w/cdd - RJ EDA

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION
****

PILIPINAS TOTAL GAS, INC.,
Petitioner,

C.T.A. CASE NO. 7422

\- versus -

Members:

ACOSTA, *Chairperson*
BAUTISTA, *and*
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JUN 16 2009 ; 10:22am

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DECISION

CASANOVA, *J.*

Before Us is the Petition for Review filed by Pilipinas Total Gas, Incorporated (petitioner), seeking that judgment be rendered ordering the Commissioner of Internal Revenue (respondent) to refund or issue to petitioner a tax credit certificate in the total amount of P11,057,502.81 allegedly representing unutilized and unapplied input Value Added Tax (VAT) arising from sales to PEZA-registered entities for taxable year 2004.

Petitioner is a domestic corporation duly organized and existing, under the laws of the Philippines with principal place of business located at the Philippine

Stock Exchange Centre 8/F West Tower, Exchange Road, Ortigas Center, Pasig City.[1]

Respondent, on the other hand, is the Commissioner of Internal Revenue with address at the BIR National Office Building, Agham Road, Quezon City, where he may be served with summons, and who was duly appointed and empowered to perform the duties of his office including among others, the duty to act on and approve claims for refund or issue the tax credit certificate as provided by law.[2]

Petitioner is engaged in the sale, transportation and distribution of industrial gases as well as the sale of gas equipment and other related business on wholesale basis.[3] It is likewise registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer as per its Certificate of Registration No. 3RC0000031647 showing petitioner's taxpayer identification number (TIN) of 004-609-538-000.[4]

In the year 2004, pursuant to its business operations, petitioner allegedly incurred input VAT on its domestic purchases and importations. However, petitioner stipulated that its clientele comprised mainly of companies registered with the Philippine Economic Zone of Authority (PEZA). Pursuant to Sections 106 (A)(2)(c) of the National Internal Revenue Code of 1997 (1997 NIRC), in relation to Section 110 (B) and 112 (A) of the same code and Section 3 of Revenue Memorandum Circular 74-99 (RMC 74-99) petitioner did not charge its PEZA-

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[1] Joint Stipulation of Facts and Issues (JSFI), par. 1, Rollo, pp. 95-96.
[2] Ibid. Par. 2.
[3] Exhibit "T", Rollo, pp. 286-314; JSFI, par. 3, Rollo, pp. 95-96.
[4] Exhibit "A", Rollo, p. 231; Ibid., par. 4.

registered clients output VAT.[5] This in effect left a large portion of its input VAT unutilized.

Petitioner submitted its amended Quarterly VAT returns with the following details:

PERIOD	EXHIBIT	ZERO-RATED SALES	TAXABLE SALES	OUTPUT VAT (a)	INPUT VAT ON DOMESTIC (b)	INPUT VAT ON IMPORTATION (c)	EXCESS INPUT VAT (c) + (b) - (a)
1ST QTR. OF 2004	"III"	35,956,796.14	3,428,872.24	299,394.25	2,592,424.45		P 2,293,030.20
2ND QTR. OF 2004	"LLL"	36,076,214.10	385,277.94	38,527.79	2,514,348.34	7,373.04	2,483,193.59
3RD QTR. OF 2004	"PPP"	36,943,924.55	226,627.44	22,662.74	2,727,528.53	173,324.70	2,878,190.49
4TH QTR. OF 2004	"UUU"	36,396,080.24	70,681.09	7,068.11	2,912,418.87	1,819.15	2,907,169.91
						EXCESS INPUT VAT FOR 2004	**P10,561,584.18**

Although the excess input tax reflected in its Amended Returns is only P10,561,584.18, petitioner filed an administrative claim for refund/ tax credit for taxable year 2004 before the Revenue District Office No. 4 of the BIR[6] in the amount of P11,057,502.81 on September 30, 2005. Respondent failed to act upon petitioner's claim for refund/tax credit, and in order to protect its interests, petitioner filed the instant Petition on March 27, 2006.

Respondent filed an Answer alleging the following Special and Affirmative Defenses[7]:

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[5] Petition for Review, par. 25, Rollo, p. 8.
[6] Supra note 1, par. 6.
[7] Answer, Rollo, p. 76.

"7. The claim for refund is still under examination by the respondent's Bureau;
8. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund or issuance of tax credit certificate;
9. The grant of claim for refund tantamounts to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
10. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same."

During the hearing of this case, petitioner presented documentary and testimonial evidence to prove its claim. Respondent failed to present any evidence in her behalf[8].

Petitioner submitted its Memorandum on July 29, 2008. The instant Petition was submitted for decision, *sans* respondent's Memorandum, on August 11, 2008[9].

The parties jointly agreed on the following issues to be resolved:[10]

1. Whether or not petitioner's subject transactions qualify as zero-rated sales;

2. Whether or not petitioner has not utilized the claimed input taxes attributable to its zero-rated sales to the subsequent taxable quarters;

3. Whether or not petitioner's claim of excess input taxes is validly substantiated by evidence; and

4. Whether or not petitioner is entitled to its claim for refund or issuance of TCC on its unutilized input tax attributable to zero-

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[8] Resolution, Rollo, p. 472; Transcript of Stenographic Notes (TSN), June 24, 2008, p. 4.
[9] Resolution, Rollo, p. 483.
[10] JSFI, Rollo, p. 96.

rated sales in the amount of P11,057,502.81 incurred for taxable year 2004.

The sole issue to be decided in this case is whether or not petitioner is entitled to a refund or issuance of a tax credit certificate in the amount of P11,057,502.81 representing unutilized input taxes for the taxable year 2004.

Petitioner anchors its claim for refund on Section 106(A)(2)(c) of the 1997 NIRC, as amended, which provides that:

> "**SEC.106. *Value-Added Tax on Sale of Goods or Properties.—***
>
> **(A) *Rate and Base of Tax.*—**There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.
>
> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> (c) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate."

In relation to Section 106(A)(2)(c), Section 3(3) of Revenue Memorandum Circular (RMC) No. 74-99, provides:

> **"SECTION 3. Tax Treatment of Sales Made by a VAT Registered Supplier from the Customs Territory, to a PEZA Registered Enterprise.—**
>
> xxx xxx xxx

> (3) In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec.106(A)(2)(a)(5), NIRC, in relation to ART.77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Sec.108(B)(3), NIRC, in relation to the provisions of R.A.7916 and the 'Cross Border Doctrine' of the VAT system.
>
> This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No.7-95 effective as of the date of the issuance of this Circular."

Petitioner claims that under the above sections, its sales to entities duly registered with PEZA are deemed zero-rated; that as a result, it is entitled to the refund of its unutilized input taxes.

This Court agrees with petitioner that its sales to PEZA-registered entities are deemed zero-rated.

Among the measures adopted by the government to implement the policy of promoting preferential use of Filipino labor, domestic materials and locally produced goods and to help make them internationally competitive is the establishment of special economic zones or freeports. In pursuit of these social and economic objectives, enterprises registered and authorized to conduct business operations in designated economic zones enjoy fiscal incentives, among which is relief or exemption from payment of national and local taxes, in lieu of which they pay a flat rate on gross income[11].

Although an ecozone is undeniably a sovereign geographical territory of the Philippines, treating the zone as a special customs territory is necessary to give meaningful effect to the objectives expressed in the special law creating a particular economic zone. In effect, what is created is a fiction of a foreign territory. The entity that manages this fiction of foreign territory is the Philippine Economic Zone Authority (PEZA)[12].

In the context of the fiction of foreign territory, the destination principle as a basis for jurisdiction of the Philippines to impose VAT, as well as the *situs* of the transaction as criteria for determining the place where the transaction occurred as the taxable event will apply. As a result of the destination principle, Revenue Memorandum Circular 74-99 provides that any sale of goods and services made by a VAT-registered supplier in the customs territory to any registered enterprise operating in the economic zone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT[13].

This was affirmed by the Supreme Court in the case of ***Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils), Inc.***[14] when the Supreme Court ruled that the services rendered to a PEZA-registered

[11] The Value Added Tax in the Philippines, Copyright 2000, First Ed. by Victor A. Deoferio, Jr. and Victorino C. Mamalateo, pp. 198-202.
[12] Ibid.
[13] Ibid.
[14] 466 SCRA 211 (2005).

enterprise effectively subjects the supply of such services to VAT at zero percent (0%).

