REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SOUTHERN ENERGY NAVOTAS, INC. [formerly HOPEWELL ENERGY (PHILIPPINES), INC.],
Petitioner,

- versus -

C.T.A. CASE NO. 5910

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 10 2001

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DECISION

This Petition for Review is seeking for the refund of the amount of P246,541.97 allegedly representing unutilized input value-added tax (VAT, for brevity) on domestic purchases of goods and services for the quarter ended June 30, 1997.

The following facts and issues were jointly stipulated by the parties and were approved by the Court[1]:

FACTS

1. Petitioner was originally registered with the Securities and Exchange Commission (SEC) under the name "Hopewell Energy (Philippines), Inc." However, effective June 17, 1999, Petitioner's name was changed to Southern Energy Navotas, Inc." after it filed an application with the SEC for amendment of its articles of incorporation.

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[1]Resolution, dated October 14, 1999, CTA Records, p. 93.

2. Petitioner is principally engaged in the business of power generation and subsequent sale thereof to National Power Corporation under a Build, Operate, Transfer scheme.

3. Petitioner is registered as Value-Added Tax (VAT) taxpayer in accordance with Section 107 of the Tax Code [now Section 236 of the national Internal Revenue Code of 1997], with BIR Certificate of Registration bearing RDO Control No. 96-051-005718.

4. Petitioner has a pending Application for Effective Zero Rating which was filed on March 1, 1996 with the BIR Revenue District Office No. 51 at Pasay City for the construction and operation of a gas turbine power station under the build, operate, and transfer (BOT) scheme with the National Power Corporation ("NPC").

5. For the second quarter of 1997, Petitioner filed its quarterly VAT return on July 21, 1997, which returns reflected a (sic) total domestic purchases of goods and services amounting to P2,465,419.33 a total input tax paid thereon in the amount of P246,541.97.

6. On June 30, 1999, Petitioner filed an administrative claim for refund of unutilized input VAT with the Bureau of Internal Revenue in the amount of P246,541.97 for the second quarter of 1997.

7. To this date, Respondent has not yet approved the administrative claim for refund.

ISSUES

1 Whether or not the power generation services rendered by Petitioner for the supply of electricity to National Power Corporation are subject to zero percent (0%) VAT pursuant to Section 108(B)(3) of the Tax Code of 1997 (formerly Section 102(b)(3) of the Old Tax Code);

2. Whether or not Petitioner has unapplied or unutilized creditable value-added tax inputs as of June 30, 1997 arising from its domestic purchases of goods and services which is a proper object of a claim for refund pursuant to Section 108(B)(3) (formerly Section 102(b)(3) of the Old Tax Code) and Section 112(A) (formerly Section 106(b) of the Old Tax Code) of the National Internal Revenue Code, as amended;

3. Whether or not the said creditable value-added tax inputs of Petitioner for the quarter ended June 30, 1997 are substantiated by documentary evidence in the form of invoices and official receipts;

4. Whether or not said unapplied or unutilized creditable value-added tax inputs for the quarter ended June 30, 1997 was applied or utilized in the succeeding taxable quarters;

5. Whether or not Petitioner's sales are zero rated for VAT purposes;

6. Whether or not the alleged VAT input taxes are attributable to zero-rated sales; and

7. Whether or not Petitioner is entitled to a refund of the amount of P246,541.97 representing alleged unapplied or unutilized creditable input value-added tax.

Anent the first issue, Petitioner asserts that the services it rendered to the National Power Corporation are subject to 0% VAT pursuant to Section 102(b)(3) of the Tax Code, as amended, to wit:

Sec. 102. Value-added tax on sale of services and use or lease of properties. – (a) xxx

(b) **Transactions subject to zero-rate.** – The following services performed in the Philippines by VAT-registered persons shall be subject to 0%:

(1) xxx

(2) 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 such services to zero rate.

Hence it is entitled to the refund of input VAT it paid during the period March 1, 1997 to June 30, 1997 pursuant to Section 106(a) of the same code.

On the other hand, Respondent argues that Petitioner is not entitled to the refund sought because of its failure to present an approved application for zero-rating. He cites as basis this Court's ruling in the case of **ABB Power Generation Ltd. vs. Commissioner of Internal Revenue, CTA Case No. 5270, dated March 3, 1999**[2].

We agree with the Respondent and as aptly cited by him, hereunder are excerpts of the aforementioned decision, thus:

> "Moreover, granting *arguendo*, that petitioner's sale of services to the NPC are considered effectively zero-rated sales under Section 102(a)(3) of the Tax Code, supra, nevertheless, this Court has to deny the instant claim for refund as petitioner failed to comply with Section 8(d) of Revenue Regulations No. 5-87 which requires that any person claiming that its sales of goods or services are effectively zero-rated under Sections 100 and 102 shall file an application with the Commissioner of Internal Revenue justifying the imposition of zero-rate on said transactions. Quoted hereunder is Section 8(d) of Revenue Regulations No. 5-87, thus:
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> > (d) Application for zero rate. – Any person claiming that its sales of goods or services are effectively zero-rated under Sections 100 and 102 shall file an application in a form prescribed therefor 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."

Records show that Petitioner failed to secure from the Bureau of Internal Revenue an approved application for zero-rating. In fact, Petitioner in its Memorandum, admitted that such requirement is necessary for its claim for refund to prosper. It is for this reason

[2] With Entry of Judgment, dated March 24, 1999.

that Petitioner begged the indulgence of this Court to consider the peculiar circumstances surrounding its present appeal and to grant its claim despite the absence of an approval for a zero-rating status.

As correctly pointed out by the Respondent, without an approved application for effective zero-rating, the transaction otherwise entitled to zero-rating shall be considered exempt (VAT Ruling Nos. 033-96, 012-97, 013-97, 037-97, 038-97, 023-98, 006-99, 015-99, 022-99, 052-99, and 063-99). Basic is the principle that VAT-exempt sales transactions are not entitled to input tax credits as provided in Section 9(a) of Revenue Regulations 5-87, thus:

> **SEC. 9.** ***Exemptions.*** – (a) In general exemption means that the sale of goods or services is not subject to value-added tax (output tax). <u>The seller is not allowed any tax credit on VAT (input tax) previously paid</u>. The person making the exempt sale of goods or services shall not separately bill any output tax on his customers because the said transaction is not subject to VAT.

The price of the goods and services procured is the sum total paid; and the amount added because of the tax is paid as part of the price to get the goods and services (**Philippine. Acetylene Co. vs. Commissioner of Internal Revenue, G.R. No. L-19707, August 17, 1967**).

This Court maintains that a VAT entity which failed to present an approved application for zero-rating as required by Section 8(d) of Revenue Regulations No. 5-87 will not be considered a zero-rated entity, hence, not entitled to the refund of input taxes paid (**ABB Power Generation Ltd. vs. Commissioner of Internal Revenue, CTA Case**

No. 5270, March 3, 1999, *supra.;* and Kumagai-gumi Co. Ltd., vs. Commissioner of Internal Revenue, CTA Case No. 4670, July 29, 1997[3]).

WHEREFORE, in view of the foregoing, Petitioner's claim for refund is hereby **DENIED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

AMANCIO Q. SAGA
Presiding Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge

[3] With Entry of Judgment, dated August 15, 1997.