REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

MINDANAO II GEOTHERMAL PARTNERSHIP,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 6787

Members:

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

Promulgated:
JAN 06 2009 11:45 pm

x--x

AMENDED DECISION

***CASANOVA, J.*:**

Submitted to Us for resolution is petitioner's "**Motion for Reconsideration/New Trial,"** filed on March 19, 2008, of Our Decision promulgated on February 20, 2008 *sans* respondent's comment. The dispositive portion of the assailed Decision is as follows:

> "**WHEREFORE**, for failure of petitioner to properly substantiate its claimed zero-rated sales of services, the Petition for Review is **DISMISSED**. Accordingly, petitioner's refund claim in the amount of P3,536,550.99 is hereby **DENIED**.
>
> **SO ORDERED**."

In the instant Motion, petitioner presented his arguments to be as follows:

"I. THE VAT ZERO RATING OF PETITIONER'S SALE OF GENERATED POWER IS NOT ANCHORED ON SECTION 108 (B)(3) OF THE 1997 NIRC.

II. THE BROAD AND SWEEPING RULING OF THIS HONORABLE COURT EN BANC IN CTA CASE NO. 197 AND CTA CASE NO. 103, BOTH ENTITLED *"AMERICAN EXPRESS INTERNATIONAL, INC. – PHILIPPINE BRANCH VS. COMMISSIONER OF THE INTERNAL REVENUE"* `IS NOT APPLICABLE IN THE PRESENT CASE.

III. THE EXHORTATION OF THE HONORABLE SUPREME COURT IN G.R. NO. 166732 ENTITLED *'INTEL TECHNOLOGY PHILIPPINES, INC. VS. COMMISSIONER OF INTERNAL REVENUE'* SHOULD BE APPLIED BY ANALOGY IN THE PRESENT CASE.

IV. IN ANY EVENT, TO COMPLY WITH THE PERCEIVED - REQUIREMENT OF THIS HONORABLE COURT, PETITIONER RESPECTFULLY SUBMITS HEREWITH THROUGH THE AFFIDAVIT OF MERIT EXECUTED BY MS. IVY ACOSTA, SENIOR ACCOUNTANT OF PETITIONER, THE OFFICIAL RECEIPTS CORRESPONDING TO THE SUBMITTED VAT-COMPLIANT SALES INVOICES."

On July 11, 2008, this Court issued a Resolution upholding petitioner's first argument. In the same Resolution, the second and third arguments were denied.

Anent the last argument, this Court issued the following dispositive portion:

"**WHEREFORE**, let a Commissioner's Hearing be set for the pre-marking of documents on July 29, 2008 at 1:30 p.m. Thereafter, let a hearing for the presentation of these documents be held on August 5, 2008 at 9:00 a.m. Meanwhile, the resolution of the **'Motion for Reconsideration/New Trial'** is hereby **HELD IN ABEYANCE** until after petitioner had rested its case."

In compliance with the July 11, 2008 Resolution, petitioner submitted its additional documentary evidence which this Court admitted *via* another

Resolution dated October 9, 2008. Likewise, petitioner's Motion for Reconsideration/New Trial was submitted for resolution.

After considering petitioner's supplemental evidence, this Court resolves to partially grant petitioner's claim.

The commissioned independent CPA arrived at the following finding in his report[1]:

> "I believe that the amount of P3,536,504.59 (Annex A) represents a valid claim for input VAT refund. This is net of P46.40 which may be valid VAT transactions but are not within the period being claimed."

However, upon closer scrutiny of this Court, the following input VAT should be disallowed:

Month		*Input Vat*	*Invoice #*	**Reasons**	**Exhibit**
September	Php	39,813.94	141	No OR, Invoice Only	Exhibit L-20
December		77.46	28133	No OR, Invoice Only	Exhibit L-60
December		19,940.29	162	No OR, Invoice Only	Exhibit L-61
December		364,792.57	163	No OR, Invoice Only	Exhibit L-62
December		21,344.13	164	No OR, Invoice Only	Exhibit L-63
December		46,039.67	165	No OR, Invoice Only	Exhibit L-64
TOTAL	**Php**	**492,008.06**			

As stated in the assailed Decision, sale of services must comply with the invoicing requirements under Section 113 of the NIRC; that is should submit official receipts in support of its claim. Considering that the above sales invoices were not supported by VAT official receipts, this Court cannot consider it in granting petitioner's claim.

[1] Exhibit 'K', Rollo, p. 240.

Hence, the claimed amount of P3,536,550.99 is reduced to P3,044,496.53, computed as follows:

Input VAT subject of claim	Php	3,536,550.99
Less:		
Disallowances of Independent CPA		46.40
No Official Receipts		492,008.06
Net VAT Refund Claim	**Php**	**3,044,496.53**

WHEREFORE, petitioner's Motion for Reconsideration/New Trial is hereby **PARTIALLY GRANTED.** The Decision promulgated on February 20, 2008 is hereby **AMENDED.** Respondent is **ORDERED TO ISSUE** a tax credit certificate in the amount of **THREE MILLION FORTY FOUR THOUSAND FOUR HUNDRED NINETY-SIX PESOS AND 53/100**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With Separate Concurring & Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
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 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