REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

KEPCO PHILIPPINES CORPORATION,
Petitioner,

C.T.A. CASE NO. 6965

Members:

- versus -

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

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

FEB 2 6 2007

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DECISION

UY, *J*.:

Before Us is the petition for review filed by petitioner, Kepco Philippines Corporation, against respondent, Commissioner of Internal Revenue, seeking for the refund of the input value-added tax which it incurred from its alleged zero-rated sales of electricity to the National Power Corporation in the total amount of **ELEVEN MILLION SEVEN HUNDRED TEN THOUSAND EIGHT HUNDRED SIXTY EIGHT AND 86/100 PESOS (P11,710,868.86)** covering the four quarters of the taxable year 2002.

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THE PARTIES

Kepco Philippines Corporation (petitioner) is a corporation duly organized and existing under and by virtue of the Republic of the Philippines, with principal place of business at the 18th Floor, Citibank Tower, 8741 Paseo de Roxas, Salcedo Village, Makati City. It is a duly registered value-added tax (VAT) taxpayer under the jurisdiction of the Revenue District Office (RDO) No. 43 of Pasig City,[1] engaged in the production and sale of electricity (as an independent power producer).

On the other hand, respondent Commissioner of Internal Revenue is vested under the National Internal Revenue Code (NIRC) with the authority to carry out all the functions, duties, and responsibilities of the Bureau of Internal Revenue (BIR), including *inter alia*, the power to decide, approve, and grant refunds and/or tax credits of erroneously paid or illegally collected internal revenue taxes, and holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

As culled from the records and as stipulated by the parties in their Joint Stipulation of Facts and Issues, these are the facts of the case.

On December 4, 2001, petitioner filed an application for zero-rated sales with the respondent, through its RDO No. 43. The same was eventually approved under VAT Ruling 64-01.[2] For the calendar (taxable) year 2002, petitioner filed its Quarterly VAT Returns declaring zero-rated sales in the aggregate amount of P3,285,308,055.85 as follows:

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1 Certificate of Registration, Exhibit "A".
2 Application for VAT Zero-Rate, Exhibit "F, F-1 and F-2".

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Exhibit	Quarter Involved	Zero-Rated Sales
B	1st Quarter	P 651,672,672.47
C	2nd Quarter	725,104,468.99
D	3rd Quarter	952,053,527.29
E	4th Quarter	956,477,387.10
	Total	**P3,285,308,055.85**

In the same year, petitioner allegedly incurred expenses representing domestic purchases of goods and services in the amount of P117,108,688.60, which became the basis for the computation of its input VAT in the sum of P11,710,868.86 as declared in its Quarterly VAT Returns,[3] to wit:

Exhibit	Quarter Involved	Purchases	Input VAT
B	1st Quarter	P 6,063,184.90	P 606,318.49
C	2nd Quarter	18,410,193.20	1,841,019.32
D	3rd Quarter	16,811,819.21	1,681,181.93
E	4th Quarter	75,823,491.20	7,582,349.12
	Total	**P117,108,688.51**	**P11,710,868.86**

Allegedly, the expenses represent the costs attributable to its production and sale of electricity to the NPC, its sole customer.[4] According to petitioner, such sale is effectively zero-rated for VAT purposes and the input VAT incurred in connection thereto is available for tax refund/credit. Thus, on April 20, 2004, petitioner filed a claim for refund of the input VAT incurred in the amount of P11,710,868.86 for taxable year 2002 with respondent (through Revenue District Office No. 43)[5]. Two days later, the instant Petition for Review was filed with this Court on April 22, 2004.

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[3] Quarterly Value Added Tax Return for: 1st, 2nd, 3rd and 4th Quarter of 2002, Exhibits "B, C, D, E", respectively.
[4] Par. 1, Memorandum for Petitioner, p. 2, Records, p. 144.
[5] Letter application for VAT Refund for the Taxable Year 2002 dated April 19, 2004, Exhibit "G".

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In his Answer, respondent submits the following Special and Affirmative Defenses:

> "6. Claims for refund are strictly construed against the taxpayer as the same partakes (sic) the nature of a tax exemption;
>
> 7. The taxpayer has the burden to show that the taxes were erroneously or illegally paid. Failure on the part of the Petitioner to prove the same is fatal to its cause of action;
>
> 8. The Petitioner should prove that (sic) its legal basis for claiming for the amount being refunded.[6]"

During trial, petitioner presented its evidence, both testimonial and documentary. This included the testimony of the court commissioned Independent Certified Public Accountant, Victor O. Machacon, who conducted an audit of the voluminous documentary evidence of petitioner, such as official receipts, invoices and vouchers in support of its claim for refund of its unutilized input VAT.[7] After the admission of petitioner's evidence in the Resolution dated May 3, 2006,[8] presentation of respondent's evidence was set on July 19, 2006. However, due to the failure of respondent's counsel to appear on said date, the Court considered respondent to have waived his right to present evidence and the parties were directed to file their respective memoranda. Only petitioner filed its Memorandum on August 23, 2006,[9] and this case was considered submitted for decision in the Resolution dated September 6, 2006 without any memorandum having been filed by respondent. Hence, this Decision.

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[6] Answer, Records, pp. 37-38.
[7] Minutes during the hearing held on September 7, 2005, Records, p. 91.
[8] Resolution, Records, p. 132.
[9] Records, pp. 143-153.

THE ISSUES

As jointly stipulated by the parties, these are the issues submitted for this Court's resolution:

> "1. Whether or not the sale of electricity by a VAT-registered entity such as the Petitioner to the NPC qualifies as a sale of services subject to a VAT rate of zero percent (0%) or otherwise called a zero-rated VAT transaction;
>
> 2. Whether Petitioner, as a VAT-registered entity and during the taxable year 2002, actually incurred expenses representing domestic purchases of goods and services and which expenses represent costs attributable to petitioner's production and sale of electricity to the NPC;
>
> 3. Whether or not Petitioner is entitled to the refund of the total amount of P11,710,868.68, representing the input VAT incurred for the four (4) quarters of the taxable year 2002 from its sale of electricity to the NPC; and
>
> 4. Whether or not Petitioner's claim for refund is substantiated by documentary evidence."[10]

THE COURT'S RULING

On the first issue, We rule in the affirmative.

Section 108 (B)(3) of the National Internal Revenue Code (NIRC) of 1997 provides:

> "**SEC. 108.** *Value-added Tax on Sale of Services and Use or Lease of Properties.* —
>
> x x x
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> x x x
>
> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;
>
> x x x"

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[10] Joint Stipulation of Facts and Issues, Records, pp. 59-62, at p. 61.

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The NPC is one such entity exempt from taxes under special laws, specifically, under Section 13 of Republic Act (R.A.) No. 6395,[11] as amended by Presidential Decree (P.D.) Nos. 380 and 938, which provides:

> "**Sec. 13.** *Non-profit Character of the Corporation: Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities.* — The Corporation shall be non-profit and shall devote all its returns from its capital investment as well as excess revenues from its operation, for expansion. To enable the Corporation to pay the indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section One of this Act, the Corporation, including its subsidiaries is hereby declared exempt from the payment of all forms of taxes, duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, *supersedeas* bonds, in any court or administrative proceedings." *(Underscoring supplied)*

The tax-exempt status of NPC had been affirmed in the case of *Ernesto M. Maceda vs. Catalino Macaraig, Jr., et al.*,[12] wherein the Supreme Court *en banc* pronounced that:

> "The use of the phrase 'all forms' of taxes demonstrate the intention of the law to give NPC all the tax exemptions it has been enjoying before. The rationale for this exemption is that being non-profit the NPC 'shall devote all its returns from its capital investment as well as excess revenues from its operation, for expansion. To enable the Corporation to pay the indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section one of this Act, . . .'
>
> The preamble of P.D. No. 938 states —
>
> > 'WHEREAS, in the application of the tax exemption provision of the Revised Charter, the non-profit character of the NPC has not been fully utilized *because of restrictive interpretations of the taxing agencies of the government on said provisions . . .*' (Emphasis supplied.)

[11] An Act Revising the Charter of the National Power Corporation.
[12] G.R. No. 88291. May 31, 1991 (Decision).

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It is evident from the foregoing that the lawmaker did not intend that the said provisions of P.D. No. 938 shall be construed strictly against NPC. On the contrary, the law mandates that it should be interpreted liberally so as to enhance the tax-exempt status of NPC."

In the light of the foregoing pronouncement of the Supreme Court, petitioner's sale of electricity to the NPC, a tax-exempt entity under R.A. No. 6395, effectively subjects such sale to zero percent (0%) rate.

The second, third, and fourth assigned issues, being interrelated, shall be discussed together.

In claiming a refund for input VAT directly attributable to effectively zero-rated sales, the following legal provision and revenue regulation must be observed:

<u>Section 112 (A) of the National Internal Revenue Code of 1997:</u>

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

(A) *Zero-rated or Effectively Zero-rated Sales.* — <u>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</u>: *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." *[Underscoring supplied]*

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"<u>Section 4.106-1 and Section 4.104-5 of Revenue Regulations No. 07-95:</u>

> "**Section 4.106-1. Refunds or tax credits of input tax. — (a) Zero-rated sales of goods or properties or services —** Only a VAT-registered person may be given a tax credit certificate or refund of VAT paid corresponding to the zero-rated sales of goods, properties or services, excluding the presumptive input tax and to the extent that such input tax has not been applied against the output tax. The application should be made within two (2) years after the close of the taxable quarter when the sales were made."
>
> "**Section 4.104-5. *Substantiation of claims for input tax credit.*** — (a) <u>Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business</u>. <u>The input tax should be supported by an invoice or receipt showing the information as required under Section 108 (a) and 238 of the Code</u>. Input tax on purchases of real property should be supported by a copy of the public instrument i.e. deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with the VAT receipt issued by the seller.
>
> x x x" *[Underscoring supplied]*

Based on the above-cited legal provisions, petitioner must comply with the following requisites to be entitled to the refund of input VAT directly attributable to effectively zero-rated sales:

1. Both administrative and judicial claims for refund must be filed within two (2) years after the close of the taxable quarter when the sales were made;

2. The claimed input VAT payments must be directly attributable to zero-rated sales;

3. The claimed input VAT payments must be duly supported by VAT invoices or official receipts; and

4. The claimed input VAT payments must not be applied against any output tax carried over to the succeeding month(s).

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Were the administrative and judicial claims for refund filed within the two-year prescriptive period?

For the four quarters of taxable year 2002, petitioner filed its Quarterly VAT Returns on April 25, 2002 (1st quarter), July 25, 2002 (2nd quarter), October 25, 2002 (3rd quarter), and January 27, 2003 (4th quarter).[13] Thereafter, petitioner filed its administrative claim for refund with the BIR on April 20, 2004 and its Petition for Review (judicial claim) with this Court on April 22, 2004. Since both claims were filed within the two (2)-year prescriptive period reckoned from the dates when petitioner filed its Quarterly VAT Returns, We find petitioner to have complied with the first requisite.

Were the claimed input VAT payments directly attributable to zero-rated sales?

As to the second requisite, petitioner presented in evidence its Rehabilitation, Operation Maintenance and Management Agreement with the NPC and Korea Electric Power Corporation[14] and the various official receipts[15] to prove its sales to the NPC. Since all of its sales are zero-rated, all payments of input VAT on its purchases of goods and services amounting to P11,710,868.86 should be directly attributable to its declared zero-rated sales of P3,285,308,055.85. However, out of the declared zero-rated sales of P3,285,308,055.85, petitioner was able to substantiate only the amount of P1,451,788,865.52, to wit:

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[13] Exhibits "B", "C", "D" and "E".
[14] Exhibit "H".
[15] Exhibits "K", "K-1" to "K-25".

Exhibit	OR No.	Date		Amount
K	196	1/7/2002	P	73,947,108.77
K-1	197	1/17/2002		93,128,704.04
K-2	198	2/7/2002		71,358,271.95
K-3	199	2/11/2002		89,203,098.59
K-4	200			73,381,775.74
K-5	201	3/13/2002		42,852,305.83
K-6	202	4/10/2002		73,308,066.29
K-7	204	5/8/2002		65,470,983.71
K-8	205	5/15/2002		85,847,822.37
K-9	206	6/11/2002		74,697,771.34
K-10	209	7/11/2002		72,299,993.43
K-11	211	8/8/2002		74,850,280.55
K-12	213	9/6/2002		72,325,968.86
K-13	215	10/9/2002		74,319,232.09
K-14	216	10/30/2002		87,146,130.17
K-15	217			128,230,460.22
K-16	219	11/7/2002		74,389,194.98
K-17	220	12/11/2002		34,880,455.30
K-18	221	12/11/2002		88,192,294.29
K-23	212	8/8/2002		1,958,947.00
	Total			**P1,451,788,865.52**

In view of the foregoing findings, it becomes necessary to apportion the validly supported input VAT to its substantiated zero-rated sales of P1,451,788,865.52. The rate to be applied will be based on the total volume of declared zero-rated sales, computed as follows:

Substantiated zero-rated sales to NPC	P1,451,788,865.52
Divided by the total declared zero-rated sales	3,285,308,055.85
Rate of substantiated zero-rated sales	44.19%

Therefore, the proper subject of petitioner's claim for refund shall only be 44.19% of the validly supported input VAT.

Were the claimed input VAT payments duly supported by VAT invoices or official receipts?

Petitioner partly complied with this third requisite.

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Based on the findings of the commissioned independent Certified Public Accountant contained in his Report submitted on January 11, 2006,[16] petitioner's claimed input VAT in the amount of P11,710,868.86 should be reduced by P125,556.40, as follows:

"**Conclusion**

Based on the results of the procedures performed, as outlined in Annex H, on the Company's accounting and related records supporting the Company's claim for refund/tax credit on the Input VAT, such claim requires adjustments based on exceptions noted as summarized in Annexes B to G.

Based on the above findings, the claim for refund/tax credit by the Company on Input VAT should be adjusted as follows:

	Annex	Total
Amount of Input VAT claimed	A	P11,710,868.86
• Invoices and/or statements of account and or official receipts subject to overseas communication tax	B	(106,001.52)
• Input VAT recognized for unpaid service invoices and/or statement of account	C	(17,661.83)
• Erroneous amounts indicated in the Schedule of Input VAT as compared to related invoices or statements of account or official receipts resulting to net understatement of the Input VAT Claim	D	266.08
• Input VAT recognized and recorded in the books for non-VAT suppliers	E	(203.28)
• Input VAT recognized for invoices not named to client or buyers	F	(766.76)
• Input VAT recognized but not supported by official receipts and/or sales invoices	G	(1,189.09)
		P11,585,312.46"[17]

[16] Report marked as Exhibit "N".
[17] Records, p. 103.

However, a careful scrutiny of petitioner's supporting documents reveals that input VAT in the aggregate amount of P5,045,357.80 should further be disallowed for the reasons hereunder stated:

Exhibit	Supplier	Date	Invoice/OR Amount	Input VAT
(a)	**Input VAT on purchase of goods not supported by an invoice**			
	A2X Communications Trading	6/19/2002	P 10,500.00	P 954.55
	ABC Strategic Solutions	4/15/2002	580.00	52.73
	ANC Commercial	1/12/2002	146.00	13.27
	Big R Stores Incorporated	2/16/2002	453.95	41.27
	Bo. San Juan Lumber & Hardware	1/12/2002	930.00	84.55
	Bon Vincent Enterprises	3/17/2002	300.00	27.27
	Bon Vincent Enterprises	4/15/2002	580.00	52.73
	CD-R King Gen Mdse	10/20/2002	1,003.00	91.18
	Christine Auto Supply	3/26/2002	160.00	14.55
	CO-Green Trading Corp.	4/30/2002	15,400.00	1,400.00
	Contract Design & System Furniture	11/22/2002	5,460.00	496.36
	Contract Design & Systems Design	4/30/2002	3,168.00	288.00
	Data Hardware & Electrical Supply	1/25/2002	185.00	16.82
	DMM Gloves & Rugs	2/24/2002	300.00	27.27
	DMM Gloves & Rugs	3/12/2002	380.00	34.55
	DMM Gloves & Rugs	4/15/2002	380.00	34.55
	DMM Gloves & Rugs	4/29/2002	3,990.00	362.73
	DMM Gloves & Rugs	5/6/2002	380.00	34.55
	DMM Gloves & Rugs	6/28/2002	380.00	34.55
	DMM Gloves & Rugs	9/15/2002	380.00	34.55
	DMM Gloves & Rugs	10/29/2002	320.00	29.09
	DMM Gloves & Rugs	11/20/2002	320.00	29.09
	DMM Gloves & Rugs Gen Mdse	1/7/2002	380.00	34.55
	Eastern Tanay Supermarket	1/2/2002	785.25	71.39
	Eastern Tanay Supermarket	1/7/2002	1,628.75	148.07
	Eastern Tanay Supermarket	1/7/2002	1,628.50	152.59
	Eastern Tanay Supermarket	1/24/2002	945.00	85.91
	Eastern Tanay Supermarket	1/7/2002	638.00	58.00
	Eastern Tanay Supermarket	1/10/2002	2,899.85	263.62
	Eastern Tanay Supermarket	1/31/2002	572.50	52.05
	Eastern Tanay Supermarket	1/31/2002	1,462.50	132.95
	Eastern Tanay Supermarket	1/31/2002	1,552.75	141.16
	Eastern Tanay Supermarket	2/18/2002	655.25	59.57
	Eastern Tanay Supermarket	3/20/2002	443.25	40.29
	Eastern Tanay Supermarket	3/7/2002	3,020.20	274.56
	Eastern Tanay Supermarket	3/7/2002	627.50	57.05
	Eastern Tanay Supermarket	3/7/2002	1,602.10	145.65
	Eastern Tanay Supermarket	3/7/2002	1,377.50	125.23
	Eastern Tanay Supermarket	3/18/2002	954.75	86.80
	Eastern Tanay Supermarket	3/7/2002	656.95	59.72

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Eastern Tanay Supermarket	4/12/2002	294.50	26.77
Eastern Tanay Supermarket	4/12/2002	327.00	29.73
Eastern Tanay Supermarket	4/21/2002	437.25	39.75
Eastern Tanay Supermarket	4/12/2002	1,133.00	103.00
Eastern Tanay Supermarket	4/12/2002	1,604.75	145.89
Eastern Tanay Supermarket	4/10/2002	2,770.00	251.82
Eastern Tanay Supermarket	5/16/2002	3,993.70	363.06
Eastern Tanay Supermarket	5/23/2002	326.75	29.75
Eastern Tanay Supermarket	6/7/2002	3,569.50	324.50
Eastern Tanay Supermarket	7/4/2002	3,104.00	282.17
Eastern Tanay Supermarket	8/5/2002	2,877.75	261.61
Eastern Tanay Supermarket	8/6/2002	3,119.55	283.60
Eastern Tanay Supermarket	8/22/2002	478.50	43.50
Eastern Tanay Supermarket	7/30/2002	113.50	10.32
Eastern Tanay Supermarket	8/5/2002	544.50	49.50
Eastern Tanay Supermarket	8/5/2002	714.75	64.98
Eastern Tanay Supermarket	8/26/2002	2,828.75	257.16
Eastern Tanay Supermarket	8/29/2002	305.00	27.73
Eastern Tanay Supermarket	9/5/2002	591.00	53.73
Eastern Tanay Supermarket	9/4/2002	67.00	6.09
Eastern Tanay Supermarket	9/5/2002	806.25	73.30
Eastern Tanay Supermarket	9/5/2002	3,240.50	294.59
Eastern Tanay Supermarket	9/5/2002	137.50	12.50
Eastern Tanay Supermarket	9/10/2002	361.50	32.86
Eastern Tanay Supermarket	9/5/2002	1,148.00	104.36
Eastern Tanay Supermarket	9/5/2002	1,935.80	175.98
Eastern Tanay Supermarket	10/8/2002	863.50	78.50
Eastern Tanay Supermarket	10/8/2002	1,588.00	144.36
Eastern Tanay Supermarket	10/8/2002	754.75	68.62
Eastern Tanay Supermarket	10/8/2002	902.90	82.08
Eastern Tanay Supermarket	10/10/2002	3,497.50	317.96
Eastern Tanay Supermarket	11/6/2002	658.25	59.84
Eastern Tanay Supermarket	11/6/2002	752.10	68.36
Eastern Tanay Supermarket	11/6/2002	1,497.25	136.11
Eastern Tanay Supermarket	11/6/2002	944.75	85.89
Eastern Tanay Supermarket	11/11/2002	3,105.70	282.34
Eastern Tanay Supermarket	12/5/2002	3,364.25	305.89
Family Mate Trading	11/26/2002	5,400.00	490.91
Farmacia Amoin	7/6/2002	33,387.25	3,035.20
Farmacia Peralta	8/6/2002	1,911.92	173.82
Farmacia Peralta	10/22/2002	31,443.33	2,858.48
FAT Kee Computer System	3/18/2002	19,760.00	1,796.36
FAT Kee Computer System	6-Sep	2,700.00	245.45
Filaway Awards	6/30/2002	1,350.00	122.73
Filway Awards	8/15/2002	450.00	40.91
Filway Awards	9/13/2002	1,800.00	163.64
Filway Awards	11/9/2002	1,150.00	104.55
Filway Awards	10/26/2002	1,800.00	163.64
Filway Awards	12/4/2002	2,000.00	181.82
Filway Awards	12/17/2002	3,800.00	345.45
First ADB Construction Supply	10/10/2002	488.00	44.36
Firticor Inc	6/18/2002	700.00	63.64
Holland Blooms	9/3/2002	1,800.00	163.64

Information Products Corp	6/24/2002	1,100.00	100.00
JVS Worldwide, Inc	10/31/2002	1,820.00	165.45
Lightning Sales Marketing	2/6/2002	3,000.00	272.73
Max Saver Corporation	11/18/2002	900.00	81.81
Merriam & Webster Bookstore	11/3/2002	870.00	79.09
National Bookstore	12/23/2002	1,768.50	160.77
New Tanay Hardware & Const.	3/26/2002	131.00	11.91
Office Plus Phils.	4/30/2002	6,328.90	575.35
Office1Superstore	6/21/2002	748.75	68.07
Premium Logic	7/28/2002	3,350.00	304.55
Premium Logic	8/10/2002	3,500.00	318.18
PT Office Furniture	9/10/2002	2,422.50	220.23
PT Office Furniture	10/11/2002	10,311.00	937.36
Pumpcraft Industrial Sales	6/1/2002	1,600.00	145.45
Pumpcraft Industrial Sales	7/17/2002	1,500.00	136.36
Pumpcraft Industrial Sales	8/15/2002	1,380.00	125.45
Pumpcraft Industrial Sales	8/16/2002	3,850.00	350.00
Pumpcraft Industrial Sales	8/30/2002	2,750.00	250.00
Pumpcraft Industrial Sales	10/15/2002	1,440.00	130.91
Robinsons Department Store	2/16/2002	431.75	39.25
Robinsons Department Store	8/18/2002	796.00	72.36
Rustan's Commercial Corp	9/10/2002	440.00	40.00
Rustan's Commercial Corp	9/10/2002	9,144.75	831.34
Ruvyrich Trading	1/3/2002	215.00	19.55
Ruvyrich Trading	5/2/2002	1,125.00	102.27
Son-Rise Tire & Battery Supply	4/12/2002	6,200.00	563.63
Son-Rise Tire & Battery Supply	7/12/2002	4,100.00	372.73
Son-Rise Tire & Battery Supply	7/26/2002	6,800.00	618.18
Son-Rise Tire & Battery Supply	10/22/2002	2,600.00	236.36
Sta Lucia East Dept Store	7/5/2002	237.34	21.58
Sta Lucia East Dept. Store	1/7/2002	1,487.75	135.25
Sta Lucia East Dept. Store	1/7/2002	553.75	50.34
Sta Lucia East Dept. Store	1/30/2002	908.50	82.59
Sta Lucia East Supermarket	7/5/2002	410.25	37.30
Sta Lucia East Supermarket	7/5/2002	831.65	75.60
Sta Lucia East Supermarket	7/5/2002	586.85	53.35
Sta Lucia East Supermarket	7/5/2002	1,268.00	115.27
Sta Lucia East Supermarket	7/5/2002	1,344.75	122.25
Sta Lucia East Supermarket	9/11/2002	1,854.90	168.63
Sta. Lucia East Dept. Store	2/26/2002	940.75	85.48
Sta. Lucia East Dept. Store	6/4/2002	729.25	66.30
Sta. Lucia East Dept. Store	9/13/2002	2,051.00	186.45
Sta. Lucia East Dept. Store	9/13/2002	3,192.88	290.26
Sta. Lucia East Dept. Store	10/24/2002	585.50	53.23
Sta. Lucia East Supermarket	2/14/2002	3,159.68	287.24
Sta. Lucia East Supermarket	2/6/2002	1,000.00	90.91
Sta. Lucia East Supermarket	2/6/2002	1,962.50	178.41
Sta. Lucia East Supermarket	3/8/2002	519.60	47.27
Sta. Lucia East Supermarket	3/8/2002	963.00	87.55
Sta. Lucia East Supermarket	4/11/2002	639.50	58.14
Sta. Lucia East Supermarket	6/4/2002	429.55	39.05
Sta. Lucia East Supermarket	9/13/2002	1,417.50	128.86
Tanay Cycle Parts & Gen Mdse	8/14/2002	140.00	12.73

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Tanay Cycle Parts & Gen Mdse	9/26/2002	970.00	88.18
TCA	4/11/2002	240.00	21.82
The DIY Shop Corp	9/5/2002	1,024.25	93.11
The DIY Shop Corp	9/23/2002	356.00	32.36
Up-Town Industrial Sales, Inc	1/10/2002	18,576.00	1,688.73
UR Photo Corp	7/31/2002	591.00	53.73
Venice Furniture Corp	10/16/2002	132,000.00	12,000.00
Venture Trading	9/9/2002	28,742.21	2,612.93
World Net Comm Enterprises	4/6/2002	430.00	39.09
World Net Comm Enterprises	6/30/2002	800.00	72.73
Subtotal		**P 506,906.09**	**P 64,509.50**

(b) Input VAT on purchase of service not supported by an official receipt

AML Auto Aircon & Elec. Supply	5/18/2002	P 1,100.00	P 100.00
Delfin's Portrait & Photo Supply	9/28/2002	143.50	13.05
Delfin's Portrait & Photo Supply	9/7/2002	148.00	13.45
DHL	6/28/2002	1,216.82	110.62
Ding's Auto Repair	2/5/2002	3,000.00	272.73
East Photo	10/29/2002	116.50	10.59
Eastern Telecoms	3/1/2002	88.77	8.07
Eurasian Motors Co	5/27/2002	1,100.00	100.00
Eurasian Motors Co	5/27/2002	1,160.00	100.00
First Imperial Cargo, Inc	10/30/2002	205,658.86	18,696.26
Globe Telecom	2/5/2002	2,064.75	404.13
Globe Telecom	various	26,497.67	2,408.88
Globe Telecom	11/20/2001	4,707.28	427.93
Globe Telecom	various	30,769.64	2,797.24
Globe Telecom	various	30,264.19	2,751.29
HD Edsa Auto Center Corp.	6/28/2002	27,803.05	2,527.55
INFOCOM	1/1/2002	16,500.00	1,500.00
INFOCOM	2/1/2002	41,454.60	3,768.60
INFOCOM	4/26/2002	37,159.10	3,378.10
INFOCOM	5/1/2002	16,500.00	1,500.00
INFOCOM	6/28/2002	30,800.00	2,800.00
Mr. Quickie Corp	1/31/2002	60.00	5.45
Mr. Quickie Corp	23-Nov	30.00	2.73
Omni Workx, Inc	5/21/2002	652,415.06	59,310.46
Omni Workx, Inc	various	253,225.26	23,020.48
PLDT	2/28/2002	4,523.32	411.21
PLDT	various	2,979.02	270.82
PLDT	2/24/2002	45,302.73	4,118.43
PLDT	4/26/2002	67,318.24	6,119.84
PLDT	5/15/2002	63,044.52	5,731.32
PLDT	5/27/2002	50,380.77	4,580.07
PT & T	6/30/2002	27,720.00	2,520.00
PT & T	6/28/2002	72,553.14	6,595.74
St. Francis Transport System	6/20/2002	5,649.49	513.59
Unisun Supermarket, Inc	1/30/2002	172.00	15.64
Globe Telecom	5/23/2002	61,280.34	5,570.94
Philippine Fuji Xerox	6/28/2002	2,237.51	203.41
Fuji Zerox	12/2/2002	2,687.63	244.33
Fuji Zerox	8/31/2002	921.58	83.78

3N Copy Systems	9/6/2002	1,225.00	111.36
3N Copy Systems	9/9/2002	1,225.00	111.37
Tirelandia, Inc.	8/9/2002	60.00	5.45
Globe Telecom	various	31,640.73	2,876.43
Globe Telecom	various	39,419.27	3,583.57
PLDT	10/11/2002	135,843.29	12,349.39
PLDT	10/30/2002	6,273.30	570.30
Hankook Insurance Agency	6/27/2002	22,421.63	2,038.33
INFOCOM	12/1/2002	23,650.00	2,150.00
PLDT	12/1/2002	6,273.30	570.30
Fast Clean Laundry & Dry Cleaning	4/15/2002	952.00	86.55
Ihsung Engineering	12/27/2002	761,532.20	69,230.20
Subtotal		**P2,821,269.06**	**P256,689.98**

(c) Input VAT on purchase of goods/service not in the name of the company

O-3529	4L Auto Parts	8/12/2002	P 580.00	P 52.73
O-106	Aileen Ligores	1/3/2002	130.00	11.82
O-2559	Christine Auto Supply	6/11/2002	165.00	43.64
O-2564	Christine Auto Supply	6/18/2002	740.00	15.00
O-3533	Data Hardware & Electrical Supply	8/12/2002	100.00	9.09
O-3534	Data Hardware & Electrical Supply	8/28/2002	1,640.00	149.09
O-3535	Data Hardware & Electrical Supply	8/18/2002	470.00	42.73
O-3538	Eastern Tanay Supermarket	8/7/2002	867.50	78.87
O-1599	Electroworld	4/17/2002	1,430.00	130.00
O-2061	Gold Mine Motorists Center	5/26/2002	300.00	27.27
O-3002	Highland Radio Supply Inc.	7/17/2002	100.00	9.09
O-91	JR Auto Parts Inc.	1/2/2002	960.00	87.27
O-2486	Maximus	6/9/2002	200.00	18.18
O-3020	Mr. Quickie Corp	7/1/2002	75.00	6.82
O-3050	Multiflex Enterprises	9/16/2002	750.00	68.18
O-3681	National Bookstore	9/11/2002	1,680.00	152.73
O-197	New Capitol Tire Trading Corp	1/11/2002	180.00	16.36
O-2065	PNCC Skyway Corp.	5/14/2002	1,000.00	90.91
O-5217	PNCC Skyway Corp.	10/29/2002	700.00	63.64
O-3080	Ramil Tire Supply, Inc	8/7/2002	6,800.00	618.18
O-3562	Ruvyrich Trading	7/26/2002	85.00	7.73
O-1084	Searton Marketing	3/17/2002	1,500.00	136.36
O-2067	Wellington Insurance Company	5/8/2002	1,176.00	106.91
O-2068	Wellington Insurance Company	5/8/2002	1,176.00	106.91
O-3826	Zenith Insurance Corp	9/9/2002	1,176.00	106.91
	Subtotal		**P 23,980.50**	**P 2,156.42**

(d) Input VAT on purchase of goods not within the period of claim

O-6049	PC Quarters	1/4/2003	P 3,340.00	P 621.81
O-187	Tanay Flying V Gasoline Station	12/26/2001	63.00	5.73
	Subtotal		**P 3,403.00**	**P 627.54**

(e) Input VAT on purchase of goods/service supported by Stamped TIN-VAT, Non-VAT and without TIN-VAT invoice/official receipt.

O-1968	MAPFRE Asian Insurance	5/30/2002	P 14,509.00	P 1,319.00

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O-4460	Babcock-Hitachi (Philippines)	10/22/2002	24,327,000.00	2,252,500.00
O-4495	Bethel Auto Supply & Electric Serv	10/10/2002	4,400.00	400.00
O-3967	Dina M. Monforte Motorshop	9/5/2002	240.00	21.82
O-1959 to O-1960	Babcock-Hitachi (Philippines)	5/28/2002	4,372,500.00	397,500.00
O-2302	MICES	4/26/2002	20,691.00	1,881.00
O-2781	PT CERNA CORP	5/27/2002	62,940.00	5,721.82
O-1228	GSIS	4/11/2002	38,400.00	422,400.00
O-3210	Wise & Company, Inc	8/9/2002	268,351.49	24,974.55
O-5816 to O-5819	Asan V & P Co	12/27/2002	1,792,590.91	162,962.81
O-4150	WG Super Store	9/9/2002	36,900.00	3,354.55
O-572	F. Fernando Auto Supply	1/25/2002	95.00	8.64
O-5936	Geumhwa PSC	12/27/2002	1,802,659.32	163,878.12
O-5942	Geumhwa PSC	12/27/2002	13,329,836.52	1,211,803.32
O-3297	High Point Development Corp	8/22/2002	876,000.00	72,000.00
	Subtotal		**P46,947,113.24**	**P4,720,725.63**

(f) Input VAT on purchase of goods supported by invoices without dates

O-3545	First ADB Construction Supply		P 6,316.00	P 574.18
O-573	Christine Auto Supply	30-Jan	700.00	63.64
O-574	Christine Auto Supply	31-Jan	120.00	10.91
	Subtotal		**P 7,136.00**	**P 648.73**
	Total		**P50,309,807.89**	**P5,045,357.80**

The disallowances, as verified by this Court, are summarized as follows:

a)	Input VAT on purchase of goods not supported by an invoice	P 64,509.50
b)	Input VAT on purchase of service not supported by an official receipt	256,689.98
c)	Input VAT on purchase of goods/service not in the company's name	2,156.42
d)	Input VAT on purchase of goods not within the period of claim	627.54
e)	Input VAT on purchase of goods/service supported by invoice/official receipt without TIN-VAT	4,720,725.63
f)	Input VAT on purchase of goods without date/year date	648.73
Total Disallowed Input VAT Per Court's Verification		**P 5,045,357.80**

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The disallowances referred to in items *(a)* and *(b)* are supported by the provisions of Section 110(A)(2)(a) of the NIRC of 1997, which state:

> "**SEC. 110.** *Tax Credits.* —
>
> (A) *Creditable Input Tax.* —
>
> x x x
>
> (2) The input tax on domestic purchase of goods or properties shall be creditable:
>
> (a) To the purchaser upon consummation of sale and on importation of goods or properties; and
>
> x x x
>
> However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee." *[Underscoring supplied]*

In relation thereto, Sections 106(D)(1) and 108(C) of the NIRC of 1997 provide:

> "**SEC. 106.** *Value-added Tax on Sale of Goods or Properties.* —
>
> x x x
>
> (D) *Determination of the Tax.* —
>
> (1) The tax shall be computed by multiplying the total amount indicated in the invoice by one-eleventh (1/11).
>
> x x x
>
> "**SEC. 108.** *Value-added Tax on Sale of Services and Use or Lease of Properties.* —
>
> x x x
>
> (C) *Determination of the Tax.* — The tax shall be computed by multiplying the total amount indicated in the official receipt by one-eleventh (1/11)." *[Underscoring supplied]*

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The Court *en banc* clarified in *BASF Philippines, Inc. vs. Commissioner of Internal Revenue*[18] the use of an invoice and an official receipt as support for valid purchase of goods or service, to wit:

> "The law is clear; it states 'upon consummation of sale,' in the case of domestic purchases of goods or properties, and 'upon payment of compensation or fee,' in the case of purchases of services. Pursuant to the aforequoted Section 110, the input VAT on domestic purchases of goods or properties shall be allowed as tax credit to the purchaser only upon consummation of sale, which means upon issuance by the seller of the VAT sales invoice evidencing the sale of goods/properties. On the other hand, the input VAT on purchases of services shall be available as tax credit to the purchaser only upon payment of the compensation or fee *i.e.*, upon issuance by the seller of the VAT official receipt evidencing receipt of the payment for services performed or yet to be performed.
>
> From the foregoing, it can be concluded that there is a clear delineation between official receipts and invoices. Contrary to petitioner's position, these two documents cannot be used interchangeably as evidence to prove a particular transaction. Such as in the instant case, petitioner presented official receipts and statements of accounts to prove input VAT on its local goods purchases, instead of invoices as required by law."

Meanwhile, the disallowances referred to in item *(e)* are supported by Section 4.108-1 of Revenue Regulations No. 07-95, to wit:

> "**Section 4.108-1. Invoicing Requirements** — All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:
>
> 1. the name, TIN and address of seller;
> 2. date of transaction;
> 3. quantity, unit cost and description of merchandise or nature of service;
> 4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
> 5. the word 'zero rated' imprinted on the invoice covering zero-rated sales; and

[18] C.T.A. EB No. 47, January 5, 2006.

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> 6. the invoice value or consideration.
>
> x x x
>
> Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or receipts and this shall be considered as a 'VAT Invoice'. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax.
>
> If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A 'VAT Invoice' shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the Code.
>
> x x x"

Applying the abovequoted provisions to the instant case, input VAT on purchases supported by invoices or official receipts stamped with TIN-VAT shall be disallowed because these purchases are not supported by "VAT Invoices" under the contemplation of the aforequoted invoicing requirement. To be considered a "VAT Invoice", the TIN-VAT must be **printed,** and not merely stamped. Consequently, purchases supported by invoices or official receipts, wherein the TIN-VAT are not printed thereon, shall not give rise to any input VAT. Likewise, input VAT on purchases supported by invoices or official receipts which are NON-VAT are disallowed because these invoices or official receipts are not considered as "VAT Invoices". Hence, the claims for input VAT on purchases referred to in item *(e)* are properly disallowed.

Based on the foregoing findings, petitioner's allowable input VAT amounts to P2,890,005.96, computed as follows:

Total Input VAT Claimed		P 11,710,868.86
Less: Disallowance		
(a) Per verification of the independent CPA	P 125,556.40	
(b) Per Court's verification	5,045,357.80	5,170,914.20

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Validly Supported Input VAT	P	6,539,954.66
Multiply by Rate of Substantiated Zero-Rated Sales		44.19%
Total Allowed Input VAT	**P**	**2,890,005.96**

Were the claimed input VAT payments unapplied against any output tax carried over to the succeeding month(s)?

Lastly, petitioner's Quarterly VAT Returns for the four (4) quarters of 2002 show that it had no output VAT against which the total allowed input VAT payments of P2,890,005.96 maybe credited or applied. For the 4th quarter of 2004, petitioner deducted the total input VAT claim of P11,710,868.86 (of which only the amount of P2,890,005.96 is allowable) as "Any VAT Refund/TCC Claimed" from the total available input VAT of P46,153,782.06.[19] As a result, the remaining available input VAT of P34,442,913.20 carried over to the first quarter of 2005 no longer included the total allowed input VAT claim of P2,890,005.96. Clearly then, petitioner did not apply the total allowed input VAT claim of P2,890,005.96 to the 1st quarter of 2005 or any succeeding quarters.

In sum, petitioner was able to sufficiently prove its entitlement to a refund representing unutilized input VAT arising from its zero-rated sales of electricity to NPC for the four (4) quarters of taxable year 2002, not for the total amount of its subject claim, but only in the reduced amount of P2,890,005.96.

WHEREFORE, petitioner's claim for refund is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to **REFUND** petitioner the

[19] Exhibit "I-1".

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reduced amount of **TWO MILLION EIGHT HUNDRED NINETY THOUSAND FIVE PESOS AND 96/100 (P2,890,005.96)** representing unutilized input value-added tax for taxable year 2002.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

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.
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