REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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MIRANT NAVOTAS CORPORATION
(formerly: Southern Energy Navotas, Inc.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6960

Members:

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

Promulgated:
NOV 13 2008

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DECISION

BAUTISTA, *J.*:

The *Petition for Review* prays for refund or issuance of tax credit certificate in the amount of P2,666,221.16, representing unutilized input VAT from domestic purchases of taxable goods and services, and importation of goods attributable to zero-rated sale of power generation services to the National Power Corporation for the four quarters of taxable year 2002.

Mirant Navotas Corporation (Petitioner) is a corporation duly organized and existing by virtue of Philippine laws, with principal office located at 5F, CTC Building, 2232 Roxas Boulevard, Pasay City.[1] It is primarily engaged in the business of power generation and

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[1] Par. 1, Jointly Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 121

subsequent sale thereof to the National Power Corporation (NPC) under a Build, Operate and Transfer (BOT) Scheme.[2]

Petitioner was originally registered with the Securities and Exchange Commission (SEC) under the name Hopewell Energy (Philippines) Corporation. On June 17, 1999, petitioner's name was officially changed to Southern Energy Navotas, Inc. Subsequently, the SEC approved the application of petitioner to further change its corporate name to Mirant Navotas Corporation on June 18, 2001.[3]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue vested with the authority to act as such, including the power to decide, approve, and grant claims for issuance of tax credit certificate or refunds of overpaid internal revenue taxes as provided by law. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[4]

On December 7, 2001, petitioner filed with the BIR an Application for VAT Zero-Rate for its supply of electricity to the NPC, which was subsequently approved.[5]

Petitioner filed its Quarterly VAT Returns for taxable year 2002 on the following dates:

Period	**Date Filed**	**Exhibits**
1st Quarter	April 25, 2002	"A"
2nd Quarter	July 26, 2002	"B"
3rd Quarter	October 25, 2002	"C"
4th Quarter	January 27, 2003	"D"

On December 23, 2003, petitioner filed an administrative claim for refund of its unutilized input VAT in the total amount of 2,666,221.16 for the four quarters of taxable year 2002 with the BIR Large Taxpayers Service.[6]

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[2] Par. 2, Jointly Stipulated Facts, JSFI, Docket, p. 121
[3] Par. 4, Jointly Stipulated Facts, JSFI, Docket, p. 121
[4] Par. 1, Admitted Facts, JSFI, Docket, p. 120
[5] Par. 5, Jointly Stipulated Facts, JSFI, Docket, p. 121
[6] Exhibit "E"

Due to respondent's inaction and to suspend the two-year prescriptive period under the National Internal Revenue Code (NIRC) of 1997, as amended, and Revenue Regulations No. 7-95, petitioner filed this *Petition for Review* on April 22, 2004.

In his *Answer* filed on June 9, 2004, respondent by way of Special and Affirmative Defenses averred the following:

"4. He reiterates and repleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses;

5. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the respondent;

6. 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 the Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

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 Sections 113 and 114 of the Tax Code, as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, **otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition sine qua non prior to the filing of judicial claim** in accordance with the provision of Section 229 of the Tax Code, as amended. It is worthy of emphasis that Section 112 (D) of the Tax Code, as amended, requires the **submission of complete documents in support of the application filed** with the Bureau of Internal Revenue before the 120-day audit period shall apply, and **before the taxpayer could avail of judicial remedies as provided 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 P2,666,211.16 allegedly paid by the petitioner on its purchase of goods and services for the four (4) quarters of the year 2002 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable 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 in pursuance to Section 4.104-5 (a) & (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credit);

g. The requirements as enumerated under Section 4.104-2 of the Revenue Regulations No. 7-95 (Re: Persons who can avail of the Input Tax Credits);

7. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications ***(Asiatic Petroleum Co. {P.I.} v. Llanes, 49 Phil. 466*** cited in ***Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil. 670)***;

8. Claims for refund are construed strictly 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 Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)***."

Petitioner filed its *Pre-Trial Brief*[7] on August 25, 2004; while respondent filed its *Pre-Trial Brief*[8] on August 30, 2004. Subsequently, the parties filed their *Joint Stipulation of Facts and Issues*[9] on December 8, 2004, which was approved in a *Resolution* dated December 28, 2004.[10]

[7] Docket, pp. 100-105
[8] Docket, pp. 111-113
[9] Docket, pp. 120-123
[10] Docket, p. 128

On November 8, 2005, the Court granted petitioner's motion to appoint Mr. Henry Tan, as the Court-commissioned Independent Certified Public Accountant (CPA), pursuant to CTA Circular No. 1-95, as amended.[11]

The Independent CPA submitted his Report on January 19, 2006.[12]

After presenting documentary and testimonial evidence, petitioner filed its *Formal Offer of Evidence*[13] on October 2, 2006, which was partially admitted in a *Resolution*[14] dated November 20, 2006, and its *Omnibus Motion* filed on December 18, 2006, which was resolved via *Resolution* dated March 23, 2007[15].

On May 22, 2007, petitioner filed a *Supplemental Formal Offer of Evidence*[16], which the Court resolved in a *Resolution* dated July 27, 2007.[17]

In a *Resolution* dated January 14, 2008, which confirmed the order in open court on January 8, 2008, respondent is deemed to have waived his right to present evidence for failure on the part of respondent's counsel to appear during the hearing for his initial presentation of evidence on August 28, 2007, October 11, 2007, November 13, 2007, and January 8, 2008.[18]

On April 4, 2008, the case was submitted for decision, taking into consideration the *Memorandum*[19] filed by petitioner on February 6, 2008, *sans* respondent's *Memorandum*[20].

Hence, this decision.

The parties stipulated the following issues[21] for this Court's resolution:

> "1. Whether or not the power generation services rendered by petitioner to NPC are subject to zero-percent (0%) pursuant to Section 108(B)(3) of the Tax Code.

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[11] Docket, p. 155
[12] Docket, pp. 158-205
[13] Docket, pp. 227-244
[14] Docket, pp. 246-247
[15] Docket, pp. 343-344
[16] Docket, pp. 369-376
[17] Docket, pp. 402-403
[18] Docket, p. 414
[19] Docket, pp. 415-445
[20] Docket, p. 454
[21] Jointly Stipulated Issues, JSFI, Docket, p. 122

2. Whether or not petitioner has unapplied and unutilized input VAT for the four (4) quarters of calendar year 2002 in the total amount of P2,666,221.16 arising from its domestic purchases of taxable goods and services and importation of goods.

3. Whether or not petitioner's unapplied and unutilized input VAT for the four (4) quarters of 2002 are attributable to its zero-rated sale of power generation services to NPC.

4. Whether or not petitioner's administrative claim for refund was seasonably filed.

5. Whether or not petitioner's unapplied and unutilized input VAT for the four (4) quarters of 2002 are properly substantiated by invoices and official receipts and other relevant documents.

6. Whether or not petitioner's unapplied and unutilized input VAT for the four (4) quarters of 2002 were carried over to and utilized in the succeeding taxable quarters or applied against any of the output VAT liability of petitioner.

7. Whether or not petitioner is entitled to a refund or issuance of TCC for its unapplied and unutilized input VAT for the four (4) quarters of 2002 in the total amount of P2,666,221.16."

The issues may be summarized as follows: *Whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P2,666,221.16, representing unutilized input VAT from its domestic purchases of goods and services, and importation of goods attributable to its zero-rated sale of power generation services to the NPC for the four quarters of taxable year 2002.*

The issue of whether or not the power generation services rendered by petitioner to the National Power Corporation are subject to 0% VAT is not one of first impression. In a number of similar cases, this Court has affirmatively ruled that petitioner's sale of power generation services to NPC are subject to zero percent VAT. Being principally engaged in the business of power generation, petitioner's subsequent sale thereof to the NPC under a BOT Scheme makes such sale subject to zero percent VAT, pursuant to Section 108(B)(3) of the NIRC of 1997, as amended, which reads:

"SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. -

xxx xxx xxx

(B) Transaction 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

(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."

In relation thereto, Section 13 of Republic Act No. 6395 (NPC Charter) reads:

"**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 investment as well as excess revenues from its operation, 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, in any court or administrative proceedings."

In the case of **Ernesto M. Maceda vs. Catalino Macaraig, Jr. *et al.***[22], the Supreme Court has affirmed NPC's tax-exempt character, stating thus:

"The NPC is a non-profit public corporation created for the general good and welfare, wholly owned by the government of the Republic of the Philippines. From the very beginning of its corporate existence, the NPC enjoyed preferential tax treatment, to enable the Corporation to pay the indebtedness and obligation and in the furtherance and effective implementation of the policy enunciated in Section one of 'Republic Act No. 6395'...

xxx xxx xxx

It is noted that in the earlier law, R.A. No. 358 the exemption was worded in general terms, as to cover 'all taxes, duties, fees, imposts, charges, etc...'. However, the amendment under Republic Act No. 6395 enumerated the details covered by the exemptions. Subsequently, P.D. No. 380, made even more specific the details of the exemption of NPC to

[22] 197 SCRA 771

> cover, among others, both direct and indirect taxes on all petroleum products used in its operation. Presidential Decree No. 938 amended the tax exemption by simplifying the same law in general terms. It succinctly exempts NPC from '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.'
>
> The use of the phrase 'all forms' of taxes demonstrate the intention of the law to give NPC all tax exemption it has been enjoying before. The rationale for this exemption is that being non-profit the NPC 'shall devote all its returns from its capital investments as well as excess revenues from its operation, for expansion...
>
> xxx xxx xxx
>
> It is evident from the provisions of P.D. No. 938 that its purpose is to maintain the tax exemption of NPC from all forms of taxes including indirect taxes as provided for under R.A. No. 6395 and P.D. No. 380 if it is to attain its goals."

Based on the foregoing, NPC is an entity with a special charter, which categorically makes it exempt from payment of all taxes, whether direct or indirect, including VAT. Hence, by virtue of the said charter, the services rendered by a VAT-registered entity, like herein petitioner, to NPC are effectively subject to zero percent VAT.

In order to prove the existence of its sales of power generation services to NPC, petitioner presented its Quarterly VAT Returns for the four quarters of taxable year 2002[23], various VAT invoices and VAT official receipts issued to NPC[24]. Petitioner's VAT Returns reflected zero-rated sales for the four quarters of taxable year 2002 in the amount of P377,762,866.42, which were duly substantiated by VAT invoices and official receipts. The following is the breakdown of the amount of P377,762,866.42:

Period Covered 2002	Zero-Rated Sales
1st qtr	P 56,108,302.44
2nd qtr	127,151,947.94
3rd qtr	96,148,695.77
4th qtr	98,353,920.27
Total	**P 377,762,866.42**

[23] Exhibits "A" to "D"
[24] Exhibits "O-2" to "O-38"

Considering that the services of petitioner are subject to 0% VAT pursuant to Section 108(B) of the NIRC of 1997, it can, therefore, claim refund of input taxes attributable thereto in accordance with Section 112(A) of the same Code.

Petitioner reported in its Quarterly VAT Returns for the four quarters of taxable year 2002 input taxes amounting to P2,666,221.16, broken down as follows:

Period Covered 2002	Input Tax
1st qtr	P 1,001,155.62
2nd qtr	986,545.03
3rd qtr	407,150.45
4th qtr	271,370.06
TOTAL	**P 2,666,221.16**

In order to determine whether or not petitioner's reported input taxes for the four quarters of taxable year 2002 in the amount of P2,666,221.16 have been substantiated by requisite documentary evidence, the Court notes the findings of the commissioned Independent CPA[25], to wit:

"Based on our verification of the documents supporting the input taxes, we present below our findings:

	Findings	1st QTR	2nd QTR	3rd QTR	4th QTR	TOTAL
I.	**Input taxes on domestic purchases of goods that are supported by VAT invoices and purchases of services that are supported by VAT ORs (*Annex 6*)**	677,206.28	822,330.01	403,139.20	258,505.79	2,161,181.28
II.	**Input tax on an importation of goods that is supported by original bank OR and photocopied IED certified as true copy of the BOC (*Annex 7*)**	60,154.00				60,154.00
III.	**Input taxes on domestic purchases of goods:**					-
1	Erroneously computed *(Annex 8-1)*	129.10	-	-	-	129.10
2	Supported by a VAT invoice without BIR Permit Number *(Annex 8-2)*	-	-	240.00	-	240.00
3	Supported by a document other than a VAT invoice *(Annex 8-3)*	-	-	54.55	-	54.55
4	Supported by a VAT invoice with pre-printed "TIN NON-VAT" *(Annex 8-4)*	4,414.55	-	-	-	4,414.55
5	Supported by VAT invoices not issued in the Name of the Company *(Annex 8-5)*	-	3,763.64	-	-	3,763.64
6	Erroneously presented twice in the Summary of Local Purchases *(Annex 8-6)*	2,181.82	-	-	-	2,181.82

[25] Exhibit L-6 to 10

IV.	**Input taxes on purchases of services:**					-
1	Erroneously computed (Annex 9-1)	3,471.70	-	-	-	3,471.70
2	Supported by a VAT OR without BIR Permit Number *(Annex 9-2)*	-	5,330.64	-	-	5,330.64
3	Supported by documents other than VAT ORs *(Annex 9-3)*	1,499.32	517.91	1,196.64	1,561.63	4,775.50
4	Supported by VAT ORs with pre-printed "TIN - NV"only (*Annex 9-4*)	-	-	2,000.06	-	2,000.06
5	Supported by VAT ORs with pre-printed TIN only (*Annex 9-5*)	5,880.00	4,015.00	470.00	5,825.00	16,190.00
6	Supported by VAT ORs not issued in the Name of the Company *(Annex 9-6)*	1,800.00	427.83	-	-	2,227.83
V.	**Input taxes on importation of goods:**					-
1	Supported by BOC OR only *(Annex 10-1)*	-	-	50.00		50.00
2	Supported by photocopied IED only *(Annex 10-2)*	84.00	-	-	-	84.00
3	Without available supporting documents *(Annex 10-3)*	39,200.00	150,160.00	-	-	189,360.00
TOTAL		**P796,020.77**	**P986,545.03**	**P407,150.45**	**P265,892.42**	**P2,455,608.67**

Moreover, we would like to mention the following items for the additional information of this Honorable Court:

1. Input taxes amounting to **P33,289.24** were claimed on domestic purchases of goods which are supported by VAT invoices issued in the name of Southern Energy Pangasinan, Inc., former name of the Company. The VAT invoices were issued after June 18, 2001 (The change of the Company's name from SENI (Southern Energy Pangasinan, Inc. [Hopewell Energy (Philippines) Corporation] to Mirant Navotas Corporation was effective on June 18, 2001 under its Amended Articles of Incorporation filed with the Securities and Exchange Commission on June 11, 2001). ***(See Annex 11)***

2. Input taxes amounting to **P102,162.75** were claimed on domestic purchases of goods which are supported by VAT invoices dated outside the period of claim. ***(See Annex 12)***

   We were able to ascertain that there were no double claiming relative to these input taxes. These input taxes were claimed only in the calendar year 2002 and were not claimed in any quarters of 2001.

3. Input taxes amounting to **P1,040.48** were claimed on domestic purchases of services which are supported by VAT ORs dated outside the period of claim. ***(See Annex 13)***

   We were able to ascertain that there were no double claiming relative to these input taxes. These input taxes were claimed only in the calendar year 2002 and were not claimed in any quarters of 2001 and 2003.

4. Input tax amounting to **P2,552.00** was claimed on an importation of goods supported by Informal IED and BOC OR Dated outside the period of claim. ***(See Annex 14)***

   We were able to ascertain that there was no double claiming relative to this input tax. This input tax was claimed only in the calendar year 2002 and was not claimed in any quarters of 2001.

5. Input taxes amounting to **P21,219.00** were claimed on importations of goods supported by photocopied IEDs and BOC or Bank ORs. ***(See Annex 15)***

6. Input tax amounting to **P47,535.00** was claimed on an importation of goods supported by a Bank OR Dated outside the Period of claim. ***(See Annex 16)***"

Based on the above-quoted findings of the commissioned Independent CPA, out of the total claimed input VAT of P2,666,221.16, only the amount of P2,221,335.28 (only the first and second items of the Independent CPA's findings) is properly substantiated by the required evidence under Sections 110(A) and 113(A) of the NIRC of 1997, and as implemented by Sections 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations No. 7-95. The remaining amount of P444,885.88 shall be denied for the above-stated reasons.

The Court will now proceed to resolve the issue of whether or not petitioner's unapplied and unutilized input VAT for the subject period of claim were carried over to and utilized in the succeeding taxable quarters or applied against any of the output VAT liability of petitioner. Although petitioner carried over the claimed unutilized input VAT for taxable year 2002 to the succeeding taxable quarters until the second quarter of taxable year 2004[26], the same was deducted as "Any VAT Refund/TCC" claimed from the total available input tax of P4,711,966.48 as of the second quarter of taxable year 2004[27]. In other words, the subject claim no longer formed part of the excess input VAT of P2,045,745.32 as of the second quarter of taxable year 2004 which was to be carried over/applied to the succeeding third quarter of taxable year 2004.

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[26] Exhibits "F," "G," "H," "I," "J", and "K"
[27] Exhibit "K"

However, it should be noted that the input VAT used in computing the input VAT available for refund was not reduced by the amount of output tax for sales subject to VAT. Thus, the output VAT of P727.27[28] shall be deducted from the substantiated input VAT of P2,221,335.28, thereby leaving a refundable excess input VAT of P2,220,608.01 which are all attributable to petitioner's zero-rated sales.

With respect to the issue of whether or not petitioner's administrative and judicial claims were seasonably filed, this Court rules in the affirmative.

Records show that petitioner filed its administrative and judicial claims on December 23, 2003[29] and April 22, 2004, respectively; both within the two-year period reckoned from April 25, 2002, the date when petitioner filed its Quarterly VAT Return[30] for the first quarter of taxable year 2002, which is the earliest quarter covered by the instant *Petition*.

Considering the Court's finding that petitioner's sales of power generation services to NPC is subject to a zero VAT rate and had complied with all the requisites thereof, a tax refund or issuance of tax credit certificate is in order.

WHEREFORE, with the foregoing disquisitions, the *Petition for Review* is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of P2,220,608.01, representing its unutilized input VAT for taxable year 2002.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[28] Exhibit "A-1"
[29] Exhibit "E"
[30] Exhibit "A"

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
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
Chairperson, First Division