REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

KEPCO PHILIPPINES CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NOS. 5675 & 5704

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 18 2003

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DECISION

This is a consolidated case seeking the refund of alleged unutilized input value-added tax VAT paid on domestic purchases of goods and services (including capital goods) that are attributable to effectively zero-rated sales and creditable VAT withheld for the third and fourth quarters of 1996 in the aggregate sum of P22,172,003.26, broken down as follows:

CTA Case No.	Period Covered	Input VAT	Creditable VAT Withheld	Total Claim
5675	3rd qtr 1996	P 4,895,858.01	P 4,084,867.25	P 8,980,725.26
5704	4th qtr 1996	13,191,278.00	-	13,191,278.00
		P 18,087,136.01	P 4,084,867.25	P 22,172,003.26

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with its principal place of business located at Suite 2501-A, 25th Floor, Tektite Tower I, Exchange Road, Ortigas Centre, City of Pasig. It is a Value-Added Tax (VAT) registered taxpayer engaged in the production and sale of

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electricity (as an independent power producer), and sells electricity to the National Power Corporation (*pars. 1 & 2, Facts Admitted*).

For the third and fourth quarters of 1996, petitioner alleged that it incurred input VAT in the amounts of P4,895,858.01 and P13,191,278.00, respectively, on its domestic purchases of goods and services (including capital goods) that were used in its production and sale of electricity to National Power Corporation (NPC) for the same period.

Likewise, petitioner averred that for the income payments it received from NPC for the months of April and June, 1996, the latter withheld creditable VAT in the amounts of P1,971,178.86 and P2,113,688.39, respectively, or in the sum of P4,084,867.25.

On September 16, 1998, petitioner simultaneously filed its quarterly VAT returns for the third and fourth quarters of 1996, declaring the following:

			INPUT VAT				Excess VAT
Exh	1996	Zero-rated Sales	Carried-over from prev qtr	this quarter	Total	Creditable VAT W/held	Credits carried-over to subs qtr
M	3rd qtr	P 83,538,812.32	P 9,550,968.83	P 4,895,858.01	P 14,446,826.84	P 4,084,867.25	P 18,531,694.09
N	4th qtr	91,541,490.43	18,531,694.09	13,191,278.00	31,722,972.90	-	31,722,972.90
				P 18,087,136.01		P 4,084,867.25	

On September 18, 1998, petitioner filed with the Bureau of Internal Revenue an application for the effective zero-rating of its sales of electricity to NPC (*Annex "F," Petition for Review, page 15, CTA Case No. 5765 docket*).

On September 30, 1998, petitioner filed an administrative claim for refund in the amount of P8,980,725.26 representing the sum of the alleged input VAT payment of P4,895,858.01 directly attributable to its sale of electricity to NPC for the third quarter of 1996 and the creditable VAT of P4,084,867.25 allegedly withheld from the payments it received from NPC for the months of April and June, 1996. Also, on the same date,

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petitioner filed with this court a claim for the aforesaid amount of P8,980,725.26 docketed as CTA Case No. 5765.

On December 28, 1998, petitioner filed with the BIR another letter-claim for refund in the amount of P13,191,278.00 corresponding to its alleged unutilized input VAT attributable to its effectively zero-rated sales to NPC for the fourth quarter of 1996 (*Annex "E," Petition for Review, page 13, CTA Case No. 5704 docket*). On the following day, or on December 29, 1998, petitioner elevated its claim before this court via a Petition for Review, which was docketed as CTA Case No. 5704.

On May 12, 1999, the parties filed a Joint Motion to Consolidate CTA Cases Nos. 5675 and 5704 since these cases involve the same parties and the same cause of action. The said motion was granted in open court on the same date (*pp. 56-58, CTA Case No. 5675 docket*).

Respondent, in his Answer, raised the following Special and Affirmative Defenses:

> "6. That the herein petitioner is not entitled to the refund of the amounts prayed for in the instant petition for review;
>
> 7. That the instant petition for review was prematurely filed as petitioner has not exhausted the administrative remedies required by law and jurisprudence on the actions of this nature as no decision has as yet been rendered by the respondent;
>
> 8. Such being the case this Honorable Court has no jurisprudence (sic) over the Petition for Review."

On June 8, 1999, the parties submitted their revised Joint Stipulation of Facts and Issues which was approved by this court on June 11, 1999, limiting the issues to be resolved as follows:

1. That through the proper and correct appreciation and application of the existing laws, regulations, and jurisprudence, and further in conjunction with the proper appreciation of the facts admitted to and to be proven herein, it be resolved whether or not the sale of electricity by a VAT-registered entity to the National Power Corporation (NPC) qualifies as a sale of services subject to a VAT rate of zero percent (0%) or otherwise called a zero-rated VAT transaction;

2. That through the proper and correct appreciation and application of the existing laws, regulations and jurisprudence, and further in conjunction with the proper appreciation of the facts admitted to and to be proven herein, it be resolved whether herein petitioner qualifies as a VAT-registered entity, whereby its sales of electricity to the NPC qualify as a zero-rated VAT transaction;

3. That through the proper and correct appreciation and application of the existing laws, regulations, and jurisprudence, and further in conjunction with the proper appreciation of the facts admitted to and to be proven herein, it be resolved whether herein petitioner qualifies as a VAT-registered entity entitled to claim the refund of the unutilized input VAT incurred in connection with petitioner's purchases of supplies, goods, and equipment which were directly used to produce the electricity sold to NPC;

4. That through the proper and correct appreciation and application of the existing laws, regulations, and jurisprudence, and further in conjunction with the proper appreciation of the facts admitted to and to be proven herein, it be resolved whether creditable VAT withheld by government agencies from payments made to VAT-registered entities may be the subject of a claim for refund, considering that no VAT output tax exists on the part of the VAT-registered entity for which the creditable VAT withheld may be offset against; and

5. That through the proper and correct appreciation and application of the existing laws, regulations, and jurisprudence, and further in conjunction with the proper appreciation of the facts admitted to and to be proven herein, it be resolved whether herein petitioner qualifies as a VAT-registered entity entitled to claim the refund of the creditable VAT withheld by government agencies from said government agencies' payments to petitioner.

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In its Petitions for Review for both CTA Cases Nos. 5675 and 5704, petitioner cited Section 106(a) of the 1995 Tax Code as basis of its claimed input VAT, asserting that its sales of electricity to NPC are effectively zero-rated. However, on September 26, 2001, petitioner filed a Motion for Leave of Court to Admit Attached Amended Consolidated Petition for Review in order to include also Section 106(b) of the 1995 Tax Code as basis of the claimed input VAT (*pages 145-149, CTA Case No. 5675 docket*). The latter provision allows the refund of unutilized input VAT directly attributable to capital goods. On December 4, 2001, this court granted petitioner's motion.

To support its claim, petitioner presented testimonial and documentary evidence. Respondent, on the other hand, did not present any controverting evidence and submitted this case for decision based on the pleadings (*page 118, CTA Case No. 5675 docket*).

Anent the issue of whether or not the sale of electricity by a VAT registered entity to NPC is effectively zero-rated for VAT purposes, the same had already been resolved by this court in the affirmative in a number of similar cases where the controlling law is Section 102(b)(3) [now 108(B)(3)] of the Tax Code in relation to Section 13 of Republic Act No. 6395 (NPC Charter), as amended, to wit:

> "**Sec. 102.** ***Value-added tax on sale of services and use or lease of properties.*** — *(a) Rate and base of tax.* — xxx
>
> "(b) *Transactions subject to zero-rate.* — The following services performed in the Philippines by VAT-registered persons shall be subject to 0%:
> "(1)
> "(2)
> "(3) <u>Services rendered to persons or entities whose exemption under special laws</u> or international agreements to which the Philippines is a signatory <u>effectively subjects the supply of such services to zero rate</u>."

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> "**Section 13.** ***Non-profit Character of the Corporation: Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities***. — 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 and in furtherance of effective implementation of the policy enunciated in Section One of this Act, <u>the Corporation, including its subsidiaries, is hereby declared exempt from the payment of all forms of taxes, duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings</u>." (Underscoring supplied).

Clearly from the foregoing, NPC is an entity with a special charter, which categorically makes it exempt from payment of all taxes, whether direct or indirect, including VAT. Hence, by virtue of the said charter, services rendered by a VAT registered entity to NPC are effectively subject to zero percent (0%) VAT ***(Mirant Navotas Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6044, October 16, 2002)***.

Moreover, no less than the Supreme Court affirmed NPC's tax exemption in the case of ***Maceda vs. Macaraig, Jr., 197 SCRA 771*** where the Supreme Court in its Resolution dated June 8, 1993 held that:

> "A chronological review of the NPC laws will show that it has been the lawmaker's intention that the NPC was to be completely tax-exempt from all forms of taxes – direct or indirect.
>
> *xxx* *xxx* *xxx*
>
> One common theme in all these laws is that the NPC must be enable to pay its indebtedness which, as of P.D. No. 938 was P12 Billion in total domestic indebtedness, at any one time, and US$4 Billion in total foreign loans at any one time. The NPC must be and has to be exempt from all forms of taxes if this goal is to be achieved."

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We now proceed to the second issue of whether or not petitioner's reported sales for the third and fourth quarters of 1996 of P83,538,812.32 and P91,541,490.43 qualify as effectively zero-rated sales.

In order to qualify for effective zero-rating under Section 102(b)(3), petitioner must prove: a) that it is a VAT registered entity and (b) that it actually derived sales from services rendered to NPC, an entity exempt from VAT by virtue of Republic Act No. 6395, as amended.

The fact that petitioner is a VAT registered entity is admitted. *(par. 1, Joint Stipulation of Facts*). However, while petitioner reported the amounts of P83,538,812.32 and P91,541,490.43 in its 1996 third and fourth quarterly VAT returns (*Exhibits M & N*), respectively, as zero-rated sales, it failed to substantiate the same. Petitioner did not submit the corresponding invoices and/or official receipts showing its sales of electricity to NPC for the subject period. Since petitioner failed to submit documents evidencing its reported effectively zero-rated sales for the third and fourth quarters of 1996, it follows that the input VAT payments allegedly attributable thereto cannot be refunded. It is quite clear from the provisions of Section 106(a) [now 112(A)] of the Tax Code that there must be zero-rated or effectively zero-rated sales in order that a refund of input VAT could prosper, to wit:

> "**Sec. 106.** ***Refunds or tax credits of creditable input tax***. — (a) <u>Any VAT-registered person, whose sales are zero-rated or effectively zero-rated</u>, 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-

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> rated sales under Section 100(a)(2)(A)(i), (ii) and (b) and Section 102(b)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the 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. (Underlining supplied)

With reference to the claimed unutilized creditable VAT withheld, petitioner relied on the following provisions of Section 110(c) [now 114(C)] of the Tax Code in relation to Section 204(3) [now 204(C)] of the Tax Code:

> *"(c) Withholding of Creditable Value-Added Tax.* — The government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCC's) shall, before making payment on account of its purchase of goods from sellers and services rendered by contractors which are subject to the value-added tax imposed in Sections 100 and 102 of this Code, deduct and withhold the value-added tax due at the rate of three percent (3%) of the gross payment for the purchase of goods and <u>six percent (6%) on gross receipts for services rendered by contractors on every sale or installments payment which shall be creditable against the value-added tax liability of the seller or contractor</u>: Provided, however, That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For this purpose, the payor or person in control of the payment shall be considered as the withholding agent." (Underlining supplied)
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> **"SEC. 204.** ***Authority of the Commissioner to compromise, abate and refund/credit taxes.*** — The Commissioner may —
>
> xxx xxx xxx
>
> "(3) Credit or refund taxes erroneously or illegally received, penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty."

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From the aforequoted provisions of Section 110(c) [now 114(C)] of the Tax Code, the creditable VAT withheld shall be creditable or applied against the taxpayer's output VAT liability. However, in case the taxpayer has no output VAT liability against which the creditable VAT withheld may be applied/credited, then such creditable VAT withheld constitutes excessively or erroneously paid tax which is refundable under Section 204(3) [now 204(C)] of the Tax Code.

Nonetheless, a scrutiny of the certificates supporting the claimed creditable VAT withheld of P4,084,867.25 shows that the same was withheld in April and June 1996 or during the second quarter of 1996 (*Exhibits G-1/2 & G-2/2*). Inasmuch as the claimed amount of P4,084,867.25 is outside of the period covered by the instant Petition for Review, the same shall be denied outright.

The only issue left for our determination is whether or not petitioner is entitled to the claimed input VAT payments on capital goods purchased for the third and fourth quarters of 1996.

Section 106(b) [now 112(B)] of the Tax Code, provides:

> "**Sec. 106.** ***Refunds or tax credits of creditable input tax.*** — (a) x x x
>
> "(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.

Relative thereto, Sections 4.104-5 and 4.106-1 of Revenue Regulations No. 7-95 state, thus:

> "**SEC. 4.106-1. Refunds or tax credits of input tax**. — (a) x x x

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(b) x x x

"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."

"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. x x x"

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

1) it is a VAT registered entity;

2) it paid input VAT on capital goods purchased;

3) its input VAT payments on capital goods are duly supported by VAT invoices or official receipts;

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

5) the administrative and judicial claims for refund were filed within the two-year prescriptive period.

Records reveal that petitioner substantially complied with all the aforementioned requirements. It is undisputed that petitioner is a VAT registered entity. Likewise, it paid input VAT on capital goods purchased. But from among the valid VAT invoices/official receipts submitted, only the following purchases with the corresponding input taxes of P8,325,350.35 can be classified as capital goods:

Exhibit	Particulars	Total Amount	Input VAT
A-24/340, A-25/340	dormitory construction	P 1,909,400.00	P 173,581.82
A-29/340 to A-31/340	G-1 gravel	205,767.35	18,706.12
A-32/340 to A-33/340	Air-conditioning unit	651,320.00	59,210.91

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A-66/340 to A-67/340	centrifugal pump	296,508.30	26,955.30
A-71/340 to A-76/340	filter gauge	250,198.51	22,745.32
A-86/340 to A-89/340	Forklift	1,843,000.00	167,545.45
A-105/340 to A-108/340	electric motor degreaser	131,320.00	11,938.18
A-129/340 to A-131/340	analytical balance	75,000.00	6,818.18
A-156/340 to A-158/340	mach lift hand pallet truck	16,000.00	1,454.55
A-199/340 to A-201/340	Screwdriver	12,371.40	1,124.67
A-209/340 to A-212/340	board magnetic/stand drafting	6,500.00	590.91
A-227/340 to A-229/340	Beaker	2,916.30	265.12
A-259/340 to A-260/340	office building construction	1,076,600.00	97,872.73
A-272/340 to A-274/340	Refrigerator	16,888.00	1,535.27
A-275/340 to A-277/340	Motorcycle	31,850.00	2,895.45
A-289/340 to A-291/340	generator exciter lifter	44,096.00	4,008.73
A-323/340 to A-326/340	tools for K-1 overhauling	4,214.90	383.17
A-339/340 to A-340/340	waterproofing completion works Of chemical office building	1,367,718.55	124,338.05
B-15/380 to B-17/380	boiler & turbine sump pump	470,400.00	42,763.64
B-18/380 to B-20/380	electronic scriber	25,000.00	2,272.73
B-24/380 to B-26/380	tinted cover of new building	55,590.00	5,053.64
B-41/380 to B-43/380	Computers	216,050.00	19,640.91
B-44/380 to B-46/380	Computers	291,000.00	26,454.55
B-53/380 to B-55/380	rehab of K1 gas duct	2,224,596.00	202,236.00
B-71/380 to B-73/380	Air-conditioning units	651,320.00	59,210.91
B-108/380 to B-110/380	Computers	96,000.00	8,727.27
B-167/380 to B-169/380	rehab of MFOT !,2 & 3	1,189,352.44	108,122.95
B-170/380 to B-171/380	road improvement-infront of office bldg	40,872.00	3,715.64
B-175/380 to B-177/380	K-1 overhauling tools	22,833.00	2,075.73
B-186/380 to B-189/380	centrifugal pump	101,103.75	9,191.25
B-190/380 to B-192/380	sounding tape	24,300.00	2,209.09
B-203/380 to B-205/380	overhead travelling crane	449,262.67	40,842.06
B-226/380 to B-228/380	desk shell	198,000.00	18,000.00
B-232/380 to B-234/380	adjustable wrench	1,748.00	158.91
B-264/380 to B-266/380	allen wrench	14,009.00	1,273.55
B-267/380 to B-269/380	printer cable and automatic data switch	1,770.00	160.91
B-270/380 to B-272/380	chest type freezer	72,077.50	6,552.50
B-273/380 to B-275/380	File set	11,165.00	1,015.00
B-285/390 to B-287/380	drafting chair	4,000.00	363.64
B-288/380 to B-270/380	executive table and side cabinets	373,362.00	33,942.00
B-291/380 to B-293/380	Furniture	566,002.40	51,454.76
B-294/380 to B-296/380	computer printer	66,000.00	6,000.00
B-297/380 to B-299/380	computer printer	66,000.00	6,000.00
B-313/380 to B-315/380	canteen supplies	44,700.00	4,063.64
B-329/380 to B-331/380	improvement of kitchen	359,857.00	32,714.27
B-338/380 to B-341/380	grease gun	15,010.00	1,364.55
B-356/380 to B-358/380	torque wrench	11,632.00	1,057.45
C-10/244 to C-11/244	rubber mallet	5,840.00	530.91
C-36/244 to C-38/244	rehab of K-1 gas duct contract	2,992,294.50	272,026.77
C-52/244 to C-54/244	hand tools	7,125.00	647.73
C-58/244 to C-60/244	tools at materials section	2,251.00	204.64
C-87/244 to C-89/244	camera for mechanical dept	23,960.00	2,178.18
C-123/244 to C-125/244	Screwdriver	1,240.00	112.73
C-128/244 to C-131/244	electric drill	31,702.77	2,882.07
C-136/244 to C-138/244	combination wrench	9,520.00	865.45

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C-139/244 to C-141/244	triangular file	86,599.50	7,872.68
C-145/244 to C-147/244	hydraulic jack	63,908.84	5,809.89
C-148/244 to C-150/244	pipe wrench	12,310.00	1,119.09
C-161/244 to C-162/244	rehab of chemical tank contract	1,378,807.30	125,346.12
C-163/244 to C-165/244	rehab of K-1 gas duct contract	4,280,218.50	389,110.77
C-176/244 to C-178/244	portable handheld transceiver	96,000.00	8,727.27
D-3/568 to D-4/568	renovation work at warehouses 1 & 3	336,310.80	30,573.71
D-5/568 to D-7/568	rehab of K-1 smokestack contract	2,629,730.75	239,066.43
D-15/568 to D-18/568	handle nail hammer	35,220.00	3,201.82
D-29/568 to D-30/568	renovation work-warehouses 2 & 3	73,165.40	6,651.40
D-42/568 to D-44/568	machine room roof construction	117,500.00	10,681.82
D-45/568 to D-47/568	civil works for elevator	76,500.00	6,954.55
D-48/568 to D-50/568	Air duct repair	392,000.00	35,636.36
D-54/568 to D-56/568	hydraulic jack	56,780.00	5,161.82
D-66/568 to D-68/568	torque multiplier	187,723.90	17,065.81
D-80/568 to D-82/568	Computer	82,900.00	7,536.36
D-97/568 to D-99/568	office renovation/construction	510,131.00	46,375.55
D-113/568 to D-115/568	rehabilitation of gas duct	58,482.00	5,316.55
D-125/568 to D-127/568	rehabilitation of MFOT #1, 2 & 3	3,148,511.30	286,228.30
D-137/568 to D-139/568	Motorcycle	31,850.00	2,895.45
D-140/568 to D-142/568	expenses for vehicle importation	5,964,321.00	542,211.00
D-143/568 to D-145/568	rehabilitation of K-1 smokestack	5,259,461.51	478,132.86
D-164/568 to D-166/568	fiberglass stepladders	108,051.00	9,822.82
D-224/568 to D-226/568	camera	11,980.00	1,089.09
D-245/568 to D-247/568	mezzanine const at warehouse 2	192,351.09	17,486.46
D-253/568 to D-254/568	elevator construction	217,800.00	19,800.00
D-255/568 to D-257/568	mini files	184,946.00	16,813.27
D-270/568 to D-272/568	hand tools	47,190.00	4,290.00
D-287/568 to D-289/568	improvement of switchgear generating room	203,076.72	18,461.52
D-290/568 to D-292/568	improvement of emergency diesel gen room	592,370.62	53,851.87
D-293/568 to D-295/568	improvement of battery storage room	773,863.94	70,351.27
D-334/568 to D-336/568	HP vectra computer	93,500.00	8,500.00
D-413/568 to D-417/568	furniture for dormitory	251,864.00	22,896.73
D-447/568 to D-419/568	canteen equipment	371,047.75	33,731.61
D-461/568 to D-463/568	Allen wrench	48,175.20	4,379.56
D-476/568 to D-478/568	rehabilitation of K-1 gas duct	4,027,404.40	366,127.67
D-479/568 to D-481/568	Fuji xerox machine	118,000.00	10,727.27
D-541/568 to D-543/568	Air-conditioning unit	44,800.00	4,072.73
D-550/568 to D-551/568	dormitory construction	642,060.00	58,369.09
E-4/351 to E-6/351	chain hoist	109,725.00	9,975.00
E-19/351 to E-21/351	Air duct repair	588,000.00	53,454.55
E-57/351 to E-59/351	circular saw	8,900.00	809.09
E-204/351 to E-206/351	transfer pump	23,440.00	2,130.91
E-224/351 to E-226/351	punch and chisel	76,500.00	6,954.55
E-251/351 to E-253/351	bearing scriper	18,974.00	1,724.91
E-257/351 to E-258/351	K-2 gas duct & smokestack rehabilitation	25,122,240.00	2,283,840.00
E-298/351 to E-300/351	chest type freezer for canteen	25,500.00	2,318.18
E-320/351 to E-321/351	dormitory construction	642,060.00	58,369.09
E-339/351 to E-341/351	telephone handsets	50,000.00	4,545.45
E-348/351 to E-349/351	telephone system	198,225.89	18,020.54
F-4/1023 to F-6/1023	micron millennia	398,000.00	36,181.82
F-7/1023 to F-9/1023	HP 4V laserjet printer and cable	70,000.00	6,363.64

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F-10/1023 to F-12/1023	Uratex foam for double deck beds	74,160.00	6,741.82
F-24/1023 to F-25/1023	dormitory construction	947,500.00	86,136.36
F-87/1023 to F-89/1023	installation of open shelves	44,854.50	4,077.68
F-133/1023 to F-135/1023	floor crane	66,550.00	6,050.00
F-158/1023 to F-160/1023	office renovation/construction	2,356,972.63	214,270.24
F-165/1023 to F-167/1023	rehabilitation of chemical tank	1,246,062.20	113,278.38
F-179/1023 to F-181/1023	office furniture	593,779.85	53,979.99
F-182/1023 to F-184/1023	rehabilitation of K1 smokestack	737,355.55	67,032.32
F-213/1023 to F-215/1023	rehabilitation of K-1 gas duct	2,013,046.50	183,004.23
F-216/1023 to F-218/1023	additional works for stiffeners & hanger support	345,459.11	31,405.37
F-219/1023 to F-221/1023	fabrication/installation of hopper access door	7,259.50	659.95
F-277/1023 to F-279/1023	Air-conditioning unit	99,000.00	9,000.00
F-280/1023 to F-282/1023	Air-cons for dormitory	437,720.00	39,792.73
F-304/1023 to F-306/1023	rehab cost of warehouses 1, 2 & 3	1,169,711.07	106,337.37
F-307/1023 to F-309/1023	construction of AVR room	377,229.24	34,293.57
F-327/1023 to F-329/1023	rehab of fuel oil storage tank	584,856.00	53,168.73
F-330/1023 to F-332/1023	HP computer	47,000.00	4,272.73
F-333/1023 to F-335/1023	chairs/tables for dormitory	311,865.00	28,351.36
F-336/1023 to F-338/1023	rehabilitation of well	250,000.00	22,727.27
F-354/1023 to F-356/1023	rehabilitation of MFOT #1, 2 & 3	148,500.00	13,500.00
F-360/1023 to F-362/1023	renovation of road/dormitory site	902,880.00	82,080.00
		P 91,578,853.90	P 8,325,350.35

Also, petitioner was able to establish that the input taxes of P8,325,350.35 were not applied against any output VAT liability during and in the subsequent period of the claim for refund (*Exhibits K, O to DD*). Finally, the administrative claims filed on September 30, 1998 and December 28, 1998 as well as the judicial claims filed on September 30, 1998 and December 29, 1998, fell within the two-year prescriptive period counted from September 16, 1998, the date when petitioner filed its 1996 third and fourth quarterly VAT returns.

In fine, the court finds petitioner to have sufficiently proven its claim only insofar as the amount of P8,325,350.35 representing input VAT payment on capital goods purchased for the third and fourth quarters of 1996.

WHEREFORE, in the light of the foregoing, the instant petition is ***PARTIALLY GRANTED***. Accordingly, respondent is hereby **ORDERED TO REFUND** to petitioner the amount of P8,325,350.35 representing input VAT payment on capital goods purchased for the third and fourth quarters of 1996.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

LOVELL R. BAUTISTA
Associate 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

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