REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>SPECIAL SECOND DIVISION</u>

FILPRIDE RESOURCES INCORPORATED,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8233

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Mindaro-Grulla, *<u>JJ.</u>*

Promulgated:

NOV 12 2013

4:27 p.m.

x - x

DECISION

CASTAÑEDA, JR., <u>J.</u>:

This is a Petition for Review filed on February 18, 2011 by Filpride Resources Incorporated (petitioner) to appeal the Final Decision on Disputed Assessment (FDDA)[1] of the Commissioner of Internal Revenue, through Zenaida G. Garcia, the Assistant Commissioner-Large Taxpayers Service, finding petitioner liable for alleged deficiency income tax, expanded withholding tax (EWT) and value-added tax (VAT) in the aggregate amount of ₱61,343,211.66 covering taxable year 2006.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at Unit 57 Westgate Office, Sampson Road, Central Business District, Subic Bay Freeport Zone.[2] It is registered with the Bureau of Internal Revenue (BIR) with Taxpayer's Identification Number

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[1] Exhibit "I".
[2] Par. 1, Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), docket, p. 182.

216-589-000, as evidenced by Certificate of Registration No. OCN 8RC0000018692 dated March 4, 1998.[3]

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue, who is duly appointed and empowered to perform the duties of her office, including, among others, the power to decide, cancel, and abate tax liabilities as provided by law. She holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner received from respondent a Preliminary Assessment Notice (PAN) dated November 18, 2009, finding petitioner liable for deficiency taxes for taxable year 2006.[4]

After filing its Reply[5] to the PAN, petitioner received from respondent a Formal Letter of Demand (FLD) dated January 19, 2010 and Formal Assessment Notices (FAN) all dated January 18, 2010, with Details of Discrepancy, alleging that petitioner had deficiency taxes for taxable year 2006 in the total amount of ₱759,488,615.53, broken down as follows:[6]

Income Tax	₱ 611,207,996.55
Value-added Tax	130,855,305.74
Withholding Tax-Expanded	13,418,511.96
Excise Tax	4,006,801.28
TOTAL	**₱759,488,615.53**

On February 24, 2010, petitioner filed a letter-protest addressed to respondent, through Zenaida G. Garcia, the OIC–Assistant Commissioner for the Large Taxpayer's Service-Excise.[7]

On April 26, 2010, petitioner submitted relevant documents to respondent addressed to Sarah B. Mopia, OIC Chief, LT Excise Audit Division I and Luzviminda Pedrosa, Examiner, LT Excise Audit Division I, in support of its protest letter filed on February 24, 2010.[8] Thereafter, on October 26, 2010, petitioner submitted additional documents to respondent addressed to Rolando M. Balbido, Group

[3] Par. 3, Facts Admitted, JSFI, docket, p. 183; Exhibit "B".
[4] Par. 4, Facts Admitted, JSFI, docket, p. 183; Exhibit "C"; Exhibit "7".
[5] Exhibits "D" to "D-7".
[6] Par. 5, Facts Admitted, JSFI, docket, p. 183; Exhibits "E" to "E-5"; Exhibit "10".
[7] Exhibits "F" and "J".
[8] Exhibits "G" and "J".

Supervisor, LT Excise Audit Division I and Luzviminda Pedrosa, Examiner, LT Excise Audit Division I.[9]

On January 19, 2011, petitioner received the Final Decision on Disputed Assessment and Audit Result/Assessment Notice all dated January 18, 2011 issued by respondent. In the said FDDA and revised Assessment Notice, respondent declared that there is still due from petitioner tax liabilities for taxable year 2006 in the reduced amount of ₱61,343,211.66, inclusive of interest and compromise penalties, computed as follows:[10]

TAX TYPE	BASIC	INTEREST	COMP.	TOTAL
Income	₱ 19,863,202.71	₱ 15,073,985.91	₱ 50,000.00	₱ 34,987,188.62
VAT	14,512,211.98	11,658,095.25	50,000.00	26,220,307.23
WE	68,393.22	55,322.59	12,000.00	135,715.81
TOTAL	**₱34,443,807.91**	**₱ 26,787,403.75**	**₱112,000.00**	**₱ 61,343,211.66**

Hence, on February 18, 2011, petitioner filed the instant Petition for Review[11].

Respondent filed her Answer[12] on March 23, 2011, interposing the following defenses:

> "7. Petitioner Filpride Resources Incorporated is liable to pay its deficiency income tax, value-added tax and withholding tax including increments in the total amount of Sixty One Million Three Hundred Forty Three Thousand Two Hundred Eleven and 66/100 (₱61,343,211.66).
>
> 8. Comprehensive study disclosed that petitioner is liable to pay the total deficiency income tax assessment.
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> Analysis of records and documents revealed that the volume of fuel received per Import Entry Internal Revenue Declaration is 23,728,291.02 liters but per Official Register Book, it was 22,331,596 liters only. Petitioner's claim that the discrepancy of ₱1,396,695.02 liters was directly delivered to customers is not tenable

[9] Exhibits "H" and "J".
[10] Par. 6, Facts Admitted, JSFI, docket, p. 184; Exhibits "I" to "I-3".
[11] Docket, pp. 4 to 19.
[12] Docket, pp. 132 to 141.

considering that the arrival date of the fuel per IEIRD with SN 69914783 is March 20, 2006, while the date per sales invoice issued to Sea Oil Philippines is December 18, 2006 Withdrawal Certificate No. WCP2005 00065531 is dated December 17, 2006 same date as per Lighter Loading/Delivery Report.

The volume of fuel per SN 69914783 in kilogram was converted to liters; thus, the undeclared sales from undeclared receipts of imported diesel increased to ₱39,735,973.36. The imposition of income tax on the undeclared sales was sustained pursuant to Section 32 of the NIRC.

Verification disclosed that petitioner's sales to Manila International Airport Authority as appearing in the certificates of creditable withholding VAT or BIR Form No. 2306 amounted to ₱14,299,945.59 while the reported sales as appearing in its Summary List of Sales (SLS) amounted to ₱4,131,271.33. The discrepancy amounting to ₱10,168,674.56 was assessed pursuant to Section 32 of the NIRC.

Income payments amounting to ₱6,839,322.38 were not subjected to withholding tax; hence, the claim for deduction for income tax was disallowed pursuant to Section 34(K) of the NIRC.

Validation of certificates of creditable withholding tax submitted disclosed that the amount of ₱2,813.10 is unsupported. Hence, the assessment was sustained pursuant to Section 58 of the NIRC, as implemented by Section 2.58.5 of Revenue Regulations No. 2-98.

9. With respect to value-added tax assessments, verification of accounting records and upon considering the discrepancy in sales due to VAT rate transition revealed that the amount of sales reported in VAT return amounted to ₱2,002,081,196.65 whereas the reported sales as appearing in the Income Tax Return amounted to ₱2,004,785,459.28. Petitioner failed to submit evidence that no VAT deficiency should be assessed on the difference amounting to ₱2,595,097.18. Thus, the

discrepancy was assessed pursuant to Section 106 of the NIRC.

The volume of fuel received per Import Entry Internal Revenue Declaration is 23,728,291.02 liters but in Official Register Book, the volume of fuel is only 22,331,595 liters. The claim of petitioner that the discrepancy of 1,396,695.02 liters was delivered directly to customers is not tenable considering that the arrival date of fuel per IEIRD with SN 69914783 is March 20, 2006 while the date per sales invoice issued to Sea Oil Philippines is December 18, 2006, Withdrawal Certificate No. WCP2005 00065531 is dated December 17, 2006 same date as per Lighter Loading/Delivery Report. In addition, the volume of fuel per SN 69914783 in kilogram was converted to liters; thus, the undeclared receipts of imported diesel increased to ₱39,735,973.36. The imposition of value added on the undeclared sales was sustained pursuant to Section 106 of the NIRC.

There was understatement of sales to Manila International Airport Authority amounting to ₱10,168,674.56 and was assessed pursuant to Section 106 of the NIRC. The amount represented the discrepancy of sales as appearing in Certificates of Creditable Withholding VAT which reported sales amounting to ₱14,299,945.59 and Summary List of Sales only declared ₱4,131,271.33.

Verification of certificates of creditable withholding VAT to support claim for VAT credits revealed that the reported sales indicated in the Summary List of sales amounted to ₱149,137,352.78 with the corresponding output VAT at the rate of 7% only; thus, the differential rate of 5% or total amount of ₱7,456,867.64 was assessed pursuant to Section 106 of the NIRC.

Verification likewise disclosed that the input tax claimed from Herma Shipping and Transport Corp. in the amount of ₱54,124.39 is supported with official receipt dated January 7 & 8, 2007. Evidently, the documents pertain to the period beyond 2006. Thus, it was properly disallowed pursuant to Sections 110 and 113 of the NIRC.

Study of petitioner's sales invoice and official receipts to validate its claim for input tax credits disclosed that the amount of ₱643,883.15 was found to be purchases from suppliers who are non-VAT with invalid TINs, invalid SI/OR, registered as one time taxpayer (ONETT) and cannot be found in the BIR database. Thus, the claim was properly disallowed pursuant to Section 110 of the NIRC.

Comprehensive study of certificates of creditable withholding VAT to support its claim for VAT credits in the amount of ₱30,019,105.22 disclosed that only the amount of ₱30,076,472.61 is applicable for the taxable year 2006. Hence, the difference in the amount of ₱57,367.39 was properly disallowed pursuant to Section 114 of the NIRC, as implemented by Section 4.110-8 of Revenue Regulations 16-2005.

10. With respect to withholding tax assessments, reconciliation and analysis of the income payments, it was determined that withholding tax in the amount of ₱68,393.22 is still due and unpaid. Thus, it was properly assessed pursuant to Section 57 (B) of the NIRC.

13. Assessments are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. **(Marcos II vs. Court of Appeals G.R. No. 120880 June 5, 1997)**

14. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise the presumption of correctness of tax assessment stands **(Commissioner of Internal Revenue vs. Hantex Trading Co. Inc., G.R. No. 136975, March 31, 2005)** ge

15. Petitioner has not pointed out any provision or item in the assessment notice which bears a trace of falsity. Its averments were based on conjectures, surmises and speculations. These cannot supply the basis for the charge of impropriety in the assessments made."

On April 8, 2011, petitioner filed its Reply[13] to respondent's Answer.

On June 8, 2011, the parties filed with this Court their Joint Stipulation of Facts and Issues[14], which was approved in a Resolution[15] dated June 14, 2011. In the same Resolution, the Court considered the pre-trial terminated and ordered the parties to proceed with the trial on the merits and to only present evidence not covered by their Joint Stipulation of Facts.

On August 4, 2011, this Court, upon petitioner's Motion for Commissioning of Independent Certified Public Accountant[16], appointed Ronald B. Alvarez as duly commissioned Independent CPA.[17]

During trial, petitioner presented Aniebeth Dionzon[18] and Ronald B. Alvarez[19] as its witnesses.

Thereafter, petitioner filed its Formal Offer of Evidence[20] on April 17, 2012, submitting Exhibits "A" to "JJ", inclusive of sub-markings; which this Court admitted in Resolutions dated May 22, 2012[21] and July 19, 2012[22].

On the other hand, respondent presented as her sole witness Ms. Luzviminda A. Pedroso.[23] *Jl*

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[13] Docket, pp. 145 to 148.
[14] Docket, pp. 182 to 185.
[15] Docket, p. 188.
[16] Docket, pp. 214 to 216.
[17] Minutes of Hearing dated August 4, 2011, docket, p. 229.
[18] Minutes of Hearing dated June 22, 2011, July 18, 2011, February 15, 2012, and March 28, 2012, docket, pp. 197, 207, 349, and 355.
[19] Minutes of Hearing dated October 19, 2011 and November 16, 2011, docket, pp. 252 and 279.
[20] Docket, pp. 424 to 452.
[21] Docket, pp. 464 to 465.
[22] Docket, p. 477.
[23] Minutes of Hearing dated August 1, 2012, docket, pp. 518 and 519.

On September 24, 2012, respondent filed her Formal Offer of Documentary Evidence[24], submitting Exhibits "1" to "15-a"; which this Court admitted in the Resolution[25] dated November 20, 2012.

On February 12, 2013, the case was submitted for decision taking into consideration petitioner's Memorandum[26] filed on January 28, 2013 and the Report dated February 6, 2013 of the Records Division that respondent failed to submit a Memorandum.[27]

The parties submitted the following jointly stipulated issue[28] for this Court's consideration:

> "Whether or not Petitioner is liable for deficiency income, value-added and withholding tax for the taxable year 2006 amounting to Sixty One Million Three Hundred Forty Three Thousand Two Hundred Eleven Pesos and Sixty Six Centavos (P61,343,211.66)."

I. <u>Deficiency Income Tax and Expanded Withholding Tax</u>

Respondent assessed petitioner of deficiency income tax for taxable year 2006 in the aggregate amount of ₱34,987,188.62, computed as follows:[29]

Taxable income per ITR			₱ 3,836,582.76
Add: Adjustments per audit			
Undeclared sales from undeclared receipts of imported diesel		₱39,735,973.36	
Understated sales to MIAA			
Per Certificate of Creditable WVAT	₱ 14,299,945.89		
Per Summary List of Sales	4,131,271.33	10,168,674.56	
Income payments not subjected to EWT		6,839,322.38	56,743,970.30
Total net income subject to income tax per audit			₱ 60,580,553.06
Tax rate			35%
Tax due			₱ 21,203,193.57
Less: Tax Credits/Payments			
Prior year's tax credit		₱ 38,298.48	
Creditable withholding tax (CWT)	₱ 5,038,140.73		
Less: No supporting cert. of CWT	₱ 2,813.10		
Carried over to succeeding quarter per ITR	3,733,635.25		
Total	₱ 3,736,448.35	1,301,692.38	1,339,990.86
Income tax still due			₱ 19,863,202.71

[24] Docket, pp. 527 to 536.
[25] Docket, pp. 552 to 553.
[26] Docket, pp. 567 to 629.
[27] Docket, p. 631.
[28] Issue, JSFI, docket, p. 184.
[29] Exhibits "I" and "M-1"; BIR Records, Folder 1, Part 2, p. 1327.

Add: Penalties		
Interest (4.15.07 to 01.31.11)	₱ 15,073,985.91	
Compromise	50,000.00	15,123,985.91
Total Deficiency Income Tax		**₱ 34,987,188.62**

The determination of whether or not the assessment is correct shall depend on the propriety of the income imputed as well as the deductible expense and tax credits disallowed by respondent, namely:

a. Undeclared sales from undeclared receipts of imported diesel	₱ 39,735,973.36
b. Understated sales to MIAA	₱ 10,168,674.56
c. Income payments not subjected to EWT	₱ 6,839,322.38
d. No supporting certificate of CWT	₱ 2,813.10
e. Tax credits carried over to succeeding quarter per ITR	₱ 3,733,635.25

The enumerated items shall be discussed in *seriatim*.

a. Undeclared sales from undeclared receipts of imported diesel - ₱39,735,973.36

In the FDDA, the analysis of records and documents revealed that the volume of fuel received per Import Entry Internal Revenue Declaration (IEIRD) was 23,728,291.02 liters[30]; but per Official Register Book (ORB), the volume of fuel was 22,331,596 liters[31] only. The difference of 1,396,695.02 liters was assessed as undeclared receipt, computed as follows:[32]

Total receipts of diesel per IEIRD (in liters)	23,728,291.02
Total receipts of diesel per ORB (in liters)	22,331,596.00
Undeclared receipts	1,396,695.02
Multiply by average selling price per SLS	₱ 28.45
Undeclared sales subject to income tax & VAT	**₱ 39,735,973.32**

Petitioner's Chief Financial Officer, Ms. Aniebeth Dionzon, explained the discrepancy in this wise:[33]

> A5: xxx There is a discrepancy of 1,396,695.02 liters, which the BIR treated as undeclared sales amounting to ₱39,735,973.36. xxx

[30] Exhibit "M-1-2".
[31] Exhibit "M-1-3".
[32] Exhibit "M-1-1".
[33] Exhibit "K".

Q6: Do you agree with this particular assessment?

A6: We disagree. The discrepancy in the amount of ₱39,735,973.36 was partly due to the direct deliveries made by Petitioner to Sea Oil Philippines as shown in Petitioner's IEIRD No. SN 76177656 dated 15 December 2006, with Withdrawal Certificate No. WCP2005 00065531 dated 17 December 2006 and Sales Invoice No. 01383 dated 18 December 2006. Accordingly, the total receipts of diesel per ORB should be adjusted to include the said direct fuel deliveries of 503,974 liters; the adjusted total receipt of diesel per ORB is 22,835,570 liters.

With respect to Petitioner's IEIRD No. SN 69914783 dated 17 March 2006, it appears that the weight appearing on the face of the document is 3,284,707 kilograms. However, further investigation has shown that the real volume of the goods is 3,425,028 liters as per Bill of Lading No. WDGDSMN-2610B dated 16 March 2006. Accordingly, the total receipts of diesel per IEIRD should be adjusted by deducting the 4,317,747.35 liters of diesel which is the converted volume of 3,284,707 kilograms of diesel. Thereafter, the correct volume of diesel, which is 3,425,028 liters, should be added back. Based on this computation, the adjusted total receipt of diesel per IEIRD is 22,835,571.67 liters. The difference of 1.67 liters between the ORB and IEIRD is likely due to rounding of decimal points."

The Independent CPA made a comparison of the findings per respondent's examiner, petitioner's books, and his audit findings, as presented below:[34]

IEIRD No.	**Date**	**Quantity in Liters**			**Variance**
		Per BIR	**Per Books**	**Per Audit**	
73100106	7/12/2006	550,000	550,000	550,000	-
73224907	8/3/2006	2,030,000	2,030,000	2,030,000	-
73871436	8/18/2006	1,189,686	1,189,686	1,189,686	-
73871411	8/24/2006	800,000	800,000	800,000	-

[34] Exhibit "N".

74352381	9/8/2006	700,000	700,000	700,000	-
74352336	9/11/2006	700,000	700,000	700,000	-
74352415	9/16/2006	2,598,419	2,598,419	2,598,419	-
76177656	12/15/2006	2,000,000	2,000,000	2,000,000	-
				(503,974)	503,974
77725173	12/29/2006	179,439	179,439	179,439	-
69762253	3/8/2006	2,500,000	2,500,000	2,500,000	-
70433255	4/11/2006	2,163,000	2,163,000	2,163,000	-
71248274	5/11/2006	1,000,000	1,000,000	1,000,000	-
71246752	5/12/2006	1,000,000	1,000,000	1,000,000	-
72000126	6/6/2006	2,000,000	2,000,000	2,000,000	-
69914783	3/15/2006	4,317,747	3,425,026	3,425,026	892,721
TOTAL		**23,728,291.02**	**22,835,569.67**	**22,331,595.67**	**1,396,695.35**

He explained the variance, thus:[35]

"After a careful validation of evidences provided, we found out that the above discrepancy resulted from two errors:

a. BIR converted the weight in kilograms to liters as shown in their final assessment **(Exhibit M-1-2)** whereas per Import Entry Declaration No. 69914783 **(Exhibit N-15)** and the Petitioner's Bill of Lading **(Exhibit N-20)**, the volume in liters is already stated. This error shows a variance of 892,721.35 liters.

b.

Total undeclared receipts per BIR Assessment	1,396,695.02
Discrepancy per conversion	892,721.35
Remaining Discrepancy	503,973.67

This pertains to the direct delivery from the Coastal Subic to Sea Oil **(Exhibit N-8)**, IEIRD No. 76177656 dated December 15, 2006 and not from IEIRD with SN no. 69914783 dated March 20, 2006 **(Exhibit N-15)**. This resulted to an over-assessment of the BIR with a quantity of 503,974 liters. Please refer to:

xxx xxx xxx

The sum of the two errors mentioned above, is equivalent to the BIR's assessment of under declaration of 1,396,695.02 liters with the amount of ₱39,735,973.36. The claim of the BIR is not valid." *gr*

[35] Exhibit "L", pp. 3 to 4; Exhibit "CC", A10.

Anent item "a" above, examination of Annex A-2.1 of the FDDA[36] shows that respondent's examiner picked up the correct quantity of diesel of 3,284,707 kilograms as declared in IEIRD No. 69914783.[37] However, the corresponding Bill of Lading shows quantity of 3,425,026 liters. The difference is computed as follows:

Exhibit	**Document**	**Kilograms**	**Ave. conversion rate[38]**	**Liters**
N-15	IEIRD No. 69914783 (declared quantity in kilograms)	3,284,707.00	1.31450	4,317,747.35
N-20	Bill of Lading No. WDGDSMN-2610-B (declared quantity in liters)	2,605,573.22	1.31450	3,425,026.00
	Difference	**679,133.78**	**1.31450**	**892,721.35**

The Court reiterates the following provision of the Tariffs and Customs Code of the Philippines:

"SEC. 1304. *Declaration of the Import Entry.* - Except in case of informal entry, no entry of imported article shall be effected until there shall have been submitted to the collector a written declaration under penalties of falsification or perjury, in such form as shall be prescribed by the Commissioner, containing statements in substance as follows:

a. That the entry delivered to the Collector contains a full account of the value or price of said articles, including subject of the entry;

b. That the invoice and entry contain a just and faithful account of the value or price of said articles including and specifying the value of all containers or coverings, and that nothing has been omitted, therefrom or concealed whereby the government of the Republic of the Philippines might be defrauded of any part of the duties lawfully due on the articles;

c. **That, to the best of the declarant's information and belief, all the invoices and bills of**

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[36] Exhibit "M-1-2".
[37] Exhibit "N-15".
[38] Exhibit "M-1-2".

> **lading relating to the articles are the only ones in existence relating to the importation in question and that they are in the state in which they were actually received by him;**
>
> d. **That, to the best of the declarant's information and belief, the entries, invoices and bill of lading and the declaration thereon under penalties of falsification of perjury are in all respects genuine and true, and were made by the person by whom the same purpose to have been made.**" *(Emphasis supplied)*

Considering the foregoing, petitioner recorded in its ORB the quantity it received based on the information declared on the Bill of Lading. However, petitioner failed to explain the discrepancy between the quantity declared per IEIRD and Bill of Lading. While it may be correct for petitioner to use the quantity per Bill of Lading, it failed to prove why it was wrong for respondent to use the quantity per IEIRD.

Regarding item "b", it can be gathered that the ORB from which respondent's examiner picked up the quantity of imported diesel was from the bonded warehouse where petitioner's imported diesel was stored. Naturally, the imported diesel directly delivered to Sea Oil Philippines could not have been included in the ORB of the bonded warehouse. Petitioner submitted the following evidence to support its allegation:

1. Dryness Certificate dated December 18, 2006 issued by Batangas Bay Carriers, Inc. (BBCI);[39]
2. Lighter Loading/Delivery Reports of BBCI dated December 17, 2006 and December 18, 2006;[40]
3. Notices of Readiness dated December 16, 2006 and December 18, 2006;[41]
4. Sales Invoice No. 01383 issued by petitioner to Sea Oil Philippines;[42]
5. Subic Bay Metropolitan Authority Gate Pass;[43]

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[39] Exhibit "N-16".
[40] Exhibit "N-17".
[41] Exhibit "N-18".
[42] Exhibit "N-19".
[43] Exhibit "EE".

6. BOC Inspector's Certificate of Lading;[44] and
7. Quantity Report by SGS (Subic Bay) Inc. dated December 17, 2006.[45]

A scrutiny of the foregoing documents shows that indeed petitioner delivered and sold the 503,973.67 liters of fuel with peso amount of ₱12,599,350.00 (net of VAT) to Sea Oil Philippines on December 18, 2006 and the same was recorded as part of the ₱1,985,241,196.54 sales per petitioner's 2006 Annual Income Tax Return (ITR).[46]

In fine, only the amount of ₱27,136,623.32 (₱39,735,973.36 less ₱12,599,350.00) shall be considered as undeclared sales of petitioner for 2006. However, the related cost should be deducted from the undeclared sales based on petitioner's cost ratio as computed from the total sales and cost of sales declared in its Annual ITR for the year 2006, detailed as follows:

Total sales	₱ 1,985,241,196.54
Less: Total cost of sales	1,938,163,357.97
Gross Profit	**₱ 47,077,838.57**
Gross Profit Ratio	2.37139%
Cost Ratio	**97.62861%**
Undeclared sales	₱ 27,136,623.32
Multiply by cost ratio	97.62861%
Cost of undeclared sales	**₱ 26,493,107.77**

Hence, petitioner's undeclared income from undeclared sales resulting from undeclared receipts of imported diesel amounts to ₱643,515.55, computed as follows:

Undeclared sales from undeclared receipts of imported diesel	₱ 27,136,623.32
Less: Cost of undeclared sales	26,493,107.77
Undeclared income	**₱ 643,515.55**

b. Understated sales to MIAA - ₱10,168,674.56

When petitioner submitted certificates of creditable withholding VAT to support its claimed creditable withholding VAT for the year

[44] Exhibit "FF".
[45] Exhibit "GG".
[46] Exhibit "Q-1".

2006, respondent found the following discrepancy and assessed petitioner for understated sales to Manila International Airport Authority (MIAA):

Per Certificate of Creditable WVAT[47]	₱ 14,299,945.89
Per Summary List of Sales[48]	4,131,271.33
Difference	**₱ 10,168,674.56**

Petitioner asserted that the difference found by respondent's examiner arose merely from the erroneous inclusion of certain Certificates of Final Tax Withheld at Source, which pertain to sales made in prior years.[49]

The Independent CPA examined the certificates of withholding submitted by petitioner relating to its sales to MIAA and compared them with respondent's findings, and found the following:

Exhibit	Period Covered	VAT Withheld	Income Payments per Certificate of Final Tax Withheld at Source	Per BIR[50]	Variance
O-1	1/1/05 to 10/31/05	₱ 418,774.97	₱ 13,959,165.67	₱ 8,375,499.40	₱ 5,583,666.27
O-2	10/1/05 to 12/31/05	19,650.00	432,300.00	393,000.00	39,300.00
O-3	1/1/06 to 9/30/06	164,040.70	3,263,195.79	3,283,195.79	(20,000.00)
O-4	11/1/05 to 11/30/05	38,394.55	844,680.10	844,680.10	-
O-5	11/1/06 to 11/30/06	14,383.92	287,678.40	287,678.40	-
O-6	8/1/06 to 8/31/06	15,124.99	302,499.80	302,499.80	-
O-7	7/1/06 to 7/31/06	18,616.07	372,321.40	372,321.40	-
O-8	9/1/06 to 9/30/06	22,053.55	441,071.00	441,071.00	-
TOTAL		**₱ 711,038.75**	**₱19,902,912.16**	**₱14,299,945.89**	**₱ 5,602,966.27**

The Court also found that petitioner submitted a Certificate of Withholding issued by MIAA covering the period January 2007 with income payment in the amount of ₱715,247.00 and a corresponding withholding tax of ₱35,762.35.[51] Examination of the related invoice reveals that said income payment pertains to the following Sales Invoices issued by petitioner in the year 2006: Jr

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[47] Exhibit "M-1-5".
[48] Exhibit "M-1-6".
[49] Par. 27, Petitioner's Memorandum, docket, p. 585.
[50] Exhibit "M-1-5".
[51] Exhibit "O-9".

Exhibit	Invoice No.	Invoice Date	Gross Amount	Net of VAT
O-29	01305	11/3/2006	₱ 333,782.00	₱ 298,019.64
O-30	01306	11/6/2006	467,294.80	417,227.50
	TOTAL		**₱ 801,076.80**	**₱ 715,247.14**

It should be noted that the foregoing was already included in the total income payment of ₱4,131,271.33, as per Summary List of Sales used by respondent in her comparison but not included in the total income payment of ₱19,902,912.16, per certificate of final tax withheld at source. Thus, necessary adjustment should be made. Consequently, the difference found by respondent should be ₱16,486,887.83, computed as follows:

Income Per Certificate of Creditable WVAT*	₱ 20,618,159.16
Income Per Summary List of Sales	4,131,271.33
Difference	**₱16,486,887.83**

₱19,902,912.16 + ₱715,247.00 =* *₱20,618,159.16***

As correctly pointed out by petitioner, the certificates of withholding include income payments for periods other than for taxable year 2006. Only the amount ₱5,382,013.39 pertain to year 2006, to wit:

Exhibit	Period Covered	VAT Withheld	Income Payments per Certificate of Final Tax Withheld at Source
O-3	1/1/06 to 9/30/06	₱ 164,040.70	₱ 3,263,195.79
O-5	11/1/06 to 11/30/06	14,383.92	287,678.40
O-6	8/1/06 to 8/31/06	15,124.99	302,499.80
O-7	7/1/06 to 7/31/06	18,616.07	372,321.40
O-8	9/1/06 to 9/30/06	22,053.55	441,071.00
O-9	1/1/07 to 1/31/07	35,762.35	715,247.00
TOTAL		**₱ 269,981.58**	**₱ 5,382,013.39**

However, the Independent CPA likewise found, by verifying the foregoing with the official receipts issued by petitioner to MIAA, that income payments as reflected in certificates of withholding for the months of July, August, and September 2006 in the respective amounts of ₱372,321.40, ₱302,499.80, and ₱441,071.00 were already included in the amount of ₱3,263,195.79 *(Exhibit "O-3")* representing Certificate of Withholding for the period January to September 2006, as detailed below:

Exhibit	Invoice No.	Invoice Date	Gross Amount	Net of VAT	BIR Form No. 2306	
O-31	24580	12/29/2005	₱ 193,800.00	₱ 176,181.82		
O-10	24635	1/12/2006	199,500.60	181,364.18		
O-11	24853	1/27/2006	210,600.00	191,454.55		
O-12	25287	3/15/2006	211,800.00	189,107.14		
O-13	25380	3/30/2006	210,300.00	187,767.86		
O-14	25017	2/9/2006	214,800.00	191,785.71		
O-15	25258	3/4/2006	214,800.00	191,785.71		
O-16	00060	4/21/2006	222,000.00	198,214.29		
O-17	00121	5/10/2006	232,800.00	207,857.14		
O-18	00152	5/24/2006	238,800.00	213,214.29		
O-19	00236	6/14/2006	244,800.00	218,571.43	₱ 2,147,304.12	
O-20	00285	7/6/2006	249,000.00	222,321.43		
O-21	00554	7/21/2006	168,000.80	150,000.70	372,322.13	Exh. O-7
O-22	00609	8/4/2006	168,800.80	150,715.00		
O-23	00649	8/11/2006	170,000.00	151,785.71	302,500.71	Exh. O-6
O-24	00801	8/24/2006	170,000.00	151,785.71		
O-25	00904	9/4/2006	164,000.00	146,428.57		
O-26	00935	9/13/2006	160,000.00	142,857.14	441,071.42	Exh. O-8
TOTAL			**₱ 3,643,802.20**	**₱3,263,198.39**	**₱3,263,198.39**	Exh. O-3

Thus, total income payments from MIAA for the year 2006 would amount to ₱4,266,121.19, computed as follows:

Exhibit	Period Covered	VAT Withheld	Income Payments
O-3	1/1/06 to 9/30/06	₱ 164,040.70	₱ 3,263,195.79
O-5	11/1/06 to 11/30/06	14,383.92	287,678.40[52]
O-9	1/1/07 to 1/31/07	35,762.35	715,247.00
TOTAL		**₱ 214,186.97**	**₱ 4,266,121.19**

Comparing the said amount with petitioner's Summary List of Sales (SLS) to MIAA for the year 2006, there remains a discrepancy of ₱134,849.86, as computed below:

Per Certificate of Creditable WVAT	₱ 4,266,121.19
Per Summary List of Sales	4,131,271.33
Difference	**₱ 134,849.86**

The said unaccounted discrepancy is petitioner's undeclared income that should be subjected to income tax.

c. Income payments not subjected to withholding tax - ₱6,839,322.38

[52] Supported by sales invoices per Exhibits "O-27" and "O-28".

By comparing petitioner's Annual ITR with its Alphalist for the year 2006, respondent found that income payments made by petitioner amounting to ₱6,839,322.38 were not subjected to withholding tax.[53] Hence, the corresponding expenses were disallowed and petitioner was assessed of deficiency income tax and deficiency expanded withholding tax.

Petitioner asserted that the discrepancy found by respondent can be attributed to the timing difference in remitting the subject withholding tax,[54] that is, the same was subjected to expanded withholding tax in the following month of January 2007 and was remitted in February 2007. Petitioner also reasoned out that as long as it can be proven that there is proof of withholding, the amount of the income payments should be allowed as deductible expense from the gross income. In this case, petitioner allegedly proved that the necessary tax was withheld on the income payments.

In support of its allegations, petitioner submitted invoices, statement of accounts, official receipts, checks issued for its purchases from TWA, Inc. for December 2006 and January 2007, and BIR Form No. 1601-E for the month of January with Alphalist of Payees[55] to prove that the corresponding taxes were withheld therefrom and remitted to the BIR in February 2007, detailed as follows:

Exhibit	Invoice No.	Invoice Date	Gross	Net	WT Due	Net of WT
P-3	23115	12/28/2006	₱ 1,512,000.00	₱ 1,350,000.00	₱ 13,500.00	₱ 1,498,500.00
P-4	23116	12/28/2006	3,162,000.00	2,823,214.29	28,232.14	3,133,767.86
P-5	21493	12/16/2006	410,200.00	366,250.00	3,662.50	406,537.50
P-6	21966	12/14/2006	367,400.40	328,036.07	3,280.36	364,120.04
P-7	21488	12/14/2006	408,800.00	365,000.00	3,650.00	405,150.00
			₱ 5,860,400.40	**₱ 5,232,500.36**	**₱ 52,325.00**	**₱ 5,808,075.40**
P-11	23501	1/12/2007	420,000.00	375,000.00	3,750.00	416,250.00
P-10	SOA 0469	1/16/2007	410,200.00	366,250.00	3,662.50	406,537.50
P-8	SOA 0478	1/25/2007	77,280.00	69,000.00	690.00	76,590.00
P-9	25094	1/29/2007	1,120,000.00	1,000,000.00	10,000.00	1,110,000.00
			₱ 2,027,480.00	**₱ 1,810,250.00**	**₱ 18,102.50**	**₱ 2,009,377.50**
TOTAL			**₱ 7,887,880.40**	**₱ 7,042,750.36**	**₱ 70,427.50**	**₱ 7,817,452.90**
Less: Overpayment on December 2006[56]				843,749.36	8,437.49	
EWT remitted for the month of January 2007[57]				**₱ 6,199,001.00**	**₱ 61,990.01**	

[53] Exhibit "M-1-4".
[54] Pars. 32, 33, 34, and 35, Petitioner's Memorandum, docket, pp. 595 to 597.
[55] Exhibits "P-1" and "P-2".
[56] Exhibit "P-22-1"; BIR Records, Folder 1, Part 1, p. 765.
[57] Exhibit "P-2-1" (Included in the remitted amount of ₱196,953.07).

As found by the Independent CPA and as verified by this Court, purchases made in December 2006 amounting to ₱5,232,500.36 (net of VAT), which formed part of the purported income payments not subjected to expanded withholding tax, were indeed subjected to expanded withholding taxes in January 2007 and remitted on February 14, 2007. Thus, only the amount of ₱1,606,822.02 remains unaccounted and petitioner should be made liable to pay deficiency income tax and withholding tax only on the said remaining discrepancy.

But, since the income payments of ₱5,232,500.36 was already due and demandable in December 2006 based on the invoice that it received, it is incumbent upon petitioner to withhold and remit to the collecting agent of the BIR the corresponding taxes thereon, pursuant to Section 2.57.4 of Revenue Regulations No. 2-98, as amended by Revenue Regulations No. 12-01, as quoted hereunder:

> "SECTION 2.57.4. *Time of Withholding.* – **The obligation of the payor to deduct and withhold the tax under Section 2.57 of these Regulations arises at the time an income payment is paid or payable, or the income payment is accrued or recorded as an expense or asset,** whichever is applicable, in the payor's books, whichever comes first. The term 'payable' refers to the date the obligation becomes due, demandable or legally enforceable.
>
> Provided, however, that where income is not yet paid or payable but the same has been recorded as an expense or asset, whichever is applicable, in the payor's books, the obligation to withhold shall arise in the last month of the return period in which the same is claimed as an expense or amortized for tax purposes." *(Emphasis supplied)*

Considering that the corresponding withholding taxes due thereon in the amount of ₱43,887.51 (₱52,325.00 less ₱8,437.49) was already due for payment on January 15, 2007 but was belatedly remitted only on February 14, 2007, the same shall be imputed with interest computed from January 15, 2007 until February 14, 2007, pursuant to Section 249(A) of the NIRC of 1997.

d. Unsupported Creditable Withholding Tax - ₱2,813.10

With regard to respondent's findings of unsupported creditable withholding tax for the year 2006 in the amount of ₱2,813.10, petitioner conceded for the reason that it cannot locate anymore the relevant certificates of creditable withholding tax.[58]

e. CWT carried over per return - ₱3,733,635.25

In arriving at the assessed amount of deficiency income tax of ₱34,987,188.62, respondent disallowed from the total tax credits of ₱5,076,439.21[59] the amount of ₱3,733,635.25[60] representing excess tax credits carried over to the succeeding quarter of 2007, presumably to recapture the tax benefit realized by petitioner in carrying the said amount to the succeeding year.

However, it was improper for respondent to disallow the said excess tax credits because any tax benefit derived by petitioner from the carry-over of the said amount redounds to the succeeding year 2007. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.

In fine, petitioner has no deficiency income tax liability for the year 2006, since it has sufficient tax credits to cover its income tax liability for the same year, as shown below:

Taxable Income per ITR			₱ 3,836,582.76
Add: Adjustments per audit			
Undeclared sales from undeclared receipts of imported diesel		₱ 643,515.55	
Understated Sales to MIAA		134,849.86	
Income payments not subjected to tax		1,606,822.02	2,385,187.43
Taxable Income			**₱ 6,221,770.19**
Tax Due			₱ 2,177,619.57
Less: Tax Credits/ Payments			
Prior Year's Excess Tax Credits		₱ 38,298.48	
Creditable Tax Withheld for the First Three Quarters	₱ 2,631,872.66		

[58] Par. 38, Petitioner's Memorandum, docket, p. 602.
[59] Total of Prior Year's Excess Credits of ₱38,298.48 and CWT for year 2006 in the amount of ₱5,038,140.73 (₱2,631,872.66 plus ₱2,406,268.07).
[60] Line 29 of Exhibit "Q-1".

Creditable Tax Withheld per BIR Form 2307 for the Fourth Quarter	2,406,268.07		
Total CWT for year 2006	₱ 5,038,140.73		
Less: Unsupported CWT	2,813.00	5,035,327.73	5,073,626.21
Overpayment			**(₱ 2,896,006.64)**

However, petitioner is liable to pay deficiency expanded withholding tax for the year 2006 in the amount of ₱16,068.22, computed as follows:

Income not subjected to EWT	₱ 1,606,822.02
EWT Rate	x 1%
Deficiency EWT	**₱ 16,068.22**

Likewise, petitioner shall be liable to pay the deficiency increments of ₱721.44 for late remittance of withholding taxes of ₱43,887.51, as computed below:

Deficiency on Increments for Late Remittance of Withholding Taxes	
Expanded withholding taxes due	₱ 43,887.51
Add: 20% Interest (01-15-07 to 02-14-07)	
[43,887.51 x 20% x 30 days / 365]	721.44
Total Tax Due	₱ 44,608.95
Less: Payment (02-14-07)	43,887.51
Total Amount Due	**₱ 721.44**

II. Deficiency Value-added Tax

Respondent assessed petitioner of deficiency value-added tax for the year 2006, computed as follows:[61]

Sales per return:			
Vatable sales - Non-government		₱ 1,395,908,936.48	
Vatable sales - Government		588,227,000.79	
Zero-rated sales		4,032,601.00	₱ 1,988,168,538.27
Add: Adjustments per audit			
Corrections per VAT Rate Transition:			
Total Vatable sales:			
At 10%	₱ 69,740,734.11		
At 12%	1,926,018,658.74		
Zero-rated sales	6,321,803.80	₱ 2,002,081,196.65	
Reflected per VAT Return		1,988,168,538.27	13,912,658.38
Total sales per audit			₱ 2,002,081,196.65
Understatement of sales:			

[61] Exhibits "I" and "M-1"; BIR Records, Folder 1, Part 2, pp. 1325 to 1327.

Per ITR	₱ 2,004,676,293.83		
Per VAT Return	2,002,081,196.65	2,595,097.18	
Net sales from undeclared receipts of imported diesel		39,735,973.36	
Understatement of sales to MIAA		10,168,674.56	52,499,745.11
Total sales subject to VAT as corrected			₱ 2,054,580,941.75
Less: Zero-rated sales			6,321,803.80
Total sales subject to VAT per audit			₱ 2,048,259,137.95
Output tax:			
At 10%	₱ 69,740,734.11	₱ 6,974,073.41	
At 12%	1,978,518,403.84	237,422,208.46	
	₱ 2,048,259,137.95		₱ 244,396,281.87
Add: Under-computation of output VAT on sales to government			7,456,867.64
Total output tax			₱ 251,853,149.51
Less: Input tax credits			
Claimed per VAT Return		₱ 213,493,120.97	
Less: Input tax carried over to succeeding quarter		5,485,229.89	
Total		₱ 208,007,891.08	
Less: Deductions			
Disallowed input tax:			
Herma Shipping & Transport Corp.	₱ 54,124.39		
Input tax on local purchases	643,883.16	698,007.55	207,309,883.53
VAT Payable			₱ 44,543,265.98
Less: Tax credits/Payments per return			
Total claim per VAT return		₱ 30,088,421.39	
Less: Unsupported creditable VAT		57,367.39	30,031,054.00
Deficiency VAT			₱ 14,512,211.98
Add: Penalties			
Interest (1.25.07 to 01.31.11)		₱ 11,658,095.25	
Compromise		50,000.00	11,708,095.25
Total deficiency VAT			**₱ 26,220,307.23**

a. Understatement of sales - ₱2,595,097.18

Respondent's examiner found the difference of ₱2,595,097.18 when she compared petitioner's adjusted sales per VAT Returns with the adjusted sales reported per Annual Income Tax Return for the year 2006, computed as follows:[62]

Per ITR:		
Sales/Revenues	₱ 1,985,241,196.54	
Add: Other Income	19,544,262.74	
Total gross income	₱ 2,004,785,459.28	
Less: Meralco refund not subject to VAT	(109,165.45)	₱ 2,004,676,293.83
Per VAT Returns:		
Sales - At 10%	₱ 69,740,734.11	
At 12%	1,926,018,658.74	
Total gross income	₱ 1,995,759,392.85	
Add: Zero-rated sales	6,321,803.80	2,002,081,196.65

[62] Exhibit "M-1-8".

Difference	**₱ 2,595,097.18**

Petitioner claimed that the alleged discrepancy in the amount of ₱2,595,097.18 was due to subsequent price adjustments made with respect to sales transactions covering the month of January 2006 and prior years, at which time the VAT rate was still 10%. However, due to system limitations, as the BIR's Electronic Filing and Payment System (EFPS) automatically computes 12% of the sales amount, petitioner was constrained to adjust the amount of sales as VAT base to reflect the correct amount of output tax due.[63]

In support of its allegation, petitioner submitted in evidence its Summary of Sales and Other Income[64], Detailed Schedule of Sales[65] and Other Income[66] on Per Day Basis, Reconciliation of VAT Relief vs. VAT Returns[67], and the Schedule of Quarterly Sales Transactions[68] attached to the Quarterly VAT Returns of petitioner.

After examination of petitioner's evidence, the Court finds that petitioner has no understatement of sales since it clearly illustrated how much of its gross receipts were subjected to 0%, 10% or 12% VAT rate. As correctly pointed out by petitioner, the difference was only due to VAT rate transition from 10% to 12% during the year 2006, by virtue of RA No. 9337, as clarified in Revenue Memorandum Circular (RMC) No. 22-2006. In applying the correct and applicable VAT rate, the total income for VAT purposes will be the same as the total income as reported in petitioner's Annual ITR for 2005 in the amount of ₱2,004,785,459.26. Hence, there is no understatement of sales.

b. Sales from undeclared receipts of imported diesel - ₱39,735,973.36

As previously discussed, petitioner failed to submit proof of error in the assessment pertaining to the assessed sales from undeclared receipts of imported diesel; hence, the assessment should be upheld but in the modified amount of ₱27,136,623.32.

[63] Exhibit "K", p. 5, A12; Par. 40, Petitioner's Memorandum, docket, p. 603.
[64] Exhibit "Q".
[65] Exhibit "Q-11".
[66] Exhibit "Q-12".
[67] Exhibit "Q-10".
[68] Exhibits "Q-6", "Q-7", "Q-8", and "Q-9".

c. Understatement of sales to MIAA - ₱10,168,674.56

After consideration of evidence presented with regard to respondent's assessment on petitioner's understatement of sales to MIAA amounting to ₱10,168,674.56, the Court finds that petitioner should be held liable for deficiency VAT on the adjusted discrepancy amounting to ₱134,849.86, computed as follows:

Per Certificate of Creditable WVAT	₱ 4,266,121.19
Per Summary List of Sales	4,131,271.33
Difference	**₱ 134,849.86**

d. Under-computation of output VAT on sales to government - ₱7,456,867.64

Respondent found that petitioner's sales to government for the year 2006 per SLS amounting to ₱149,137,352.78 have corresponding output tax at the rate of 7% only. As a consequence, petitioner was assessed of the remaining 5% or in the amount of ₱7,456,867.64, as shown below:[69]

Name of Customer	Goods	Rate	Output Tax (OT)	Date	OT at 5%
DPWH	₱ 1,639,799.62	0.07	₱ 109,319.98	5/31/2006	₱ 81,989.98
DPWH	1,688,579.43	0.07	112,571.97	6/30/2006	84,428.97
Subtotal	*₱ 3,328,379.05*		*₱ 221,891.95*		*₱ 166,418.95*
MIAA	₱ 210,735.00	0.07	₱ 14,049.00	4/30/2006	₱ 10,536.75
MIAA	444,735.00	0.07	29,649.00	5/31/2006	22,236.75
MIAA	212,440.09	0.07	14,263.91	6/30/2006	10,622.00
Subtotal	*₱ 867,910.09*		*₱ 57,961.91*		*₱ 43,395.50*
National Power Corporation	₱ 18,243,562.08	0.07	₱ 1,216,237.47	4/30/2006	₱ 912,178.10
National Power Corporation	57,476,184.52	0.07	3,831,745.63	5/31/2006	2,873,809.23
National Power Corporation	69,221,317.04	0.07	4,609,638.92	6/30/2006	3,461,065.85
Subtotal	*₱ 144,941,063.64*		*₱ 9,657,622.02*		*₱ 7,247,053.18*
TOTAL	**₱ 149,137,352.78**		**₱9,937,475.88**		**₱7,456,867.64**

Petitioner argued that the discrepancy arose from the erroneous computation by the BIR of the output tax. Respondent computed output tax by multiplying the tax base by 7% then dividing it by 105%. The remaining 5% computed by multiplying the tax

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[69] Exhibit "M-1-9".

base by 5% has been allegedly unpaid and therefore formed part of the assessment.[70]

Pursuant to Section 114(C) of the NIRC of 1997, as amended by RA No. 9337, as implemented by Section 4.114-2 of RR No. 16-2005, the Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall deduct and withhold a final VAT due at the rate of 5% on gross payment of account of each purchase of goods and/or services subject to ten percent (10%) (12% effective February 1, 2006) VAT. The 5% final VAT withholding rate shall represent the net VAT payable of the seller. The remaining (5%) (7% effective February 1, 2006) effectively accounts for the standard input VAT for sale of goods or services to government or any of its political subdivisions, instrumentalities or agencies, including GOCCs, in lieu of the actual input VAT directly attributable or ratably apportioned to such sales. Section 114(C) of the NIRC of 1997 and Section 4.114-2 of RR No. 16-2005 are quoted hereunder for easy reference:

> "SEC. 114. *Return and Payment of Value-added Tax.* -
>
> xxx xxx xxx
>
> (C) *Withholding of Value-Added Tax.* – The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold a final value-added tax at the rate of five percent (5%) of the gross payment thereof: *Provided,* 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 purposes of this Section, the payor or person in control of the payment shall be considered as the withholding agent." gr

[70] Exhibit "CC", A19, p. 10; Pars. 52 and 53, Petitioner's Memorandum, docket, pp. 610 to 611.

"SECTION 4.114-2. *Withholding of VAT on Government Money Payments and Payments to Non-Residents. -*

(a) The government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and/or services taxed at 10% VAT pursuant to Secs. 106 and 108 of the Tax Code, deduct and withhold a final VAT due at the rate of five percent (5%) of the gross payment thereof.

The five percent (5%) final VAT withholding rate shall represent the net VAT payable of the seller. The remaining five percent (5%) effectively accounts for the standard input VAT for sales of goods or services to government or any of its political subdivisions, instrumentalities or agencies including GOCCs, in lieu of the actual input VAT directly attributable or ratably apportioned to such sales. Should actual input VAT exceed five percent (5%) of gross payments, the excess may form part of the sellers' expense or cost. On the other hand, if actual input VAT is less than 5% of gross payment, the difference must be closed to expense or cost." *(Emphasis supplied)*

To prove that its sales to government agencies were subjected to final VAT of 5%, petitioner submitted Certificates of Final Tax Withheld at Source summarized as follows:

Exhibit	Period Covered	Payor	Income Payment	VAT Withheld
V-1	Jan-06	NPC	₱ 48,363,686.95	₱ 2,418,184.46
V-2	Feb-06	NPC	20,753,311.39	1,037,665.56
V-3	Mar-06	NPC	22,950,814.89	1,147,540.70
V-4	Apr-06	NPC	11,890,192.57	594,509.63
V-5	May-06	NPC	28,138,945.89	1,406,947.30
V-6	Jun-06	NPC	44,449,662.20	2,222,483.11
V-7	Aug-06	NPC	53,010,212.35	2,650,510.51
V-8	Aug-06	NPC	84,337,125.60	4,216,856.25
V-9	Sep-06	NPC	46,131,543.65	2,306,577.18
V-10	Oct-06	NPC	104,731,827.11	5,236,591.36
V-11	Nov-06	NPC	92,356,477.07	4,617,823.86
V-12	Dec-06	NPC	15,955,344.70	797,767.24

V-13	Jan-Oct 05	MIAA	13,959,165.67	418,774.97
V-14	Oct-Dec 05	MIAA	432,300.00	19,650.00
V-15	Jan-Sep 06	MIAA	3,263,195.79	164,040.70
V-16	Nov-05	MIAA	844,680.10	38,394.55
V-17	Nov-06	MIAA	287,678.40	14,383.92
V-18	Aug-06	MIAA	302,499.80	15,124.99
V-19	Jul-06	MIAA	372,321.40	18,616.07
V-20	Sep-06	MIAA	441,071.00	22,053.55
V-21	Jan-07	MIAA	715,247.00	35,762.35
V-22	Feb-06	DPWH	162,671.49	7,677.79
V-23	Mar-06	DPWH	184,267.20	8,375.78
V-24	Mar-06	DPWH	1,161,595.20	58,079.76
V-25	Apr-06	DPWH	826,009.60	36,875.43
V-26	May-06	DPWH	393,745.82	19,687.29
V-27	May-06	DPWH	1,355,373.78	67,768.69
V-28	Jun-06	DPWH	277,259.87	13,862.99
V-29	Jun-06	DPWH	1,982,511.08	99,125.55
V-30	Jul-06	DPWH	1,428,184.80	71,409.24
V-31	Aug-06	DPWH	1,334,867.00	66,743.35
V-32	Sep-06	DPWH	206,639.48	10,331.97
V-33	Nov-06	DPWH	2,003,180.70	100,159.04
V-34	Dec-06	DPWH	1,629,711.53	81,485.58
TOTAL			**₱ 606,633,321.08**	**₱ 30,041,840.72**

It is noteworthy that included in the foregoing were income payments from MIAA supported by certificates of withholding pertaining to periods outside the year 2006 and those that have been taken up twice as discussed previously in the deficiency income tax assessment arising from understatement of sales to MIAA, to wit:

Exhibit	**Period Covered**	**Payor**	**Income Payments**	**Final VAT Withheld**
V-13	Jan-Oct 05	MIAA	₱ 13,959,165.67	₱ 418,774.97
V-14	Oct-Dec 05	MIAA	432,300.00	19,650.00
V-16	Nov-05	MIAA	844,680.10	38,394.55
V-18	Aug-06	MIAA	302,499.80	15,124.99
V-19	Jul-06	MIAA	372,321.40	18,616.07
V-20	Sep-06	MIAA	441,071.00	22,053.55
TOTAL			**₱ 16,352,037.97**	**₱ 532,614.13**

Out of the income payment of ₱606,633,321.08 only the amount of ₱590,281,283.11 (₱606,633,321.08 less ₱16,352,037.97) pertains to sale to government agencies for the year 2006, with a final VAT withheld amounting to ₱29,509,226.59 (₱30,041,840.72 less ₱532,614.13). In line with this, respondent allegedly found that the sales to government amounting to ₱149,137,352.78 was subjected only to 7% VAT instead of 12%, thus, assessed for the deficiency tax of ₱7,456,867.64 representing the remaining 5% output VAT. *ge*

However, upon verification of petitioner's Summary List of Sales, the Court finds that petitioner's sales to government agencies for the months of April, May, and June 2006, the period covered by the present assessment, actually amount to ₱142,048,364.35, and the sales were properly subjected to 12% output tax, except for the sale to NPC for the month of June 2006 amounting to ₱255,777.36, which was only subjected to 10% VAT, as shown below:

Period Covered	**Customer**	**Sales**	**Output Tax**	**Tax Rate**
5/31/2006	DPWH	₱ 1,561,713.93	₱ 187,405.67	12%
6/30/2006	DPWH	1,608,170.89	192,980.51	12%
	Subtotal	***₱ 3,169,884.82***	***₱ 380,386.18***	
4/30/2006	MIAA	₱ 200,700.00	₱ 24,084.00	12%
5/31/2006	MIAA	423,557.14	50,826.86	12%
6/30/2006	MIAA	218,571.43	26,228.57	12%
	Subtotal	***₱ 842,828.57***	***₱ 101,139.43***	
4/30/2006	NPC	₱ 17,374,821.03	₱ 2,084,978.52	12%
5/31/2006	NPC	54,739,223.35	6,568,706.80	12%
6/30/2006	NPC	65,665,829.22	7,879,899.51	12%
6/30/2006	NPC	255,777.36	25,577.74	10%
	Subtotal	***₱138,035,650.96***	***₱ 16,559,162.57***	
TOTAL		**₱142,048,364.35**	**₱17,040,688.18**	

Accordingly, petitioner should be made liable only to additional output tax of 2% or in the amount of ₱5,115.54, computed thus:

Sale to NPC for June 2006	₱ 255,777.36
Output tax rate	12%
Tax due	₱ 30,693.28
Less: Output tax applied	25,577.74
Deficiency VAT on sales to government	**₱ 5,155.54**

e. Input tax carried over to succeeding quarter - ₱5,485,229.89

Out of the alleged input tax claimed per VAT Return of ₱213,493,120.97, respondent deducted the amount of ₱5,485,229.89 representing input tax carried over to succeeding quarter. However, the Court finds it improper for respondent to disallow petitioner's excess input tax in the amount of ₱5,485,229.89[71] reflected in its Quarterly VAT Return for the fourth quarter of 2006 because any tax benefit derived by petitioner from the carry-over of the said amount

[71] Exhibit "Q-5", Line 29.

redounds to the succeeding quarter/year 2007. Since the tax benefit will be in the succeeding quarter/year, at most, petitioner may only be assessed in the said succeeding quarter/year.

f. Disallowed input taxes - ₱698,007.55

The disallowed input tax in the amount of ₱698,007.55 consists of input tax from Herma Shipping and Transport Corp. amounting to ₱54,124.39 and input tax on local purchases amounting to ₱643,883.16.

1. Input tax from Herma Shipping and Transport Corporation - ₱54,124.39

Respondent's examiner disallowed input taxes claimed by petitioner for being supported by official receipts dated January 7 and 8, 2007, which are outside taxable year 2006.[72] Petitioner argued that this is just a matter of timing difference since the corresponding sales invoices of the said official receipts are dated October 27, 2006 and November 30, 2006.[73]

Examination of petitioner's Summary List of Purchases for the fourth quarter of 2006[74] and the submitted invoices issued by Herma Shipping and Transport Corp. ("Herma Shipping" for brevity) show that petitioner claimed total input taxes therefrom in the amount of ₱54,097.50, as shown below:

Exhibit	Invoice No.	Invoice Date	Gross Amount	VAT	Net of VAT
S-1	45645	10/27/2006	₱ 126,311.67	₱ 13,533.39	₱ 112,778.28
S-2	45634	10/27/2006	126,336.24	13,536.03	112,800.21
S-3	45633	10/27/2006	125,973.63	13,497.17	112,476.46
S-4	45963	11/30/2006	126,288.45	13,530.91	112,757.54
TOTAL			**₱ 504,909.99**	**₱54,097.50**	**₱450,812.49**

The corresponding official receipts issued by Herma Shipping when the foregoing invoices were paid are summarized as follows:

[72] Exhibit "I", p. 3.
[73] Exhibit "K", A19, p. 6; Par. 57, Petitioner's Memorandum, p. 613.
[74] Exhibit "Q-13".

Exhibit	OR No.	OR Date	Gross Amount	2% EWT	OR Amount
S-5	9057	1/2/2007	₱ 126,311.67	₱ 2,255.57	₱ 124,056.10
S-6	9058	1/2/2007	126,336.24	2,256.00	124,080.24
S-7	9060	1/8/2007	125,973.63	2,249.53	123,724.10
S-8	9061	1/8/2007	126,288.45	2,255.15	124,033.30
TOTAL			**₱504,909.99**	**₱9,016.25**	**₱495,893.74**

Considering that petitioner purchased **services** from Herma Shipping, the input taxes claimed therefrom should be supported by VAT official receipts, as provided by Section 110(A)(1)(b) in relation to Section 113(A)(2) of the NIRC of 1997, as amended, as implemented by Sections 4.110-2 and 4.110-8(a)(4) of Revenue Regulations No. 16-2005, to wit:

> "SEC. 110. *Tax Credits.* –
>
> (A) *Creditable Input Tax.* -
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> xxx xxx xxx
>
> (b) Purchase of services on which a value-added tax has actually been paid."
>
> "SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* -
>
> (A) *Invoicing Requirements.* - A VAT-registered person shall issue:
>
> xxx xxx xxx
>
> (2) A VAT **official receipt** for every lease of goods or properties, and **for every sale, barter or exchange of services**." *(Emphasis supplied)* Jr

"SECTION 4.110-2. *Persons Who Can Avail of the Input Tax Credit.* - The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:

xxx xxx xxx

(c) **To the purchaser of services** or the lessee or licensee **upon payment of the compensation**, rental, royalty or fee." *(Emphasis supplied)*

"SECTION 4.110-8. *Substantiation of Input Tax Credits.* -

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

xxx xxx xxx

(4) For the **purchase of services – official receipt showing the information required** under Secs. 113 and 237 of the Tax Code." *(Emphasis supplied)*

The Independent CPA verified "that these transactions were claimed as part of the purchases for 2006 instead of 2007 as evidenced by the summary list of sales and purchases for the 4th quarter of 2006 **(Exhibit Q-13)** and 1st quarter of 2007 **(Exhibit T, T-1 1 to T-4).**"[75] Even so, petitioner still cannot claim the subject input taxes in the fourth quarter of 2006 by virtue of the afore-quoted VAT law and regulations.

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[75] Exhibit "L", p. 12.

Hence, input taxes from purchase of services from Herma Shipping are creditable in the first quarter of 2007 when the services were paid by petitioner as evidenced by the submitted official receipts. Consequently, respondent's disallowance of the said input taxes for the year 2006 is in order and the deficiency VAT assessment arising therefrom should be upheld.

2. Input tax on local purchases - ₱643,883.16

Respondent disallowed petitioner's input taxes from its local purchases amounting to ₱643,883.16 for the year 2006 for being supported by invoices and/or official receipts that are issued by non-VAT suppliers, with invalid TINs, invalid invoices/official receipts, registered as one-time taxpayer (ONETT) and cannot be found in the BIR database, to wit:[76]

Supplier	Service	Contractor	Goods	Input Tax
Alphatemp Refrigerat		₱ 5,580.33		₱ 669.64
Anthony Hotel & Restaurant			₱ 589.29	70.71
Atienza Shipping Lines		4,161,606.67		499,392.80
Berwite, Estela		26,785.66		3,214.28
Cygma Greek Taverna			977.68	117.32
D and Y Hardware			89.29	10.71
De Luna, Adrina				3,214.28
Donatos Canteen			70.51	8.46
E4J Motors		664,285.75		79,714.29
EM Petroleum			68,101.25	8,172.15
EM Petroleum Haulers		156,762.50		18,811.50
Hot Shots			232.17	27.86
Island Exhibit Link			5,952.42	714.29
JTR			151,392.45	18,167.09
Pagunsan, Serenia		26,785.66		3,214.28
Pangan, Merly		26,785.66		3,214.28
Pastry Shop and Restaurant			3,750.00	375.00
Petron Socony			1,339.29	160.71
Ribbons and Beads Shop			100.00	10.00
Shinjuku			1,769.58	212.35
Sports Central (Manila) Inc.				95.36
SSG Supermart			30.58	3.67
St. Anthony Hotel & Restaurant			589.29	70.71
Sun Serigraphics			1,339.25	160.71
Taluban, Efehemia		26,785.66		3,214.28
Tape Measure Shop	₱ 1,070.00			
Trapal, Rowena D.		803.58		96.43
Wilconsa Enterprises			6,250.00	750.00
TOTAL	**₱1,070.00**	**₱5,096,181.47**	**₱242,573.05**	**₱643,883.16**

gr

[76] Exhibit "M-1-11".

Petitioner counters that E.M. Petroleum Haulers was registered as percentage taxpayer but became VAT-registered as of September 14, 2001[77] and that it erroneously encoded the name of some of its suppliers, namely:[78]

Encoded	Instead of
Atienza Shipping Lines	San Nicholas Line and DEMS Express Cargo
E4J Motors	DEMS Express Cargo
JTR	Golden Arawana Marine Enterprises, Inc.

However, scrutiny of the invoices and/or official receipts submitted by petitioner[79] reveals that its argument of erroneous encoding of the names of suppliers is not tenable. Even though petitioner submitted invoices and official receipts issued by San Nicolas Line and DEMS Express Cargo, the same do not support its allegations. It may be observed that the names of the suppliers per invoices and/or official receipts are clearly identifiable, hence, no way that anybody could possibly report it as another supplier. Further, the disallowed amounts do not tally with those amounts indicated in the invoices and/or official receipts issued by Golden Arawana, San Nicolas Line, and DEMS Express Cargo.

Moreover, petitioner claimed input taxes of ₱2,069,903.53 from said suppliers as indicated in its Summary List of Purchases for the year 2006, to wit:[80]

Name of Supplier	Amount	Input Tax
Atienza Shipping Lines	₱ 4,161,606.67	₱ 499,392.80
DEMS Express Cargo	9,725,000.06	1,167,000.01
San Nicholas Lines Inc.	2,925,089.30	351,010.72
San Nicholas Shipping	437,500.00	52,500.00
TOTAL	**₱17,249,196.03**	**₱2,069,903.53**

The Court could not ascertain whether the said invoices and/or official receipts indeed pertain to the disallowed input taxes or to the claim as shown in the foregoing.

Anent petitioner's disallowed input taxes on purchases from E.M. Petroleum Haulers, respondent's examiner found that said

[77] Par. 65, Petitioner's Memorandum, docket, p. 619.
[78] Pars. 64, 66, and 67, Petitioner's Memorandum, docket, pp. 619 to 620.
[79] Exhibits "U-1" to "U-31".
[80] BIR Records, Folder 1, Part 1, pp. 825 to 834.

supplier is registered as a percentage taxpayer.[81] The Court examined the official receipts submitted by petitioner and found the following:

Exhibit	OR No.	OR Date	Net of VAT	Input Tax	Total	Withholding Tax	OR Amount
1. VAT official receipts							
U-33	0064	10/7/2006	₱ 49,105.00	₱ 5,892.60	₱ 54,997.60	₱ 982.10	₱ 54,015.50
	0050	10/28/2006	12,237.95	1,468.55	13,706.51	244.76	13,461.75
U-34	0076	11/4/2006	5,046.25	605.55	5,651.79	100.92	5,550.87
	0063	10/7/2006	5,070.72	608.49	5,679.20	101.41	5,577.79
U-35	0077	11/4/2006	10,092.50	1,211.10	11,303.60	201.85	11,101.75
	0080	11/4/2006	2,868.57	344.23	3,212.80	57.37	3,155.43
U-36	0078	11/4/2006	2,282.50	273.90	2,556.40	45.65	2,510.75
	Subtotal		*₱ 86,703.49*	*₱ 10,404.42*	*₱ 97,107.91*	*₱ 1,734.07*	*₱ 95,373.84*
2. Non-VAT official receipts stamped "VAT registered as of 9/14/01"							
	0961	12/22/2006	₱ 11,125.00	₱ 1,335.00	₱ 12,460.00	₱ 222.50	₱ 12,237.50
U-37	0836	2/25/2006	28,250.73	3,390.09	31,640.81	565.01	31,075.80
	0957	12/22/2006	2,218.75	266.25	2,484.99	44.37	2,440.62
U-38	0828	2/18/2006	96,052.47	11,526.30	107,578.77	1,921.05	105,657.72
	Subtotal		*₱ 137,646.95*	*₱ 16,517.63*	*₱ 154,164.58*	*₱ 2,752.94*	*₱ 151,411.64*
TOTAL			**₱224,350.44**	**₱26,922.05**	**₱251,272.49**	**₱ 4,487.01**	**₱246,785.48**

Section 4.113-4(A)(2) of Revenue Regulations No. 16-2005 provides that input taxes of VAT invoices or official receipts issued by non-VAT persons "shall be recognized as an input tax credit to the purchaser under Sec. 110 of the Tax Code, provided the requisite information required under Subsection 4.113 (B) of these Regulations is shown on the invoice or receipt." Thus, input taxes on purchases from E.M. Petroleum Haulers supported by VAT official receipts amounting to ₱10,404.42 should be disallowed since the submitted official receipts do not reflect the requisite information required under Subsection 4.113(B) of RR No. 16-2005. Likewise, input taxes in the amount of ₱16,517.63 should be disallowed for being supported by non-VAT official receipts. The stamp "VAT registered as of 9/14/01" has no bearing since Section "b" of the Transitory and Other Provisions of Revenue Regulations No. 16-2005, as amended, clearly provides:

> "(b) *Unused invoice or receipts.* - Taxpayers who changed status from NON-VAT to VAT or from VAT to NON-VAT as a result of the implementation of RA No. 9337 should submit within thirty (30) days from effectivity of the law an inventory of unused invoices or receipts as of the day immediately preceding the effectivity of RA No. 9337 indicating the number of

[81] Exhibit "M-1-11".

booklets and the corresponding serial numbers. Unused non-VAT invoices/receipts shall be allowed for use in transactions subject to VAT provided the phrase **'VAT-registered as of [effectivity date of RA No. 9337]'** is stamped on all copies thereof. Likewise, unused VAT invoices/receipts shall be allowed in VAT-exempt transactions provided the phrase **'Non-VAT-registered as of ______________'** is stamped on all copies thereof. **These unused invoices or receipts with the proper stamp shall be allowed for use in transactions subject to VAT/Non-VAT up to December 31, 2005.**" *(Emphasis supplied)*

Hence, petitioner's disallowed input taxes in the amount of ₱643,883.16 shall remain.

g. Unsupported Creditable VAT - ₱57,367.39

Respondent avers that petitioner submitted Certificate of Final Tax Withheld at Source to support its claim for VAT credits in the amount of ₱30,019,105.22, but verification disclosed that only the amount of ₱30,076,472.61 is applicable for taxable year 2006. Hence, the difference of ₱57,367.39 is disallowed.[82]

As pointed out by the Independent CPA, it is clearly shown in respondents FDDA that VAT credits per certificates of withholding exceed the VAT credits claimed by petitioner for the year 2006;[83] hence, the disallowance of the discrepancy has no basis.

Nevertheless, the Court has examined the subject certificates of withholding VAT and, as previously discussed, the total adjusted VAT withheld amounts to ₱29,509,226.59. On the other hand, petitioner's Quarterly VAT Returns for the year 2006 show petitioner's claimed VAT withheld on sales to government in the aggregate amount of ₱30,019,105.11, as determined below:

Exhibit	Period Covered	Sales to Govt.	Output Tax Due	Creditable VAT Withheld	VAT Withheld on sales to Government	Total VAT Withheld
Q-2	1st Qtr	₱ 74,813,852.33	₱ 8,977,662.28	₱ 418,774.97	₱ 3,838,311.87	₱ 4,257,086.84

[82] Exhibits "I", p. 3 and "M-1-5".
[83] Exhibit "L", p. 13.

Q-3	2nd Qtr	142,173,813.50	17,060,857.62	58,044.55	7,110,764.15	7,168,808.70
Q-4	3rd Qtr	222,819,206.92	26,738,304.83		11,172,203.17	11,172,203.17
Q-5	4th Qtr	148,420,128.04	17,810,415.36		7,421,006.40	7,421,006.40
TOTAL		**₱588,227,000.79**	**₱70,587,240.09**	**₱476,819.52**	**₱29,542,285.59**	**₱30,019,105.11**

Therefore, the unsupported claim of VAT withheld on sales to government for taxable year 2006 would amount to ₱509,878.52, computed as follows:

VAT withheld on sales to government per VAT Returns	₱ 30,019,105.11
VAT withheld per BIR Form No. 2306	29,509,226.59
Unsupported withholding VAT credits	**₱ 509,878.52**

However, based on the foregoing, petitioner has no deficiency VAT liability for the year 2006, as detailed below:

Sales per return:				
Vatable sales - Non-government			₱1,395,908,936.48	
Vatable sales - Government			588,227,000.79	
Zero-rated sales			4,032,601.00	₱1,988,168,538.27
Add: Adjustments per Audit				
Corrections per VAT Rate Transition				
Total Vatable sales:				
At 10%	₱ 69,740,734.11			
At 12%	1,926,018,658.74			
Zero-rated sales	6,321,803.80	₱2,002,081,196.65		
Reflected per VAT Return		1,988,168,538.27	₱13,912,658.38	
Net sales from undeclared receipts of imported diesel			27,136,623.32	
Understatement of sales to MIAA			134,849.86	41,184,131.56
Total sales subject to VAT as corrected				₱2,029,352,669.83
Less: Zero-rated sales				6,321,803.80
Total sales subject to VAT per audit				₱2,023,030,866.03
Output tax:				
At 10%		₱ 69,740,734.11	₱ 6,974,073.41	
At 12%		1,953,290,131.92	234,394,815.83	
		2,023,030,866.03		₱ 241,368,889.24
Add: Under-computation of output VAT on sales to government				5,155.54
Total Output tax				₱ 241,374,044.78
Less: Input tax credits				
Claimed per VAT Return			₱213,493,120.97	
Less: Deductions				
Disallowed input tax				
Input tax from Herma Shipping		₱ 54,124.39		
Input tax on local purchases		643,883.16	698,007.55	212,795,113.42
VAT Payable				₱ 28,578,931.36

Less: Tax credits/Payments per return		
Total claim per VATreturn	₱ 30,088,421.39	
Less: Unsupported creditable VAT	509,878.52	29,578,542.87
Excess Input VAT		**₱ (999,611.51)**

III. Compromise Penalty

The compromise penalties imposed by respondent against petitioner for the following deficiency taxes shall be cancelled there being no compromise agreement between the parties:

Tax Type	Compromise Penalty
Income Tax	₱ 50,000.00
Value-Added Tax	50,000.00
WT-Expanded	12,000.00
Total	**₱ 112,000.00**

Under Revenue Memorandum Order No. 01-90, compromise penalties are amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. Thus, compromise penalties imply mutual agreement between the taxpayer, on one hand, and the Commissioner of Internal Revenue, on the other. Absent any showing that petitioner consented to the compromise penalties, the same should not be imposed. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[84]

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the assessments issued by respondent against petitioner covering taxable year 2006 for deficiency income tax and value-added tax are hereby **CANCELLED**. However, respondent's assessment of deficiency expanded withholding tax for taxable year 2006 is hereby **UPHELD** but in the modified amount of ₱20,806.72, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Tax Type	Basic Tax Due	Surcharge	20% Interest	Total
EWT	₱ 16,068.22	₱ 4,017.06		₱ 20,085.28

[84] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., et al.*, G.R. No. 35266, January 21, 1991.

Deficiency Increments for late remittance of EWT			₱ 721.44	721.44
Total	**₱16,068.22**	**₱4,017.06**	**₱ 721.44**	**₱20,806.72**

In addition, petitioner is hereby **ORDERED TO PAY**:

a. Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency expanded withholding tax of ₱16,068.22 computed from January 15, 2007 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;

b. Delinquency interest at the rate of 20% per annum on the total EWT due of ₱20,085.28 and on the 20% deficiency interest which have accrued as aforestated in "a", computed from January 19, 2011 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended; and

c. Delinquency interest at the rate of 20% per annum on the deficiency increments for late remittance of withholding taxes in the amount of ₱721.44 computed from January 19, 2011 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

ATTESTATION

I attest 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice