REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

CE LUZON GEOTHERMAL POWER COMPANY, INC.,
Petitioner,

C.T.A. CASE NO. 7180

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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CE LUZON GEOTHERMAL POWER COMPANY, INC.,
Petitioner,

C.T.A. CASE NO. 7279

Members:

- versus -

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 2 1 2009

2:30 p.m.

x- x

DECISION

UY, J.:

This is a consolidation of two Petitions for Review, C.T.A. Case Nos. 7180 and 7279, both filed by petitioner, CE Luzon Geothermal Power

Company, Inc., against respondent, Commissioner of Internal Revenue, seeking the refund of the consolidated amount of **TWENTY FIVE MILLION SEVEN HUNDRED THIRTY TWO THOUSAND FIVE HUNDRED TWELVE and 82/100** (PHP25,732,512.82), representing unutilized input value-added tax (VAT) on petitioner's alleged purchases of goods and services and importation of goods attributable to zero-rated sales of power generation services for the four quarters of the taxable year 2003.

THE FACTS

CE Luzon Geothermal Power Company, Inc. (Petitioner) is a corporation duly organized and existing under Philippine laws, with principal office at 24/F 6750 Bldg., Ayala Avenue, Makati City. It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC), with Tax Identification No. 003-924-356-000.[1] On the other hand, respondent is the duly appointed Commissioner of the BIR empowered to perform the duties of his office, including among others, the duty to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes. He holds office at the BIR National Office Building, Agham Road, Quezon City.[2]

Petitioner is accredited by the Department of Energy (DOE) as the owner and operator of CE Luzon Geothermal Power Plant, as shown in its DOE Certificate of Accreditation (OSAC94-12)[3] issued on June 15, 1994. It is principally engaged in the business of power generation and the subsequent sale of generated power to the Philippine National Oil Company-Energy

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[1] Annex "B", Petition for Review (CTA Case No. 7180).
[2] Par. 4, Consolidated Joint Stipulation of Facts and Issues, Docket (CTA Case No. 7180), p. 107.
[3] Annex "A", Petition for Review (CTA Case No. 7180).

Development Corporation (PNOC-EDC), pursuant to an Energy Conversion Agreement (ECA). It appears that said agreement was inadvertently referred to in paragraph 2 of the Consolidated Joint Stipulation of Facts and Issues as "Power Purchase Agreement or PPA".

In the course of its operation, petitioner made domestic purchases of goods and services, services rendered by non-residents, and importation of goods attributable to its zero-rated sale of power generation services. From these arose petitioner's input VAT which allegedly remained unutilized. For each quarter of taxable year 2003, petitioner filed its Quarterly VAT Returns, indicating as follows:

Exhibit	Quarter	Date of filing of Return	Zero-rated Sales	Input VAT
D	1st	25-Apr-03	856,386,440.57	4,723,705.62
Q	2nd	24-Jul-03	1,042,918,879.54	4,150,402.36
R	3rd	27-Oct-03	1,067,478,721.24	7,760,246.26
S	4th	26-Jan-04	1,252,326,575.66	10,336,308.43
TOTAL			**4,219,110,617.01**	**26,970,662.67**

On November 24, 2004, petitioner filed its Amended Quarterly VAT Returns for each quarter of taxable year 2003, summarized as follows:

Exh.	Qtr.	Zero-rated Sales	Excess/Unutilized VAT Credits					Total (P)
			Domestic purchases of capital goods (P)	Domestic purchases of goods other than capital goods (P)	Domestic purchases of services (P)	Services Rendered by Non-Residents (P)	Importations of Goods Other than Capital Goods (P)	
E	1st	856,386,440.57	141,272.73	577,547.84	2,069,863.26	1,577,106.87	265,834.00	4,785,234.70
F	2nd	1,042,918,879.54	0.00	1,072,720.05	2,236,164.11	37,870.33	1,221,704.00	4,568,458.49
G	3rd	1,067,478,721.24	0.00	1,708,210.65	2,762,233.95	534,653.37	2,450,216.00	7,455,413.97
H	4th	1,252,326,575.66	0.00	697,915.28	7,612,110.29	392,407.26	1,062,849.00	9,765,281.83
Total Excess/Unutilized VAT Credits for 1st to 4th Quarters of CY 2003 (10% of Total Purchases)								**26,574,388.99**

