REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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MINDANAO I GEOTHERMAL PARTNERSHIP,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6906

Members:

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

Promulgated:

JUN 08 2009 ; 10:45 am

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DECISION

BAUTISTA, *J.:*

The Petition for Review seeks the issuance of tax credit certificate in the amount of P60,787,732.87, representing petitioner's alleged excess/unutilized input VAT for the period covering January 1, 2002 to December 31, 2002, arising from its zero-rated sale of generated power in accordance with the Electric Power Industry Reform Act (EPIRA) of 2001.

Mindanao I Geothermal Partnership (Petitioner) is a partnership duly registered with the Securities and Exchange Commission (SEC), with principal office at 26th Floor, Citibank Tower, Valero Street, Salcedo Village, Makati City.[1]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of his office, including among others, the duty to act

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[1] Par. 3, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 71

upon and approve claims for refund or tax credit as provided by law. He holds office at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Quarterly VAT Returns for taxable year 2002 on the following dates:

Exhibit	Period	Date of Filing
"D"	1st Quarter (Amended)	July 1, 2003
"E"	2nd Quarter (Amended)	March 29, 2004
"F"	3rd Quarter (Amended)	March 29, 2004
"G"	4th Quarter (Amended)	March 30, 2004

On June 3, 2003, petitioner filed with the BIR an administrative claim for issuance of tax credit certificate for its unutilized input VAT credits for the period from January 1, 2002 to December 31, 2002 in the amount of P61,067,122.79.[2]

Due to respondent's failure to act on petitioner's application for tax credit and in order to preserve its right to claim refund by judicial action, petitioner filed a *Petition for Review* on March 31, 2004, praying for issuance of tax credit certificate in the amount of P59,951,116.64[3] as its excess/unutilized input VAT.

On April 29, 2004, respondent filed his *Motion to Admit Attached Answer*[4] and his *Answer*[5], stating the following Special and Affirmative Defenses:[6]

> "3. He reiterates and repleads the preceding paragraphs of this answer as part of his 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:
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> a. The registration requirements of a value-added taxpayer in compliance with Section 6 (a) and (b) of the Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

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[2] Exhibit "H"
[3] Represents the amount allocated to petitioner's zero-rated sales
[4] Docket, pp. 38-40
[5] Docket, pp. 41-45
[6] Docket, pp. 41-44

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section 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 P59,951,116.64 allegedly paid by the petitioner on its purchases of goods and services for taxable year 2002 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 quarter or 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, and in pursuance to Section 4.104-5 (a) & (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for 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 v. Manila Jockey Club, Inc. 98 Phil 670);

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

In a *Resolution*[7] dated June 8, 2004, the Court granted respondent's *Motion to Admit Attached Answer* and effectively admitted the attached *Answer*.

Pre-Trial was set on July 2, 2004. Petitioner filed its *Pre-Trial Brief*[8] on June 29, 2004; while respondent filed his *Respondent's Pre-Trial Brief*[9] on July 1, 2004. On July 2, 2004, the parties stipulated on the facts and issues of the case and the Court ordered the submission of their *Joint Stipulation of Facts and Issues*.[10]

The parties submitted their *Joint Stipulation of Facts and Issues*[11] on July 19, 2004, which the Court approved in a *Resolution*[12] dated July 26, 2004; thus, the Pre-Trial was terminated and the parties were ordered to proceed with the trial on the merits.

Petitioner filed a *Motion to Approve the Commission of Mr. Eliseo A. Aurellado as Independent Certified Public Accountant*[13] on August 27, 2004, which the Court granted on September 30, 2004.[14]

The Court-commissioned Independent Certified Public Accountant (CPA) made the following conclusions in his *Report*[15] dated October 25, 2004:[16]

"In performing the above procedures, I believe that the total zero-rated sales of the Company for the year 2002 which amounts to **P821,132,352.36** (Annex C) which were sold to PNOC-EDC are properly recorded and supported by sales invoices and official receipts.

I believe that the amount of **P60,787,732.87** (Annex A) represents a valid claim for input VAT refund. This is net of the exceptions amounting to **P279,390.00** (Annex B) which were excluded from my evaluation for reasons previously mentioned."

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[7] Docket, p. 48
[8] Docket, pp. 51-58
[9] Docket, pp. 61-63
[10] Docket, p. 69
[11] Docket, pp. 70-73
[12] Docket, p. 77
[13] Docket, pp. 80-81
[14] Docket, p. 86
[15] Docket, pp. 88-127
[16] Docket, p. 92

Considering that the amount claimed in the *Petition for Review* was only P59,951,116.64, counsel for petitioner manifested during the hearing on October 28, 2004, that he will file an *Amended Petition for Review* to show the correct amount of P60,787,732.87 as petitioner's excess/unapplied input VAT.[17]

Consequently, on November 30, 2004, petitioner filed a *Manifestation*[18] with attached *Amended Petition for Review [To Conform to Evidence]*[19], praying for the issuance of tax credit certificate in the amount of P60,787,732.87, representing its excess/unutilized input VAT for the period covering January 1, 2002 to December 31, 2002.

On March 29, 2005, counsel for respondent manifested that he will adopt his original *Answer*.[20] The Court, in a *Resolution* dated May 5, 2005, admitted petitioner's *Amended Petition for Review*.[21]

The Independent CPA filed a *Supplemental Report*[22] on April 15, 2005.

On September 22, 2005, petitioner manifested that it will be submitting a *Supplemental Joint Stipulation of Facts* for the signature of respondent's counsel.[23] The parties filed their *Additional Joint Stipulation of Facts*[24] on November 22, 2005, which the Court approved in a *Resolution*[25] dated December 1, 2005.

Petitioner filed its *Offer of Documentary Evidence*[26] on January 11, 2007, offering *Exhibits "A"* to *"CC"*, inclusive of submarkings. Subsequently, petitioner filed a *Motion to Admit Attached Supplemental Offer of Documentary Evidence with Manifestation*[27] on February 2, 2007, with attached *Supplemental Offer of Documentary Evidence*.[28]

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[17] Docket, p. 128
[18] Docket, pp. 132-133
[19] Docket, pp. 134-141
[20] Docket, p. 170
[21] Docket, p. 179
[22] Docket, pp. 171-173
[23] Docket, p. 197
[24] Docket, pp. 207-208
[25] Docket, p. 214
[26] Docket, pp. 272-279
[27] Docket, pp. 288-290
[28] Docket, pp. 307-308

In a *Resolution*[29] dated March 6, 2007, petitioner's *Motion to Admit Attached Supplemental Offer of Documentary Evidence with Manifestation* was granted.

The Court resolved petitioners' *Offer of Documentary Evidence* and *Supplemental Offer of Documentary Evidence* in a *Resolution*[30] dated April 25, 2007, and its *Motion for Partial Reconsideration (of Resolution dated April 25, 2007)* filed on May 31, 2007 in *Resolutions* dated August 9, 2007[31] and November 28, 2007[32].

In a *Manifestation*[33] filed on December 6, 2007, petitioner stated that it is reaffirming its *Petition for Review* in view of the letter dated August 14, 2007, it received from the Large Taxpayers Service of the Bureau of Internal Revenue denying its administrative claim for refund.

Subsequently, petitioner filed a *Motion for Leave of Court to File Attached Supplemental Petition for Review*[34] on December 17, 2007, stating the following:

> "1. After the above-captioned has been submitted for the resolution of this Honorable Court, respondent issued to petitioner Tax Credit Certificate ('TCC') No. 2006 00003060 in the amount of P6,251,065.74 which belatedly and partially granted the latter's administrative claim for refund or tax credit in the amount of P7,427,965.37 arising from its excess/unapplied creditable input taxes for the Year 2002, subject matter of the above-captioned case.
>
> 2. Considering that such issuance of TCC is deemed an admission on the part of respondent that petitioner, to the extent of P6,251,065.74, is entitled to the tax refund or credit being claimed for, the same should be taken cognizance by this Honorable Court.
>
> 3. With such admission of respondent, it is respectfully submitted that what is now left for this Honorable Court to resolve is the remaining claim of petitioner."

Hence, the attached *Supplemental Petition for Review*[35] prayed for the issuance of another tax credit certificate in the amount of P1,176,218.14[36], representing the remaining claim for issuance of tax credit certificate.

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[29] Docket, p. 319
[30] Docket, pp. 321-322
[31] Docket, pp. 358-360
[32] Docket, p. 383
[33] Docket, pp. 384-385
[34] Docket, pp. 388-390

Respondent filed his *Formal Offer of Evidence*[37] on February 6, 2008, submitting *Exhibits "1"* to *"5"*, and filed his *Manifestation with Motion to Admit Exhibits*[38] on March 26, 2008. The same were admitted in a *Resolution*[39] dated April 10, 2008.

In a *Resolution*[40] dated June 27, 2008, the case was submitted for decision, taking into consideration respondent's *Memorandum*[41] filed on June 13, 2008 and petitioner's *Memorandum*[42] filed on June 18, 2008.

The issues[43] to be resolved by the Court are as follows:

"1. Whether or not petitioner's sale of generated power qualifies as zero-rated sales under the Tax Reform Act of 1997, as amended, and the Electric Power Industry Reform Act of 2001.

2. Whether or not the amount of (P60,787,732.87) represents excess input VAT paid on domestic purchases of taxable goods and services allocable to its zero-rated sales for the year 2002.

3. Whether or not petitioner's excess input VAT for the year 2002 was applied or utilized against its output VAT in the succeeding year/s.

4. Whether or not the excess input VAT arising from petitioner's purchases of goods and services for the taxable year 2002 are duly supported by pertinent documents, such as VAT invoices and receipts.

5. Whether or not petitioner is entitled to the claim for refund in the amount of (P60,787,732.87) representing unutilized and/or unapplied input VAT of petitioner for the taxable year 2002."

The above-enumerated issues can be summarized into a single issue, to wit: "Whether or not based on the evidence presented, petitioner is entitled to the issuance of tax credit certificate in the amount of P60,787,732.87, representing excess/unutilized input VAT for the period covering January 1, 2002 to December 31, 2002."

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[35] Docket, pp. 391-402
[36] P7,427,283.88 (amount as found by the Independent CPA)
- 6,251,065.74 (amount covered by the TCC)
P1,176,218.14
[37] Docket, pp. 412-415
[38] Docket, pp. 432-435
[39] Docket, p. 448
[40] Docket, p. 520
[41] Docket, pp. 457-464
[42] Docket, pp. 475-518
[43] Pars. 1-5, Stipulated Issues, JSFI, Docket, p. 72

The Court quotes Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, inasmuch as on its proper interpretation and application would depend the correct resolution of the present case, thus:

> "**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, in order to be entitled to a refund or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales, petitioner must comply with the following requisites:

1. there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes are attributable to zero-rated or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability; and
5. that the claim for refund was filed within the two-year prescriptive period.

Petitioner maintains that its sales of electricity as a power generation company, qualify for VAT zero-rating in accordance with paragraph 5, Section 6 of Republic Act No. 9136, also known as the "Electric Power Industry Reform Act of 2001 (EPIRA)", which states:

> "SEC. 6. Generation Sector.
>
> xxx xxx xxx
>
> Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated."

In the case of **Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue**[44], this Court declared that the sales of generated power by generation companies are no longer subject to ten percent (10%) VAT as provided under the NIRC of

[44] CTA Case No. 6788, October 13, 2005

1997, as amended; but are subject to zero percent (0%) VAT beginning June 26, 2001 by virtue of the amendatory provision of the EPIRA, to wit:

> "[I]t is undisputed that Republic Act No. 6136[45] otherwise known as the 'Electric Power Industry Reform Act of 2001' provided for VAT zero-rating of sales of generated power by generation companies beginning June 26, 2001. Thus, the pertinent provisions of the National Internal Revenue Code of 1997 are deemed amended by the provisions of RA No. (9136) by modifying the VAT rate applicable to sales of generated power by generation companies from ten (10%) percent to zero (0%) percent."

Records show that pursuant to its build-operate-transfer (BOT) contract with the Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) involving a 47-megawatt geothermal power plant, the primary operation of petitioner is to convert the steam supplied to it by PNOC-EDC into electric energy, which will in turn be delivered or supplied to the National Power Corporation (NPC), in behalf of PNOC-EDC.[46] Petitioner's 47-megawatt geothermal power plant had been accredited by the Department of Energy as a Private Sector Generation Facility since June 15, 1995.[47] Likewise, petitioner's *Certificate of Registration* showed that its line of business is the generation, collection, and distribution of electricity.[48] Accordingly, in conformity with the foregoing provisions and jurisprudence, petitioner's sales of electricity are considered subject to zero percent (0%) VAT rate.

In its VAT Returns for the four quarters of 2002, petitioner declared the following zero-rated sales/receipts in the total amount of P821,132,352.36:

Exhibits	Period	Zero-Rated Receipts
"D-2-c"	1st Quarter	P 214,594,854.11
"E-2-c"	2nd Quarter	P 197,804,000.59
"F-2-c"	3rd Quarter	P 199,223,364.13
"G-2-c"	4th Quarter	P 209,510,133.53
	Total	**P 821,132,352.36**

Verification showed that the afore-stated zero-rated sales/receipts were actually derived from petitioner's sales of power generation services as evidenced by the invoices[49]

[45] Should be R. A. No. 9136
[46] Pages 9-10, August 12, 2004, TSN
[47] Exhibit "B"
[48] Exhibit "A"

and official receipts[50] issued by petitioner to PNOC-EDC for taxable year 2002.

However, the official receipts supporting the amount of P72,271,445.75, detailed below, do not bear the word "zero-rated" in violation of the invoicing requirements under Section 4.108-1 of Revenue Regulations No. 7-95, in relation to Section 113 of the NIRC of 1997.

				Amount		
Exhibit	**OR No.**	**Date**	**Inv. No**	**In US$**	**Exch. Rate**	**In Php**
"N-1a"	202	28-Jan-02	098	963,840.00		
				243,279.50		
				1,207,119.50	51.28576354	61,908,045.24
"N-20a"	233	28-Nov-02	121	193,227.33	53.63320243	10,363,400.51
					Total	**72,271,445.75**

Thus, only the remaining gross receipts in the amount of P748,860,906.61 supported by VAT zero-rated official receipts qualify for VAT zero-rating, computed as follows:

Exh	**Year 2002**	**Zero-Rated Receipts Per Return**	**Disallowances**	**Substantiated Zero-Rated Receipts**	**% of Substantiated Zero-Rated Receipts**
D-2-c	1st qtr	P214,594,854.11	P61,908,045.24	P 152,686,808.87	71.1511977%
E-2-c	2nd qtr	197,804,000.59		197,804,000.59	100.0000000%
F-2-c	3rd qtr	199,223,364.13		199,223,364.13	100.0000000%
G-2-c	4th qtr	209,510,133.53	10,363,400.51	199,146,733.02	95.0535087%
	Total	**P821,132,352.36**	**P72,271,445.75**	**P 748,860,906.61**	

The Court now proceeds to determine petitioner's compliance with the second and third requisites pertaining to the ascertainment of the amount of input taxes attributable to the zero-rated gross receipts of P748,860,906.61.

In its VAT Returns for the four quarters of taxable year 2002, petitioner reported the following excess input taxes amounting to P61,067,122.79:

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[49] Exhibits "N", "N-1" to "N-23" as summarized in Exhibit "L-5"

[50] Exhibits "N-1a", "N-1b", "N-1c", "N-1d", "N-2a", "N-3a", "N-4a", "N-4b", "N-5a", "N-6a", "N-6b", "N-7a", "N-7b", "N-8a", "N-9a", "N-10a", "N-10b", "N-11a", "N-12-a", "N-12b", "N-13a", "N-14a", "N-14b", "N-15a", "N-16a", "N-16b", "N-17a", "N-18a", "N-18b", "N-19a", "N-20a", "N-20b", "N-21a", "N-22a", "N-22b", and "N-23a"

Year 2002	Exhibit	Input VAT	Exhibit	Output VAT	Excess Input VAT
1st qtr	D-2-e	P 3,020,841.98	D-2-b	P 375,636.17	P 2,645,205.81
2nd qtr	E-2, lines 23G & 23I	2,237,230.00	E-2-b	372,713.93	1,864,516.07
3rd qtr	F-2, lines 23G & 23I	3,390,523.87	F-2-b	384,288.74	3,006,235.13
4th qtr	G-2, lines 23G & 23I	53,947,086.88	G-2-b	395,921.10	53,551,165.78
	Total	**P 62,595,682.73**		**P 1,528,559.94**	**P 61,067,122.79**

In support of its reported excess input taxes, petitioner presented various suppliers' invoices, official receipts and other relevant documents.[51] Upon verification of these documents, together with the *Report*[52] of the Independent CPA, the Court finds that out of the reported input VAT of P61,067,122.79, only the amount of P60,784,875.59 is properly substantiated by the required evidence under Sections 110(A) and 113(A) of the NIRC of 1997, as implemented by Sections 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations No. 7-95. The remaining amount of P282,247.20 should be denied due to the following reasons:

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total
Excess Input VAT Per Return	**P2,645,205.81**	**P1,864,516.07**	**P3,006,235.13**	**P53,551,165.78**	**P61,067,122.79**
Less: Disallowances					
Purchases of goods supported by sales invoices dated other than 2002	P 23,913.91			P 2,857.20	P 26,771.11[53]
Sales Invoices/Official Receipts in the name other than petitioner	24,923.55	P 115,881.07	P 37,275.66	77,395.81	255,476.09[54]
Total Disallowances	**P 48,837.46**	**P 115,881.07**	**P 37,275.66**	**P 80,253.01**	**P 282,247.20**
Valid Excess Input VAT	**P2,596,368.35**	**P1,748,635.00**	**P2,968,959.47**	**P53,470,912.77**	**P60,784,875.59**

Petitioner's Quarterly VAT Returns for taxable year 2002 showed that the substantiated excess input taxes in the amount of P60,784,875.59 is already net of petitioner's output VAT liability for the subject period and is attributable to the entire zero-rated sales/receipts declared by petitioner in the amount of P821,132,352.36. However,

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[51] Exhibits "M", "M-1" to "M-1039", "P", "Q", "R", "S"," Z", and "BB", inclusive of sub-markings
[52] Exhibit "L"
[53] Erroneously added as P23,913.91 in Exhibit "L", Schedule B-1
[54] Exhibit "L", Schedule B-2

only the input VAT of P57,390,920.37, as computed below, is attributable to petitioner's substantiated zero-rated sales/receipts of P748,860,906.61.

Year 2002	Input VAT Attributable to Declared Zero-Rated Receipts	% of Substantiated Zero-Rated Receipts	Input VAT Attributable to Substantiated Zero-Rated Receipts
1st Quarter	P 2,596,368.35	71.1511977%	P 1,847,347.18
2nd Quarter	1,748,635.00	100.0000000%	1,748,635.00
3rd Quarter	2,968,959.47	100.0000000%	2,968,959.47
4th Quarter	53,470,912.77	95.0535087%	50,825,978.73
Total	**P 60,784,875.59**		**P 57,390,920.37**

Finally, as to whether or not the subject claim was filed within the two-year prescriptive period, records disclosed that the input VAT claim for the fourth quarter of taxable year 2002 included the amount of P51,343,868.32 supported by VAT official receipt no. 0375 dated December 2, 2002 which reflects a higher input VAT amount of P51,824,485.76.[55] The figure of P51,824,485.76 pertains to sales invoice no. MPB(F)-Mt Apo-100102 dated October 28, 2002 issued by Mitsubishi to petitioner to cover the 10% VAT in the amount of US$967,037.11, in relation to several sales invoices dated from January 18, 1996 to June 9, 2000, in the aggregate amount of US$9,670,371.14; representing services rendered by Mitsubishi to petitioner in the construction of the latter's Geothermal Plant.

The reason why petitioner belatedly paid the amount of P51,824,485.76 (US$967,037.11) representing 10% VAT on services rendered by Mitsubishi to petitioner for the period January 18, 1996 to June 9, 2000 in the sum of US$9,670,371.14 was explained by the Independent CPA as follows:[56]

> "Mitsubishi did not include in its sales invoices the 10% VAT component of its sale of services to the Company.
>
> According to the Accounting Manager assigned to the Company, at that time the gross receipts of Mitsubishi under its contract with the Company was considered VAT zero-rated pursuant to Section 102 of the Tax Code, as amended, in that Mitsubishi was engaged in the sale of services payable in US dollars which treatment was later confirmed by a Bureau of Internal Revenue (BIR) ruling. I have examined this ruling contained in BIR's letter

[55] Exhibit "M-904"
[56] Exhibit "O"

> with reference UN-239-95 and dated June 30, 1995 (copy of which is hereto attached as **Annex 'D'**) addressed to Sycip, Gorres Velayo & Co. responding to the latter's request for a ruling with respect to its client, the Company. The BIR letter-ruling indicates that based on the facts represented by SGV & Co., the BIR ruled that '*Mitsubishi Corporation is engaged in the sale of services. Section 102 of the Tax Code, as amended, provides that services, the consideration for which is paid for in acceptable foreign currency which is remitted inwardly to the Philippines and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas, shall be subject to zero percent (0%). (VAT Ruling No. 042-94 dated February 8, 1994)*' Consequently, the Company received invoices from Mitsubishi from 1996 to 2000 representing the latter's billings for services which did not include any VAT component. For its part, the Company did not compute or include any input VAT pertaining to these services of Mitsubishi in its monthly and quarterly VAT reports.
>
> However, in October 2002 Mitsubishi issued the aforementioned invoice (MPB(F)-MtApo-100102 (Annex 'A') to the Company representing billing for the total input VAT of US$967,037,111, which was computed at 10% of US$9,670,371.14, the entire amount of the invoices issued previously for services rendered from 1996 to 2000, for which invoices (Annex 'A') the Company paid the peso equivalent of **P51,824,485.76** at the exchange rate of US$1:P53.591 as shown by Official Receipt No. 0375 (Annex 'B'). According to the Accounting Manager assigned to the Company, Mitsubishi informed the Company that the said transactions should be subject to 10% VAT as the requirements imposed under the BIR letter-ruling dated June 30, 1995 (Annex 'D') were not allegedly complied. Consequently, Mitsubishi passed on the VAT to the Company as VAT is an indirect tax. The Company paid the 10% VAT on said transactions as shown by OR No. 0375 (Exhibit 'B').
>
> The official receipt which was issued on a date later than the date of the invoice and the actual date of payment or remittance shows the peso equivalent of P51,824,485.76 using the exchange rate of US$1:P53.591, or P480,617.44 higher than what was recorded in the books of the Company. The Company, however, recognized in its application for VAT refund/tax credit only the actual amount of pesos used to purchase the dollars to pay the VAT, i.e., P51,343,868.32."

In order to prove that the input VAT of P51,824,485.76 was remitted by Mitsubishi to the BIR, petitioner presented Mitsubishi's Quarterly VAT Return for the third quarter of the fiscal year ending March 2003.[57]

The Court finds that while the input VAT claim of P51,343,868.32 is supported by a valid VAT official receipt in accordance with Sections 110(A)(1)(b) and 113(A) of the NIRC of

[57] Exhibits "S" and "S-1"

1997, in relation to Sections 4.104-1(b), 4.104-5, and 4.108-1 of Revenue Regulations No. 7-95, the same shall be denied on the ground of prescription.

In the case entitled **Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)**[58], the Supreme Court held that the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund under Section 112(A) of the NIRC of 1997 starts from the **close of the taxable quarter when the relevant sales were made** pertaining to input VAT regardless of whether said tax was paid or not. In the present case, since the last creditable input VAT due for the period covering the progress billing of June 9, 2000[59] is the second quarter of 2000 ending on June 30, 2000, any claim for unutilized creditable input VAT refund/tax credit for said quarter prescribed two years after June 30, 2000 or on June 30, 2002. Consequently, the input VAT claim of P51,343,868.32 should be disallowed on the ground of prescription.

However, as computed earlier, out of the P51,343,868.32 prescribed claim, only 95.0535087% thereof in the amount of P48,804,148.35 is attributable to the substantiated zero-rated receipts for the fourth quarter of 2002. Therefore, out of the P57,390,920.37 input VAT attributable to substantiated zero-rated receipts for taxable year 2002, the amount of P48,804,148.35 had already prescribed and only the remaining amount of P8,586,772.03 was timely filed, computed as follows:

Year 2002	Input VAT Attributable to Substantiated Zero-Rated Receipts	Prescribed Input VAT Claim	Timely-Filed Input VAT Claim
1st Quarter	P 1,847,347.18		P 1,847,347.18
2nd Quarter	1,748,635.00		1,748,635.00
3rd Quarter	2,968,959.47		2,968,959.47
4th Quarter	50,825,978.73	P 48,804,148.35	2,021,830.38
Total	**P 57,390,920.37**	**P 48,804,148.35**	**P 8,586,772.03**

[58] G.R. No. 172129, September 12, 2008
[59] Exhibit "M-901"

In sum, petitioner is entitled to the issuance of tax credit certificate in the reduced amount of P8,586,772.03, representing unutilized input VAT for the four quarters of taxable year 2002.

WHEREFORE, petitioner's claim for issuance of tax credit certificate is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of P8,586,772.03, representing its excess/unutilized input VAT for the period covering January 1, 2002 to December 31, 2002.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(with Concurring and 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