REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

CBK POWER COMPANY LIMITED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8246

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CBK POWER COMPANY LIMITED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8302

Members:
BAUTISTA, *Chairperson, and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

JUN 10 2014
3:29 p.m.

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DECISION

BAUTISTA, J.:

The consolidated Petition for Review filed on March 30, 2011,[1] and Amended Petition for Review filed on April 8, 2013,[2] pursuant to Section 112(A) of the 1997 National Internal Revenue Code, as amended,[3] seek

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[1] *Records*, CTA Case Nos. 8246 & 8302, pp. 1-49, with Annexes; docketed as CTA Case No. 8246.

[2] *Id.*, at pp. 1439-1642, with Annexes; docketed as CTA Case No. 8302.

[3] 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: *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 Pilipinas* (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 attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

for the issuance of tax credit certificates in the respective amounts of ₱17,784,968.91, for unutilized input taxes on local purchases and importations of goods other than capital goods, local purchases of services, payments for services rendered by non-residents, including unutilized amortized input taxes on capital goods, all attributable to zero-rated sales covering the period from January 1, 2009 to March 31, 2009; and ₱5,781,915.24, for unutilized input taxes on importations of goods other than capital goods, attributable to zero-rated sales covering the period from April 1, 2009 to June 30, 2009.

FACTS OF THE CASE

Petitioner, CBK Power Company Limited, is a partnership duly organized and existing under and by virtue of the laws of the Philippines, with principal office at the National Power Corporation Compound, Kalayaan, Laguna.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including, *inter alia*, the power to decide, approve and grant refunds or tax credit of erroneously or illegally collected internal revenue taxes as provided by law, with office address at the Bureau of Internal Revenue ("BIR") National Office Building, Diliman, Quezon City.

On November 26, 2010, petitioner filed with the BIR Revenue District Office No. 55 of Laguna, its administrative claim in the amount of ₱17,784,968.91, for unutilized input taxes on local purchases and importations of goods other than capital goods, local purchases of services, payments for services rendered by non-residents, including unutilized amortized input taxes on capital goods covering the period from January 1, 2009 to March 31, 2009.

Also, on February 24, 2011, petitioner filed with the BIR Large Taxpayers Service, Revenue District Office No. 121, BIR National Office Building, Agham Road, Diliman, Quezon City, its administrative claim in the amount of ₱31,680,290.87, for unutilized input taxes on its local purchases and importations of goods other than capital goods, local purchases of services, including unutilized amortized input taxes on capital goods covering the period from April 1, 2009 to June 30, 2009.

Due to respondent's inaction, on March 30, 2011, petitioner filed a Petition for Review, docketed as *CTA Case No. 8246*,[4] regarding its claim in the amount of ₱17,784,968.91, covering the period from January 1, 2009 to March 31, 2009.

On June 27, 2011, respondent filed her Answer,[5] interposing the following Special and Affirmative Defenses:

> "4. Petitioner is not entitled to [a] refund or tax credit in the amount of ₱17,784,968.91 representing alleged unutilized input tax because it failed to submit all the necessary and relevant documents pertaining to the above-mentioned amount with respondent *(sic)* in the administrative claim for refund or tax credit;
>
> 5. In an administrative claim for refund or tax credit of input taxes attributable to zero-rated sales, a VAT[-]registered person must submit complete documents to support its application for refund pursuant to Section 112(D) *(sic)* of the Tax Code of 1997. Otherwise, there will be no sufficient compliance with the filing of an administrative claim for refund, which is a condition *sine qua non* prior *(sic)* to the filing of judicial claim;
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> 6. To support its claim, it is imperative for petitioner to prove and present the following, *viz*:
>
>> a. The registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-a(a) of Revenue Regulations No. 7-95, and Section 236 of the National Internal Revenue Code of 1997 (NIRC of 1997);
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>> 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 NIRC of 1997;
>>
>> c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT

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[4] *Supra*, note 1.
[5] *Records*, CTA Case Nos. 8246 & 8302, pp. 68-73.

refund pursuant to Revenue Memorandum Order No. 53-98. It is worthy of emphasis that Section 112(D) *(sic)* of the NIRC of 1997 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 [the] immediate dismissal of the petition for review;

d. That the input taxes of ₱47,425,306.79 *(sic)* allegedly paid by petitioner on its domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods for the period April 1, 2008 to December 31, 2008 *(sic)* 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 claim for tax credit or refund of [its] unutilized input tax (VAT) was filed within two (2) year[s] after the close of the taxable quarter when the sales were made in accordance with Sections 112(A) and (D) *(sic)* of the NIRC of 1997;

f. The judicial claim was filed within the period prescribed in Section 112(D) *(sic)* of the NIRC of 1997;

g. That petitioner's domestic purchases of goods and services were made in the course of the 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 NIRC of 1997, and in pursuance *(sic)* to Section 4.104-5(a) and (b) of Revenue Regulations No. 7-95 (RE: Substantiation of Claims for Input Tax Credit); [and]

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

7. In *Ang Tibay vs. Court of Industrial Relations, G.R. No. L-46496*, the Highest Court stated the primary rights which must be respected even in an administrative proceeding:

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Petitioner is mandated to present evidence to support its administrative claim and such evidence will be used as basis for the decision of the quasi-judicial body. If there is lack of evidence, then the decision will probably be contrary to petitioner. Only the evidence presented will be reviewed by the quasi-judicial body. An administrative claim is meant to expedite the proceedings where all the relevant evidence is presented. Petitioner, however, instead chose not to submit any evidence to support its claim; and

8. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund *(sic)* 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 the common burden cannot be permitted to exist upon value implications **(Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466, cited in Collector of Internal Revenue vs. Manila Jockey Club, Inc., 98 Phil. 670)**."[6]

On the other hand, on June 28, 2011, petitioner filed another Petition for Review, docketed as *CTA Case No. 8302*,[7] regarding its claim in the amount of ₱31,680,290.87, covering the period from April 1, 2009 to June 30, 2009.

On September 2, 2011, respondent filed her Answer,[8] interposing the following:

"5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR);

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[6] *Id.*, at pp. 69-72.
[7] *Records*, CTA Case No. 8302, pp. 1-44, with Annexes.
[8] *Id.*, at pp. 61-67.

6. The amount of ₱31,680,290.87 being claimed by petitioner as alleged unutilized input VAT on its alleged local purchases and importations of goods other than capital goods, alleged local purchases of services, including alleged unutilized amortized input taxes on capital goods exceeding ₱1 Million, for the period April 1, 2009 to June 30, 2009 allegedly attributable to zero-rated sales is not properly documented;

7. Petitioner must prove that it has complied with the provisions of Section 112(A) and 112(B) *(sic)* of the Tax Code of 1997, as amended;

8. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98, **otherwise there would be no sufficient compliance with the filing of the administrative claim for refund, the administrative claim thereof being mere pro-forma, which is a condition *sine qua non* prior** *(sic)* **to the filing of judicial claim in accordance with the provision of Section 229 of the Tax Code of 1997.** Further Section 112(C) of the Tax Code of 1997, as amended, **requires the submission of complete documents in support of the application filed with the BIR before the 120-day audit period will apply, and before the *taxpayer could avail of judicial remedies* as provided for in law**. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants [the] immediate dismissal of the petition for review;

9. Petitioner must likewise prove that it has complied with the invoicing requirements mentioned in Sections 110 and 113 of the Tax Code of 1997, as amended, in relation to the provisions of Revenue Regulations [No.] 7-95;

10. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund *(sic)* and failure to sustain the burden is fatal to the claim for refund/credit **(Asiatic Petroleum Co., vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue vs. Manila Jockey Club, Inc., 98 Phil. 670)**;

11. Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person claiming the exemption **(Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., *et al.*, 209 SCRA 87 (1999)** and further, 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)**;

12. Petitioner must likewise comply with the provisions of Section 112(C) of the Tax Code of 1997, as amended, which provides:

xxx xxx xxx

13. The power of taxation will not be surrendered except in words too plain to be mistaken. The reason is that the State cannot strip itself of this highest attribute of sovereignty – its most essential power of taxation – by vague or ambiguous language. **Since tax refunds are in the nature of tax exemptions, these are deemed to be in derogation of sovereign authority and to be considered in *strictissimi juris* against the person or entity claiming the exception** ***(Commissioner of Internal Revenue vs. Solidbank Corporation, 416 SCRA 436)***. It must be indubitably shown to exist, for every presumption is against it ***(Davao Light & Power Co., Inc., vs. Commissioner of Customs, 44 SCRA 122)***.

Ignoring the above teaching of the Supreme Court and adopting the interpretation favorable to petitioner cannot be done because it runs afoul of its ruling that **those who claim to be exempt from the payment (here, claim for a refund) of a particular tax must do so under clear and unmistakable terms found on the statute**. They must be able to point to some positive provision, not merely a vague implication ***(Asiatic Petroleum Co., Ltd. vs. Llanes, 49 Phil. 466)***, of the law creating that right ***(Espanol vs. Philippine Veterans Administration, 137 SCRA 314)***."[9]

On October 14, 2011, the Court ordered the consolidation of *CTA Case No. 8302*, with *CTA Case No. 8246*, pursuant to Section 1 of Rule 31 of the 1997 Rules of Civil Procedure.[10]

On December 1, 2011, for failure of respondent to appear during Pre-Trial, and upon motion of petitioner, the Court declared the former

[9] *Id.*, at pp. 62-66.
[10] *Id.*, at pp. 81-82.

as in default and allowed the latter to present its evidence *ex-parte*.[11] The same was confirmed in a Resolution dated December 23, 2011.[12]

On May 2, 2013, the Court granted petitioner's Motion for Leave of Court to File Attached Amended Petition for Review for *CTA Case No. 8302*.[13] Accordingly, the Amended Petition for Review was admitted by the Court.

In the Amended Petition for Review for *CTA Case No. 8302*, petitioner seeks the reduced amount of ₱5,781,915.24 for unutilized input taxes on its importations of goods other than capital goods for the period covering April 1, 2009 to June 30, 2009,[14] taking into consideration the Letter dated February 19, 2013 issued by respondent.

On June 11, 2013, the Court submitted the consolidated cases for decision.[15]

Hence, this Decision.

