**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## SPECIAL FIRST DIVISION

*************

**TEAM SUAL CORPORATION (Formerly MIRANT SUAL CORPORATION),**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 7470**

Members:

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

**Promulgated:**

APR 05 2011 : 3:12 pm

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# AMENDED DECISION

**BAUTISTA, *J*.:**

Before us is respondent's "**Motion for Partial Reconsideration**" filed on April 5, 2010, with petitioner's "**Comment/Opposition (To Respondent's Motion For Partial Reconsideration)**" filed on April 22, 2010; and petitioner's "**Motion for Partial Reconsideration**" filed on April 6, 2010, without respondent's comment thereto despite notice.

Under the Joint Stipulation of Facts and Issues,[1] the parties agreed on the following:

**ADMITTED FACTS**

1. Petitioner is a domestic corporation organized and existing under and by virtue of Philippine laws, with principal office at Bo. Pangascan, Sual, Pangasinan;

2. Respondent is the Commissioner of the Bureau of Internal Revenue who is duly appointed and empowered to perform the duties of [her] office, including, among others, the duty to act on and approve claims for refund or issuance of tax credit certificate of overpaid internal revenue taxes as provided by law, with office address at the BIR National Office Building, Agham Road, Quezon City, where [s]he may be served with summons and other court processes;

3. Under Republic Act No. 6395 ("**RA 6395**"), as amended, otherwise known as the NPC Chapter, NPC is declared exempt from the payment of all forms of taxes, duties, fees and imposts. Section 13 of RA 6395 provides as follows:

   > "SEC. 13. *Non-profit Character of the Corporation: Exemption from All Taxes, Duties, 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 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."

4. In the case of *Ernesto M. Maceda vs. Hon. Catalino Macaraig,* G.R. No. 88291 dated May 31, 1991, the Supreme Court affirmed the above exemption of NPC from the

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[1] *Rollo*, pp. 380-386.

payment of all taxes, whether direct or indirect. Acting on the Motion for Reconsideration filed by former Senator Ernesto M. Maceda, the Supreme Court reaffirmed the exemption of NPC from all direct and indirect taxes in its Resolution promulgated on June 8, 1993, to wit:

> "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." (223 SCRA 236, June 8, 1993);

5. Section 108(B)(3) of the Tax Code of 1997;

6. Further, effective 26 June 2001, sales of generated power by generation companies achieved VAT zero-rated status by virtue of Section 4(x) in relation to Section 6 of Republic Act No. 9136 ("**RA 9136**") or the Electric Power Industry Reform Act ("**EPIRA**"), thus:

> "**Section 4**. *Definition of Terms*. –
>
> xxx
>
> (x) 'Generation Company' refers to any person or entity authorized by the ERC (Energy Regulatory Commission) to operate facilities used in the generation of electricity;
>
> xxx
>
> **Sec. 6**. Generation Sector. – Generation of electric power, a business affected with public interest, shall be competitive and open.
>
> Upon the effectivity of this Act, any new generation company, shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.
>
> Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or

entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.

Upon implementation of retail competition and open access, the prices charged by a generation company for the supply of electricity shall not be subject to regulation by ERC except as otherwise provided in this Act.

Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated.

The ERC shall, in determining the existence of market power abuse or anti-competitive behavior, require from generation companies the submission of their financial statements." (*Underscoring supplied*)

7. Moreover, Rule 5, Section 6 of the Rules and Regulations to Implement RA 9136 ("**EPIRA IRR**"), promulgated by the Department of Energy, states:

"**RULE 5. GENERATION SECTOR**

**Section 6. Generation Charges and VAT.**

(a) xxx

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

8. Furthermore, Revenue Memorandum Circular No. 61-2005 (Clarifying the VAT provisions of RAA 9337 Applicable to the Power Industry) provides:

> "Q25. What is the treatment of the unapplied excess input VAT as of October 31, 2005 arising from VAT zero-rated transactions?
>
> A25. Unapplied excess input VAT arising from VAT zero-rated sales of power generation companies including Independent Power Producers (IPP) selling power solely to GOCC/government agency as of October 31, 2005 can be carried over and offset against future output VAT liability subject to the 70% cap rule and the rule on 5% final withholding VAT.
>
> <u>Unapplied input VAT can also be filed for tax refund/tax credit within 2-year period from the close of the taxable quarter when such sales were made provided that it is clearly indicated in the VAT Declaration covering October 2005 that the excess credits arising from transactions subject to zero-rate as of October 31, 2005 will be applied for TCC/Refund.</u>" (*<u>Underscoring supplied.</u>*)

