REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

KEPCO PHILIPPINES CORPORATION, Petitioner,	**C.T.A. CASE NO. 6413**
	Members:
-versus-	**Castañeda**, Jr., *Chairman* **Uy**, and **Palanca-Enriquez**, *JJ*.
THE COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 10 2005

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DECISION

CASTAÑEDA, JR., *J*.:

This case involves a claim for refund of unutilized input value-added tax arising from the domestic purchases of goods and services allegedly attributable to zero-rated sales of electricity to the National Power Corporation for the four calendar quarters of taxable year 2000.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with its principal place of business located at Suite 2501-A, 25th Floor, Tektite Tower I, Exchange Road, Ortigas Center, City of

Pasig.[1] It is a value-added tax (VAT) registered taxpayer engaged in the production and sale of electricity as an independent power producer.[2] It sells electricity to National Power Corporation (NPC).

On December 15, 1999, petitioner filed an Application/Certificate for Zero-Rate with the Bureau of Internal Revenue.[3] The said application was received by the Audit Information, Tax Exemption/Incentives Division of the Bureau of Internal Revenue on January 17, 2000 and was subsequently approved by the then respondent Commissioner of Internal Revenue, Mr. Dakila B. Fonancier, through the Chief, Audit Information, Tax Exemption/Incentives Division, Ms. Nora C. Villanueva. The NPC was named as contractee therein.[4]

For the four taxable quarters of 2000, petitioner purchased goods and services necessary in the production and sale of electricity to the NPC. The said expenses allegedly yielded input VAT in the total amount of P5,928,498.26 reported by petitioner in the corresponding quarterly VAT returns as follows:

Period	Exhibit	Input VAT
1st Qtr. 2000	K, K-1	P 651,053.90
2nd Qtr. 2000	L, L-1	1,092,198.44
3rd Qtr. 2000	M, M-1	1,690,522.38
4th Qtr. 2000	N, N-1	2,494,723.54
Total		P5,928,498.26

Believing that its sales to NPC are subject to VAT at 0% in accordance with Section 108(B)(3) the National Internal Revenue Code of 1997 thereby entitling it to a refund of input VAT allegedly attributable to such zero-rated sales pursuant to Section

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[1]Facts Admitted, Joint Stipulation of Facts and Issues, Paragraph 1.
[2]*Ibid.*, Paragraph 2.
[3]*Ibid.*, Paragraph 5.
[4]Annex "F" of Petition for Review.

112(A) of the same Code, petitioner filed written claims for refund of its unutilized input VAT. The letter-applications for refund for the first, second and third quarters of 2000 were simultaneously filed on January 29, 2001 while the letter-request for refund for the fourth quarter of 2000 was filed on March 21, 2001.[5]

Respondent has not acted on the subject claims for refund.[6] Hence, on March 31, 2002, petitioner filed the instant Petition for Review with this Court in order to toll the running of the two-year prescriptive period under the law.

On July 24, 2002, respondent filed his Answer raising the following as Special and Affirmative Defenses, to wit:

> 5. That the herein petitioner is not entitled to the refund of the amounts prayed for in the instant petition for review;
>
> 6. That the instant petition for review was prematurely filed as petitioner has not exhausted the administrative remedies required by law and jurisprudence on the actions of this nature as no decision has as yet been rendered by the respondent;
>
> 7. In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action; and
>
> 8. Claims for tax refund are strictly construed against the taxpayer. Petitioner has no cause of action.

This case was submitted for decision on January 7, 2005 without any evidence from the respondent and memorandum of both parties.[7]

The jointly stipulated issues to be resolved by the Court are as follows:

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[5] Facts Admitted, Joint Stipulation of Facts and Issues, Paragraph 6. See also Annexes G, H, I and J of the Petition for Review.

[6] Facts Admitted, Joint Stipulation of Facts and Issues, Paragraph 7.

[7] Page 478, CTA records.