ISSUE

The sole issue for the Court's determination is that:

WHETHER OR NOT PETITIONER IS ENTITLED FOR THE ISSUANCE OF TAX CREDIT CERTIFICATES IN THE TOTAL AMOUNT OF ₱23,566,884.15 FOR THE PERIODS COVERING JANUARY 1, 2009 TO MARCH 31, 2009, AND APRIL 1, 2009 TO JUNE 30, 2009.

RULING OF THE COURT

The Court finds the Petition for Review and Amended Petition for Review partly meritorious.

[11] *Records*, CTA Case Nos. 8246 & 8302, p. 125.
[12] *Id.*, at p. 127.
[13] *Id.*, at pp. 1653-1655.
[14] *Id.*, at pp. 1439-1642.
[15] *Id.*, at p. 1701.

The subject claim in the amount of ₱23,566,884.15, consisted of the following input taxes:

		1st Quarter - 2009[16]	2nd Quarter - 2009[17]	Total Input VAT Claim
Input Taxes on Importations of Goods Other Than Capital Goods		₱ 335,565.00[18]	₱ 5,781,915.24[19]	₱ 6,117,480.24
Input Taxes on Domestic Purchases of Goods Other Than Capital Goods		6,024,501.87[20]	-	6,024,501.87
Input Taxes on Domestic Purchases of Services		10,414,723.92[21]	-	10,414723.92
Input Taxes on Services Rendered by Non-Residents		474,530.30[22]	-	474,530.30
Amortization of Input Taxes on Capital Goods Exceeding ₱1 Million:				
Input Tax Deferred on Capital Goods Exceeding ₱1Million from Previous Quarter	4,626,744.08[23]			
Add: Input Tax on Capital Goods Exceeding ₱1Million Purchased this Quarter	1,469,860.78[24]			
Total Unamortized Input Tax on Capital Goods Exceeding ₱1Million	6,096,604.86			
Less: Input Tax on Capital Goods Exceeding ₱1Million Deferred for the Succeeding Period	5,560,957.04[25]			
Amortization of Input Taxes on Capital Goods Exceeding ₱1Million		535,647.82	-	535,647.82
TOTAL CLAIMED UNUTILIZED INPUT TAXES		**₱17,784,968.91**	**₱5,781,915.24**	**₱23,566,884.15**

Accordingly, Section 112(A) of the 1997 National Internal Revenue Code ("NIRC"), as amended, allows the refund or tax credit of unutilized input taxes attributable to zero-rated or effectively zero-rated sales, to wit:

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16 *Exhibit "BB-1-002."*
17 *Supra*, note 14.
18 *Exhibit "BB-1-002,"* line 21H.
19 *Exhibit "BB-2-002,"* line 21H.
20 *Exhibit "BB-1-002,"* line 21F.
21 *Exhibit "BB-1-002,"* line 21J.
22 *Exhibit "BB-1-002,"* line 21L.
23 *Exhibit "BB-1-002,"* line 20B.
24 *Exhibit "BB-1-002,"* line 21D.
25 *Exhibit "BB-1-002,"* line 23A.

> "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: *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 Pilipinas* (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 of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

Thus, enumerated hereunder are the requisites that must be complied with:

1) the claimant must be a value-added tax ("VAT")-registered person;
2) there must be zero-rated or effectively zero-rated sales;
3) input taxes were incurred or paid;
4) input taxes are attributable to zero-rated or effectively zero-rated sales;
5) input taxes were not applied against any output VAT liability; and
6) both administrative and judicial claims for refund were seasonably filed.

At the outset, the Court finds it appropriate to first determine petitioner's compliance with the sixth requirement – *that the administrative and judicial claims were timely filed.*

As earlier-quoted, Section 112(A) of the 1997 NIRC, as amended, provides that the application for refund or tax credit of unutilized excess input VAT must be filed within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. Based on the records, petitioner filed its administrative claim on November 26, 2011 covering the period from January 1, 2009 to March 31, 2009; while it filed on February 24, 2011, its administrative claim covering the period from April 1, 2009 to June 30, 2009. Applying therefore Section 112(A) of the 1997 NIRC, as amended, petitioner had until March 31, 2011 and June 30, 2011, respectively, within which to file its administrative claims for refund/tax credit. The Court, thus, finds the administrative claims filed well within the two (2)-year period.

Also, Section 112(C) of the 1997 NIRC, as amended, provides as follows:

> "Sec. 112. *Refunds or Tax Credits of Input Tax.* -
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> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals."

It has been settled that the Commissioner of Internal Revenue has one hundred twenty (120) days from the date of submission of the complete documents in support of the application for tax refund/credit within which to grant or deny the claim; and in case of full or partial denial thereof, the taxpayer has thirty (30) days from receipt within which to elevate the same to this Court; nonetheless, if the Commissioner of Internal Revenue fails to act thereon within the allotted one hundred twenty (120) days, the taxpayer has thirty (30) days to appeal the said inaction to this Court.

Based on the records, the following hereunder are the relevant dates:

CTA Case No.	Taxable Quarter-CY 2009	Close of Taxable Quarter	Date of Filing of Administrative Claim	End of 120 days	End of 30 days from the lapse of the 120 days	Date of Filing of Judicial Claim
8246	1st Qtr	March 31, 2009	November 26, 2010	March 26, 2011	April 25, 2011	March 30, 2011[26]
8302	2nd Qtr	June 30, 2009	February 24, 2011	June 24, 2011	July 24, 2011	June 28, 2011[27]

From the foregoing, the judicial claims filed by petitioner for the first (1st) and second (2nd) quarters of taxable year 2009 were timely filed.

To continue, for the first requisite – *that the claimant must be a VAT-registered person* – as borne by the records, petitioner is registered as a VAT entity with TIN/VAT No. 205-760-474-000; it was issued a BIR Certificate of Registration OCN 1RC0000050243 dated April 10, 2000 by the BIR Revenue District Office No. 55 (San Pablo City, Laguna), which was updated on May 11, 2005, thus, it was issued a BIR Certificate of Registration OCN 1RC0000195405; and that on January 12, 2011, it received a letter from respondent dated December 21, 2010, informing it about its classification as a Large Taxpayer under the Large Taxpayers Service pursuant to Revenue Regulations No. 17-2010, dated November 16, 2010, and under the jurisdiction of Revenue District Office No. 121 effective January 1, 2011,[28] thus, the Large Taxpayers Service issued a BIR Certificate of Registration OCN 8RC0000019901 dated April 10, 2000.[29]

From the foregoing, petitioner is a VAT-registered person, and has clearly complied with the first requisite.

[26] *Supra*, note 1.
[27] *Supra*, note 7.
[28] *Records*, p. 2 and p. 68.
[29] *Exhibit "M."*

Onto the second requisite – *that there must be zero-rated or effectively zero-rated sales* – Section 108(B)(7) of the 1997 NIRC, as amended, provides that sale of power generated through renewable sources of energy is among the transactions subject to zero percent (0%) VAT, to wit:

> "(B) *Transactions Subject to Zero Percent (0%) Rate.* –
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> xxx xxx xxx
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> (7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels."

In relation thereto, Section 4.108-5(b)(7) of Revenue Regulations No. 16-2005,[30] which implements the afore-quoted provision, qualifies the applicability of such zero-rating as follows:

> "(b) *Transactions Subject to Zero Percent (0%) VAT Rate.* – The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate:
>
> xxx xxx xxx
>
> (7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels; *Provided, however,* That zero-rating shall apply strictly to the sale of power or fuel generated through renewable sources of energy, and shall not extend to the sale of services related to the maintenance or operation of plants generating said power."

While Section 4.108-3(f) of the same Revenue Regulations provides:

> "SEC. 4.108-3. *Definitions and Specific Rules on Selected Services.* –

[30] Entitled "Consolidated Value-Added Tax Regulations of 2005," dated September 1, 2005.

xxx xxx xxx

> (f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10% VAT on their gross receipts; *Provided*, That sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels shall be subject to 0% VAT.
>
> '*Generation companies*' refers to persons or entities authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity. For this purpose, generation of electricity refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of RA No. 9136 (EPIRA). They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities."

Therefore, to qualify for VAT zero-rating, petitioner must prove that it is engaged in the sale of power or fuel generated through renewable sources of energy.

It is undisputed that petitioner is a special purpose entity, the sole purpose of which is to engage in all aspects of (*a*) the design, financing, construction, testing, commissioning, operation, maintenance, management and ownerhisp of Kalayaan II pumped-storage hydroelectric power plant, the new Caliraya Spillway, and other assets located in the Province of Laguna; and (*b*) the rehabilitation, upgrade, expansion, testing, commissioning, operation, maintenance and management of the Caliraya, Botocan and Kalayaan I hydroelectric power plants and their related facilities located in the Province of Laguna, as shown in its Securities and Exchange Commission Registration and Amended Articles of Partnership.[31]

Also, petitioner has entered into a Second Accession Undertaking with the National Power Corporation ("NPC"), Industrias Metalurgicas Pescarmona, S.A. ("IMPSA"), and CBK Power Corporation on September 20, 2000,[32] wherein it became a party to the Build-Rehabilitate-Operate-

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[31] *Records*, p. 2 and p. 68.
[32] *Exhibit "D."*

Transfer ("BROT") Agreement dated November 6, 1998.[33] Under the BROT Agreement and by virtue of the Second Accession Undertaking, petitioner shall cause and be responsible for the rehabilitation, construction, operation and maintenance of the Caliraya, Botocan, and Kalayaan hydroelectric power plants and other civil structures for the purpose of generating electricity for the NPC. In consideration thereof, NPC shall pay petitioner Capital Recovery Fees and Operation and Maintenance Fees and other fees in accordance with the BROT Agreement.[34]

In performing its obligations under the BROT Agreement and the Accession Undertaking, petitioner entered into an Agreement with IMPSA Construction Corporation designated as Turnkey Contract[35] on August 18, 2000, by virtue of which IMPSA, as Contractor, undertook the design, engineering, procurement, supply of all plant and materials, rehabilitation, construction, commissioning, testing, completion and handover of such power plants, together with the civil structures, access roads and other works as specified in the BROT Agreement.[36]

Petitioner then generates electricity through its Caliraya, Botocan and Kalayaan I hydroelectric power plants, as well as from the Kalayaan II hydroelectric power plant. The plants generate electricity by drawing water from an upstream reservoir, passing the water through a penstock and in the process utilizing the force of gravity to rotate the turbines. The turbines in turn rotate the generators, thereby generating electricity.[37]

Petitioner's Caliraya, Botocan, Kalayaan I and Kalayaan II power plants were likewise found by the Energy Regulatory Commission ("ERC") to be compliant with the pertinent rules and regulations as evidenced by the Certificates of Compliance ("COC")[38] issued by the ERC to petitioner.

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[33] *Exhibit "C."*
[34] *Exhibit "N."*
[35] *Exhibit "E."*
[36] *Exhibit "N."*
[37] *Ibid.*
[38] *Exhibits "F"* to *"I."*

And a verification of various sales invoices[39] and official receipts[40] issued by petitioner to NPC showed that for the first (1st) and second (2nd) quarters of 2009, it has derived revenues from sales of electricity to NPC in the amount of ₱1,949,421,902.14 which was reflected in its Quarterly VAT Returns, as follows:

Exhibit	Period	Zero-rated Sales
"BB-1-002e"	1st Quarter	₱1,113,056,584.68
"BB-2-002e"	2nd Quarter	836,365,317.46
	Total	**₱1,949,421,902.14**

With the foregoing sales of electricity generated through a renewable source of energy, particularly, hydropower, the Court finds that the same qualifies for VAT zero-rating under Section 108(B)(7) of the 1997 NIRC, as amended.

Then next to the third requisite - *that input taxes were incurred or paid* - petitioner reflected in its Quarterly VAT Returns for the first (1st) and second (2nd) quarters of 2009 its claimed input taxes in the amount of ₱23,566,884.15, broken down as follows:

Exhibit	Period	Input VAT
"BB-1-002a"	1st Quarter	₱17,784,968.91
"BB-2-002"	2nd Quarter	5,781,915.24
	Total	**₱23,566,884.15**

To prove that it has incurred/paid the aforesaid input VAT, petitioner submitted various suppliers' invoices, official receipts, Bureau of Customs ("BOC") Import Entries and Internal Revenue Declarations ("IEIRD"), BOC and bank official receipts,[41]which were examined by the Court-commissioned Independent Certified Public Accountant ("CPA"), Ms. Myra Celeste O. Dabalos.

Upon scrutiny of the Independent CPA's Report[42] and the related supporting documents, the Court finds that the input taxes in the

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[39] *Exhibits "II-1"* to *"II-102."*
[40] *Exhibits "MM-0001"* to *"MM-0146."*
[41] *Exhibits "CC-010001"* to *"CC-010268," "CC-020001"* to *"CC-020417," "CC-030001"* to *"CC-031250," "CC-040001"* to *"CC-040352," "CC-050001"* to *"CC-050545," "CC-060001"* to *"CC-061332."*
[42] *Exhibit "DD."*

amount of ₱702,904.61 should be disallowed for non-compliance with the substantiation requirements under Sections 110(A)[43] and 113(A) and (B)[44] of the 1997 NIRC, as amended, in relation to Sections 4.110-2,[45] 4.110-3,[46] 4.110-8,[47] and 4.113-1[48] of Revenue Regulations No. 16-05.[49]

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[43] 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:
(i) For sale; or
(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
(iii) For use as supplies in the course of business; or
(iv) For use as materials supplied in the sale of service; or
(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this 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.
(3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed 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 or required to register under Section 236 of this Code.

[44] 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.
(B) *Accounting Requirements.* – Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance.

[45] SEC. 4.110-2. *Persons Who Can Avail of the Input Tax Credit.* – The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:
(a) To the importer upon payment of VAT prior to the release of goods from customs custody;
(b) To the purchaser of the domestic goods or properties upon consummation of the sale; or
(c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee.

[46] SEC. 4.110-3. *Claim for Input Tax on Depreciable Goods.* – Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million pesos (₱1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:
(a) *If the estimated useful life of a capital good is five (5) years or more* – The input tax shall be spread evenly over a period of sixty (60) months and the claim for input tax credit will commence in the calendar month when the capital good is acquired. The total input taxes on purchases or importations of this type of capital goods shall be divided by 60 and the quotient will be the amount to be claimed monthly.
(b) *If the estimated useful life of a capital good is less than five (5) years* – The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of

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the capital good. The claim for input tax credit shall commence in the calendar month that the capital goods were acquired.

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed One million pesos (₱ 1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition; *Provided, however,* that the total amount of input taxes (input tax on depreciable capital goods plus other allowable input taxes) allowed to be claimed against the output tax in the quarterly VAT Returns shall be subject to the limitation prescribed under Sec. 4.110-7 of these Regulations.

The aggregate acquisition cost of a depreciable asset in any calendar month refers to the total price agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired in installment for an acquisition cost of more than P 1,000,000.00 will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed P1,000,000.00.

[47] SEC. 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.

(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.

[48] SEC. 4.113-1. *Invoicing Requirements.* –

(A) *A VAT-registered person shall issue:* –

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or official receipts. Said documents shall be considered as a "VAT Invoice" or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official 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.

(B) *Information contained in VAT invoice or VAT official receipt.* – The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:

(a) The amount of tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from VAT, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

Below is the detailed breakdown of the disallowed input VAT of ₱702,904.61:

Exceptions	Exhibit	Input VAT
Input taxes on domestic purchase of goods supported by documents other than VAT invoice - Supported by other non-VAT document, *1st Quarter*	*"DD-5"*	₱4,423.23
Input taxes on domestic purchase of goods supported by VAT invoice but not an original copy, *1st Quarter*	*"DD-7"*	61,710.78
Input taxes on domestic purchase of goods supported by VAT invoice not issued in the name of petitioner (*e.g.* Power Co. Ltd.) but with TIN and address of petitioner	*"DD-8"*	5,235.00
Input taxes on domestic purchases of goods supported by VAT invoice not issued in the name of petitioner (*e.g.* CBK only), *1st Quarter*	*"DD-9"*	58.93
Input taxes on domestic purchase of goods supported by TIN sales invoice, *1st Quarter*	*"DD-10"*	18,344.99
Input taxes on domestic purchase of goods supported by VAT invoice but not dated within the VAT-taxable year, *1st Quarter*	*"DD-13"*	14,119.23
Input taxes on domestic purchase of goods supported by VAT invoice that is not BIR registered, *1st Quarter*	*"DD-14"*	72,450.00
Input taxes on domestic purchase of goods with correction on the year of the invoice date without counter signature, *1st Quarter*	*"DD-17"*	174.79
Input taxes on domestic purchase of services supported by documents other than VAT OR (*i.e.* VAT invoice, etc.), *1st Quarter*	*"DD-23"*	29,693.58
Input taxes on domestic purchase of services supported by documents other than VAT OR (*i.e.*, statement of account, non-VAT invoice, etc.), *1st Quarter*	*"DD-24"*	18,301.21
Input taxes on domestic purchase of services supported by VAT OR not issued in the name of petitioner (*e.g.* EME Phils. Services Corp. and CBR Power Co. Ltd.) but with TIN and address of petitioner and the amount of tax was not separately shown	*"DD-26"*	493.75

(3) In the case of sales in the amount of one thousand pesos (₱1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section.
[49] *Supra*, note 30.

Input taxes on domestic purchase of services supported by VAT OR not issued in the name of petitioner (*e.g.* CBK only, CBK New-Spillway, CBK Training Center) but without TIN and/or address of petitioner, 1st *Quarter*	*"DD-27"*	4,505.03
Input taxes on domestic purchase of services supported by TIN OR only, 1st *Quarter*	*"DD-28"*	22,422.85
Input taxes on domestic purchase of services supported by VAT OR dated within the VAT-taxable year	*"DD-31"*	187,801.33
Input taxes on domestic purchase of services supported by VAT OR that is not BIR-registered, 1st *Quarter*	*"DD-32"*	1,189.68
Input taxes on domestic purchase of services with correction in the OR date without counter signature	*"DD-34"*	39,594.02
Double claiming of input tax on domestic purchase of services	*"DD-40"*	180.48
Input taxes on domestic purchase of services supported by VAT OR. However, the sentence: "*This is not a source of input tax*" is printed in the VAT OR, 1st *Quarter*	*"DD-41"*	2,972.51
Input taxes on domestic purchase of goods and services without supporting documents, 1st *Quarter*	*"DD-42"*	32,698.72
Overclaimed input tax on domestic purchase of goods/services due to erroneous computation (*i.e.* arithmetical error), 1st *Quarter*	*"DD-44"*	4,768.41
Overclaimed portion of input tax arising from forex rate used on foreign currency denominated purchases of goods and services, 1st *Quarter*	*"DD-46"*	25,580.99
Input taxes on domestic purchase of services supported by VAT OR which is not an original copy	*"DD-49"*	97,499.10
Input taxes on importation of goods supported by a document other than an original copy of the IEIRD and BOC OR	*"DD-50"*	58,686.00
Total		**₱702,904.61**

In addition, the claimed input VAT in the amount of ₱737,559.61, as detailed below, should be disallowed for non-compliance with the substantiation requirements under the VAT law and regulations:

Vendor	O.R./ Invoice No.	O.R./ Invoice Date	Exhibit *"CC-"*	Input VAT
1) Input VAT without supporting documents				
Multiple J Enterprises	-	-	-	₱ 18,325.49
Rejoice Tyre Gallery & Auto Center	-	-	-	1,339.28
Asee Enterprises	-	-	-	1,917.88
Multiple J Enterprises	-	-	-	34,815.00
Phil. Environmental & Technical Systems and Services, Inc.	-	-	-	38,941.20
Hitachi Asia Limited	-	-	-	263,718.69
Kokusai Commerce	-	-	-	34,012.22

Sumitomo Corporation	-	-	-	71,243.16
Tecnored Ingeniera	-	-	-	64,991.49
Viking Cars, Incorporated	-	-	-	9,510.01
Airfreight 2100, Inc.	-	-	-	80.43
Airfreight 2100, Inc.	-	-	-	80.43
Airfreight 2100, Inc.	-	-	-	55.26
Airfreight 2100, Inc.	-	-	-	72.52
Airfreight 2100, Inc.	-	-	-	72.52
Globe Telecom	-	-	-	151.83
Viking Cars, Incorporated	-	-	-	1,356.31
Center Lane Car Rental Services	-	-	-	780.00
Subtotal				**₱541,463.72**
2) **Input VAT on domestic purchases of services supported by VAT ORs but the amount of VAT was not separately shown**				
Counterflow Movers, Inc.	2425	1/9/2009	010001-010002	₱24,816.37
Counterflow Movers, Inc.	2425	1/9/2009	010001, 010003	9,720.25
PLDT	000072575	2/4/2009	010105-010106	107.14
Firstly & Foremost Resort Corp.	0602	2/10/2009	010015-010017	101.24
Firstly & Foremost Resort Corp.	0602	2/10/2009	010015-010017	2,555.42
Firstly & Foremost Resort Corp.	0601	2/10/2009	010033-010039	717.60
PLDT	000072576	2/4/2009	010097-010098	910.69
PLDT	000072572	2/4/2009	010099-010100	133.63
PLDT	000072573	2/4/2009	010101-010102	369.78
PLDT	000072574	2/4/2009	010103-010104	123.81
PLDT	000072577	2/4/2009	010107-010108	121.63
PLDT	000072578	2/4/2009	010109-010110	292.39
PLDT	000072579	2/4/2009	010111-010112	121.63
PLDT	000072580	2/4/2009	010113-010114	738.21
PLDT	000072581	2/4/2009	010115-010116	235.77
PLDT	000072582	2/4/2009	010117-010118	157.38
PLDT	000072583	2/4/2009	010119-010120	1,066.20
PLDT	000072584	2/4/2009	010121-010122	139.63
PLDT	000072585	2/4/2009	010123-010124	927.23
PLDT	000072586	2/4/2009	010125-010126	577.80
PLDT	000072587	2/4/2009	010127-010128	126.13
PLDT	000072588	2/4/2009	010129-010130	854.51
PLDT	000072589	2/4/2009	010131-010132	151.90
PLDT	000072590	2/4/2009	010133-010134	347.71
PLDT	PKPOR0002	2/13/2009	010206-010207	1,910.53
PLDT	PKPOR0002	2/13/2009	010206, 010208	151.08
PLDT	PKPOR0002	2/13/2009	010206, 010209	151.08
PLDT	PKPOR0002	2/13/2009	010206, 010210	151.08
PLDT	PKPOR0002	2/13/2009	010206, 010211	156.54
Firstly & Foremost Resort Corp.	0604	2/26/2009	020012-020019	885.13
Gencars-San Pablo, Inc.	23045	3/16/2009	020024-020025	306.11
PLDT	000075268	3/10/2009	020097-020098	123.81
PLDT	000075269	3/10/2009	020099-020100	122.76
PLDT	000075265	3/10/2009	020101-020102	10,236.57
Qconsult, Inc.	0111	2/19/2009	020103-020104	4,320.00

Banahaw Telephone Corp.	40894	3/3/2009	020112-020114	78.57
Banahaw Telephone Corp.	40894	3/3/2009	020112-020114	78.57
Banahaw Telephone Corp.	40894	3/3/2009	020112-020114	78.57
Toyota, Batangas, City	170866	3/16/2009	020138-020140	159.00
Airfreight 2100, Inc.	1204459	2/16/2009	020162-020163	41.89
Airfreight 2100, Inc.	1204484	3/2/2009	020164-020165	89.80
New World International Development Phils., Inc.	14085	3/5/2009	020240-020243	9,115.39
PLDT	PKPOR0002	3/11/2009	020246-020247	2,393.77
PLDT	PKPOR0002	3/11/2009	020246, 020248	151.08
PLDT	PKPOR0002	3/11/2009	020246, 020249	151.08
PLDT	PKPOR0002	3/11/2009	020246, 020250	151.08
PLDT	PKPOR0002	3/11/2009	020246, 020251	171.28
Firstly & Foremost Resort Corp.	0621	3/27/2009	030073-030074	1,891.52
PLDT	000077286	3/27/2009	030100-030101	910.69
PLDT	000077301	3/27/2009	030102-030103	121.63
PLDT	000077302	3/27/2009	030104-030105	364.69
PLDT	000077303	3/27/2009	030106-030107	121.63
PLDT	000077304	3/27/2009	030108-030109	121.63
PLDT	000077305	3/27/2009	030110-030111	153.63
PLDT	000077306	3/27/2009	030112-030113	121.63
PLDT	000077307	3/27/2009	030114-030115	1,182.86
PLDT	000077308	3/27/2009	030116-030117	142.36
PLDT	000077309	3/27/2009	030118-030119	121.63
PLDT	000077310	3/27/2009	030120-030121	524.53
PLDT	000077311	3/27/2009	030122-030123	126.13
PLDT	000077312	3/27/2009	030124-030125	139.63
PLDT	000077313	3/27/2009	030126-030127	13,878.45
PLDT	000077316	3/27/2009	030128-030129	133.63
PLDT	000077317	3/27/2009	030130-030131	355.93
PLDT	000077318	3/27/2009	030132-030133	79.88
PLDT	000077319	3/27/2009	030134-030135	13,511.15
PLDT	000077479	3/31/2009	030140-030141	107.14
Rejoice Tyre Gallery & Auto Center	0216	3/17/2009	030146-030147	192.86
WorldBest Logistics Phils., Inc.	0448	3/31/2009	030151-030152	1,139.15
WorldBest Logistics Phils., Inc.	0448	3/31/2009	030151, 030153	94.87
New World International Development Phils. Inc.	14383	3/27/2009	030190-030191	720.00
New World International Development Phils., Inc.	14383	3/27/2009	030190, 030192	720.00
Firstly & Foremost Resort Corp.	0588	1/31/2009	030214-030220	5,113.36
Firstly & Foremost Resort Corp.	0588	1/31/2009	030214, 030221-030227	576.79
Firstly & Foremost Resort Corp.	0588	1/31/2009	030214, 030228-030234	829.53
Firstly & Foremost Resort Corp.	0589	1/31/2009	030235-030245	865.74
Firstly & Foremost Resort Corp.	0589	1/31/2009	030235, 030246-030260	1,407.88
Firstly & Foremost Resort Corp.	0589	1/31/2009	030235, 030261-030267	850.53
Firstly & Foremost Resort Corp.	0589	1/31/2009	030235, 030268-030269	187.50
Firstly & Foremost Resort Corp.	0589	1/31/2009	030235, 030270-030271	187.50
Firstly & Foremost Resort Corp.	0589	1/31/2009	030235, 030272-030277	679.66

PLDT	000070622	1/14/2009	030349-030350	133.63
PLDT	000070623	1/14/2009	030351-030352	461.53
PLDT	000070624	1/14/2009	030353-030354	123.81
PLDT	000070625	1/14/2009	030355-030356	198.75
PLDT	PKPOR0002	1/20/2009	030414-030415	2,139.91
PLDT	PKPOR0002	1/20/2009	030414, 030416	165.95
PLDT	PKPOR0002	1/20/2009	030414, 030417	151.08
PLDT	PKPOR0002	1/20/2009	030414, 030418	154.08
PLDT	PKPOR0002	1/20/2009	030414, 030419	169.10
Tricom Dynamics, Inc.	162163	1/9/2009	030439-030440	469.29
Subtotal				**₱128,431.69**
3) Input VAT on domestic purchase of goods supported by VAT invoice but the amount of VAT was not separately shown				
Jems Technik Corp.	0385	3/17/2009	030799-030800	₱40,193.34
Subtotal				**₱40,193.34**
4) Input VAT on domestic purchase of goods supported by VAT invoice with correction in the date but without counter signature				
MFT International Corporation	2902	1/22/2009	010239-010240	₱ 22,071.43
Subtotal				**₱ 22,071.43**
5) Input VAT on domestic purchase of goods supported by a VAT invoices that is not BIR-registered				
Canon Marketing (Phils.), Inc.	500983	3/18/2009	030863-030864	₱ 4,285.71
Subtotal				**₱ 4,285.71**
Eastern Aluminum Glass Supply	13486	11/28/2008	030212-030213	₱750.00
Subtotal				**₱750.00**
R. Ong Shell Gasoline Station	2089	3/18/2009	031133, 031153	₱120.95
R. Ong Shell Gasoline Station	2090	3/18/2009	031133, 031169	101.50
R. Ong Shell Gasoline Station	2763	3/26/2009	031133, 031172	141.27
Subtotal				**₱363.72**
Total				**₱737,559.61**

Thus, from the total input VAT claim in the amount of ₱23,566,884.15, only the amount of ₱22,126,419.93, as computed below, has been duly substantiated:

Claimed Input VAT		₱23,566,884.15
Less: Disallowances		
Per CPA Report	₱702,904.61	
Per Court's further verification	737,559.61	1,440,464.22
Valid Input VAT		**₱22,126,419.93**

And for the fourth and fifth requisites – *that the input taxes are attributable to zero-rated or effectively zero-rated and the same were not applied* *against any output tax* – the Court finds that petitioner's reported sales for the first (1st) and second (2nd) quarters of 2009 were all zero-rated, thus, the substantiated input VAT in the amount of ₱22,126,419.93 is entirely attributable thereto and was not applied against any output tax. In addition, in its reported unutilized input taxes for the first (1st) and second (2nd) quarters of 2009 in the respective amounts of ₱17,784,968.91,[50] and ₱31,680,290.87,[51] the same were deducted as "*VAT Refund/TCC claimed*" in the said Quarterly VAT Returns for the same taxable quarters preventing the carry-over or application of such input taxes in the next taxable quarter/s.

In sum, the Court finds that petitioner is entitled to the reduced amount of ₱22,126,419.93, representing unutilized input VAT incurred in relation to its zero-rated sales of electricity to the NPC for the first (1st) and second (2nd) quarters of 2009.

WHEREFORE, the consolidated Petition for Review and Amended Petition for Review are hereby **PARTLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **ISSUE a TAX CREDIT CERTIFICATE,** in favor of petitioner, in the reduced amount of ₱22,126,419.93, representing unutilized input VAT incurred in relation to its zero-rated sales of electricity to the NPC for the first (1st) and second (2nd) quarters of 2009.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

I CONCUR:

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[50] *Exhibit "BB-1-002a."*
[51] *Exhibit "BB-2-002a."*

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice