REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MIRANT NAVOTAS CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6044

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 16 2002

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DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P1,239,324.36 allegedly representing unutilized input VAT paid on its domestic purchases of goods and services which are attributable to effectively zero-rated sale of services for the four quarters of 1998.

Petitioner is a domestic corporation existing under and by virtue of Philippine law, with principal office at Suite 501, CTC Building, 2232 Roxas Boulevard, Pasay City. It was originally registered with the Securities and Exchange Commission (SEC) under the name "Hopewell Energy (Philippines) Corp." However, on June 17, 1999, petitioner's name was officially changed to "Southern Energy Navotas, Inc.," as shown by the SEC Certificate of Filing of Amended Articles of Incorporation, reflecting the change of name of petitioner from "Hopewell Energy (Philippines) Corp." to "Southern Energy Navotas, Inc." (*pars. 1 & 2, Stipulation of Facts*).

Petitioner is principally engaged in the business of power generation and the subsequent sale thereof to the National Power Corporation (NPC) under a Build, Operate, Transfer (BOT) scheme. It is registered as a Value-Added Tax (VAT) taxpayer in accordance with Section 236 of the National Internal Revenue Code of 1997, with BIR Certificate of Registration bearing RDO Control No. 96-051-005718 *(pars. 4 & 5, Stipulation of Facts)*.

On December 1, 1997, petitioner filed an Application for Effective Zero Rating with BIR RDO No. 51 at Pasay City for the taxable year 1998 for the construction and operation of a gas turbine power station under the BOT scheme with the NPC (*Exhibit B; par. 6, Stipulation of Facts*).

For the year 1998, petitioner filed its VAT returns for the four quarters of the said year, reflecting an amount of P163,636.36 taxable sales with the related output VAT of P16,363.64 and input VAT payment of P1,239,324.36 on its domestic purchases of goods and services during the said period, broken down as follows:

Exhibit	1998	Date Return Filed w/ the BIR	Taxable Sales	Output VAT	Input VAT
C	1st qtr	4/27/98			P 175,791.30
E	2nd qtr	7/27/98	P 163,636.36	P 16,363.64	286,902.03
G	3rd qtr	10/26/98			473,405.11
I	4th qtr	1/25/99			303,225.92
			P 163,636.36	P 16,363.64	P 1,239,324.36

On October 8, 1999, petitioner simultaneously filed amended VAT returns for the four quarters of 1998 in order to reflect its zero-rated sales for the said period in the aggregate sum of P351,973,845.25, detailed as follows:

Exhibit	1998	Zero-Rated Sales	Taxable Sales	Output VAT	Input VAT
D	1st qtr	P 81,121,691.70			P 175,791.30
F	2nd qtr	89,282,329.79	P 163,636.36	P 16,363.64	286,902.03
H	3rd qtr	95,112,460.56			473,405.11
J	4th qtr	86,457,363.20			303,225.92
		P 351,973,845.25	P 163,636.36	P 16,363.64	P 1,239,324.36

On November 26, 1999, petitioner filed an administrative claim for refund of alleged unutilized input VAT attributable to effectively zero-rated sales for the four quarters of 1998, citing Section 108 (B)(3) in relation to Section 112 (A) of the Tax Code of 1997 as legal bases (*Exhibit K*).

As the said application remained unacted upon (*par. 7, Stipulation of Facts*) and in order to suspend the running of the two-year prescriptive period under Section 4.106-2 of Revenue Regulations No. 7-95, in relation to Section 112(D) of the Tax Code, petitioner filed the instant Petition for Review on March 31, 2000.

Respondent, in his Answer filed through registered mail on May 16, 2000, interposed the following Special and Affirmative Defenses:

"4. The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;

5. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35);

6. One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute (Asiatic Petroleum vs. Llanes, 49 Phil. 466; Union Garment Co. vs. Court of Tax Appeals, 4 SCRA 304);

7. In action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;

8. It is incumbent upon petitioner to show compliance with the provisions of Section 229 of the National Internal Revenue Code;

9. Taxes paid and collected are presumed to have been made in accordance with the law and regulations; hence not refundable.

To support its claim, petitioner presented testimonial and documentary evidence. Respondent, on the other hand, was considered to have waived his right to present evidence (*page 222, CTA Records*).

On May 28, 2002, this case was submitted for decision sans the memorandum of the respondent.

As jointly stipulated by the parties, the issues to be resolved by this court are:

1. Whether or not the power generation services rendered by petitioner for supply to NPC are subject to zero percent (0%) VAT pursuant to Section 108(B)(3) of the Tax Code of 1997;

2. Whether or not petitioner has unapplied or unutilized creditable input value-added taxes for the four (4) quarters of 1998 arising from its domestic purchases of goods and services which can be a proper object of a claim for refund pursuant to Section 108(B)(3) and Section 112(A) of the Tax Code of 1997;

3. Whether or not the said creditable input value-added taxes of petitioner for the four (4) quarters of 1998 are substantiated by documentary evidence in the form of invoices and official receipts; and

4. Whether or not the said unutilized creditable input value-added taxes for the four (4) quarters of 1998 were carried over to the succeeding taxable quarter(s) and applied against any of the output value-added tax liability of the petitioner for the said period.

Anent the issue of whether or not the power generation services rendered by petitioner to NPC are subject to zero percent (0%) VAT, petitioner relied on the provisions of Section 108(B)(3) of the 1997 Tax Code, in relation to Section 13 of Republic Act No. 6395 (NPC Charter), as amended, to wit:

> "**Section 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:
>
> (1) x x x
> (2) 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."(Underscoring supplied).
>
> "**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, supersedeas bonds, in any court or administrative proceedings." (Underscoring supplied).

Clearly from the foregoing, NPC is an entity with a special charter, which categorically makes it exempt from payment of all taxes, whether direct or indirect, including VAT. Hence, by virtue of the said charter, the services rendered by petitioner to NPC are effectively subject to zero percent (0%) VAT.

Moreover, this legal issue had already been resolved in favor of petitioner in previous similar cases, the most recent of which is ***Mirant (Navotas II) Corporation (Formerly Southern Energy Navotas II Power, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 6043, promulgated on July 5, 2002,*** where this court held, thus:

> "In the case of Ernesto M. Maceda vs. Hon. Catalina Macaraig, supra, the total exemption of National Power Corporation (NPC) from all kinds of taxes, whether direct or indirect, was already settled by the Supreme Court. The NPC's exemption from all kinds of taxes was further explicated by the High Court in its Resolution dated June 8, 1993, resolving the same issue in a motion for reconsideration, and We quote, thus:
>
> > "A chronological review of the NPC laws will show that it has been the lawmaker's intention that the NPC was to be completely tax-exempt from all forms of taxes – direct or indirect.
> >
> > One common theme in all these laws is that the NPC must be enable to pay its indebtedness which, as P.D. No. 938 was P12 Billion in total domestic indebtedness, at any one time, and US$5 billion in total foreign loans at any one time. The NPC must be and has to be exempt from all forms of taxes if this goal is to be achieved."
>
> In the light of the aforementioned decision, the Secretary of the Department of Finance issued a memorandum dated January 28, 1998, addressed to the Commissioner of Internal Revenue, upholding the ruling of the Supreme Court with respect to the total exemption of NPC from all kinds of taxes and further ruled that purchases by NPC of electricity from independent power producers are subject to VAT at 0%. Pertinent portions of said memorandum read as follows:
>
> > "As explained by the Supreme Court, the rationale for the NPC's tax exemption is to ensure cheaper power. If the BIR's recent view is to be implemented, the VAT, being an indirect tax, may be passed on by the seller of electricity to NPC. Effectively, this means that electricity will be sold at a higher rate to the consumers. Estimates show that a 10% VAT on electricity which is purchased by NPC from its independent power producers will increase

> power cost by about P109.4 million a month or about P1.30 billion a year. The effect on the consumer is an additional charge of P0.059 per kilowatt-hour. The recognition of NPC's broad privilege will inure to the ultimate benefit of the Filipino consumer.
>
> In view of the foregoing and using the power of review granted to the Secretary of Finance under Section 4 of Republic Act NO. 8424, the DOF upholds the ruling of the Supreme Court that the NPC is exempt under its charter and subsequent laws from all direct and indirect taxes on its purchases of petroleum products and electricity. Thus, the purchases by NPC of electricity from independent power producers are subject to VAT at zero-rate."

> Consequently, respondent acknowledged that purchases by NPC of electricity from independent power producers are subject to VAT at 0% in a number of VAT and BIR Rulings (VAT Ruling Nos. 015-99, 022-99, 052-99, 067-99, 018-00; BIR Ruling Nos. DA-247-04-19-99, DA-632-11-10-99 and DA-209-04-04-99)."

Furthermore, the Court of Appeals affirmed our aforequoted ruling in the case of ***Commissioner of Internal Revenue vs. Mirant Navotas Corporation (formerly Southern Energy Navotas, Inc.), CA-G.R. SP. No. 69114, promulgated on June 27, 2002.***

Having settled the legal issue, we now go to the factual aspect of petitioner's claim for refund.

Petitioner's various invoices, official receipts and account statements from Citibank (*Exhibits CC-1 to FF-14*) show that petitioner generated revenues from its sale of power generation services to NPC for the four quarters of 1998 in the aggregate sum of P351,973,845.25. Since the said revenues are effectively zero-rated for VAT purposes under Section 108(B)(3) of the Tax Code, petitioner is therefore entitled to the refund of input taxes directly attributable thereto under Section 112(A) and (D) of the Tax Code.

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

1.) 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 Tax Code;

2.) 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 and 237 of the Tax Code;

3.) the claimed input VAT payments are directly attributable to zero-rated sales; and

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

Petitioner complied with the first requisite. Counting from the respective dates when petitioner filed its original 1998 quarterly VAT returns (*Exhibits C, E, G & I*), both the administrative and judicial claims for refund filed on November 26, 1999 and March 31, 2000, respectively, fall within the two-year prescriptive period as provided under Section 4-106.2(c) of Revenue Regulations No. 7-95 in relation to Section 112(D) of the Tax Code.

To prove compliance with the second requisite, petitioner submitted various suppliers' invoices and official receipts (*Exhibits Y-1 to Y-132, Z-1 to Z-210; AA-1 to AA-243; BB-1 to BB-165 & BB-177 to BB-223*). However, as correctly noted by the commissioned auditing firm, SGV & Co., in its report dated March 19, 2001 (*Exhibit X-*

4), the claimed input VAT of P174,092.35 failed to meet the substantiation requirements under Section 4.104-5 of Revenue Regulations No. 7-95 in relation to Sections 113 and 237 of the Tax Code. Accordingly, only the input VAT of P1,065,232.01 (P1,239,324.36 – P174,092.35) was supported by valid VAT invoices and/or official receipts.

As regards the third requisite, records reveal that not all of the substantiated input VAT of P1,065,232.01 can be directly attributed to petitioner's effectively zero-rated sales for the said period. As can be seen in petitioner's amended VAT return for the second quarter of 1998 (*Exhibit F*), petitioner had taxable sales in the amount of P163,636.36 with the corresponding output VAT of P16,363.64. Hence, only the input VAT of P1,048,868.37, arrived at by deducting the output VAT of P16,363.64 from the substantiated input VAT of P1,065,232.01, can be directly attributed to petitioner's effectively zero-rated sales for the subject period.

Finally, petitioner proved that despite the carry-over of the claimed input VAT in the succeeding quarters until the third quarter of 2000, the same were not utilized since petitioner had no output VAT liability for the said period. Moreover, petitioner deducted the claimed input taxes of P1,239,324.36 as "Any VAT Refund/TCC Claimed " (*Exhibit V-3*) from the "Total Available Input Tax" of P7,572,493.65 (*Exhibit V-2*). Thus, the resulting "Excess Input Tax" of P6,333,169.29 to be carried over to the succeeding fourth quarter of 2000 no longer included the 1998 claimed input taxes of P1,239,324.36.

In sum, the court finds petitioner to have sufficiently proven its entitlement to the VAT refund sought for but in the reduced amount of P1,048,868.37 computed as follows:

Claimed Input VAT		P 1,239,324.36
Less:	Input VAT without proper VAT invoices/official receipts per SGV & Co. report (*Exhibit X-4*)	174,092.35
Substantiated Input VAT		P 1,065,232.01
Less:	Output VAT liability - 2nd quarter 1998 (*Exhibit F*)	16,363.64
Refundable Input VAT		P 1,048,868.37

WHEREFORE, in the light of the foregoing, the instant petition is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED** to **REFUND** or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P1,048,868.37 representing unutilized input VAT paid on its domestic purchases of good and services which are attributable to effectively zero-rated sale of services for the four quarters of 1998.

SO ORDERED.

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

I CONCUR:

Ernesto D. Acosta
ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

Ernesto D. Acosta
ERNESTO D. ACOSTA
Presiding Judge