REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

KEPCO ILIJAN CORPORATION, Petitioner,	**C.T.A. CASE NO. 6966**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** APR 14 2009 8:05 a.m.

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DECISION

CASTAÑEDA, JR., *J.*:

Before this Court is a Petition for Review praying for refund or issuance of tax credit certificate in the amount of P74,658,481.68, representing input value-added tax (VAT) incurred by petitioner for taxable year 2002 from importations and domestic purchases of capital goods/equipment and services preparatory to its production and eventual sale of electricity to the National Power Corporation (NPC).

Kepco Ilijan Corporation (Petitioner) is a domestic corporation duly registered with the Securities and Exchange Commission (SEC), with principal office at 2501 Tektite Tower I, Exchange Road, Ortigas Center, San

Antonio, Pasig City. Petitioner is likewise registered as a VAT taxpayer with the Bureau of Internal Revenue (BIR), through Revenue District Office (RDO) No. 43 of Pasig City.[1] It is engaged in the production and sale of electricity as an independent power producer (IPP), whose produced electricity is sold solely to NPC.[2] It has a duly approved Application for VAT Zero-Rate, covering sales of electricity from June 5, 2002 to December 31, 2002.[3]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, with authority, among others, to decide, approve and grant claims for refund or tax credit of internal revenue taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

For the four quarters of taxable year 2002, petitioner filed its Quarterly VAT Returns showing that it incurred expenses representing importation and domestic purchases of goods and services, for which petitioner also incurred input VAT.[4]

On April 13, 2004, petitioner filed an administrative claim for refund of the amount of P74,658,481.68 with the BIR Revenue District Office No. 43, representing input VAT allegedly incurred by petitioner for taxable year 2002 from importations and domestic purchases of capital goods/equipment and services preparatory to its production and eventual sale of electricity to NPC.[5]

Due to respondent's inaction and in order to suspend the running of the two-year prescriptive period under the National Internal Revenue Code (NIRC), petitioner filed the present Petition for Review on April 22, 2004. Je

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[1] Annex "A", Petition for Review, Docket, p. 11.
[2] Par. 2, Facts Admitted, Joint Stipulation of Facts and Issues, Docket, pp. 52-53.
[3] Annex "F", Petition for Review, Docket, p. 16.
[4] Annexes "B", "C", "D", and "E", Docket, pp. 12-15.
[5] Annex "G, Petition for Review, Docket, p. 17.

In his Answer filed on July 9, 2004, respondent prayed for the dismissal of the present Petition, and alleged the following Special and Affirmative Defenses:[6]

> "6. Claims for refund are strictly construed against the taxpayer as the same partakes the nature of a tax exemption;
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> 7. The taxpayer has the burden to show that the taxes were erroneously or illegally paid. Failure on the part of the Petitioner to prove the same is fatal to its cause of action;
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> 8. The Petitioner should prove that its legal basis for claiming for the amount being refunded."

During trial, petitioner presented testimonial and documentary evidence; while respondent was declared to have waived his right to present evidence after repeated failure to appear and present evidence despite due notice.[7] After petitioner filed its Memorandum on May 21, 2008, and considering that respondent did not file his Memorandum, the case was deemed submitted for decision on June 10, 2008.[8]

The parties submitted the following issues[9] for this Court's resolution:

> "1. Whether or not the sale of electricity by a VAT-registered entity, as the Petitioner, to the National Power Corporation (NPC), qualifies as a sale of services subject to a VAT rate of zero percent (0%) or otherwise called a zero-rated VAT transaction.
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> 2. Whether Petitioner, as a VAT-registered entity and during the calendar (taxable) year 2002, actually incurred expenses representing importation and domestic purchases of goods and services and which expenses represent costs attributable to Petitioner's production and sale of electricity to the NPC. gz

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[6] Docket, p. 30.
[7] Docket, p. 309.
[8] Resolution dated June 10, 2008, Docket, p. 350.
[9] Docket, p. 54.

3. Whether or not Petitioner is entitled to the refund of the total amount of P74,658,481.68, representing the input VAT incurred for the four (4) taxable quarters of the calendar (taxable) year 2002 from its sale of electricity to the NPC.

4. Whether or not Petitioner's claim for refund is substantiated by documentary evidence."

Petitioner anchors its claim on Sections 112(A) and (B) of the NIRC of 1997, which provide as follows:

> "**SEC. 112. Refunds or Tax Credits of Input Tax. —**
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> **(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 Pilippinas (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 attributable to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.
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> **(B) Capital Goods.** — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made."

The afore-quoted provisions allow the refund/tax credit of excess input VAT in two instances, namely: (1) when the excess input VAT is attributable to zero-rated or effectively zero-rated sales; and (2) when the excess input VAT is attributable to capital goods purchased by a VAT-registered person.

In its VAT Returns for the four quarters of taxable year 2002, petitioner reflected no amount of taxable or exempt sales/receipts but only zero-rated sales/receipts in the amount of P3,784,339,472.72, and an unutilized excess input VAT in the amount of P74,658,481.68, broken down as follows:

Exhibit	Taxable Year 2002	Zero-rated Sales	Excess Input VAT
B	1st Quarter	P -	P 1,740,640.93
C	2nd Quarter	366,163,018.53	27,110,271.53
D	3rd Quarter	1,614,690,075.46	17,468,655.94
E	4th Quarter	1,803,486,378.73	28,338,913.28
	Total	**P 3,784,339,472.72**	**P 74,658,481.68**

The present claim covers the entire P74,658,481.68 excess input VAT reported for the four quarters of taxable year 2002. Before deciding on the merits of petitioner's claimed input VAT of P74,658,481.68, the Court must determine first the timeliness of the filing of the same, both in the administrative and judicial levels.

Pursuant to Sections 112(A) and (B) of the NIRC of 1997, the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund starts from the close of the taxable quarter when the sale, importation or purchase was made. Counting from March 31, 2002, June 30, 2002, September 30, 2002 and December 31, 2002, the close of all the quarters of taxable year 2002; petitioner had until March 31, 2004, June 30, 2004, September 30, 2004 and December 31, 2004, respectively, within which to file its claim both in the administrative and judicial levels.

Petitioner filed its administrative claim on April 13, 2004,[10] and the Petition for Review on April 22, 2004. Clearly, both the administrative claim and the instant Petition for Review were filed out of time insofar as the claim

[10] Exhibit "G".

for the first quarter of taxable year 2002 is concerned. Thus, petitioner is barred from claiming refund of the input taxes for the first quarter of taxable year 2002 in the amount of P1,740,640.93 due to prescription.

As regards the remaining input VAT claim covering the second, third, and fourth quarters of taxable year 2002 in the amount of P72,917,840.75 (P74,658,481.68 less P1,740,640.93), which was filed within the two-year prescriptive period, petitioner's VAT Returns for the second, third, and fourth quarters of taxable year 2002 showed that it had zero-rated sales/receipts in the amount of P3,784,339,472.72. The above-quoted Section 112(A) of the NIRC of 1997 allows the refund/tax credit of input VAT attributable to zero-rated or effectively zero-rated sales subject to the taxpayer's compliance with the following requisites:[11]

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 attributable to zero-rated 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.

Petitioner is a VAT-registered taxpayer engaged in the production and sale of electricity as an independent power producer to the National Power Corporation. Petitioner submits that its sale of electricity to NPC is effectively zero-rated pursuant to Section 108(B)(3) of the NIRC of 1997, in relation to

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[11] *AT&T Communications Services Phils. Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 7221, December 12, 2007; and *Aichi Forging Co. of Asia, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 7314, November 21, 2007.

Section 13 of Republic Act No. (R.A.) 6395[12], as amended, which read as follows:

> "**SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties**.
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> xxx xxx xxx
>
> **(B) Transactions Subject to Zero Percent (0%) Rate.** — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
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> xxx xxx xxx
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> (3) Services rendered to persons or entities **whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate**;" (*Emphasis supplied*)
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> "**Section. 13. Non-profit Character of the Corporation, Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities**. — The Corporation shall be non-profit and shall devote all its returns from its capital investments, as well as excess revenues from its operations, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance of effective implementation of the policy enunciated in Section One of this Act, **the Corporation, including its subsidiaries, is hereby declared exempt from the payment of all forms of taxes**, duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings." (*Emphasis supplied*)

This Court agrees with petitioner as it consistently held that NPC is an entity with a special charter, which categorically makes it exempt from payment of all taxes, whether direct or indirect, including VAT. Accordingly, by virtue of the said charter, services rendered by a VAT-registered entity to

[12] otherwise known as the Revised Charter of the NPC.

NPC are effectively subject to zero percent (0%) VAT, in accordance with Section 108(B)(3) of the NIRC of 1997.[13]

The Supreme Court affirmed NPC's tax exemption in the case of *Maceda vs. Macaraig, Jr., et al.*[14], declaring:

> "A chronological review of the NPC laws will show that it has been the lawmaker's intention that the NPC was to be completely tax-exempt from all forms of taxes — direct or indirect.
>
> xxx xxx xxx
>
> One common theme in all these laws is that the NPC must be enabled to pay its indebtedness which, as of P.D. No. 938 was P12 Billion in total domestic indebtedness, at any one time, and US$4 Billion in total foreign loans at any one time. The NPC must be and has to be exempt from all forms of taxes if this goal is to be achieved."

Further, R.A. No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001", specifically Section 6 thereof, as well as its Implementing Rules and Regulations, confirmed the zero-rated nature of the sale of generated power by generation companies to NPC.[15]

Likewise, respondent himself approved petitioner's Application for VAT Zero-Rate covering its sales of electricity to NPC from June 5, 2002 to December 31, 2002.[16]

Moreover, petitioner was able to establish through the various official receipts it issued to NPC that it actually generated gross receipts from sale of

[13] *Kepco Phil. Corp. vs. Commissioner of Internal Revenue*, CTA Case No. 7236, October 4, 2007; *Kepco Phil. Corp. vs. Commissioner of Internal Revenue*, CTA EB No. 107, June 29, 2007 (affirming the Decision in CTA Case No. 6413, March 10, 2005); *Kepco Phil. Corp. vs. Commissioner of Internal Revenue*, CTA Case No. 6287, August 31, 2005; *Kepco Phil. Corp. vs. Commissioner of Internal Revenue*, CTA Case Nos. 5675 and 5704, March 18, 2003; *Commissioner of Internal Revenue vs. Mirant Pagbilao Corp.*, CTA EB No. 251, May 30, 2007.
[14] Resolution, G.R. No. 88291, June 8, 1993 (223 SCRA 217).
[15] *Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue*, CTA Case No. 6788, October 13, 2005
[16] Exhibit "F".

power generation services to NPC for the second, third, and fourth quarters of taxable year 2002 in the total amount of P2,270,146,221.01, broken down as follows:[17]

Exhibit	OR Number	Date	Amount		
			In US$	Exchange Rate	In Peso
K	0002	8/8/2002	879,284.82	51.819	45,563,660.09
K-1	0003	8/8/2002			18,094,786.33
K-2	0004	9/2/2002			20,442,908.76
K-3	0005	9/3/2002	1,183,872.06	51.741	61,254,724.26
K-4	0006	9/12/2002	4,991,142.55	52.075	259,913,748.29
K-5	0007	9/30/2002	5,229,571.20	52.410	274,081,826.59
K-6	0008	9/30/2002			9,390,919.81
K-7	0009	10/23/2002	9,643,190.27	53.238	513,384,163.59
K-8	0010	10/28/2002			10,569,926.84
K-9	0011	11/29/2002	9,549,226.75	53.575	511,599,823.13
K-10	0012	11/29/2002			14,748,027.08
K-11	0013	12/27/2002	9,709,882.83	53.254	517,090,100.23
K-12	0014	12/27/2002			14,011,606.01
				TOTAL	**2,270,146,221.01**

While the zero-rated sales/receipts declared in petitioner's VAT Returns for the second, third, and fourth quarters of taxable year 2002 in the amount of P3,784,339,472.72 is higher than the amount of P2,270,146,221.01 reflected in the official receipts, such discrepancy was brought about by petitioner's adoption of the "accrual method" instead of the "cash method" of accounting in recognizing its income for VAT purposes.[18]

Since no other sales were reported in its VAT Returns for the second, third, and fourth quarters of taxable year 2002, all of petitioner's purchases for the same period are attributable to its effectively zero-rated sales and the input taxes of P72,917,840.75 arising from said purchases are eligible for refund under Section 112(A) of the NIRC of 1997. Inasmuch as the said law allows the refund/tax credit of excess input tax attributable to zero-rated or

[17] Exhibits "K" to" K-12".
[18] Exhibits "HH-1", "J", and "KK", pp. 4-6.

effectively zero-rated sales without distinction as to whether or not the said input tax consists of VAT paid on the purchase of capital goods, the Court finds it unnecessary to determine whether the claimed amount of P72,917,840.75 consists of input VAT pertaining to capital goods.

Going now to the issue of whether petitioner actually incurred the input VAT claim for the second, third, and fourth quarters of taxable year 2002 in the amount of P72,917,840.75, Mr. Ador C. Mejia, the Court-commissioned Independent Certified Public Accountant (CPA), noted the following exceptions on petitioner's claimed input VAT for the four quarters of taxable year 2002 in the total amount of P74,658,481.68:[19]

Findings	1st Quarter	2nd to 4th Quarters	Total
Erroneous amounts indicated in the schedule of input VAT as compared to sales invoices or official receipts resulting in net overstatement of the input VAT claim *(Annex B)*	P 18,694.28	-	P 18,694.28
Input VAT recognized and recorded in the books related to non-VAT suppliers *(Annex C)*	-	27,842.35	27,842.35
Input VAT recognized but not supported by official receipts and/or sales invoices *(Annex D)*	13,754.50	731,747.82	745,502.32
Input VAT recognized and supported by sales invoices/official receipts but not within the period claimed *(Annex E)*	-	26,573.27	26,573.27
Input VAT recognized and supported by official receipts but TIN was rubber stamped only *(Annex F)*	919.74	-	919.74
Input VAT on purchases which are not subjected to VAT *(Annex G)*	26,765.92	17,492.84	44,258.76
Transactions not supported by sales invoices and/or official receipts on file *(Annex H)*	7,403.55	274,904.63*	282,308.18
VAT on importations without import-export internal revenue declaration form *(Annex I)*	328,356.00	-	328,356.00
VAT on importations with erroneous recording of VAT on GL as against the import-export internal revenue declaration form *(Annex J)*	1,914.88	(71,181.75)	(69,266.87)
TOTAL	**P 397,808.87**	**P 1,007,379.16**	**P 1,405,188.03**

**Includes purchase of goods supported by an invoice not duly registered with the BIR in the amount of P152,614.45 (Exhibit Z-59).*

Upon examination of petitioner's supporting documents such as suppliers' invoices, official receipts, Bureau of Customs (BOC) Import Entry

[19] Exhibit "O".

Internal Revenue Declarations, monthly summary lists of purchases and other relevant documents,[20] this Court agrees with the findings of the Independent CPA except for the amount of P69,266.87 detailed under Annex "J" of Exhibit "O".

In arriving at the amount of P69,266.87, the Independent CPA compared petitioner's input VAT claims as reflected in its general ledger *vis-à-vis* those amounts shown in its import internal revenue declarations such that the understatements of input VAT in the general ledger were offset against the overstatements. Considering that the bases of the Petition are the VAT Returns as filed, the understatements should not be offset against the overstatements. Thus, the disallowed overstatements for the first quarter and second to fourth quarters should be P57,017.37 and P28,140.76, respectively, or a total of P85,158.13 and not P69,266.87. Accordingly, the exceptions found by the Independent CPA should be adjusted from P1,405,188.03 to P1,559,613.03, as computed below:

Findings	1st Quarter	2nd to 4th Quarters	Total
Erroneous amounts indicated in the schedule of input VAT as compared to sales invoices or official receipts resulting in net overstatement of the input VAT claim *(Annex B)*	P 18,694.28	-	P 18,694.28
Input VAT recognized and recorded in the books related to non-VAT suppliers *(Annex C)*	-	27,842.35	27,842.35
Input VAT recognized but not supported by official receipts and/or sales invoices *(Annex D)*	13,754.50	731,747.82	745,502.32
Input VAT recognized and supported by sales invoices/official receipts but not within the period claimed *(Annex E)*	-	26,573.27	26,573.27
Input VAT recognized and supported by official receipts but TIN was rubber stamped only *(Annex F)*	919.74	-	919.74
Input VAT on purchases which are not subjected to VAT *(Annex G)*	26,765.92	17,492.84	44,258.76
Transactions not supported by sales invoices and/or official receipts on file *(Annex H)*	7,403.55	274,904.63*	282,308.18
VAT on importations without import-export	328,356.00	-	328,356.00

[20] Exhibits "P" to" Z", "AA" to "BB", inclusive of sub-markings.

internal revenue declaration form *(Annex I)*			
VAT on importations with erroneous recording of VAT on GL as against the import-export internal revenue declaration form *(Annex J)*	57,017.37	28,140.76	85,158.13
TOTAL	**452,911.36**	**1,106,701.67**	**1,559,613.03**

However, as stated earlier, petitioner's claim for the first quarter of taxable year 2002 shall be denied due to prescription. Therefore, only the input taxes of P1,106,710.67 shall be disallowed from the total claim of P72,917,840.75 covering the second, third, and fourth quarters of taxable year 2002.

Moreover, evidence on record shows that petitioner's input VAT claim of P72,917,840.75 should be further reduced by P48,422,089.03,[21] broken down as follows:

Reason for Disallowance	Input VAT
1) Purchase of goods supported by invoices with TIN-V instead of TIN-VAT	P 463,296.13
2) Purchase of services supported by ORs with TIN-V instead of TIN-VAT	392,926.01
3) Purchase of goods and services supported by ORs or invoices issued not in the name of Petitioner	12,994,374.02
4) Purchase of services supported by undated ORs	547,823.07
5) Purchase of goods and services supported by invoices or ORs outside the period of claim	11,782.96
6) Purchase of goods supported by invoices that are not duly registered with the BIR	4,385.45
7) Purchase of goods not supported by invoices	190,745.60
8) Purchase of goods and services included in the summary of purchases but with no supporting documents	19,340,287.79
9) Input VAT on importations outside the period of claim	14,476,468.00
TOTAL	**P 48,422,089.03**

In other words, out of the P74,658,481.68 input VAT claim for the four quarters of taxable year 2002, the amount of P1,740,640.93 shall be denied on the ground of prescription while the amounts of P1,106,701.67 and P48,422,089.03 shall be denied for not being supported with the required documentary evidence under Sections 110(A) and 113(A) of the NIRC of

[21] Details per Annex "A" of this Decision.

1997 and as implemented by Sections 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations No. 7-95[22], which read as follows:

"**SEC. 110. Tax Credits.** -

(A) Creditable Input Tax. -

(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:

(a) Purchase or importation of goods

1. For sale; or
2. For conversion into or intended to form part of a finished product for sale, including packaging materials; or
3. For use as supplies in the course of business; or
4. For use as materials supplied in the sale of services; or
5. For use in trade or business for which deduction for depreciation or amortization is allowed under the Code, except automobiles, aircraft and yachts.

(b) Purchase of services on which a value-added tax has been actually paid;

(2) The input tax on domestic purchase of goods or properties shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee. ℛ

[22] Consolidated Value-Added Tax Regulations.

(3) A VAT-registered person who is also engaged in transactions not subject to VAT shall be allowed input tax credit as follows:

(a) Total input tax which can be directly attributed to transactions subject to value-added tax; and

(b) A ratable portion of any input tax which cannot be directly attributed to either activity.

The term '*input tax*' means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.

The term '*output tax*' means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered under Section 236 of this Code."

"**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. 4.104-1.** *Credits for input tax.* -

'Input tax' means the value-added tax due from or paid by a VAT-registered person on importation of goods or local purchases of goods or services, including lease or use of property, from another VAT-registered person in the course of his trade or business. It shall also include the transitional or presumptive input tax determined in accordance with Section 105 of the Code. Jc

It includes the input taxes which can be directly attributed to transactions subject to the value-added tax plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.

Any input tax evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Section 108 of the Code, on the following transactions, shall be creditable against the output tax:

(a) Purchase or importation of goods

1. For sale; or
2. For conversion into or intended to form part of a finished product for sale, including packaging materials; or
3. For use as supplies in the course of business; or
4. For use as raw materials supplied in the sale of services; or
5. For use in trade or business for which deduction for depreciation or amortization is allowed under the Code, except automobiles, aircraft and yachts.

xxx xxx xxx

(b) Purchase of real properties for which a VAT has actually been paid;

(c) Purchase of services in which a VAT has actually been paid;

(d) Transactions 'deemed sale' under Section 100 (b) of the Code;

(e) Presumptive input tax allowed to be carried over as provided for in Section 4.105-1 of these Regulations;

(f) A VAT-registered person who is also engaged in transactions not subject to VAT shall be allowed input tax credit as follows;

xxx xxx xxx"

"**SECTION. 4.104-5.** *Substantiation of claims for input tax credit.* – (a) Input taxes shall be allowed only if the domestic ge purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Section 108 (a) and 238 of the Code. Input tax on purchases of real property should be supported by a copy of the public instrument *i.e.* deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc. together with the VAT receipt issued by the seller.

A cash-register machine tape issued to a VAT-registered buyer by a VAT-registered seller from a machine duly registered with the BIR in lieu of the regular sales invoice, shall constitute valid proof of substantiation of tax credit only if the name and TIN of the purchaser is indicated in the receipt and authenticated by a duly authorized representative of the seller.

(b) Input tax on importations shall be supported with the import entry or other equivalent document showing actual payment of VAT on the imported goods.

(c) Presumptive input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.

(d) Input tax on 'deemed sale' transactions shall be substantiated with the required invoices.

(e) Input tax from payments made to non-residents shall be supported by a copy of the VAT declaration/return filed by the resident licensee/lessee in behalf of the non-resident licensor/lessor evidencing remittance of the VAT due."

"**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 *gc*

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 also engaged 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 Sections 100 and 102 of the Code.

The invoice or receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records."

Hence, petitioner's claimed amount of P74,658,481.68 should be reduced by P51,269,431.63 computed as follows:

Barred by prescription – 1st Quarter	P 1,740,640.93
Disallowances per CPA Report – 2nd to 4th Quarters	1,106,701.67
Disallowances per Court's verification– 2nd to 4th Quarters	48,422,089.03
Total disallowances	**P 51,269,431.63**

It was established that petitioner's claimed input taxes were not applied against any output VAT liability during the period of claim and in the succeeding quarters since all of petitioner's sales were zero-rated and there was no output VAT due thereon. Although the claimed input tax was carried over to the succeeding quarters until the second quarter of taxable year 2004, the same was deducted as any "Any VAT Refund/TCC Claimed" from the Total Available Input Tax as of the second quarter of taxable year 2004.[23] *Ergo*, petitioner could not have possibly utilized the subject claim in the succeeding quarters.

[23] Exhibit "I-1".

In sum, petitioner has sufficiently proven that it is entitled to a refund or issuance of tax credit certificate corresponding to its unutilized input VAT for the second, third, and fourth quarters of taxable year 2002 in the amount of P23,389,050.05, computed as follows:

Amount of Claim			P 74,658,481.68
Less:	Barred by prescription – 1st Quarter	P 1,740,640.93	
	Disallowances per CPA Report – 2nd to 4th Quarters	1,106,701.67	
	Disallowances per Court's verification– 2nd to 4th Quarters	48,422,089.03	51,269,431.63
Refundable Input VAT			**P 23,389,050.05**

WHEREFORE, with the foregoing disquisitions, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or to **ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of P23,389,050.05, representing unutilized excess input VAT attributable to its zero-rated sales of electricity to NPC for the second, third, and fourth quarters of taxable year 2002.

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, 2nd Division

ANNEX A

SUMMARY OF ADDITIONAL DISALLOWANCES PER COURT'S VERIFICATION

Exh.	OR/Invoice Date	Supplier		Input VAT
1) Purchase of goods supported by invoices with TIN-V instead of TIN-VAT				
U-75	6/5/2002	Quiet Stream Waters & Trade	P	1,515.00
V-75	7/11/2002	Sta. Rita Machine Shop		545.45
W-23	7/10/2002	General Electric Phils Inc.		145,595.63
X-103	9/2/2002	Standphil Corporation		44,118.18
X-147	9/30/2002	Ono Hardware & Lumber		375.91
X-148	9/30/2002	Ono Hardware & Lumber		179.64
Y-24	10/8/2002	Citimart Shop-On		1,466.78
Z-50	12/19/2002	Citimart Shop-On		450.23
Z-85	11/14/2002	Quiet Stream Waters & Trade		3,250.00
Y-54 & Y-55	8/31/02 & 9/15/02	General Electric Phils Inc.		265,799.31
		Subtotal	***P***	***463,296.13***
2) Purchase of services supported by ORs with TIN-V instead of TIN-VAT				
S-55	4/18/2022	Red Eight Trading & Gen. Services	P	6,500.00
T-13	5/8/2002	Red Eight Trading & Gen. Services		2,500.00
U-4	6/4/2002	Typo Grafika, Inc.		222.73
U-52	6/18/2002	Typo Grafika, Inc.		231.82
U-95	6/27/2002	Typo Grafika, Inc.		3,122.73
V-85	7/29/2002	Balisong Intelligence & Security Agency		56,073.13
W-7	8/15/2002	Premier Chemical Enterprise		545.45
W-7	8/15/2002	Premier Chemical Enterprise		545.45
W-38	8/12/2002	MCC Printers & Enterprises		1,227.27
W-40	8/12/2002	MCC Printers & Enterprises		477.27
W-99	8/23/2002	Typo Grafika, Inc.		95.45
W-103	8/23/2002	Typo Grafika, Inc.		159.09
W-103	8/23/2002	Typo Grafika, Inc.		159.09
X-70	9/11/2002	Typo Grafika, Inc.		527.27
X-118	9/20/2002	Bullion Construction & Dev't Corp.		43,553.00
Y-18	10/13/2002	Balisong Intelligence & Security Agency		63,842.48
Y-43	10/3/2002	Typo Grafika, Inc.		1,500.00
Y-133	10/17/2002	Typo Grafika, Inc.		587.27
Z-19	10/30/2002	Typo Grafika, Inc.		181.82
Z-38	11/11/2002	Grandoise Food Services, Inc.		2,072.73
Z-144	11/22/2002	Balisong Intelligence & Security Agency		66,791.32
Z-145	11/22/2002	MOF Company (Subic) Inc.		21,436.80
Z-161	11/22/2002	Red Eight Trading & Gen. Services		3,090.91
Z-220	12/3/2002	Bullion Construction & Dev't Corp.		38,083.36
Z-237	11/29/2002	L.Armani Trading & General Services		9,217.05
AA-26	12/5/2002	Balisong Intelligence & Security Agency		70,182.52
		Subtotal	***P***	***392,926.01***
3) Purchase of goods and services supported by ORs or invoices issued not in the name of Petitioner				
S-15	4/16/2002	Via Mare Catering Services	P	1,155.37
T-1	5/7/2002	Marsh Phils.		4,307,658.27

gr

T-31	5/7/2002	F.A.T. Kee Computer Systems		627.27
V-79	7/24/2002	Marsh Phils.		10,841,961.12
V-79	7/24/2002	Marsh Phils.		(2,158,670.07)
W-133	8/28/2002	Via Mare Catering Services		919.51
W-136	8/28/2002	Via Mare Catering Services		722.55
		Subtotal	***P***	***12,994,374.02***

4) Purchase of services supported by undated ORs

S-26		Sarca Construction	P	177,014.40
T-58		Sarca Construction		214,056.44
V-93		Banbros Commercial		1,427.28
Z-15		ADP Electrical & Industrial Enterprises		58,909.09
Z-58		Marietta Purisima P. Santos		96,000.00
AA-96		Jumbo Cycle Enterprise, Inc.		415.86
		Subtotal	***P***	***547,823.07***

5) Purchase of goods and services supported by invoices or ORs outside the period of claim

S-31	4/26/2001	Intertek Testing Services Phils.	P	731.59
S-31	4/26/2001	Intertek Testing Services Phils.		8,869.55
AA-24	1/2/2003	Premier Chemical Enterprise		2,181.82
		Subtotal	***P***	***11,782.96***

7) Purchase of goods supported by invoices that are not duly registered with the BIR

T-74	5/30/2002	Yokogawa Philippines, Inc.	P	4,385.45
		Subtotal	***P***	***4,385.45***

8) Purchase of goods not supported by invoices

Quiet Stream Waters & Trade	P	1,505.00
Quiet Stream Waters & Trade		1,045.00
Quiet Stream Waters & Trade		2,585.00
101 Computer Center		2,545.45
Atlas Super Flags		580.00
Office 1 Superstore		1,231.82
Triton Communications Corp.		5,069.09
Society Glass & Aluminum		2,454.55
Justic International Trading Corp.		31,272.73
RBC Petron Gasoline Station		5,002.43
Triton Communications Corp.		10,245.82
Mercury Drug-Batangas		4,059.84
Caltex (Philippines) Inc.		14,411.61
Big-Top Builders & Enterprise		275.00
Mila's Special Lechon		1,772.73
Raytheon Ebasco Overseas, Ltd.		80,168.23
Raytheon Ebasco Overseas, Ltd.		19,203.12
Citimart Shop-on		7,318.18
Subtotal	***P***	***190,745.60***

9) Purchase of goods and services included in the summary of purchases but with no supporting documents

Marsh Phils.	P	12,156,847.69
Raytheon Ebasco Overseas, Ltd.		7,078,574.09
		8,690.48
		32,968.18
		33,756.44

gr

				29,450.91
		Subtotal	***P***	***19,340,287.78***

Exh.	IEIRD Date	Supplier		Input VAT
10) Input VAT on importations outside the period of claim				
BB-88 & BB-89	1/2/2003	Mitsubishi Corporation	P	8,146,683.00
BB-90 & BB-91	1/2/2003	Mitsubishi Corporation		1,246,331.00
BB-93 & BB-94	1/2/2003	Mitsubishi Corporation		735,353.00
BB-96 & BB-97	1/2/2003	Mitsubishi Corporation		3,999,202.00
BB-98 to BB-100	1/2/2003	Mitsubishi Corporation		348,899.00
		Subtotal	***P***	***14,476,468.00***

TOTAL ADDITIONAL DISALLOWANCES	**P**	**48,422,089.03**

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