Petitioner filed an application for refund of these unutilized input VAT with the BIR on the following dates:

NN

Exhibit	Quarter	Date of Filing	Input VAT (P)
N	1st	January 20,2005	4,785,234.70
O	2nd	March 31,2005	4,568,458.49
P	3rd	June 07,2005	7,455,413.97
P	4th	June 07,2005	9,765,281.83
		TOTAL	**26,574,388.99**

To date, respondent has not yet acted on petitioner's claims for refund. Consequently, petitioner filed two separate Petitions for Review on March 30, 2005 and June 30, 2005, docketed as CTA Case Nos. 7180 and 7279, respectively.

In his Answer[4] in CTA Case No. 7180, respondent interposes the following Special and Affirmative Defenses:

> "4. Petitioner's claim for refund is subject to administrative investigation/examination by the respondent;
>
> 5. To support its claim, it is imperative for petitioner to prove the following, viz:
>
> a. The registration requirements of a value-added taxpayer in compliance with Section 6 (a) and (b) of the Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;
>
> b. The invoicing and accounting requirements of VAT registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code as amended;
>
> c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, **otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition sine qua non prior to the filing of judicial claim** in accordance with the provision of Section 229 of the Tax Code, as amended. It is worthy of emphasis that Section 112 (D) of the Tax Code, as amended, requires the **submission of complete documents in support of the application filed** with the

[4] Docket (CTA Case No. 7180), pp. 26-30.

Bureau of Internal Revenue before the 120-day audit period shall apply, and **before the taxpayer could avail of judicial remedies as provided in the law.** Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.

d. That the input taxes of P4,785,234.70 allegedly paid by the petitioner on its purchases of goods and services for the first quarter of taxable year 2003 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with sections 112 (A) and (D) and 229 of the Tax Code, as amended;

f. That petitioner's domestic purchases of goods and services were made in the course of trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal, showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code as amended, and in pursuance to Section 4.104-5 (a) & (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credit);

g. The requirements as enumerated under Section 4.104-2 of the Revenue Regulations 7-95. (Re: Persons who can avail of the Input Tax Credits);

6. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications (Asiatic Petroleum Co. {P.I.} v. Llanes, 49 Phil. 466 cited in Collector of internal Revenue v. Manila Jockey Club, Inc. 98 Phil. 670);

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

In CTA Case No. 7279, respondent raises the following Special and Affirmative Defenses:[5]

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue;
>
> 5. The amount of P21,789,154.29 being claimed by petitioner as alleged unutilized input VAT on purchases of goods and services for the 2nd and 4th quarters of 2003 is not properly documented;
>
> 6. In an action for refund/credit, the burden of proof is on the taxpayer to establish the right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
>
> 7. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the 1997 Tax Code on the prescriptive period for claiming tax refund/credit.
>
> 8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)** and such, they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)**."

During trial, petitioner presented documentary and testimonial evidence in support of its claim, while respondent's counsel manifested during the hearing held on March 12, 2008 that he is waiving his right to present evidence relative to the instant case[6]. Thus, the Court directed the parties to file their respective Memorandum. Petitioner submitted its Memorandum[7] on

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[5] Docket (CTA Case No. 7279) p. 41.
[6] Minutes, Hearing held on March 12, 2008, Docket (CTA Case No. 7180); p. 375.
[7] Docket (CTA Case No. 7180), pp. 396 – 417.

May 23, 2008 while respondent filed his Memorandum[8] on June 10, 2008. On June 17, 2008, the instant case was deemed submitted for decision[9].

Hence, this Decision.

THE ISSUES

The stipulated issues for this Court's resolution are as follows:

> "1. Whether or not Petitioner's sales are zero-rated within the meaning of the VAT law;
>
> 2. Whether or not the unutilized input VAT of the Petitioner for the first to fourth quarters of 2003 amounting to P26,574,388.99 are substantiated by documentary evidence in the form of invoices and official receipts;
>
> 3. Whether or not the said unutilized input VAT credits of the Petitioner for the first to fourth quarters of 2003 amounting to P26,574,388.99 were applied against any output tax of the Petitioner in the subsequent quarters;
>
> 4. Whether or not Petitioner is entitled to a refund and/or issuance of tax credit certificate in the total amount of P26,574,388.99 representing its unutilized input VAT credits from purchases of taxable goods and services, services rendered by nonresidents and importation of goods for the first to fourth quarters of 2003."

The foregoing stipulated issues are inter-related and boil down to one central issue: whether or not petitioner is entitled to its refund claim in the amount of P25,732,512.82, representing its alleged unutilized input taxes for the taxable year 2003.

THE COURT'S RULING

The first issue, which is a legal issue, is resolved in the affirmative. All the remaining issues (from the second to the fourth) refer to whether or not petitioner was able to comply with legal requirements in the substantiation of

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[8] Docket (CTA Case No. 7180), pp. 418 – 434.
[9] Docket (CTA Case No. 7180), p. 437.

its claim for refund or issuance of a tax credit certificate arising from its alleged unutilized input vat for the four (4) quarters of the taxable year 2003 in the consolidated amount of P25,732,512.82.

Going back to the first issue, We hold that the power generation services rendered by petitioner to CE Luzon Geothermal Power Company, Inc. are subject to zero percent (0%) VAT pursuant to Chapter II, Section 6 of Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA) and Rule 5, Section 6 of its implementing rules and regulations. Said provisions read as follows:

Republic Act No. 9136
Electric Power Industry Reform Act of 2001 (EPIRA)

CHAPTER II
Organization and Operation of the
Electric Power Industry
xxx xxx xxx

"**SEC. 6.** ***Generation Sector*** – Generation of electric power, a business affected with public interest shall be competitive and open.

Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.

Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.

Upon the implementation of retail competition and open access, the prices charged by a generation company for the supply of electricity shall not be subject to regulation by the ERC except as otherwise provided in this Act.

Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated.

The ERC shall, in determining the existence of market power abuse or anti-competitive behavior, require from generation companies the submission of their financial statements (*Emphasis and underscoring supplied)"*

"Rules and Regulations to Implement Republic Act No. 9136,entitled 'Electric Power Industry Reform Act of 2001"

"RULE 5
Generation Sector
xxx xxx xxx

SECTION 6. Generation Charges and VAT. —

xxx xxx xxx

(b) Pursuant to the policy of reducing electricity rates to End-users, sales of generated power by a Generation Company shall, from the effectivity of the Act, be zero-rated for the purpose of imposition of value-added tax. Towards this end, the imposition of zero percent (0%) VAT shall apply to the sale of generated power by a Generation Company through all stages of sale until it reaches the End-user. The DOF, through the BIR, shall issue the necessary revenue regulation within sixty (60) calendar days from effectivity of these rules."

The EPIRA law was formulated by the legislature to ordain reforms in the electric power industry, highlighting, among others, the importance of ensuring the reliability, security and affordability of the supply of electric power to end-users. Pursuant to the provisions of R.A. No. 9136 and its implementing rules and regulations, the delivery and supply of electric energy by generation companies became VAT zero-rated on June 26, 2001, which prior thereto, were subjected to ten (10%) percent VAT. Consequently, the pertinent provisions of the NIRC of 1997 were deemed amended by the provisions of R.A. No. 9136, by modifying the VAT rate applicable to sales of generated power by generation companies from ten (10%) percent to zero

(0%) percent. Otherwise stated, petitioner's power generation services are no longer subject to ten (10%) percent VAT as provided under the NIRC of 1997, but are now subject to zero (0%) percent VAT by virtue of the amendatory provision of the EPIRA.

To qualify for VAT zero-rating under R.A. No. 9136 however, petitioner must prove that: 1) it is a generation company; and, 2) it derived sales from power generation.

As admitted by the parties in their Consolidated Joint Stipulation of Facts and Issues, petitioner is principally engaged in the business of power generation and it sells generated power to the PNOC-EDC, pursuant to an Energy Conversion Agreement between petitioner and PNOC-EDC. Moreover, records reveal that it was accredited and certified as such by the DOE, as evidenced by its DOE Certificate of Accreditation (OSAC 94-12) issued on June 15, 1994[10]. Accordingly, petitioner is a power generation company.

As regards petitioner's sales of generated power, its Quarterly VAT Returns for the four (4) quarters of taxable year 2003 reflected only zero-rated sales, as duly supported by its VAT invoices and receipts[11] amounting to P4,219,110,617.01, detailed as follows:

Exhibit	Period Covered (2003)	Zero-Rated Sales
E	1st	P 856,386,440.57
F	2nd	1,042,918,879.54
G	3rd	1,067,478,721.24
H	4th	1,252,326,575.66
TOTAL		**P 4,219,110,617.01**

[10] Petition for Review Annex "A", p. 11; Consolidated Joint Stipulation of Facts and Issues, Docket (CTA Case No. 7180), p. 107.
[11] Exhibits "JJ-1 to 13" and "LL-1 to 38".

Clearly from the foregoing, petitioner satisfied these two requirements to qualify for VAT zero-rating under R.A. No. 9136.

We now look into whether or not petitioner was able to substantiate its subject claim in accordance with the requirements set forth under Sections 110(B) and 112(A) of the NIRC of 1997, which read as follows:

> "**SEC. 110. Tax Credits. —**
>
> xxx xxx xxx
>
> **(B) Excess Output or Input Tax.** – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."
>
> "**SEC. 112. Refunds or Tax Credits of Input Tax. –**
>
> **(A) Zero-rated or Effectively Zero-rated Sales.** – Any VAT registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1),(2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

Based on the foregoing, and relative to the second issue as to whether or not petitioner's unutilized input VAT for the subject period were supported by documentary evidence, petitioner submitted as evidence the Summary List of Purchases for the period January 1, 2003 to December 31, 2003[12] and the related suppliers' invoices / official receipts and other related documents[13]. However, this Court notes that the total amount per Administrative Claims[14] is P26,574,388.99, which is different from petitioner's claimed amount of unutilized input VAT per Petition for Review by P841,876.17. The discrepancy is illustrated as follows:

CTA CASE NO.	Period Covered in 2003	Amount per Petition for Review	Amount per Amended Administrative Claim	Difference
7180	1st Qtr.	P 4,785,234.70	P 4,785,234.70	-
7279	2nd to 4th Qtr	20,947,278.12	21,789,154.29	P (841,876.17)
Total		**P 25,732,512.82**	**P 26,574,388.99**	**P (841,876.17)**

Records show that the original administrative claims[15] of petitioner had an aggregate amount of P25,732,512.82 and P26,574,388.99 on its amended administrative claims[16]. However, petitioner did not file an Amended Petition for Review to include the discrepancy for CTA Case No. 7279. Therefore, this Court shall only consider the input VAT amounting to P25,732,512.82, the amount which was prayed for refund in the Petitions for Review for CTA Case Nos. 7180 and 7279, in computing the refundable unutilized input VAT for taxable year 2003.

After careful examination of the pieces of documentary evidence presented and the Report[17] of the Court-commissioned Independent Certified

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[12] Exhibit "MM".
[13] Exhibits "NN", "L-1Q-1 to 750", "L-2Q-1 to 1182", "L-3Q-1 to 1352", and "L-4Q-1 to 1122".
[14] Exhibits "N", "O", and "P".
[15] Annex "E", Petition for Review (CTA Case No. 7180), Docket, pp. 19-20; Annexes "I" and "J", Petition for Review (CTA Case No. 7279), Docket, pp. 30-33.
[16] Exhibits "N", "O", and "P".
[17] Exhibit "HH".

Public Accountant (ICPA), this Court finds that only the amount of P22,647,638.47 represents the valid and duly substantiated claim of petitioner in accordance with the provisions of Sections 110(A) and 113(A) of the NIRC of 1997, as implemented by Sections 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations No. 7-95.

The remaining amount of P3,084,874.35 is however disallowed and the details of the said disallowance are as follows:

	Findings	Reference (Annex to Exhibit HH)	Input VAT	Total
1	**Input VAT on domestic purchases of goods supported by pre-printed TIN-V invoice.**			
	1st qtr	L-1Q-A12	P 3,987.81	
	2nd qtr	L-2Q-A12	11,114.74	
	3rd qtr	L-3Q-A12	9,705.17	
	4th qtr	L-4Q-A12	6,932.15	P 31,739.87
2	**Input VAT on domestic purchase of services supported by pre-printed TIN-V official receipt (OR).**			
	1st qtr	L-1Q-B12	47,391.56	
	2nd qtr	L-2Q-B12	47,128.98	
	3rd qtr	L-3Q-B12	290,452.45	
	4th qtr	L-4Q-B12	146,532.34	531,505.33
3	**Input VAT on importation of goods supported by a certified true copy of the IEIRD.**			
	1st qtr	L-1Q-C18	153,610.00	
	2nd qtr	L-2Q-C18	238,536.00	392,146.00
4	**Input VAT on payments to travel agencies.**			
	1st qtr	L-1Q-G2	1,100.18	
	2nd qtr	L-2Q-G2	531.98	
	3rd qtr	L-3Q-G2	550.09	
	4th qtr	L-4Q-G2	1,063.82	3,246.07
5	**Input VAT on Overseas Communication Tax (OCT) included in payments to telecommunications service providers.**			
	3rd qtr	L-3Q-G3	201.19	
	4th qtr	L-4Q-G3	23.54	224.73
6	**Input VAT on DST and local taxes included in payments to purchase of services.**			
	1st qtr	L-1Q-G7	0.91	
	4th qtr	L-4Q-G7	210.51	211.42
7	**Input VAT on domestic purchases of goods supported by documents other than a VAT invoice.**			
	1st qtr	L-1Q-A1	630.31	
	2nd qtr	L-2Q-A1	76,465.48	

	3rd qtr	L-3Q-A1	3,572.90	
	4th qtr	L-4Q-A1	2,004.53	82,673.22
8	**Input VAT on domestic purchases of goods supported by a VAT invoice but not an original copy.**			
	1st qtr	L-1Q-A3	3,533.11	
	2nd qtr	L-2Q-A3	45,990.26	
	3rd qtr	L-3Q-A3	77,137.56	
	4th qtr	L-4Q-A3	12,615.58	139,276.51
9	**Input VAT on domestic purchases of goods supported by a VAT invoice not issued in the name of the Company.**			
	2nd qtr	L-2Q-A4	2,187.04	2,187.04
10	**Input VAT on domestic purchases of goods supported by a VAT invoice issued in the name of the Calenergy / CE Cebu / VGPC (whichever is applicable)**			
	1st qtr	L-1Q-A5	4,759.33	
	2nd qtr	L-2Q-A5	109.09	
	3rd qtr	L-3Q-A5	1,354.55	
	4th qtr	L-4Q-A5	1,074.99	7,297.96
11	**Input VAT on domestic purchases of goods supported by TIN-NV / NON VAT Invoice but stamped with "VAT" / "TIN VAT" or the word "NON" was erased.**			
	3rd qtr	L-3Q-A6	409.09	409.09
12	**Input VAT on domestic purchases of goods supported by TIN only: TIN-NV / NON VAT invoice; stamped / handwritten TIN-V / VAT.**			
	1st qtr	L-1Q-A7	7,084.64	
	2nd qtr	L-2Q-A7	10,558.08	
	3rd qtr	L-3Q-A7	18,127.70	
	4th qtr	L-4Q-A7	63,668.51	99,438.93
13	**Input VAT on domestic purchase of goods supported by tape receipt but without the Company's name and / or TIN.**			
	2nd qtr	L-2Q-A8	484.60	484.60
14	**Input VAT on domestic purchase of goods supported by a VAT Invoice but without invoice date.**			
	4th qtr	L-4Q-A10	43.64	43.64
15	**Input VAT on domestic purchases of goods not dated within the VAT taxable year.**			
	1st qtr	L-1Q-A14	104,573.81	
	2nd qtr	L-2Q-A14	13,103.14	117,676.95
16	**Input VAT on domestic purchases of goods supported by a VAT invoice with changes in the name of the Company.**			
	1st qtr	L-1Q-A15	190.91	
	2nd qtr	L-2Q-A15	152.73	
	3rd qtr	L-3Q-A15	8,035.53	
	4th qtr	L-4Q-A15	1,995.21	10,374.38
17	**Input VAT on domestic purchases of goods supported by TIN only; TIN-V; TIN-NV / NON VAT; stamped / handwritten TIN-V / VAT tape receipt.**			
	4th qtr	L-4Q-A16	125.64	125.64
18	**Input VAT on domestic purchases of goods supported by an invoice which are not BIR-registered.**			
	2nd qtr	L-2Q-A17	28,782.47	
	3rd qtr	L-3Q-A17	62,836.64	
	4th qtr	L-4Q-A17	21,028.20	112,647.31

19	**Input VAT on domestic purchases of services supported by documents other that a VAT OR.**			
	1st qtr	L-1Q-B1	5,589.40	
	2nd qtr	L-2Q-B1	89,282.49	
	3rd qtr	L-3Q-B1	20,105.49	
	4th qtr	L-4Q-B1	17,333.13	132,310.51
20	**Input VAT on domestic purchases of services supported by a VAT OR but not an original copy.**			
	1st qtr	L-1Q-B3	1,939.81	
	2nd qtr	L-2Q-B3	10,893.40	
	3rd qtr	L-3Q-B3	1,284.42	
	4th qtr	L-4Q-B3	19,191.45	33,309.08
21	**Input VAT on domestic purchases of services supported by a VAT OR issued in the name of Calenergy / CE Cebu / VGPC (whichever is applicable).**			
	4th qtr	L-4Q-B5	9,860.00	9,860.00
22	**Input VAT on domestic purchases of services supported by TIN-NV/ NON VAT OR but stamped with "VAT"/ "TIN VAT" or the word "NON" was erased.**			
	1st qtr	L-1Q-B6	38,098.07	
	2nd qtr	L-2Q-B6	22,426.71	
	3rd qtr	L-3Q-B6	5,054.71	
	4th qtr	L-4Q-B6	7,621.82	73,201.31
23	**Input VAT on domestic purchases of services supported by a TIN only; TIN-NV / NON VAT OR; stamped / handwritten TIN-V / VAT.**			
	1st qtr	L-1Q-B7	3,449.09	
	2nd qtr	L-2Q-B7	13,942.00	
	3rd qtr	L-3Q-B7	1,680.85	
	4th qtr	L-4Q-B7	20,387.09	39,459.03
24	**Input VAT on domestic purchases of services supported by a VAT OR but without OR date.**			
	4th qtr	L-4Q-B10	136.20	136.20
25	**Input VAT on domestic purchases of services not dated within the VAT taxable year.**			
	4th qtr	L-4Q-B14	1,471.91	1,471.91
26	**Input VAT on domestic purchases of services with changes in the name of the Company.**			
	1st qtr	L-1Q-B15	557.45	
	2nd qtr	L-2Q-B15	4,175.00	
	3rd qtr	L-3Q-B15	2,558.45	7,290.90
27	**Input VAT on domestic purchase of services from previous NON VAT suppliers but which were subjected to VAT under RR 1-2003 supported by TIN NON VAT ORs but not stamped "VAT-registered as of January 2003".**			
	3rd qtr	L-3Q-B-19	32,429.95	32,429.95
28	**Input VAT on importation of goods supported by an original IRIERD and BOC OR not dated within the year.**			
	1st qtr	L-1Q-C3	235,075.00	235,075.00
29	**Input VAT on importation of goods with supporting documents not in the name of the Company.**			
	1st qtr	L-1Q-C4	30,759.00	30,759.00
30	**Over-claimed input VAT on domestic purchases of goods / services due to erroneous computation.**			
	1st qtr	L-1Q-E1	3.38	

	2nd qtr	L-2Q-E1	8.60	
	3rd qtr	L-3Q-E1	15.36	
	4th qtr	L-4Q-E1	484.25	511.59
31	**Input VAT on purchase of vehicles with engine displacement of more than 2000cc.**			
	1st qtr	L-1Q-G1	141,272.73	141,272.73
32	**Input VAT on payments for printing services supported with documents other than VAT OR.**			
	1st qtr	L-1Q-G6	818.18	
	2nd qtr	L-2Q-G6	172.73	
	3rd qtr	L-3Q-G6	2,167.64	3,158.55
33	**Over-claimed portion of input tax arising from foreign exchange rate used on foreign currency denominated purchases of goods and services.**			
	2nd qtr	L-2Q-J1	162.98	
	3rd qtr	L-3Q-J1	75.05	
	4th qtr	L-4Q-J1	63.00	301.03
34	**Supporting documents not available.**			
	1st qtr	L-1Q-F	232,910.24	
	2nd qtr	L-2Q-F	187,863.52	
	3rd qtr	L-3Q-F	83,320.95	
	4th qtr	L-4Q-F	308,524.16	812,618.87
TOTAL				**3,084,874.35**

Anent the third issue as to whether or not petitioner's unutilized input VAT were applied against any output tax in the subsequent quarters, this Court rules in the negative.

It is evident in petitioner's Quarterly VAT Returns covered by the instant Petition and in the succeeding quarters that the sale of generated power to the PNOC is petitioner's only revenue-generating activity, and such is subject to zero percent. Thus, petitioner had no output VAT liability against which the claimed input VAT may be applied or credited. Although petitioner carried over the claimed unutilized input VAT for the first and second quarters of taxable year of 2003 to the succeeding taxable quarters until the first quarter of taxable year 2005[18], and the claimed input VAT for the third and fourth quarters of taxable year 2003 to the succeeding taxable quarters until

[18] Exhibit "DD".

the second quarter of taxable year 2005[19], the same was deducted as "Any VAT Refund/TCC" claimed from the total available input tax of P56,467,846.23 and P50,856,979.05 as of the first quarter[20] and second quarter[21] of taxable year 2005, respectively. In other words, the subject claim does not form part of the excess input VAT of P25,225,030.62 as of the second quarter of taxable year 2005, which was to be carried over/applied to the succeeding third quarter of taxable year 2005.

As to whether or not the claim for refund was filed within the two-year prescriptive period, the Supreme Court recently held in the case of ***Commissioner Of Internal Revenue v. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon Inc.)***[22] that Section 112(A) of the NIRC of 1997 provides for the period within which to file the claim for refund or tax credits of unutilized input VAT attributable to zero-rated or effectively zero-rated sales. The pertinent portion of the High Court's Decision reads:

> "The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Sec. 112(A) of the NIRC pertinently reads:
>
> > (A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter <u>when the sales were made</u>, apply for the issuance of a tax credit certificate or refund of creditable input tax <u>due or paid</u> attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: xxx. (Emphasis Ours)

[19] Exhibit "EE".
[20] Exhibit "DD".
[21] Exhibit "EE".
[22] G.R. No. 172129, September 12, 2008.

> **The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not**. As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112(A), '[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued.' Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. **The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid.**" xxx. (*Emphasis supplied*)

In the light of the aforequoted pronouncement of the Supreme Court, the reckoning frame of the prescriptive period shall commence from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT, regardless of whether said tax was paid or not.

The present claim involves petitioner's input VAT incurred for the four quarters of taxable year 2003. Counting from the close of each of the said taxable quarters, petitioner had until the following dates within which to file its claim both in the administrative and judicial levels:

Taxable Quarter		**Last Day to File Claim for Refund**
2003	**End Date**	
1st quarter	March 31, 2003	March 31, 2005
2nd quarter	June 30, 2003	June 30, 2005
3rd quarter	September 30, 2003	September 30, 2005
4th quarter	December 31, 2003	December 31, 2005

A perusal of the records of these cases reveal that the Petitions for Review were filed on March 30, 2005 in C.T.A. Case No. 7180 and on June

30, 2005 in C.T. A. Case No. 7279, while the administrative claims were filed on the following dates:

Exhibit	Quarter	Date of Filing
N	1st	January 20, 2005
O	2nd	March 31, 2005
P	3rd	June 7, 2005
P	4th	June 7, 2005

Clearly, both administrative and judicial claims of petitioner were filed within the two-year prescriptive period.

In the light of the foregoing considerations, this Court finds petitioner entitled to its claim for refund or issuance of tax credit certificate, representing unutilized input VAT attributable to zero-rated sales for the four quarters of taxable year 2003, but in the reduced amount of P22,647,638.47.

WHEREFORE, petitioner's claim for refund or issuance of tax credit certificate is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **TWENTY-TWO MILLION SIX HUNDRED FORTY SEVEN THOUSAND SIX HUNDRED THIRTY EIGHT PESOS AND 47/100 (P22,647,638.47)** to petitioner, representing its unutilized input VAT for the four (4) quarters of taxable year 2003.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

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

OLGA PALANCA-ENRIQUEZ
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.

ERNESTO D. ACOSTA
Presiding Justice