REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SAN ROQUE POWER CORPORATION,
Petitioner,

C.T.A. EB NO. 248
(C.T.A. Case No. 6916)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 2 0 2007

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DECISION

BAUTISTA, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner San Roque Power Corporation assailing the Decision dated March 23,

[1] *Rollo*, pp. 7 – 66 with Annexes.

2006 of the Second Division of the Court ("Court in Division") in C.T.A. Case No. 6916 denying petitioner's claim for refund or tax credit in the amount of P249,397,620.18 representing the sum of its unutilized input value added taxes (VAT) paid on its purchases of capital and other taxable goods and services for the period covering January 1 to December 31, 2002; and the Resolution dated January 4, 2007 of the Court in Division denying petitioner's Motion for Reconsideration.

Antecedent Facts

The antecedent facts, as narrated by the Court in Division in its Decision, are as follows:

> "Petitioner, San Roque Power Corporation, is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at Barangay San Roque, San Manuel, Pangasinan. It was incorporated on October 14, 1997 to design, construct, erect, assemble, own, commission, and operate power-generating plants and related facilities pursuant to and under contract with the Government of the Republic of the Philippines, or any subdivision, instrumentality or agency thereof, or any government-owned or controlled corporation, or other entity engaged in the development, supply, or distribution of energy.
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> Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue and empowered to perform the duties of his office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law.
>
> Petitioner was incorporated solely for the purpose of building and operating the San Roque Multipurpose Project, which is an indivisible project consisting of the power station, the dam, spillway, and other related facilities. And as a seller of services, petitioner is registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer covered under the Certificate of Registration No. OCN-98-006-007394. Likewise, it is registered with the Board of Investments (BOI) on a preferred pioneer status

to engage in the design, construction, erection, assembly, as well as, own, commission, and operate electric power-generating plants and related activities, for which it was issued the Certificate of Registration No. 97-356 dated February 11, 1998.

On October 11, 1997, petitioner entered into a Power Purchase Agreement (PPA) with the National Power Corporation (NPC) to develop the hydropotential of the Lower Agno River, and to be able to generate additional power and energy for the Luzon Power Grid, by building the San Roque Multi-purpose Project at San Manuel, Pangasinan.

The PPA provides, among others, that petitioner shall be responsible for the design, construction, installation, completion, testing and commissioning of the Power Station and shall operate and maintain the same, subject to NPC instructions. During the co-operation period of twenty-five (25) years commencing from the completion date of the Power Station, NPC will take and pay for all electricity available from the Power Station. In other words, the electricity to be generated by the Power Plant will be sold to and purchased by NPC in its entirety.

In view thereof, petitioner applied for and was approved a zero-rating certificate by respondent, through the Chief Regulatory Operations Monitoring Division, now the Audit Information, Tax Exemption & Incentive Division, which approval covered the year 2002.

For the period covering January 1 to December 31, 2001, petitioner filed with the respondent its Monthly Value-Added Tax Declarations and Quarterly Value-Added Tax Returns. Its Quarterly VAT Returns showed excess input VAT payments on account of its importation and purchases of capital and other taxable goods and services, as follows:

Period Covered	Date Filed	Particulars	Amount
1st Quarter (January 1, 2002 to March 31, 2002)	April 10, 2002	Tax Due for the Quarter (Box 13C)	P 26,247.27
		Input Tax carried over from previous qtr (22B)	296,124,429.21
		Input VAT on Domestic Purchases for the Qtr (22D)	95,003,348.91
		Input VAT on Importation of Goods for the Qtr (22F)	20,758,668.00
		Total Available Input tax (23)	411,886,446.12
		VAT Refund/TCC Claimed (24A)	173,909,435.66
		Net Creditable Input Tax (25)	237,977,010.46
		VAT Payable (Excess Input Tax) (260	(237,950,763.19)
		Tax Payable (overpayment) (28)	(237,950,763.19)

2nd Quarter (April 1, 2002 to June 30, 2002)	July 24, 2002	Tax Due for the Quarter (Box 13C)	P blank
		Input Tax carried over from previous qtr (22B)	237,950,763.19
		Input VAT on Domestic Purchases for the Qtr (22D)	65,206,499.83

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		Input VAT on Importation of Goods for the Qtr (22F)	18,485,758.00
		Total Available Input tax (23)	321,643,021.02
		VAT Refund/TCC Claimed (24A)	237,950,763.19
		Net Creditable Input Tax (25)	83,692,257.83
		VAT Payable (Excess Input Tax) (26)	(83,692,257.83)
		Tax Payable (overpayment) (28)	(83,692,257.83)

3rd Quarter (July 1, 2002 to September 30, 2002)	October 25, 2002	Tax Due for the Quarter (Box 13C)	P blank
		Input Tax carried over from previous qtr (22B)	199,428,027.47
		Input VAT on Domestic Purchases for the Qtr (22D)	28,924,020.79
		Input VAT on Importation of Goods for the Qtr (22F)	1,465,875.00
		Total Available Input tax (23)	229,817,923.26
		VAT Refund/TCC Claimed (24A)	Blank
		Net Creditable Input Tax (25)	229,817,923.26
		VAT Payable (Excess Input Tax) (26)	(229,817,923.26)
		Tax Payable (overpayment) (28)	(229,817,923.26)

4th Quarter (October 1, 2002 to December 31, 2002)	January 23, 2003	Tax Due for the Quarter (Box 13C)	P 34,996.36
		Input Tax carried over from previous qtr (22B)	114,082,153.62
		Input VAT on Domestic Purchases for the Qtr (22D)	18,166,330.54
		Input VAT on Importation of Goods for the Qtr (22F)	2,308,837.00
		Total Available Input tax (23)	134,557,321.16
		VAT Refund/TCC Claimed (24A)	83,692,257.83
		Net Creditable Input Tax (25)	50,865,063.33
		VAT Payable (Excess Input Tax) (26)	(50,830,066.97)
		Tax Payable (overpayment) (28)	(50,830,066.97)

Thus, petitioner filed with the respondent separate claims for refund in the total amount of P250,258,094.44 representing its excess unutilized input value-added taxes paid on its importation and purchases of capital and other taxable goods relative to its construction of the San Roque Multipurpose Project, with breakdown as follows:

Qtr Involved	Output Tax	Input Tax		
		Domestic Purchases	Importations	Excess Input Tax
	(A)	(B)	(C)	(D) = (B) +(C) - (A)
1st	P26,247.27	P 95,003,348.91	20,758,668.00	115,735,769.64
2nd	-	65,206,499.83	18,485,758.00	83,692,257.83
3rd	-	28,924,020.79	1,465,875.00	30,389,895.79
4th	34,996.36	18,166,330.54	2,308,837.00	20,440,171.18
	P61,243.63	P207,300,200.07	P43,019,138.00	**P250,258,094.44**

(Annexes D, E, F, & G, Petition for Review)

However, petitioner amended its Quarterly Value-Added Tax Returns to read as follows:

Period Covered	Date Filed	Particulars	Amount
1st Quarter (January 1, 2002 to March 31, 2002)	April 24, 2003	Tax Due for the Quarter (Box 13C)	P 26,247.27
		Input Tax carried over from previous qtr (22B)	297,719,296.25
		Input VAT on Domestic Purchases for the Qtr (22D)	95,126,981.69
		Input VAT on Importation of Goods for the Qtr (22F)	20,758,668.00
		Total Available Input tax (23)	413,604,945.94
		VAT Refund/TCC Claimed (24A)	175,544,002.27
		Net Creditable Input Tax (25)	175,544,002.27
		VAT Payable (Excess Input Tax) (260	(238,060,943.67)
		Tax Payable (overpayment) (28)	(238,034,696.40)
2nd Quarter (April 1, 2002 to June 30, 2002)	April 24, 2003	Tax Due for the Quarter (Box 13C)	P blank
		Input Tax carried over from previous qtr (22B)	238,034,696.40
		Input VAT on Domestic Purchases for the Qtr (22D)	65,206,499.83
		Input VAT on Importation of Goods for the Qtr (22F)	18,485,758.00
		Total Available Input tax (23)	321,643,021.02
		VAT Refund/TCC Claimed (24A)	237,950,763.19
		Net Creditable Input Tax (25)	83,692,257.83
		VAT Payable (Excess Input Tax) (26)	(83,692,257.83)
		Tax Payable (overpayment) (28)	(83,692,257.83)
3rd Quarter (July 1, 2002 to September 30, 2002)	October 25, 2002	Tax Due for the Quarter (Box 13C)	P blank
		Input Tax carried over from previous qtr (22B)	83,692,257.83
		Input VAT on Domestic Purchases for the Qtr (22D)	28,924,020.79
		Input VAT on Importation of Goods for the Qtr (22F)	1,465,875.00
		Total Available Input tax (23)	114,082,153.62
		VAT Refund/TCC Claimed (24A)	Blank
		Net Creditable Input Tax (25)	114,082,153.62
		VAT Payable (Excess Input Tax) (26)	(114,082,153.62)
		Tax Payable (overpayment) (28)	(114,082,153.62)
4th Quarter (October 1, 2002 to December 31, 2002)	January 23, 2003	Tax Due for the Quarter (Box 13C)	P 34,996.36
		Input Tax carried over from previous qtr (22B)	114,082,153.62
		Input VAT on Domestic Purchases for the Qtr (22D)	17,918,056.50
		Input VAT on Importation of Goods for the Qtr (22F)	1,573,004.00
		Total Available Input tax (23)	133,573,214.12
		VAT Refund/TCC Claimed (24A)	83,692,257.83
		Net Creditable Input Tax (25)	49,880,956.29
		VAT Payable (Excess Input Tax) (26)	(49,845,959.93)
		Tax Payable (overpayment) (28)	(49,845,959.93)

(par. 16, Joint Stipulation of Facts and Simplification of Issues)

Consequently, in view of the reduced amount of input value-added taxes for the period covering January 1 to December 31, 2002, petitioner, on May 20, 2003 and July 31, 2003, filed with the respondent separate letters to amend its claims for refund or issuance of tax credit certificates to show the amount of P249,397,620.18 representing its unutilized excess value-added taxes on its importation of capital and other taxable goods and services, as follows:

Qtr Involved	Date Filed	Output Tax	Input Tax		
			Domestic Purchases	Importations	Excess Input Tax
		(A)	(B)	(C)	(D) = (B) + (C) - (A)
1st	30-May-03	P26,247.27	P 95,126,981.69	P20,758,668.00	P115,859,402.42
2nd	25-Oct-02	-	65,206,499.83	18,485,758.00	83,692,257.83
3rd	27-Feb-03	-	28,924,020.79	1,465,875.00	30,389,895.79
4th	31-Jul-03	34,996.36	17,918,056.50	1,573,004.00	19,456,064.14
		P61,243.63	P207,175,558.81	P42,283,305.00	**P249,397,620.18**

(Exhibits 'E', 'F', 'G' and 'H')

Due to the inaction of the respondent, and before it could be barred by the two-year prescriptive period within which to file its claim, petitioner then filed this instant Petition for Review with this Court on April 5, 2004.

In his Answer filed on May 19, 2004, respondent raised the following as his Special and Affirmative Defenses:

'4. Petitioner failed to comply with the provisions of Section 8 (d) of Revenue Regulations No. 5-87 and Section 4.107-1 of Revenue Regulations No. 7-95 which provide, thus:

"Section 8. *Zero Rating.* — (a) x x x

(d) *Application for the imposition of zero rate.* — Any person claiming that his sales of goods or services are effectively zero-rated under Sections 100 and 102 shall file an application in a form prescribed therefore (sic) with the Commissioner of Internal Revenue justifying the imposition of zero-rate on the said transactions. Upon approval, his status as a zero-rated taxpayer shall remain valid until revoked."

