

Further, the invoices and official receipts must be duly registered with the BIR and must contain the seller's name, "TIN" followed by the word "VAT", and other information required under Section 113 of the NIRC of 1997, as amended, and Section 4.108-1 of Revenue Regulations No. 7-95.

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[28] Jideco Manufacturing Philippines, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 53, June 7, 2005.

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Thus, it is imperative to determine whether petitioner has complied with the abovementioned requirements.

As regards the input VAT carry-over of P11,412,688.19, this Court finds that petitioner failed to present VAT invoices or official receipts to prove the existence of such amount. Hence, the input tax carry-over of P11,412,688.19 cannot be validly applied against petitioner's output tax for the quarters involved in the instant petition.

With reference to the reported input tax for the 3rd quarter of taxable year 2001 up to the 4th quarter of taxable year 2002 in the amount of P15,390,932.52, the ICPAs from *SGV & Co.*, in the persons of Ms. Mary Ann Capuchino and Mr. Henry M. Tan, summarized their findings in their separate Reports dated April 15, 2005[29] and January 20, 2006,[30] respectively, as follows:

		CTA Case No. 6786		**CTA Case No. 7091**	
	Findings	**Amount**	***Reference (Exhibit U)***	**Amount**	***Reference (Exhibit N)***
1	Input taxes claimed on domestic purchases of goods which are properly supported by VAT invoices.	P 566,435.09	*Annex 11*	P113,810.84	*Annex 13*
2	Input taxes claimed on domestic purchases of services which are properly supported by VAT ORs.	8,601,495.24	*Annex 12*	429,622.12	*Annex 22*
3	Input taxes claimed on domestic purchases of goods supported by preprinted TIN-V invoice (printed after July 31, 1991 but before January 1, 1996).	22,798.64	*Annex 13*	4,225.87	*Annex 19*
4	Input taxes claimed on domestic purchases of services supported by preprinted TIN-V ORs (printed after July 31, 1991 but before January 1, 1996).			1,504.14	*Annex 27*
5	Input taxes claimed on domestic purchases of goods supported by documents other than a VAT invoice (e.g., official receipt, tape receipt, cash slip, etc.)	60,327.56	*Annex 14*	32,659.43	*Annex 15*
6	Input taxes claimed on domestic purchases of services supported by documents other than a VAT OR (e.g., VAT Invoice, tape receipt, parking stub, statement of account, etc.)	74,663.26	*Annex 15*	119,609.69	*Annex 24*
7	Input taxes claimed on domestic purchases of goods/services supported by original VAT invoices/VAT OR not issued in the name of the Branch/petitioner.	2,976.31	*Annex 16*	10,072.73	*Annex 16/25*
8	Input taxes claimed on domestic purchases of goods not dated within the period covered by the claim.	12,865.45	*Annex 17*	75,881.56	*Annex 14*

[29] Exhibit "U", pp. 9-12, CTA Case No. 6786.
[30] Exhibit "N-1" to "N-12", CTA Case No. 7091.

9	Input taxes claimed on domestic purchases of services not dated within the period covered by the claim.	6,324.21	*Annex 18*	49,194.61	*Annex 23*
10	Input taxes claimed on domestic purchases of services substantiated by VAT ORs not dated.			240.00	*Annex 29*
11	Input taxes claimed on domestic purchases of goods supported by "NON-VAT" invoices stamped with "TIN-VAT".	4,849.55	*Annex 19*		
12	Input taxes claimed on domestic purchases of services supported by ORs not printed with "TIN-VAT".	240,601.52	*Annex 20*		
13	Over claimed input taxes due to erroneous computation.	153,092.23	*Annex 21*	7.59	*Annex 30*
14	Input taxes claimed on application/recoupment of downpayment and retention of construction contracts which are supported by either Sales Invoices or Statements of Account.	4,646,776.36	*Annex 22*		
15	Input taxes claimed by the Branch which are still for further verification/without available supporting documents	23,296.52	*Annex 23*	35,721.71	*Annex 21*
16	Input taxes on domestic purchases of goods substantiated by a VAT Invoice with erasures in the TIN.			109.09	*Annex 17*
17	Input taxes on domestic purchases of services substantiated by a VAT OR with erasures in the TIN.			106.27	*Annex 28*
18	Input taxes on domestic purchases of goods substantiated by an Invoice with TIN only.			24,829.09	*Annex 18*
19	Input taxes on domestic purchases of services substantiated by an OR with TIN only.			76,600.98	*Annex 26*
20	Input taxes on domestic purchases of goods substantiated by a photocopied VAT Invoice.			143.18	*Annex 20*
TOTAL		**P14,416,501.94**		**P974,338.90**	

The Court finds both the ICPAs Reports to be in order. Out of the total input VAT incurred from the 3rd quarter of taxable year 2001 to the 4th quarter of taxable year 2002 in the aggregate amount of P15,390,840.84, petitioner may validly claim as input tax credit only the amount of P9,711,363.29, representing the sum of the input taxes of P566,435.09 and P113,810.84 on purchases of goods supported by VAT invoices and input taxes of P8,601,495.24 and P429,622.12 on purchases of services supported by VAT official receipts (Nos. 1 and 2 of the Findings). The remaining input taxes in the amount of P5,679,477.55[31] would have to be denied for petitioner's failure to substantiate the same pursuant to the above discussed requisite.

[31] P15,390,840.84 (total input VAT incurred) – P9,711,363.29 (total input taxes on purchases of goods and of services supported by VAT invoices and by Vat official receipts, respectively).

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Applying then the validly supported input taxes of P9,711,363.29 as payment against the output tax due in the sum of P11,798,821.31, petitioner will have a remaining output VAT payable in the amount of P2,087,458.02. Offsetting this latter amount against petitioner's aggregate creditable VAT withheld from the 3rd quarter of taxable year 2001 up to the 4th quarter of taxable year 2002 is proper.

3. Creditable VAT Withheld

Records reveal that the creditable VAT of P4,513,483.92[32] and P4,504,598.41[33] or in the total amount of P9,018,082.33 withheld by NPC from income payments made to petitioner for the 3rd quarter of taxable year 2001 up to the 4th quarter of taxable year 2002 are duly supported by Certificates of Creditable Tax Withheld at Source.[34] However, the Court notes that the certificate marked as Exhibit "P-1" with the creditable VAT withheld amounting to P931,533.14 is dated outside the period of claim; hence, said amount must be denied. Moreover, the creditable VAT withheld in the amount of P3,384.52[35] shall likewise be denied for petitioner's failure to declare the related income payments in its VAT return for the 4th quarter of taxable year 2002.

In view of the foregoing denied amounts, petitioner can only validly apply/utilize the creditable VAT withheld of P8,083,164.67[36] against its remaining output VAT liability of P2,087,458.02. As a result, petitioner will still

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[32] For the 3rd and 4th quarters of taxable year 2001 and the 1st and 2nd quarters of taxable year 2002.
[33] For the 3rd and 4th quarters of taxable year 2002.
[34] Exhibits "L-1", "M-1", "N-1", "O-1", "P-1", and "Q-1", CTA Case No. 6786; Exhibits "C-1", "E-1", "G-1", "H-1", "H-2", and "I-1", CTA Case No. 7091.
[35] Exhibits "N-7" and "N-24".
[36] P9,018,082.33 less P931,533.14 (outside the period claim) and P3,384.52 (failure to declare related income payments in its return).

have an overpaid creditable VAT withheld in the amount of P5,995,706.65,[37] which appears to have been excessively paid and refundable in accordance with Section 204(C) in relation to Section 229 of the NIRC of 1997, as amended.

Finally, in order to establish that petitioner did not apply its creditable VAT withheld against output VAT arising after the 2nd and 4th quarters of taxable year 2002, petitioner presented its Quarterly VAT Returns until the 4th quarter of taxable year 2005.[38] Although petitioner carried-over the claimed creditable withheld of P9,018,082.33 to the succeeding quarters following the 4th quarter of taxable year 2002, the amount of P4,513,483.92 and P4,504,598.41 was deducted as "Any VAT Refund/TCC" claimed from the total available input tax as of the 3rd quarter of taxable year 2004 and of the 3rd quarter of taxable year 2005, respectively. In other words, the subject claim no longer formed part of the excess input VAT as of the 3rd quarter of taxable year 2005 which was to be carried over/applied to the succeeding 4th quarter of taxable year 2005.

In sum, petitioner has sufficiently proven that it is entitled to a refund or an issuance of a tax credit certificate in its favor of its unutilized creditable VAT withheld but in the reduced amount of P5,995,706.65, computed as follows:

Output Tax	P 11,798,821.31
Less: Substantiated Input tax	9,711,363.29
VAT Payable	P 2,087,458.02
Less: Creditable VAT Withheld	8,083,164.67
Amount Refundable	**P 5,995,706.65**

[37]P8,083,164.67 (creditable VAT withheld) – P2,087,458.02 (output VAT payable)
[38]Exhibits "II", "JJ", "KK", "LL", "MM", "NN", "OO", "PP", and "QQ", CTA Case No. 6786; Exhibits "FF", "GG", "HH", "II", and "JJ", CTA Case No. 7091.

WHEREFORE, premises considered, the instant consolidated Petitions for Review are hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED to REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **FIVE MILLION NINE HUNDRED NINETY FIVE THOUSAND SEVEN HUNDRED SIX PESOS AND 65/100 (P5,995,706.65)**, representing unutilized creditable VAT withheld for the 3rd and 4th quarters of taxable year 2001 and for the four quarters of taxable year 2002.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice