Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

KEPCO ILIJAN CORPORATION Petitioner, - versus - **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	EB Case No. 528 (CTA Case No. 6550) Members: ACOSTA, PJ, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS Promulgated: OCT 14 2010

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DECISION

CASANOVA, J.:

This is an appeal, by way of Petition for Review[1], filed by petitioner Kepco Ilijan Corporation (petitioner-KEILCO), praying that the Decision[2] dated May 15, 2009 (the "Assailed Decision") and the Resolution[3] dated August 11, 2009 (the "Assailed Resolution") of the *CTA Second Division* in CTA Case No. 6550, be reversed and set aside and a new decision be rendered ordering respondent to

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[1] CTA En Banc Rollo, pp. 8-35
[2] CTA Division Docket, pp. 726-742
[3] Ibid, pp. 766-768

refund to petitioner-KEILCO the amount of P660,940,560.12, representing unutilized input taxes for the 3rd quarter of the year 2000.

The facts of the case, as culled from the records, are as follows:

Petitioner-Kepco Ilijan Corporation is a corporation duly registered and operating under the laws of the Republic of the Philippines with principal place of business located at Suite 2501-A, 26th Floor, Tektite Tower I, Exchange Road, Ortigas Center, City of Pasig;[4]

Respondent is the duly appointed Commissioner of Internal Revenue, vested under the appropriate laws with the authority to carry out all the functions, duties, and responsibilities of said office including, *inter alia*, the power to decide, approve and grant refunds and/or tax credits of erroneously paid or illegally collected internal revenue taxes, and holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

Petitioner is a duly registered value-added (VAT) taxpayer, engaged in the production and sale of electricity as an independent power producer, and sells the electricity exclusively to the National Power Corporation (NPC).[6]

For the third quarter of calendar year 2000, petitioner filed its quarterly VAT returns with the BIR on October 25, 2000.[7]

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[4] Petition for Review (CTA EB Case No. 528), par. 1, CTA En Banc Rollo, p. 10
[5] Petition for Review (CTA Case No. 6550), par. 2, Division Docket, p. 1
[6] Petition for Review (CTA EB Case No. 528), par. 1, CTA En Banc Rollo, p. 11
[7] Ibid, par. 2; Exhibit "B"

Petitioner filed its administrative claim for refund in the amount of P660,940,560.12, representing the input VAT incurred for the third quarter of 2000.[8]

Due to the inaction by the BIR on its administrative claim, petitioner filed with this Court a Petition for Review, docketed as CTA Case No. 6550, on October 23, 2003.

In his Answer[9] filed on December 2, 2002, respondent interposed the following Special and Affirmative Defenses:

> "7. The claim for refund is subject to investigation by the Bureau of Internal Revenue;
>
> 8. Taxes paid and collected are presumed to have been made in accordance with laws and regulations, hence, not refundable.
>
> Claims for tax refund are construed in *strictissimi juris* strictly against the claimant as they partake of the nature of an exemption from tax (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1979, 31 SCRA 95) and it is incumbent upon the petitioner to prove that it is entitled thereto under the law (Western Minalco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121) and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. It is not sufficient for the Petitioner to make allegations of the applicability of the cited provisions of law, cited cases and memorandum issued. It is incumbent upon the Petitioner to prove that it is entitled to a refund and it should not merely make an assumption that it is similarly situated to that of National Power Corporation, an entity entirely separate and distinct from that of herein Petitioner.

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[8] Ibid, par. 3; Exhibit "D"
[9] Division Docket, pp. 30-33

9. Petitioner's allegation that it erroneously and excessively paid the tax during the year under review does not *ipso facto* warrant the refund/credit;

10. Moreover, petitioner must prove that it has complied with the governing rules with regard to tax recovery or refund, which are found in Sections 204(c) and 229 of the Tax Code, as amended, which are quoted as follows:

> **Section 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.** – The Commissioner may –
>
> (C) Credit or refund taxes erroneously or illegally received or 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 or refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer agrees in writing with the Commissioner a claim for credit or refund within two (2) years after payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered a written claim for credit or refund.
>
> **Section 229. Recovery of Tax Erroneously or Illegally Collected.** – No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed or have been collected without authority, or of any sum alleged to have been excessively or in any manner collected, until a claim for refund or credit has been duly filed with the Commissioner; 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 the payment of 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 thereof, 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."

On July 30, 2004, the parties submitted their Joint Stipulation of Facts and Issues[10] which was approved by the Court per Resolution dated August 09, 2004.[11]

The parties stipulated on the following issues to be resolved by the Court[12]:

1. Whether or not the Petitioner is entitled to the refund of the amount of Php660,940,560.12 as alleged unutilized accumulated input VAT and VAT Refund for Domestic Purchases and Importation of Capital Goods/Equipment and Services for the third quarter of the calendar year 2000.

2. Whether or not the Petitioner incurred accumulated input VAT from the purchase of goods and services for the third quarter of the calendar year 2000, which purchases are attributable to the sale by Petitioner of electricity to NPC.

3. Whether or not the sale by Petitioner of electricity to NPC for the third quarter of the calendar year 2000 is subject to VAT at zero rate and/or VAT Refund for Domestic Purchases and Importation of Capital Goods/Equipment and Services.

[10] CTA Division Docket, pp. 105-106
[11] Ibid, p. 108
[12] Joint Stipulation of Facts and Issues (JSFI), CTA Division Docket, p. 106

4. Whether or not the alleged accumulated input VAT are duly supported by VAT invoices and/or official receipts.

5. Whether or not the accumulated input VAT for the third quarter of the calendar year 2000 were utilized or applied by the Petitioner to the succeeding taxable year.

After trial on the merits, the CTA *Second Division* promulgated a decision (the "Assailed Decision") on May 15, 2009, the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED**.
>
> **SO ORDERED**."

On June 2, 2009, petitioner filed a Motion for Reconsideration[13] which was subsequently denied by the Court for lack of merit per Resolution (the "Assailed Resolution") promulgated on August 11, 2009.

On August 28, 2009, petitioner filed an Urgent Motion for Extension of Time to File Petition For Review[14] which the Court granted in a Resolution dated September 4, 2009 thereby giving petitioner a final and non-extendible period of fifteen (15) days from September 1, 2009 or until September 16, 2009, within which to file its Petition for Review.

On September 16, 2009, petitioner filed the instant Petition for Review.

[13] CTA Division Docket, pp. 744-764
[14] Ibid, pp. 770-775

In a Resolution[15] promulgated on October 22, 2009, the Court deemed the case submitted for decision as of the date of promulgation of the resolution considering that no comment was filed by the respondent.

The lone issue sought to be resolved by the petitioner in the instant Petition for Review is:

> "Whether or not the CTA Second Division Erred When It Retroactively Applied the 2008 Mirant Case, Leading To The Automatic Dismissal/Denial of the Present Claim for Refund."[16]

Petitioner contends that the CTA *Second Division* erred when it applied the 2008 *Mirant Case* to the present case. In support of its contention, petitioner cites the numerous Supreme Court rulings[17] holding that judicial rulings should be applied prospectively.

After a careful and thorough evaluation and consideration of the records of the case, the Court *En Banc* finds the Petition for Review to be meritorious.

In the recent case of *Mirant Pagbilao Corporation vs. CIR*[18] (the Mirant Case), the Supreme Court had ruled that the claim for refund of unutilized input VAT payments must be filed within two (2) years from the close of the taxable quarter when the relevant sales were made. Said ruling, however, should not be

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[15] CTA En Banc Rollo, p. 69
[16] Petition for Review, par. 1, p. 8, CTA En Banc Rollo, p. 15
[17] Columbia Pictures, Inc. vs. CA, G.R. No. 110318, August 28, 1996; People vs. Jabinal, L.30061, Feb. 27, 1964; Unciano Paramedical College, Inc., et al. vs. CA, et al., G.R. No. 10035, April 7, 1993, 221 SCRA 285; Tañada, et al. vs. Guingona, Jr., etc., et al., G.R. No. 113888, August 19, 1994, 235 SCRA 507
[18] G.R. No. 172129, September 12, 2008

made to apply to the present case but should be applied prospectively pursuant to and consistent with the numerous rulings of the Supreme Court.

In *Columbia Pictures, Inc. vs. Court of Appeals*[19], the Supreme Court ruled in this wise:

> "Decisions of this Court, although in themselves not laws, are nevertheless evidence of what the law mean, and this is the reason why under Article 8 of the New Civil Code, 'Judicial decisions applying or interpreting the laws or interpreting the laws or the Constitution shall form part of the legal system'. The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that the law was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate. The settled rule supported by numerous authorities is a restatement of the legal maxim *'legis interpretation legis vim obtinet'* – the interpretation placed upon the written law by a competent court has the force of law. x x x but when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof. x x x." (Strees supplied)

Reiterating and citing this same doctrine in *Ejercito vs. Sandiganbayan (Special Division)*[20], the Supreme Court stated thus:

> "While judicial interpretations of statutes, such as that made in Marquez with respect to R.A. No. 6770 or the Ombudsman Act of 1989, are deemed

[19] G.R. No. 110318, August 28, 1996
[20] G.R. No. 157294-95, November 30, 2006

> part of the statute as of the date it was originally passed, the rule is not absolute.
>
> Columbia Pictures, Inc. vs. Court of Appeals teaches:
>
> 'It is consequently clear that a judicial interpretation becomes a part of the law as of the date that law was originally passed, ***subject only to the qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively*** and should not apply to parties who relied on the old doctrine and acted in good faith.' (Emphasis and italics supplied)
>
> When the Court construed the Ombudsman Act of 1989, in light of the Secrecy of Bank Deposits Law in Marquez, that xxx, it was, in fact, reversing an earlier doctrine found in Banco Filipino Savings and Mortgage Bank vs. Purisima.
>
> x x x x x x x x x
>
> Marquez, on the other hand, practically reversed this ruling in Banco Filipino despite the fact that the subpoena power of the Ombudsman under RA 6770 was essentially 1630. Thus Section 15 of RA 6770 empowers the Office of the Ombudsman x x x.
>
> The Marquez ruling that there must be a pending case in order for the Ombudsman to validly inspect bank records in camera <u>thus reversed a prevailing doctrine. Hence, it may not be</u> retroactively applied." (Underscoring supplied)

Applying, therefore, the doctrine laid down in the aforecited case, the prescriptive period applicable in the instant case would still be the period enunciated in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[21] where it was held that the counting of the two-year prescriptive period is reckoned from the filing of the quarterly VAT returns. If the ruling in the *Mirant case* were applied, the same would run counter to the pronouncement of the Supreme Court itself in the aforecited decisions that "when a doctrine of this Court is overruled and a different view is adopted and, more so, when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith.[22] (Underscoring supplied)

Even assuming *arguendo* that the ruling in the *Mirant case* partakes the nature of a procedural rule, as ruled by the *CTA Second Division*, the same, however, admits of exceptions as enunciated in the case of *Jaime Tan, Jr. vs. Court of Appeals, Jose A. Magdangal and Estrella Magdangal.*[23] The Supreme Court ruled thus:

> "There is no dispute that rules of procedure can be given retroactive effect. This general rule, however, has well-delineated exceptions. We quote author Agpalo:
>
> 'x x x x x x x x x
>
> 9.18. Exceptions to the rule.

[21] G.R. Nos. 141104 & 148763, June 8, 2007
[22] People vs. Jabinal, L-30061, February 27, 1964
[23] G.R. No. 136368, January 16, 2002

> The rule that procedural laws are applicable to pending actions or proceedings admits certain exceptions. The rule does not apply where the statute itself expressly or by necessary implication provides that pending actions are excepted from its operation, or where to apply it to pending proceedings would impair vested rights. Under appropriate circumstances, courts may deny the retroactive application of procedural laws in the event that to do so would not be feasible or would work injustice. Nor may procedural laws be applied retroactively to pending actions if to do so would involve intricate problems of due process or impair the independence of the courts.'

> We hold that Sec. 1, Rule 39 of the 1997 Revised Rules of Procedure should not be given retroactive effect in this case as it would result in great injustice to the petitioner."

Having thus settled the prescriptive period to be applied in determining the timeliness of petitioner's claim, We shall now proceed to determine whether or not said claim is valid or not.

Petitioner's claim for refund of the input value-added tax it allegedly incurred for the 3rd quarter of 2000 in the amount of P660,940,560.12 stems from its importations and domestic purchases of capital goods/equipment and services preparatory to its production and sale of electricity to the National Power Corporation. The amount is broken down as follows:

Period		Amount
July 2000	P	75,191,762.89
August 2000		328,109,488.20
September 2000		257,639,309.03
TOTAL	**P**	**660,940,560.12**

The claimed amount of P660,940,560.12 can be further detailed as follows:

1.	Input VAT on Domestic Purchases of Capital Goods and Services	P 46,600,517.58
2.	Input VAT on Importation of Capital Goods	614,340,042.52
	TOTAL	**P 660,940,560.12**

Petitioner anchors its claim on Section 112(B) of the National Internal Revenue Code (NIRC) of 1997.

