REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

MIRANT (NAVOTAS II) CORPORATION (formerly: SOUTHERN ENERGY NAVOTAS II POWER, INC.), Petitioner,	**C.T.A. CASE NO. 6959**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** SEP 2 6 2007

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DECISION

UY, J.:

Before Us is a Petition for Review filed by petitioner, Mirant (Navotas II) Corporation, against respondent, Commissioner of Internal Revenue, claiming for a tax refund or issuance of a Tax Credit Certificate in the amount of ₱706,560.58 representing unutilized input VAT from its domestic purchases of taxable goods and services and importation of goods allegedly attributable to its zero-rated sales for the four (4) quarters of 2002.

233

THE FACTS

Culled from the records of the case and as stipulated by the parties in their Joint Stipulation of Facts and Issues,[1] these are the facts of the case.

Petitioner is a corporation duly organized and existing by virtue of Philippine Laws, with principal office located at 5F, CTC Building, 2232 Roxas Boulevard, Pasay City. It is primarily engaged in the business of power generation and the subsequent sale thereof to the National Power Corporation (NPC) under a Build Operate and Transfer (BOT) Scheme, and registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer with Tax Identification Number (TIN) 001-726-862.[2]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue vested with the authority to act as such, including the power to decide, approve and grant claims for refunds 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.

On December 7, 2001, petitioner filed with the Bureau of Internal Revenue (BIR) an Application for VAT Zero-Rate of its supply of electricity to the NPC under the BOT Scheme. Respondent approved such application with a condition that the same shall be valid only for sale of electricity from January 2, 2002 up to December 31, 2002 unless sooner revoked and the zero-rated sales must be indicated in the invoice/receipt.[3]

As stipulated by the parties, petitioner filed the following VAT returns:

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[1] Joint Stipulation of Facts and Issues (JSFI), Docket, pp. 92-95.
[2] Paragraph 4, JSFI, Docket, p. 93.
[3] Exhibit "A", Application for Vat Zero-Rate.

237

1) On April 25, 2002, petitioner filed its quarterly VAT return for the first quarter of 2002 wherein item 22D of the return reflected petitioner's domestic purchases in the amount of ₱180,229.67 for the quarter;[4]

2) On July 25, 2002, petitioner filed is quarterly VAT return for the second quarter of 2002 wherein items 22D and 22F of the return showed petitioner's domestic purchases in the amount of ₱238,228.21 and importation of good in the amount of ₱4,678.00 for the quarter;[5]

3) On October 25, 2002, petitioner filed its quarterly VAT return for the third quarter of 2002 wherein Items 23G and 23I of the return showed petitioner's domestic purchases of goods other than capital goods in the amount of ₱20,896.80 and domestic purchases of services the amount of ₱141,139.30;[6] and

4) On January 27, 2003, petitioner filed its quarterly VAT return for the fourth quarter of 2002 wherein Items 23G and 23I of the return reflected petitioner's domestic purchases of goods other than capital goods in the amount of ₱61,450.27 and its domestic purchases of services in the amount of ₱59,938.33.[7]

Subsequently on December 22, 2003, petitioner filed an administrative claim for refund of unutilized input VAT in the total amount of ₱706,560.58 for the four (4) quarters of taxable year 2002 with the Revenue District Office No.

[4] Exhibits "B and B-5".
[5] Exhibits "C and C-5".
[6] Exhibits " D and D-5".
[7] Exhibits "E, E-5 and "E-7".

235

51, Pasay City, [8] pursuant to the procedure prescribed in Revenue Regulations No. 7-95, as amended.

Considering that to date, respondent has not allegedly acted upon said administrative claim for refund, petitioner was constrained to file this Petition for Review to suspend the running of the two-year prescriptive period under the National Internal Revenue Code (NIRC) of 1997 and Revenue Regulations No. 7-95, as well as, to preserve petitioner's right to judicially claim for the refund or the issuance of tax credit certificate for its unutilized input VAT.