"Section 4.107-1. *Registration of Value-Added Taxpayers.*

(a) x x x

(d) *Application for effective zero-rating.* — Except for actual export sale, other cases of zero-rated sales in Section 4.100-3 and Section 4.102-2(c) shall require prior application with Revenue District Office for effective zero-rating, the transaction otherwise entitled to zero-rating shall be considered exempt."

5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue;

6. The amount of P249,397,610.18 being claimed by petitioner as alleged unutilized input VAT on purchases of capital goods and services for the period January 1 to December 31, 2002 is not properly documented;

7. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

8. Petitioner must show that it has complied with the provisions of Section 205 (C) and 229 of the 1997 Tax Code on the prescriptive period for claiming tax refund/credit;

9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).'

As both parties filed their respective Memoranda on time, this case was considered submitted for decision on November 9, 2005.

The parties stipulated the following as the issues of the case:

1. Whether or not petitioner's sales are subject to value-added taxes at effectively zero percent (0%) rate;

2. Whether or not petitioner incurred input taxes which are attributable to its effectively zero-rated transactions;

3. Whether or not petitioner's importation and purchases of capital goods and related services are within the scope and meaning of 'capital goods' under Revenue Regulations No. 7-95;

4. Whether or not petitioner's input taxes are sufficiently substantiated with VAT invoices or official receipts;

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5. Whether or not the VAT input taxes being claimed for refund/tax credit by petitioner has been credited or utilized against any output taxes or has been carried forward to the succeeding quarter or quarters;

6. Whether or not petitioner is entitled to a refund of VAT input taxes it paid from January 1, 2002 to December 31, 2002 in the total amount of Two Hundred Forty Nine Million Three Hundred Ninety Seven Thousand Six Hundred Twenty Pesos and 18/100 (Php249,397,620.18)."[2]

The Ruling of the Court in Division

On March 23, 2006, the Court in Division rendered its Decision denying petitioner's claim for refund or tax credit in the amount of P249,397,620.18 for petitioner's failure to validate its claim.

The Court in Division found that petitioner had no effectively zero-rated sales for the taxable year 2002. This finding was affirmed by the report submitted by the Court-commissioned Independent Certified Public Accountant (CPA), Mr. Angel Aguilar, and confirmed by petitioner's Vice-President and Director for Finance, Mr. Carlos M. Echevarria.

Anent petitioner's claim for refund or tax credit of its input VAT paid on capital goods purchased, the Court in Division found that petitioner failed to prove that the importations and purchases made by it fall squarely within the meaning of "capital goods and properties" as defined under Section 4.106-1 (b) of Revenue Regulations No. 7-95. The Court in Division further said that although valid invoices were presented, it could

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[2] *Id.*, pp. 40 – 46, (pp. 1 -8, Decision, C.T.A. Case No. 6916).

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not properly verify if these importations and purchases pertain to capital goods subject of the claim.

The dispositive portion of the Decision reads as follows:

> "**WHEREFORE**, the instant Petition for Review is **DENIED** for lack of merit.
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> **SO ORDERED.**"

On April 20, 2006, petitioner filed a Motion for Reconsideration[3] of the Decision dated March 23, 2006. Petitioner moved for a new trial and/or reconsideration of the assailed Decision on two grounds: (1) honest mistake or oversight and (2) the findings or conclusions do not agree with the evidence presented and with the applicable law and established jurisprudence.

Respondent, in turn, filed an Opposition[4] arguing that it is incorrect for petitioner to move for a new trial and/or reconsideration because the choice of one remedy excludes the other. He also argued that the mistake committed in this case does not warrant a new trial. To this pleading, petitioner filed a Reply.[5]

On August 16, 2006, the Court in Division issued a Resolution allowing petitioner to explain how the documents already presented in evidence would prove its claim.[6]

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[3] *Records*, C.T.A. Case No. 6916, pp. 362 – 374.
[4] *Id.*, pp. 382 – 385.
[5] *Id.*, pp. 387 – 389.
[6] *Id.*, pp. 391 – 393.

