REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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VISAYAS GEOTHERMAL POWER COMPANY, INC.,
Petitioner,

C.T.A. CASE NOS. 6790
and 6838

Members:

- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JAN 18 2007 / 3:05 PM

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DECISION

BAUTISTA, L., J.:

Before Us are two (2) consolidated Petitions for Review filed by petitioner seeking refund or issuance of a tax credit certificate in the aggregate amount of P20,213,044.50 allegedly representing unutilized input value-added tax for the period covering September 1, 2001 to December 31, 2002.

Visayas Geothermal Power Company Inc. ("petitioner") is a partnership duly organized and existing under and by virtue of the laws of the Republic of the Philippines[1], with principal address located at Barangay Tongonan, Ormoc City, Province of Leyte. The Commissioner of Internal Revenue ("respondent"), on the other hand, is the duly appointed

[1] Exhibit "A".

government official vested with the authority, among others, to grant refunds of unutilized input value-added taxes ("VAT") paid pursuant to the provisions of the National Internal Revenue Code ("Tax Code") with office address at the Fifth Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner's business purpose is "to invest in, acquire, finance, complete, construct, develop, improve, operate, maintain and hold that certain partially constructed power production geothermal electrical engineering facility in Malibog, Leyte Province, Philippines (the "Project"), and other property incidental thereto, for the production and sale of electricity from geothermal resources, to sell or otherwise dispose of the Project and such other property, and to engage in any other activities related or incidental thereto".[2]

On June 15, 1994, petitioner was accredited and certified to by the Department of Energy ("DOE"), to own and operate a power plant facility comprising of three (3) steam turbine-generating units and related equipments, with a total capacity of 216 Megawatts situated in Malibog, Leyte Province.[3]

On January 23, 1996, petitioner was registered as a VAT taxpayer with the Bureau of Internal Revenue ("BIR") Revenue District Office No. 89, Ormoc City and was issued Taxpayer's Identification No. 003-832-538-VAT.[4]

For the third and fourth quarters of 2001 and all the four (4) quarters of 2002, petitioner allegedly incurred input VAT amounting to P20,213,044.50 on its domestic purchases of goods and services and importation of goods used in its power generation activities.

According to petitioner, effective June 26, 2001, its sales of generated power are no longer subject to VAT at 10% but at 0% rate, pursuant to Republic Act No. 9136, otherwise

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[2] Exhibit "A-1".
[3] Exhibit "C".
[4] Exhibit "B".

known as the EPIRA Law,[5] hence, it was not able to fully utilize the input VAT incurred in the subject period to the succeeding quarters.

Petitioner's purported unutilized input VAT are reflected in its original and amended Quarterly VAT Returns for the third, fourth quarters of 2001 and the four (4) quarters of 2002 filed with the Bureau of Internal Revenue ("BIR"), to wit:

Third and Fourth Quarterly VAT Returns filed on October 25, 2001 and January 10, 2002, respectively:

	3rd Qtr -2001 *(Exhibit "F")*	**4th Qtr-2001** *(Exhibit "G")*
Taxable Sales (Others-Power Generation)	P225,035,466.71	
Zero Rated Sales/Receipts	634,795,458.64	P999,383,002.87
Total Sales/Receipts	P859,830,925.35	P999,383,002.87
Output Tax	P 22,503,546.67	P -
Less: Input Tax		
Carried over from previous quarter		2,169,920.61
Domestic Purchases	1,717,928.52	1,634,537.98
Importation of Goods	1,364,456.29	1,781,706.63
Total Available Input Tax	3,082,384.81	5,586,165.22
VAT Payable/(Excess Input Tax)	P 19,421,161.86	P (5,586,165.22)
Less: Tax Credits/Payments		
Monthly VAT Payments	7,061,700.17	
Creditable VAT Withheld-previous two months	13,502,128.01	-
Total	P 20,563,828.18	P -
Tax Payable/(Overpayment)	P (1,142,666.32)	P (5,586,165.22)

Original Quarterly VAT Returns for the four (4) quarters of 2002 filed on April 9, 2002, July 24, 2002, October 24, 2002 and January 27, 2003, respectively:

	1st Qtr-2002 *(Exhibit "H")*	**2nd Qtr-2002** *(Exhibit" J")*	**3rd Qtr-2002** *(Exhibit "L")*	**4th Qtr-2002** *(Exhibit "N")*
Taxable Sales	P -	P -	P -	P -
Zero Rated Sales/Receipts	985,801,370.37	936,893,612.56	962,795,466.77	931,980,608.80
Total Sales/Receipts	P 985,801,370.37	P936,893,612.56	P 962,795,466.77	P 931,980,608.80
Output Tax	P -	P -	P -	P -
Less: Input Tax				
Carried over from previous quarter	5,586,165.22	7,062,985.49	8,629,874.15	10,511,587.06
Domestic Purchases	1,269,764.72	1,429,966.54	2,535,782.04	
Goods other than capital goods				665,608.00
Services				8,186,549.83
Services rendered by Non-Resident				1,520,381.90
Importation of Goods	207,055.55	136,922.12	616,672.56	
Goods other than capital goods	-	-	-	356,172.00
Total Available Input Tax	P 7,062,985.49	P 8,629,874.15	P 11,782,328.75	P 21,240,298.79
(Excess Input Tax) and (Overpayment)	P (7,062,985.49)	P (8,629,874.15)	P (11,782,328.75)	P (21,240,298.79)

[5] Electric Power Industry Reform Act of 2001.

Amended Quarterly VAT Returns for the four (4) quarters of 2002 simultaneously filed on March 18, 2003:

	1st Qtr-2002 (Exhibit "I")	2nd Qtr-2002 (Exhibit "K")	3rd Qtr-2002 (Exhibit "M")	4th Qtr-2002 (Exhibit "O")
Taxable Sales	P -	P -	P -	P -
Zero Rated Sales/Receipts	598,362,249.25	883,468,956.49	900,258,270.76	1,131,415,076.92
Total Sales/Receipts	P 598,362,249.25	P 883,468,956.49	P 900,258,270.76	P 1,131,415,076.92
Output Tax	P -	P -	P -	P -
Less: Input Tax				
Carried over from previous quarter	5,586,165.22	7,062,985.49	8,629,874.15	10,511,587.06
Domestic Purchases	1,269,764.72	1,429,966.54	1,528,890.88	
Goods other than capital goods				665,608.00
Services				8,186,549.83
Services rendered by Non-Resident				1,520,381.90
Importation of Goods	207,055.55	136,922.12	352,822.03	
Goods other than capital goods	-	-	-	356,172.00
Total Available Input Tax	P 7,062,985.49	P 8,629,874.15	P 10,511,587.06	P 21,240,298.79
(Excess Input Tax) and (Overpayment)	P (7,062,985.49)	P (8,629,874.15)	P (10,511,587.06)	P (21,240,298.79)

In the belief that it is entitled to the said unutilized input VAT, petitioner filed on June 26, 2003 a letter with the BIR Revenue District Office No. 89, Ormoc City, requesting for the refund of the amount of P1,142,666.32 allegedly representing its unutilized input VAT for the third quarter of 2001.[6] A few days later, petitioner elevated its claim to this Court via a Petition for Review filed on September 30, 2003 and docketed as CTA Case No. 6790.

On December 18, 2003, during the pendency of CTA Case No. 6790, petitioner filed with the BIR Revenue District Office No. 89, Ormoc City, another letter-request for refund, this time for the alleged unutilized input VAT covering the fourth quarter of 2001 and the four (4) quarters of 2002 in the sum of P19,070,378.18.[7] The next day, December 19, 2003, petitioner filed a Petition for Review before this Court covering the said claim and docketed as CTA Case No. 6838.

On January 30, 2004, this Court granted in open court petitioner's oral motion to consolidate CTA Case Nos. 6790 and 6838 involving the total claim of P20,213,044.50, as follows:

[6] Exhibit "D".
[7] Exhibit "E".

CTA Case No.	Period Covered	Amount of Claim	
6790	Sept. 2001		P 1,142,666.32
6838	Oct. - Dec. 2001	P 3,416,244.61	
	Jan. - Mar. 2002	1,476,820.27	
	Apr. - June 2002	1,566,888.66	
	July - Sept. 2002	1,881,712.91	
	Oct. - Dec. 2002	10,728,711.73	19,070,378.18
		Total:	P20,213,044.50

In his Answer to the Petitions, respondent raised the following Special and Affirmative Defenses:

> **"4. Petitioner's claim for refund is subject to administrative investigation/examination by the respondent;**
>
> **5. To support its claim, it is imperative for petitioner to prove, the following, viz:**
>
> **a. The registration requirements of a value-added taxpayer in compliance with Section 6 (a) and (b) of the Revenue Regulations No. 6-97 in relation to Section 4.107-1(a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;**
>
> **b. The invoicing and accounting requirements for VAT registered persons, as well as the filing and payments of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code, as amended;**
>
> **c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, otherwise, there would be no sufficient compliance with the filing of administrative claim for refund which is a condition sine qua non prior to the filing of judicial claim in accordance with the provision of Section 229 of the Tax Code, as amended. It is worthy of emphasis that Section 112 (D) of the Tax Code, as amended, requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review;**
>
> **d. That the input taxes of P1,142,666.32 and P19,070,378.18 allegedly paid by the petitioner on its purchases of goods and services for the third quarter of taxable year 2001 and the fourth quarter of 2001 up to the fourth quarter of 2002, respectively, were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarters;**

e. **That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the Tax Code, as amended;**

f. **That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal, showing that it actually paid VAT in accordance with Sections 110(A) (2) and 113 of the Tax Code as amended, in pursuance to Section 4.104-5 (a) & (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims of Input Tax Credit);**

g. **The requirements as enumerated under Section 4.104-2 of the Revenue Regulations 7-95 (Re: Persons who can avail of the Input Tax Credits);**

6. Furthermore, in an action for refund 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. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications (Asiatic Petroleum Co. {P.I} v. Llanes, 49 Phil 466 cited in Collector of Internal Revenue vs. Manila Jockey Club, Inc., 98 Phil 670); and

7. Claims for refund are construed strictly against the claimant for the same partake [of] the nature of exemption from taxation."

On July 6, 2006, this case was submitted for decision sans the memorandum of respondent.

For the consideration of this Court, the parties jointly stipulated the following issues:

1. Whether or not petitioner generated zero-rated sales for the third and fourth quarter of taxable year 2001 and for all the succeeding quarters to taxable year 2002 as a result of the applicability to the EPIRA law;

2. Whether or not petitioner incurred unutilized input VAT as follows: for the third quarter of taxable year 2001 in the amount of P1,142,666,32; for the fourth quarter of taxable year 2001 in the amount of P3,416,244.61; and for the fourth quarters of taxable year 2002 in the aggregate amount of P15,654,139.57;

3. Whether or not the alleged unutilized input VAT sought to be refunded herein were applied against any output VAT liability in succeeding taxable quarters in 2001 and 2002 and thereafter;

4. Whether or not the claims for refund of the alleged unutilized input VAT for the third and fourth quarters of taxable year 2001 and for all the four quarters of taxable year 2002 with the Bureau of Internal Revenue were filed by petitioner within the two-year period by law; and

5. Whether or not both the present Petitions for Review filed by the petitioner with this Honorable Court were filed within the two- year period provided by law.

Anent the first issue, Section 6 of the EPIRA Law provides that "sales of generated power by generation companies shall be value-added tax zero-rated". Thus, effective June 26, 2001, the pertinent provisions of the Tax Code are deemed amended by the EPIRA Law by modifying the VAT rate applicable to sales of generated power by generation companies from ten (10%) percent to zero (0%) percent.

As to whether petitioner generated zero-rated sales for the subject period, it must establish the following requisites: 1) it is a generation company, and 2) it derived sales from power generation.

Based on the Certificate of Accreditation issued by DOE,[8] petitioner was able to prove that it is engaged in the sale of power generation services to PNOC-EDC by virtue of the Energy Conversion Agreement entered into between PNOC-EDC and petitioner's predecessor-in-interest, Magma Power Company. Likewise, for the same period covering September 1, 2001 to December 31, 2002, petitioner generated gross receipts from power generation services rendered to PNOC-EDC in the total amount of P4,711,992,658.82,[9] which was properly declared in its VAT returns for the 3rd quarter of 2001 to the 4th quarter of 2002.[10] Moreover, the gross receipts in the amount of P4,711,992,658.82 was duly supported by VAT invoices and official receipts[11] except for the amount of P21,686,928.42, the covering official receipt of which was not stamped with the word "zero-rated".[12]

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[8] Exhibit "C".
[9] Annex 3, Exhibit "BB".
[10] Exhibits "F", "G", "I", "K", "M" & "O".
[11] Exhibits "U-1" to "U-16" and "W-1" to "W-46".
[12] Exhibit "U-4"; Annex 2 of Exhibit "UU".

Having shown that it is a generation company and that it derived sales from power generation for the period September 1, 2001 to December 31, 2002, petitioner's alleged total unutilized input VAT in the amount of P20,213,044.50 may be a proper subject of a claim for refund under Sections 100 (B) and 112(A) of the Tax Code which read:

> SEC. 110. *Tax Credits.* –
> xxx xxx xxx
>
> (B) *Excess Output or Input Tax.* – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarter. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT registered person may at his option be refunded or credited against other internal revenue taxes subject to the provisions of Section 112.
>
> 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, 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: xxx

From the foregoing and relative to the second issue of whether petitioner incurred unutilized input VAT for the subject period in the aggregate amount of P20,213,044.50, the report of the commissioned auditing firm, SGV & Co. finds that only the input taxes in the amount of P16,431,375.08[13] was properly substantiated by the required documents for VAT purposes in accordance with Section 110 of the National Internal Revenue Code of 1997 in relation to Section 4.104-5 of Revenue Regulations No. 7-95, detailed as follows:

Domestic Purchases of Goods Which are Properly Supported by VAT Invoices	P 2,483,937.82
Domestic Purchases of Services Which are Properly Supported by VAT ORs	10,166,613.68
Importation of Goods Which are Properly IEIRDs and BOC ORs	583,790.00
Purchases of Services from Non-Residents which are Properly Supported by Withholding VAT Certificates	3,197,033.58
TOTAL	P16,431,375.08

[13] Annex 4, Exhibit "BB".

After a judicious review, this Court finds the above-mentioned report of the commissioned auditing firm to be in order. However, as discussed above, the gross receipts in the amount of P4,711,992,658.82 was duly supported by VAT invoices and official receipts[14] except for the amount of P21,686,928.42, the covering official receipt of which was not stamped with the word "zero-rated". Consequently, out of the substantiated input VAT of P16,431,375.08, this Court disallows the amount of input VAT of P75,625.34, which is attributable to the zero-rated sales of P21,686,928.42, the corresponding proceeds thereof is supported by an official receipt without the required pre-printed or stamped word "zero-rated." The disallowed input VAT of P75,625.34 is computed hereunder:

Substantiated Claim	P16,431,375.08
Multiply by the ratio of the zero-rated sales of P21,686,928.42, the corresponding proceeds thereof is supported by an official receipt without the required pre-printed or stamped word "zero-rated" to that of the total gross receipt of P4,711,992,658.82	.004602496224
Additional disallowance	P 75,625.34

We will now proceed to the third issue of whether petitioner's unutilized input VAT were applied against any output VAT liability in succeeding taxable quarters in 2001 and 2002 and thereafter. Although petitioner carried-over the claimed unutilized input VAT to the succeeding taxable quarters until the third and fourth quarters of 2003, the same was not utilized since it had no output VAT liability during those quarters. In addition, in its Quarterly VAT Returns for the third and fourth quarters of 2003, petitioner deducted the claimed input VAT of P1,142,666.32[15] and P19,070,378.18,[16] respectively, as "Any VAT Refund/TCC Claimed" from the "Total Available Input Tax". Thus, the substantiated claim of P16,355,749.74 (P16,431,375.08 less P75,625.34) was no longer included as part of the

[14] Exhibits "U-1" to "U-16" and "W-1" to "W-46".
[15] Exhibit "PP".
[16] Exhibit "QQ".

excess input tax of P28,138,598.13 as of the first quarter of 2004 which was to be carried-over to the succeeding quarter.[17]

On the issue of whether petitioner's administrative and judicial claims were seasonably filed, We rule in the affirmative. The reckoning of the two-year reglementary period for the filing of a claim for input VAT refund commences from the date of filing of the corresponding quarterly VAT return.[18] Counting from October 25, 2001, the date when petitioner filed its Quarter VAT Return for the third quarter of 2001, both the administrative claim filed on September 26, 2003 and the Petition for Review filed on September 30, 2003,[19] fell within the two-year prescriptive period. Likewise, counting from dates when petitioner filed its Quarterly VAT Returns for the fourth quarter of 2001 and the four quarters of 2002 on January 10, 2002, April 9, 2002, July 24, 2002, October 24, 2002 and January 27, 2003, both the administrative claim filed on December 18, 2003 and the Petition for Review filed on December 19, 2003,[20] were well within the two-year prescriptive period.

WHEREFORE, premises considered, the consolidated Petitions for Review are hereby ***PARTIALLY GRANTED***. Accordingly, respondent is hereby **ORDERED to REFUND** or **ISSUE a TAX CREDIT CERTIFICATE** to the petitioner in the amount of P16,355,749.74 representing unutilized input VAT covering the period September 1, 2001 to December 31, 2002.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[17] Exhibit "RR".
[18] JIDECO MANUFACTURING PHILIPPINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE, CTA Case No. 6552, September 16, 2004, affirmed on June 6, 2005 in CTA EB No. 53.
[19] CTA Case No. 6970.
[20] CTA Case No. 6838.

WE CONCUR:

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division