In his Answer filed on June 10, 2004, respondent interposes the following Special and Affirmative Defenses:

> "5. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
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> 6. Petitioner's claim for refund/tax credit is still subject to administrative routinary investigation/examination by the respondent's Bureau;
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> 7. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;
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> 8. Petitioner's claim for refund/tax credit for the four quarters of calendar year 2002 in the amount of P706,560.58, representing the alleged unutilized input VAT paid on its domestic purchases of taxable goods and services and importation of goods allegedly attributable to its zero-rated sales were not fully substantiated;
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> 9. It is incumbent upon petitioner to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code, as amended, as well as the requirements provide under Revenue Regulations No. 5-87, as amended by Revenue

[8] Exhibit "F".

236

Regulations No. 3-88. Otherwise, its failure to prove the same is fatal to its claim for refund.

10. 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).*"[9]

During trial, petitioner presented two witnesses: Taryn F. Uberita and the court commissioned independent certified public accountant (CPA), Henry M. Tan; while respondent failed to do so during the scheduled hearings[10] for the presentation of respondent's evidence. Thus, the parties were directed to submit their respective memoranda in the Resolution dated November 23, 2006.[11] Only petitioner filed its Memorandum on January 23, 2007[12] while respondent failed to file his Memorandum despite notice. In the Resolution dated January 29, 2007,[13] this case was deemed submitted for decision.

Hence, this decision.

THE ISSUES

The parties stipulated on the following issues for this Court's resolution:

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

2. Whether or not petitioner has unapplied and unutilized input VAT for the four (4) quarters of calendar year 2002 in the total amount of P706,560.58 arising from its domestic

[9] Docket, pp. 69-70.
[10] Minutes of Hearings on August 14, 2006, October 4, 2006, and November 20, 2006, Docket, pp. 203, 207, and 209, respectively.
[11] Docket, p. 211.
[12] Ibid, pp. 215-226.
[13] Ibid, p. 227.

purchases of taxable goods and services and importation of goods[;]

3. Whether or not petitioner's unapplied and unutilized input VAT for the four (4) quarters of 2002 are attributable to its zero-rated sale of power generation services to NPC[;]

4. Whether or not petitioner's administrative claim for refund was seasonably filed[;]

5. Whether or not petitioner's unapplied and unutilized input VAT for the four (4) quarters of 2002 are properly substantiated by invoices and official receipts and other relevant documents[;]

6. Whether or not petitioner's unapplied and unutilized input VAT for the four (4) quarters of 2002 were carried over to and utilized in the succeeding taxable quarters or applied against any of the output VAT liability of petitioner[; and]

7. Whether or not petitioner is entitled to a refund or issuance of TCC for its unapplied and unutilized input VAT for the four (4) quarters of 2002 in the total amount of P706, 560.58."[14]

It appearing that some of foregoing issues are inter-related, We summarize the issues as follows: (1) whether or not petitioner's sale of power generation services to NPC are subject to zero percent (0%) VAT; (2) whether or not petitioner's subject claim for refund, both administrative and judicial, were filed within the two-year prescriptive period; and (3) whether or not petitioner is entitled to a refund or issuance of TCC for its unapplied and unutilized input VAT for the four (4) quarters of 2002 in the total amount of P706,560.58."[15]

THE COURT'S RULING

This case is not one of first impression.

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[14] JSFI, Docket , pp. 94-95.
[15] Ibid.

238

In a number of similar cases,[16] this Court has affirmatively ruled that petitioner's sale of power generation services to NPC are subject to zero percent (0%) VAT. Being principally engaged in the business of power generation, petitioner's subsequent sale thereof to the NPC under a Build, Operate and Transfer (BOT) Scheme makes such sale subject to zero percent (0%) VAT pursuant to Section 108 (B) of the NIRC of 1997, as amended, which reads:

> "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:
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> xxx xxx xxx
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> (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 Ours)*

In relation thereto, P.D. 938 states:

> "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

[16] Mirant (Phils.) Mobile Corp. (formerly Southern Energy Mobile, Inc.) vs. Commissioner of Internal Revenue, CTA Case Nos. 5935 & 5969, January 15, 2002; Mirant Navotas Corp. (formerly Southern 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.

> 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."

Pursuant to the abovequoted provision, it is without dispute that NPC is categorically exempt 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.

In the case of ***Ernesto M. Maceda vs. Catalino Macaraig, Jr. et al***,[17] the Supreme Court has affirmed the NPC's tax exempt character, stating thus:

> "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
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> xxx xxx xxx
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> 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. xxx.' 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*

[17] 197 SCRA 771 (1991).

> *taxes,* duties, fees, imposts, as well as costs and service fees 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 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. xxx
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> xxx xxx xxx
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> 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."

Furthermore, respondent himself categorically recognized NPC's tax exempt character when he approved petitioner's Application for VAT Zero-Rate, though valid only for sale of electricity from January 2, 2002 until December 31, 2002.

With respect to the issue as to whether or not petitioner's administrative claim for refund was seasonably filed, this Court rules in the affirmative.

Records show that counting from April 25, 2002 (the earliest quarter covered by the claim), the administrative claim[18] and the Petition for Review[19] were filed within the two-year prescriptive period pursuant to Section 112 (A) of the NIRC of 1997, in relation to Section 4.106-1 of Revenue Regulations No. 7-95, as amended.

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[18] Application was filed with the BIR, RDO No. 51, on December 22, 2003.
[19] Petition for Review was filed with this Court on April 22, 2004.

We now determine whether or not petitioner is entitled to its subject claim for refund.

To prove the existence of its sale of power generation services to NPC, petitioner presented its Quarterly VAT Returns for the four quarters of taxable year 2002,[20] various VAT invoices and VAT official receipts issued to NPC.[21] Moreover, the commissioned independent CPA, in his Report,[22] correctly ascertained that petitioner was able to establish through its various VAT invoices and VAT official receipts it issued to NPC;[23] and, that it actually derived revenues from its sale of power generation services to NPC for the four quarters of taxable year 2002 in the total amount of ₱303,428,182.77 as reflected in its 2002 quarterly VAT returns.[24]

Considering that its sales are effectively zero-rated for VAT purposes pursuant to Section 108(B)(3) of the NIRC of 1997, the reported unutilized input taxes in the amount of ₱706,560.58, which are allegedly attributable thereto, may be the proper subject of a claim for refund or issuance of a tax credit certificate in accordance with Section 112(A) of the NIRC of 1997. However, it is necessary to determine whether or not petitioner's reported unutilized input taxes for the four quarters of taxable year 2002 in the amount of ₱706,560.58 have been substantiated by requisite documentary evidence.

We look into the findings of the commissioned independent CPA, to wit:

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[20] Exhibits "B" to "E".
[21] Exhibits "T-1" to "T-24".
[22] Exhibits "Q-1" to "Q-18".
[23] Exhibits "T-1" to "T-24".
[24] Exhibits "B" to "E".

242

"Based on our verification of the documents supporting the input taxes, we present below our findings:[25]

Findings	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	TOTAL
I. Input Taxes on Purchases of Goods and Services that are Properly Substantiated (Annex 2)	132,440.61	223,555.00	141,348.34	109,346.41	606,690.36
II. Input Taxes On Purchases of Goods:					
1. Supported by VAT Invoices without BIR Permit Number (Annex 3-1)	2,144.56	0	0	0	2,144.56
2. Supported by an Invoice not in The Name of the Company (Annex 3-2)	454.55	0	0	0	454.55
III. Input Taxes on Purchases of Services:					
1. Supported by Documents other than VAT OR (Annex 4-1)	537.84	388.20	0	782.19	1,708.23
2. Without Supporting Documents (Annex 4-2)	16,510.00	14,285.01	20,415.00	11,260.00	62,470.01
TOTAL	**152,087.56**	**238,228.21**	**161,763.34**	**121,388.60**	**673,467.71**

[25] Exhibits "Q-5" to "Q-6".

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243

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

1. Input taxes amounting to ₱272.76 were claimed on local purchases of services supported by VAT ORs issued in the name of Mirant (Philippines) Energy Corp., former name of the Company. The VAT ORs were issued after April 26, 2001. (See Annex 5)

2. Input taxes amounting to ₱28,142.11 were claimed on local purchases of goods, which are supported by invoices dated outside the period of claim. (See Annex 6)

   We were able to ascertain that there was 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.

3. Input tax amounting to ₱4,678.00 was claimed on an importation of goods, which is supported by a photocopied Import Entry Declaration (IED). (*See Annex 7*)"

Clearly from the foregoing findings, the commissioned independent CPA of this Court found that only the amount of ₱606,690.36 for input taxes on purchases of goods and services had been properly substantiated by supporting documents while he found, among others, that the claimed amount of P62,470.01 had no supporting documents. This prompted petitioner to recall its witness, Taryn F. Uberita, during the hearing held on December 12, 2005,[26] to identify additional supporting documents relative thereto.[27]

Hence, We carefully considered the findings of the commissioned independent CPA, together with all the supporting documentary evidence submitted by petitioner, and We found that, out of the subject claim for input VAT in the amount of ₱706,560.58, petitioner was able to properly

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[26] Minutes for the hearing held on December 12, 2005, Docket, p. 166.
[27] See Exhibits "Z", "AA", "BB", "CC", "DD", "EE", "FF", "GG", "HH", "II", "JJ", "KK", "LL", "MM", "NN", "OO" and "PP", inclusive of sub-markings.

244

substantiate the amount of ₱669,160.37 (₱606,690.36 + ₱62,470.00) input VAT.

The remaining claim for input VAT of ₱37,400.21, is denied for the following reasons:

1. The amount of ₱2,144.56 for input VAT on purchases of goods were supported by VAT invoices but without the required BIR Permit in violation of Section 238 of the NIRC of 1997, 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." Non-compliance with such requirement would mean that such official receipt/s cannot be admitted as a valid supporting document/s for purposes of petitioner's claim for VAT refund;[28]

2. The amount of ₱454.55 for input tax on purchase of goods was supported by an invoice issued not in the name of the petitioner. In ***Matsushita Business Machine Corporation of the Philippines vs. Commissioner of Internal Revenue***,[29] this Court denied portion of the claimed input VAT on domestic purchase of goods supported by VAT invoice, which were not issued in the name of the petitioner, for non-compliance with Section 4.108-1 of Revenue Regulations No. 7-95, implementing Section 113, in relation to Section 237 of the NIRC of 1997, 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;

[28] SMI-ED Philippines Technology, Inc. versus Commissioner of Internal Revenue, CTA Case No. 6556, May 16, 2005.
[29] CTA Case No. 6580, September 14, 2006.

3. The amount of ₱1,708.23 for input VAT on purchases of services were supported by documents other than VAT Official Receipt. In the *Matsushita* case,[30] this Court had denied the portion of the claimed input VAT on domestic purchases of services because it is supported by documents other than VAT Official Receipts;

4. The amount of ₱272.76 for input tax on local purchases of services for which the related VAT ORs issued after April 26, 2001 as the VAT ORs, at the time of its issuance, were still in the name of Mirant (Philippines) Energy Corp., petitioner's former name. Petitioner's current registered corporate name became effective April 26, 2001. Thus, the Court sees 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, Mirant (Navotas II) Corporation, to document its purchase transactions after April 26, 2001;

5. The amount of ₱28,142.11 for input taxes on local purchases of goods were supported by invoices dated outside the period of claim (from January 31, to December 31, 2002). The commissioned independent CPA made a table showing the corresponding details of petitioner's out-of-period claims, thus:[31]

Payee	TIN	Reference (Invoice)	Input Tax	Date of Invoice
1st Quarter				
Ascend Industrial Supplies Inc.	031-004-574-954-VAT	336	21,290.00	Dec. 18, 2001
Mechatronics Instruments	300-000-381-904-V	3789	5,045.46	Dec. 20, 2001

[30] Ibid.
[31] Annex 6, Commissioned Independent CPA Report dated August 10, 2005.

& Controls, Inc.				
Mercury Drug Corporation	400-000-388-474-V	521614	340.45	Dec. 3, 2001
Newburg Commercial	300-000-366-460-V	E36697	411.00	Nov. 22, 2001
ZAB Enterprises	032-116-039-020-000	7727	1,055.20	Dec. 4, 2001
Sub Total			28,142.11	
TOTAL			24,142.11	

Records show that petitioner's claim for refund/credit of input VAT taxes in the amount of ₱28,142.11 were substantiated by VAT invoices dated ahead of the period of claim. Consistent with this Court's ruling in the *Matsushita case*, input taxes on domestic purchases of goods supported by VAT invoices, as well as on domestic purchases of services supported by VAT ORs, which are not dated with the VAT-taxable quarter, should be disallowed considering that input VAT supported by VAT invoices and official receipts dated earlier than the period of claims can no longer be claimed for refund.[32] Hence, that portion of the claim cannot be granted since those input taxes should have been declared in the corresponding taxable quarters when purchases of goods were consummated, as evidenced by VAT invoices.

In the case of ***Lepanto Consolidated Mining Co. vs. Commissioner of Internal Revenue***,[33] this Court ruled that:

> "The alleged unutilized input VAT of P5,820,863.87 should be denied since the supporting invoices and official receipts thereof bore dates which were earlier than the period of petitioner's claim. Section 110(A)(2) of the 1997 Tax Code provides:

[32] Supra.
[33] CTA Case Nos. 6368 and 6480, December 15, 2004, cited in the cases of Mirant (Navotas II) Corporation (formerly Southern Energy Navotas II Power, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6418, April 11, 2006 (Entry of Judgment dated September 14, 2006) and Takenaka Corp. Phil. Branch vs. Commissioner of Internal Revenue, CTA Case No. 6752, January 2, 2007 (Entry of Judgment dated February 16, 2007).

247

'Sec. 110. *Tax Credits.* –

A. *Creditable Input Tax.* –

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

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.'

It is clear from the above-quoted provisions of law that for purchases of goods, the corresponding input value-added taxes of which is creditable to the purchaser upon consummation of sale, that is, upon the issuance of the corresponding invoice. On the other hand, for purchases of services, the corresponding input value added taxes of which is creditable to the purchaser upon payment of compensation, rental, royalty, or fee, that is, upon the date of official receipt. Section 110(A) is explicit. It states 'upon consummation', in the case of domestic purchases of goods, and 'upon payment', in the case of purchases of services. It does not provide any qualification, such as 'upon delivery of invoice or official receipt' which is the main thesis of petitioner's contention.

In a resolution of the case entitled ***Telecommunications Technologies Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6168, promulgated on July 28, 2004***, this Court elucidated that 'the input VAT on domestic purchases of goods or properties shall be allowed as tax credit to the purchaser upon consummation of sale, which means upon issuance by the seller of the VAT sales invoices 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 receipts of the payment for services performed or yet to be performed.'

Thus, it is indubitable on the part of the petitioner to declare the input value added taxes on domestic purchases of goods and services at the end of the corresponding taxable quarter where purchases of goods were consummated, as

248

> evidenced by VAT invoice and for payment of services, as evidenced by VAT official receipt.
>
> Therefore, the amount of input VAT of P5,820,863.87 which is supported by VAT invoices and official receipts dated earlier than the period of petitioner's claims can no longer be claimed for refund pursuant to Section 110(A) in relation with Section 112(A) of the 1997 National Internal Revenue Code." *(Underscoring Ours)*;

6. The amount of ₱4,678.00 for input taxes on an importation of goods is only supported by a photocopy of Import Entry Declaration (IED). Again, in the *Matsushita* case,[34] this Court has denied portion of the claimed input tax on importation of goods which were supported by mere photocopies of import entry and internal revenue declarations. In this jurisdiction, the purpose of production of the originals of a document, instead of relying on mere photocopies, is for the prevention of fraud or inaccuracy. It serves as a protection against erroneous or inaccurate depiction of the contents of a document which may be attributable to mistake in memory, faulty transcription or plain and simple bad faith. Determinations made by any court in this jurisdiction should be supported by credible evidence and not by mere photocopies which were never compared with their originals.

Finally, We also found that petitioner's subject claim for input taxes have not been applied against any output taxes as shown in its 2002 quarterly VAT returns.[35] Although, the total claimed unutilized input tax was carried-over to the succeeding quarters,[36] the same was deducted as "Any VAT Refund/TCC Claimed" from its "Total Available Input Tax" for the second

[34] Supra.
[35] Exhibits "B", "C", "D" and "E".
[36] Exhibits "G", "H", "I", "J", "K", "L", "M" and "N".

quarter of 2004.[37] Thus, petitioner's claimed input tax did not form part of the excess input VAT of ₱4,328,261.95,[38] which was to be carried over to the third quarter of 2004.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND**, or in the alternative, **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the reduced amount of ₱669,160.37 representing unutilized input VAT from its domestic purchases of taxable goods and services and importation of goods attributable to its zero-rated sales for the four quarters of taxable year 2000.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[37] Exhibits "N" and "N-5".
[38] Exhibit "N-7".

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice

251