REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

SAN ROQUE POWER CORPORATION, Petitioner,	**C.T.A. CASE NO. 6647**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** NOV 2 9 2007 3:00 p.m.

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AMENDED DECISION

UY, *J.*:

On March 8, 2006, this Court rendered a Decision denying petitioner's claim for refund or issuance of a tax credit certificate in the amount of P560,200,283.14 allegedly representing unutilized input VAT paid on purchases of capital goods and other taxable goods and services for the period January 1, 2001 to December 31, 2001. Petitioner received its copy of the said Decision on March 23, 2006.

Subsequently, on April 7, 2006, petitioner filed a "Motion for New Trial and/or Reconsideration[1]" of the assailed Decision on the ground of honest mistake or oversight; and that the Court's findings and conclusions do not agree with the evidence presented and with applicable law and jurisprudence, specifically:

> "(1) Petitioner's 2001 audited financial statements are attached to all of Petitioner's letters to Respondent, representing its administrative claims for refund of excess input taxes which were presented by Petitioner as **Exhibits "EE" to "LL"** but Petitioner inadvertently failed to include the attachments to the said Exhibits. As indicated in the attached affidavit of merit and in the aforementioned Exhibits, the attachments provide further proof that Petitioner's construction costs and other capital goods are duly recorded as Property, Plant and Equipment in Petitioner's books of accounts;
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> (2) The Honorable Court should consider several other evidence submitted by Petitioner in support of its purchases showing that such purchases consist of capital goods;
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> (3) The Honorable Court should find that in the absence of any other line of business engaged in by Petitioner, it logically follows that all its expenses which are made in the ordinary course of business are attributable to its effectively zero-rated business. The law does not require that zero-rated sales be made within the same period as the time when the expenses were incurred in order to consider such purchases as attributable to its zero-rated sales."

Respondent was directed to file his Comment to the instant Motion in the Resolution dated May 3, 2006[2], within ten (10) days from receipt thereof. On May 18, 2006, respondent filed an "Opposition (Re: Motion for New Trial and/or Reconsideration[3]", arguing, among others, that it is incorrect for petitioner to file a Motion for New Trial and/or Reconsideration; rather it should choose between the two remedies; that petitioner's reliance on the

[1] Docket, pp. 385-401.
[2] Docket, p. 561.
[3] Docket, pp. 568-571.

ground of honest mistake is misplaced; and that Annexes "A" to "A-24" attached to the Motion are inadmissible as these are not original documents and were neither presented during trial nor formally offered.

Pursuant to Section 1, Rule 1 of the 1997 Rules of Civil Procedure, this Court resolved in the Resolution dated July 28, 2006[4] to construe the Rules of Court liberally to promote the objective of securing a just, speedy, and inexpensive disposition of every action, and allowed petitioner to present additional evidence in support of its subject motion. Thereafter, upon petitioner's motion[5], the Court commissioned Ma. Victoria C. Españo as an Independent CPA on November 9, 2006,[6] to examine the voluminous documents evidencing petitioner's capital goods purchases, and corresponding VAT input tax thereon, and was directed to submit her CPA Report within thirty (30) days from said date, and to testify on her findings on January 10, 2007. On said date, Independent CPA, Ma. Victoria C. Españo, completed her testimony and petitioner was directed to file Supplemental Offer of Evidence within thirty (30) days therefrom, while respondent was given fifteen (15) days to file Comment thereto.

On February 9, 2007, petitioner filed its Supplemental Offer of Evidence[7] consisting of Exhibits "SS" to "WW", with submarkings, for the purpose of proving the following: purchases of its capital goods; the nature and/or details of petitioner's purchases for the calendar year 2001 which gave rise to its excess VAT input taxes for the said year; the amount of its claim for

[4] Docket, pp. 573-574.
[5] Motion to Commission An Independent CPA filed on November 8, 2006, Docket, pp. 601-607.
[6] Minutes of hearing held on November 9, 2006, Records, p. 608.
[7] Petitioner's Supplemental Formal Offer of Evidence, Docket, pp. 713-717.

refund of excess input VAT that are attributable to purchases of capital goods which are duly substantiated in accordance with law; due recording of capital goods purchases in petitioner's books of accounts under property plant and equipment; and petitioner's entitlement to the refund or credit of the excess VAT input taxes thereon.

In respondent's "Comment (Re: Petitioner's Formal Offer of Evidence)" filed on February 15, 2007, it was stated that respondent has no objection to the admission of Exhibits "SS" to "WW-1" inclusive of sub-markings, without necessarily admitting their relevancy, materiality or probative value and the validity of the purposes for which the said exhibits are offered in evidence.[8]

In the Resolution dated March 14, 2007, all the exhibits mentioned in petitioner's Supplemental Formal Offer of Evidence were admitted and the parties were directed to simultaneously file their memoranda within thirty (30) days from receipt thereof.[9] Petitioner filed its Supplemental Memorandum on April 27, 2007[10] while respondent filed her Memorandum on May 28, 2007.[11] On June 6, 2007, petitioner's "Motion for New Trial and/or Reconsideration" dated April 7, 2006 was submitted for resolution.[12] Hence, this resolution.

After a thorough review and examination of the pieces of evidence submitted by petitioner and the applicable laws and jurisprudence, the Court finds legal basis to partially grant petitioner's claim.

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[8] Docket, pp. 718-721.
[9] Docket, pp. 723-724.
[10] Docket, pp. 725-732.
[11] Docket, pp. 738-743.
[12] Docket, p. 745.

The Report[13] of the commissioned Independent CPA reflects the following summarized findings regarding petitioner's claim for refund or issuance of tax credit certificate pertaining to unutilized input VAT arising from purchases of capital goods:

1.)	Input VAT on local purchases of goods & services ascertained to be in the nature of capital goods and recorded under PPE account	P 359,440,010.47	Exh. VV-A & VV-A.2
2.)	Input VAT on importation of goods ascertained to be in the nature of capital goods & can reasonably be concluded to be part of the progress billings of the contractor that had been recorded under PPE account	182,522,086.77	Exh. VV-F & VV-D
3.)	Input VAT on payment to services of nonresident foreign contractors ascertained to be in the nature of capital goods and recorded under PPE account	4,723,448.56	Exh. VV-G-1 to VV-G-2
4.)	Footing error	39,300.27	Exh. VV-B & VV-B-2
5.)	Input VAT relating to purchases of non-capital goods	143,265.82	Exh. VV-A.3
6.)	Input VAT from local purchases of services which cannot be traced in the books under PPE account	134,898.36	Exh. VV-A.4
7.)	Input VAT on importation of goods that cannot be ascertained to be in the nature of capital goods used in the construction of the Power Plant	1,673.00	Exh. VV-F-1
8.)	Input VAT on importation of services that cannot be ascertained to be in the nature of capital goods; supporting invoices were not available	508,534.88	Exh. VV-G-3
9.)	Input VAT from importation of services where the onshore fees in the invoices cannot be reconciled with the Company's schedules	467,235.56	Exh. VV-G-4
	TOTAL	**P 547,980,453.69**	

Based on the foregoing findings, only the input VAT mentioned in item nos. 1, 2, and 3, in the aggregate amount of P546,685,545.80 represents petitioner's valid claim since the related purchases were ascertained to be in

[13] Exhibit "VV-A.5".

the nature of capital goods and recorded under petitioner's Property, Plant and Equipment (PPE) account.

On the other hand, input VAT in the combined amount of P1,294,907.89 under nos. 4, 5, 6, 7, 8, and 9, cannot be allowed for any of the following reasons: for being erroneously computed; their related purchases cannot be ascertained to be in the nature of capital goods; or they pertain to non-capital goods.

The input VAT of P359,440,010.47 under item no. 1 of the commissioned Independent CPA's summarized findings should further be reduced by **P9,862,986.26**. The amount of reduction represents the difference between petitioner's claim and that appearing on its books; the details are provided below:[14]

SUPPLIER	CLAIMED	RECORDED PER BOOKS UNDER CIP	DIFFERENCE
January			
REOL	P 18,596,495.64	P 18,118,772.73	P 477,722.91
March			
REOL	31,628,456.25	30,583,712.42	1,044,743.83
Sithe	483,670.00	478,120.00	5,550.00
April			
REOL	36,053,626.63	34,872,993.23	1,180,633.40
Sithe	498,800.00	497,430.00	1,370.00
May			
REOL	30,231,248.56	25,344,686.78	4,886,561.78
Sithe	563,960.91	504,870.00	59,090.91
July			
REOL	35,915,314.62	34,311,242.62	1,604,072.00
August			
REOL	27,261,188.82	26,872,762.99	388,425.83
September			
AB Garcia	590,512.28	590,512.00	0.28
REOL	19,738,153.10	19,730,072.99	8,080.11

[14] Exhibit "VV-A.5".

October			
URS Phils.	8,516.55	7,750.00	766.55
November			
REOL	38,559,147.56	38,439,390.82	119,756.74
December			
REOL	20,861,261.50	20,775,049.58	86,211.92
TOTAL	**P 260,990,352.42**	**P 251,127,366.16**	**P 9,862,986.26**

Moreover, the official receipts[15] covering the claimed input VAT of **P36,897.96** on purchase of local services included in item no. 1 are not within the period of claim. Thus, the same must likewise be disallowed from the total input VAT of **P359,440,010.47.**

The amounts of **P52,454,331.00** and **P533,730.93** should likewise be disallowed and be deducted from the total claim of P182,522,086.77 under item no. 2 in the Independent CPA's summarized findings, inasmuch as the amount of VAT cannot be determined from the submitted official receipts and invoices. The particulars are as follows:

Amount of VAT cannot be ascertained from the ORs and invoices presented		
SUPPLIER	PER PETITIONER'S SCHEDULE ("ANNEX C.2)	EXHIBIT NO.
August		
Toshiba Int'l Corp.	P 32,826,222.00	MM-2-V283/MM-2-V288
Toshiba Int'l Corp.	14,177,949.00	MM-2-V284/MM-2-V285/MM-2-V289
September		
Ishikawajima-Harima Heavy Industries	4,827.00	MM-2-W232/MM-2-W233
UEII	2,104.00	MM-2-W236/MM-2-W237
November		
Toshiba Int'l Corp.	5,443,229.00	MM-2-Y208/MM-2-Y209
TOTAL	**P 52,454,331.00**	

[15] Exhibits "MM-2-P16" and "MM-2-P17".

Variance of input VAT claimed vs. amount appearing in supporting documents				
SUPPLIER	PER PETITIONER'S SCHEDULE ("ANNEX C.2)	PER EVALUATION OF IEIRDs & OTHER DOCUMENTS	DIFFERENCE	EXHIBIT NO.
February				
UEII	P 622,382.00	P 109,727.00	P 512,655.00	MM-2-P180/MM-2-P181
April				
UEII	412,956.00	391,880.93	21,075.07	MM-2-R169/MM-2-R168
June				
Ishikawajima-Harima Heavy Industries	30,776.43	30,776.00	0.43	MM-2-T232/MM-2-T233/MM-2-T234
August				
Chevalier	825,509.00	825,508.89	0.11	MM-2-V236/MM-2-V237/MM-2-V238
September				
TATE Access	75,175.00	75,174.68	0.32	MM-2-W229/MM-2-W230/MM-2-W231
TOTAL	**P 1,966,798.43**	**P 1,433,067.50**	**P 533,730.93**	

Therefore, the proper subject of refund or issuance of tax credit certificate is **P483,797,599.65**, computed as follows:

1.)	Input VAT on local purchases of goods & services ascertained to be in the nature of capital goods and recorded under PPE account	P 359,440,010.47	
	Less: Disallowances: a) Variance between the claimed input VAT and input VAT recorded per books under CIP	(9,862,986.26)	
	b) Official receipt for purchase of local services not within the period of claim	(36,897.96)	P 349,540,126.25
2.)	Input VAT on importation of goods ascertained to be in the nature of capital goods & can reasonably be concluded to be part of the progress billings of the contractor that had been recorded under PPE account	P 182,522,086.77	
	Less: Disallowances: a) Amount of VAT cannot be ascertained from the Ors and invoices presented	(52,454,331.00)	
	b) Variance of input VAT claimed vs. amount appearing in the supporting documents	(533,730.93)	129,534,024.84
3.)	Input VAT on payment to services of nonresident foreign contractors ascertained to be in the nature of capital goods and recorded under PPE account		4,723,448.56
	TOTAL		**P 483,797,599.65**

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Anent petitioner's refund claim attributable to its effectively zero-rated sales, petitioner argues that in the absence of any other line of business, it logically follows that all its expenses made in the ordinary course of business are attributable to its effectively zero-rated business. Petitioner further maintains that the law does not require that zero-rated sales be made within the same period as the time when the expenses were incurred in order to consider such purchases as attributable to its zero-rated sales.

We disagree.

The refund/tax credit of input VAT under Section 112(A) of the National Internal Revenue Code of 1997 is premised on the existence of zero-rated or effectively zero-rated sales. Since it has no record of zero-rated or effectively zero-rated sales for the four quarters of 2001, petitioner's said claim cannot be granted.

Well-settled is the general rule that claimants of tax refunds bear the burden of proving the factual basis of their claims. This is because tax refunds are in the nature of tax exemptions, the statutes of which are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Taxes are the lifeblood of the nation, therefore statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government.[16] Since tax refunds are considered to be in derogation of sovereign authority, it is imperative that the granting thereof should not be based on mere assumptions or dictates of logic. Concrete proof should be presented by petitioner showing its actual effectively zero-rated sales. And

[16] Philippine Phosphate Fertilizer Corp. vs. CIR, G.R. No. 141973, June 28, 2005.

failure of petitioner to prove its entitlement to the refund claim by concrete evidence, will merit its denial.

In the light of the foregoing considerations, the Court finds legal basis to partially grant petitioner's subject "Motion for New Trial and/or Reconsideration" and thus hereby renders this Amended Decision pursuant to Section 3, Rule 14 of the Revised Rules of the Court of Tax Appeals, thereby effectively amending the assailed Decision dated March 8, 2006 rendered in the instant case.

WHEREFORE, petitioner's "Motion for New Trial and/or Reconsideration" is hereby **PARTIALLY GRANTED** and this Court's Decision promulgated on March 8, 2006 in the instant case is hereby **MODIFIED**.

Accordingly, respondent is hereby **ORDERED** to **REFUND** or in the alternative, to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **Four Hundred Eighty Three Million Seven Hundred Ninety Seven Thousand Five Hundred Ninety Nine Pesos and Sixty Five Centavos (P483,797,599.65)** representing unutilized input VAT on purchases of capital goods and services for the taxable year 2001.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

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

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

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

ERNESTO D. ACOSTA
Presiding Justice