REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

MINDANAO II GEOTHERMAL PARTNERSHIP, Petitioner,	C.T.A. CASE NO. 7800
	Members:
- versus -	ACOSTA, *Chairperson* UY, *and* FABON-VICTORINO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 20 2011 ; 3:00 pm

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AMENDED DECISION

***Fabon-Victorino, J.*:**

On January 19, 2011, the Court in Division promulgated a decision denying the instant Petition for Review for insufficiency of evidence. The Court found the evidence presented by petitioner plainly inadequate to sustain its claim that it is a generation company entitled to a refund or issuance of a tax credit certificate in the amount of P7,842,632.34, allegedly representing its unutilized creditable input taxes for the taxable year 2006. In particular, petitioner failed to present a Certificate of Compliance issued by the Energy Regulatory Commission (ERC), without which all of the reported zero-rated receipts of P556,163,849.79 cannot qualify for VAT zero-rating under Section 108(B)(7) of the 1997 National Internal Revenue Code (NIRC), as amended by Republic Act (RA) No. 9337, and Section 4 of Rule 5 of the Rules and Regulations Implementing RA No. 9136.

Relentless in its cause, petitioner filed a Motion for New Trial on February 7, 2011, praying that the adverse Decision of January 19, 2011 be vacated and a new trial allowed in order for it to submit the Certificate of Compliance (COC) issued by ERC to further prove that it is a generation company and its unutilized and/or excess input tax for the year 2006 are directly attributable to its zero-rated receipts from power generation. It argued that its non-submission of the COC was due to its honest mistake and/or excusable negligence in relying as it did on the previous rulings of the Court that the submission of the Certificate of Accreditation issued by the Department of Energy (DOE) is sufficient to prove that an entity is a generation company.

In the Resolution dated April 12, 2011, petitioner's motion was granted, in the interest of substantial justice. Thus, petitioner was allowed to present its additional evidence.

During the hearing for the reception of additional evidence, petitioner presented its former Senior Accountant, Ivy P. Acosta who identified Exhibits "R", "R-1", "S", "S-1" and "T", all of which were offered in petitioner's Supplemental Offer of Documentary Evidence on May 3, 2011. In the Resolution dated June 30, 2011, all the additional exhibits were admitted for the appreciation of the Court. In the same Resolution, the instant Petition for Review was submitted anew for decision.

After a careful examination of all the evidence presented, this Court hereby partially grants the instant Petition for Review.

As stated in the Decision dated January 19, 2011, the main issue for the resolution of the Court is whether petitioner's sales of generated power to NPC for and in behalf of PNOC-EDC qualify as a zero-rated VAT transaction, and if so, whether petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P7,842,632.34, representing its unutilized input VAT attributable to VAT zero-rated sales for the four quarters of taxable year 2006.

Section 112(A) of the NIRC of 1997, as amended, provides:

> "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."

Thus, to be entitled to a refund or issuance of a tax credit certificate, petitioner must prove the following:

1. that the claim for refund was filed within the two-year prescriptive period;

2. that there must be zero-rated or effectively zero-rated sales;

3. that input taxes were incurred or paid;

4. that such input taxes are attributable to zero-rated sales or effectively zero-rated sales; and

5. that such input taxes were not applied against any output VAT liability.

As established and pronounced by the Court in its January 19, 2011 Decision, petitioner seasonably filed on February 8, 2008 its administrative claim for refund or tax credit for the four quarters of 2006. Petitioner had until March 31, June 30, September 30, and December 31, all of 2008, within which to file its claim with respondent reckoned from the close of the first, second, third and fourth taxable quarters of 2006 on March 31, June 30, September 30 and December 31 of the said taxable year. Admittedly, respondent failed to act on petitioner's application for refund or tax credit within the prescribed 120-day period which lapsed on June 7, 2008. Counting from the lapse of the 120-day period, petitioner had thirty (30) days or until July 7, 2008 to assail respondent's inaction before this Court. Thus, petitioner's appeal was seasonably taken on June 27, 2008, pursuant to Section 112(D) of the 1997 NIRC, as amended.

Anent the second requisite, petitioner claims that its sales of generated power to National Power Corporation (NPC) for and in behalf of Philippine National Oil Corporation-Energy Development Corporation (PNOC-EDC) qualify as a zero-rated transaction pursuant to R.A. No. 9136, also known as the Electric Power Industry Reform Act (EPIRA) of 2001.

Under Section 6 of the EPIRA, sales of generated power by generation companies are value added tax zero-rated. However, this provision was expressly repealed by RA 9337. Notwithstanding the repeal, the sale of generated power through renewable source of energy continued to be VAT zero-rated pursuant to Section 108(B)(7) of the 1997 NIRC, as amended by RA 9337, which provides:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> (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." (*Emphasis supplied*)

Section 4.108-3(f) of Revenue Regulations (RR) No. 16-2005, which implements the foregoing provision of the NIRC, states:

> "SEC. 4.108-3. *Definition and Specific Rules on Selected Services. –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 provision of the 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." *(Emphasis supplied)*

A fortiori, to qualify for VAT zero-rating, the taxpayer must prove by sufficient evidence that it is a generation company and that it is engaged in sale of power or fuel generated through renewable sources of energy.

With the second round of presentation of evidence with leave of Court, petitioner was able to fully establish that it is a generation company. As proof thereof, it presented its ERC Certificate of Compliance [1] (COC No. 03-10-GXT25-0025) dated October 15, 2003, Terms and Conditions of the Certificate of Compliance,[2] and ERC Certificate of Compliance [3] (COC No. 08-12-GXT 25-0025) dated December 8, 2008. Petitioner likewise proved that it actually derived revenues from sale of power generation based on the Certificate of Accreditation issued by DOE and the related invoices and official receipts issued by petitioner to the PNOC-EDC for the year 2006. All the foregoing evinced that petitioner's sales of power generated through a renewable source of energy, particularly, geothermal energy, qualify for VAT zero-rating under Section 108(B)(7) of the NIRC of 1997, as amended.

However, a scrutiny of the Schedule of Zero-Rated Sales/Receipts[4] and the related invoices and official receipts[5] issued by petitioner to PNOC-EDC for the year 2006 reveals that out of Php556,163,849.79 reported zero-rated sales for 2006, only the amount of Php462,783,410.84 is duly supported by valid VAT zero-rated official receipts, summarized as follows:

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1 Exhibits "S".
2 Exhibits "S-1".
3 Exhibit "T".
4 Exhibit "P", Annex K.
5 Exhibits "AE-1" to "AE-12", "AF-1" to "AF-20", "AG-1" to "AG-7" and "AH-1" to "AH-9".

Exhibit	Zero-rated Sales
AE-2, AE-3	P 49,987,385.78
AE-5 to AE-7	49,107,524.68
AE-9 to AE-12	48,744,434.44
AF-2	7,718,693.95
AF-4 to AF-7	49,656,745.09
AF-9	359,673.72
AF-11 to AF-14	50,668,610.09
AF-16 to AF-18	51,485,195.96
AF-20	280,384.61
AG-2, AG-3	46,790,291.36
AG-5 to AG-7	36,849,137.66
AH-4, AH-5	35,694,752.25
AH-7, AH-8	35,440,581.25
	P 462,783,410.84

Consequently, only a portion of the input VAT claim attributable to the substantiated zero-rated sales of Php462,783,410.84 shall be considered for refund. The applicable rate is computed as follows:

Substantiated Zero-Rated Receipts	P 462,783,410.84
Divided by Total Declared Zero-Rated Receipts	÷ 556,163,849.79
Rate of Substantiated Zero-Rated Receipts	**83.209904961%**

To soar up its claim that the input VAT amounting to Php7,842,632.34, representing its unutilized input VAT attributable to its zero-rated sales for the year 2006 are strongly backed-up by sufficient evidence, petitioner submitted the following:

1. Report[6] of the Court-commissioned Independent Certified Public Accountant (ICPA)[7] dated March 31, 2009, with Summary of Output VAT and Input VAT[8];
2. Schedule of Input 10% VAT on Purchases[9];
3. Schedule of Input 12% VAT on Purchases[10],
4. Schedule of Exceptions on Input VAT;[11] and
5. Related suppliers' invoices/official receipts.[12]

Per the ICPA's Report, the total amount of Php26,544.74 representing the exceptions found on petitioner's supporting documents for the year 2006, should be deducted from petitioner's claimed input VAT. The details of the said amount are shown below:

Annex	Particulars	Amount
N.1	Purchases of Services Outside the 2006 Cut-off Period	P 26,327.10
N.2	Purchases of Service Without Original and Valid Official Receipt and Outside the 2006 Covered Period	217.64
Total exceptions as found by the ICPA		**P 26,544.74**

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6 Exhibit "P".
7 Mr. Michael L. Aguirre, Managing Partner of M.L Aguirre & Co., CPAs
8 Exhibit "P", Annex J.
9 Exhibit "P", Annex L.
10 Exhibit "P", Annex M.1 to M.4.
11 Exhibit "P", Annex N.1 to N.3.
12 Exhibits "AA-1" to "AA-58", "AB-1" to "AB-46", "AC-1" to "AC-52" and "AD-1" to "AD-75".

In addition to the foregoing exceptions found by the ICPA, the Court finds that input taxes in the amount of Php6,016,192.37 must likewise be disallowed for the following reasons:

1. Input VAT on purchases of services supported by statement of account and transaction receipt/TIN-V transaction receipt.		
AD-12	PLDT	P 399.00
AD-19	Smart Communications Inc.	342.00
AD-32	PLDT	217.64
AD-39	Smart Communications Inc.	209.80
AD-66	Smart Communications Inc.	155.89
	Subtotal	***P 1,324.33***
2. Input VAT on purchase of goods supported by invoice but the amount of the tax is not shown as a separate item in the invoice.		
AA-21	Glimex, Inc.	P 475,407.00
	Subtotal	***P 475,407.00***
3. Input VAT on purchases of services supported by invoice and official receipt but the amount of the tax is not shown as a separate item in the receipt.		
AA-3	Jetour Philippines, Inc.	P 1,720.00
AA-3	Jetour Philippines, Inc.	700.00
AA-8	Marubeni Energy Services Corp.	43,283.98
AA-8	Marubeni Energy Services Corp.	46,773.82
AA-8	Marubeni Energy Services Corp.	66,368.82
AA-8	Marubeni Energy Services Corp.	132,779.80
AA-10	Mindanao I Geothermal Partnership	162,013.89
AA-26	Marubeni Energy Services Corp.	26,186.42
AA-26	Marubeni Energy Services Corp.	44,726.91
AA-26	Marubeni Energy Services Corp.	74,505.23
AA-28	Marubeni Energy Services Corp.	36,480.63
AA-31	Mindanao I Geothermal Partnership	191,137.43
AA-48	Marubeni Energy Services Corp.	20,919.94
AA-48	Marubeni Energy Services Corp.	32,842.41
AA-48	Marubeni Energy Services Corp.	69,459.40
AA-50	Marubeni Energy Services Corp.	39,808.18
AA-53	Mindanao I Geothermal Partnership	203,866.62
AA-58	Triple Eight Int'l Travel & Tours, Inc.	757.00
AB-5	Marubeni Energy Services Corp.	91,299.43
AB-5	Marubeni Energy Services Corp.	41,938.89
AB-5	Marubeni Energy Services Corp.	177,894.38
AB-5	Marubeni Energy Services Corp.	229,159.27
AB-7	Mindanao I Geothermal Partnership	201,667.34
AB-10	Iternatives Solutions	240.00
AB-15	Marubeni Energy Services Corp.	24,441.41

AB-15	Marubeni Energy Services Corp.	43,648.63
AB-15	Marubeni Energy Services Corp.	42,904.28
AB-15	Marubeni Energy Services Corp.	87,842.81
AB-17	Mindanao I Geothermal Partnership	204,071.57
AB-31	Triple Eight Int'l Travel & Tours, Inc.	1,037.00
AB-33	Desco Incorporated	3,000.00
AB-38	Marubeni Energy Services Corp.	33,161.84
AB-38	Marubeni Energy Services Corp.	47,259.65
AB-38	Marubeni Energy Services Corp.	45,611.03
AB-38	Marubeni Energy Services Corp.	76,261.35
AB-40	Mindanao I Geothermal Partnership	209,262.59
AB-43	Triple Eight Int'l Travel & Tours, Inc.	1,563.00
AB-46	Triple Eight Int'l Travel & Tours, Inc.	1,235.00
AB-46	Triple Eight Int'l Travel & Tours, Inc.	671.00
AC-2	Marubeni Corporation	11,487.79
AC-7	Marubeni Energy Services Corp.	24,417.25
AC-7	Marubeni Energy Services Corp.	39,928.63
AC-7	Marubeni Energy Services Corp.	62,712.76
AC-7	Marubeni Energy Services Corp.	114,864.74
AC-9	Mindanao I Geothermal Partnership	212,091.07
AC-12	Triple Eight Int'l Travel & Tours, Inc.	599.00
AC-14	Triple Eight Int'l Travel & Tours, Inc.	359.00
AC-16	Cifra Industrial Services Corp.	7,808.70
AC-18	Jetour Philippines, Inc.	9,308.25
AC-23	Marubeni Energy Services Corp.	16,301.92
AC-23	Marubeni Energy Services Corp.	52,228.28
AC-23	Marubeni Energy Services Corp.	51,899.20
AC-23	Marubeni Energy Services Corp.	122,561.44
AC-25	Mindanao I Geothermal Partnership	205,005.42
AC-34	Triple Eight Int'l Travel & Tours, Inc.	1,235.00
AC-37	Lima Logistics Services, Inc.	5,400.00
AC-37	Lima Logistics Services, Inc.	132.86
AC-39	Lima Logistics Services, Inc.	5,560.71
AC-44	Marubeni Energy Services Corp.	19,587.79
AC-44	Marubeni Energy Services Corp.	73,244.62
AC-44	Marubeni Energy Services Corp.	42,297.63
AC-44	Marubeni Energy Services Corp.	79,453.79
AC-46	Mindanao I Geothermal Partnership	202,486.79
AC-52	Triple Eight Int'l Travel & Tours, Inc.	1,235.00
AC-52	Triple Eight Int'l Travel & Tours, Inc.	1,235.00
AD-5	Marubeni Energy Services Corp.	19,957.84
AD-5	Marubeni Energy Services Corp.	46,624.97
AD-5	Marubeni Energy Services Corp.	43,752.13
AD-5	Marubeni Energy Services Corp.	76,880.05
AD-7	Mindanao I Geothermal Partnership	200,251.11
AD-15	Plumas Transport Corporation	9,107.14
AD-22	Triple Eight Int'l Travel & Tours, Inc.	917.00
AD-27	Marubeni Energy Services Corp.	19,592.68
AD-27	Marubeni Energy Services Corp.	52,628.72
AD-27	Marubeni Energy Services Corp.	40,485.99

AD-27	Marubeni Energy Services Corp.	72,885.23
AD-29	Mindanao I Geothermal Partnership	198,740.73
AD-35	Plumas Transport Corporation	9,107.14
AD-54	Marubeni Energy Services Corp.	47,364.90
AD-54	Marubeni Energy Services Corp.	75,372.66
AD-54	Marubeni Energy Services Corp.	105,657.64
AD-54	Marubeni Energy Services Corp.	191,041.06
AD-56	Mindanao I Geothermal Partnership	198,043.32
AD-62	Plumas Transport Corporation	9,107.14
	Subtotal	***P 5,539,461.04***
	Total	**P 6,016,192.37**

The findings of the Court coupled with that of the ICPA shows that out of the Php7,842,632.34 input VAT being claimed by petitioner for refund, only the amount of Php1,799,895.23 is duly substantiated in accordance with Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, implemented by Sections 4.110-8 and 4.113-1 of RR No. 16-2005. It is computed as follows:

Total Input VAT claimed for refund - CY 2006		P 7,842,632.34
Less: Not properly substantiated input VAT		
(a) Per Independent CPA	P 26,544.74	
(b) Per this Court's further verification	6,016,192.37	6,042,737.11
Validly supported input VAT		**P 1,799,895.23**

Thus, of the substantiated input VAT of Php1,799,895.23, only the amount of Php1,497,691.11 attributable to the substantiated zero-rated sales of Php462,783,410.84 for the year 2006 is refundable, as computed below:

Validly supported input VAT	P 1,799,895.23
Multiply by rate of substantiated zero-rated sales	83.209904961%
Refundable Input VAT attributable to the Substantiated Zero-Rated Sales/Receipts	**P 1,497,691.11**

Finally, the Court finds that petitioner had no output tax liability against which the claimed input VAT may be applied or credited, as shown in its Quarterly VAT Returns from the first quarter of 2006 to the first quarter of 2007.[13] Petitioner's Quarterly VAT Returns for the first quarter of 2007[14] reveals that it did not carry over its unutilized input VAT for taxable year 2006 to the succeeding quarters.

All said, petitioner is entitled to a refund or issuance of a tax credit certificate as prayed for in its Petition for Review but in the reduced amount of Php1,497,691.11 only, representing its unutilized input VAT attributable to zero-rated sales from power generation services for the year 2006.

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or to **ISSUE A**

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[13] Exhibits "B" to "I".
[14] Exhibit "I-1".

TAX CREDIT CERTIFICATE in favor of petitioner Mindanao II Geothermal Partnership the reduced amount of **ONE MILLION FOUR HUNDRED NINETY SEVEN THOUSAND SIX HUNDRED NINETY ONE PESOS AND ELEVEN CENTAVOS (Php1,497,691.11)**, representing the latter's unutilized input VAT attributable to zero-rated sales/receipts from power generation services for the year 2006.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice