REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

CE LUZON GEOTHERMAL POWER COMPANY, INC., *Petitioner,*	**C.T.A. CASE NO. 7558**
	Members:
-versus-	CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** JUN 2 4 2009 4:00 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by CE Luzon Geothermal Power Company, Inc. (hereafter "petitioner") praying for the refund or issuance of a tax credit certificate (TCC) for its unutilized input value-added taxes (hereafter "input VAT") in the aggregate amount of P20,546,004.87, representing unutilized input VAT paid on its domestic purchases of non-capital goods and services, services rendered by non-residents, and importation of non-capital goods, which are attributable to zero-rated sales for the four quarters of taxable year 2005.

THE PARTIES

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at the 24th Floor, 6750 Bldg., 6750 Ayala Avenue, Makati City.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. He may be served with summons, pleadings and other legal processes at his office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

The antecedent facts of the case are as follows:

Petitioner is engaged in the business of power generation for which it was accredited and certified to as such by the Department of Energy, as evidenced by its DOE Certificate of Accreditation (OSAC94-12) issued on June 15, 1994 *(Exhibit "B")*. Petitioner is a registered value added tax (VAT) taxpayer with the Bureau of Internal Revenue evidenced by its Certificate of Registration with Tax Identification Number 003-924-356-000 *(Exhibit "C")*.

On the following dates, petitioner filed with the BIR its Original Quarterly VAT Returns for the first to fourth quarters of 2005, respectively:

Taxable Quarter	Date of Filing of Original Return
1st	April 25, 2005
2nd	July 25, 2005
3rd	October 25, 2005
4th	January 25, 2006

On the following dates, petitioner filed with the BIR its Amended Quarterly VAT Returns for the first to fourth quarters of 2005, reflecting excess or unutilized VAT credits arising from petitioner's domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods:

2005 Taxable Quarter	Date of Filing of Amended Return	Excess/Unutilized VAT Credits				Total (P)
		Domestic Purchases-Goods Other than Capital Goods (P)	Domestic Purchases-Services (P)	Services Rendered by Non-Residents (P)	Importation-Goods Other than Capital Goods (P)	
1st	January 12, 2006	534,507.06	5,957,152.09	460,519.69	176,684.00	7,128,862.84
2nd	January 12, 2006	1,213,592.81	2,179,539.80	30,471.40	319,222.00	3,742,826.01
3rd	January 12, 2006	1,091,122.97	2,690,938.31	0	1,306,800.00	5,088,861.28
4th	April 10, 2006	965,895.81	2,514,421.72	337,660.21	767,477.00	4,585,454.74
Total		3,805,118.65	13,342,051.92	828,651.30	2,570,183.00	20,546,004.87

On November 30, 2006, petitioner filed its administrative claim for refund of unutilized input VAT for the four quarters of taxable year 2005.

In view of respondent's inaction, on January 3, 2007, petitioner filed its judicial claim for refund with this Court, docketed as C.T.A. Case No. 7558.

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

> "4. Petitioner's claim for refund is subject to administrative investigation/examination by the Bureau;
>
> 5. The amount of P20,546,004.87 being claimed by petitioner as alleged unutilized input VAT from its domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods for the first to fourth quarters of taxable year 2005 was not properly documented;
>
> 6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
>
> 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 Section 6 (a) and (b) of the Revenue Regulations No. 6-97 in relation to Section 4.107-1(a) of Revenue Regulations No. 7-95, and Section

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236 of the National Internal Revenue Code of 1997 (NIRC of 1997);

b. The invoicing and accounting requirements for VAT registered persons, as well as the filing and payments 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 refund in pursuance to Revenue Memorandum Order No. 53-98, 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 the provision of Section 229 of the Tax Code, as amended. It is worthy of emphasis that Section 112 (D) of the Tax Code, as amended, 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 immediate dismissal of the petition for review;

d. That the input taxes of P20,546,004.87 allegedly paid by the petitioner on its purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods for the first to fourth quarters of 2005 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 and judicial claims 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 Sections 112 (A) and (D) and 229 of the NIRC of 1997;

f. That petitioner's domestic purchases of goods and services 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 NIRC of 1997, and in pursuance to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims of Input Tax Credit);

g. The requirements as enumerated under Section 4.104-2 of the Revenue Regulations 7-95 (Re: Persons who can avail of the Input Tax Credits);

8. The petition for review is premature. Since petitioner did not submit complete documents in support of its administrative claim for refund as indicated under Section 112 (D) of the NIRC of 1997, the 120-day period starts to run on 30 November 2006, the date when it filed its administrative claim for refund. The said period is yet to expire on 10 March 2007. Hence, the 30-day period within which to file the petition for review before this Honorable Court is yet to expire on 9 April 2007. This being so, this Honorable Court has no jurisdiction to act on the instant petition for review.

9. 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 such, they were looked upon with disfavor *(Western Minolco Corp., vs. Commissioner of Internal Revenue, 124 SCRA 1211).*"

Petitioner presented Leilah Yasmin E. Alpad and Jerome Antonio B. Constantino, as witnesses, and documentary evidence, marked as

Exhibits *"A"* to *"AAA"*, inclusive of their submarkings, which were all admitted by the Court.

On the other hand, respondent's counsel manifested that he will not be presenting evidence and submitted the case for decision.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice, afterwhich the case shall be deemed submitted for decision.

Both parties having complied thereto, the petition was deemed submitted for decision on July 25, 2008.

However, on August 29, 2008, petitioner filed a "Motion to Admit Reply Memorandum" and its "Reply Memorandum (To Respondent's Memorandum dated July 18, 2008)", which the Court granted in a Resolution dated September 4, 2008.

Hence, this decision.

ISSUES

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

I

WHETHER OR NOT UNUTILIZED INPUT VAT OF THE PETITIONER FOR THE FIRST TO FOURTH QUARTERS OF 2005 AMOUNTING TO P20,546,004.87 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 FIRST TO FOURTH QUARTERS OF 2005 AMOUNTING TO P20,546,004.87 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 P20,546,004.87, REPRESENTING ITS UNUTILIZED INPUT VAT FROM PURCHASES OF TAXABLE GOODS AND SERVICES AND IMPORTATION OF GOODS FOR THE FIRST TO FOURTH QUARTERS OF 2005.

Principal Issue

The foregoing issues raised by both parties boil down to the principal issue of whether or not petitioner is entitled to a refund or the issuance of a TCC in the amount of P20,546,004.87, representing unutilized input VAT paid on its domestic purchases of non-capital goods and services rendered by non-residents and importation of non-capital goods which are attributable to zero-rated sales for calendar year 2005.

THE COURT'S RULING

The petition is partly meritorious.

Petitioner anchors its claim on *Sections 110(B)* and *112(A)* of the *National Internal Revenue Code of 1997 (NIRC of 1997), as amended,* which provide, as follows:

> "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:
>
> xxx xxx
>
> (B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. 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."
>
> "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 volume of sales."

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Pursuant to the above provisions, in order to be entitled to a refund or the issuance of a TCC of input VAT paid attributable to zero-rated or effectively zero-rated sales, 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 taxes are attributable to zero-rated sales or effectively zero-rated sales;
4) that the input taxes were not applied against any output VAT liability; and
5) that the claim for refund was filed within the two-year prescriptive period.

First Requisite:
There must be zero-rated or effectively zero rated sales

As regards the first requisite, petitioner contends that its sales of electricity as a power generation company, qualify for VAT zero-rating, under *paragraph 5*, *Section 6* of *RA 9136*, also known as the Electric Power Industry Reform Act of 2001, which states:

"SEC. 6. *Generation Sector.* xxx

xxx xxx

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

Notwithstanding the repeal of *RA 9136* under *RA 9337,* which took effect on November 1, 2005, petitioner's sale of generated power continued to be VAT zero-rated under *Section 108(B)(7) of the NIRC of 1997, as amended by RA 9337.*

To qualify for VAT zero-rating, petitioner must be able to establish that: (1) it is a generation company; and (2) it derives sales from power generation. The Court finds that the prescribed requisites were duly established by petitioner.

As to the first requisite, records show that petitioner owns and operates a 180-megawatt power plant facility located in Mahanagdong, Province of Leyte, which has been accredited by the Department of Energy, as a Block Power Production Facility (BPPF), since June 15, 1994 (*Exhibit "B"*). As such, it is engaged in the business of power generation and the subsequent sale of generated power to the Philippine National Oil Company-Energy Development Corporation [PNOC-EDC] (*Exhibit "D"*). Hence, petitioner was able to establish that it is a generation company.

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As regards the second requisite, records show that for the four quarters of taxable year 2005, petitioner generated sales of power generation services to PNOC-EDC in the amount of P4,318,484,466.77, which was declared in its Quarterly VAT Returns for the same period, as follows:

Exhibit	Year 2005	Zero-Rated Sales/Receipts
X	1st Quarter	P 742,366,072.39
Z	2nd Quarter	1,120,564,388.92
CC	3rd Quarter	1,343,514,348.00
FF	4th Quarter	1,112,039,657.46
		P 4,318,484,466.77

However, We find that there is a marked discrepancy between the total zero-rated receipts of P4,232,115,860.06 reflected in the official receipts (ORs) issued by petitioner to PNOC-EDC *(Exhibits "SS-1" to "SS-37", as summarized in Exhibit "RR")*, and the total zero-rated receipts of P4,318,484,466.77 declared by petitioner in its 2005 Quarterly VAT Returns. The Court-Commissioned Independent CPA explained the discrepancy and clarified that it was merely brought about by the 2% expanded withholding tax deducted by PNOC-EDC and the foreign exchange rates differential, thus:

OR Amount	P	4,232,115,860.06
Withholding tax		86,369,689.34
Forex		(1,083.84)
Total Sales	**P**	**4,318,484,465.56** *

** Difference due to rounding.* (Exhibit "OO")

Thus, petitioner's sales of electricity as a power generation company amounting to P4,318,484,466.77 qualify for VAT zero-rating.

Second and Third Requisites:
Input taxes were incurred or paid and that such input taxes are attributable to zero-rated sales or effectively zero-rated sales

Having resolved that petitioner's gross receipts from power generation services rendered to PNOC-EDC for the four quarters of 2005 in the amount of P4,318,484,466.77 qualify for VAT zero-rating, We now proceed to the determination of the amount of input VAT attributable thereto.

Petitioner submitted various suppliers' invoices, official receipts, Bureau of Customs (BOC) Import Entries and Internal Revenue Declarations (IEIRDs), BOC and bank official receipts *(Exhibit "UU" as summarized in Exhibit "TT")*, in support of its claimed unutilized input taxes reflected in its Quarterly VAT Returns for the four quarters of 2005, in the amount of P20,546,004.87, broken down as follows:

Exhibit	Year 2005	Input VAT
X	1st Quarter	P 7,128,862.84
Z	2nd Quarter	3,742,826.01
CC	3rd Quarter	5,088,861.28
FF	4th Quarter	4,585,454.74
		P 20,546,004.87

Upon perusal of the said documents, the Court-Commissioned Independent CPA, Jerome Antonio B. Constantino of CG & Co., summarized his findings, as follows *(Exhibit "OO")*:

Findings	Annex		Input Tax
A. Properly supported by VAT invoices/receipts/IEIRDs/BIR Form 1600			
1. Domestic purchase of goods and services supported by VAT invoices and ORs, and importation of goods supported by IEIRDs	OK	P	13,836,590.38
2. Domestic purchase of goods and services supported by TIN No. VAT No., VAT No. TIN No., VAT Reg. TIN, TIN VAT No. invoice or OR	OK-1		300,764.55
3. Domestic purchase of goods supported by a VAT invoice issued in the Company's name but without the Company's TIN and/or address or with TIN and/or address changed/added on the support but without countersign	A13		92,212.69
4. Domestic purchase of services supported by a VAT OR issued in the Company's name but without the Company's TIN and/or address or with TIN and/or address changed/added on the support but without countersign	B13		2,795,106.46
5. Importation of goods supported by a BOC/LBP OR issued in the Company's name but without the Company's TIN and/or address or with TIN and/or address changed/added on the support but without countersign	C13		3,440.00
6. Domestic purchase of goods supported by a VAT invoice not dated within the VAT-taxable quarter but within the VAT-taxable year	A2		574,689.78
7. Domestic purchase of goods supported by TIN-V invoice	A12		26,533.05
8. Domestic purchase of goods supported by non VAT invoice but stamped as "VAT registered as of November 1, 2005" issued within the period November 1, 2005 to December 1, 2005	A12-1		8,842.67
9. Domestic purchase of goods supported only by a certified true copy of the VAT invoice	A18		14,719.09
10. Domestic purchase of service supported by a VAT OR not dated within the VAT-taxable quarter but within the VAT-taxable year	B2		101,896.41
11. Domestic purchase of services supported by TIN-V OR	B12		350,944.47
12. Domestic purchase of services supported by a certified true copy VAT OR	B18		61,500.00
13. Importation of goods supported by an original IEIRD and BOC/LBP OR not dated within the VAT-taxable quarter but within the VAT-taxable year	C2		1,028,358.01
Subtotal		*P*	*19,195,597.56*
B. Other findings			
1. Domestic purchase of goods supported by documents other than a VAT invoice	A1	P	84,591.79
2. Domestic purchase of goods supported by a VAT invoice but not an original copy	A3		104,218.30
3. Domestic purchase of goods supported by a VAT invoice not issued in the name of the Company	A4		336.03
4. Domestic purchase of goods supported by a VAT invoice issued in the name of Calenergy/CE Visayas/CE Cebu	A5		10,575.87

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(whichever is applicable)		
5. Domestic purchase of goods supported by TIN# only; TIN-NV/NON-VAT invoice; stamped/handwritten TIN-V/VAT	A7	33,833.47
6. Domestic purchase of goods supported by a VAT invoice but without invoice date	A10	100.00
7. Domestic purchase of goods supported by a VAT invoice not dated within the VAT-taxable year	A14	96,987.29
8. Domestic purchase of goods supported by a VAT invoice with changes in the name of the Company	A15	5,090.73
9. Domestic purchases of services supported by documents other than a VAT official receipt	B1	23,011.64
10. Domestic purchase of services supported by a VAT OR but not an original copy	B3	24,499.57
11. Domestic purchase of services supported by a VAT OR not issued in the name of the Company	B4	3,369.13
12. Domestic purchase of services supported by a VAT OR issued in the name of Calenergy/CE Visayas/CE Cebu (whichever is applicable)	B5	21,471.51
13. Domestic purchase of services supported by TIN # only; TIN-NV/NON-VAT OR; stamped/handwritten TIN-V/VAT	B7	69,594.95
14. Domestic purchase of services supported by a VAT OR but without OR date	B10	5,131.07
15. Domestic purchase of services supported by a VAT OR not dated within the VAT-taxable year	B14	20,009.57
16. Domestic purchase of services supported by a TIN# only; TAN-V; TAN VAT;TIN-NV/Non VAT stamped/handwritten TIN-V/VAT tape receipt	B16	2,333.33
17. Importation of goods supported by an original IEIRD and BOC OR not dated within the year	B17	1,630.90
18. Importation of goods supported by documents other than an original copy of the IEIRD	C1	50.00
19. Importation of goods supported by an original IEIRD and BOC OR not dated within the year	C3	257,620.00
20. Importation of goods with supporting documents not issued in the name of the Company	C4	56,446.00
21. Importation of goods supported by a photocopy of IEIRD and original BOC OR	C5	35,796.00
22. Importation of goods supported by a photocopy (any other than original) of IEIRD and an original BOC/LBP OR	C6	58,498.00
23. Importation of goods supported by original BOC OR and/or LBP OR only	C7	51,480.00
24. Overclaimed input tax on domestic purchases of goods/services due to erroneous computation	E1	16,411.24
25. Effect of forex on foreign currency denominated purchases of goods and services - overstatement	J1	20,006.11
26. Supporting documents not available	F	347,314.81
Subtotal		*P 1,350,407.31*
TOTAL		**P 20,546,004.87**

After a careful examination of the report of the Court-Commissioned Independent CPA, the Court finds the same to be in order. Hence, the items under the heading *"A. **Properly supported by VAT***

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invoices/receipts/IEIRDs/BIR Form 1600", particularly A.3, A.4, A.7, A.9, A.11, A.12, and all 26 items under the heading ***"B. Other Findings"***, except B.21, B.22 and B.23, should be denied for the grounds above-stated. To recapitulate, the said disallowances amounting to P4,545,649.07 are, as follows:

DISALLOWANCES PER INDEPENDENT CPA'S REPORT

Findings	Input VAT
Domesitc purchase of goods supported by a VAT invoice issued in the petitioner's name but without the petitioner's TIN and/or address or with TIN and/or address changed/added on the support but without countersign	92,212.69
Domestic purchase of services supoprted by a VAT OR issued in the petitioner's name but without the petitioner's TIN and/or address or with TIN and/or address changed/added on the support but without countersign	2,795,106.46
Domestic purchase of goods supported by TIN-V invoice	26,533.05
Domestic purchase of goods supported only by a certified true copy of the VAT invoice	14,719.09
Domestic purchase of services supported by TIN-V OR	350,944.47
Domestic purchase of services supported by a certified true copy VAT OR	61,500.00
Domestic purchase of goods supported by documents other than a VAT invoice	84,591.79
Domestic purchase of goods supported by a VAT invoice but not an original copy	104,218.30
Domestic purchase of goods supported by a VAT invoice not issued in the name of the Company	336.03
Domestic purchase of goods supported by a VAT invoice issued in the name of Calenergy/CE Visayas/CE Cebu (whichever is applicable)	10,575.87
Domestic purchase of goods supported by TIN# only; TIN-NV/NON-VAT invoice; stamped/handwritten TIN-V/VAT	33,833.47
Domestic purchase of goods supported by a VAT invoice but without invoice date	100.00
Domestic purchase of goods supported by a VAT invoice not dated within the VAT-taxable year	96,987.29
Domestic purchase of goods supported by a VAT invoice with changes in the name of the Company	5,090.73
Domestic purchases of services supported by documents other than a VAT official receipt	23,011.64
Domestic purchase of services supported by a VAT OR but not an original copy	24,499.57
Domestic purchase of services supported by a VAT OR not issued in the name of the Company	3,369.13
Domestic purchase of services supported by a VAT OR issued in the name of Calenergy/CE Visayas/CE Cebu (whichever is applicable)	21,471.51
Domestic purchase of services supported by TIN # only; TIN-NV/NON-VAT OR; stamped/handwritten TIN-V/VAT	69,594.95

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Domestic purchase of services supported by a VAT OR but without OR date	5,131.07
Domestic purchase of services supported by a VAT OR not dated within the VAT-taxable year	20,009.57
Domestic purchase of services supported by a TIN# only; TAN-V; TAN VAT;TIN-NV/Non VAT stamped/handwritten TIN-V/VAT tape receipt	2,333.33
Importation of goods supported by an original IEIRD and BOC OR not dated within the year	1,630.90
Importation of goods supported by documents other than an original copy of the IEIRD	50.00
Importation of goods supported by an original IEIRD and BOC OR not dated within the year	257,620.00
Importation of goods with supporting documents not issued in the name of the Company	56,446.00
Overclaimed input tax on domestic purchases of goods/services due to erroneous computation	16,411.24
Effect of forex on foreign currency denominated purchases of goods and services – overstatement	20,006.11
Supporting documents not available	347,314.81
TOTAL	**4,545,649.07**

Upon a careful examination of the evidence on record, the Court also finds that the input VAT claim should be further decreased by P1,121,043.15 for the following reasons:

Exh.	Inv/OR #	Inv/OR Date	Supplier		Input VAT
1) Withholding VAT remitted in behalf of non-resident supplier of services with supporting documents not properly marked					
			Fulkerson & Associates	P	65,598.15
			ABB Industry Pte. Ltd.		394,921.54
			John Gilden Ltd.		30,471.40
			Kokusai Commerce Co. Ltd.		74,826.01
			Parsons Brinckerhoff Pte. Ltd.		262,834.20
			Subtotal	*P*	*828,651.30*
2) Purchase of goods/services supported by documents other than a VAT invoice/OR					
UU-L-4Q-548			Harnwell Chemicals Corp.	P	51,271.03
UU-L-4Q-549			Industrial Inspection (Intrnat'l) Inc.		38,981.25
UU-L-4Q-135			Nalco Philippines, Inc.		48,727.27
			Subtotal	*P*	*138,979.55*
3) Input VAT claimed twice					
UU-L-1Q-338B	31496	2/3/2005	Nalco Philippines, Inc.	P	48,727.27
UU-L-2Q-0346A	6001	3/17/2005	Joaquin Cunanan & Co.		20,500.00
			Subtotal	*P*	*69,227.27*

4) Purchase of goods/services with no supporting documents

			Isla Lipana & Co.	P	10,037.00
			Trane Philippines		17,500.00
			Trane Philippines		21,403.50
			Subtotal	*P*	*48,940.50*

5) Purchase of services supported by ORs that are not legible

UU-L-2Q-0312 to 0313	BM2000000 00057196	6/30/2005	Innove Communications Inc.	P	11,168.89
UU-L-4Q-089 to 090	BM2000000 00000071076	11/9/2005	Innove Communications Inc.		10,067.46
			Subtotal	*P*	*21,236.35*

6) Importation of goods supported by undated Ors

UU-L-1Q-617	121628963		Bureau of Customs		2,306.00
UU-L-2Q-00821	122263504		Bureau of Customs		1,433.00
UU-L-2Q-00842	122822567		Bureau of Customs		2,573.00
UU-L-2Q-00921	123662551		Bureau of Customs		3,678.00
			Subtotal	*P*	*9,990.00*

7) Purchase of goods supported by an invoice bearing erasures countersign

UU-L-3Q-01015	12612	7/25/2005	Richworld Electrical and Sales Co.	P	4,018.18
			Subtotal	*P*	*4,018.18*
			TOTAL	**P**	**1,121,043.15**

Based on the foregoing, out of petitioner's claimed input VAT of P20,546,004.87, only the amount of P14,879,312.65 has been duly substantiated, in accordance with *Sections 110(A) and 113(A)* of the *NIRC of 1997, as amended*, and as implemented by *Sections 4.104-5 and 4.108-1 of Revenue Regulations No.7-95,* broken down as follows:

Claimed input VAT			P 20,546,004.87
Less:	Disallowances		
	Per ICPA	P4,545,649.07	
	Per Court's verification	1,121,043.15	5,666,692.22
Valid input VAT			**P** 14,879,312.65

<u>Fourth Requisite:</u>
<u>Input taxes were not applied against any output VAT liability</u>

As regards the fourth requisite, a perusal of petitioner's Quarterly VAT Returns for the four quarters of 2005 *(Exhibits "X", "Z", "CC" and "FF")*, shows that it has no output tax liability against which the substantiated input VAT of P14,879,312.65 may be applied or credited. Although petitioner carried-over the amount of P14,879,312.65 to the succeeding four quarters of 2006 *(Exhibits "GG" to "KK")*, the same remained unutilized as petitioner had no output VAT liability for the said period. Moreover, the substantiated input VAT of P14,879,312.65 formed part of the P20,546,004.87 input VAT deducted as "Any VAT Refund/TCC Claimed" in the Quarterly VAT Return for the fourth quarter of 2006 *(Exhibits "JJ" and "KK")*. Consequently, the input VAT of P14,879,312.65 was no longer carried over to the succeeding first quarter of 2007 *(Exhibit "LL")*.

<u>Fifth Requisite:</u>
<u>The claim for refund was filed within the two-year prescriptive period</u>

Finally, as to the two-year prescriptive period, We rule that petitioner's claim was timely filed. In the recent case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly*

Southern Energy Quezon, Inc.), G.R. No. 172129, September 12, 2008, the Supreme Court settled the issue on the reckoning of the prescriptive period and the applicable provisions on claims for refund for input VAT, as follows:

> **"Claim for refund or tax credit filed out of time**
>
> The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Sec. 112(A) of the NIRC pertinently reads:
>
> > (A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales,** except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x. (Emphasis ours.)
>
> The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years **reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not**. As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112(A), '[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued.' Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input

VAT. The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid. Be that as it may, and given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years after September 30, 1996 or, to be precise, on September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed.

Reckoning for prescriptive period under Secs. 204(C) and 229 of the NIRC inapplicable

To be sure, MPC cannot avail itself of the provisions of either Sec. 204(C) or 229 of the NIRC which, for the purpose of refund, prescribes a different starting point for the two-year prescriptive limit for the filing of a claim therefor. Secs. 204(C) and 229 respectively provide:

> Sec. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*— The Commissioner may –
>
> x x x x
>
> (c) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund <u>within two (2) years after the payment of the tax</u> or penalty**: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> x x x x

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> Sec. 229. *Recovery of Tax Erroneously or Illegally Collected.*— No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, **no such suit or proceeding shall be filed after the <u>expiration of two (2) years from the date of payment of the tax</u> or penalty** regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis ours.)

Notably, the above provisions also set a two-year prescriptive period, reckoned from date of payment of the tax or penalty, for the filing of a claim of refund or tax credit. Notably too, both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes."

Section 112 (A) of the NIRC of 1997, as amended, clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for internal revenue tax due the taxpayer must be claimed within two (2) years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT, regardless of whether said tax was paid or not. The reckoning of the two-year prescriptive period

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for the filing of a claim for input VAT refund commences from the close of the taxable quarter when the relevant sales or transaction was made regardless when the input VAT was paid.

Counting from March 31, 2005, June 30, 2005, September 30, 2005 and December 31, 2005, the close of the first, second, third and fourth quarters of 2005, respectively, petitioner's administrative claim *(Exhibit "L")* and Petition for Review *(docketed as C.T.A. Case No. 7558)* filed on November 30, 2006 and January 3, 2007, respectively, were both filed within the two-year prescriptive period.

In sum, the Court finds that petitioner is entitled to a refund or issuance of a TCC, representing unutilized input VAT paid on its domestic purchases of non-capital goods and services rendered by non-residents and importation of non-capital goods attributable to zero-rated sales for all the four quarters of 2005, but in the reduced amount of P14,879,312.65.

WHEREFORE, premises considered, the present Petition for Review is **PARTLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **FOURTEEN MILLION EIGHT HUNDRED SEVENTY NINE**

THOUSAND THREE HUNDRED TWELVE and 65/100 (P14,879,312.65), representing unutilized input VAT paid on its domestic purchases of non-capital goods and services rendered by non-residents and importation of non-capital goods which are attributable to zero-rated sales for calendar year 2005.

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. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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