1. Whether or not the petitioner is entitled to the refund of the amount of P5,928,498.26 as alleged unutilized accumulated input VAT for the year 2000;

2. Whether or not the petitioner incurred accumulated input VAT from the purchase of goods and services for the calendar year 2000, which purchases are attributable to the sale by petitioner of electricity to NPC;

3. Whether or not the sale by petitioner of electricity to NPC for calendar year 2000 is subject to VAT at zero rate;

4. Whether or not the alleged accumulated input VAT are duly supported by VAT invoices and/or official receipts; and

5. Whether or not the accumulated input VAT for the calendar year 2000 were utilized or applied by the petitioner to the succeeding taxable year.

We deemed it best to resolve first the third issue.

The law applicable is Section 108(B)(3) [then Section 102(b)(3)] of the National Internal Revenue Code of 1997 in relation to Section 13 of Republic Act No. 6395 (the Revised NPC Charter), as amended by Presidential Decree Nos. 380 & 938, to wit:

> SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —
>
> (A) *Rate and Base of Tax.* — 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;
> (1) xxx.
> (2) 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**. *(Emphasis supplied).*
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> xxx xxx xxx

> **Section 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 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. *(Emphasis supplied).*

The wordings of Section 13 of Republic Act No. 6395, as amended, are clear. NPC is a non-profit corporation declared as exempt from the payment of all forms of taxes. This exemption includes the value-added tax. Hence, by virtue of the said revised charter, the services rendered by a VAT registered entity to NPC are effectively subject to zero percent (0%) VAT pursuant to Section 108(B)(3) of the National Internal Revenue Code of 1997.[8] Moreover, no less than the Supreme Court affirmed NPC's tax exemption from all kinds of taxes in the case of ***Maceda vs. Macaraig, Jr., G.R. No. 88291, May 31, 1991, 197 SCRA 771***, where the High Court ruled in this wise:

> [P]residential 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 services including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings.
>
> 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. xxx

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[8]Mirant Navotas Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6044, October 16, 2002.

xxx xxx xxx

> 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 fact, the issue of whether or not the sale of electricity by a VAT-registered entity to NPC is effectively zero-rated for VAT purposes is not one of first impression. In numerous VAT and BIR rulings, the respondent had already recognized that purchases by NPC of electricity from independent power producers are subject to VAT at zero-rate.[9] More importantly, this Court and the Court of Appeals have resolved the legal issue in the affirmative in several analogous cases, namely:

1. Mirant (Phils.) Mobile Corporation (formerly Southern Energy Mobile, Inc.) vs. Commissioner of Internal Revenue, CTA Case Nos. 5935 & 5969, January 15, 2002; with CTA Entry of Judgment dated April 25, 2002;

2. Mirant (Navotas II) Corporation, Inc. vs. Commissioner of Internal Revenue, CA-G.R. SP No. 64811, October 29, 2002;

3. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue, CTA Case Nos. 5933 & 5984, January 15, 2002; CA-G.R. SP No. 69115, April 29, 2004; with Court of Appeals Entry of Judgment dated June 3, 2004;

4. Mirant Navotas Corp. (formerly Southern Energy Navotas, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 5936 and 5968, January 16, 2002; CA-G.R. SP No. 69114, June 27, 2002; with Court of Appeals Entry of Judgment dated August 16, 2002;

5. Mirant (Navotas II) Corporation (formerly Southern Energy Navotas II Power, Inc.) vs. Commissioner of Internal Revenue, CTA Case Nos. 5934 and 5963, January 21, 2002; with CTA Entry of Judgment dated March 14, 2002;

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[9]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.

6. Magellan Cogeneration, Incorporated vs. Commissioner of Internal Revenue, CTA Case No. 5765, February 26, 2002; with CTA Entry of Judgment dated April 25, 2002;

7. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 6041, March 5, 2002; CA-G.R. SP No. 69843, February 27, 2004; with Court of Appeals Entry of Judgment dated April 6, 2004;

8. Magellan Cogeneration Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5938, May 28, 2002; with CTA Entry of Judgment dated August 9, 2002;

9. Mirant (Navotas II) Corporation (formerly Southern Energy Navotas II Power, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 6043, July 5, 2002; with CTA Entry of Judgment dated September 30, 2002;

10. KEPCO Philippines Corporation vs. The Commissioner of Internal Revenue, CTA Cases Nos. 5675 & 5704, March 18, 2003;

11. Mirant Pagbilao Corp. (formerly Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 6133, March 18, 2003;

12. Magellan Cogeneration Incorporated vs. Commissioner of Internal Revenue, CTA Case No. 6033, May 19, 2003; with CTA Entry of Judgment dated August 1, 2003;

13. Mirant Pagbilao Corp. (formerly Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 6183, February 18, 2004; with CTA Entry of Judgment dated March 12, 2004;

14. Mirant Pagbilao Corp. (formerly Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 6262, October 20, 2004; and

13. KEPCO Philippines Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6100, February 9, 2005.

Notwithstanding the above pronouncements, petitioner must still prove that it actually sells electricity to NPC in order for such sales to be qualified as effectively zero-rated under Section 108(B)(3). To prove this fact, petitioner presented its service contract with NPC[10] and several official receipts[11]. After a careful perusal thereof, We have noted that not all of petitioner's declared zero-rated sales in the 2000 Quarterly VAT Returns were substantiated.

In the respective 2000 quarterly VAT returns, the following were declared by petitioner as zero rated sales:

1st Qtr Exh. K	2nd Qtr Exh. L	3rd Qtr. Exh. M	4th Qtr. Exh. N	Total
P559,061,502.50	P735,857,511.71	P582,517,204.48	P876,865,786.63	P2,754,302,005.32

However, based on the official receipts likewise formally offered by petitioner as exhibits, only the following 2000 zero-rated sales to NPC[12] were established, to wit:

Date	Exh.	O.R. No.	1st Qtr	2nd	3rd	4th	Total
03-06-00	R	151	P74,666,735.62				P 74,666,735.62
04-03-00	R-1	154		P 74,679,090.12			74,679,090.12
05-09-00	R-2	157		69,764,211.54			69,764,211.54
06-05-00	R-3	159		74,724,067.62			74,724,067.62
07-00-00	R-4	160			P 72,250,997.18		72,250,997.18
08-07-00	R-5	162			74,649,209.79		74,649,209.79
09-05-00	R-6	166			72,271,487.22		72,271,487.22
10-05-00	R-7	169				P 64,549,345.47	64,549,345.47
11-07-00	R-8	171				54,722,259.90	54,722,259.90
12-07-00	R-9	173				57,305,471.81	57,305,471.81
Total			P74,666,735.62	P219,167,369.28	P219,171,694.19	P176,577,077.18	P689,582,876.27

Considering the above findings, We shall allocate the (valid) input VAT against the supported zero-rated sales because the input taxes sought to be refunded in the total amount of P5,928,498.26 is attributable to total declared zero-rated sales of P2,754,302,005.32. Inasmuch as only the sum of P689,582,876.27 was proven as

[10]Exhibits P and Q, inclusive of submarkings.
[11]Exhibits R and R-1 to R-11.
[12]Exhibits R-10 and R-11 were not considered because the sales pertained to taxable year 2001.

zero-rated sales of electricity to NPC, it is but proper to apportion the input taxes equivalent thereto. The rate to be applied will be based on the total volume of declared sales, computed as follows:

Supported zero-rated sales to NPC	P 689,582,876.27
Divided by the total declared zero-rated sales	P2,754,302,005.32
Rate of supported zero-rated sales	0.25

We now proceed to the determination of validly supported input VAT.

Petitioner avers that it has unutilized input VAT in the aggregate amount of P5,928,498.26 for the year 2000 derived from its various purchases of goods and services. To support such claim, petitioner engaged the services of an independent certified public accountant (CPA) pursuant to CTA Circular 1-95, as amended, to verify the accuracy of its supporting documents for the summary of input taxes for 2000.

Consequently, We have commissioned an independent CPA from Joaquin Cunanan & Co., in the person of Mr. Rodelio Acosta. Based on his report[13], input VAT in the total amount of P3,891.82 failed to comply with VAT invoicing requirement, detailed as follows:

• Supplier's invoices or Statements of Account or official receipts are not available	P 309.03
• Supported by NON-VAT invoices and/or Statements of accounts and/or official receipts	735.01
• Erroneous amounts indicated in the Schedule of Input VAT as compared to related invoices or statements of account or official receipts resulting to net overstatement of the Input VAT Claim	2,487.78

[13]Exhibits A to I, inclusive of submarkings.

• Supported by official receipt without VAT Identification number	360.00
Total	P3,891.82

We find the above report in order. However, after a further perusal of the pre-marked exhibits supporting the input taxes claimed, We have also found that input taxes in the sum of P303,849.95 cannot be allowed for the following reasons:

• Purchases of goods and services supported only by statement of account, provisional receipt, acknowledgement slip, cash voucher or check	P 22,650.39[14]
• Purchases of goods supported by invoices Without BIR permit	68.18[15]
• Purchases of services not supported by official receipts	49,783.65[16]
• Purchases of goods and services without Supporting documents	222,737.61[17]
• Overstatement of input VAT claimed	8,610.12[18]
Total	P303,849.95

The above disallowances were not included in the exception of the commissioned auditor. Therefore, only the input taxes in the sum of P5,620,756.49 are validly supported by VAT invoices and/or official receipts, to wit:

Total Input VAT Claimed		P5,928,498.26
Less: Disallowances		
a. Per commissioned independent CPA	P 3,891.82	
b. Per Court's further verification	303,849.95	307,741.77

[14]Exhibits 2-25, 3-54, 8-7, 12-9, 12-10, 12-118, 12-140, 12-147, 12-148, 12-151, 12-154 and 12-456.
[15]Exhibits 12-76 and 12-77.
[16]Exhibits 12-160 and 12-161.
[17]Exhibits 10-121 and 12-20 to 12-24.
[18]Exhibits 3-37, 4-72, 7-07, 7-31, 8-73 and 12-12, 12-25 and 12-36.

Validly Supported Input VAT	P5,620,756.49

Finally, We have to determine if the validly supported input taxes can be refunded based on Section 112(A) [then Section 106(b)] of the National Internal Revenue Code of 1997 which provides:

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

Prescinding from the above provision, petitioner must comply, insofar as applicable, with the following requisites:

(1) that it is a VAT registered person;

(2) that its sales are zero rated;

(3) that its administrative claim for refund was seasonably filed;

(4) that the input taxes claimed were attributable to zero-rated sales; and

(5) that the input taxes were not applied against the output tax liability.

We shall tackle the foregoing requisites simultaneously.

It is already undisputed that petitioner is a VAT registered person. This was already admitted by the respondent in paragraph 2 of the Joint Stipulation of Facts. In addition, We have ruled earlier that petitioner's sales to NPC are subject to VAT at 0%. Records also show that the claims for refund, both in the administrative and judicial levels, were filed within the two-year period reckoned from the respective dates of filing of the quarterly VAT returns since petitioner filed its claim for refund with the Bureau of Internal Revenue on January 29, 2001 and March 21, 2001 and the Petition for Review on March 31, 2001. Furthermore, the claimed input taxes were all attributable to petitioner's declared zero-rated sales as evidenced by the 2000 quarterly VAT returns wherein petitioner had no taxable or exempt sales. It should be emphasized, however, that out of the total declared zero-rated sales of P2,754,302,005.32, petitioner was only able to substantiate the amount of P689,582,876.27 as zero-rated sales of services to NPC as discussed earlier. As to the last requirement, the subject input taxes of P5,928,498.26 were not applied against output VAT and was finally deducted from the total available input tax as of March 21, 2001 as part of "Any VAT Refund/TCC Claimed" in the amount of P107,468,940.30.[19]

In sum, petitioner is entitled to the refund of input taxes attributable to proven zero-rated sales of services to NPC in the amount of P1,405,189.12, computed as follows:

Validly supported input VAT	P5,620,756.49
Multiply by the Rate of Zero-rated Sales to NPC	0.25
Amount Refundable	P1,405,189.12

[19]Exhibit O or S.

WHEREFORE, the instant Petition for Review is hereby *PARTIALLY GRANTED*. Respondent is **ORDERED** to **REFUND** in favor of the petitioner the amount of P1,405,189.12 representing unutilized input value-added tax for taxable year 2000 attributable to proven zero-rated sales of electricity to NPC.

No pronouncement as to cost.

SO ORDERED.

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

We Concur:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Chairman