Likewise, in BIR Ruling [DA-736-06], the BIR ruled that sale of industrial gases and equipment by petitioner to its PEZA-registered customers pursuant to contracts entered into prior to the effectivity of Republic Act 9337 is subject to zero percent (0%) VAT and requires no prior approval for zero-rating based on RMC 74-99.

The case of ***Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue,***[15] this Court *En Banc* explained that the sale to an enterprise within the economic zone is actually a sale outside the territory to impose VAT. The relevant portion of the Decision states that:

> "The Cross Border Doctrine provides that no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority.
>
> Since, an ECOZONE is regarded as a foreign territory by RA 7916, the sales of goods and services therefore by VAT registered enterprises to PEZA-registered enterprises are subject to VAT at zero percent rate. Accordingly, no output VAT shall be shifted to or passed on to PEZA-registered enterprises; conversely, no input VAT shall be paid by PEZA-registered enterprises from said purchases. There being no input VAT paid by PEZA-registered enterprises, it necessarily follows that they are not entitled to refund, or issuance of tax credit certificate from their purchases of goods and services."

From the foregoing, it appears that petitioner must first prove that its clients are situated in an economic zone or is a PEZA-registered entity to qualify its sales as zero-rated. In support of its claim, petitioner submitted certificates[16]

[15] CTA Case No. 7022, March 10, 2008.
[16] Exhibits "N", "W" to "EEE".

from PEZA certifying that its clients are PEZA-registered. Upon examination of said certificates, this Court finds petitioner to have aptly proven its right to claim for a VAT refund. With said certificates, its sales to the PEZA-registered entities are thus deemed zero-rated.

From the 1st to the 4th quarters of taxable year 2004,[17] petitioner generated zero-rated sales in the amount of P145,373,085.06. Consequently, petitioner is not liable to pay any output VAT thereon and the reported unutilized input VAT attributable thereto may be the proper subject of a claim for refund/tax credit certificate under Section 112(A) of the NIRC of 1997, to wit:

> "**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 sales 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."

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[17] Exhibits "III", "LLL", "PPP" and "UUU".

Based on the afore-quoted provisions of Section 112(A), in order to be entitled to a refund/tax credit of unutilized input VAT, the following requisites must be complied with:

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

With respect to the first requisite, Section 106(A)(2)(c) and RMC 74-99 qualifies petitioner's sales as zero-rated and is properly a subject for a refund/ claim under Section 112(A) of the 1997 NIRC. However, Section 112(A) must be read together with Section 113 of the same Code as implemented by Section 4.108-1 of Revenue Regulations No. 7-95, which state that:

"**SEC.113.** ***Invoicing and Accounting Requirements for VAT-Registered Persons.—***

(A) ***Invoicing Requirements.—*** A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax."

"**SECTION 4.108-1.** ***Invoicing Requirements*** – All VAT registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN and address of seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word "zero-rated" imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration.

xxx xxx xxx

Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or receipts and this shall be considered as a 'VAT Invoice'. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax."

If the taxable person is engage in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A 'VAT Invoice' shall be issued only for sales of goods, properties or services subject to VAT imposed in Section 100 and 102 of the Code. xxx"

Based on the foregoing law and regulation, petitioner must show that VAT invoices/official receipts duly registered were issued and contain all the necessary information, i.e. petitioner's TIN-VAT number and the imprinted word "zero-rated", in order that its sales to PEZA-registered entities be deemed fully entitled for VAT zero-rating.

Petitioner submitted to this Court the ***Report of the Commissioned ICPA***[18], Mr. Richard Go of Dy Go Juan and Company, ***Schedule of Sales and Receipts from January 2004 to December 2004***[19], ***sales invoices***[20] issued

[18] Exhibit R.
[19] Exhibits R-7-1 to R-7-12.
[20] Reference No.1-855 of Exhibits R-7-1 to R-7-12.

to various entities and ***Quarterly VAT Returns***[21] from January 2004 to December 2004 of petitioner's buyers/customers.

In its Quarterly VAT Returns for the taxable year 2004, petitioner declared the following zero-rated sales:

Exh No.	Period Covered (2004)	Zero-Rated Sales
III/R-4-3	1st Qtr	P 35,956,796.14
LLL/R-4-6	2nd Qtr	36,076,214.10
PPP/R-4-9	3rd Qtr	36,943,924.57
UUU/R-4-12	4th Qtr	36,396,150.25
	TOTAL	**P 145,373,085.06**

However, based on the report of the independent CPA, the zero-rated sales as per sales and receipts is actually P143,891,440.60[22]. A comparison of the total amount of zero-rated sales for the taxable year 2004, as reflected in the amended Quarterly VAT Returns and the zero-rated sales supported by sales invoices will disclose the difference of P1,481,644.46, which should be disallowed for not being supported by petitioner's invoices and official receipts. The disallowance is computed below:

Zero-Rated Sales per VAT Returns	P 145,373,085.06
Zero-Rated Sales per schedule of sales and receipts	143,891,440.60
Difference	**P 1,481,644.46**

The amount of P143,891,440.60 as zero-rated sales shall be further reduced considering that a perusal of the documents submitted revealed that

[21] Exhibits "III", "LLL", "PPP" and "UUU".
[22] Exhibit R-7.

P102,449,161.62 was supported by TIN-VAT sales invoices[23] without the word "zero-rated" imprinted thereon, in violation of the requirement set forth under Section 4.108-1 of Revenue Regulations No. 7-95, leaving the amount of P41,442,278.98[24] as zero-rated sales to PEZA-registered entities duly established as supported by valid documentary evidence.

Considering the above findings, we shall allocate the substantiated input VAT against the supported zero-rated sales because the input taxes sought to be refunded in the total amount of P11,057,502.81 is attributable to declared zero-rated sales of P145,373,085.06. In as much as only the sum of P41,442,278.98 was proven as zero-rated sales to PEZA-registered entities, it is but proper to apportion the input taxes equivalent thereto. The rate to be applied will be based on the total volume of declared zero-rated sales, computed as follows:

Substantiated Zero-Rated Sales	P 41,442,278.98
Divided by Total Declared Zero-Rated Sales	P145,373,085.06
Rate of Substantiated Zero-Rated Sales	**28.507532163%**

Thus, only 28.507532163% of the allowable input tax may be a proper subject of a claim for refund.

Going now to the second requisite, We now determine whether or not petitioner's unutilized input tax for the taxable year 2004 in the total amount of

[23] Reference Nos.1 to 855 of Exhibits R-7-1 to R-7-12.
[24] Annex A of this Report.

P11,057,502.81 was duly incurred or paid based on documentary evidence submitted.

To prove that it actually paid input tax in the total amount of P11,057,502.81 on its purchases of goods and services during the covered period of claim, petitioner presented its Summary of Input Taxes for the year 2004[25], as well as its pertinent official receipts and invoices[26].

Based on its amended Quarterly VAT returns, petitioner incurred an excess input VAT in the amount of P10,561,584.18 computed as follows:

PERIOD	EXHIBIT	ZERO-RATED SALES	TAXABLE SALES	OUTPUT VAT (a)	INPUT VAT ON DOMESTIC (b)	INPUT VAT ON IMPORTATION (c)	EXCESS INPUT VAT (c) + (b) - (a)
1ST QTR. OF 2004	"III"	35,956,796.14	3,428,872.24	299,394.25	2,592,424.45		P 2,293,030.20
2ND QTR. OF 2004	"LLL"	36,076,214.10	385,277.94	38,527.79	2,514,348.34	7,373.04	2,483,193.59
3RD QTR. OF 2004	"PPP"	36,943,924.55	226,627.44	22,662.74	2,727,528.53	173,324.70	2,878,190.49
4TH QTR. OF 2004	"UUU"	36,396,080.24	70,681.09	7,068.11	2,912,418.87	1,819.15	2,907,169.91
					EXCESS INPUT VAT FOR 2004		P10,561,584.18

From its refund claim of P11,057,502.81, there is a difference of P495,918.81 which cannot be deemed part of petitioner's claim for being unaccounted.

[25] Exhibits R-5-1 to R-5-12.
[26] Reference Nos. 1 to 5123 of Exhibits R-5-1 to R-5-12.

Upon examination and verification of the documentary evidence, the independent CPA confirmed the disallowance of P495,918.81 together with other items, likewise deducted from the refund claim, to wit[27]:

Item	**Nature**	**Reference**	**Amount**
1	Input VAT on purchases of goods and services where no withholding taxes were recognized.	Exhibit R-10-1	754,340.96
2	Input VAT on purchase of goods without supporting documents.	Exhibit R-10-2	660,686.86
3	Disallowed input VAT claims attributable to the difference between the amount per Petition for Review and per summary list of purchases.	Page 2, Exhibit R, Item No.2	495,918.81
4	Disallowed input VAT claims resulting from vatable and zero-rated sales pro-rata allocation.	Exhibit R-10-11	128,756.72
5	Input VAT on purchases of goods evidenced by altered supporting documents.	Exhibit R-10-3	49,821.06
6	Input VAT on purchases of goods and services evidenced by tape receipts and other invalid documents	Exhibit R-10-4	37,107.41
7	Input VAT on purchases of goods and services supported by official receipts and invoices not in the name of the Company	Exhibit R-10-5	25,638.84
8	Disallowed input VAT claims attributable to the difference between VAT returns and Summary List of Purchases.	Page 2, Exhibit R, Item No.2	24,814.30
9	Others	Exhibit R-10-6	75,010.11
TOTAL			**2,252,095.07**

However, this Court finds that of the above stated disallowances, only the amount of P1,497,754.11 (*items no. 2 to 9*) represents petitioner's disallowed input VAT on purchase of goods and services. The amount of P754,340.96 (*item no.1*) shall not be disallowed for the non-withholding of expanded withholding tax related to such transaction does not affect the input VAT thereon.

[27] Exhibit R, page 5.

Furthermore, verification and examination of the records disclose that additional amount of P137,722.09 of the input taxes claimed should be disallowed for failure to properly document the same, to wit:

	FINDINGS	Exhibit No.	Reference No.	Input VAT	Total
1	**Input VAT on purchase of goods supported by documents other than VAT invoice.**				
	Comarc Construction Supply	R-5-1	1	P 1,818.18	
	Comarc Construction Supply	R-5-1	2	9,554.00	
	Comarc Construction Supply	R-5-2	397	1,700.00	
	Comarc Construction Supply	R-5-2	417	4,545.45	
	Balikbayan Handicrafts	R-5-3	818	3,181.82	
	Market Strategic Firm, Inc.	R-5-4	1245	72.27	
	National Bookstore	R-5-4	1278	10.23	
	Ingasco Inc.	R-5-9	3466	727.27	
	Andison Industrial Sales, Inc.	R-5-10	3899	9.09	
	Daron Hardware	R-5-10	3902	21.82	
	Pilipinas Makro Inc.	R-5-10	3907	53.45	
	E Plot Enterprises	R-5-10	3914	35.73	
	Emerco Battery & Trading	R-5-10	3919	234.91	**P 21,964.22**
2	**Input VAT on purchase of services supported by documents other than VAT OR.**				
	BOT Lease and Finance Phil Inc.	R-5-1	3	904.72	
	Republic Courier Service Inc.	R-5-1	7	4.00	
	PLDT	R-5-1	21	241.34	
	PLDT	R-5-1	22	1,569.41	
	PLDT	R-5-1	23	196.48	
	PLDT	R-5-1	24	961.71	
	PLDT	R-5-1	25	149.65	
	PLDT	R-5-1	26	598.90	
	Biofood Corp.	R-5-2	384	29.45	
	BPI/MS Insurance Corp.	R-5-2	389	4,350.00	
	BPI/MS Insurance Corp.	R-5-2	390	4,950.00	
	BOT Lease and Finance Phil Inc.	R-5-2	396	689.89	
	PLDT	R-5-2	421	180.26	
	PLDT	R-5-2	422	996.20	
	PLDT	R-5-2	423	551.72	
	PLDT	R-5-2	424	233.90	
	PLDT	R-5-2	425	2,035.62	
	PLDT	R-5-2	426	248.17	
	PLDT	R-5-3	871	140.69	
	PLDT	R-5-3	872	940.69	
	PLDT	R-5-3	873	525.81	
	PLDT	R-5-3	874	202.74	
	PLDT	R-5-3	875	1,345.88	
	PLDT	R-5-4	876	211.10	

Smart Communications	R-5-4	1269	359.86
PLDT	R-5-4	1281	141.54
PLDT	R-5-4	1282	255.74
PLDT	R-5-4	1283	1,762.63
PLDT	R-5-4	1284	250.81
PLDT	R-5-4	1285	949.04
PLDT	R-5-4	1286	720.16
Globe Telecom	R-5-5	1676	163.53
Globe Telecom	R-5-5	1677	109.14
Globe Telecom	R-5-5	1678	255.14
Globe Telecom	R-5-5	1679	313.51
Smart Communications	R-5-5	1681	336.87
PLDT	R-5-5	1699	250.84
PLDT	R-5-5	1700	1,334.52
PLDT	R-5-5	1701	265.99
PLDT	R-5-5	1702	549.68
PLDT	R-5-5	1703	953.36
PLDT	R-5-5	1704	140.86
Ingasco, Inc.	R-5-5	1715	3,818.18
Globe Telecom	R-5-6	2118	128.03
Globe Telecom	R-5-6	2119	207.48
Globe Telecom	R-5-6	2120	191.94
Globe Telecom	R-5-6	2121	296.83
Smart Communications	R-5-6	2122	380.06
PLDT	R-5-6	2149	139.70
PLDT	R-5-6	2150	967.77
PLDT	R-5-6	2151	454.12
PLDT	R-5-6	2152	180.59
PLDT	R-5-6	2153	1,288.46
PLDT	R-5-6	2154	261.52
Globe Telecom	R-5-7	2546	301.79
Globe Telecom	R-5-7	2547	272.63
Globe Telecom	R-5-7	2548	336.46
Globe Telecom	R-5-7	2549	128.03
Smart Communications	R-5-7	2550	332.39
PLDT	R-5-7	2558	1,064.74
PLDT	R-5-7	2559	140.23
PLDT	R-5-7	2560	413.99
PLDT	R-5-7	2561	206.99
PLDT	R-5-7	2562	1,170.37
PLDT	R-5-7	2563	222.47
Globe Telecom	R-5-8	2978	243.31
Globe Telecom	R-5-8	2979	222.04
Globe Telecom	R-5-8	2980	110.91
Smart Communications	R-5-8	2981	378.30
Globe Telecom	R-5-8	2982	163.02
PLDT	R-5-8	2990	973.12
PLDT	R-5-8	2991	140.17
PLDT	R-5-8	2992	421.93
PLDT	R-5-8	2993	245.53

PLDT	R-5-8	2994	1,370.20	
PLDT	R-5-8	2995	235.26	
PLDT	R-5-9	3432	140.17	
PLDT	R-5-9	3433	962.22	
PLDT	R-5-9	3434	521.96	
PLDT	R-5-9	3435	246.44	
PLDT	R-5-9	3436	755.34	
PLDT	R-5-9	3437	231.62	
Republic Courier Service Inc.	R-5-9	3438	4.00	
Globe Telecom	R-5-9	3442	188.49	
Globe Telecom	R-5-9	3443	187.06	
Globe Telecom	R-5-9	3444	380.38	
Smart Communications	R-5-9	3445	337.99	
Manila Consulting	R-5-9	3467	3,000.00	
PLDT	R-5-10	3867	979.26	
PLDT	R-5-10	3868	140.17	
PLDT	R-5-10	3869	660.50	
PLDT	R-5-10	3870	250.52	
PLDT	R-5-10	3871	902.70	
PLDT	R-5-10	3872	200.68	
Kaya Restaurant	R-5-10	3882	138.91	
Republic Courier Service Inc.	R-5-10	3915	8.00	
PLDT	R-5-11	4341	948.47	
PLDT	R-5-11	4342	140.17	
PLDT	R-5-11	4343	417.94	
PLDT	R-5-11	4344	185.18	
PLDT	R-5-11	4345	1,145.48	
PLDT	R-5-11	4346	218.88	
Globe Telecom	R-5-12	4744	179.97	
Smart Communications	R-5-12	4750	325.82	
Globe Telecom	R-5-12	4765	145.15	
PLDT	R-5-12	4770	945.60	
PLDT	R-5-12	4771	142.19	
PLDT	R-5-12	4772	367.77	
PLDT	R-5-12	4773	165.27	
PLDT	R-5-12	4774	962.47	
PLDT	R-5-12	4775	196.79	**65,503.67**

3 Input VAT on purchase of goods/services supported by invoice/OR dated outside the period of claim.

Sta. Rosa Bottling Corp.	R-5-1	4	29.55
Sta. Rosa Bottling Corp.	R-5-1	5	29.55
Ingasco Inc.	R-5-10	3864	4,609.52
Ingasco Inc.	R-5-10	3865	3,636.36
SQ Resources Inc.	R-5-12	4742	2,011.36
Motorcity Autoshop	R-5-12	4745	68.18
SQ Resources Inc.	R-5-12	4776	1,618.18
Airlift Asia	R-5-12	4778	139.94
Ingasco Inc.	R-5-12	4779	4,609.52
Ingasco Inc.	R-5-12	4780	10,909.09
Keihin Everett Forwarding Co.	R-5-12	4782	850.00

Keihin Everett Forwarding Co.	R-5-12	4783	1,100.00	
Keihin Everett Forwarding Co.	R-5-12	4784	1,100.00	
Keihin Everett Forwarding Co.	R-5-12	4785	3,690.00	
PCM Industrial Sales Inc.	R-5-12	4788	470.30	
PCM Industrial Sales Inc.	R-5-12	4789	11,537.20	
Ingasco Inc.	R-5-12	4790	3,845.45	50,254.20
TOTAL				**P 137,722.09**

Thus, petitioner was able to support by proper VAT invoices and/or official receipts input taxes in the amount of P9,422,026.61, computed as follows:

Input VAT claimed for Refund			P11,057,502.81
Less: Disallowances per CPA Report	P 2,252,095.07		
Less: Adjustment	754,340.96	1,497,754.11	
Additional Disallowances per Court's findings		137,722.09	1,635,476.20
Substantiated Input VAT			**P 9,422,026.61**

Going now to the third requisite, of whether or not petitioner's input VAT is entirely attributable to zero-rated sales, petitioner likewise complied with the same. Petitioner's VAT returns show that the claim is net of remaining output VAT liability, therefore, the entire amount of P9,422,026.61 is attributable to zero-rated sales or effectively zero-rated sales. However, this substantiated input VAT will be apportioned based on the rate of substantiated zero-rated sales which would result to a refundable amount of P2,685,987.27 to be computed as follows:

Substantiated Input VAT	P 9,422,026.61
Rate of Substantiated Zero-Rated Sales	x 28.507532163%
Input VAT attributable to zero-rated sales	**P 2,685,987.27**

Petitioner also met the fourth requirement: that the input taxes were not applied against any output VAT liability during and in the succeeding quarters.

Based on the amended returns submitted, petitioner deducted its VAT claim for the current quarter which in effect prevented the carry-over of the claimed refund to the succeeding quarters. As a result, the input taxes claimed were not utilized.

Finally, Section 112(A) of the 1997 NIRC provides that a claim for VAT refund, both in the administrative and judicial levels, must be filed within two (2) years from the time of the close of taxable quarter. Petitioner's claim for refund was timely filed within the two-year prescriptive period. The earliest quarter of petitioner's claim is the 1st quarter of 2004 which ends on March 31, 2004. Counting two years therefrom, petitioner had until March 30, 2006 to file its claim. Records show that petitioner filed its administrative and judicial claims on September 30, 2005[28] and March 27, 2006, respectively, both within the two-year period reckoned from March 31, 2004, well within the prescriptive period required by law.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. Respondent is ordered to **ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **P2,685,987.27** representing petitioner's unutilized input VAT for the 1st to 4th quarters of taxable year 2004.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

[28] Exhibits "P" and "P-1".

WE CONCUR:

With Concurring and Dissenting Opinion
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
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.

ERNESTO D. ACOSTA
Presiding Justice