Pertinent to the resolution of the instant Petition for Review are Sec. 112(B) of the Tax Code of 1997 and Secs. 4.106-1(b) and 4.104-5 of Revenue Regulations No. 7-95, the relevant provisions of which are herein below quoted, to wit:

<u>Tax Code of 1997</u>

"**Sec. 112. Refunds or Tax Credits of Input Tax –**

(A) Zero-Rated or Effectively Zero-Rated Sales. – 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."

Revenue Regulations No. 7-95

"**Section 4.106-1. Refunds or tax credits of input tax. –**

(a) x x x

(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' refers to goods or properties with an estimated useful life of 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.
>
> **Section 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 required under Section 108(a) and 238 of the Code . . ."

From the aforequoted provisions it is clear that in order to be entitled to a refund/tax credit of input VAT paid on capital goods purchased, petitioner must prove:

1. that it is a VAT-registered entity;
2. that it paid input taxes on capital goods imported or locally purchased;
3. that its input VAT payments on capital goods are duly supported by VAT invoices or official receipts;
4. that such 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.

As to the first requisite, it is undisputed that petitioner is a VAT-registered taxpayer engaged in the production and sales of electricity (as an independent power producer).[24]

[24] Joint Stipulation of Facts and Issues (JSFI), par. 2, Facts Admitted, Division Docket, p. 105

Regarding the fourth requisite, the same had likewise been satisfied by petitioner. The input taxes sought to be refunded/credited were not utilized by petitioner during the subject period because it had no output tax liability against which the said input taxes could be applied (bearing emphasis that petitioner has not yet started its commercial operations as of September 2000, thus, it was virtually impossible for petitioner to have utilized its accumulated input VAT for the 3rd quarter of 2000). Also, in its Quarterly VAT Returns for the 2nd and 3rd quarters of 2002, petitioner deducted the claimed input VAT of P46,600,517.58[25] and P614,340,042.54[26], respectively, as "Any VAT Refund/TCC Claimed" from the "Total Available Input Tax". This means that petitioner can no longer utilize the claimed input VAT in its future output tax liabilities.

Since we have initially determined that the reckoning of the prescriptive period applicable in the instant case would still be that enunciated in the *Atlas case*, the fifth requisite was also met.

The reckoning of the two-year reglementary period for the filing of a claim for input VAT refund starts from the date of filing of the corresponding Quarterly VAT Return. Counting from October 25, 2000, the date when petitioner filed its Quarterly VAT Return for the 3rd quarter of 2000[27], both the administrative claims

[25] Exhibit "H"
[26] Exhibit "I"
[27] Exhibit "B"

filed on June 23, 2002[28] (for input VAT on domestic purchases of goods and services in the amount of P46,600,517.58) and September 26, 2002[29] (for input VAT on importations in the amount of P614,340,042.54), as well as the Petition for Review filed on October 23, 2002 are well within the two-year prescriptive period.

To determine compliance with the second and third requirements, a look at the meaning of capital goods, as defined in Section 4.106-1 of Revenue Regulations No. 7-95 is in order.

> "**Section 4.106-1. Refunds or tax credits of input tax. –**
>
> (a) x x x
>
> (b) Capital Goods – x x x
>
> 'Capital goods or properties' refer to goods or properties with an estimated useful life of 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."

It is clear from the foregoing that, in order that the subject purchases can be classified as "Capital goods or properties", the following conditions must be present, to wit:

[28] Exhibit "D"
[29] Exhibit "E"

> a. that the goods or properties must have estimated useful life of more than one year;
> b. they are treated as depreciable assets under Section 29(f); and
> c. they are used directly or indirectly in the production or sale of taxable goods or services.

Petitioner submitted in evidence, among others, the following documents to support its claim which were examined by the Court-commissioned Independent CPA (ICPA), Mr. Ruben Rubio of SGV & Co.:

	DOCUMENTS	**EXHIBIT**
1	Schedule of Input VAT Claimed on Domestic Purchases of Goods and Services for the 3rd Quarter of Calendar Year 2000	K-1 to K-5
2	Official Receipts and Invoices supporting the input VAT claimed on Domestic Purchases of Goods and Services for the 3rd Quarter of Year 2005	L-1 to L-184
3	Schedule of Input VAT Segregation Between Capital and Non-Capital Goods	O
4	Schedule of Input VAT Claimed on Importation of Capital Goods for the 3rd Quarter of Calendar Year 2000	R-1 to R-5
5	Official Receipts and Invoices supporting the input VAT claimed on importations of capital goods for the 3rd Quarter of Year 2005	S-1 to S-1292
6	Schedule of Input VAT Segregation Between Capital and Non-Capital Goods	Y
7	Year 2000 Audited Financial Statement (Certified Machine Copy)	NN
8	Photocopy of General Ledger of the Input VAT account for the Year 2000	WW-1 to WW-12
9	Photocopy of General Ledger of the Import VAT account for the Year 2000	WW-13 to WW-23
10	Photocopy of General Ledger of Construction in Progress account for the Year 2005	AAA-1 to AAA-9

11	Photocopy of General Ledgers of the Power Plant Complex accounts (i.e., Machinery & Equipment, Buildings, Other Land Improvements) and Related Accumulated Depreciation for the calendar years 2002 to 2005 and Other Fixed Assets Account (i.e., Machinery & Equipment, Furnitures & Fixtures and Vehicles) and Related Accumulated Depreciation for the calendar years 2000 to 20050.	CCC-1 to CCC-103

The ICPA noted in his Report dated May 23, 2007[30] that out of the claimed input VAT on domestic purchases of goods and services of P46,600,517.58, the input VAT in the amount of P187,487.30 is not properly substantiated for VAT purposes and thus should be disallowed, the details of which are as follows:

FINDINGS	ANNEX (Exhibit V)	JULY	AUGUST	SEPTEMBER	TOTAL
1. Input Taxes Claimed on Purchases of Services supported by Documents Other than VAT ORs	A			P 1,337.23	P 1,337.23
2. Input Taxes Claimed on Purchases of Services Supported by Non-VAT ORs	B	P 155.45	P 103.64	227.73	486.82
3. Input Taxes Claimed on Purchases of Services Supported by VAT ORs with TIN Only	C	272.73	181.82		454.55
4. Input Taxes Claimed on Purchases of Services Supported by VAT ORs issued not in the Name of the Company	D	783.64	42.18		825.82
5. Input Taxes Claimed on Purchases of Services Supported by Photocopied VAT ORs	E			2,190.64	2,190.64

[30] Exhibit "SS", p. 6

6. Input Taxes Claimed on Purchases of Goods Supported by Documents Other Than VAT Invoices	F		3,563.64	54,060.41	57,624.05
7. Input Taxes Claimed on Purchases of Goods Supported by Non-VAT Invoices	G			1,363.64	1,363.64
8. Input Taxes Erroneously Claimed on Purchase of Automobile	H			123,204.55	123,204.55
TOTAL		**P1,211.82**	**P3,891.28**	**P182,384.20**	**P187,487.30**

As to the remaining input VAT of P46,413,030.28 (P46,600,517.58 less P187,487.30) ascertained to be properly substantiated for VAT purposes, the ICPA summarized and classified the valid claim of capital goods from non-valid claims (non-capital goods) based on accepted definition of capital goods, as shown below:

FINDINGS	**ANNEX (Exhibit SS)**	**JULY**	**AUGUST**	**SEPTEMBER**	**TOTAL**
APITAL GOODS					
Input taxes claimed on purchase of services supported by VAT OR	2	P19,977,668.09	P25,932,255.77		P45,909,923.86
Input taxes claimed on purchase of goods supported by VAT Invoice	3	26,424.73	26,991.02	49,457.54	102,873.29
SUB-TOTAL		**P20,004,092.82**	**P25,959,246.79**	**P 49,457.54**	**P46,012,797.15**
NON-CAPITAL GOODS					
Input taxes claimed on purchase of services supported by VAT OR	2	58,440.75	40,199.85	252,384.98	351,025.58
Input taxes claimed on purchase of goods supported by VAT Invoice	3	10,214.96	10,498.90	24,874.08	45,587.94

	Input taxes claimed on purchase of services supported by VAT ORs dated outside the period of claim (e.g., June 2000)	4	3,514.21	105.45		3,619.66
	Rounding-off difference		(0.02)	(0.02)	(0.01)	(0.05)
	SUB-TOTAL		**72,169.90**	**50,804.18**	**277,259.05**	**400,233.13**
GRAND TOTAL			**P20,076,262.72**	**P26,010,050.97**	**P326,716.59**	**P46,413,030.28**

However, out of the input VAT on purchases of goods and services classified as capital goods in the amount of P46,012,797.15, We find that petitioner failed to prove that the purchase of services supported by VAT official receipt with the corresponding input VAT of P101,543.88[31] was treated as depreciable asset or as part of its Property, Plant and Equipment Account and that the related depreciation was recognized, thus, the same should be disallowed.

Nonetheless, since petitioner was able to prove that its domestic purchases of goods and services (a) are in the nature of depreciable assets which have economic useful life of more than one year, b) formed part of petitioner's Property, Plant and Equipment and (c) used directly or indirectly in petitioner's business, it is, therefore, entitled to the issuance of tax credit certificate or refund but only in the amount of P45,911,253.27 (P46,012,797.15 less P101,543.88), representing input VAT paid on domestic purchases of goods and services for the 3rd quarter of 2000.

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[31] Exhibit "L102"

As to the claimed input VAT on importations in the amount of P614,340,042.54, the ICPA classified the same as input VAT pertaining to importations of capital goods and was debited to Construction-In-Progress account which was subsequently transferred to Power Plant Complex Account[32], details of which are as follows:

FINDINGS		ANNEX (Exhibit SS)	JULY	AUGUST	SEPTEMBER	TOTAL
1	Input taxes claimed on importations supported by original IEDs and Bank ORs.	13		P249,517,618.30	P232,262,269.43	**P481,779,887.73**
2	Input taxes claimed on importations supported by original IEDs and Bank Debit Advices	14			3,554,589.02	**3,554,589.02**
3	Input taxes claimed on importations supported by original IEDs.	15	35,027,882.00		2,098,736.54	**37,126,618.54**
4	Input taxes claimed on importations supported by certified true copy IEDs and original Bank Debit Advices	16	10,005,138.49	33,662,393.73	17,397,177.44	**61,064,709.66**

[32] Exhibit "TT", p. 9

5	Input taxes claimed on importations supported by certified true copy IEDs	17	83,300.77	989,127.00	713,209.28	**1,785,637.05**
6	Input taxes claimed on importations supported by photocopied IEDs	18	147,060.39	164,192.81	40,587.38	**351,840.58**
7	Input taxes claimed on importations supported by photocopied IEDs and original Bank Debit Advices	19	8,760,800.29	16,892,245.42	1,014,429.03	**26,667,474.74**
8	Input taxes claimed on importations supported by photocopied IEDs and photocopied Bank OR	20		868,619.99		**868,619.99**
9	Input taxes claimed on importations supported only by original Bank Debit Advices	21	1,091,156.00			**1,091,156.00**
10	Input taxes claimed on importations without supporting documents	22			49,509.57	**49,509.57**
11	Rounding-off difference		(0.11)	(0.11)	(0.12)	**(0.34)**
	TOTAL		**P55,115,337.83**	**P302,094,197.14**	**P257,130,507.57**	**P614,340,042.54**

Based on the above findings, this Court finds that the following should be disallowed:

1. The input tax of **P1,785,637.05** claimed on importations supported by Certified True Copy IEDs[33]. While the ICPA noted that the IEDs were certified as true copies by Mr. Rene Gatchalian-Accounting COO IV of Liquidation and Billing Division of Bureau of Customs (BOC), Port of Manila, Mr. Konrad A. Rubin-State Auditor, Office of the Auditor, Daniel Farid Jr.-State Auditor, Office of the Auditor, and Alejandro Aldrias-State Auditor I, Commission on Audit-BOC[34], the same is insufficient due to the absence of documentary evidence proving the same.

2. The aggregate input taxes of **P1,220,460.57** on importations supported by photocopied IEDs and photocopied Bank ORs[35]. The supporting documents which are not originals cannot be given evidentiary value for being mere photocopies, in violation of the Best Evidence Rule.

3. The input taxes of **P1,091,156.00** claimed on importations supported only by Original Bank Debit Advices, the actual amount of VAT payment of which was not depicted thereon. Furthermore, no official receipt or other documents proving actual payment of VAT on the imported goods were presented to support such claim. To reiterate, as a general rule, input tax on importations should be supported with IEIRDs duly validated for actual payment of the input tax. Petitioner must prove the actual payment of VAT on the imported goods by submitting the documents specified in Section 4.104-5(b) of Revenue Regulations No.7-95. The required evidence is the import entry or other equivalent

33 Annex "17"
34 Exhibit "T", p. 7
35 Annexes "18" and "19"

document. Thus, without these documents, petitioner's claimed input VAT payment in the amount of P1,091,156.00 cannot be granted.

4. The input taxes claimed on importations without supporting documents in the amount of **P49,509.57** for lack of required documents prescribed by law.

In addition, out of claimed input VAT of P61,064,709.66[36] supported by certified true copy IEDs and original Bank Debit Advices, the amount of P4,086,514.98, as presented below, should be disallowed for the reason that the actual VAT payment cannot be ascertained from the available supporting documents.

Supplier	**IED Number**	**VAT Claimed**	**Exhibit**
Wescot Industries	26165876	105,016.76	S-114 to S-116
Daelim Industrial Co. Ltd.	26165781	1,015,343.18	S-230 to S-232
Daelim Industrial Co. Ltd.	26165754	667,185.00	S-244 to S-246
Daelim Industrial Co. Ltd.	26295936	293,106.07	S-068 to 070
Daelim Industrial Co. Ltd.	226165727	71,828.35	S-074 to S-076
Daelim Industrial Co. Ltd.	26295814	38,030.00	S-120 to S-122
Daelim Industrial Co. Ltd.	26165797	83,361.77	S-208 to S-210
Daelim Industrial Co. Ltd.	25798717	1,592,602.45	S-252 to S-253

[36] Annex "16"

Daelim Industrial Co. Ltd.	26656235	21,989.36	S-257 to s-260
Daelim Industrial Co. Ltd.	26656226	48,269.12	S-267 to S-269
ACS Asia Ltd.	25518001	149,782.92	S-273 to S-275
TOTAL		**4,086,514.98**	

Thus, out of the P614,340,042.54 claimed input VAT on importations of capital goods, only P606,106,764.71 input tax payments is duly substantiated by the required supporting documents, computed as follows:

Claimed Input VAT on importations of capital goods		P614,340,042.54
Less: Disallowances		
Annex 17	P1,785,637.05	
Annex 18	351,840.58	
Annex 20	868,619.99	
Annex 21	1,091,156.00	
Annex 22	49,509.57	
Rounding-off difference	(0.34)	
Additional Disallowances (part of Annex 16)	4,086,514.98	8,233,277.83
Substantiated Input VAT on importations of capital goods		**P606,106,764.71**

While it appears that petitioner paid input tax of P606,106,764.71, nevertheless, petitioner failed to prove that the related importations were treated as capital goods. Save for the VAT Return for the 3rd quarter of 2000, IEDs/IEIRDs, bank OR/ debit advices, suppliers' official receipts and invoices which merely prove that petitioner had indeed paid for the said importations of capital goods, nothing in the documents offered by petitioner proves capitalization of the same. To stress, it does not only mean that the capital goods are depreciable in nature, but rather, petitioner must have treated the same as its depreciable asset or as part of its properties/assets in its books. The absence of such is fatal to the present claim. Therefore, for petitioner's failure to prove that the subject importations of goods and services were treated as depreciable assets in its books of accounts, the related input VAT of P606,106,764.71 cannot be granted.

WHEREFORE, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of P45,911,253.27 representing unutilized input VAT paid by petitioner on its domestic purchases of goods and services for the 3rd quarter of taxable year 2000.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(with Separate Concurring Opinion)
ERNESTO D. ACOSTA
Presiding Justice

Juanito C. Castañeda, Jr.
(with Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(Concurs with Justice Castaneda's Dissenting Opinion)
ERLINDA P. UY
Associate Justice

See attached Separate Concurring & Dissenting Opinion

(with Concurring and Dissenting Opinion)
OLGA PALANCA-ENRIQUEZ
Associate Justice

(Concurs with Ponente and Justice Acosta's Concurring Opinion)
ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
(Concurs with Justice Castaneda's Dissenting Opinion)
CIELITO N. MINDARO GRULLA
Associate Justice

AMELIA C. COTANGCO-MANALASTAS
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice