

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

**COMMISSIONER OF INTERNAL
REVENUE,**

Petitioner, **CTA EB CASE NO. 523**
(CTA CASE NO. 7173)

-versus-

Present:

ACOSTA, P.J.,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
PALANCA-ENRIQUEZ
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS, JJ.

**SAN ROQUE POWER
CORPORATION,**

Respondent. Promulgated:

APR 15 2010 *tibula*
4:52 pm

X-----X

DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition For Review¹ for the Court en banc under Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, of the Decision² dated April 23, 2009, rendered by the former Second Division of this Court in C.T.A Case No. 7173, and its Resolution³ dated August 6, 2009.

¹ Rollo, pp. 7-58

² Ibid. pp.21-52, Penned by Associate Justice Juanito C. Castañeda, Jr., concurred in by Associate Justice Erlinda P. Uy and Associate Justice Olga Palanca-Enriquez

³ Rollo, pp. 53-58 *ℓ*

DECISION

The petitioner Commissioner of Internal Revenue (CIR) seeks reversal of both the aforesaid Decision and Resolution, the dispositive portions of which, respectively read as follows:

Decision dated April 23, 2009:

*"WHEREFORE, premises considered, the instant **PETITION FOR REVIEW** is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** or **TO ISSUE TAX CREDIT CERTIFICATE** in the amount of **ONE HUNDRED FOURTEEN MILLION ONE HUNDRED NINETY ONE THOUSAND ONE HUNDRED SIXTEEN PESOS AND 15/100 (P114,191,116.15)** in favor of petitioner, representing unutilized excess input taxes attributable to capital goods purchases and effectively zero-rated sales to NPC for the period covering January 1, 2003 to December 31, 2003.*

SO ORDERED." (Italics Supplied)

Resolution dated August 6, 2009:

*"WHEREFORE, premises considered, respondent's Motion for Partial Reconsideration is hereby **DENIED** for lack of merit.*

SO ORDERED." (Italics Supplied)

The facts culled from the Decision of this Court's former Second Division, are as follows:

San Roque Power Corporation⁴ 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, whose primary purpose is "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."

⁴ San Roque Power Corporation and Commissioner of Internal Revenue (CIR) were the petitioner and respondent, respectively, in the Petition for Review before the former Second Division of this Court. In this Petition for Review before this Court En banc, CIR is the petitioner while San Roque Corporation is the respondent. Thus, we edited and refer to the Commissioner of Internal Revenue as the CIR and San Roque Power Corporation for San Roque Power Corporation in the quoted portions of the Decision of this Court's former Second Division. 

DECISION

On the other hand, Commissioner of Internal Revenue (CIR⁵) was duly appointed 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. He holds office at the BIR National Office Building, Diliman, Quezon City.

San Roque Power Corporation is duly registered as a VAT taxpayer with the BIR and was issued Certificate of Registration No. OCN 98-006-007394 and TIN No. 005-017-501. It is likewise registered with the Board of Investments (BOI) on a preferred pioneer status, to engage in the design, construction, erection, assembly, as well as to own, commission, and operate electric power-generating plants and related activities; for which it was issued Certificate of Registration No. 97-356 on February 11, 1998.

On October 11, 1997, San Roque Power Corporation entered into a Power Purchase Agreement (PPA) with the National Power Corporation (NPC) to develop the hydropotential of the Lower Agno River and generate additional power and energy for the Luzon Power Grid, by building the San Roque Multi-Purpose Project; an indivisible project consisting of the power station, the dam and spillway, and other related facilities, located in San Manuel, Pangasinan.

The PPA provides, among others, that San Roque Power Corporation 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 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 Station will be sold to and purchased by NPC in its entirety.

Relative to the construction and development of the San Roque Multi-purpose Project, petitioner allegedly incurred excess input VAT in the amount of P142,256,438.22, covering the period from January 1, 2003 to December 31, 2003.

During the same period, San Roque Power Corporation purportedly commenced commercial operations and generated sales of electricity to NPC in the amount of **P4,870,723,381.00**. San Roque Power Corporation believes that its sales of electricity to NPC qualify for VAT zero-rating under Section 108 (B)(3) of the National Internal Revenue Code (NIRC) of 1997 in relation to Section 13 of Republic Act (RA) No. 6395, otherwise known as the NPC Charter.

For the four quarters of 2003, San Roque Power Corporation filed with the BIR its Quarterly VAT Returns, including amendments thereto, reflecting the alleged excess input VAT in the amount of P142,256.438.22 and zero-rated sales of electricity in the amount of **P4,870,723,381.02** as follows:

⁵ Ibid. 

Exh	2003	Zero-rated Sales/Receipts	Output VAT	Input VAT		
				Domestic Purchases	Importation of Goods	Excess
F	1 st Qtr		P83,676.97	P18,856,186.54	P365,795.00	P 19,138,304.57
L	2 nd Qtr	P1,081,634,328.00	0.00	27,126,814.46	208,366.00	27,335,180.46
O	3 rd Qtr	1,951,602,941.92	0.00	9,925,652.31	3,352,178.50	13,277,830.81
S	4 th Qtr	1,837,486,111.10	0.00	82,281,037.38	224,085.00	82,505,122.38
		P4,870,723,381.02	P83,676.97	P138,189,690.69	P4,150,424.00	P142,256,438.22

On November 5, 2004, San Roque Power Corporation filed with the BIR four (4) letters claiming refund of the total amount of P142,256,438.22, representing unutilized excess input VAT, as declared in its VAT Returns for the four quarters of 2003 in the sum of P142,256,438.22.

On February 24, 2005, San Roque Power Corporation filed with the BIR an additional claim in the amount of P5,723,120.48, allegedly representing unutilized input VAT for the first quarter of 2003 which was erroneously included in its previous claim for refund covering the period October 1, 2002 to December 31, 2002. However, upon verification that such error was already corrected in its records and that there was no basis for the said additional claim, respondent filed a letter with the BIR on March 22, 2005 to withdraw the refund claim of P5,753,120.48.

As the two-year prescriptive period within which to file a judicial claim for refund was about to lapse without action on the part of CIR, San Roque Power Corporation elevated its claims before this Court via a Petition for Review filed on March 21, 2005, praying for the refund or issuance of tax credit certificate in the amount of P142,256,438.22, representing unutilized input VAT on purchases of capital goods and other taxable goods and services for the period covering January 1, 2003 to December 31, 2003.

In his Answer filed on May 19, 2005, CIR, raised the following Special and Affirmative Defenses:

4. San Roque Power Corporation's alleged claim for refund/ tax credit is subject to administrative routinary examination/investigation by the Bureau's Revenue District No. 8 in Urdaneta City Pangasinan.
5. San Roque Power Corporation failed miserably to show that the total amount of Php 142,256,438.22 represent[ing] excess input VAT on purchases of capital goods and services for the period January 1 to December 31, 2003.
6. Taxes paid and collected are presumed to have been paid in accordance with law; hence, not refundable. /

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DECISION

7. *In an action for refund/credit, the taxpayer has the burden to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.*
8. *It is incumbent upon San Roque Power Corporation to show that it has complied with the provisions of Section 204 (c) in relation to section 229 of the Tax Code.*
9. *Well-established is the rule that refund/tax credits are construed strictly against the taxpayer as they partake the nature of exemption from tax.'*

During the trial on the merits, San Roque Power Corporation presented documentary and testimonial evidence. CIR, on the other hand, submitted this case for decision without presenting any witness."

Thus, this Court's former Second Division rendered the assailed Decision⁶. Not satisfied, the CIR moved for a partial reconsideration of the same, which was denied in a Resolution⁷ dated August 06, 2009.

Hence, the CIR filed this petition.

In assailing the Decision and Resolution of the Court's former Second Division, promulgated on April 30, 2009 and August 6, 2009, respectively, the Commissioner of Internal Revenue (CIR) raised the sole issue:

"WHETHER OR NOT THE (FORMER) SECOND DIVISION OF THE HONORABLE COURT ERRED IN PARTIALLY GRANTING RESPONDENT'S CLAIM FOR REFUND IN THE AMOUNT OF P114,191,116.15 ALLEGEDLY REPRESENTING UNUTILIZED EXCESS INPUT TAXES ATTRIBUTABLE TO CAPITAL GOODS PURCHASES AND EFFECTIVELY ZERO-RATED SALES TO NPC FOR THE PERIOD COVERING 1 JANUARY 2003 TO 31 DECEMBER 2003 BECAUSE THE CLAIM WAS NOT FILED IN ACCORDANCE WITH THE PROCEDURE PRESCRIBED BY LAW."

⁶ Supra, Note 2

⁷ Supra, Note 3 (

DECISION

In support thereof, the CIR contends that San Roque Power Corporation's claim for refund was not properly documented in the administrative proceedings and thus, San Roque Power Corporation is not entitled to the relief sought.

The CIR's argument that the denial by inaction of San Roque Power Corporation's claim for refund should be sustained for non-compliance with the legal procedure - submission of complete documents, is totally without merit.

Suffice it to say that San Roque Power Corporation did not elevate to this Court's former Second Division its claim for refund on the ground of denial for insufficiency of evidence due to non-submission of complete documents but rather from the CIR's inaction or failure to act on it.

Admittedly, the submission of relevant and complete supporting documents is necessary for the granting of refund or tax credit certificate, in both administrative and judicial level. However, submission of the complete supporting documents in the administrative level is not a condition precedent before a taxpayer can elevate its claim before this Court.

A perusal of the records would reveal that on November 5, 2004, San Roque Power Corporation filed a claim for refund⁸ with the Bureau of Internal Revenue, Revenue District Office No. 6, Urdaneta, Pangasinan.

⁸ Exhibits "U", "V", "W" & "X", admitted in Resolution dated Jul 14, 2006, Second Division Docket pp.140-141 

DECISION

Pursuant to section 112 (C) of the NIRC as amended, San Roque Power Corporation has thirty (30) days from the decision of the CIR denying its claim or after the expiration of one hundred twenty (120) days from the filing of refund, to appeal the decision or the unacted claim to this Court.

We quote:

SEC. 112. Refunds or Tax credits of Input Tax.-

x x x x x x

(C) Period within which Refund or Tax Credit of Input Taxes shall be made.- In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or credit, or the failure on the part of the Commissioner to act on the application within period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals. (Italics supplied)

The above provision clearly provides that the taxpayer must elevate its claim before this Court within 30 days from receipt of the denial of its claim for refund/tax credit or after the expiration of the 120-day period granted to the CIR to decide on the taxpayer's claim. Having filed the claim for refund on November 5, 2004, San Roque Power Corporation has 30 days from the expiration of the 120-day period, specifically until April 5, 2005 to petition to this Court. The petition having been filed on March 21, 2005 and raffled to the Second Division of this Court, was well within the period prescribed by law. 

DECISION

The alleged non-submission of complete documents at the administrative level will not bar this Court from receiving evidence, evaluating and appreciating its materiality, relevancy, probative value and sufficiency concerning the San Roque Power Corporation's claim for refund considering that the CIR failed to state and identify what documents did San Roque Power Corporation fail to submit in order to warrant their denial. The CIR ought to know that mere allegation is not evidence.⁹ Thus, mere allegation in the total absence of evidence is just that- an allegation- undeserving of credence.

Records reveal that the CIR failed to controvert the documentary and testimonial evidence presented by San Roque Power Corporation. Likewise, neither a speck of evidence was presented nor to say the least any action/opposition from the CIR was made before submitting the case for resolution. After a thorough examination of the documentary and testimonial evidence presented before this Court's former Second Division, we find them sufficient for adjudication on San Roque Power Corporation's claim.

Respondent anchored its claim for refund of Php 142,256,438.22¹⁰ under Section 112(A) and (B)¹¹ of the NIRC , as amended by RA 9224 broken down as follows.

⁹ Industrial Textile Manufacturing Co. of the Phils. Inc vs. LPJ Ent. Inc., G.R. No. 66140; January 31, 1993, 217 SCRA 322

¹⁰ Rollo, p. 27

¹¹ SEC. 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, **✓**

2003		Per Return		Capital Goods		Non-Capital Goods/ Services
January	Php	8,376,552.05	Php	7,107,311.52	Php	1,269,240.53
February		5,941,941.02		5,389,717.61		552,223.41
March		4,819,811.50		3,514,692.90		1,305,118.60
Subtotal	Php	19,138,304.57	Php	16,011,722.03	Php	3,126,582.54
April		10,771,389.83		9,693,940.97		1,077,448.86
May		11,521,557.23		1,432,711.11		10,088,846.12
June		5,042,233.40		2,969,322.23		2,072,911.17
Subtotal	Php	27,335,180.46	Php	14,095,974.31	Php	13,239,206.15
July	Php	4,409,756.66	Php	3,749,735.35	Php	660,021.31
August		5,255,289.60		2,898,474.21		2,356,824.39
September		3,612,775.55		2,591,365.69		1,021,409.86
Subtotal	Php	13,277,830.81	Php	9,239,575.25	Php	4,038,255.56
October	Php	2,440,219.14	Php	1,205,337.58	Php	1,234,881.56
November		78,160,805.76		76,922,800.49		1,238,005.27
December		1,904,097.48		1,315,615.27		588,482.21
Subtotal		82,505,122.38		79,443,753.34		3,061,369.04
Total	Php	142,256,438.22	Php	118,791,024.93	Php	23,465,413.29

Of the ₱118,791,024.93, representing alleged input tax on capital goods, the amount of ₱700,133.45 and ₱4,584,028.12 or a total of ₱5,284,161.57 shall be disallowed. Thus, the valid input VAT attributable to capital goods amounts to ₱113,506,863.36. We agree with the findings of this Court's former Second Division, the pertinent portion of which reads:

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.*

(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 the 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, records disclose that out of the total input tax claim of ₱118,791,024.93, only ₱114,206,996.82 is properly attributable to petitioner's purchases of capital goods and formed part of the Property plant and equipment account shown in its 2003 audited Financial statements. The purchases related to the remaining balance of ₱4,584,028.12, although recorded under property, plant and equipment account, are not in the nature of capital goods as these pertain to non-capitalizable transactions such as payments for curtain rods, security guards services, advertising expenses, lease and service of portalets, safety shoes, etc.

Nonetheless, out of the remaining balance of ₱4,584,028.12, petitioner may claim the amount of ₱4,579,228.12 which was incurred during its commercial operations that started May 1, 2003. Thus, petitioner's entitlement to the input tax of ₱4,579,228.12 shall be evaluated together with petitioner's claimed amount of ₱23,465,413.29, allegedly representing input tax on non capital goods/services attributable to effectively zero rated sales to NPC. “

As aptly found by this Court's former Second Division, the amount of ₱700,133.45 is disallowed for the following reasons:

Name of Supplier	Inv. No.	Exhibit	OR No.	Exhibit	Input Vat
1. Purchases of services supported by official receipts not in the name of petitioner in violation of Sections 113 and 237 of the NIRC of 1997 & Section 4.108.1 of Rev. Reg. 7-95					
F. Gutierrez Corporation	239	PP-4-E112	300	PP-4-E111	P35,243.57
F. Gutierrez Corporation	270	PP-4G175	417	PP-4G174	14,440.91
F. Gutierrez Corporation	269	PP-4G177	417	PP-4G174	20,023.47
F. Gutierrez Corporation	337	PP-4K155	450	PP-4K154	2,052.55
F. Gutierrez Corporation	331	PP-4K156	450	PP-4K154	3,662.01
F. Gutierrez Corporation	335	PP-4K157	450	PP-4K154	3,528.83
F. Gutierrez Corporation	336	PP-4K158	450	PP-4K154	5,533.52
F. Gutierrez Corporation	343	PP-4K160	451	PP-4K159	10,633.2
F. Gutierrez Corporation	348	PP-4K161	451	PP-4K159	9,449.09
F. Gutierrez Corporation	333	PP-4K162	451	PP-4K159	7,086.02
F. Gutierrez Corporation	349	PP-4K163	451	PP-4K159	1,866.25
F. Gutierrez Corporation	338	PP-4K165	451	PP-4K159	1,6301.72
F. Gutierrez Corporation	365	PP-4L171	458	PP-4L170	4,730.71
F. Gutierrez Corporation	223	PP-4D151	292	PP-4D149	12,171.00
subtotal					P146,722.85
2. Purchases of services without supporting official receipts in violation of Section 110(A)(1)(b) in relation to Sections 113 and 237 of the NIRC of 1997 and Section 4.108 of RR 7-95					
Harza Engineering					P176,332.78
Harza Engineering					178,567.37
Subtotal					P354,900.13
3. Not included per “Schedule of Input VAT Paid on Local Purchases with original and appropriate supporting documents” (Exhibit PP-4)					
F. Gutierrez Construction	267	PP-4-G175	417	PP-4-G174	P5,562.07
Raytheon Ebasco Overseas Ltd.	233	PP-4-B208	460	PP-4-B207	8,533.34
F. Gutierrez Construction	121	PP-4-C138	291	PP-4-C137	3,596.55
F. Gutierrez Construction	220	PP-4-C140	288	PP-4-C139	180,818.51
subtotal					P198,510.47
Total					P700,133.45

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Regarding the refund of ₱23,465,413.29¹² input tax for non-capital goods/services, ₱684,252.79¹³ of it were proven to be attributable to substantiated zero-rated sales. In the recent case of San Roque Power Corporation vs. Commissioner of Internal Revenue G.R. No. 180345, November 25, 2009, on claim for refund or tax credit under Section 112(A)¹⁴, the Supreme Court set the following criteria:

- (1) The taxpayer is VAT registered;
- (2) The taxpayer is engaged in zero-rated or effectively zero-rated sales;
- (3) The input taxes are due or paid;
- (4) The input taxes are not transitional input taxes;
- (5) The input taxes have not been applied against output taxes during and in the succeeding quarters;
- (6) The input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
- (7) For zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;

¹² Total claimed input tax
Less: Input Tax Claim on Capital Goods Purchases
Input Tax Claim on Non-Capital Goods/Services

P 142,256,438.22
118,791,024.93
P 23,465,413.29
=====

¹³ See Note 18

¹⁴ Supra, Note 12 

DECISION

- (8) Where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and
- (9) The claim is filed within two years after the close of the taxable quarter when such sales were made.

Records reveal that *San Roque Power Corporation* complied with the criteria set by the Supreme Court, as follows:

First and Second criteria. - Based on the joint stipulation of facts of the parties, *San Roque Power Corporation* is a VAT registered taxpayer with Certificate of Registration No. OCN 98-006-007394 and TIN No. 005-017-501¹⁵; and it was granted a Certificate for Zero Rate by the CIR through the Chief of Regulatory Operations Monitoring Division (now the Audit Information, Tax Exemption & Incentive Division) and thus, is engaged in zero-rated sales.

Third criterion. - Various suppliers' VAT invoices, official receipts, confirmation letters and bank's official receipt, Bureau of Customs (BOC) Import Entries and Internal Revenue Declarations were presented to prove the input taxes claimed.

¹⁵ First Division Docket. P.75 ☞

Fourth and Fifth criteria. - There is no transitional input tax on the claimed input tax and that the same was already net of the output tax for the 1st quarter of 2003¹⁶.

Sixth criterion. - As correctly found by this Court's former Second Division, *San Roque Power Corporation* was able to prove that the amount of ₱684,252.79¹⁷ of claimed input tax taxes were attributable to substantiated zero-rated or effectively zero-rated sales of ₱170,000,000.00.

Seventh criterion. - Foreign currency exchange proceeds are inapplicable considering that San Roque Power Corporation's substantiated zero-rated sale of ₱170,000,000.00 as operating fee did not involve foreign exchange.

Eighth criterion. - Similarly, the **eighth criterion** is inapplicable to this case, where the only sale transaction consisted of an effectively zero-rated sale.

¹⁶ Findings of the Court a quo, Rollo, p. 28 citing Exhibit "F"
¹⁷ Rollo, pp. 40-41

	Capital Goods	Non-Capital Goods/Services	Total
Amount of claim	P118,791,024.93	P23,465,413.29	P142,256,438.22
Add/(Less)			
a. Input vat claim on capital goods purchases which are not duly supported by VAT official receipts	(700,133.45)		(700,133.45)
b. Input Vat, the related purchases of which are not in the nature of capital goods	(4,584,028.12)		(4,584,028.12)
c. Input Vat, the related purchases of which are not in the nature of capital goods but are attributable to effectively zero-sales		4,579,228.12	4,579,228.12
d. Input VAT claim on non-capital goods/services which could not be attributable to effectively zero-sales		(4,204,031.40)	(4,204,031.40)
e. Input VAT claim on non-capital goods/services which are not duly substantiated by VAT invoices, official receipts, BOC import declarations/ etc.		(4,235,868.33)	(4,235,868.33)
Valid Input VAT	P113,506,863.36	P19,604,741.68	P133,111,605.04
Less: Input VAT attributable to unsubstantiated zero-rated sales (P19,604,741.68-P684,252.79*)		(18,920,488.89)	(18,920,488.89)
	P113,506,863.36	P P684,252.79	P114,191,116.15
Substantiated Zero Rated Sales			
divided by Total reported Zero -Rated Sales			
Multiplied by the Substantiated Excess Input VAT			
Input VAT attributable to substantiated Zero-Rated Sales P			
	P170,000,000.00		
	4,870,723,381.02		
	19,604,741.68		
	P	684,252.79	

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Ninth criterion. - Lastly, the claim was filed within two years after the close of the taxable quarter when such sales were made. The claim for refund, for the four quarters of 2003 having been filed with the BIR on November 5, 2004, is within the two year period to file a claim for refund.

2003	Close of taxable quarter	Last day within which to file a claim for refund
1 st Qtr	March 31, 2003	March 31, 2005
2 nd Qtr	June 30, 2003	June 30, 2005
3 rd Qtr	September 30, 2003	September 30, 2005
4 th Qtr	December 31, 2003	December 31, 2005

In fine, the Court En Banc finds no cogent justification to disturb the findings and conclusion in the assailed Decision and Resolution of the Court's former Second Division, promulgated on April 30, 2009 and August 6, 2009, respectively.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for **LACK OF MERIT**. Accordingly, the April 30, 2009 Decision and August 6, 2009 Resolution of this Court's former Second Division are **AFFIRMED**.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

Ernesto D. Acosta
ERNESTO D. ACOSTA
Presiding Justice

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JUANITO C. CASTAÑEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice

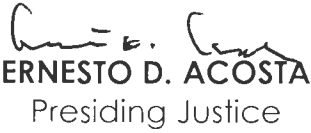

OLGA PALANCA-ENRIQUEZ
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.


ERNESTO D. ACOSTA
Presiding Justice

