REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

CE CASECNAN WATER AND ENERGY COMPANY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8041

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CE CASECNAN WATER AND ENERGY COMPANY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8111

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:
SEP 11 2012
3:55 p.m.

x- x

DECISION

CASTAÑEDA, JR., *J.*:

This is a consolidation of two Petitions for Review filed by CE Casecnan Water and Energy Company Inc. (petitioner) to seek the refund or issuance of tax credit certificate in the aggregate amount of P20,063,676.24, allegedly representing unutilized input value-added tax (VAT) attributable to its zero-rated sales as a generation company to the National Irrigation Administration (NIA) for taxable year 2008, broken down as follows:

CTA Case No.	Period Covered	Amount of Claim
8041	1st Quarter 2008	P 6,264,758.82
8111	2nd to 4th Quarter 2008	13,798,917.42
TOTAL		**P 20,063,676.24**

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office at Pantabangan, Nueva Ecija. It was incorporated on September 21, 1994, the primary purpose of which is "to design, develop, construct, erect, assemble, commission, finance, own and operate a combined irrigation and hydro-electric power project and related facilities in Central Luzon, Philippines for the conversion into electricity of water provided by and under contract with the National Irrigation Administration (the 'Project'); provided that, in no event shall the corporation itself engage in the general supply or distribution of electricity, in retail trade or in the business of a public utility, or furnish electricity to end-users or consumers, or provide a public service or engage in industries or activities reserved by the Constitution or by law to corporations wholly or partially owned by Filipino citizens".[1]

Petitioner's multi-purpose irrigation and power project with the power plant component, consisting of a hydro-electric powerhouse with an installed capacity of 140 MW, has been duly accredited and certified as a Private Sector

[1] Par. 2, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket (CTA Case No. 8041), p. 224.

Generation Facility by the Department of Energy (DOE) as evidenced by its DOE Certificate of Accreditation No. 95-07-12 issued on July 20, 1995.[2] On July 27, 2005, petitioner was granted by the Energy Regulation Commission (ERC) a Certificate of Compliance (COC) No. 05-07-GN8-10701.[3]

It is likewise a registered VAT taxpayer with the Bureau of Internal Revenue (BIR) as evidenced by its Certificate of Registration No. 0000017028 dated July 1, 1998, with Tax Identification Number 004-500-931-000.[4]

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue, vested with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner filed its Quarterly VAT Returns for taxable period January 2008 to December 2008, as well as their amendments through the BIR's Electronic Filing and Payment System (EFPS) on the following dates:

EXHIBIT	PERIOD COVERED	DATE OF FILING
H	January to March	April 25, 2008
I	January to March (Amended Return)	February 23, 2009
J	April to June	July 25, 2008
K	April to June (Amended Return)	February 11, 2010
L	July to September	October 24, 2008
M	July to September (Amended Return)	February 11, 2010
N	October to December	January 26, 2009
O	October to December (Amended Return)	February 11, 2010

On November 11, 2009, petitioner filed an administrative claim with the Large Taxpayers Audit and Investigation Division I of the BIR (BIR LTAID I)

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[2] Exhibit "B"; Par. 5, Admitted Facts, JSFI, docket (CTA Case No. 8041), p. 225.
[3] Exhibit "C"; Par. 7, Admitted Facts, JSFI, docket (CTA Case No. 8041), p. 225.
[4] Par. 8, Admitted Facts, JSFI, docket (CTA Case No. 8041), p. 225.

for the refund or issuance of tax credit certificate for its alleged unutilized input VAT payments in the amount of P6,264,758.82 attributable to its zero-rated sales covering the First (1st) Quarter of taxable year 2008.[5] On February 16, 2010, petitioner filed before BIR LTAID I its claim for refund or issuance of tax credit certificate in the aggregate amount of P13,917,771.50, covering the Second (2nd) Quarter to the Fourth (4th) Quarter of taxable year 2008.[6] Subsequently, on March 5, 2010 petitioner filed before the BIR LTAID I a letter amending the amount stated in its previous claim for refund or issuance of tax credit certificate from the aggregate amount of P13,917,771.50 to P13,798,917.42, covering the 2nd Quarter to 4th Quarter of taxable year 2008.[7]

However, due to the inaction of respondent on petitioner's administrative claims, petitioner filed the two separate Petitions for Review docketed as CTA Case Nos. 8041 and 8111 on March 26, 2010 and June 24, 2010, respectively.

At the instance of petitioner, the two separate cases were consolidated by the CTA Third Division on November 12, 2010[8]; which was confirmed by the CTA Second Division in a Resolution[9] dated November 22, 2010.

In her separate Answers to the Petitions for Review docketed as CTA Case Nos. 8041[10] and 8111[11], respondent interposed the following defenses:

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[5] Exhibit "P"; Par. 4, Admitted Facts, JSFI, docket (CTA Case No. 8041), pp. 224-225.
[6] Exhibit "Q"; Par. 6, Admitted Facts, JSFI, docket (CTA Case No. 8041), p. 225.
[7] Exhibit "R".
[8] Docket of CTA Case No. 8041, p. 205 and Docket of CTA Case No. 8111, p. 220.
[9] Docket (CTA Case No. 8041), pp. 207-208.
[10] Docket (CTA Case No. 8041), pp. 67-73.
[11] Docket (CTA Case No. 8111), pp. 141-147.

CTA Case No. 8041

"6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue.

7. The amount of P6,264,758.82 being claimed by petitioner as alleged erroneously paid VAT input taxes for the 1st quarter of calendar year 2008 is not properly documented.

8. Petitioner must prove that it has complied with the provisions of Section 112(A) and (C) of the National Internal Revenue Code of 1997 (1997 Tax Code), as amended, on the prescriptive period for claims for VAT refund/credit.

9. Proof of compliance with the prescribed checklist of requirements to be submitted involving claims for VAT refund pursuant to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund, the administrative claim thereof being mere pro-forma. Further, Section 112(C) of the 1997 Tax Code, as amended, requires the submission of complete documents in support of the application filed with the BIR before the 20-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the Petition for Review.

10. Petitioner must likewise prove that it has complied with the invoicing requirements mentioned in Sections 110 and 113 of the 1997 Tax Code, as amended, in relation to the provisions of Revenue Regulations No. 7-95.

11. In an action for refund/tax credit, the ***onus probandi*** is on the taxpayer to establish its right to refund/tax credit, and failure to sustain the burden is fatal to its claim for refund/tax credit **(ASIATIC PETROLEUM CO. VS. LLANES, 49 PHIL., 466 cited in COLLECTOR OF INTERNAL REVENUE VS. MANILA JOCKEY CLUB, INC., 98 PHIL. 670)**. In the same vein, the Supreme Court in the case of ***Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 159490, February 18, 2009***, ruled in this wise:

> '*In fine*, we reiterate our consistent ruling that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the

taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.'

12. 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 fort refund or credit. 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.) vs. LLANES, 49 Phil. 466 cited in Collector of Internal Revenue vs. Manila Jockey Club, Inc., 98 Phil. 670.*** C ***Ei incumbit probatio qui dicit, non qui negat.*** ('He who asserts must prove, not he who denies.)

13. Claims for refund are construed in ***strictissimi juris*** 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 COPR. VS. COMMISSIONER OF INTERNAL REVENUE, 124 SCRA 1211**)."

<u>CTA Case No. 8111</u>

"**SPECIAL AND AFFIRMATIVE DEFENSES**

4. Respondent hereby reiterates and repleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses.

5. Taxes collected are presumed to be in accordance with laws and regulations.

6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.

7. Taxes are essential to government's very existence; (**CIR v. Solidbank Corporation, G.R. No. 148191, November 25, 2003**) hence, the dictum that 'taxes are the lifeblood of the government.' For this reason, the right of taxation cannot be easily surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority. (**CIR**

v. Fortune Tobacco Corporation, G.R. Nos. 167274-75, July 21, 2008) Since tax refunds are regarded as tax exemptions and these are to be construed ***strictissimi juris*** against the person or entity claiming the exemption. (**Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue G.R. 141973, June 28, 2005**).

8. In an action for refund, the burden of proof is on the taxpayer who claims exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications (**BPI Leasing Corporation vs. Honorable Court of Appeals, G.R. 127624, November 18, 2003**). The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. (**Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc. G.R. 163835 July 7, 2010**).

9. To support its claim, it is imperative for petitioner to prove the following, viz:

   a. The registration requirements of a value-added taxpayer in compliance with section 6 (a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

   b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section 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 pursuant to Revenue Memorandum Order No. 53-98, **otherwise there would be no sufficient compliance with the filing of an administrative application for refund which is a condition sine qua non prior to the filing of a judicial claim** in accordance with Section 112 of the Tax Code, as amended. This 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 the judicial remedies as provided for in the law**. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review;

d. That the input taxes of P13,798,917.42 allegedly incurred by petitioner for the second to fourth quarter of taxable year 2008 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within the two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the Tax Code, as amended;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code, as amended, and pursuant to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits);

g. The requirements as enumerated under Section 4.104-5 of Revenue Regulations No. 7-95. (Re: Substantiation of Claims for Input Tax Credits)

10. The amount of Thirteen Million Seven Hundred Ninety Eight Thousand Nine Hundred Seventeen and forty two Pesos (Php13,798,917.42) being claimed by petitioner arising from unutilized input value-added tax ('VAT') paid and incurred for the taxable year 2008 is not properly documented;

11. Following the premise above-mentioned, petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim."

On June 22, 2010, petitioner filed its Reply (Re: Respondent's Answer dated 30 April 2010)[12] to respondent's Answer filed in CTA Case No. 8041.

[12] Docket (CTA Case No. 8041), pp. 92-97.

On February 23, 2011, upon motion of petitioner,[13] this Court commissioned Annalyn B. Artuz of Constantino Guadalquiver & Co. as Independent Certified Public Accountant (ICPA).[14]

During trial, petitioner presented Leilah Yasmin E. Alpad, its Head of the Tax Services and Annalyn B. Artuz, the Independent Certified Public Accountant, as witnesses.

Thereafter, petitioner filed on October 3, 2011 its Formal Offer of Evidence[15], submitting Exhibits "B", "C", "E", "F", and "H" to "AA", inclusive of their sub-markings; which was admitted by this Court in the Resolutions dated November 21, 2011[16] and January 24, 2012[17].

On the other hand, counsel for respondent manifested during the hearing held on March 12, 2012 that respondent will no longer be presenting evidence considering that petitioner's administrative claim with the BIR's Large Taxpayers Division is still pending. Counsels for both parties were given thirty (30) days from said date to file their respective memorandum.[18]

On May 17, 2012, this case was submitted for decision, considering petitioner's Memorandum filed on May 11, 2012 and the Report dated May 15, 2012 of the Records Division that respondent failed to file a Memorandum.[19]

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[13] Docket (CTA Case No. 8041), pp. 247-249.
[14] Minutes of Hearing dated February 23, 2011, docket (CTA Case No. 8041), p. 276.
[15] Docket (CTA Case No. 8041), pp. 317-342.
[16] Docket (CTA Case No. 8041), pp. 535-538.
[17] Docket (CTA Case No. 8041), pp. 531-533.
[18] Minutes of Hearing dated March 12, 2012, docket (CTA Case No. 8041), p. 544.
[19] Docket (CTA Case No. 8041), p. 579.

The following are the parties' jointly stipulated issues[20] submitted for this Court's resolution:

"9. Whether or not the instant petition is prematurely filed.

10. Whether or not Petitioner's excess and unutilized input VAT for the period from the 1st quarter to the 4th quarter of CY 2008 in the total amount of Php20,063,676.24 is duly substantiated by documentary evidence such as invoices and official receipts.

11. Whether or not Petitioner's excess and unutilized input VAT for the period from the 1st quarter to the 4th quarter of CY 2008 in the total amount of Php20,063,676.24 was applied or credited against any output VAT in the succeeding quarter or quarters.

12. Whether or not Petitioner is entitled to a refund of and/or issuance of a tax credit certificate ('TCC') for its excess and unutilized input VAT in the total amount of Php20,063,676.24, which input VAT: (i) arose from Petitioner's domestic purchases of non-capital goods and services, services rendered by non-residents, and importation of non-capital goods; and (ii) are all directly attributable to Petitioner's zero-rated sales of generated power to the NIA.

13. Whether or not Petitioner generated zero-rated sales of power to the NIA for the period from the 1st quarter to the 4th quarter of CY 2008 amounting to Php3,717,728,475.85.

14. Whether or not Petitioner filed its administrative and judicial claims for a refund or tax credit of its unutilized input VAT for the period from the 1st quarter to the 4th quarter of CY 2008 within the prescriptive period."

The foregoing issues can be summarized as follows:

"Whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P20,063,676.24, representing its unutilized input VAT incurred from its purchases of goods and services attributable to its zero-rated sales to NIA for taxable year 2008."

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[20] Docket (CTA Case No. 8041), pp. 226-227.

As correctly pointed out by petitioner, the law explicitly states that sales of generated power by generation companies are VAT zero-rated beginning June 26, 2001, the date of effectivity of Republic Act (R.A.) No. 9136[21]. The significant parts of Section 6 of R.A. No. 9136 read as follows:

> "SECTION 6. *Generation Sector.* - Generation of electric power, a business affected with public interest, shall be competitive and open.
>
> 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.**" *(Emphasis supplied)*

Likewise, the Rules and Regulations to Implement Republic Act No. 9136, specifically, Section 6 of Rule 5 thereof states that:

> "SECTION 6. *Generation Charges and VAT.*
>
> xxx xxx xxx
>
> **(b) Pursuant to the policy of reducing electricity rates to End-users, sales of generated power by a Generation Company shall, from the effectivity of the Act, be zero-rated for the purpose of imposition of value-added tax.** Towards this end, the imposition of zero percent (0%) VAT shall apply to the sale of generated power by a Generation Company through all stages of sale until it reaches the End-user. The DOF, through the BIR, shall issue the necessary revenue regulation within sixty (60) calendar days from effectivity of these Rules." *(Emphasis supplied)*

In order for a power generation company to qualify for VAT zero-rating in accordance with R.A. No. 9136, two (2) requirements must concur, namely, (1) it is a generation company; and (2) it derived sales from power generation.

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[21] An Act Ordaining Reforms In The Electric Power Industry, Amending For The Purpose Certain Laws And For Other Purposes otherwise known as "Electric Power Industry Reform Act of 2001".

However, the foregoing provision was expressly repealed by R.A. No. 9337[22]. The repealing clause of R.A. No. 9337 provides:

> "SECTION 24. *Repealing Clause.* - The following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax subject to the provisions of Title IV of the National Internal Revenue Code of 1997, as amended:
>
> xxx xxx xxx
>
> (B) Section 6, fifth paragraph of R.A. No. 9136 on the zero VAT rate imposed on the sales of generated power by generation companies; and"

Notwithstanding the said repeal, the sale of power or fuel generated through renewable source of energy continued to be VAT zero-rated under Section 108(B)(7) of the National Internal Revenue Code (NIRC) of 1997, as amended by R.A. No. 9337, which states:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> (7) **Sale of power or fuel generated through renewable sources of energy such as**, but not limited to, biomass, solar, wind, **hydropower**, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels." (*Emphasis supplied*)

In this case, records show that petitioner's 140-megawatt hydro-electric power plant project has been accredited by the Department of Energy as a Private Sector Generation Facility under the Implementing Rules and

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[22] An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as amended, and for other purposes.

Regulations of Executive Order No. 215, as amended.[23] Likewise, the Energy Regulatory Commission issued Certificate of Compliance No. 05-07GN8-10701 for its generation facility.[24] Further, under the Amended and Restated Casecnan Project Agreement between petitioner and NIA, petitioner generates power and subsequently sells it only to NIA.[25] Thus, petitioner has sufficiently established that it is in the business of power generation and as such sold corresponding generated power to NIA. Accordingly, it can treat its sale of generated power to NIA as VAT zero-rated sales.

This Court will now resolve the issue of whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P20,063,676.24, representing its unutilized input VAT incurred from its purchases of goods and services attributable to its zero-rated sales to NIA for taxable year 2008.

Section 112(A) of the National Internal Revenue Code of 1997 lays down the requisites for refunds or tax credits of input tax due or paid attributable to zero-rated or effectively zero-rated sales, which read as follows:

> "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

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[23] Exhibit "B".
[24] Exhibit "C".
[25] Exhibit "E".

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."

Based on the foregoing, petitioner must comply with the following requisites to be entitled to a refund or issuance of tax credit certificate of input tax due or paid attributable to zero-rated or effectively zero-rated sales:

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

In its Quarterly VAT Returns for 2008, petitioner reported a total zero-rated sales of P3,717,728,475.85, detailed as follows:

EXHIBIT	YEAR 2008	ZERO-RATED SALES/RECEIPTS
"I"	1st Quarter	P 891,776,085.71
"K"	2nd Quarter	601,563,171.26
"M"	3rd Quarter	1,127,498,520.53
"O"	4th Quarter	1,096,890,698.35
TOTAL		**P 3,717,728,475.85**

An examination of the official receipts issued by petitioner for its zero-rated sales for the year 2008[26] revealed that its declared zero-rated sales per Quarterly VAT Returns are fully substantiated.

This Court shall now determine the amount of input VAT attributable thereto.

Petitioner also reported a total of P34,770,623.42 input taxes incurred for taxable year 2008, detailed as follows:

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[26] Exhibits "Z-4-1.1" to "Z-4-1.24".

Qtr	Purchases - Goods		Importation - Goods		Purchases - Services		Services- Non Residents		Amount of Input exceeding 1Million	Total Purchases	Total Input VAT
	Purchases	Input VAT	Importation	Input VAT	Purchases	Input VAT	Services	Input VAT			
1st	4,045,143.67	485,417.24	854,575.00	102,549.00	81,797,735.83	9,815,728.30	754,600.83	90,552.10	36,894.63	87,452,055.33	10,531,141.27
2nd	5,860,316.42	703,237.97	1,293,230.83	155,187.70	50,606,451.05	6,072,774.13	1,126,569.58	135,188.35	36,894.63	58,886,567.88	7,103,282.78
3rd	5,051,649.58	606,197.95	352,433.00	42,291.96	40,211,510.00	4,825,381.20	525,829.17	63,099.50	36,894.63	46,141,421.75	5,573,865.24
4th	4,836,972.17	580,436.66	4,475,026.58	537,003.19	86,733,330.42	10,407,999.65	-	-	36,894.63	96,045,329.17	11,562,334.13
										288,525,374.13	34,770,623.42

Its claim of P20,063,676.24 is computed as follows:[27]

Exhibit	Year 2008	Input Tax	Ratio of Zero-rated Sales over Total Sales	Input VAT Attributable to Zero-rated Sales
"I"	1st Quarter	P 10,531,141.27	59.487938%	P 6,264,758.82
"K"	2nd Quarter	7,103,282.78	48.354861%	3,434,782.55
"M"	3rd Quarter	5,573,865.24	62.661695%	3,492,678.44
"O"	4th Quarter	11,562,334.13	60.457607%	6,990,310.51
Total		**P34,770,623.42**		**P 20,182,530.32**
Less: Input VAT applied to Miscellaneous Sales				118,854.08
TOTAL INPUT VAT CLAIMED FOR REFUND/ISSUANCE OF TCC				**P 20,063,676.24**

Petitioner submitted in evidence various suppliers' invoices, official receipts, Bureau of Customs (BOC) Import Entries and Internal Revenue Declarations (IEIRDs), BOC and bank official receipts[28] in support of the P20,063,676.24 unutilized input taxes reflected in its Quarterly VAT Returns for the four quarters of 2008.

The Court-commissioned Independent CPA[29] examined and verified the above-mentioned supporting documents and reported her findings as follows:[30]

	Total Input VAT Properly Substantiated (See Section I of Annex 3)				
			Annex	**Total Amount of Input VAT**	**Input VAT Allocated to Zero-rated Sales**
1	Domestic purchases of goods and services properly supported by VAT invoices and VAT ORs		3-1Q-1; 3-2Q-1; 3-3Q-1; 3-4Q-1	P 32,659,593.45	P 18,976,433.29

[27] Exhibit "Z", page 1.
[28] Exhibits "Z-6-C-1Q-00001" to "Z-6-C-1Q-00383", "Z-6-C-2Q-00001" to "Z-6-C-2Q-00630", "Z-6-C-3Q-00001" to "Z-6-C-3Q-00453", and "Z-6-C-4Q-00001" to "Z-6-C-3Q-00587"
[29] Ms. Annalyn B. Artuz of Constantino Guadalquiver & Co.
[30] Exhibit "Z", pp. 12 to 17

2	Importation of goods and services properly supported by IEIRDs/BOC ORs/BIR Form 1600 and BIR EFPS filing acknowledgement and payment confirmations acknowledgement and payment confirmations		3-1Q-2; 3-2Q-2; 3-3Q-2; 3-4Q-2	617,111.46	357,233.41
3.	Domestic purchases of goods properly supported by VAT invoices not dated within the VAT taxable quarter but within the taxable year. We ascertained that the input VAT on the purchases of goods were not claimed twice during the taxable year		3-1Q-3; 3-2Q-3; 3-3Q-3; 3-4Q-3	168,551.63	82,976.22
4	Domestic purchases of services properly supported by VAT ORs not dated within the VAT taxable quarter but within the taxable year. We ascertained that the input VAT on purchases of services were not claimed twice during the taxable year		3-1Q-4; 3-2Q-4; 3-3Q-4; 3-4Q-4	4,458.38	2,540.05
5	Domestic purchases of capital goods exceeding Pts1Million properly supported by VAT invoices (Amortization Only)		3-1Q-5; 3-2Q-5; 3-3Q-5; 3-4Q-5	94,650.00	54,651.40
	Total Input VAT properly substantiated			**P 33,544,364.92**	**P 19,473,834.37**
*The Honorable Court may also accept the following amounts as properly substantiated in which case the amount that is properly substantiated will be **P19,521,919.84:***					
	For Consideration of the Honorable CTA (See Section II of Annex 3):				
			Annex	**Total Amount of Input VAT**	**Input VAT Allocated to Zero-Rated Sales**
1	Domestic purchases of goods/services supported by VAT invoices/VAT ORs with countersigned changes. We have ascertained from additional supporting documentation (i.e. VAT ORs for goods/ VAT invoices for services) that input VAT was passed on to the petitioner.		3-1Q-6; 3-2Q-6; 3-3Q-6; 3-4Q-6	P 8,652.21	P 5,270.76
2	Domestic purchases of goods/services supported by VAT invoices/VAT ORs with countersigned changes in the company's name and/or TIN		3-1Q-7; 3-4Q-7	4,425.51	2,647.40
3	Domestic purchases of goods supported by tape receipts with handwritten/stamped company's name, TIN and/or address		3-1Q-8; 3-2Q-7; 3-3Q-7; 3-4Q-8	15,258.79	8,900.00
4	Domestic purchases of services supported by tape receipts with handwritten/stamped company's name, TIN and/or address		3-2Q-8; 3-3Q-8; 3-4Q-9	1,203.79	706.10
5	Domestic purchase of capital goods exceeding P1Million supported by TIN # Vehicle Sales Invoice which shows that VAT was passed on to the petitioner(amortization only)		3-1Q-9; 3-2Q-9; 3-3Q-9; 3-4Q-10	52,928.52	30,561.21
	Total For Consideration of the Honorable CTA			**P 82,468.82**	**P 48,085.47**

	Other Findings (see Section III of Annex 3)	Annex	Total Amount of Input VAT	Input VAT Allocated to Zero-Rated Sales
1	Domestic purchases of goods supported by documents other that VAT invoices	3-1Q-10; 3-2Q-10; 3-3Q-10; 3-4Q-11	P 30,159.73	P 18,060.99
2	Domestic purchases of services supported by documents other that VAT ORs	3-1Q-11; 3-2Q-11; 3-3Q-11; 3-4Q-12	120,539.23	71,995.93
3	Domestic purchases of goods supported by VAT invoices not issued in the name of the company	3-1Q-12; 3-2Q-12; 3-3Q-12; 3-4Q-13	1,691.12	958.87
4	Domestic purchases of services supported by VAT ORs not issued in the name of the company	3-1Q-13; 3-2Q-13; 3-3Q-13; 3-4Q-14	53,116.71	32,342.40
5	Domestic purchases of goods supported by TIN-V invoice	3-1Q-14; 3-2Q-14	22,418.51	11,555.95
6	Domestic purchases of services supported by TIN-V ORs	3-1Q-15; 3-2Q-15; 3-3Q-14; 3-4Q-15	91,671.99	50,951.26
7	Domestic purchases of goods supported by VAT invoices not dated within the VAT taxable year	3-1Q-16; 3-2Q-16; 3-4Q-16	28,077.19	16,524.70
8	Domestic purchases of services supported by VAT ORs not dated within the VAT taxable year	3-1Q-17; 3-4Q-17	474.54	286.45
9	Domestic purchases of goods supported by TIN # or TIN-V tape receipts only	3-1Q-18; 3-2Q-17; 3-3Q-15; 3-4Q-18	4,635.82	2,606.07
10	Domestic purchases of services supported by TIN # or TIN-V tape receipts only	3-4Q-19	139.53	84.36
11	Domestic purchases of goods supported by TIN# only; TAN-V; TAN-VAT; TIN-NV/NON VAT invoices; stamped/handwritten TIN-V/VAT invoices	3-1Q-19; 3-2Q-18; 3-3Q-16; 3-4Q-20	36,732.05	22,593.86
12	Domestic purchases of services supported by TIN# only; TAN-V; TAN-VAT; TIN-NV/NON VAT ORs stamped/handwritten TIN-V/VAT Ors	3-1Q-20; 3-2Q-19; 3-4Q-21	45,809.22	27,254.97

13	Domestic purchases of goods supported VAT invoices issued in the company's name but without or with wrong Company's TIN and/or address		3-1Q-21; 3-2Q-20; 3-3Q-17; 3-4Q-22	1,919.90	1,072.20
14	Domestic purchases of services supported but VAT ORs issued in the company's name but without or with wrong company's TIN and/or address		3-1Q-22; 3-2Q-21; 3-3Q-18; 3-4Q-23	3,718.48	2,093.54
15	Domestic purchases of goods supported by VAT invoices issued in the Company's name with TIN and/or address changed/added on the VAT invoices but without countersignature		3-1Q-23; 3-2Q-22; 3-4Q-24	1,571.50	846.88
16	Domestic purchases of goods supported by tape receipts without or not in the Company's name and/or TIN		3-2Q-23; 3-3Q-19; 3-4Q-25	2,524.30	1,479.18
17	Domestic purchases of services supported by tape receipts without Company's name and/or TIN		3-3Q-20	128.67	80.63
18	Domestic purchases of services supported by VAT ORs but without OR date		3-3Q-21	168.94	105.86
19	Domestic purchases of goods/services supported by VAT invoice/VAT ORs wherein VAT was not shown separately		3-1Q-24; 3-2Q-24; 3-3Q-22; 3-4Q-26	6,268.10	3,370.27
20	Purchases of services supported by TIN VAT invoices with stamp "Not allowed for claiming input VAT"		3-1Q-25; 3-2Q-25; 3-3Q-23; 3-4Q-27	39,204.30	24,137.81
21	Domestic purchases of services supported by VAT ORs with vatable amount placed under NON VATABLE portion		3-1Q-26; 3-2Q-26; 3-3Q-24; 3-4Q-28	30,873.00	18,390.64
22	Overclaimed input VAT on domestic purchases/ importation of goods/services due to erroneous computation (i.e. arithmetical error)		3-1Q-27; 3-2Q-27; 3-3Q-25; 3-4Q-29	6,536.34	3,717.83
23	Effects of forex on foreign currency denominated purchases of goods and services - overstatement		3-1Q-28; 3-3Q-26; 3-4Q-30	11,366.38	6,856.70

24	Supporting documents not available for verification		3-1Q-29; 3-2Q-28; 3-3Q-27; 3-4Q-31	604,054.02	343,249.15
	TOTAL OTHER FINDINGS			**P 1,143,799.57**	**P 660,616.51**
	ROUNDING OFF DIFFERENCE			(9.89)	(6.03)
	GRAND TOTAL			**P34,770,623.42**	**P20,182,530.32**

This Court finds the Independent CPA Report to be in order. All 24 items under "Other Findings" amounting to P660,616.51 should be disallowed for the reasons stated. In addition, this Court cannot consider all the items under "For consideration of the Honorable CTA", in the total amount of P48,085.47 because in items 1 and 2, this Court cannot determine whether the one who countersigned the changes is the authorized representative of the supplier and the rest of the items are in violation of the invoicing requirements as provided in Section 113 of the NIRC of 1997. Thus, disallowances per ICPA findings amounted to P708,701.98. Likewise, the input VAT claim should be further decreased by P135,808.95, broken down as follows:

SUPPLIER		INPUT VAT	EXHIBIT	REASON FOR DISALLOWANCE
Isla Lipana & Co.	OR No. 10695	P 111,000.00	Z-6-1Q-00170	The amount reflected in the summary was P222,000 instead of P111,000
PLDT		24,808.95	Z-6-4Q-00387	No Document. Submitted document was not the one reflected in the summary.
TOTAL		**P 135,808.95**		

Accordingly, out of petitioner's claimed input tax of P20,063,676.24, only the amount of P19,219,165.31, as computed below, is duly substantiated in accordance with Sections 110(A) and 113(A) of the NIRC of 1997, as amended by R.A. No. 9337, in relation to Sections 4.110-1, 4.110-8, and 4.113-1 of Revenue Regulations No. 16-2005: Je

Claimed input VAT			P 20,063,676.24
Less:	Disallowances		
	Per ICPA	P708,701.98	
	Per Court's verification	135,808.95	844,510.93
Valid input VAT			**P 9,219,165.31**

As evidenced by its Quarterly VAT Returns for the four quarters of 2009 and first quarter of 2010[31], petitioner carried over the amount of P19,219,165.31 to the succeeding quarters but the same remained unutilized as the substantiated input VAT of P19,219,165.31 formed part of the P6,264,758.82 and P13,798,917.42 input VAT deducted as "VAT Refund/TCC Claimed" in the Quarterly VAT Returns for the fourth quarter of 2009[32] and first quarter of 2010,[33] respectively. Hence, the input VAT of P19,219,165.31 was no longer carried over to the succeeding quarters of 2010.

Finally, this Court finds that petitioner's administrative and judicial claims for refund or issuance of tax credit certificate were filed well within the prescriptive period under Section 112 of the NIRC of 1997, as amended, as shown below:

CTA Case No.	**8041**	**8111**
Period Covered	1st Quarter 2008	2nd to 4th Quarters 2008
2 years after close of taxable quarter	March 31, 2010	June 30, 2010, September 30, 2010 and December 31, 2010
Date of filing of Administrative Claim	November 11, 2009[34]	February 16, 2010[35]
120 days from Administrative Claim	March 11, 2010	June 16, 2010
Date of filing of Petition for Review	March 26, 2010	June 24, 2010
Last Day to file Petition for Review	April 10, 2010	July 16, 2010

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[31] Exhibits "T","U", "V", "W", and "X".
[32] Exhibit "W".
[33] Exhibit "X".
[34] Exhibit "P".
[35] Exhibit "Q".

Based on the foregoing, the Court finds that petitioner is entitled to a refund or issuance of tax credit certificate for its unutilized input VAT, but in the reduced amount of P19,219,165.31.

WHEREFORE, the instant consolidated case is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the amount of P19,219,165.31 to petitioner, representing unutilized input VAT attributable to its zero-rated sales to NIA for taxable year 2008.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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