REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

CE LUZON GEOTHERMAL POWER COMPANY, INC., *Petitioner*, -versus- COMMISSIONER OF INTERNAL REVENUE, *Respondent*.	**C.T.A. CASE NO. 6792**

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CE LUZON GEOTHERMAL POWER COMPANY, INC., *Petitioner*, -versus- COMMISSIONER OF INTERNAL REVENUE, *Respondent*.	**C.T.A. CASE NO. 6837** Members: CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ. **Promulgated:** NOV 2 5 2008 10:00 a.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASES

Before the Court are two consolidated Petitions for Review filed by CE Luzon Geothermal Power Company, Inc. (hereafter "petitioner"), to wit: C.T.A. Case No. 6792 filed on September 30, 2003, which seeks the refund or issuance of a tax credit certificate in the amount of P2,921,085.31, representing petitioner's unutilized Input VAT for the third quarter of taxable year 2001 for the zero-rated sales of petitioner, and C.T.A. Case No. 6837 filed on December 19, 2003, which seeks the refund or issuance of a tax credit certificate in the amount of P21,229,990.80, representing petitioner's unutilized input VAT for the fourth quarter of taxable year 2001 and for all the quarters of 2002 for the zero rated sales of petitioner.

THE FACTS

The antecedent facts of the case are as follows:

Petitioner CE Luzon Geothermal Power Company, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at the 24th Floor, 6750 Bldg., 6750 Ayala Avenue, Makati City.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including, among others, the power to grant refunds of unutilized input value added taxes, pursuant to the provisions of the National Internal Revenue Code. He may be served with summons and other legal processes of this Honorable Court at his office located at the Fifth Floor, BIR, National Office Building, Agham Road, Diliman, Quezon City.

Petitioner is engaged in the business of power generation for which it is accredited and certified to as such by the Department of Energy, as evidenced by its DOE Certificate of Accreditation (OSAC91-12) issued on June 15, 1994. Petitioner is a registered value added taxpayer (VAT) with the Bureau of Internal Revenue, as evidenced by its Certificate of Registration with Tax Identification Number 047-003-924-336-VAT.

On June 26, 2001, *RA 9136*, otherwise known as the Electric Power Industry Reform Act of 2001 (hereafter "*EPIRA Law*") took effect. The EPIRA Law is a legislative act which ordained reforms in the electric power industry, amending for the purpose certain laws and for other purposes. As a consequence of the effectivity of the EPIRA Law, petitioner, as one of the generating companies recognized by the DOE, treated the delivery and supply of electric energy to PNOC-EDC as VAT zero-rated. Prior to the effectivity of the EPIRA Law, such transactions were subject to 10% VAT and petitioner paid the corresponding output tax.

For the third quarter of taxable year 2001, petitioner declared zero-rated sales in its amended quarterly VAT return in the amount of P661,007,570.05 and unutilized input VAT in the amount of P2,921,085.31. Its original quarterly VAT returns for the third and fourth quarters of taxable year 2001 was filed on October 25, 2001 and January 10, 2002, respectively, and its amended quarterly VAT returns for the third quarter of taxable year 2001 was filed on November 12, 2001.

Petitioner likewise filed its original and amended quarterly VAT returns for the first, second, third and fourth quarters of taxable year 2002 on April 10, 2002, May 15, 2003, May 15, 2003 and April 1, 2003, respectively.

On September 26, 2003, petitioner filed its administrative claim for refund of unutilized input VAT for the third quarter of taxable year 2001. While the administrative claim for refund of unutilized input VAT for taxable year 2002 was filed on December 18, 2003.

Alleging inaction of respondent, petitioner filed a Petition For Review with this Court on September 30, 2003 for unutilized input VAT for the third quarter of taxable year 2001, docketed as C.T.A. Case No. 6792. On December 19, 2003, petitioner filed another Petition For

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Review with this Court, docketed as C.T.A. Case No. 6837 for unutilized input VAT for the fourth quarter of taxable year 2001 and for all the quarters of 2002 for the zero rated sales of petitioner.

In C.T.A. Case No. 6792, in her Answer, respondent alleged by way of special and affirmative defenses:

> "4. Petitioner's claim for refund is subject to administrative investigation/examination by the respondent;
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> 5. To support its claim, it is imperative for petitioner to prove, the following, viz:
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> 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;
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> b. The invoicing and accounting requirements for VAT registered persons, as well as the filing and payments 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 amended. It is worthy of emphasis that Section 112 (D) of the Tax Code, as 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

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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 P1,142,666.32 and P19,070,378.18 allegedly paid by the petitioner on its purchases of goods and services for the third quarter of taxable year 2001 and the fourth quarter of 2001 up to the fourth quarter of 2002, respectively, 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 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, in pursuance to Section 4.104-5 (a) & (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims of 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);

6. 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. Lanes, 49 Phil. 466 cited in Collector of Internal Revenue vs. Manila Jockey Club, Inc., 98 Phil. 670); and

7. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation."

In C.T.A. Case No. 6837, respondent raised the same special and affirmative defenses.

On January 30, 2004, petitioner orally moved for the consolidation of both cases, which was granted by the First Division in a Resolution dated March 1, 2004.

On July 21, 2004, in view of the consolidation, petitioner and respondent submitted the following Joint Stipulation of Facts:

"JOINT STIPULATION OF FACTS AND ISSUES

PETITIONER and RESPONDENT, through their respective counsels, to this Honorable Court with its order during the pre-trial conference held on June 11, 2004, respectfully submit the following Joint Stipulation of Facts and Issues:

I. STIPULATION OF FACTS

The parties agree to the following stipulation of facts;

1. Respondent is the duly appointed Commissioner of Internal Revenue, vested with the authority to act as such, including, among others, the power to grant refunds of unutilized input value added taxes pursuant to the

provisions of the National Internal Revenue Code. He may be served with summons and other legal processes of this Honorable Court at his office located at the Fifth Floor, BIR, National Office Building, Agham Road, Diliman, Quezon City.

2. Section 110 of the Tax Code provides:

'Section 110. Tax Credits -

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(B) Excess output or input tax --- If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter. Any input tax attributable to the purchase of capital goods or to zero rated sales by a VAT registered person may at his option be refunded or credited against other internal revenue taxes subject to the provisions of Section 112.'

4. The Supreme Court, in the case of Commissioner of Internal Revenue vs. Victorias Milling Co., Inc., 22 SCRA 12, held that:

'The claim for refund with the Bureau of Internal Revenue and the subsequent appeal to the Court of Tax Appeals must be filed within the two year period. If however, the Commissioner takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two year period without awaiting the decision of said Collector.'

5. Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws;

6. Petitioner is registered as a value-added taxpayer with the Bureau of Internal Revenue;

7. Authenticity and due execution of Petitioner's BIR Certificate of Registration, dated June 25, 2004;

8. For the third quarter of taxable year 2001, Petitioner declared zero-rated sales in its amended quarterly VAT return in the amount of ₱661,007,570.05;

9. For the third quarter of taxable year 2001, petitioner declared unutilized input VAT in the amount of ₱2,921,085.31; and declared the same in its quarterly VAT return for the third quarter of taxable year 2001;

11. Authenticity , due execution and filing with the Bureau of Internal Revenue of the Petitioner's original quarterly VAT returns for third and fourth quarters of taxable year 2001 filed on October 25, 2001 and January 10, 2002, respectively, and Petitioner's amended quarterly VAT returns for the third quarter of taxable year 2001 filed on November 12, 2001;

12. Authenticity, due execution and filing of the Petitioner's original and amended quarterly VAT returns for the first, second, third and fourth quarters of taxable year 2002 filed on April 10, 2002, May 15, 2003, May 15, 2003 and April 1, 2003, respectively;

13. Authenticity and due execution of the Petitioner's administrative claims for refund and/or Tax Credit Certificate (TCC) of unutilized input VAT for the third quarter of taxable year 2001, dated September 25, 2003 which was filed on September 26, 2003;

14. The administrative claim for refund of unutilized input VAT dated December 11, 2003 was filed on December 18, 2003;

15. The present claims for refund with this Honorable Court for unutilized input VAT were both filed on September 30, 2003 and December 19, 2003.

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Petitioner presented Ma. Mary Ann C. Capuchino, as witness, and documentary evidence, marked as Exhibits *"A"* to *"JJJ"*, inclusive of their submarkings, which were all admitted by the Court.

On the other hand, respondent presented Luzviminda G. Sabile, as witness, and Exhibits *"1"* to *"8"*, inclusive of their submarkings, which were all admitted by the Court.

On May 24, 2007, petitioner manifested that he will not present rebuttal evidence, and instead filed a Motion To Present Additional Evidence, which the Court granted. As additional witness, petitioner presented Trinity Gatuz, and after the completion of her testimony, moved for fifteen days until May 31, 2007 to file a Supplemental Offer of Evidence, which the Court granted. Respondent was granted fifteen (15) days from notice to file her comment.

In a Resolution dated July 9, 2007, the Court admitted the additional exhibits, marked as Exhibits *"KKK"* to *"PPP"*, inclusive of their submarkings, and both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice.

Both parties having complied thereto, the consolidated petitions were deemed submitted for decision on November 28, 2007.

Hence, this decision.

THE ISSUES

As stipulated upon by the parties, the following are the issues for the consideration of this Court:

I

WHETHER OR NOT PETITIONER GENERATED ZERO-RATED SALES FOR THE THIRD AND FOURTH QUARTERS OF TAXABLE YEAR 2001 AND FOR EACH OF THE FOUR QUARTERS OF TAXABLE YEAR 2002 AS A RESULT OF THE APPLICABILITY OF THE EPIRA LAW.

II

WHETHER OR NOT PETITIONER INCURRED UNUTILIZED INPUT VAT, AS A RESULT OF ITS VAT ZERO-RATED SALES, AS FOLLOWS: FOR THE THIRD QUARTER OF TAXABLE YEAR 2001 IN THE AMOUNT OF P2,921,085.31; FOR THE FOURTH QUARTER OF TAXABLE YEAR 2001 AND FOR ALL THE FOUR QUARTERS OF TAXABLE YEAR 2002 IN THE AMOUNT OF P21,229,990.80.

III

WHETHER OR NOT THE UNUTILIZED INPUT VAT SOUGHT TO BE REFUNDED HEREIN WERE APPLIED AGAINST ANY OUTPUT VAT LIABILITY IN SUCCEEDING TAXABLE QUARTERS IN 2001 AND IN 2002 AND THEREAFTER.

IV

WHETHER OR NOT THE CLAIMS FOR REFUND OF THE UNUTILIZED INPUT VAT FOR THE THIRD AND FOURTH QUARTERS OF TAXABLE YEAR 2001 AND FOR ALL THE FOUR QUARTERS TAXABLE YEAR 2002 WITH THE BUREAU OF INTERNAL REVENUE

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WERE FILED BY PETITIONER WITHIN THE TWO-YEAR PERIOD PROVIDED BY LAW.

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WHETHER OR NOT BOTH THE PRESENT PETITIONS FOR REVIEW FILED BY THE PETITIONER WITH THIS HONORABLE COURT WERE FILED WITHIN THE TWO-YEAR PERIOD PROVIDED BY LAW.

Principal Issue

The foregoing issues raised by both parties boil down to the principal issue of whether or not petitioner is entitled to a refund or the issuance of a tax credit certificate in the aggregate amount of P24,151,076.11, representing unutilized excess input VAT paid on its domestic purchases of goods and services which are attributable to zero-rated sales for the third and fourth quarters of 2001 and for all four quarters of 2002.

THE RULING OF THE COURT

The petition is partly meritorious.

The applicable laws are *Sections 110(B) and 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended*, which provide, as follows:

"SEC. 110. *Tax Credits.* —

(A) *Creditable Input Tax.* —

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(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

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(B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."

"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 volume of sales."

Pursuant to the above provisions, in order to be entitled to a refund or tax credit certificate of input VAT directly attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1) there must be zero-rated or effectively zero-rated sales;

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2) that input taxes were incurred or paid;
3) that such input taxes are attributable to zero-rated sales or effectively zero-rated sales;
4) that the input taxes were not applied against any output VAT liability; and
5) that the claim for refund was filed within the two-year prescriptive period.

First Requisite:
There must be zero-rated or
effectively zero rated sales

As regards the first requisite, petitioner claims that its sales of electricity as a power generation company, qualify for VAT zero-rating in accordance with *paragraph 5, Section 6 of RA 9136*, which states:

> "SEC. 6. *Generation Sector.* xxx
>
> xxx xxx
>
> Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated.
>
> xxx xxx."

With the enactment of *RA 9136,* related provisions of the National Internal Revenue Code of 1997 were deemed amended by modifying the

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VAT rate applicable to sales of generated power by generation companies from ten (10%) percent to zero (0%) percent.

However, to qualify for VAT zero-rating under *RA 9136,* petitioner must be able to establish that: 1) it is a generation company, and 2) it derived sales from power generation.

Records show that petitioner is engaged in the business of power generation and the subsequent sale of generated power to the Philippine National Oil Company-Energy Development Corporation [PNOC-EDC] (*Exhibit "A-1"; TSN, July 29, 2004, pp. 8-10*). As such, petitioner owns and operates a 180-megawatt power plant facility located in Mahanagdong, Province of Leyte, which was accredited by the Department of Energy, as a Block Power Production Facility since June 15, 1994 (*Exhibit "B"*). Hence, petitioner was able to establish that it is a generation company.

Likewise, it was established that for the period commencing from July 1, 2001 to December 31, 2002, petitioner generated gross receipts from sales of power generation services rendered to PNOC-EDC as evidenced by sales invoices and official receipts by petitioner to PNOC-EDC for the period (*Exhibits "Z-1" to "Z-18", "AA-1" to "AA-2" and "BB-1" to "BB-61"*). However, in his Report, the Court-Commissioned Independent CPA noted that there is a discrepancy between the amounts of gross receipts from sales of generated power, as reflected in the VAT returns and as shown in the official receipts (*Exhibit "Y", page 7*), to wit:

"Our comparison of the amount of proceeds of the sales of generated power supported by ORs and the amount of sales of generated power presented in the VAT Returns disclosed the following:

Gross Receipts of the Sales of Generated Power	***July 1, 2001 to September 30, 2001 (inclusive of VAT Collected)***	***October 1, 2001 to December 31, 2002***	
Per Official Receipts (ORs)	*P 1,050,699,959.30*	*P 4,850,680,562.55*	***(Annex 2)***
Per VAT Returns			
Subjected to the 10% VAT	*365,347,759.00*		
Treated as Zero-Rated Sales	*661,007,570.05*	*5,318,146,689.21*	
	P 1,026,355,329.05	*P 5,318,146,689.21*	***(Annex 3)***
Difference - Gross Receipts of the Sales of Generated Power Per ORs is Over/(Under)	*P 24,344,630.25*	*(P 467,466,126.66)*	

We noted that for the period from July 1, 2001 to September 30, 2001, the difference of P24,344,630.25 represents collections per OR Nos. 0521, 0525, 0010 and 0013 issued in the CY 2001 pertaining to the 4% VAT charged and collected by the company from PNOC-EDC which was not reported in the VAT Returns for the period from July 1, 2001 to September 30, 2001.

On the other hand, for the period from October 1, 2001 to December 31, 2002, the difference of P467,466,126.66 is accounted for as follows:

	Per Sales Invoice	*Per Official Receipt*	*Difference - Amount Per Sales Invoice is Over*	
Computation of Zero-rated Sales Bases on Sales Invoice (accrual basis instead on ORs (cash basis)				
4th Quarter of 2001 (OR Nos. 0001, 0002, 0003 and 0009 for Sales Invoice No. 0053 and OR Nos. 0004, 0006 and 0007 for Sales Invoice No. 0054)	*P701,394,953.66*	*P684,456,806.69*	*P 16,938,146.97*	*(Annex 2)*
1st Quarter of 2002 (OR Nos. 0014, 0015 and 0016 for	*738,495,853.29*	*655,392,246.26*	*83,103,607.03*	*(Annex 2)*

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Sales Invoice No. 0001 and OR Nos. 0017, 0018 and 0019 for Sales Invoice No. 0002)		
OR Nos. 0011 and 0012 for Sales Invoice No. 0052 not considered as gross receipts in the VAT returns.	*(P321,493.29)*	*(Annex 2)*
Sales Invoice No. 0003 considered both in 1st Quarter of 2002 (accrual basis) and amended 2nd Quarter of 2002 (cash basis) VAT Returns	*367,745,865.96*	*(Annex 3)*
Rounding off Difference	*(0.01)*	
Total	***P467,466,126.66***	

A further scrutiny of the records discloses that the difference in zero-rated sales of P24,344,630.25 covering the period July 1, 2001 to September 30, 2001 represents not only 4% VAT, but also service fees and capital/operating cost recovery collected by petitioner from PNOC-EDC, as shown below:

Official Receipts / Sales Invoices Issued to PNOC-EDC

Customer	OR Date	OR Number	Nature of Income	Invoice No.	Amount
PNOC – EDC	22-Aug-01	0521	4% VAT	0049	14,348,174.14
PNOC – EDC	21-Sep-01	0525	4% VAT	0050	265,736.22
PNOC – EDC	28-Dec-01	0010	Service Fee Revenue	0051	4,419,912.45
PNOC – EDC	28-Dec-01	0013	Capital Cost Recovery/Operating Cost Recovery	0051	5,310,807.48
					P 24,344,630.29

Under the VAT law, the 4% VAT collected by petitioner from PNOC-EDC in the amounts of P14,348,174.14 and P265,736.22 do not form part of taxable gross receipts and it was correct on the part of

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petitioner not to declare the said amounts. However, the service fees and capital/recovery costs collected by petitioner from PNOC-EDC in the amounts of P4,419,912.45 and P5,310,807.48 or in the aggregate amount of P9,730,719.93 should have been declared by petitioner, as part of its zero-rated receipts for the third quarter of 2001. Petitioner's zero-rated receipts for the third quarter of 2001 should have been P670,738,289.98 instead of P661,007,570.05, hence, there is an underdeclaration of P9,730,719.93.

On the other hand, the discrepancy in zero-rated receipts for the fourth quarter of 2001 to the fourth quarter of 2002 in the amount P467,466,126.66 pertains to the overstatement of petitioner's zero-rated receipts for the said period. Thus, instead of the declared amount of P5,318,146,689.21, the Court considers the amount of P4,850,680,562.55 supported by zero-rated VAT official receipts, as petitioner's valid zero-rated receipts for the said period.

In sum, petitioner's substantiated zero-rated receipts for the third quarter of 2001 to the fourth quarter of 2002 amounted to P5,511,688,132.60, computed as follows:

	July 1, 2001 to Sept. 30, 2001	Oct. 1, 2001 to Dec. 31, 2002	Total
Zero-Rated Receipts Per ORs	P 670,738,289.98	P4,850,680,562.55	P5,521,418,852.53
Less: Undeclared Portion	9,730,719.93		9,730,719.93
Substantiated Zero-Rated Receipts	**P 661,007,570.05**	**P4,850,680,562.55**	**P5,511,688,132.60**

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Second and Third Requisites:
Input taxes were incurred or paid and that such input taxes are attributable to zero-rated sales or effectively zero-rated sales

As regards the second and third requisites, petitioner presented in evidence the suppliers' invoices, official receipts, Import Entries and Internal Revenue Declarations [IEIRDs] *(Exhibits "DD-1" to "DD-3866")*, Summary List of Purchases *(Exhibits "CC-1" to "CC-28")* and general ledgers (*Exhibits "EE-1" to "EE-24")* for the period July 1, 2001 to December 31, 2002, in support of its reported input tax for the said period in the amount of P25,749,880.18, broken down as follows:

Exhibit	Period Covered	Input VAT
G	3rd quarter -2001	P 4,519,889.38
H	4th quarter – 2001	3,059,611.70
I	1st quarter – 2002	1,956,223.67
J	2nd quarter – 2002	2,432,000.14
K	3rd quarter – 2002	4,049,983.55
L	4th quarter – 2002	9,732,171.74
	Total	**P 25,749,880.18**

After a careful examination of the report of the Court-Commissioned Independent CPA and petitioner's supporting documents, the Court finds that out of the reported input VAT of P25,749,880.18, the following input taxes in the amount of P10,199,791.42 should be denied for failure to meet the substantiation requirements prescribed under *Sections 110(A) and 113(A) of the NIRC of 1997,* as implemented by *Sections 4.104-1, 4.104-5 & 4.108-1 of Revenue Regulations No. 7-95*:

	Findings	Reference (Annexed to Exhibit Y)	Disallowed Input VAT
1.	Input taxes on importation of goods supported by original copy of IEIRD and an original BOC OR but not issued in the name of the company	Annex 7	459.00
2.	Input taxes claimed on purchases of goods and services which are supported by the following documents:		
a.	Domestic purchases of goods supported by pre-printed TIN-V invoices after July 31, 1991 but before January 1, 1996	Annex 9	26,457.52
b.	Domestic purchases of services supported by pre-printed TIN-V ORs after July 31, 1991 but before January 1, 1996	Annex 10	580,010.02
c.	Domestic purchases of goods supported by documents other than a VAT invoice	Annex 11	96,233.63
d.	Domestic purchases of services supported by documents other than VAT OR	Annex 12	234,018.88
e.	Domestic purchases of goods supported by VAT Invoices but are not original copies	Annex 13	81,997.55
f.	Domestic purchases of services supported by a VAT OR but not an original copy	Annex 14	7,343.22
g.	Domestic purchases of goods supported by original VAT invoices not issued in the name of the petitioner	Annex 15	71,842.51
h.	Domestic purchases of services supported by original VAT ORs not issued in the name of the petitioner	Annex 16	13,554.55
i.	Domestic purchases of goods supported by a tape receipt without the petitioner's name and/or TIN	Annex 17	823.74
j.	Domestic purchases of services supported by a tape receipt without the petitioner's name and/or TIN	Annex 18	75.00
k.	Domestic purchases of goods supported by a VAT Invoice but no date indicated	Annex 19	4,168.79
l.	Domestic purchases of services supported by a VAT OR but no date indicated	Annex 20	62,288.76
m.	Domestic purchases of goods supported by zero-rated VAT invoice	Annex 21	40,785.08
n.	Domestic purchases of goods supported by VAT Invoices not dated within the taxable year	Annex 22	3,562.11
o.	Domestic purchases of services supported by VAT Ors not dated within the taxable year	Annex 23	182,857.66

p. Domestic purchases of goods supported by invoices with TIN# only, TIN-V, TAN-V/VAT, TIN NV/NONVAT stamped/handwritten TIN-V/VAT (printed after January 1, 1996)	Annex 24	112,623.60
q. Domestic purchases of services supported by ORs with TIN# only, TIN-V, TAN-V/VAT, TIN NV/NONVAT stamped/handwritten TIN-V/VAT (printed after January 1, 1996)	Annex 25	323,764.24
r. Domestic purchases of services supported by a TIN-NV/NONVAT ORs but stamped with "TIN-VAT" or the word "NON" was erased	Annex 26	300,266.20
s. Over-claimed input tax on purchases of goods and services due to erroneous computation	Annex 27	5,926.86
t. Input tax claimed on purchases of vehicles with engine displacement of more than 2000cc	Annex 28	386,645.00
u. Input tax on payments to insurance companies for DST and local taxes	Annex 29	55.32
v. Input tax on payment to travel agencies for airfare, security fare, terminal fee and other charges	Annex 30	1,871.27
w. Input tax claimed on petroleum products (e.g., diesel and gasoline)	Annex 31	78,451.39
y. Input tax claimed on payment to brokerage companies for "non-VATable" reimbursable charges supported by a TIN_VAT OR	Annex 33	4,490.60
z. Input tax claimed pertaining to DST on payments for check printing services	Annex 34	1,022.74
3. Input taxes claimed on purchases of goods and services without supporting documents	Annex 35	7,578,196.18
TOTAL Disallowed Input VAT		**P 10,199,791.42**

Thus, only the following input taxes in the amount of P15,550,088.76 represents petitioner's valid claim, to wit:

Findings	Reference (Annexed to Exhibit Y)	Valid Input VAT
1. Input taxes claimed on purchases of goods and services and	Annex 4	P14,654,160.66

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importation of goods which are properly substantiated for VAT purposes		
2. Input taxes claimed on importation of goods which are supported by the following documents:		
a. Importation of goods supported by a photocopy of Import Entry Internal Revenue Declaration (IEIRD) and an original BOC OR	Annex 5	614,732.00
b. Importation of goods supported by original IEIRDs but with no BOC Ors	Annex 6	201,774.00
c. Importation of goods supported by a photocopy of IEIRD and an original LBP OR	Annex 8	77,231.00
d. Input tax on brokerage and other service fees paid to brokerage companies supported by a TIN-VAT OR	Annex 32	2,191.10
Total Valid Input VAT		**P15,550,088.76**

Fourth Requisite:
Input taxes were not applied against any output VAT liability

We now proceed to the determination of whether or not the substantiated input VAT of P15,550,088.76 was applied against any output VAT.

A perusal of petitioner's Quarterly VAT Returns for the subject period of claim shows that it was only in the third quarter of 2001 that petitioner incurred an output tax liability in the amount of P36,534,775.90 on taxable sales of P365,347,759.00. Such output tax was partially offset by petitioner against its reported creditable VAT withheld in the amount of P21,920,865.53 and VAT payment for July 2001 in the amount of P13,015,106.29.

To prove the actual withholding of the creditable VAT withheld of P21,920,865.53, petitioner presented Certificates of Creditable Tax Withheld at Source issued by PNOC-EDC for the months of July, August and September 2001, which reflected creditable VAT withheld in the amount of P33,684,203.31, which is higher than the reported amount of P21,920,865.53, as shown below:

	Per VAT Return **(Exhibits G, G-8)**	Per Supporting Documents **(Exhibits II,KK,LL)**
6% VAT withheld by PNOC-EDC		
July	P 21,522,261.20	P 21,588,154.66
August	398,604.33	11,697,444.32
September	-	398,604.33
Total 6% VAT withheld by PNOC-EDC	**P 21,920,865.53**	**P 33,684,203.31**

Since petitioner did not file an amended VAT return to reflect the higher creditable VAT withheld of P33,684,203.31, this Court shall consider the amount of P21,920,865.53 as the basis for the computation of petitioner's claim.

As regards the VAT payment of P13,015,106.29, petitioner was able to prove actual payment thereof through the presentation of the machine validated Monthly VAT Declaration for July 2001 and corresponding bank official receipt (*Exhibits "II-1" & "JJ-1"*).

After applying the creditable VAT withheld of P21,920,865.53 and monthly VAT payment of P13,015,106.29 totalling to P34,935,971.82 against petitioner's output tax liability of P36,534,775.90, there still remains an output tax due of P1,598,804.08, which shall be offset against the substantiated input VAT of P15,550,088.76. Thus, only the net input VAT amount of P13,951,284.68 is unutilized or unapplied, as of the fourth quarter of 2002.

Although petitioner carried-over the subject claim to the succeeding taxable quarters until the fourth quarter of 2003 (*Exhibits "R" to "U", inclusive of submarkings*), the same remained unapplied as petitioner had no output VAT liability during those quarters. Moreover, in its VAT return for the third and fourth quarters of 2003 (*Exhibits "T-4" & "U-4"*), petitioner deducted the said input VAT as "Any VAT Refund/TCC Claimed" from the "Total Available Input Tax". This means that the substantiated claim of P13,951,284.68 can no longer be used as credit against petitioner's future output VAT liability.

Fifth Requisite:
The claim for refund was filed within the two-year prescriptive period

Finally, as to the two year prescriptive period, the Court finds that petitioner's claim was timely filed. The reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund commences from the date of filing of the corresponding Quarterly VAT Return (*Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, 524 SCRA 733*). Counting from the date when petitioner filed its Quarterly VAT Return for the third quarter of 2001 on October 25, 2001 *(Exhibit "G-9"),* both the administrative claim filed on September 26, 2003 *(Exhibit "E-2")* and the Petition for Review *(C.T.A. Case No. 6792*) filed on September 30, 2003, fell within the two-year prescriptive period. Likewise, counting from the dates when petitioner filed its Quarterly VAT Returns for the 4th quarter of 2001 and the four quarters of 2002 on January 10, 2002 (*Exhibit "H-2*)", April 10, 2002 *(Exhibit "I-2")*, July 24, 2002 *(Exhibit "K³")* , October 25, 2002 *(Exhibit "M³"),* and January 27, 2003 *(Exhibit "O³"),* respectively, both the administrative claim filed on December 18, 2003 *(Exhibit "F-2")* and the Petition for Review *(C.T.A. Case No. 6837)* filed on December 19, 2003 fell within the two-year prescriptive period.

In sum, the Court finds that petitioner is entitled to a refund or issuance of a tax credit certificate, representing unutilized input VAT attributable to zero-rated sales for the third and fourth quarters of 2001

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and all four quarters of 2002, but in the reduced amount of P13,926,697.51, computed as follows:

Output VAT		P 36,534,775.90
Less: Tax credits/payment		
Creditable VAT Withheld	P 21,920,865.53	
VAT payment - July 2001	13,015,106.29	34,935,971.82
Output VAT still due		P 1,598,804.08
Less: Substantiated Input VAT		15,550,088.76
Excess Input VAT Attributable to Zero-Rated Receipts		P 13,951,284.68
Multiply by the ratio of:		
Substantiated Zero-rated Receipts	5,511,688,132.60	
Divided by: Total Zero-Rated Receipts	÷5,521,418,852.53	0.998237641
Refundable Excess Input VAT Attributable to Zero-Rated Receipts		**P13,926,697.51**

WHEREFORE, premises considered, the present Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the reduced amount of **THIRTEEN MILLION NINE HUNDRED TWENTY-SIX THOUSAND SIX HUNDRED NINETY-SEVEN AND 51/100 PESOS (P13,926,697.51)**, representing the unutilized input VAT attributable to zero-rated sales for the third and fourth quarters of 2001 and all four quarters of 2002.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
ERLINDA P. UY
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.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, Second Division