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After the hearing on September 27, 2007 petitioner submitted its Supplemental Formal Offer of Evidence[7] to which respondent interposed no objection.[8]

On October 17, 2006, the Court in Division issued a Resolution admitting the exhibits offered by petitioner and directed the parties to submit their respective Supplemental Memoranda.[9]

On November 28, 2006, petitioner filed its Supplemental Memorandum.[10] Respondent, on the other hand, did not submit any supplemental memorandum.

In a Resolution dated January 04, 2007, the Court in Division denied petitioner's Motion for Reconsideration. It ruled that:

> "Upon a careful review of the supplemental evidence offered by petitioner, We find that the same did not in any prove anything other than what this Court had already considered in its Decision of March 23, 2006. The data attached to the affidavit is not enough. In fact, petitioner's presentation of these data is in no way different from the invoices and receipts already presented. As previously established by this Court, petitioner failed to prove that its importations and purchases may be classified as capital goods which may form part of its 'Property, Plant and Equipment – Net' account. Further, petitioner failed to prove that the same importations and purchases fall squarely within the ambit of 'capital goods and properties' as defined in Section 4.106-1 (b) of Revenue Regulations No. 7-95. And its submission of the said judicial affidavit did not cure such failure.
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> Moreover, this Court finds the testimony of petitioner's Treasurer and Vice-President for Finance, Mr. Carlos M. Echevarria, to be self-serving.

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[7] *Id.*, pp. 474 - 549.
[8] *Id.*, pp. 550 – 553.
[9] *Id.*, pp. 555 – 556.
[10] *Id.*, pp. 557 – 566.

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Hence, We reiterate Our previous ruling that petitioner failed to prove that the purchases related to the claimed input VAT are in the nature of capital goods.

Lastly, this Court may agree with petitioner's argument that the law does not require that zero-rated sales be made within the same period as the time when the expenses were incurred in order to consider such purchases as attributable to its zero-rated sales. However, it must be emphasized that for purposes of determining when petitioner can be said to be legally entitled to claim a refund of input tax paid, what should matter is not the date when the purchases of goods and services were made, but rather, the date when petitioner's zero-rated sales were made. For indeed, it is only at the time of such sale that petitioner can establish with definiteness that the input taxes paid were in fact, either directly attributable or otherwise, allocable to its zero-rated sales. It is quite clear under Section 112 (A) of the NIRC of 1997, as amended, that the refund/tax credit of input VAT is premised on the existence of zero-rated or effectively zero-rated sales. Therefore, it is imperative that petitioner prove it had zero-rated sales in order that the claimed input VAT may be refunded."[11] *(Citations omitted)*

The Issues

Hence, the instant recourse where petitioner assigns the following errors allegedly made by the Court in Division:

I. The Court in Division committed reversible error when it did not allow the Petitioner to present an independent auditor's report as clarificatory evidence to verify petitioner's claim on its purchases;

II. The Court in Division erred in ruling that Petitioner's evidence failed to prove that its importations and local purchases can be classified as capital goods despite overwhelming evidence presented by Petitioner; and

III. The Court in Division committed reversible error when it ruled that Petitioner must incur effectively zero-rated sales in the year 2002 for it to be entitled to the refund or issuance of tax credit certificate, contrary to the provisions of law.[12]

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[11] *Rollo,* pp. 62 – 63.
[12] *Id.,* p. 16.

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Petitioner's Arguments

Petitioner claims that it is entitled to its claim for refund or issuance of a tax credit certificate in the total amount of P249,397,620.18 as it was able to present sufficient evidence to prove the same. It contends that the testimonial and documentary evidence it presented in court are sufficient to support a conclusion that indeed its purchases are in the nature of "capital goods." Petitioner insists that the documents clearly show that the purchases consisted of engineering and procurement services, the building of the dam & spillway and design services for the purpose of building and constructing the San Roque Multi-Purpose Project.

Petitioner further contends that the ruling of the Court in Division that petitioner must incur effectively zero-rated sales in the year 2002 is contrary to the provisions of the law. Petitioner argues that while it is true that non-capital goods may only be refunded if they are attributable to zero-rated or effectively zero-rated sales, it does not require that the zero-rated sales must first exist before purchases can be considered attributable to such sales. According to petitioner, the law merely requires the filing of an application for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales within two (2) years after the close of the taxable quarter when the sales were made.

Petitioner also prays that, in the event this Court finds it difficult to verify the nature of petitioner's capital goods purchases based on evidence it has submitted, it should remand the present case to the Court in Division for the reception of petitioner's clarificatory evidence. To bolster this request, petitioner likewise filed a Supplemental Petition for Review.[13]

Respondent's Counter-arguments

Respondent filed his Comments[14] on both the Petition for Review and the Supplemental Petition for Review. He vehemently opposes the request of petitioner to remand the case to the Court in Division and maintains his position that the Court in Division correctly denied petitioner's claim and that petitioner was given enough opportunity to prove its claim during the trial of the case.

The Ruling of the Court En Banc

The Petition for Review is bereft of merit.

To begin with, petitioner's assertion that the Court in Division did not allow petitioner to present an independent auditor's report as clarificatory evidence to verify its claim is unsubstantiated and absolutely without basis.

Records show that the Court in Division afforded petitioner fair and reasonable opportunity to prove its claim for refund or issuance of a tax credit certificate. The Court in Division granted petitioner's Motion to

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[13] *Id.*, pp. 75 – 80.
[14] *Id.*, pp. 81 – 85 and pp. 95 – 98.

/n/

Commission an Independent CPA.[15] Several hearings were also conducted during which petitioner was given the opportunity to present its evidence. The Court in Division in the interest of justice likewise granted petitioner's request in its Motion for Reconsideration that it be allowed to explain how the documents already presented in evidence would prove its claim.[16]

Furthermore, contrary to the claim of petitioner, the records of this case are bereft of any indication that petitioner sought the approval of the appointment of another independent CPA to provide clarificatory evidence to assist the court in verifying petitioner's claim. As a matter of fact, no motion for the appointment of another independent CPA was ever filed by the petitioner.

It is also well to note that in petitioner's Reply to Opposition[17] it specifically stated:

> "1) **Petitioner does not seek to present new evidence** but merely seeks to present, by the testimony of witnesses and supporting documents, a detailed explanation of how the documents already presented in evidence show the capital goods nature of Petitioner's purchases. Petitioner merely seeks to show, by additional evidence how these documents, which were already admitted by this Honorable Court as part of Petitioner's evidence provide detailed proof that Petitioner's construction costs and other capital goods are duly recorded as Property, Plant and Equipment in Petitioner's books of accounts and that therefore, the input tax on these expenses are properly refundable to the Petitioner.
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[15] *Records,* C.T.A Case No. 6916, p. 123.
[16] *Id.,* p. 393.
[17] *Id.*, pp. 387 - 389.

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> 3) It is to be noted that the said **Petitioner merely hopes to strengthen its position that it incurred expenses in the nature of capital goods to corroborate its other uncontrovertible evidence** which prove the fact that Petitioner's purchases are in the nature of capital goods, such as official receipts and invoices in support of such purchases, coupled with contracts entered into by the Petitioner in relation thereto, the ruling issued by the Respondent, Petitioner's Financial Statements, as well as the testimony of Petitioner's Treasurer and Vice-President for Finance Carlos M. Echevarria." *(Emphasis ours)*

Thus, petitioner has no one else to blame but itself for failing to prove its claim. It is basic that as long as a party is given the opportunity to defend its interests in due course, it would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process.[18]

In view of the foregoing, We find no compelling reason to remand the case to the Court in Division as the purpose of remand, which is to afford parties an opportunity to present evidence, has been achieved.

Having resolved the preliminary issue, We shall now proceed to the merits of the petition.

Petitioner is claiming refund or tax credit in the amount of P249,397,620.18, allegedly representing its unutilized input VAT paid on its purchases of capital and other taxable goods and services for the period covering January 1 to December 31, 2002.

There is no question that under the National Internal Revenue Code ("NIRC") of 1997 petitioner's sales of services to NPC is subject to VAT at

[18] Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue, G.R. No. 168498, June 16, 2006, 491 SCRA 213 (2006).

zero-percent (0%). Accordingly, it is entitled to refund or tax credit pursuant to Sections 112(A) and (B) of the same Code, which provide that:

> "*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)(a)(1),(2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.
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> (B) Capital Goods. — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.
>
> xxx xxx xxx"

Based on the foregoing, petitioner may file a claim for refund or tax credit of unutilized input VAT in two (2) instances, namely: (a) when the excess/unutilized input VAT is attributable to zero-rated or effectively zero-

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rated sales; and (b) when the excess/unutilized input VAT is attributable to capital goods purchased by a VAT registered person.[19]

In the first instance, the following requisites must be complied with by petitioner:

1. Both administrative and judicial claims for refund must be filed within two (2) years after the close of the taxable quarter when the sales were made;
2. The claimed input VAT payments must be directly attributable to zero-rated sales;
3. The claimed input VAT payments must be duly supported by VAT invoices or official receipts; and
4. The claimed input VAT payments must not be applied against any output tax carried over to the succeeding month(s).[20]

Here, petitioner failed to comply with the second requirement.

Petitioner does not deny that it had no effectively zero-rated sales for the taxable year 2002. However, it contends that the ruling of the Court in Division that petitioner must incur effectively zero-rated sales in the year 2002 is contrary to the provisions of the law as the law does not require

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[19] Marubeni Philippines Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 6215, February 26, 2007.
[20] Kepco Philippines Corporation v. The Commissioner of Internal Revenue, C.T.A. Case No. 6965, February 26, 2007.

that the zero-rated sales must first exist before purchases can be considered attributable to such sales.

We are not persuaded.

Although Section 112 (A) of the NIRC of 1997 does not require that zero-rated sales be made within the same period as the time when the expenses were incurred, nevertheless, the said provision mandates that in order to claim for a refund/tax credit of input VAT, there must still be zero-rated sales or effectively zero-rated sales to which the input VAT sought to be refunded are attributable.[21] As correctly explained by the Court in Division, it is not the date when the purchases of goods and services were made that should matter, but rather, the date when the zero-rated sales were made because it is only at the time of such sale when petitioner can establish that the input taxes paid were in fact, either directly attributable or otherwise, allocable to its zero-rated sales.

Therefore, given that petitioner had no effectively zero-rates sales for the taxable year 2002, petitioner's claimed input VAT under the first instance cannot be granted. Again, We must emphasize that a refund of input taxes attributable to zero-rated sales pursuant to Section 112(A) of the NIRC of 1997 presupposes that a sale was actually made.[22]

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[21] San Roque Power Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 6213, December 23, 2004.

[22] San Roque Power Corporation v. The Commissioner of Internal Revenue, C.T.A. Case No. 6372 September 9, 2005 and San Roque Power Corporation v. The Commissioner of Internal Revenue, C.T.A. Case No. 6427, October 19, 2005, both citing *Kepco Philippines Corporation v. The Commissioner of Internal Revenue, C.T.A. Case No. 6413, March 10, 2005; San Roque Power Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 6213, December 23, 2004; Kepco Philippines Corporation v. The*

With regard to the second instance, petitioner in order to claim refund or tax credit has to prove that:

1.) it is a VAT registered entity;

2.) input taxes claimed were paid on capital goods duly supported by VAT invoices and official receipts;

3.) it did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and

4.) the claim for refund was filed within the two-year prescriptive period both in the administrative and judicial levels.[23]

But, in order that the items purchased can be classified as capital goods or properties, petitioner must show that: (1) the goods or properties have economic useful life of more than one year; (2) such goods or properties are treated as depreciable assets under Section 34F of the NIRC of 1997; and (3) they are used directly or indirectly in the production or sale of taxable goods or services. [24]

This petitioner failed to do.

