REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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MIRANT PAGBILAO CORPORATION (Formerly Southern Energy Quezon, Inc.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6957

Members:

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

Promulgated:
MAY 16 2008 ; 1:00pm

x - x

DECISION

CASANOVA, *J.:*

THE CASE

Before Us is a Petition for Review filed by Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.) seeking that judgment be issued ordering respondent to refund or issue a tax credit certificate in favor of petitioner for the total amount of P79,918,002.95. The amount claimed allegedly represents unutilized input VAT paid on its domestic purchases of goods and services and importation of goods attributable to zero-rated sales to National Power Corporation (NPC) for the four quarters of taxable period 2002.

THE FACTS

Petitioner, is a domestic corporation organized and existing under and by virtue of Philippine laws, with principal office at Pagbilao Grande Island, Pagbilao, Quezon.[1] It is principally engaged in the business of power generation and the subsequent sale thereof to the NPC under a Build, Operate, Transfer ("BOT") scheme.[2] It is registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer in accordance with Section 107 of the Old Tax Code (now Section 236 of the National Internal Revenue Code of 1997), with BIR Certificate of Registration bearing RDO Control Number 96-600-002498 and Taxpayer Identification Number 001-726-870.[3] It was originally registered with the Securities and Exchange Commission (SEC) under the name "Hopewell Power (Philippines), Corporation" which was subsequently changed to "Southern Energy Quezon, Inc." on September 22, 1999. Thereafter, on June 28, 2001, it made another changed of name from "Southern Energy Quezon, Inc." to "Mirant Pagbilao Corporation."[4]

Respondent, on the other hand, is the Commissioner of Internal Revenue who is duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund or issuance of tax credit certificate of overpaid internal revenue taxes as provided by law, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.[5]

Petitioner filed its first to fourth quarterly VAT returns for the calendar year 2002 with the BIR on the following dates as follows:[6]

Quarter:	Date filed:
1st	April 25, 2002
2nd	July 23, 2002
3rd	October 25, 2002
4th	January 27, 2003

[1] Paragraph 2, Admitted Facts, Rollo, p. 461.
[2] Paragraph 1, Joint Stipulation Of Facts (JSOF), Rollo, p. 462.
[3] Paragraph 2, JSOF, ibid.
[4] Paragraph 3, JSOF, ibid.
[5] Paragraph 1, Admitted Facts, Rollo, p. 461.
[6] Paragraph 4, 5, 6, 7, JSOF, Rollo, pp. 462-463.

On July 25, 2003, petitioner amended its first to fourth quarterly VAT returns for the aforesaid calendar year.[7]

On December 22, 2003, petitioner filed an administrative claim for refund of unutilized input VAT with the Revenue District Office No. 60 at Lucena City in the total amount of P79,918,002.95 for the four quarters of calendar year 2002.[8]

Then on April 22, 2004, petitioner filed its judicial claim for refund on the aforesaid unutilized input VAT in the total amount of P79,918,002.95 for the four quarters of calendar year 2002.[9]

Respondent, in his Answer dated June 25, 2004, interposed the following Special and Affirmative Defenses, and We quote:

> "4. He reiterates and repleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses;
>
> 5. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the respondent;
>
> 6. 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 for 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

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[7] Paragraph 7, JSOF, Rollo, p. 463.
[8] Paragraph 8, Ibid.
[9] Paragraph 9, Ibid.

amended, requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for 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 P79,918,002.95 allegedly paid by the petitioner on its purchases of goods and services for the four (4) quarters of the year 2002 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 its 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);

7. 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);

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 as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)."

To support its claim, petitioner presented documentary and testimonial evidence. On the other hand, respondent failed to present any. After which, the parties were required to submit their respective memoranda.

On September 20, 2007, petitioner filed its memorandum, while on November 21, 2007, respondent filed his memorandum. On November 28, 2007, this case is submitted for decision.

ISSUES

The parties jointly submitted to the following issues:[10]

1. Whether or not the power generation services rendered by petitioner to NPC are subject to zero percent (0%) VAT pursuant to Section 108 (B) (3) of the Tax Code;

2. Whether or not petitioner has unutilized creditable input VAT for the four quarters of calendar year 2002 arising from its domestic purchases of goods and services and importation of goods amounting to P79,918,002.95 that can be a proper object of a claim for refund pursuant to Sections 108 (B) (3) and 112 (A) of the Tax Code;

3. Whether or not the unutilized creditable input taxes for the four quarters of calendar year 2002 are substantiated by proper invoices and official receipts;

4. Whether or not the unutilized creditable input VAT payments for the four quarters of calendar year 2002 were carried over to and utilized in the succeeding taxable quarter(s) or applied against any of the output VAT liability of the petitioner; and

5. Whether or not petitioner is entitled to a refund and/or issuance of tax credit certificate for the unutilized input VAT payments in the amount of P79,918,002.95.

THE COURT'S RULING

Anent the first issue of whether or not the power generation services rendered by petitioner to National Power Corporation (NPC) are subject to zero percent (0%) VAT, We rule in the affirmative.

[10] Joint Stipulation of Issues, Rollo, p. 463.

Pursuant to Section 108 (B)(3) of the 1997 NIRC, as amended, providing the following:

> "SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. —
>
> xxx xxx xxx
>
> (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:
>
> xxx xxx xxx
>
> (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."***

From the foregoing, We need to determine whether NPC is an exempt entity and subjects the supply of services to it to zero-percent (0%) rate, by relating this Section of the Tax Code to Section 13 of Republic Act No. 6395, as amended, otherwise known as the National Power Corporation Charter, to wit:

> "Section 13. Non-profit Character of the Corporation: Exemption from All Taxes, Duties, 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 operations, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance of 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, in any court or administrative proceedings."

The above-quoted provision in NPC's special charter is without dispute states that NPC is categorically an exempt entity from payment of all taxes, whether direct or indirect, including VAT. Hence, services rendered by VAT registered persons, such as petitioner herein, to NPC are effectively subject to zero percent (0%) VAT.

Furthermore, the Supreme Court in the case of **Ernesto M. Maceda vs. Catalino Macaraig, Jr., et al., 197 SCRA 771, May 31, 1991**, affirmed NPC's tax exemption, and We quote in part:

> "The NPC is a non-profit public corporation created for the general good and welfare wholly owned by the government of the Republic of the Philippines. From the very beginning of its corporate existence, the NPC enjoyed preferential tax treatment, to enable the Corporation to pay the indebtedness and obligation and in the furtherance and effective implementation of the policy enunciated in Section one of "Republic Act No. 6395. . . .
>
> xxx xxx xxx
>
> It is noted that in the earlier law, R.A. No. 358 the exemption was worded in general terms, as to cover "all taxes, duties, fees, imposts, charges, etc. . . . ." However, the amendment under Republic Act No. 6395 enumerated the details covered by the exemption. Subsequently, P.D. No. 380, made even more specific the details of the exemption of NPC to cover, among others, both direct and indirect taxes on all petroleum products used in its operation. Presidential Decree No. 938 amended the tax exemption by simplifying the same law in general terms. It succinctly exempts NPC from "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".
>
> xxx xxx xxx
>
> The use of the phrase "all forms" of taxes demonstrate the intention of the law to give NPC all 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 investments as well as excess revenues from its operation, for expansion. . . .
>
> It is evident from the provisions of P.D. No. 938 that its purpose is to maintain the tax exemption of NPC from all forms of taxes including indirect taxes as provided for under R.A. No. 6395 and P.D. No. 380 if it is to attain its goals."

In addition, the issue of whether or not the power generation services rendered by petitioner to NPC are subject to zero percent (0%) VAT pursuant to Section 108 (B) of the 1997 NIRC, as amended has already been resolved by this Court in the affirmative in a number of similar cases.[11]

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[11] *Mirant (Phils.) Mobile Corp. (formerly Southern Energy Mobile, Inc.) vs. Commissioner of Internal Revenue, CTA Case Nos. 5939 & 5969, January 15, 2002; Mirant Navotas Corp. (formerly Southern*

Therefore, the generation services petitioner rendered to NPC is subject to zero percent (0%) VAT.

Having resolved the legal issue, We will now discuss the remaining issues jointly, considering that they relate to the factual aspect of petitioner's claim for refund.

Petitioner claims that its sale of power generation services to NPC as shown in its quarterly VAT returns for the four quarters of taxable year 2002 (*Exhibits C to J*) amounted in the aggregate sum of P12,087,947,799.57 (*Exhibit S*). Considering such sales are effectively zero-rated for VAT purposes pursuant to Section 108 (B) (3) of the 1997 NIRC, as amended, the reported unutilized input taxes in the amount of P79,918,002.95 allegedly attributable thereto can be proper subject of a claim for refund or issuance of tax credit certificate in accordance with Section 112 (A) and (D) of the 1997 NIRC, as amended.

However, in order to be entitled to a refund of input taxes directly attributable to effectively zero-rated sales, petitioner must prove the following:

1. the claimed input VAT payments are duly supported by VAT invoices or official receipts in accordance with Section 4.104-5 of Revenue Regulations No. 7-95 in relation to Sections 113 of the 1997 NIRC, as amended;

2. the claimed input VAT payments are directly attributable to zero-rated sales;

3. the claimed input VAT payments were not applied against any output tax nor carried over to the succeeding month(s)/quarter(s); and

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Energy Navotas, Inc.) vs. Commissioner of Internal Revenue, CTA Case Nos. 5936 & 5968, January 16, 2002; Mirant (Navotas II) Corp. (formerly Southern Energy Navotas II Power, Inc.) vs. Commissioner of Internal Revenue, CTA Case Nos. 5944 & 5963, January 21, 2002; Mirant Pagbilao Corp. (formerly Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 6041, March 5, 2002; Mirant Navotas Corporation (formerly Southern Energy Navotas Corporation, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 6459, April 21, 2005; Mirant (Navotas II) Corporation (formerly Southern Energy Navotas II Power, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 6418, April 11, 2006; Mirant Navotas Corporation (formerly Southern Energy Navotas, Inc.) vs. Commissioner of Internal Revenue, CTA Case Nos. 6637 and 6729, January 12, 2007; Mirant (Navotas II) Corporation (formerly Southern Energy Navotas II Power, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6959, September 26, 2007.

4. both the administrative and judicial claims for refund were filed within two years upon filing of the quarterly VAT return(s) covered by the claim as provided under Section 4-106.2 (c) of Revenue Regulations No. 7-95 in relation to Section 112 (D) of the 1997 NIRC, as amended.

To support its claim, petitioner presented, among others, various official receipts, invoices, bank debit advices, Bureau of Customs ("BOC") official receipts, import entry and internal revenue declarations (Exhibits CC-1 to CC-2988, DD-1 to DD-2795, EE-1 to EE-3254, FF-1 to FF-4244, JJ to DDDDD). However, not all of these were considered by Us.

As noted by the Commissioned Independent Certified Public Accountant (CICPA) in his report dated June 21, 2005, the following were found and observed:

Findings	*1st Quarter*	*2nd Quarter*	*3rd Quarter*	*4th Quarter*	*Total*
I. Input Taxes on Purchases of Goods:					
1. Supported by Invoices with Pre-printed TIN-NONVAT ***(Annex 2-1)***	*198.82*	*0*	*10,205.91*	*0*	*10,404.73*
2. Erroneously Computed ***(Annex 2-2)***	*0*	*16.30*	*0*	*0*	*16.30*
3. Supported by VAT Invoices Issued Not in the Company's Name/No Name ***(Annex 2-3)***	*730.36*	*1,042.74*	*39,036.61*	*500.00*	*41,309.71*
4. Supported by Photocopied VAT Invoices ***(Annex 2-4)***	*0*	*0*	*0*	*7,074.84*	*7,074.84*
5. Supported by Invoices with Pre-printed "TAN-VAT" ***(Annex 2-5)***	*1,436.37*	*681.82*	*327.27*	*3,012.40*	*5,457.86*
6. Supported by					

Invoices with Pre-printed "TAN" only ***(Annex 2-6)***	*0*	*0*	*2,456.37*	*6,569.96*	*9,026.33*
II. Input Taxes on Purchases of Services:					
1. Erroneously Computed ***(Annex 3-1)***	*3,850.59*	*0*	*11,910.00*	*28,297.38*	*44,057.97*
2. Supported by VAT ORs Issued Not in the Company's Name ***(Annex 3-2)***	*0*	*90.91*	*851.57*	*31.98*	*974.46*
3. Supported by ORs without Pre-printed "TIN VAT" ***(Annex 3-3)***	*0*	*0*	*0*	*3,454.55*	*3,454.55*
4. Supported by ORs without BIR Permit ***(Annex 3-4)***	*0*	*812.84*	*0*	*0*	*812.84*
5. Supported by ORs with Pre-printed TIN only ***(Annex 3-5)***	*0*	*41,686.36*	*34,625.00*	*0*	*76,311.36*
6. Supported by an OR with Pre-printed "VAT No." Only ***(Annex 3-6)***	*0*	*0*	*0*	*247.71*	*247.71*
III. Input Taxes Claimed On Local Purchases of Goods and Services Without Available Supporting Documents					
(Annex 4)	*537,524.03*	*366,126.45*	*426,111.56*	*538,892.84*	*1,868,654.88*

IV. Input Taxes Claimed on Importations					
1. Supported by a Photocopied IED Only					
(Annex 5-1)	*0*	*11,968.00*	*0*	*0*	*11,968.00*
2. Supported by Photocopied Informal IED only					
(Annex 5-2)	*45,583.00*	*0*	*0*	*0*	*45,583.00*
3. Without Available Supporting Documents					
(Annex 5-3)	*695,415.00*	*720,090.00*	*37,902.00*	*330,435.00*	*1,783,842.00*
TOTAL	***1,284,738.17***	***1,142,515.42***	***563,426.29***	***918,516.66***	***3,909,196.54***

Moreover, we would like to mention the following observations for the additional information of the Honorable Court:

1. *Input taxes amounting to P2,439,836.82 were claimed on local purchases of goods which are supported by VAT invoices dated outside the period of claim (i.e., dated within the calendar quarters of 2001, second quarter of 2000 and fourth quarter of 2000).* ***(See Annex 6)***

   We were able to ascertain, that there were no double claiming relative to these input taxes. These input taxes were claimed only in the calendar year 2002, and were not claimed in the calendar quarters of 2001, second quarter of 2000 and fourth of 2000.

2. *Input taxes amounting to P284,590.02 were claimed on local purchases of goods which are supported by VAT invoices issued in the name Southern Energy Quezon, Inc. (SEQI) and Hopewell Power Pagbilao Corp. (HPPC), former names of the Company. The VAT invoices were issued after April 26, 2001 (the change of the Campany's name from SEQI to Mirant Pagbilao Corporation was effective on April 26, 2001 under its amended Articles of Incorporation filed with the Securities and Exchange Commission on June 5, 2001.* ***(See Annex 7)***

3. *Input taxes amounting to P51,884.63 were claimed on local purchases of goods which are supported by Certified True Copies of VAT Invoices.* ***(See Annex 8)***

4. *Input taxes amounting to P133,244.20 were claimed on local purchases of goods which are supported by invoices with pre-printed "TIN-V" (printed after January 1, 1996).* ***(See Annex 9)***

5. *Input taxes amounting to P195,758.39 were claimed on local purchases of services which are supported by OR s dated outside the period of claim (i.e., within the calendar quarters of 2001 and first quarter of 2003).* ***(See Annex 10)***

We were able to ascertain, that there were no double claiming relative to these input taxes. These input taxes were claimed only in the calendar year 2002, and were not claimed in the calendar quarters of 2001 and first quarter of 2003.

6. *Input taxes amounting to P174,990.28 were claimed on local purchases of services supported by VAT OR s issued in the name of Southern Energy Quezon, Inc. (SEQI), former name of the Company. The VAT OR s were issued after April 26, 2001.* ***(See Annex 11)***

7. *Input taxes amounting to P791,101.76 were claimed on local purchases of services which are supported by ORs with pre-printed "TIN-V" (printed after January 1, 1996).* ***(See Annex 12)***

8. *Input taxes amounting to P243,231.62 were claimed on local non-life insurance premium payments which are supported by VAT ORs issued by the insurance agent.* ***(See Annex 13)***

9. *Input taxes amounting to P21,120.00 were claimed on importations of goods which are supported by original copies of BOC ORs and photocopied informal IEDs certified by the BOC.* ***(See Annex 14)***

10. *Input taxes amounting to P61,076.00 were claimed on importations of goods which are supported by original copies of BOC ORs and photocopied informal IEDs.* ***(See Annex 15)***

11. *Input taxes amounting to P1,310,535.00 were claimed on importations of goods which are supported only by photocopied IEDs certified by the BOC.* ***(See Annex 16)***

12. *Input taxes amounting to P12,859.00 were claimed on importations of goods which are supported by original copies of BOC ORs dated outside the period of claim (i.e., fourth quarter of 2001) and photocopied IEDs certified by the BOC.* ***(See Annex 17)***

    We were able to ascertain, that there were no double claiming relative to these input taxes. These input taxes were claimed only in the calendar year 2002, and were not claimed in the fourth quarter of 2001.

13. *Input taxes amounting to P6,897.00 were claimed on importations of goods which are supported by original copies of BOC ORs dated outside the period of claim (i.e., fourth quarter of 2001) and photocopied informal IEDs certified by the BOC.* ***(See Annex 18)***

    We were able to ascertain, that there were no double claiming relative to these input taxes. These input taxes were claimed only in the calendar year 2002, and were not claimed in the fourth quarter of 2001.

14. *Input taxes amounting to P131,898.00 were claimed on importations of goods which are supported by original copies of Bank ORs dated outside the period of claim (i.e., fourth quarter of 2001) and photocopied IEDs certified by the BOC.* ***(See Annex 19)***

    We were able to ascertain, that there were no double claiming relative to these input taxes. These input taxes were claimed only in the calendar year 2002, and were not claimed in the fourth quarter of 2001.

15. *Input taxes amounting to P216,624.00.00 were claimed on importations of goods which are supported by original copies of Bank ORs dated outside the period of claim (i.e., fourth quarter of 2001) and photocopied IEDs certified by the BOC issued not in the name of the Company.* ***(See Annex 20)***

We were able to ascertain, that there were no double claiming relative to these input taxes. These input taxes were claimed only in the calendar year 2002, and were not claimed in the fourth quarter of 2001.

16. *Input taxes amounting to P1,459,722.00 were claimed on importations of goods which are supported by original copies of Bank ORs dated outside the period of claim (i.e., third and fourth quarters of 2001) and photocopied IEDs certified by the BOC issued in the former name of the Company (i.e., Southern Energy Quezon, Inc.).* ***(See Annex 21)***
We were able to ascertain, that there were no double claiming relative to these input taxes. These input taxes were claimed only in the calendar year 2002, and were not claimed in the third and fourth quarters of 2001."

From the foregoing findings and observations, We ascertained the following:

A. The P10,404.73 input tax on purchases of goods supported by invoices with pre-printed TIN-NONVAT; the P5,457.86 input tax on purchases of goods supported by invoices with pre-printed "TAN-VAT"; the P9,026.33 input tax on purchases of goods supported by invoices with pre-printed "TAN" only; the P3,454.55 input tax on purchases of services supported by Official Receipts' (ORs) without pre-printed "TIN-VAT"; the P76,311.36 input tax on purchases of services supported by an ORs with pre-printed TIN only; and the P247.71 input tax on purchase of service supported by an OR with pre-printed "VAT No." only; failed to meet the substantiation requirements under Section 110 in relation to Section 113 of the NIRC of 1997, as implemented by Sections 4.104-11, 4.104-5 and 4.108-1 of Revenue Regulations No. 7-95 which requires the word "TIN-VAT" to appear on the OR or invoices issued. (**Mirant Navotas Corporation (formerly Southern Energy Navotas, Inc. vs. Commissioner of Internal Revenue, CTA Case Nos. 6637 and 6729, January 12, 2007.**)

B. The over-claimed input tax of P16.30 on purchase of goods as well as the over-claimed input tax of P44,057.97 on purchases of services should be disallowed. Petitioner is only entitled to the amounts of VAT actually paid for in its purchases of goods and services.

C. The amount of P41,309.71 input taxes on purchases of goods supported by VAT invoices and the amount of P974.46 input tax on purchases of services supported by VAT ORs were issued not in the name of petitioner or it contains no name or it does not contain the name of the purchaser, customer or client in violation of Section 4.108-1 of Revenue Regulations No. 7-95, implementing Section 113, in relation to Section 237 of the 1997 NIRC, as amended, which provides that the duly registered VAT invoices or official receipts issued for every sale of goods or services must show, among others, the name of the VAT-registered purchaser, customer or client.

D. The P7,074.84 input tax on purchases of goods, and the amounts of P11,968.00 and the P45,583.00 representing input taxes on importations, are supported by photocopied VAT invoices and photocopied IED respectively violate the best evidence rule. Therefore, the same are disallowed.

E. The P812.84 input tax on purchases of services supported by ORs without BIR permit runs counter against Section 238 of the 1997 NIRC, as amended which provides that "all persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same." As held in **SMI-ED Philippines Technology, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6556, May 16, 2005 as reiterated in Mirant (Navotas II) Corporation [formerly: Southern Energy Navotas II Power, Inc.] vs. Commissioner of Internal Revenue, CTA Case No. 6959, September 26, 2007**, "non-compliance with such requirement would mean that such official receipt cannot be admitted as a valid supporting document for purposes of petitioner's claim for VAT refund."

F. The claimed input VAT without supporting documents amounts to P2,576,620.30 computed as follows:

Without supporting documents:	
Input tax on local purchases of goods and services	1,868,654.88
Input tax on importations	1,783,842.00
Input taxes without supporting documents:	3,652,496.88
less:Input VAT on domestic purchases of goods and services	373,089.58
Input VAT on importations	702,787.00
Total input taxes without supporting documents:	**2,576,620.30**

The findings of the CICPA that the amount of P1,868,654.88 input taxes on local purchases of goods and services as well as the P1,783,842.00 input taxes on importations "without available supporting documents" are no longer accurate because petitioner was able to retrieve the documents supporting the input VAT from domestic purchases of goods and services in the amount of P373,089.58 *(Exhibits JJ to MM-1, OO to CCC-2, DDD to MMMM and NNNN to DDDD, EEEEE and EEEEE-1)* and the input VAT on importations in the amount of P702,787.00 *(Exhibits NN to NN-54)* after the CICPA submitted the final report with this Court. In view thereof, the correct amount of the claimed input VAT without supporting documents is P2,576,620.30 *[(P1,868,654.88 + P1,783,842.00) – (P373,089.58 + P702,787.00)].* This is to be disallowed for lack of the requisite documents prescribed by law to make refund.

G. Likewise, the P2,439,836.82 input tax on local purchases of goods, the 195,758.39 input tax on local purchases of services as well as the following amounts of P12,859.00, P6,897.00 and P131,898.00 representing input tax on importations of goods are denied admission for the documents supporting these amounts such as the VAT invoice, ORs, BOC's ORs and Import and Export Declarations (IEDs) are dated outside the period of claim. In addition to this, the amounts of P216,624.00 and P1,459,722.00 attributable to input tax on importations of goods are not considered for the supporting documents of these are issued not in the name of petitioner.

H. Also, the P284,590.02 input taxes on local purchases of goods supported by VAT invoices as well as the P174,990.28 input taxes on local purchases of services supported by VAT ORs were issued after April 26, 2001 to Southern Energy Quezon, Inc. (SEQI) and Hopewell Power Pagbilao Corp. successively (HPPC), which were the former names of petitioner (observations # 2 and 6 of CICPA), are denied consideration. It should be noted that on April 26, 2001, petitioner adopted the change of its name from SEQI to Mirant Pagbilao Corporation as shown on petitioner's Securities and Exchange Commission Certificate of filing *(Annex C, Petition for Review)*. Hence, there is no reason why petitioner could not have notified its suppliers as regards its new name and correspondingly asked for VAT invoices or official receipts bearing its new name with respect to its purchase transactions after such date, April 26, 2001.

I. As regards the amount of P51,884.63 input tax on local purchases of goods which were supported by Certified True Copies of VAT Invoices (Observation # 3 of CICPA), the same should be denied since there is no way of ascertaining who certified the subject invoices.

J. The P133,244.20 input tax on local purchases of goods supported by invoices with pre-printed "TIN-V" as well as the P791,101.76 input tax on local purchases of services which are supported by ORs with pre-printed "TIN-V" which were printed after January 1, 1996 (Observations # 4 and 7 OF CICPA) are denied admission for Section 4.108-1 of Revenue Regulations No. 7-95 requires that the word "VAT" be imprinted in such receipts or invoice in order for it to be considered as a valid VAT invoice or receipt.

K. More so, the P243,231.62 input taxes on local non-life insurance premium payments which are supported by VAT ORs issued by the insurance agent (Observation # 8 of CICPA) should be denied for failure to meet the substantiation requirements under Section 110 in relation to Section 113 of the 1997 NIRC, as amended, and as implemented by Section 4.104-11, 4.104-5 and 4.108-1 of Revenue Regulations No. 7-95.

L. In addition to this, the P1,310,535.00 input tax on importations of goods which are supported only by photocopied IEDs as certified by the BOC (Observation # 11 of CICPA) can not be taken into consideration for there is no way of ascertaining who certified the subject invoices.

M. Nevertheless, the amounts of P21,120.00 and P61,076.00 representing input taxes on importations of goods which are supported by original copies of BOC ORs and certified photocopied BOC informal IEDs (Observation #9 &10 of CICPA) are granted. Based on Section 4.104-5(b) of Revenue Regulations No. 7-95: "input tax on importations shall be supported with import entry or **other equivalent document showing actual payment of VAT on the imported goods,**" therefore the original official receipts from the Bureau of Customs or Land Bank of the Philippines showing petitioner's actual payment of input VAT constitute sufficient compliance with the foregoing regulations.

N. Much so, the claimed input VAT of P79,918,002.95 were partly applied against its output tax liability in the aggregate amount of P12,539.08 *(Exhibits C, E and F)* during the first, third and fourth quarters of 2002. Although, petitioner carried-over the unutilized input VAT of P79,905,463.87 in its VAT returns *(Exhibits K, L, M, N, O and P)* for the succeeding quarters until the second (2nd) quarter of taxable year 2004, the amount of P79,918,002.95 was deducted as Any VAT Refund/TCC Claimed" from the "Total Available Input Tax" of P210,307,638.69 reflected in its VAT return for the second quarter of 2004 *(Exhibit P)*. In other words, petitioner's claimed input VAT did not form part of the excess input VAT in the amount of P130,389,398.66 which was carried-over to the third quarter of 2004 *(Exhibit Q)*.

Thus, based on the above discussions, We determined that out of the total claimed input tax of P79,918,002.95, petitioner was able to properly substantiate the amount of P69,631,510.27, and is entitled to a refund in the amount of P69,618,971.19, computed as follows *(amounts are in Philippine Peso)*:

Claimed Input VAT		**79,918,002.95**
Less: Disallowances:		
Based on the findings of the Commissioned Independent CPA		
Input tax on purchases of goods supported by invoices With pre-printed TIN-NONVAT	10,404.73	
Input tax on purchases of goods supported by invoices with pre-printed TAN-VAT	5,457.86	
Input tax on purchases of goods supported by invoices with pre-printed TAN only	9,026.33	
Input tax on purchases of services supported by Ors without pre-printed TIN-VAT	3,454.55	
Input tax on purchases of services supported by Ors with pre-printed TIN only	76,311.36	
Input tax on purchase of service supported by an OR with pre-printed VAT No. only	247.71	
Over-claimed input tax on purchase of goods	16.30	
Over-claimed input tax on purchases of services	44,057.97	

Input tax on purchases of goods supported by VAT invoices issued not in the name of the petitioner/ no name	41,309.71	
Input tax on purchases of services supported by VAT Ors issued not in the name of the petitioner/ no name	974.46	
Input tax on purchases of goods supported by photocopied VAT invoices	7,074.84	
Input tax on importations supported by a photocopied IED only	11,968.00	
Input tax on importations supported by a photocopied informal IED	45,583.00	
Input tax on purchases of services supported by Ors without BIR permit	812.84	
Input tax on local purchases of goods and services as well as on importations without available supporting documents	2,576,620.30	
Based on the observation of the Commissioned Independent CPA		
Input tax on local purchases of goods supported by VAT invoices, on local purchases of services supported by ORs, on importations of goods supported by original copies of BOC ORs, and on importations of goods supported by original Copies of BOC ORs dated outside the period of claim	4,463,595.21	
Input tax on local purchases of goods supported by VAT invoices as well as on local purchases of services supported by VAT ORs issued in the former names of petitioner	459,580.30	
Input tax on local purchases of goods supported by certified true copies of VAT invoices	51,884.63	
Input tax on local purchases of goods supported by invoices with Pre-printed TIN-V as well as on local purchases of services supported by ORs with pre-printed TIN-V printed after January 1, 1996	924,345.96	
Input tax on local non-life insurance premium payments supported by VAT ORs issued by the insurance agent.	243,231.62	
Input tax on importations of goods which are supported only by photocopied IEDs certified by BOC	1,310,535.00	**10,286,492.68**
Substantiated Input VAT		**69,631,510.27**
Less: Output tax liability		**12,539.08**
Refundable Input VAT		**69,618,971.19**

Wherefore, IN VIEW OF ALL THE FOREGOING, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Thus, Respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **SIXTY NINE MILLION SIX HUNDRED EIGHTEEN THOUSAND NINE HUNDRED SEVENTY ONE AND 19/100 PESOS (P69,618,971.19)** representing unutilized input value-added taxes paid by petitioner on its domestic purchases of goods and services and importation of goods attributable to its effectively zero-rated sales of power generation services to the National Power Corporation for the taxable year 2002.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division