REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

KEPCO ILIJAN CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7473

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

JAN 0 5 2009
1:30 p.m.

x---x

DECISION

CASTAÑEDA, JR., J.:

The instant "Petition for Review" seeks that judgment be rendered ordering respondent Commissioner of Internal Revenue to refund or to issue a tax credit certificate to petitioner in the amount of P45,357,998.44, representing the input VAT incurred for calendar year 2004 from its importations and domestic purchases of goods and services for the sale of electricity to the National Power Corporation (NPC).

Petitioner is a domestic corporation duly organized and existing under by virtue of the laws of the Republic of the Philippines, with principal place of business at the 18th Floor, Citibank Tower, 8741 Paseo de Roxas, Salcedo Village, Makati City.[1]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested under the appropriate laws with the authority to carry out all the functions, duties and responsibilities of the said office, including, *inter alia*, the power to decide, approve, and grant refunds and tax credits of erroneously paid or illegally collected internal revenue taxes. He holds office at 5th Floor, BIR National Office Building, Agham Road, Quezon City.[2]

Petitioner alleges that it is likewise a value-added tax (VAT)-registered taxpayer engaged in the production and sale of electricity (as an independent power producer) solely to NPC as its only customer.[3]

In the course of its operation, petitioner made domestic purchases of goods and services and accumulates therefrom creditable input taxes. In its VAT Returns for the four quarters of calendar year 2004, petitioner declared the following zero-rated sales/receipts:

Exhibit	**Year 2004**	**Zero-rated Sales/Receipts**
D	1st quarter	P 1,637,748,690.31
E	2nd quarter	1,820,980,585.76
F	3rd quarter	1,706,051,141.96
G	4th quarter	1,698,793,509.30
	Total:	**P 6,863,573,927.33**

For the four quarters of calendar year 2004, petitioner allegedly incurred expenses representing domestic purchases and importations of goods and

[1] Annex "A", Petition for Review, Docket, p. 13.
[2] Par. 1, Joint Stipulation of Facts and Issues, Docket, pp. 55-56.
[3] Annex "F", Petition for Review, Docket. p. 18.

services for which it incurred an input VAT in the aggregate amount of P45,357,998.44. The aforementioned amount represents the costs incurred by petitioner for the production and sale of electricity to NPC from January 1, 2004 to December 31, 2004.[4]

On December 22, 2003, petitioner filed an Application for VAT Zero-rate with respondent for its sales of electricity to NPC from January 1, 2004 to December 31, 2004, which was subsequently approved[5].

On October 28, 2005, petitioner files a claim for refund of the input VAT incurred from its importations and domestic purchases of goods and services from its actual production and sale of electricity to NPC for calendar year 2004, which remains unacted up to this date.[6] Hence, this Petition for Review filed on April 25, 2006.

Respondent, in his Answer interposed the following Special and Affirmative Defenses:

> "7. Assuming but without admitting that Petitioner filed a claim for refund, the same is still subject to investigation by the Bureau of Internal Revenue;
>
> 8. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;
>
> 9. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable;
>
> 10. It is incumbent upon the Petitioner to show that it has complied with the provisions of Sections 112, 204(C) and 229 of the Tax Code, as amended;
>
> 11. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to

gr

[4] Annexes "B", "C", "D", and "E", Petition for Review, Docket, pp. 14, 15, 16, and 17, respectively.
[5] Annex "F", Petition for Review, Docket, p. 20.
[6] Annex "G", Petition for Review, Docket, p. 19.

discharge said burden is fatal to the claim (*Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206*);

12. Claims for refund are construed strictly against the claimant 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 121*)."[7]

After trial on the merits, this case was submitted for decision on March 19, 2008 considering the Memoranda filed by the parties.

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

"1. Whether Petitioner, as a VAT-registered entity and during the calendar (taxable) year of 2004, actually incurred expenses from importation and domestic purchases of goods and services which represents costs attributable to Petitioner's production and sale of electricity solely to the NPC.

2. Whether Petitioner's sale of electricity to NPC for taxable year 2004 is subject to VAT at zero percent.

3. Whether Petitioner's claim for tax credit certificate of the alleged input VAT for taxable year 2004 is duly substantiated by documentary evidence.

4. Whether Petitioner is entitled to the refund of the amount of P45,357,998.44 representing the input VAT incurred for the four (4) taxable quarters of the calendar (taxable) year of 2004 from its sale of electricity solely to the NPC."[8]

These issues boil down into one major issue:

"Whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P45,357,998.44, representing unutilized input VAT

[7] Answer, Docket, pp. 30-31.
[8] Joint Stipulation of Facts and Issues, pp. 56-57.

on importations and domestic purchases of goods and services attributable to zero-rated sales for calendar year 2004."

The petition is partly meritorious.

Section 112(A) of the NIRC of 1997 lays down the requisites for refunds or issuance of a tax credit certificate of input tax due or paid attributable to zero-rated or effectively zero-rated sales, which reads as follows:

> "**SEC. 112. Refunds or Tax Credits of Input Tax. –**
>
> **(A) Zero-rated or Effectively Zero-rated Sales.** – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax. xxx."

From the foregoing, petitioner must comply with the following requisites to be entitled to a refund:

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

Anent the first requisite, this Court and the Honorable Supreme Court have consistently held in a long line of cases, that NPC is an entity with a special charter[9], which categorically makes it exempt from payment of all taxes, whether direct or indirect, including VAT.[10] Hence, by virtue of the

---

[9] Section 13, R.A. No. 6395, otherwise known as the NPC Revised Charter, as amended by P.D. Nos. 380 and 938.
[10] *Ernesto M. Maceda vs. Hon. Catalino Macaraig*, G.R. No. 88291, May 31, 1991, 197 SCRA 795.

said charter, services rendered by a VAT-registered entity to NPC are effectively subject to zero percent (0%) VAT, in accordance with Section 108(B)(3) of the NIRC of 1997.

Moreover, Republic Act (R.A.) No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001", which took effect on June 26, 2001, as well as its Implementing Rules and Regulations, which took effect on March 22, 2002, confirm the zero-rated nature of the sale of generated power by generation companies to NPC.

Petitioner is an Independent Power Producer (IPP) engaged in the business of generating electricity for sale solely to National Power Corporation, pursuant to the Amended and Restated Energy Conversion Agreement (ECA)[11] for the 1200 MW Ilijan Natural Gas Power Project it executed with NPC. Thus, the power generation services rendered by petitioner to NPC are subject to zero percent (0%) VAT. Respondent even recognized this when he approved petitioner's Application for VAT Zero-rate for petitioner's sale of electricity from January 1, 2004 to December 31, 2004.[12]

In its VAT Returns for the four quarters of calendar year 2004, petitioner declared the following zero-rated sales/receipts with the aggregate amount of P6,863,573,927.33:

Exhibit	Year 2004	Zero-rated Sales/Receipts
D	1st quarter	P 1,637,748,690.31
E	2nd quarter	1,820,980,585.76
F	3rd quarter	1,706,051,141.96

gr

[11] Exhibit "C"; Exhibit "K", page 4.
[12] Exhibit "B"

G	4th quarter	1,698,793,509.30
	Total	P 6,863,573,927.33

As per verification, the abovementioned zero-rated sales/receipts were derived from petitioner's sale of electricity to NPC, as seen in the official receipts issued by petitioner to NPC for calendar year 2004.[13]

However, this Court noted that the total amount of zero-rated sales as reflected in the official receipts is higher by P484,973,811.49 when compared with the total amount of zero-rated sales declared in the Quarterly VAT Returns. Such discrepancy was explained by the Court-commissioned Independent CPA in his Report[14], in the following manner:

> "3. We have determined based on the Company's OR's that it has no receipts that are subject to the 10% VAT or exempt from VAT. Our comparison of the amount of zero-rated sales supported with OR's and the amount of zero-rated sales reported in the VAT returns showed a discrepancy of P484,973,811.49, as follows:

Zero-rated sales per ORs	P 7,348,547,738.82
Zero-rated sales per VAT returns	6,863,573,927.33
Difference	P 484,973,811.49

> Our examination of the Company's documents showed that the above difference pertains to accruals of revenue made by the Company during the year, adjustments of energy fees by the NPC and revenues earned for the period November 25 – December 25, 2003 in the amount of P562,969,796.74 which was received in the year 2004. The Company and the NPC has a 30-day credit term for collection. We have verified that the amount of P562,969,796.74 was reported by the Company in its 2003 VAT returns. The accrued revenue reported in the VAT returns amounted to P52,968,913.56 which pertain to a 6.5 days accrual to make up for the 365 calendar year in 2004, while the adjustment of energy fees by the NPC amounted to P25,027,071.56."

---

[13] Exhibits "J-1" to "J-14", "J-19" to" J-24", "J-26", "J-27","J-31" to "J-34" as summarized in Exhibit "BBB".

[14] Exhibit "M".

From the foregoing, the reporting of the amount of P484,973,811.49 was made earlier, *i.e.*, in calendar year 2003 when it was earned, rather than in calendar year 2004 when it was collected. However, such early reporting does not affect the present claim. What is important is that the gross receipts in the amount of P484,973,811.49 was actually reported by petitioner in its VAT Returns, and was duly supported by zero-rated VAT official receipts.

Respondent, in opposition to petitioner's claim, argues that the official receipts submitted by petitioner in support of its zero-rated sales/receipts failed to comply with the invoicing requirements under Section 4.108-1 of Revenue Regulations No. 7-95, because the word "zero-rated" was merely stamped and not imprinted thereon. Section 4.108-1 states as follows:

> "**SEC. 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 the 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."

This Court finds that the official receipts presented substantially complied with the VAT invoicing requirements. In Revenue Memorandum Order No. 9-00, it is stated that:

> "SECTION 3. Sales of goods, properties or services made by a VAT-registered supplier to a BOI registered exporter shall be accorded automatic zero-rating, i.e., without necessity of applying for and securing approval of the application for zero-

gr

> rating as provided in Revenue Regulations No. 7-95, subject to the following conditions.
>
> xxx xxx xxx
>
> (5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly-registered VAT invoice with the words **'zero-rated' stamped thereon** in compliance with Sec. 4108-1(5) of RR 7-95. The supplier must likewise indicate in the VAT invoice the name and BOI-registry number of the buyer." (*Emphasis supplied*)

Although the said order refers to sales of goods made by a VAT-registered supplier to a Board of Investments-registered exporter, the same shows that the Bureau of Internal Revenue prescribes the practice of stamping the word "zero-rated" on invoices.

Moreover, Revenue Memorandum Order No. 22-04 states that duly-registered non-VAT receipts/sales or commercial invoices must bear the following information: "the word 'ZERO-RATED' (to be prominently written or rubber stamped on the face of the invoice/receipt)[15]."

Accordingly, the mere stamping by petitioner of the word "zero-rated" should be treated as substantial compliance with the provisions of the law. And the records show that the official receipts presented substantially complied with the said VAT invoicing requirement.

Anent the second requisite, petitioner presented its schedules of input VAT on domestic purchases and importation[16], Import Entry and Internal Revenue Declarations[17], and suppliers' invoices and official

[15] Revenue Regulations No. 2-88.
[16] Exhibits "N", "Q", "V", "W", "X", "Y", "Z", "AA", "BB", "CC", "DD", "EE", "FF", "GG", "HH", "II", "JJ", "KK", "LL", "MM", "NN", "OO", "PP", "QQ", "RR", and "SS".
[17] Exhibits "HH-1" to "HH-5", "II-1" to "II-5", "JJ-1" to "JJ-8", "KK-1" to "KK-16", "LL-1" to "LL-12", "MM-1" to "MM-4", "NN-1" to "NN-4", "OO-1" to "OO-10", "PP-1" to "PP-6", "QQ-1" to "QQ-7", "RR-1" to "RR-11", and "SS-1".

receipts[18] in support of the reported unutilized input taxes for the four quarters of calendar year 2004 in the amount of P45,357,998.44, broken down as follows:

Exhibit	Year 2004	Input VAT
D	1st quarter	P 11,822,153.20
E	2nd quarter	11,683,307.06
F	3rd quarter	10,475,297.25
G	4th quarter	11,377,240.93
	Total	P 45,357,998.44

In his Report, the Independent CPA recommended the disallowance of petitioner's input VAT claim of P2,332,067.15[19], to wit:

"1. The company provided us with the summary of its unutilized input taxes which showed the details of the import-entry declarations, official receipts and sales invoices issued by various suppliers for the taxable year 2004. We were able to account for the existence and compliance of the original copies of the import-entry declarations, sales invoices and official receipts issued by these suppliers with existing regulations except for the items which we propose to be disallowed due to certain exceptions as detailed below:

Details of the above disallowed input taxes (Exhibits P and S) are as follows:

Description	Amount
Domestic Purchases	
Supported by non-VAT Official Receipts and Invoices	P 76,149.28
Invoices and ORs are not issued in the name of KEILCO	29,876.08
Invoices and ORs do not bear BIR authority to print	71,818.25
Discrepancy with the amounts per Invoice and	
per Summary list	606,786.44
Invoices and ORs that do not fall within the period covered	998,111.71
Missing Official Receipts for services rendered or	
invoices for goods sold	382,018.50
Miscellaneous Income due to penalty charges for late	
deliveries which should be deducted from the total	

Jr

[18] Exhibits "V-1" to "V-53", "W-1" to "W-62", "X-1" to "X-82", "Y-1" to "Y-93", "Z-1" to "Z-60", "AA-1" to "AA-77", "BB-1" to "BB-82", "CC-1" to "CC-77", "DD-1" to "DD-103", "EE-1" to "EE-124", "FF-1" to "FF-89", and "GG-1" to "GG-84".

[19] Exhibit "M", pages 6 to 7.

Input taxes claimed	50,711.29
Importations	
Invoices and ORs that do not fall within the period covered	18,188.00
Missing Official Receipts for services rendered or	
invoices for goods sold	98,407.00
Discrepancy between amount claimed and import	
VAT schedule	0.60
TOTAL	**P2,332,067.15**

This Court, however, finds it proper to tabulate the disallowances by the Independent CPA per quarter, the details of which are as follows:

Reason for Disallowance	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Supported by non-VAT Official Receipts and Invoices	P 66,733.84	P 508.62	P 7,379.55	P 1,527.27	P 76,149.28
Invoices and ORs are not issued in the name of KEILCO	12,978.60	3,568.18	5,820.00	7,509.30	29,876.08
Invoices and ORs do not bear BIR authority to print	-	44,814.14	10,175.70	16,828.41	71,818.25
Discrepancy with the amounts per Invoice and per Summary list	38,226.52	298,876.35	306,648.31	(36,964.74)	606,786.44
Invoices and ORs that do not fall within the period covered	998,111.71	-	-	-	998,111.71
Missing Official Receipts for services rendered or invoices for goods sold	107,387.59	58,241.23	135,941.49	80,448.19	382,018.50
invoices for goods sold					
Miscellaneous Income due to penalty charges for late deliveries which should be deducted from the total Input taxes claimed	18,744.50	3,942.32	18,463.95	9,560.52	50,711.29
Importations					
Invoices and ORs that do not fall within the period covered	18,188.00				18,188.00
Input taxes, the original official receipts of which were missing	19,661.00	26,091.00	35,211.00	17,444.00	98,407.00
Discrepancy between amount claimed and import VAT schedule				0.60	0.60
TOTAL	**P1,280,031.76**	**P436,041.84**	**P519,640.00**	**P96,353.55**	**P2,332,067.15**

Je

In addition to the exceptions amounting to P2,332,067.15 noted by the Independent CPA, this Court finds that the following input taxes in the total amount of P412,640.85 supported by invoices/official receipts with pre-printed "TIN-V" instead of "TIN-VAT" must be disallowed:

SUPPLIER'S NAME	Exhibit	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Balisong Intelligence & Security Agency, Inc.	V-005	P 68,380.41				P 68,380.41
Balisong Intelligence & Security Agency, Inc.	V-022	68,265.74				68,265.74
Balisong Intelligence & Security Agency, Inc.	X-048	68,265.74				68,265.74
Balisong Intelligence & Security Agency, Inc.	Z-004		P 67,978.88			67,978.88
GAD Builders & Enterprises	BB-014		54,773.89			54,773.89
SHUR-WAY Industries.	BB-043			P22,012.16		22,012.16
STANDPHIL Corporation	GG-016				P52,699.50	52,699.50
SHUR-WAY Industries	GG-043				10,264.55	10,264.55
TOTAL		**P204,911.88**	**P122,752.76**	**P22,012.16**	**P62,964.05**	**P412,640.85**

Petitioner in its Memorandum, objects to the disallowance made by the Independent CPA involving (1) invoices and official receipts which do not bear the BIR authority to print in the amount of P71,818.25 and (2) invoices and official receipts that do not fall within the period covered for domestic purchases in the amount of P998,111.71 and for importations in the amount of P18,188.00.[20]

Petitioner argues that the issue on the disallowed input VAT of P71,818.25 supported by invoices and official receipts which do not bear the BIR authority to print has already been squarely ruled upon by the Supreme Court in the case of *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*[21], where the High Court held that there is no law requiring

[20] Docket, pp. 206–208.
[21] G.R. No. 166732, April 27, 2007.

petitioner's BIR authority to print to be reflected or indicated in the sales invoices.

However, notwithstanding the said ruling, the High Tribunal also held that entities engaged in business are required to secure from the BIR an authority to print receipts or invoices and to issue duly registered receipts or invoices, to wit:

> "It is clear from the foregoing that while entities engaged in business are required to secure from the BIR an authority to print receipts or invoices and to issue duly registered receipts or invoices, it is not required that the BIR authority to print be reflected or indicated therein.
>
> xxx xxx xxx
>
> It bears reiterating that while the pertinent provisions of the Tax Code and the rules and regulations implementing them require entities engaged in business to secure a BIR authority to print invoices or receipts and to issue duly registered invoices or receipts, it is not specifically required that the BIR authority to print be reflected or indicated therein. Indeed, **what is important with respect to the BIR authority to print is that it has been secured or obtained by the taxpayer, and that invoices or receipts are duly registered**."(*Emphasis supplied*)

In the present case, petitioner failed to show that (1) the BIR authority to print has been secured by petitioner's suppliers as to the invoices and official receipts covering the input taxes of P71,818.25; or (2) that the said invoices and official receipts were duly registered with the BIR. Thus, the disallowance of the input VAT claim of P71,818.25 in order.

With respect to the disallowance for invoices and official receipts, in the amounts of P998,111.71 and P18,188.00[22] which do not fall within the period covered, petitioner contends that said invoices and official receipts

[22] aggregate amount of P1,016,299.70,

should be admitted to support petitioner's claim for refund since the Independent CPA categorically stated that although said invoices and official receipts fall outside the period of claim, he was able to verify that these values were nonetheless never claimed by petitioner in calendar year 2003; and that there was no double-claiming in relation to these invoices and official receipts. Since there was no double-claiming, said values should not be disallowed and must form part of the present claim.

This Court disagrees.

The input taxes of P1,016,299.70 should have been declared in the corresponding taxable quarters when the purchases of goods were **consummated** as evidenced by VAT invoices and for purchase of services, **upon payment of compensation or fee** as evidenced by VAT official receipts, as held by this Court in the case of *Lepanto Consolidated Mining Co. vs. Commissioner of Internal Revenue*[23], to wit:

> "The alleged unutilized input VAT of P5,820,863.87 should be denied since the supporting invoices and official receipts thereof bore dates which were earlier than the period of petitioner's claim. Section 110(A)(2) of the 1997 Tax Code provides:
>
> 'Sec. 110. *Tax Credits.* —
> A. *Creditable Input Tax.* —
>
> 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
>
> However, in the case of **purchase of services**, lease or use of properties, the input tax shall be creditable to the purchaser, lessee

JL

[23] CTA Case Nos. 6368 and 6480, dated December 15, 2004.

or licensee **upon payment** of the compensation, rental, royalty or fee.'

It is clear from the above-quoted provisions of law that for purchases of goods, the corresponding input value added taxes of which is creditable to the purchaser upon consummation of sale, that is, upon the issuance of the corresponding invoice. On the other hand, for purchases of services, the corresponding input value added taxes of which is creditable to the purchaser upon payment of compensation, rental, royalty, or fee, that is, upon the date of official receipt. Section 110(A) is explicit. It states 'upon consummation', in the case of domestic purchases of goods, and 'upon payment', in the case of purchases of services. It does not provide any qualification, such as 'upon delivery of invoice or official receipt' which is the main thesis of petitioner's contention.

In a resolution of the case entitled ***Telecommunications Technologies Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6168, promulgated on July 28, 2004***, this Court elucidated that 'the input VAT on domestic purchases of goods or properties shall be allowed as tax credit to the purchaser upon consummation of sale, which means upon issuance by the seller of the VAT sales invoices evidencing the sale of goods/properties. On the other hand, the input VAT on purchases of services shall be available as tax credit to the purchaser only upon payment of the compensation or fee, *i.e.*, upon issuance by the seller of the VAT official receipt evidencing receipts of the payment for services performed or yet to be performed.'

Thus, it is indubitable on the part of the petitioner to declare the input value added taxes on domestic purchases of goods and services at the end of the corresponding taxable quarter where purchases of goods were consummated, as evidenced by VAT invoice and for payment of services, as evidenced by VAT official receipt.

Therefore, the amount of input VAT of P5,820,863.87 which is supported by VAT invoices and official receipts dated earlier than the period of petitioner's claims can no longer be claimed for refund pursuant to Section 110(A) in relation with Section 112(A) of the 1997 National Internal Revenue Code."

Thus, out of the total claimed input taxes of P45,357,998.44, only the amount of P42,613,290.44 is duly substantiated by the required documentary evidence under Sections 110(A) and 113(A) of the NIRC of 1997, as implemented by Sections 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations No. 7-95, which is computed as follows:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Input VAT Claim	P11,822,153.20	P11,683,307.06	P10,475,297.25	P11,377,240.93	P45,357,998.44
Less: Disallowances Per CPA report	P 1,280,031.76	P 436,041.84	P 519,640.00	P 96,353.55	P 2,332,067.15
Per this Court's further verification	204,911.88	122,752.76	22,012.16	62,964.05	412,640.85
	P 1,484,943.64	P 558,794.60	P 541,652.16	P 159,317.60	P 2,744,708.00
Substantiated Input VAT	**P10,337,209.56**	**P11,124,512.46**	**P 9,933,645.09**	**P11,217,923.33**	**P42,613,290.44**

As to the third requisite, petitioner's 2004 Quarterly VAT Returns showed that it had no taxable or exempt sales/receipts but only zero-rated sales/receipts. Accordingly, the substantiated input VAT of P42,613,290.44 is entirely attributable to the reported zero-rated sales/receipts of P6,863,573,927.33.

Anent the fourth requisite, the input tax of P42,613,290.44 was not applied against any output VAT since petitioner had no taxable sales/receipts for the four quarters of calendar year 2004. Although the claimed input tax was carried-over to the succeeding quarters of calendar year 2005, the same was deducted as any "Any VAT Refund/TCC Claimed"[24] from the Total Available Input Tax as of the fourth quarter of calendar year 2005. *Ergo*, petitioner could not have possibly utilized the input VAT of P42,613,290.44 in the succeeding quarters. ge

[24] Exhibit "I-1" in relation to Exhibits "L-1" and "L-2"; Exhibit "K", pages 14 and 15.

Regarding the fifth requirement, the Supreme Court in the recent case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*[25] held that the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund under Section 112(A) of the NIRC of 1997 starts from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not. The pertinent portion of the said Decision is quoted hereunder for easy reference, thus:

> "The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Sec. 112(A) of the NIRC pertinently reads:
>
> > (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: xxx. (Emphasis ours)
>
> **The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not**. As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112(A), '[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued.' Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. **The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made,**

[25] G.R. No. 172129, September 12, 2008.

> **regardless when the input VAT was paid.**" (*Emphasis supplied*)

Hence, based on the aforecited jurisprudence, the reckoning of the prescriptive period shall commence from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT, regardless of whether said tax was paid or not.

The present claim involves petitioner's input VAT incurred for the four quarters of calendar year 2004. Counting from the close of each of the said taxable quarters, petitioner had until the following dates within which to file its claim both in the administrative and judicial levels:

Taxable Quarter		**Last Day to File Claim for Refund**
2004	**End Date**	
1st quarter	March 31, 2004	March 31, 2006
2nd quarter	June 30, 2004	June 30, 2006
3rd quarter	September 30, 2004	September 30, 2006
4th quarter	December 31, 2004	December 31, 2006

Perusal of the records of the case reveals that the administrative claim was filed on October 28, 2005[26] and the Petition for Review filed on April 25, 2006.

While the administrative claim falls within the two-year prescriptive period, the Petition for Review falls outside of the two-year prescriptive period insofar as the input VAT claim for the first quarter of calendar year 2004 is concerned. Thus, this Court denies petitioner's substantiated input VAT claim in the amount of P10,337,209.56, covering the first quarter of calendar year 2004 due to prescription. *gr*

[26] Exhibit "H-1".

However, the remaining substantiated input VAT claim covering the second, third, and fourth quarters of calendar year 2004 in the amount of P32,276,080.88 fall within the two-year prescriptive period.

Considering all the foregoing, this Court finds petitioner to have sufficiently proven that it is entitled to a refund or issuance of tax credit certificate representing unutilized input VAT attributable to zero-rated sales for the four quarters of calendar year 2004, but in the reduced amount of P32,276,080.88.

WHEREFORE, the Petition for Review is hereby **PARTIALLY GRANTED**. **ACCORDINGLY**, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** amounting to **THIRTY TWO MILLION TWO HUNDRED SEVENTY SIX THOUSAND EIGHTY AND 88/100 PESOS (P32,276,080.88)** to petitioner Kepco Ilijan Corporation, representing its unutilized input VAT for the second, third, and fourth quarters of calendar year 2004.

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest 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.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice