

REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

CE LUZON GEOTHERMAL
POWER COMPANY, INC.,

Petitioner,

-versus-

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

C.T.A. CASE NO. 7738

Members:

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

Promulgated:

JUL 0 1 2010

11:15 A.M.

X ----- X

D E C I S I O N

PALANCA-ENRIQUEZ, J.:

The 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, by a VAT registered person is subject to a zero percent rate (*Section 6 of RA 9337*).

THE CASE

This is a Petition for Review filed by CE Luzon Geothermal Power Company, Inc. (hereafter “petitioner”) praying for the refund or issuance

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of a tax credit certificate (TCC) in the amount of P24,673,243.53, allegedly representing unutilized input value-added tax (VAT) paid by petitioner on its domestic purchases of non-capital goods and services, importation of non-capital goods and services rendered by non-residents for the first to fourth quarters of calendar year (CY) 2006.

THE PARTIES

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office at Ormoc City, Leyte. Petitioner was incorporated on May 16, 1994, the primary purpose of which is to design, develop, construct, erect, assemble, commission and operate geothermal power plants and related facilities for the conversion into electricity of steam and brine provided by and under contract with the Philippine Government, or any subdivision, instrumentality or agency thereof, or any government-owned or controlled corporation, or other entity engaged in the development, supply or distribution of energy. Petitioner has been accredited and certified as such by the Department of Energy (DOE) (*Exhibit "B"*). Petitioner is registered with the Bureau of Internal Revenue (BIR), as a VAT taxpayer, in accordance with *Section 236 of the National Internal Revenue Code (NIRC)*, with Taxpayer Identification No. 003-924-356-000 (*Exhibit "C"*).

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue (CIR) empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or TCC of erroneously or excessively paid taxes, with office address at the BIR, National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

The facts of the case, as culled from the records, are as follows:

Petitioner filed with the BIR its Original Quarterly VAT Returns for the first to fourth quarters of CY 2006 on the following dates:

Taxable Quarter	Date of Filing of Original Return	Exhibit
1 st	April 25, 2006	E
2 nd	July 25, 2006	F
3 rd	October 25, 2006	G
4 th	January 25, 2007	H

Petitioner filed with the BIR its Amended Quarterly VAT Returns for the first to fourth quarters of CY 2006, reflecting petitioner's zero-rated sales, domestic purchases of non-capital goods and services, services rendered by non-residents, and importation of non-capital goods, on the following dates:

2006 Taxable Quarter	Date of Filing of Amended Quarterly VAT Return	Current Transactions				
		Zero-rated sales (₱)	Domestic Purchases – Goods other than Capital Goods (₱)	Importation - Goods other than Capital Goods (₱)	Domestic Purchases of Services (₱)	Services Rendered by Non-Residents (₱)
1 st	July 31, 2007	908,123,188.65	8,324,454.13	267,036.67	45,349,684.12	7,171,669.67
2 nd	July 31, 2007	1,095,655,943.47	12,641,130.22	7,286,220.00	18,334,975.57	490,662.42

3 rd	July 31, 2007	1,104,026,676.27	15,013,136.42	12,995,075.00	29,580,546.03	195,687.08
4 th	July 31, 2007	1,239,387,791.88	9,258,385.42	4,345,791.67	25,773,550.92	13,116,558.75
Total		4,347,193,600.27	45,237,106.19	24,894,123.34	119,038,756.64	20,974,577.92

On September 11, 2007, petitioner filed an administrative claim for refund/issuance of a TCC of unutilized input VAT in the amount of P24,673,243.53 with the BIR Large Taxpayers Audit and Investigation Division I. Due to respondent's failure to act on such claim, on March 14, 2008, petitioner filed the present Petition for Review.

In his Answer, respondent by way of special and affirmative defenses alleged the following:

- “5. Petitioner's (*sic*) claim for tax refund is subject to administrative investigation and/or examination by the respondent;
6. Taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with the provision of law;
7. To support its claim, it is imperative for petitioner to prove the following, viz:
 - a.) The registration requirements of a value-added taxpayer in compliance with the pertinent provision of the National Internal Revenue Code of 1997 (1997 NIRC), as amended, and its implementing revenue regulations;
 - 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 Section 113 and 114 of the 1997 NIRC, as amended;



- c.) Proof of compliance with the submission of complete documents in support of the administrative claim for refund pursuant to Section 112 (D) of the 1997 NIRC, as amended, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a *condition sine qua non* prior to the filing of judicial claim in accordance with provision of Section 229 of the 1997 NIRC, as amended;
- d.) That the input taxes of Php 24,673,243.53 representing unutilized input VAT from its domestic purchases of non-capital goods and services rendered by non-residents for the calendar year 2006 were
 - d.i paid by the petitioner
 - d.ii attributable to its zero-rated or effectively zero-rated sales;
 - d.iii such have not been applied against any output tax
- e.) That petitioner's claim for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112 (A) of the 1997 NIRC, as amended;
- f.) That petitioner's domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase journal, showing that it actually paid VAT in accordance with Sections 110 (A)(2) and 113 of the 1997 NIRC, as amended and in pursuance to Section 4.104-5 (a) & (b) of Revenue



Regulation 7-95 (Re: Substantiation of Claims for Input Tax Credit);

g.) That petitioner has complied the requirements as enumerated under Section 4.104-2 of the Revenue Regulations 7-95 (Re: Persons who can avail of the Input Tax Credit).

8. Excess input tax over output tax should be carried over to the succeeding quarter/s. However, input tax attributed to capital goods purchases or to zero-rated sales may be opted to be refunded or credited against other internal revenue taxes. This is provided under Section 110 (B) of the 1997 NIRC, as amended, which states in part:

*'xxx If the input tax exceeds the output tax, the excess **shall** be carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.xxx' (emphasis supplied)*

Likewise, Section 110 (c) of the 1997 NIRC, as amended, provides:

*'Determination of Creditable Input Tax- The sum of the excess input tax carried over from the preceding month or quarter and the input tax creditable to a VAT-registered person during the taxable month or quarter **shall be** reduced by the amount claim for refund or tax credit for value-added tax and other adjustment, xxx'. (emphasis supplied)*

9. Petitioner's claim for refund has already prescribed pursuant to Section 112 (D) of the 1997 NIRC (now Section 112 (C) of the New Expanded VAT Law) in

relation to Section 4.112-1 (D) of the Revenue Regulation No. 14-2005. Pertinent provisions thereof states that, to wit:

‘Section 112, Refunds or Tax Credit of Input Tax. –

xxx xxx xxx

(D) Period within which Refund or Tax credit of Input Taxes shall be Made. - In proper cases, the Commissioner shall grant a refund or issue a 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 Subsections (A) and (B) 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 unacted claim with the Court of Tax Appeals*’.

‘Section 4.112-1 Claims for Refund/Tax Credit Certificate of Input Tax. –

xxx xxx xxx

(d) Period within which Refund or Tax credit of Input Taxes shall be Made. – In proper cases, the Commissioner of Internal Revenue shall grant a tax credit certificate/refund 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 subparagraphs (a) above.



In case of full or partial denial of the claim for tax credit certificate/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from receipt of said denial; otherwise, the decision shall become final. However, if no action on the claim for tax credit certificate/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty-day (120) day period from the date of submission of the application but before the lapse of the two (2) year period from the close of the taxable quarter when the sales were made, the taxpayer may appeal to the CTA." (emphasis and underscoring ours)

10. Upon careful perusal of the records of the case, petitioner admitted that it filed the administrative claim for refund/tax credit of unutilized input VAT with the Large Taxpayers and Audit Investigation Division I (LTAID I) of the BIR on **September 11, 2007**. Petitioner, likewise, admitted in paragraph 4 of the Petition that the 120-day period within which the Commissioner is required to act on the claim has already lapse. Thus, based on the above-quoted provisions of the 1997 NIRC, the corresponding revenue regulations and admissions of the petitioner, the 120-day period to act on the refund lapsed on January 19, 2008. Petitioner had 30 days from the inaction to file an appeal with this Honorable Court or until February 18, 2008. Hence, the Petition for Review filed before this Honorable Court on March 14, 2008 was already filed out of time.
11. In an action for refund, the burden of proof is on the taxpayer to establish its right and failure to sustain the burden is fatal to the claim for tax refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of

organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications;

12. The claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation and liberally in favor of the taxing authority.”

Petitioner presented Leilah Yasmin E. Alpad, Senior Accountant of CE Luzon Geothermal Power, and Jerome Antonio B. Constantino, the Court-Commissioned Independent CPA, as witnesses, and documentary evidence, marked as *Exhibits “A” to “S”*, inclusive of their sub-markings, which were all admitted by the Court in its Resolutions dated May 11, 2009 and June 10, 2009, after petitioner filed a Motion for Reconsideration.

Respondent, on the other hand, manifested in open court on September 9, 2009 that he has no evidence to present in this case and he is submitting the case for decision based on the pleadings. Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice, afterwhich the case will be deemed submitted for decision.

Petitioner having filed its memorandum on December 1, 2009 and respondent having filed its memorandum on October 8, 2009, the case was deemed submitted for decision on December 7, 2009.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT THE UNUTILIZED INPUT VAT OF THE PETITIONER FOR THE 1ST TO 4TH QUARTERS OF CY 2006 AMOUNTING TO P24,673,243.53 IS SUBSTANTIATED BY DOCUMENTARY EVIDENCE IN THE FORM OF INVOICES AND OFFICIAL RECEIPTS.

II

WHETHER OR NOT THE SAID UNUTILIZED INPUT VAT OF THE PETITIONER FOR THE 1ST TO 4TH QUARTERS OF CY 2006 AMOUNTING TO P24,673,243.53 WAS APPLIED AGAINST ANY OUTPUT TAX OF THE PETITIONER IN THE SUBSEQUENT QUARTERS.

III

WHETHER OR NOT THE PETITIONER IS ENTITLED TO A REFUND AND/OR ISSUANCE OF TAX CREDIT CERTIFICATE IN THE TOTAL AMOUNT OF P24,673,243.53, REPRESENTING ITS UNUTILIZED INPUT VAT FROM PURCHASES OF TAXABLE GOODS AND SERVICES AND IMPORTATION OF GOODS FOR THE 1ST TO 4TH QUARTERS OF CY 2006.



IV

WHETHER OR NOT PETITIONER'S CLAIM FOR REFUND/TAX CREDIT OF UNUTILIZED INPUT VAT WAS FILED WITHIN THE TWO (2)-YEAR PERIOD IN ACCORDANCE WITH SECTIONS 112 AND 229 OF THE TAX CODE.

Principal Issue

The foregoing issues boil down to the principal issue of whether or not petitioner is entitled to a claim for refund or issuance of a TCC of its unutilized input VAT for the first to fourth quarters of 2006 in the amount of P24,673,243.53.

THE COURT'S RULING

The petition is partly meritorious.

Petitioner anchors its claim on *Section 112(A) of the NIRC of 1997, as amended*, which provides, 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: *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: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.”

From the afore-quoted provision, in order to be entitled to a refund or issuance of a TCC of unutilized input VAT arising from zero-rated or effectively zero-rated transactions, the following requisites must be complied with:

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.



Prescription

The Court deems it appropriate to determine first the timeliness of the filing of the instant claim.

The two-year prescriptive period for the filing of a claim for refund or issuance of a TCC of input VAT under *Section 112 (A) of the NIRC of 1997, as amended*, is reckoned from the close of the taxable quarter when the relevant sales were made, regardless of whether said tax was paid or not (*Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.]*, 565 SCRA 171) (Mirant case).

In the case at bar, petitioner is claiming refund of input VAT paid for the four quarters of 2006. Applying the Mirant case and *Section 112 (A) of the NIRC of 1997, as amended*, the following are the pertinent dates relevant to petitioner's claim for refund:

Taxable Quarter	Close of the Taxable Quarter	Last Day For Filing of the Claim
1 st	March 31, 2006	March 31, 2008
2 nd	June 30, 2006	June 30, 2008
3 rd	September 30, 2006	September 30, 2008
4 th	December 31, 2006	December 31, 2008

Records show that petitioner filed the administrative claim on September 11, 2007 (*Exhibit "M"*), and the instant Petition for Review on



March 14, 2008 (*Docket, p. 1*). Hence, both the administrative and judicial claims for refund were filed within the two-year prescriptive period.

Other Requisites

The Court now proceeds to the determination of petitioner's compliance with the other requisites for input VAT refund for the four quarters of 2006 in the amount of P24,673,243.53, which was duly filed within the two-year prescriptive period.

First Requisite:

There must be zero-rated or effectively zero rated sales

As regards the first requisite, *Section 108(B)(7) of the NIRC of 1997, as amended by RA 9337*, provides that among the transactions subject to zero percent (0%) VAT rate is:

“(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.”

Section 4.108-5 (b)(7) of Revenue Regulations No. 16-2005, implementing the foregoing provision, further provides:

“(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.

(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.”

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

Records show that petitioner is engaged in the business of power generation and sale of said power generated energy to the Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) (*Exhibit “D”*). As such, petitioner owns and operates a 180-megawatt geothermal power plant facility located in Mahanagdong, Province of Leyte, which was accredited by the Department of Energy, as a Block Power Production Facility since June 15, 1994 (*Exhibit “B”*).

For the period covering January 1, 2006 to December 31, 2006, petitioner generated gross receipts from sale of power generation services to PNOC-EDC, as evidenced by sales invoices (*Exhibits “R-2.1” to “R-*



2.14”), and official receipts (ORs) (*Exhibits “R-4.1” to “R-4.38”*) issued by petitioner to PNOC-EDC for the same period. Such sale of electricity generated through a renewable source of energy, particularly *geothermal energy*, qualifies for VAT zero-rating under *Section 108(B)(7) of the NIRC of 1997, as amended by RA 9337*, as implemented by *Section 4.108-5 (b)(7) of Revenue Regulations No. 16-2005*.

However, the Court-Commissioned Independent Certified Public Accountant (ICPA), Jerome Antonio B. Constantino, noted that there is a discrepancy between the amount of gross receipts from sale of generated power, as reflected in the VAT returns, and as shown in the official receipts (*Exhibits “R-5-1Q.1” to “R-5-4Q.14”*), to wit:

	Amount
Zero-rated Sales per Quarterly VAT Returns (<i>Annex 2</i>)	P 4,347,193,600.27
Less: Amount of collections per Summary of Official Receipts (<i>Exhibit R-3</i>)	4,347,393,641.45
Difference	P (200,041.18)

The Court-Commissioned ICPA found that the aforesated discrepancy of P200,041.18, represents under-declaration of petitioner’s zero-rated receipts for the first quarter of 2006 in the amount of P200,000.00, and rounding off-difference in the amount of P41.18.

Pursuant to *Section 114(A) of the NIRC of 1997, as amended*, petitioner should have declared the zero-rated receipts of P200,000.00 in

its Quarterly VAT Return for the first quarter of 2006. Thus, petitioner's input VAT claim corresponding to the undeclared zero-rated receipts of P200,000.00 is hereby denied.

Second Requisite:

Input taxes were incurred or paid

As regards the second requisite, petitioner's Quarterly VAT Returns for the four quarters of 2006 showed input taxes amounting to P24,673,243.53, detailed as follows:

Exh.	Year 2006	INPUT VAT				
		Domestic Purchases – Goods Other Than Capital Goods	Importation-Goods Other Than Capital Goods	Domestic Purchases – Services	Services Rendered by Non-Residents	Total
"E-1"	1st Qtr	P 892,935.94	P 27,578.00	P 5,056,568.63	P 860,600.36	P 6,837,682.93
"F-1"	2nd Qtr	1,503,079.38	862,602.00	2,179,294.22	58,879.49	4,603,855.09
"G-1"	3rd Qtr	1,801,576.37	1,559,409.00	3,547,923.28	23,482.45	6,932,391.10
"H-2"	4th Qtr	1,111,006.25	521,495.00	3,092,826.11	1,573,987.05	6,299,314.41
	Total	P5,308,597.94	P2,971,084.00	P13,876,612.24	P2,516,949.35	P24,673,243.53

In support of the above-mentioned input taxes, petitioner presented its Summary List of Purchases (*Exhibits "R-5-1Q.1" to "R-5-4Q.14"*), general ledgers (*Exhibits "R-7.1" to "R-7.115"*) and the related suppliers' invoices, official receipts, Import Entries and Internal Revenue Declarations (IEIRDs) (*Exhibits "R-6-1Q.1" to "R-6-4Q.1288"*), for the period January 1, 2006 to December 31, 2006, which were examined and verified by the Court-Commissioned ICPA.



After a careful examination and review of the report submitted by the Court-Commissioned ICPA (*Exhibit "R"*), as well as petitioner's supporting documents, the following input taxes in the total amount of P661,525.27 should be disallowed from petitioner's claim for failure to meet the substantiation requirements under *Sections 110(A) and 113(A) of the NIRC of 1997, as amended*, in relation to *Sections 4.110-1 and 4.110-8 of Revenue Regulations No. 16-05*:

FINDINGS		Exhibit R	Disallowed Input Tax
1.	Domestic purchases of goods supported by TIN-V invoices	Annexes 1-1Q-A12, 1-2Q-A12, 1-3Q-A12, 1-4Q-A12	P 20,747.44
2.	Domestic purchases of services supported by TIN-V OR	Annex 1-4Q-B12	4,821.43
3.	Domestic purchase of goods supported by documents other than a VAT invoice	Annexes 1-1Q-A1, 1-2Q-A1, 1-3Q-A1, and 1-4Q-A1	87,201.03
4.	Domestic purchase of goods supported by a VAT invoice but not an original copy	Annexes 1-1Q-A3, 1-2Q-A3, 1-3Q-A3, and 1-4Q-A3	61,011.58
5.	Domestic purchase of goods supported by a VAT invoice not issued in the name of the company (i.e. issued in employee's name)	Annexes 1-1Q-A4 and 1-2Q-A4	426.57
6.	Domestic purchase of goods supported by a VAT invoice issued in the name CE Visayas/VGPC (whichever is applicable)	Annexes 1-3Q-A5 and 1-4Q-A5	793.75
7.	Domestic purchase of goods supported by a VAT invoice but without invoice date	Annexes 1-2Q-A10	6,955.71
8.	Domestic purchases of goods supported by a VAT invoice not dated within the period of claim (taxable year 2006)	Annexes 1-1Q-A14, 1-2Q-A14 and 1-3Q-A14	172,113.91
9.	Domestic purchases of goods supported by a VAT invoice with changes in the name of the company	Annexes 1-1Q-A15, 1-2Q-A15 and 1-3Q-A15	5,262.25
10.	Domestic purchase of goods supported by a TIN # only; TAN-V; TAN VAT; TIN-NV/Non VAT stamped/handwritten TIN-V/VAT tape receipt	Annex 1-3Q-A16	3,969.64
11.	Domestic purchase of services supported by documents other than a VAT OR	Annexes 1-1Q-B1, 1-2Q-B1, 1-3Q-B1,	81,990.81

		1-4Q-B1	
12.	Domestic purchases of services supported by a VAT OR but not an original copy	Annexes 1-2Q-B3, 1-3Q-B3 and 1-4Q-B3	4,452.52
13.	Domestic purchase of services supported by a VAT OR not issued in the name of the Company (i.e., issued in employee's name)	Annexes 1-1Q-A12, 1-2Q-A12, 1-3Q-A12, 1-4Q-A12	6,760.64
14.	Domestic purchase of services supported by a VAT OR issued in the name of Visayas Geothermal Power Company/VGPC/CE Casecan Water Energy/CE Cebu (whichever is applicable)	Annexes 1-2Q-B5, 1-3Q-B5 and 1-4Q-B5	5,168.80
15.	Domestic purchase of services supported by TIN # only; TIN-NV/NON VAT OR stamped/handwritten TIN-V/VAT	Annexes 1-2Q-B7, 1-3Q-B7 and 1-4Q-B7	50,844.74
16.	Domestic purchase of services supported by a VAT OR but without OR date	Annexes 1-1Q-B10, 1-2Q-B10, 1-3Q-B10, 1-4Q-B10	33,326.78
17.	Domestic purchase of services supported by a VAT OR not dated within the period of claim (taxable year 2006)	Annexes 1-1Q-B14 and 1-4Q-B14	2,464.88
18.	Domestic purchase of services supported by a VAT OR with changes in the name of the company	Annexes 1-2Q-B15 and 1-3Q-B15	2,533.50
19.	Importation of goods supported by an original IEIRD and BOC OR not dated within the period of claim (taxable year 2006)	Annexes 1-1Q-C3	3,559.00
20.	Overclaimed input tax on domestic purchase & importation of goods and services due to erroneous computation (i.e. arithmetical error)	Annexes 1-1Q-E1, 1-2Q-E1, 1-3Q-E1, 1-4Q-E1	7,860.84
21.	Effect of forex on foreign currency denominated purchase of goods and services – overstatement	Annexes 1-1Q-J1, 1-2Q-J1, 1-3Q-J1, 1-4Q-J1	40,399.65
22.	Supporting documents not available	Annexes 1-1Q-F, 1-2Q-F, 1-3Q-F, 1-4Q-F	58,859.80
	TOTAL		P 661,525.27

Therefore, petitioner's valid input VAT claim amounts only to
P24,011,718.26, computed as follows:

Amount of Input VAT Claim	P 24,673,243.53
Less: Disallowances	661,525.27
Substantiated Input VAT	P 24,011,718.26

Third Requisite:

*The input taxes are attributable to
zero-rated sales or effectively
zero-rated sales*

As regards the third requisite, since petitioner's sales for the four quarters of 2006 were all zero-rated, the substantiated input VAT of P24,011,718.26 is entirely attributable thereto. However, as earlier stated, the input VAT related to the undeclared zero-rated receipts of P200,000.00 shall be disallowed. Consequently, petitioner's substantiated input VAT attributable to the declared zero-rated receipts of P4,347,193,600.27 amounts only to P24,010,613.61, computed as follows:

Substantiated input VAT	P 24,011,718.26
Less: Input VAT attributable to the undeclared zero-rated receipts (P200,000.00/P4,347,393,641.45 x P24,011,718.26)	1,104.65
Input VAT attributable to the declared zero-rated receipts	P 24,010,613.61

Fourth Requisite:

*The input VAT payments were not
applied against any output VAT liability*

As regards the fourth requisite, although petitioner carried-over the subject claim to the succeeding first three quarters of 2007 (*Exhibits "I-2", "J-1" and "K-1"*), the same remained unutilized until it was fully deducted as "VAT Refund/TCC Claimed" (*Exhibit "K-1", line 23D*) from the total available input tax as of the third quarter of 2007. Thus, the excess input

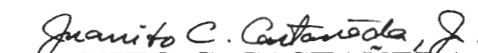
VAT carried-over to the succeeding fourth quarter of 2007 (*Exhibit "L-2", line 20A*) no longer included the instant claim. Petitioner, therefore, has complied with the fourth requisite.

WHEREFORE, premises considered, the present Petition for Review is hereby **PARTLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner CE Luzon Geothermal Power Company, Inc. in the reduced amount of **TWENTY FOUR MILLION TEN THOUSAND SIX HUNDRED THIRTEEN AND 61/100 PESOS (P24,010,613.61)**, representing unutilized input value-added tax paid by petitioner on its domestic purchases of non-capital goods and services, importation of non-capital goods and services rendered by non-residents for the first to fourth quarters of calendar year 2006, attributable to zero-rated sales.

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

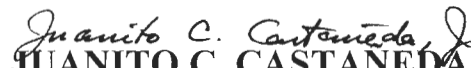
WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


ERLINDA P. UY
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. CASTANEDA, 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