Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

SAN ROQUE POWER CORPORATION, *Petitioner,*	**C.T.A. CASE NO. 6427**
	Members:
- versus -	**Castañeda, Jr.**, *Chairperson* **Uy**, and **Palanca-Enriquez**, *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 19 2005

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DECISION

UY, J.:

This case involves a claim for refund or issuance of a tax credit certificate in the total amount of P261,473,249.77 allegedly representing unutilized input VAT paid on domestic purchases of taxable goods and services and importation and local purchases of capital goods for the period January 1 to December 31, 2000.

The facts as stated in the parties' Joint Stipulation of Facts are as follows:

Petitioner 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 while respondent is the Commissioner of Internal Revenue 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, with office address at the BIR National Office Building, Diliman, Quezon City.

In October 1997, petitioner was incorporated 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.

As a seller of services, petitioner is duly registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT)- registered taxpayer under TIN/VAT Registration No. 005-017-501. Likewise, petitioner is 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, petitioner 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 located in 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 Station will be sold to and purchased by NPC in its entirety.

For the period covering January 1 to December 31, 2000, petitioner, as a VAT-registered entity, filed with the BIR its Monthly VAT Declarations and Quarterly VAT Returns. Its Quarterly VAT Returns showed excess input VAT payments on account of its importation and purchases of capital goods and other taxable goods and services in the total amount of P261,473,249.77, broken down per quarter as follows:

Periods Covered	**Date of Filing**	**Input VAT on Importation and Purchases of Capital Goods/Other Goods and Services**
January 1 to March 31, 2000	April 7, 2000	(Domestic Purchases) P 38,649,269.21
April 1 to June 30, 2000	July 25, 2000	(Domestic Purchases) 48,498,871.42 (Importation of Goods) 657,639.60
July 1 to September 30, 2000	October 25, 2000	(Domestic Purchases) 59,248,988.00 (Importation of Goods) 12,707,678.50
October 1 to December 31, 2000	January 24, 2000	(Domestic Purchases) 80,203,154.75 (Importation of Goods) 21,507,648.29
TOTAL		**P261,473,249.77**

Thereafter, petitioner filed with the BIR separate claims for refund, in the total amount of P261,473,249.77, representing unutilized VAT input taxes paid on importation and purchases of capital goods and other taxable goods and services for the following specific periods:

Periods Covered	Date of Filing of The Claim for Refund	Input VAT on Importation and Purchases of Capital Goods/Other Goods and Services
January 1 to March 31, 2000	September 11, 2000	P 38,649,269.21
April 1 to June 30, 2000	November 29, 2000	P 49,156,511.02
July 1 to September 30, 2000	December 11, 2000	P 71,956,666.50
October 1 to December 31, 2000	April 10, 2001	P101,710,803.04
TOTAL		**P261,473,249.77**

Not having received a response from the respondent, and in order to stop the running of the two-year prescriptive period, petitioner elevated its claim for refund through a Petition for Review to this Court on April 9, 2002.

In his Answer filed on May 15, 2002, respondent submits the following special and affirmative defenses: that petitioner's alleged claim for refund/tax credit is subject to administrative routinary examination/investigation by the respondent's Bureau; that petitioner failed miserably to show that the total amount of Php261,473,297.77, represented unutilized input VAT on purchases of capital goods and services for the period January 1 to December 31, 2000; taxes paid and collected are presumed to have been paid in accordance with law; hence, not refundable; that petitioner has the burden to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund; that it is incumbent upon petitioner to show that it has complied with the provisions of Sections 204(c) in relation to Section 229 of the Tax Code; and well-established is the rule that refunds/tax credits are construed strictly against the taxpayer as they partake the nature of exemption from tax."

Upon motion filed by petitioner April 28, 2003, this Court commissioned independent CPA, Noel P. Rabaja, pursuant to CTA Circular No. 1-95, as amended by CTA Circular No. 10-97 during the hearing held on May 12, 2003. In due time, the commissioned auditor submitted his partial and supplemental audit reports which form part of the evidence of the petitioner *(Exhibits "AA" and "CC")*.

To support its claim, petitioner adduced numerous documents and presented witnesses to substantiate its proposition. Respondent, on the other hand, submitted the case for decision based on the pleadings.[1] Therefore, in the Resolution dated July 11, 2005, the Court considered this case submitted for decision sans memorandum of respondent.

Issues

The parties jointly submitted the following issues for resolution:

"1. Whether or not Petitioner has incurred input taxes in the amount of P261,473,249.77, on its purchases of capital goods and other taxable goods and services;

2. Whether or not the accumulated input VAT of P261,473,249.77 arising from Petitioner's purchases of capital goods and other taxable goods and services for the period January 1 to December 31, 2000 are properly substantiated by VAT invoices and receipts;

3. Whether or not Petitioner's local purchases and importations of goods, as well as its purchases of services, including its purchases of capital goods, are attributable to Petitioner's VAT zero-rated activity;

4. Whether or not Petitioner's importation and purchases of capital goods and related services fall within the scope and meaning of 'capital goods or properties', as defined under Section 4.106-1 of Revenue Regulations No. 7-95;

[1] Records, page 222

> 5. Whether or not Petitioner has applied or utilized its accumulated input VAT incurred on the purchases of capital goods and other taxable goods and services for the period January 1 to December 31, 2000 to the succeeding quarters; and
>
> 6. Whether or not Petitioner is entitled to a tax credit certificate/refund in the amount of P261,473,249.77 representing unutilized input VAT paid on its purchases of capital goods and other taxable goods and services for the period January 1 to December 31, 2000."

A cursory reading of the jointly stipulated issues of the parties readily reveals that the main issue in this case, despite the numerous matters raised, basically boils down to the question of whether or not petitioner is entitled to a tax credit certificate/refund in the amount of P261,473,249.77 representing unutilized input VAT paid on its domestic purchases of taxable goods and services and importation and local purchases of capital goods for the period of January 1 to December 31, 2000.

In the Joint Stipulation of Facts and Issues, specifically paragraph 15 thereof, the parties stipulated that the instant Petition for Review was filed within the statutory prescriptive period in accordance with Sections 229 and 112(D) of the National Internal Revenue Code of 1997 (1997 NIRC), as amended, in relation to Section 4.112-2(c) of Revenue Regulations No. 7-95, as amended, to wit:[2]

> "**Section 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,

[2] Joint Stipulation of Facts and Issues, par. 15

whether or not such tax, penalty or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment or (sic) 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."

"**Section 112. Refunds or Tax Credit of Input Tax. –**

x x x x x x x x x

(D) 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 Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the 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."

"**Section 4.112-2. Procedures for Claiming Refunds or Tax Credits of Input Tax. –**

x x x 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 tax credit/refund 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 subparagraphs (a) and (b) above.

In case of full or partial denial of the claim for tax credit/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the receipt of the denial; otherwise, the decision will become final.

> However, if no action on the claim for tax credit/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty-day (120) period from the date of submission of the application but before the lapse of the two (2) year period from the date of filing of the VAT return for the taxable quarter, the taxpayer may appeal to the Court of Tax Appeals." *(Underscoring Ours)*

It must be pointed out however that the correct provision should be Section 4.112-2(d) of Revenue Regulations No. 14-2005 which amends Revenue Regulations No. 7-95 and not Section 4.112-2(c) as stipulated by the parties.

Petitioner contends that it is entitled to the claim for refund/ tax credit in the amount of P261,473,249.77 since its sales of services to NPC are subject to VAT at zero (0%) percent. In support thereof, petitioner cites Section 13 of Republic Act (R.A.) No. 6395, otherwise known as the NPC Revised Charter, which provides that:

> "The Corporation shall be non-profit and shall devote all its returns from its capital investment as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations in furtherance and effective implementation of the policy enunciated in Section 1 of this Act, the Corporation, including its subsidiaries, is hereby declared exempt from all taxes, duties, fees, imposts, as well as costs and service fees, including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings." (*Underscoring Ours*)

It likewise argues that respondent already issued VAT Ruling No. 015-99 to petitioner San Roque Power Corporation on February 12, 1999, which confirmed that the latter's sales of power to NPC are subject to VAT at zero-percent (0%) rate.

Further, petitioner alleges that in the case of *Southern Energy Quezon, Inc. vs. Commissioner of Internal Revenue (CTA Case Nos. 5933 and 5984, January 15, 2002)*, this Court held that "the affirmations of both the Supreme Court *(Maceda vs. Macaraig, G.R. No. 88291, May 31, 1991)* and the Secretary of Finance *(Memorandum dated January 26, 1998)* regarding NPC's exemption from all kinds of taxes should be enough bases for the Revenue District Officer (of RDO No. 51) to approve the pending application of Petitioner. x x x In fact, in numerous VAT and BIR rulings, the respondent had already acknowledged that purchases of NPC of electricity from independent power producers are subject to VAT at zero-rate. To the Court's mind, the admission of respondent regarding the issue qualifiedly approved all the pending applications for effective zero-rating filed with any district or regional offices of the Bureau of Internal Revenue considering that respondent had already expressed its decision over the matter. Moreover, respondent, being the agency head of the Bureau of Internal Revenue, has the authority and supervision over all district and regional offices of the Bureau, hence, any actions, rulings, or pronouncements made by him can be adopted by the district officers or regional directors with respect to resolving similar issues. x x x In the Court's resolution in the case entitled *Mirant (Navotas II) Corporation vs. Commissioner of Internal Revenue, CTA Case No 5911, December 12, 2001*, it was ruled that the absence of an approved application for effective zero-rating under such peculiar circumstances, should not be a deterrent to the claim for refund. "

Petitioner also stresses that, it is of record that it has applied for and was granted three (3) separate Certificates for Zero-rate by respondent Commissioner, through the Chief of Regulatory Operations Monitoring Division, covering the periods September 27, 1998 to December 31, 1998, January 1, 1999 to December 31, 1999, and January 1, 2000 to December 31, 2000.

Furthermore, petitioner invokes the cases of Commissioner of Internal Revenue vs. Hopewell Power (Phils.) Corporation (CA-G.R. S.P. No. 51617, March

17, 2000), Southern Energy Quezon, Inc. vs. Commissioner of Internal Revenue (CTA Case No. 5658, July 11, 2000), and Southern Energy Pangasinan, Inc. vs. Commissioner of Internal Revenue (CTA Case No. 5654, July 18, 2001), wherein both the Court of Appeals and the Court of Tax Appeals ruled that "the goods purchased on which input VAT was paid were necessary for the business of power establishment and generation, and that they are within the scope and meaning of "capital goods and properties" under Revenue Regulations No. 7-95. Engineering and structural services for the purpose of constructing power plant facilities needed in the production of electricity are necessary and should form part of the cost of the power plant facilities."

We agree with the petitioner.

Considering that it entered into a Purchase Power Agreement with the National Power Corporation, a corporation which is exempt from all forms of taxes, petitioner's sales to the latter are subject to VAT at 0% in accordance with Section 108(B) of the 1997 NIRC, to wit:

> "**SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.-***
>
> (A) xxx xxx xxx;
>
> **(B) *Transactions Subject to Zero Percent (0%) Rate.*** – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (1) xxx xxx xxx;
> (2) xxx xxx xxx;
> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of services to zero percent (0%) rate."

Corollary thereto, petitioner is entitled to the refund of input VAT attributable to zero-rated sales pursuant to Section 112(A) of the same NIRC, which provides:

> "**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: *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."

Additionally, petitioner may also claim for a refund of input tax paid on capital goods in accordance with Section 112(B) of the same Code, which provides:

> "(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."

Consistent with the rulings of this Court, any transactions of such nature made by any person with the NPC shall be subject to VAT at zero percent (0%) rate. Thus, as claimed by petitioner, and as stated in its separate letter-claims for refund or issuance of a tax credit certificate with the BIR *(Exhibits "N", "O", "P" and "Q")*, it may be entitled to said refund or issuance of a tax credit certificate for the amount it actually paid representing unutilized input VAT on purchases of capital goods and on purchases of goods and services attributable to zero-rated sales.

However, 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. Hence, this vital issue of whether or not petitioner has clearly, convincingly and substantially established its claim shall be the focus of this Court's discussion.

To begin with, petitioner is a VAT registered entity as evidenced by Certificate of Registration No. OCN 98-006-007394, dated August 31, 1998, issued by the BIR (*Exhibit "C"*).

As a VAT registered entity, petitioner filed its Quarterly VAT Returns for taxable year 2000 reflecting, among others, the following information:

			INPUT VAT	
EXHIBIT	QUARTER INVOLVED	DATE FILED	DOMESTIC PURCHASES	IMPORTATION
H	1st Qtr.	Apr. 7, '00	P 38,649,269.21	-
I	2nd Qtr.	Jul 25, '00	48,498,871.42	P 657,639.60
J	3rd Qtr.	Oct. 25, '00	59,248,988.00	12,707,678.50
K	4th Qtr.	Jan. 24, '01	80,203,154.75	21,507,648.29
	TOTAL		P226,600,283.38	P34,872,966.39

It is petitioner's stand that the amount of P261,473,249.77 (P226,600,283.38 + P34,872,966.39) represents input taxes paid on its purchases of capital goods and other taxable goods and services, which is allegedly substantiated, and thus, may be subject to a refund/tax credit.

After careful review of the documents presented before this Court, We have noticed that petitioner's Quarterly VAT Returns for the year 2000 show no record of zero-rated sales *(Exhibits "H", "I", "J" and "K")*. Thus, it cannot claim for a refund of input VAT on its purchases of goods and services attributable to zero-rated sales because, as consistently ruled by this Court, a refund of input taxes attributable to zero-rated sales pursuant to Section 112(A) of the 1997 NIRC presupposes that a sale was actually made ***(Kepco Philippines Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6413, March 10, 2005; San Roque Power Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6213, December 23, 2004; Kepco Philippines Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5761, July 14, 2003; Kepco Philippines Corporation vs. Commissioner of Internal Revenue, CTA Case Nos. 5675 & 5704, March 18, 2003; Placer Dome Technical Services vs. Commissioner of Internal Revenue, CTA Case No. 6106, May 14, 2002; and La Frutera vs. Commissioner of Internal Revenue, CTA Case Nos. 5898 & 5937, September 17, 2001)***. Failure to declare such fact in the return constitutes a fatal flaw or deficiency in petitioner's claim for refund under the aforesaid section.

Be that as it may, petitioner may still claim for a refund of input taxes on capital goods, pursuant to the above-quoted provision of Section 112(B) of the 1997 NIRC in relation to Sections 4.104-5 and 4.106-1 of Revenue Regulations No. 7-95, all hereunder quoted for easy reference:

Section 112(B) of the 1997 National Internal Revenue Code:

"SEC. 112. *Refunds of Tax Credits of Input Tax*. –

(A) xxx xxx xxx;
(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."

Section 4.104-5 of Revenue Regulations No. 7-95:

"SEC. 4.104-5. **Substantiation of claims for input tax credit.** – (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Section 108(a) and 238 of the Code xxx"

Section 4.106-1 of Revenue Regulations No. 7-95:

"SEC. 4.106-1. **Refunds or tax credits of input tax.** – (a) xxx

(b) **Capital Goods** – Only a VAT registered person may apply for issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased. The refund shall be allowed to the extent that such input taxes have not been applied against output taxes. The application should be made within two (2) years after the close of the taxable quarter when the importation or purchase was made.

Refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT taxable business. If it is also used in exempt operations; the input tax refundable shall only be the ratable portion corresponding to the taxable operations.

"Capital goods or properties" refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29 (f), used directly or indirectly in the production or sale of taxable goods or services."

Based on the above-quoted provisions, in order to be entitled to a refund/tax credit of input VAT paid on capital goods purchased, petitioner must prove that:

a) it is a VAT registered entity;
b) it paid input VAT on capital goods purchased;
c) its input VAT payments on capital goods are duly supported by VAT invoices or official receipts;
d) it did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and
e) the administrative and judicial claims for refund were filed within the two-year prescriptive period ***(Kepco Ilijan Corporation vs.***

> ***The Commissioner of Internal Revenue, CTA Case No. 6324, June 7, 2005 citing Air Liquide Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5652, July 6, 2000)***.

As to the first requisite, petitioner was able to prove that it is a VAT-registered entity as evidenced by the Certificate of Registration OCN 98-006-007394 dated August 31, 1998 issued by the BIR *(Exhibit "C")*, in addition to the fact that the same was already stipulated by the parties.

We find it appropriate to discuss the second and third requisites jointly for convenience, brevity and expediency.

As mentioned earlier, petitioner engaged the services of Mr. Noel P. Rabaja of SGV & Co., pursuant to CTA Circular No. 1-95 as amended by CTA Circular No. 10-97, to validate petitioner's claim for refund/tax credit certificate in the amount of P261, 473,249.77 representing unutilized input taxes paid on its purchases of capital goods and other taxable goods and services. Subsequently, the commissioned independent CPA was able to ascertain in his initial report *(Exhibit "AA")* the following:

> "Out of the total unutilized input VAT of **P261,473,249.77,** our partial verification has so far covered unutilized input VAT of **P225,464,296.22** (*Exhibit AA 1*). The unverified difference of **P36,008,953.55** (*Exhibit AA 1*) represents the input VAT on importation and local purchases of goods and services, which the original copies of the supporting documents are not yet provided by the Company for our review. With regard to the input VAT on importations which amounts to **P34,335,093.60** (*Exhibit AA 3*), it was represented to us by Mr. Carlos M. Echevarria, the Company's Director of Finance, that the Company is still in the process of securing from the Bureau of Customs (BOC) the certified true copies of the pertinent documents [e.g., import entry internal revenue declarations (IEIRD)].

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Our comparison of the amount of input taxes per Petition for Review covering 1st, 2nd, 3rd and 4th quarters of CY2000 against the input taxes in the Summary List of Purchase (Exhibits AA 8-7 to AA 8-20) disclosed the following minimal difference:

Period	Per Claim (Petition for Review)	Per Summary List	Difference (Claim is over)
1st quarter	P 38,649,269.21	P 38,649,269.21	
2nd quarter	49,156,511.02	49,156,511.02	
3rd quarter	71,956,666.50	71,956,666.00	0.50
4th quarter	101,710,803.04	101,710,748.75	54.29
Total	**P261,473,249.77**	**P261,473,194.98**	**P54.79**

We noted an error made in adding the amount of input taxes indicated in the Summary List of Purchases as follows:

Total input taxes indicated in the 1st Quarter Summary List of Purchases (AA 8-7 to AA 8-8)	P38,649,269.21
Should-be total of input taxes in 1st Quarter Summary List of Purchases	38,649,269.20
Footing Error	**P 0.01**

xxx xxx xxx

The following is the breakdown of the amount of input VAT subjected to verification:

Quarter	Input VAT Subjected to Verification	Exh. Ref	Supported by VAT ORs, Withholding VAT Returns, VAT Invoices, IEIRDs and Bank ORs/BOC ORs as earlier described			Difference
			On Construction Work in Progress	On Preoperating Expenses	Total	
First	P 38,641,550.61	*AA 1-1 p. 5 of 5*	P 37,072,492.01	P 300,225.60	P 37,372,717.61	P 1,268,833.00
Second	47,940,502.02	*AA 1-2 p. 5 of 5*	42,593,698.99	860,014.43	43,453,713.42	4,486,788.60
Third	59,786,423.93	*AA 1-3 p. 7 of 7*	56,398,583.24	504,073.11	56,902,656.35	2,883,767.58
Fourth	79,095,764.86	*AA 1-4 p. 8 of 8*	76,560,909.75	160,733.13	76,721,642.88	2,374,121.98
Add: Footing error	0.01					0.01
Total	**P225,464,241.43**		**P212,625,683.99**	**P1,825,046.27**	**P214,450,730.26**	**P11,013,511.17**

Part of the P11,013,511.17 difference above represents input taxes amounting to P7,008,115.99 which are supported by invoices, ORs, or withholding VAT returns as follows:

Item	Naturo	Exhibit Reference	Amount
1.	Input VAT on domestic purchases of services supported by Official Receipts (ORs) preprinted with the supplier's "TIN V" and not "TIN VAT", printed before January 1, 1996	*Exhibit AA 2 Table A Item 1*	P3,425,079.40
2.	Input VAT on domestic purchases of goods supported by VAT invoices which are not dated within the quarter of claim but dated within the same calendar year	*Exhibit AA 2 Table A Item 2*	55,898.15
3.	Input VAT on domestic purchases of services supported by VAT ORs which are not dated within the quarter of claim but dated within the same calendar year	*Exhibit AA 2 Table A Item 3*	1,094,983.35
4.	Input VAT on domestic purchases of goods supported by VAT invoices which are not dated within the quarter of claim and not dated within The calendar year of the claim	*Exhibit AA 2 Table A Item 4*	24,039.03
5	Input VAT on domestic purchases of services supported by VAT ORs which are not dated within the quarter of claim and not dated within The calendar year of the claim	*Exhibit AA 2 Table A Item 5*	413,109.99
6.	Input VAT on payments made to non-residents where the VAT withheld was claimed in the quarter when the payment was made to the non-residents and not in the quarter of the actual Remittance of the VAT withheld to the BIR, as Evidenced by VAT Returns duly filed and paid by The Company on behalf of the said non-residents; however, the actual date of remittance of the VAT withheld to the BIR was within the calendar year of the claim.	*Exhibit AA 2 Table A Item 6*	1,380,427.69
7.	Input VAT on payments made to non-residents where the VAT withheld was claimed in the quarter when the payment was made to the non-residents and not in the quarter of the actual Remittance of the VAT withheld to the BIR, as	*Exhibit AA 2 Table A Item 7*	614,578.38

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	Evidenced by VAT Returns duly filed and paid by The Company on behalf of the said non-residents; and the actual date of remittance of the VAT withheld to the BIR was not within the calendar year of the claim.		
	TOTAL		P7,008,115.99

The rest of the foregoing difference represents input taxes amounting to P4,005,395.18 that are supported by the following:

Item	Nature	Exhibit Reference	Amount
1.	Input VAT on domestic purchases of goods supported by invoices with pre-printed TIN without V or VAT	*Exhibit AA 2 Table B Item 1*	P 7,063.63
2.	Overclaimed input VAT on domestic purchases of services due to erroneous computation but duly supported by VAT ORs	*Exhibit AA 2 Table B Item 2*	356,184.63
3.	Overclaimed input VAT on domestic purchases of services paid in foreign currency duly supported by VAT ORs but was erroneously Computed	*Exhibit AA 2 Table B Item 3*	1,654,548.37
4.	Input VAT on domestic purchases of goods supported by documents other than VAT invoices (e.g., delivery receipts, official receipts)	*Exhibit AA 2 Table B Item 4*	41,001.71
5.	Input VAT on domestic purchases of services supported by documents other than VAT official receipts (ORs) (e.g., statement of accounts, VAT invoices)	*Exhibit AA 2 Table B Item 5*	1,599,877.60
6.	Input VAT on domestic purchases of services supported by VAT ORs issued not in the Company's name	*Exhibit AA 2 Table B Item 6*	28,397.54
7.	Input VAT on domestic purchases of services supported by VAT ORs issued in the name of two Companies	*Exhibit AA 2 Table B Item 7*	189,713.49
8.	Input VAT on domestic purchases of services supported by ORs with pre-printed TAN No. and VAT No.	*Exhibit AA 2 Table B Item 8*	91,499.08

9.	Input VAT on domestic purchases of goods supported by invoices stamped "TIN V"	*Exhibit AA 2 Table B Item 9*	24,471.82
10.	Overclaimed input VAT on domestic purchases of services paid in foreign currency duly supported by VAT ORs but input VAT was erroneously computed because the forex rate used does not tally with the prevailing IRR	*Exhibit AA 2 Table B Item 10*	6,558.36
11.	Input VAT on domestic purchases of goods supported by photocopy of VAT invoice	*Exhibit AA 2 Table B Item 11*	1,000.00
12.	Input VAT on domestic purchases of services claimed twice in a quarter	*Exhibit AA 2 Table B Item 12*	5,078.94
13.	Footing error		0.01
	TOTAL		**P4,005,395.18"**

Subsequently, on April 5, 2004, Mr. Rabaja submitted an addendum audit report *(Exhibit "CC")* pertaining to the remaining unverified input taxes of P36,008,953.55. However, out of the aforesaid unverified input taxes, only the amount of P34,984,339.74 were presented by petitioner for verification. Thus, the amount of P1,024,613.81 representing input taxes which is unsupported by documents for this Court's verification should be excluded, detailed as follows:

"Item	Nature	Exhibit Reference	Amount
1.	Input VAT on importation of goods not verified	Exhibit CC 1 Item 1	P 4,044.00
2.	Input VAT on domestic purchases of goods not Verified	Exhibit CC 1 Item 2	22,229.89
3.	Input VAT on domestic purchases of services not verified	Exhibit CC 1 Item 3	998,339.92
TOTAL			**P1,024,613.81"**

Furthermore, the commissioned independent CPA noted in his addendum audit report, that:

"Based on our verification of the additional documents provided to us after January 14, 2004, input taxes amounting to P6,837,277.14 are supported by the following:

Item	Nature	Exhibit Reference	Amount
1.	Input VAT on payment made to a non-resident Duly supported by original copies of withholding VAT return and Bank OR	*Exhibit CC 2 Table A Item 1*	P 653,290.14
2.	Input VAT on importations supported by original copies of both IEIRDs and BOC/bank Ors	*Exhibit CC 2 Table A Item 1*	6,183,987.00
TOTAL			**P6,837,277.14**

Moreover, input taxes amounting to P28,147,062.60 are supported by the following documents:

Item	Nature	Exhibit Reference	Amount
1.	Input VAT on importations supported by original copies of BOC/bank ORs and Photocopies of IEIRDs	*Exhibit CC 2 Table B Item 1*	P16,061,184.00
2.	Input VAT on importations supported only by original copies of BOC/bank Ors	*Exhibit CC 2 Table B Item 2*	5,168,868.00
3.	Input VAT on importations supported by Photocopies of both IEIRDs and BOC/bank Ors	*Exhibit CC 2 Table B Item 3*	6,917,010.60
TOTAL			**P28,147,062.60**

With regard to the above input VAT on importations which amounts to P28,147,062.60 (*Exhibit CC 2*), it was also represented to us by Mr. Carlos M. Echeverria, the Company's Director of Finance, that the Company is still in the process of securing from the Bureau of Customs (BOC) the certified true copies of the pertinent documents [e.g., import entry internal revenue declarations (IEIRD)].

xxx xxx xxx"

A perusal and validation of both audit reports *(Exhibits "AA" and "CC")* presented before this Court readily shows that the same are in order. Input taxes in the aggregate amount of P219,462,961.13 (P212,625,683.99 + P6,837,277.14) are indeed substantiated by valid documents as verified from the supporting documents appended thereto. However, pre-operating expenses with input VAT paid in the amount of P1,825,046.27 *(p.6 of Exhibit "AA")* should be denied for they are not embraced in the definition of capital goods pursuant to Section 4.106-1(b) of Revenue Regulations No. 7-95, as quoted earlier.

Indeed, pre-operating expenses are subject to amortization unlike capital goods which are subject to depreciation. Although valid VAT invoices supported these purchases, petitioner cannot claim refund of the same in accordance with Section 112(A) of the 1997 NIRC.

With respect to the amount of P7,008,115.99, which formed part of the "difference" of P11,013,511.17 (as described/stated in the initial audit report, [Exhibit "AA"]), We find that the sum of P1,051,727.40 (total amount stated in item numbers 4, 5 and 7 [Exhibit AA2, Table A, Items 4, 5 and 7]) should be disallowed. We observed that the purchases of goods and services, although validly supported by valid VAT invoices or official receipts or withholding VAT returns, are not dated within the year of the claim. Hence, this Court cannot properly verify if petitioner never claimed the same in their respective actual period.

With respect to the amount of P4,005,395.18 (still part of the aforesaid "difference" referred in the initial audit report), the same shall be outrightly denied for the reasons already stated in said commissioned CPA's report.

As to the amount of P5,168,868.00 representing input VAT on importations *(Exhibit CC2, Table B, Item 2)*, the same shall likewise be disallowed. Although original copies of BOC/Bank official receipts were presented to support said item, the fact that petitioner failed to present as evidence the Import Entry Internal Revenue Declarations (IEIRD) is fatal to its claim. Without the original IEIRD, this Court cannot verify the particulars of the goods purchased, whether or not they qualify as capital goods. Likewise, the amount of P6,917,010.60 *(Exhibit CC2, Table B, Item 3)* is also disallowed for being merely supported by photocopies of both IEIRD's and Bureau of Customs/Bank official receipts, contrary to the "best evidence rule".

Lastly, We find that the following purchases should not be classified as capital goods and should likewise be disallowed:

Supplier	**Exhibit No.**	**Taxable Base**	**Input VAT**	**Description of goods/services Purchased**
Marsh Philippines	BB1-46	P 47,045.50	P 4,704.55	Insurance
The Leather Collection	BB1-65	36,590.90	3,659.09	Leather Folders
Asian Insights	BB2-1	296,638.10	29,663.81	Legal services
Marsh Philippines	BB3-19	374.60	37.46	Insurance
Marsh Philippines	BB4-16 to 17	5,880.70	588.07	Insurance
PLDT	BB4-132	285,899.40	28,589.94	Telecommunication
Total		**P672,429.20**	**P67,242.92**	

As to the fourth requisite, it appears from the documentary evidence presented before Us that petitioner did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability. In the 2000 4th Quarterly VAT Return *(Exhibit "K")*, it can be seen that the amount of input VAT from the 1st quarter up to the 3rd quarter of 2000 was deducted from the total available input VAT. On the other hand, the input VAT for the 4th quarter of taxable year 2000 was likewise deducted from the total available input VAT in petitioner's 2nd Quarterly VAT Return *(Exhibit "M")*. Moreover, it should be noted that petitioner has no record of sale during the year 2000.

Finally, as to the fifth requisite, there is no doubt that petitioner was able to file its claims for refund in the administrative and judicial levels within the two-year prescriptive period, as far as the second, third and fourth quarters *(Exhibits "I", "J" and "K")* are concerned, reckoned from the respective dates when the Quarterly VAT Returns for the year 2000 were filed. With regard to the first quarter return filed on April 7, 2000 *(Exhibit "H")*, the judicial claim for refund filed on April 9, 2002 was still within the two-year period prescribed by law taking into consideration that the 7th day of April 2000 fell on a Sunday and the 8th day of April 2000 was declared a non-working holiday, in lieu of the celebration of the "Araw ng Kagitingan". Besides, as previously mentioned, this matter was already settled as reflected in the parties' Joint Stipulation of Facts and Issues filed on April 1, 2003.

In sum, We find petitioner to have sufficiently proven its claim for the refund or issuance of a tax credit certificate representing its input VAT paid on purchases of capital goods in the reduced amount of P241,413,290.80, computed as follows:

Amount of Claim			P261,473,249.77
Less: Disallowances			
(a) Per CPA Reports			
1.) First Report (Exh. AA)			
i. Discrepancy between the Petition for Review and Summary List	P 54.79		
ii. Footing error	0.01		
iii. Pre-operating expenses	1,825,046.27		
iv. Difference-Unsubstantiated (P1,051,727.40 + P4,005,395.17)	5,057,122.57	P 6,882,223.64	
2.) Addendum Report (Exh. CC)			
i. Unavailable Documents	P 1,024,613.81		
ii. Unsubstantiated Importations (P5,168,868.00 + P6,917,010.60)	12,085,878.60	13,110,492.41	
(b) Per Court's Further Verification		67,242.92	20,059,958.97
Amount to be Refunded			**P241,413,290.80**

WHEREFORE, the instant petition is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the reduced amount of P241,413,290.80 representing unutilized input VAT paid on its purchases of capital goods for the period January 1 to December 31, 2000.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Chairman

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

I hereby certify that this Decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Chairman