9. Sections 112(A) and 112(D) of the Tax Code of 1997.

## JOINTLY STIPULATED FACTS

1. Petitioner is principally engaged in the business of power generation and the subsequent sale thereof to the National Power Corporation ("NPC") under a Build, Operate, Transfer scheme;

2. Petitioner is registered with the Bureau of Internal Revenue ("BIR") as a value-added tax ("VAT") taxpayer in accordance with Section 107 of the National Internal Revenue Code of 1997 [now Section 236 of the National Internal Revenue Code of 1997 ("Tax Code")] with Tax Identification No. 003-841-103 as shown on its BIR Certificate of Registration bearing RDO Control No. 05-0181.

3. Petitioner was originally registered with the Securities and Exchange Commission ("SEC") under the name "Pangasinan Electric Corporation" which was subsequently changed to "Southern Energy Pangasinan, Inc." on August 17, 1999. On June 28, 2001, petitioner's name was again changed from

"Southern Energy Pangasinan, Inc." to "Mirant Sual Corporation;"

4. On December 19, 2003, petitioner filed with the BIR Revenue District Office No. 5 at Alaminos City an Application for Effective Zero-Rate of its supply of electricity to the NPC for the period January 1, 2004 to December 31, 2004, which was subsequently approved;

5. Petitioner filed its quarterly VAT return for the first quarter of the year 2004 with the BIR on April 26, 2004, through the Electronic Filing and Payment System ("EFPS") pursuant to Revenue Regulations No. 9-2001, as amended. On July 26, 2004, petitioner filed its amended quarterly VAT return for the first quarter of the year 2004, likewise through the EFPS;

6. On July 26, 2004, petitioner filed its quarterly VAT return for the second quarter of the year 2004 with the BIR through EFPS;

7. On October 25, 2004, petitioner filed its quarterly VAT return for the third quarter of the year 2004 with the BIR through EFPS;

8. On January 25, 2005, petitioner filed its quarterly VAT return for the fourth quarter of the year 2004 with the BIR through the EFPS. On August 3, 2005, petitioner filed its amended quarterly VAT return for the fourth quarter of the year 2004 through the EFPS;

9. Petitioner filed an administrative claim for refund of unutilized input VAT with the Revenue District Office No. 5 at Alaminos City on December 21, 2005 in the total amount of ₱103,302,627.88 for the four quarters of the year 2004;

10. To date, respondent has not yet favorably acted upon said administrative claim for refund with finality;

## JOINTLY STIPULATED ISSUES

Petitioner proposes the following issues for resolution:

1. Whether or not the power generation services rendered by petitioner to NPC are subject to zero percent (0%) VAT pursuant to Section 108(B)(3) of the National Internal Revenue Code of 1997 ("Tax Code");

2. Whether or not petitioner had unutilized creditable input VAT for the four quarters of CY 2004 from its domestic purchases of goods and services and importations of goods amounting to ₱103,302,627.88 that can be a proper object of a claim for refund pursuant to Section 108(B)(3) and Section 112(A) of the Tax Code;

3. Whether or not the alleged unutilized creditable input taxes for the first, second, third and fourth quarters of CY 2004 are substantiated by proper invoices and official receipts;

4. Whether or not the alleged unutilized creditable input VAT for the four quarters of CY 2004 was carried over to the succeeding taxable quarter(s) and applied against any of the output VAT liability of the petitioner; and,

5. Whether or not petitioner is entitled to a refund and/or issuance of tax credit certificate for the alleged unutilized input VAT payments for the four quarters of CY 2004 in the amount of ₱103,302,627.88.

6. Whether or not petitioner paid the alleged VAT input taxes for the period stated.

7. Whether or not petitioner's alleged input VAT is directly attributable to such alleged zero-rated sales.

8. Whether or not petitioner's claim was filed within the two (2) year period prescribed in Section 112 of the NIRC of 1997.

On March 4, 2010, the Court rendered a Decision[2] partially granting petitioner's claim. The *fallo* of said decision reads as follows:

> "**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the amount of **SEVENTY EIGHT MILLION NINE THOUSAND EIGHT HUNDRED NINETY ONE PESOS AND 56/100 (P78,009,891.56)** to petitioner, representing unutilized excess input VAT attributable to its effectively zero-rated sales to NPC for the four quarters of taxable year 2004.
>
> **SO ORDERED**."

[2] *Id.* at 910-929.

Both parties filed their respective motions for partial reconsideration against said decision.

On April 7, 2010, the Court issued an Order[3] requiring the parties to file their respective Comment.

On April 22, 2010, petitioner filed its *Comment/Opposition (to Respondent's Motion for Partial Reconsideration)*[4].

In a Resolution[5] dated May 19, 2010, the Court granted petitioner's motion for new trial and allowed petitioner to present in evidence the correct official receipts supporting the P2,430,229,567.30 zero-rated sales made to National Power Corporation (NPC). Meanwhile, the Court held in abeyance the parties' respective Motion for Partial Reconsideration. Thus, petitioner formally offered in evidence the receipts which it claims is the basis for the Court in fully granting its claim.

In a Resolution[6] dated November 18, 2010, the Court admitted petitioner's formally offered exhibits.

On January 24, 2011, petitioner's *Motion for Partial Reconsideration* and respondent's *Motion for Partial Reconsideration* with petitioner's *Comment* were submitted for resolution.

In **respondent's *Motion for Partial Reconsideration,***[7] she avers that Section 112 of the National Internal Revenue Code (**NIRC**) provides that a VAT-registered person, whose sales are zero-rated or effectively zero-rated

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3 *Id.* at 1050.
4 *Id.* at 1051-1077.
5 *Id.* at 1079-1080.
6 *Id.* at 1268-1269.
7 *Id.* at 930-950.

may, within two years *from 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.

Respondent asserts that when the words of the law are clear, plain and free from ambiguity, it must be given its literal meaning and applied without any interpretation. Hence, it is her stance that the Court erred in computing the two-year prescriptive period from the *date of the filing of the returns* and not from the close of the taxable quarter when the sales were made.

Petitioner counter-argues that its judicial claim was filed within the two-year prescriptive period. Hence, its claim has not yet prescribed. Likewise, petitioner posits that it was able to substantiate its claim that it is entitled to the claim for refund or issuance of a tax credit certificate.

We resolve to **DENY respondent's *Motion for Partial Reconsideration*** for lack of merit.

Notably, at the time petitioner filed its Petition for Review with this Court, the then prevailing jurisprudence was: "the two-year prescriptive period for filing a claim for refund or credit of input VAT on zero-rated sales should be reckoned from the **date of filing of the quarterly VAT return**."[8]

From the records of the case, petitioner filed its returns on the following dates:

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[8] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 141104 & 148763, 08 June 2007.

| | Date of Filing through EFPS | Due Date for Filing Administrative and Judicial Claim |
|---|---|---|
| 1st quarter | March 26, 2004 | April 26, 2006 |
| 2nd quarter | July 26, 2004 | July 26, 2006 |
| 3rd quarter | October 25, 2004 | October 25, 2006 |
| 4th quarter | January 25, 2004 | January 25, 2007 |

Here, petitioner filed its administrative claim on December 21, 2005 and its judicial claim on April 24, 2006. As both administrative and judicial claims were timely filed within the two-year prescriptive period, petitioner's claim has not yet prescribed.

In **petitioner's *Motion for Partial Reconsideration with Motion for Partial New Trial*,**[9] it prays for the following:

a) Reconsider the Honorable Court's disallowance of the sales made to Mirant Philippines Energy Corporation, Mirant Philippines Industrial Power Corporation and Mirant Philippines Industrial Power II Corporation amounting to ₱568,628.238.98 as VAT zero-rated sales and allow the refund of the input VAT corresponding to said sales;

b) Reconsider the Honorable Court's disallowance of the claim for refund of input VAT in the amount of ₱3,095,193.62 on services rendered by non-residents supported by BIR Form No. 1600 and allow the refund of the said amount of input VAT; and

c) Grant partial new trial, in accordance with Sections 1 and 7 of Rule 137 of the 1997 Rules on Civil Procedure and Sections 1 and 5 of the Revised Rules of the Court of Tax Appeals, with regard to the P2,430,229,567.20 zero-rated sales made to NPC, which was disallowed by the Honorable Court, to enable petitioner to present as evidence the correct official receipts supporting the said amount of zero-rated sales to NPC.

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[9] *rollo*, pp. 953-974.

Petitioner contends that the Court erred in disallowing its VAT zero-rated sales to Mirant Philippines Energy Corporation, Mirant Philippines Industrial Power Corporation and Mirant Philippines Industrial Power II Corporation for its failure to substantiate and provide legal basis for the same. It argues that it has fully substantiated and offered the needed evidence for said sales with the official receipts and invoices with the words "ZERO RATED SALES" printed on the same.

We cannot agree. In *Mindanao 1 Geothermal Partnership v. Commissioner of Internal Revenue*,[10] this Court ruled that to qualify for VAT zero-rating under Republic Act RA No. 9136,[11] otherwise known as "Electric Power Industry Reform Act of 2001" (EPIRA), the taxpayer must prove that: (1) it is a generation company, and (2) it derived sales from power generation.

In the present case, although petitioner had proven that it is principally engaged in the business of power generation, it however failed to establish that it is a generation company as defined under Section 4(x) in relation to Section 6 of the EPIRA, which states:

> "x x x x
>
> (x) "Generation Company" refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity;"

Moreover, Section 4, Rule 5 of the Rules and Regulations to Implement RA No. 9136 provides that:

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[10] CTA Case No. 6788, October 13, 2005.
[11] An Act Ordaining Reforms in the Electric Power Industry, Amending for the Purpose Certain Laws and for Other Purposes.

Section. 4. Obligations of a Generation Company.

(a) A COC[12] shall be secured from the ERC before commercial operation of a new Generation Facility. The COC shall stipulate all obligations of a Generation Company consistent with this Section and such other operating guidelines as ERC may establish. The ERC shall establish and publish the standards and requirements for issuance of a COC. A COC shall be issued upon compliance with such standards and requirements.

(i) A Person owning an existing Generation Facility or a Generation Facility under construction, shall submit within ninety (90) days from effectivity of these Rules to ERC, when applicable, a certificate of DOE/NPC accreditation, a three (3) year operation history, a general company profile and other information that ERC may require. Upon making a complete submission to the ERC, such Person shall be issued a COC by the ERC to operate such existing Generation Facility.

Nowhere in the records of the case is it shown that petitioner is duly authorized by the Energy Regulation Commission (ERC) to operate facilities used in the generation of electricity. Petitioner did not submit its ERC registration and Certificate of Compliance. Thus, in the absence of evidence that it is a generation company pursuant to the EPIRA, the reported sales to Mirant Philippines Energy Corporation, Mirant Philippines Industrial Power Corporation and Mirant Philippines Industrial Power II Corporation in the amount of P568,628,238.98 cannot qualify for VAT zero-rating under the EPIRA.

On this Court's disallowance of the amount of ₱3,095,193.62 as input VAT on services rendered by non-residents for lack of proof of payment even if the same was supported by BIR Form No. 1600; petitioner posits that the

[12] Certificate of Compliance.

duly filed BIR Form No. 1600 constitutes sufficient documentary substantiation for the claimed input VAT on services rendered by non-residents pursuant to Section 3 of Revenue Regulations (RR) No. 8-02 dated June 13, 2002 and Section 4.110-8 of RR 16-05 dated September 1, 2005, to wit:

**REVENUE REGULATIONS NO. 08-02**

> SUBJECT : Amending Further Pertinent Provisions of Revenue Regulations No. 7-95, as amended, with respect to the Time of Filing of Quarterly VAT Returns; Contents and Submission of Quarterly Total of Monthly Sales and Purchases Per Supplier or Customer, and Providing for the Penalties and Effect of Non-Submission Thereof; and Clarifying Further the Mode of Remittance of VAT Due From Non-Residents.
> TO : All Internal Revenue Officers and Others Concerned.
>
> xxxx
>
> SECTION 3. *Clarification of the Mode of Remittance of VAT Due from Non-residents.* — Sec. 4.110-3 of RR 7-95, as amended, is hereby amended to read as follows:
>
> "Sec. 4.110-3. *Withholding of Creditable and Final Value-Added Tax. –*
>
> xxxx
>
> "(b) *Withholding of Final VAT. — The government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs), as well as private corporations, individuals, estates and trust, whether large or non-large taxpayers, shall withhold ten percent (10%) VAT with respect to the following payments:*
>
> *(1) Lease or use of properties or property rights owned by non-residents;*
>
> *(2) Services rendered to local insurance companies, with respect to reinsurance premiums payable to non-residents; and*

*(3) Other services rendered in the Philippines by non-residents.*

*"In remitting the VAT withheld, whether creditable or final, the withholding agent shall use BIR Form No. 1600-Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld*".

*"The VAT withheld and paid for the non-resident recipient (**remitted using BIR Form No. 1600**), which VAT is passed on to the resident withholding agent by the non-resident recipient of the income, may be claimed as input tax by said VAT-registered withholding agent upon filing his own VAT Return, subject to the rule on allocation of input tax among taxable sales, zero-rated sales and exempt sales. The duly filed BIR Form No. 1600 is the proof or documentary substantiation for the claimed input tax or input VAT."* (Emphasis supplied)

**REVENUE REGULATIONS NO. 16-05**

SUBJECT : Consolidated Value-Added Tax Regulations of 2005

TO : All Internal Revenue Officers and Others Concerned

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SECTION 4.110-8. *Substantiation of Input Tax Credits.* —

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

(1) For the importation of goods — import entry or other equivalent document showing actual payment of VAT on the imported goods.

(2) For the domestic purchase of goods and properties — invoice showing the information required under Secs. 113 and 237 of the Tax Code.

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> (3) For the purchase of real property — public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.
>
> (4) For the purchase of services — official receipt showing the information required under Secs. 113 and 237 of the Tax Code.
>
> A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code.
>
> (b) Transitional input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.
>
> (c) Input tax on "deemed sale" transactions shall be substantiated with the invoice required under Sec. 4.113-2 of these Regulations.
>
> (d) Input tax from payments made to non-residents (such as for services, rentals and royalties) shall be supported by a copy of the Monthly Remittance Return of Value Added Tax Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident **evidencing remittance of VAT due** which was withheld by the payor.
>
> (e) Advance VAT on sugar shall be supported by the Payment Order showing payment of the advance VAT. (Emphasis supplied)

Based on the foregoing regulations, the prescribed BIR Form No. 1600 must be machine validated as to payment or must be supported by official receipt issued by the BIR's Authorized Agent Bank (AAB) in order to be considered as sufficient proof of the **remittance** of the claimed input tax on services rendered by non-residents.

In its Supplemental Formal Offer of Evidence, petitioner submitted the following electronically filed remittance returns with corresponding payment details:

| Exhibit | Month | | Input VAT |
|---|---|---|---|
| WW-1 to WW-2 | Jan-04 | P | 59,660.28 |
| XX-1 to XX-2 | Feb-04 | | 435,894.18 |
| YY-1 to YY-2 | Mar-04 | | 1,298,087.87 |
| ZZ-1 to ZZ-2 | Apr-04 | | 346,771.18 |
| AAA-1 to AAA-2 | May-04 | | 41,427.30 |
| BBB-1 to BBB-2 | Jun-04 | | 295,946.81 |
| CCC-1 to CCC-2 | Jul-04 | | 14,628.50 |
| DDD-1 to DDD-2 | Aug-04 | | 8,794.60 |
| EEE-1 to EEE-2 | Oct-04 | | 306,095.76 |
| FFF-1 to FFF-2 | Nov-04 | | 162,005.71 |
| GGG-1 to GGG-2 | Dec-04 | | 125,293.91 |
| **TOTAL** | | **P** | **3,094,606.10** |

We find the foregoing to be in order. Remittance of the input VAT due and claimed for refund has been sufficiently proven by petitioner, in accordance with Section 4.104-5(e) of Revenue Regulations No. 7-95, as amended by RR 8-02.

With respect to this Court's disallowance of its alleged zero-rated to the National Power Commission (NPC) amounting to P2,430,229,567.30; petitioner alleges that the independent CPA reviewed the correct documents pertaining to petitioner's zero-rated sales to NPC but a different set of documents with the same official receipt reference numbers were photocopied as attachments and inadvertently submitted/offered to the Court.

Petitioner, then, submitted the following official receipts, along with the corresponding schedule and certified photocopy of the Bangko Sentral ng Pilipinas (BSP) Reference Exchange Rate Bulletin for the months of March and April 2004, to support its argument:

| Exhibit | OR # | OR Date | US Dollars | Exchange Rate | Philippine Peso |
|---|---|---|---|---|---|
| VV-1 | 0041 | 3/3/2004 | | | 7,113,057.52 |
| VV-2 | 0043 | 3/8/2004 | 21,454,910.17 | 56.321 | 1,208,361,995.68 |
| VV-3 | 0044 | 3/30/2004 | | | 6,624,806.10 |
| VV-4 | 0045 | 3/30/2004 | | | 6,412,923.87 |
| VV-5 | 0046 | 4/6/2004 | 21,342,606.19 | 56.306 | 1,201,716,784.13 |
| | | **TOTAL** | | | **2,430,229,567.31** |

The same is in order. However, We find that official receipt number 042 issued by petitioner to NPC amounting to P7,232,794.92 is dated outside the period of claim (June 30, 2005); thus should be disallowed.

In fine, petitioner has sufficiently proven its entitlement to additional input VAT, computed as follows:

| | | | |
|---|---|---|---|
| Declared Zero-Rated Sales | | | P 14,915,836,460.42 |
| Less: | Sales to entities other than NPC | | 568,628,238.98 |
| | Zero-Rated Sales covered by OR dated outside the period of claim | | 7,232,794.92 |
| **Adjusted Valid Zero-Rated Sales** | | | **P14,339,975,426.52** |
| | | | |
| | | | |
| Total Input VAT Claim | | | P 103,302,627.88 |
| Less: | Disallowances | | |
| | a. Per ICPA | | 1,092,317.62 |
| | b. Per this Court's further verification | P4,398,315.03 | |
| | Less: Substantiated input VAT | 3,094,606.10 | 1,303,708.93 |
| **Adjusted Valid input VAT** | | | **P 100,906,601.33** |
| | | | |
| Adjusted Valid input VAT | | | P 100,906,601.33 |
| Less: | Output VAT | | 171,240.93 |
| **Adjusted Excess Valid Input VAT** | | | **P 100,735,360.40** |
| | | | |
| Adjusted Valid Zero-Rated Rales | | | P 14,339,975,426.52 |
| Divided by total declared zero-rated sales | | | ÷P 14,915,836,460.42 |
| Multiplied by adjusted excess valid input VAT | | | × P 100,735,360.40 |
| **Adjusted excess input VAT attributable to zero-rated sales** | | | **P 96,846,234.31** |
| Less: Input VAT previously granted by the Court | | | 78,009,891.56 |
| **Additional input VAT** | | | **P 18,836,342.75** |

**WHEREFORE**, premises considered, respondent's "**Motion for Partial Reconsideration**" is hereby **DENIED** for lack of merit while petitioner's "**Motion for Partial Reconsideration**" is hereby **PARTIALLY GRANTED**.

Accordingly, petitioner's claim for refund or issuance of tax credit certificate representing unutilized input VAT for taxable year 2004 is **GRANTED** in the total adjusted amount of **NINETY SIX MILLION EIGHT HUNDRED FORTY SIX THOUSAND AND TWO HUNDRED THIRTY FOUR PESOS AND 31/100 (P96,846,234.31)** or an additional **EIGHTEEN MILLION EIGHT HUNDRED THIRTY SIX THOUSAND AND THREE HUNDRED FORTY TWO PESOS AND 75/100 (P18,836,342.75)** on its previously granted claim of **SEVENTY EIGHT MILLION NINE THOUSAND EIGHT HUNDRED NINETY ONE PESOS AND 56/100 (P78,009,891.56).**

**SO ORDERED.**

**LOVELL R. BAUTISTA**
Associate Justice

**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 Amended 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