Commissioner of Internal Revenue, C.T.A. Case No. 5761, July 14, 2003; Kepco Philippines Corporation v. The Commissioner of Internal Revenue, C.T.A. Case Nos. 5675 & 5704, March 18, 2003; Placer Dome Technical Services v. Commissioner of Internal Revenue, C.T.A. Case No. 6106, May 14, 2002; La Prutera v. Commissioner of Internal Revenue, C.T.A. Case Nos. 5898 and 5937, September 17, 2001.

[23] San Roque Power Corporation v. The Commissioner of Internal Revenue, C.T.A. Case No. 6647, March 8, 2006, citing *BASF Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 6283, February 10, 2004, affirmed on January 5, 2006 in CTA E.B. No. 47.*

[24] Marubeni Philippines Corporation v. Commissioner of Internal Revenue, *supra,* note 20.

We have carefully and thoroughly examined the records of the case and We find no error on the part of the Court in Division in ruling that petitioner failed to prove that its importations and purchases may be classified as capital goods which may form part of its "Property, Plant and Equipment – Net" account.

Indeed, We share the observation of the Court in Division that, the report of the Court-Commissioned auditing firm, Punongbayan & Araullo made no mention that petitioner was claiming for the refund or issuance of a tax credit certificate of input VAT **on capital goods**. The commissioned CPA's audit objectives were, as a matter of fact, limited only to the verification of petitioner's claimed input VAT attributable to its **zero-rated sales** for the period January 1, 2002 to December 31, 2002. Hence, considering that the report dealt specifically with the unutilized input taxes paid or incurred by petitioner on its local and foreign purchases of goods and services **attributable to its zero-rated sales,** it cannot be used to prove petitioner's claim for refund under the second instance, i.e., unutilized input VAT **attributable to capital goods** purchased by a VAT registered person.

We likewise agree with the Court in Division that without the presentation of petitioner's books of accounts, the Court would not be able to verify with utmost certainty whether the figures in petitioner's 2001 and

2002 comparative audited financial statements included the subject purchases as appearing in the invoices/receipts submitted by petitioner.

To Our mind, petitioner's insistence to remand the case to the Court in Division can even be viewed as an admission of its failure to present sufficient evidence to support its claim for refund or tax credit. As We have stated earlier, petitioner had all the opportunity to present all its evidence, however, it did not make good use of this opportunity; and so, it must bear the consequences.

We need not belabor that, in order for petitioner to be entitled to the refund or issuance of tax credit certificate referred to above, it is imperative that competent and sufficient evidence and documents required by our laws and jurisprudence be properly presented.[25]

It also bears stressing that the question of whether or not the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.[26] Thus, in the absence of the Court's abuse or improvident exercise of authority, findings of facts made by the Court in Division must be accorded deference and respect.[27]

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[25] San Roque Power Corporation v. The Commissioner of Internal Revenue, C.T.A. Case No. 6427, October 19, 2005.

[26] El Greco Ship Manning and Management Corporation v. Commissioner of Customs, C.T.A. EB No. 172 (C.T.A. Case No. 6618), March 14, 2007.

[27] Union Refinery Corporation v. Commissioner of Customs, C.T.A. EB NO. 149 (C.T.A. Case No. 5917), January 15, 2007.

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Finally, We deem it opportune to emphasize the oft-repeated rule that tax refunds partake the nature of tax exemptions and are thus construed *strictissimi juris* against the person or entity claiming the exemption, as such, the burden in proving the claim for refund necessarily falls on the taxpayer.[28]

WHEREFORE, premises considered, the instant petition is hereby **DISMISSED.** Accordingly, the assailed Decision and Resolution are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

[28] Far East Bank and Trust Company v. Commissioner of Internal Revenue, G.R. No. 138919, May 2, 2006, 488 SCRA 473 (2006).

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice