REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MIRANT NAVOTAS CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 6257

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 16 2003

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DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P3,007,059.46 allegedly representing petitioner's unutilized input VAT paid on domestic purchases of goods and services which are attributable to its effectively zero-rated sale of services for the four quarters of 1999.

Petitioner is a domestic corporation existing under and by virtue of Philippine law, with principal office at 5th Floor, CTC Building, 2232 Roxas Boulevard, Pasay City (*par. 1, Summary of Admitted Facts*). It was originally registered with the Securities and Exchange Commission (SEC) under the name "Hopewell Energy (Philippines) Corp". However, on June 17, 1999, petitioner's corporate name was changed to "Southern Energy Navotas, Inc." (*Exhibit A*). Subsequently, on June 18, 2001, petitioner's corporate name was further changed to "Mirant Navotas Corporation" (*Exhibit K*).

Petitioner is principally engaged in the business of power generation and the subsequent sale thereof to the National Power Corporation (NPC) under a Build, Operate, Transfer (BOT) scheme. It is registered as a Value-Added Tax (VAT) taxpayer in accordance with Section 236 of the National Internal Revenue Code *(pars. 2 & 3, Summary of Admitted Facts)*.

On June 3, 1999, petitioner filed with the Bureau of Internal Revenue an application for the effective zero rating of its sales of electricity to NPC. The said application was approved by the BIR until December 31, 1999 (*Exhibit C*).

For the four quarters of 1999, petitioner allegedly incurred input taxes amounting to P3,007,059.46 relative to its effectively zero rated sales to NPC of P307,646,054.45, which were declared in its VAT returns for the same period as follows:

Exhibit	1999	Zero-rated Sales	Input VAT
E(amended)	1st qtr	P 75,559,576.19	P 1,137,147.39
G(amended)	2nd qtr	74,841,977.18	739,522.03
H	3rd qtr	77,942,081.45	384,177.18
I	4th qtr	79,302,419.63	746,212.86
		P 307,646,054.45	P 3,007,059.46

On December 20, 2000, petitioner filed an administrative claim for refund corresponding to its alleged 1999 unutilized input VAT payments of P3,007,059.46 (*Exhibit J*).

Due to the inaction of the respondent, petitioner elevated its claim before this court through a Petition for Review filed on March 29, 2001.

Respondent, in his Answer filed on May 3, 2001, interposed the following Special and Affirmative Defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue;

5. Petitioner failed to prove that the tax subject of the case at bar comes within the scope of claims for refund pursuant to Section 204 of the National Internal Revenue Code. The said section of the Tax Code explicitly enumerates the grounds upon which a taxpayer is allowed to claim for refund, to wit: (a) erroneously or illegally received or collected internal revenue taxes; (b) penalties imposed without authority. The above-mentioned grounds are exclusive;

6. The amount of *Php: 3,007,059.46* being claimed by petitioner as alleged unutilized VAT input taxes paid on its domestic purchases of goods and services during the taxable period of 1999 that are allegedly attributable to its zero-rated sale of power generation services to National Power Corporation was not properly documented;

7. Partaking of the nature of exemptions, such claims are strictly construed against the claimant, and cannot be allowed unless granted in the most explicit and categorical language. Being in the nature of tax exemptions, these are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the claimant and liberally in favor of the taxing authority;

8. Moreso, it is incumbent upon petitioner to prove that it has complied with the governing rules relative to tax recovery or refund as provided for under Sections 204 and 229 of the National Internal Revenue Code."

To support its claim, petitioner presented testimonial and documentary evidence. Respondent, on the other hand, did not present any controverting evidence.

On March 26, 2003, the case was submitted for decision sans the respondent's memorandum.

As jointly stipulated by the parties, the issues to be resolved by this court are:

1. Whether or not the amount of Php 3,007,059.49 representing petitioner's alleged unutilized VAT taxes paid relative to its domestic purchases of goods and services during the taxable period ending 1999 are attributable to its zero-rated transactions;

2. Whether or not the said unutilized input VAT was carried over to succeeding quarter and applied against any of petitioner's output VAT for the said period;

3. Whether or not the alleged unutilized input VAT is sufficiently substantiated by documentary evidence;

4. Whether or not petitioner's sale of power generation services is zero-rated; and

5. Whether or not petitioner is entitled to a tax refund.

Anent the issue of whether or not the power generation services rendered by petitioner to NPC are subject to zero percent (0%) VAT, the same had already been resolved by this court in the affirmative in a number of similar cases where the law controlling is Section 108(B)(3) of the Tax Code in relation to Section 13 of Republic Act No. 6395 (NPC Charter), as amended, to wit:

> "**Section 108.** ***Value-Added Tax on Sale of Services and Use or Lease of Properties.*** x x x
>
> (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:
>
> (1) x x x
> (2) x x x
> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate."(Underscoring supplied).

> "**Section 13.** ***Non-profit Character of the Corporation: Exemption from All Taxes, Duties, Imposts and Other Charges by the Government and Government Instrumentalities.*** — The Corporation shall be non-profit and shall devote all its returns from its capital investment as well as excess revenues from its operations, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance of effective implementation of the policy enunciated in Section one of this Act, the Corporation, including its subsidiaries, is hereby declared exempt from the payment of all forms of taxes, duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings." (Underscoring supplied).

Clearly from the foregoing, NPC is an entity with a special charter, which categorically makes it exempt from payment of all taxes, whether direct or indirect, including VAT. Hence, by virtue of the said charter, the services rendered by a VAT registered entity, like herein petitioner, to NPC are effectively subject to zero percent (0%) VAT ***(Mirant Navotas Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6044, October 16, 2002)***.

Moreover, the Supreme Court in its Resolution dated June 8, 1993, affirmed NPC's tax exemption in the case of ***Maceda vs. Macaraig, Jr., 197 SCRA 771***, thus:

> "A chronological review of the NPC laws will show that it has been the lawmaker's intention that the NPC was to be completely tax-exempt from all forms of taxes – direct or indirect.
>
> xxx xxx xxx
>
> One common theme in all these laws is that the NPC must be enabled to pay its indebtedness which, as of P.D. No. 938 was P12 Billion in total domestic indebtedness, at any one time, and US$4 Billion in total foreign loans at any one time. The NPC must be and has to be exempt from all forms of taxes if this goal is to be achieved."

Likewise, no less than the respondent himself approved petitioner's application for the zero-rating of its sales to NPC until December 31, 1999 (*Exhibit C*).

Further, petitioner was able to establish through its various invoices, official receipts to NPC and account statements from Citibank (*Exhibits N-1 to N-45*) that it actually generated revenues from its sale of power generation services to NPC for the four quarters of 1999. However, it was noted that petitioner erroneously reported twice its sales covering invoices nos. 555 and 556 in the amounts of P26,545,932.89.and P44,134.35 (*Exhibits U-3 & U-4; H & I*), respectively. Although the sales reported by petitioner in its VAT returns for 1999 in the amount of P307,646,054.45 were overstated by P26,590,067.24, the same does not alter the fact that its sales are effectively zero-rated pursuant to Section 108(B)(3) of the Tax Code. Consequently, petitioner can claim tax credit or refund of unutilized input VAT directly attributable thereto in accordance with Section 112 of the Tax Code, to wit:

> ***"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."

Proceeding now to the issue of whether or not petitioner was able to substantiate its claimed input VAT payments of P3,007,059.46, the commissioned auditing firm, SGV & Co., in its report dated March 25, 2002 (*Exhibits M-3 to M-5*), noted the following exceptions and observations:

" ***Exceptions***	***1st Qtr***	***2nd Qtr***	***3rd Qtr***	***4th Qtr***	***Total***
Input Taxes on Purchases of Services					
1. Supported by Non-VAT ORs	*P10,856.56*	*P 2,125.65*	*P 2,915.44*	*P2,570.93*	*P18,468.58*
2. Supported by ORs with TIN only			*6,705.00*	*3,165.00*	*9,870.00*

3. Supported by Documents Other Than ORs (i.e. supported by VAT invoice; statement of charges)	*5,912.68*		*159.62*		*6,072.30*
4. Supported by ORs not in the Vendor's name				*5,226.00*	*5,226.00*
5. Supported by OR with TAN-VAT only				*3,409.10*	*3,409.10*
6. Supported by Non-VAT ORs				*186,179.46*	*186,179.46*
Input Taxes on Purchases of Goods					
1. Supported by Invoice Without Printed BIR Registration			*1,800.00*		*1,800.00*
2. Supported by Invoices with TIN only	*836.37*	*4,424.40*			*5,260.77*
3. Supported by Non-VAT Invoices	*342.73*	*2,954.55*		*773.19*	*4,070.47*
Input Taxes on Purchases of Goods and Services					
1. Without Supporting Documents	*1,794.55*	*685.58*	*811.45*	*295.96*	*3,587.54*
2. Erroneously Computed					
Services				*2,995.24*	*2,995.24*
Goods		*1,685.95*			*1,685.95*
3. Not Supported by Orig. Docs.			*581.82*		*581.82*
	P19,742.89	***P11,876.13***	***P12,973.33***	***P204,614.88***	***P249,207.23***

Moreover, we would like to mention the following observations for the additional information of the Honorable Court:

1. *We noted that the Company claimed input taxes amounting to P26,758.86 (Annex N) on purchases of services for which the dates of the related VAT ORs fall within the first quarter of 2000.*

   We were able to ascertain, however, that there was no double claiming relative to these input taxes. These input taxes were claimed only in the four quarters of 1999, and were not claimed in any other quarter as mentioned above.

2. *We noted that the Company claimed input taxes amounting to P17,256.42 (Annex O) on purchases of goods for which the dates of the related VAT invoices fall within the fourth quarter of 1998.*

   We were able to ascertain, however, that there was no double claiming relative to these input taxes. These input taxes were claimed only in the first and second quarters of 1999, and were not claimed in any other quarter as mentioned above.

3. *We noted that the Company claimed input taxes on importations amounting to P1,056,248.00 (Annex P) which are properly documented by certified true copies of bank statements (i.e., CITIBANK).*"

As can be seen from the above SGV findings, a portion of petitioner's claimed input VAT payments amounting to P249,207.23 should be denied for failure to meet the substantiation requirements under Section 4.104-5 of Revenue Regulations No. 7-95 in relation to Sections 113 and 237 of the Tax Code. Likewise, the input taxes of P26,758.86 and P17,256.42 for which the related VAT official receipts (ORs) and invoices fall outside the subject period of claim (*Observations 1 & 2*) should also be deducted from the total claim of P3,007,059.46. Hence, petitioner was able to substantiate by proper VAT invoices and/or official receipts only the input taxes of P2,713,836.95 computed as follows:

Claimed input taxes			P 3,007,059.46
Less:	1.) input taxes without valid VAT invoices/official receipts	P 249,207.23	
	2.) input taxes on purchases of services for which the related VAT ORs fall within the first quarter of 2000	26,758.86	
	3.) input taxes on purchases of goods for which the related VAT invoices fall within the fourth quarter of 1998	17,256.42	293,222.51
Substantiated input taxes			P 2,713,836.95

Also, petitioner proved that the claimed input taxes were not applied against any output tax as shown in its 1999 quarterly VAT returns *(Exhibits D to I)*. Moreover, in its VAT return for the second quarter of 2001 (*Exhibit V-3*), petitioner deducted the claimed amount of P3,007,059.46 from the total available input tax of P13,210,900.70 and the resulting net creditable input tax of P10,203,841.24 to be carried-over to the succeeding third quarter of 2001 no longer included the claimed amount of P3,007,059.46.

Finally, records show that the claim for refund was filed within the two-year prescriptive period, both in the administrative and judicial levels. As held by this court in a ***Resolution dated July 20, 1998 in the case of Atlas Consolidated Mining and Development Corp. vs. Commissioner of Internal Revenue, CTA Case No. 5296,*** the reckoning of the two-year prescriptive period shall be from the filing of the corresponding quarterly VAT returns. The earliest quarter covered by the instant claim is the first quarter of 1999 for which petitioner originally filed its VAT return on April 19, 1999 (*Exhibit D*). Counting from this date, both the administrative and judicial claims for refund filed on December 20, 2000 (*Exhibit J*) and March 29, 2001, respectively, fall within the two-year prescriptive period.

IN VIEW OF THE FOREGOING, respondent is hereby **ORDERED** to **REFUND** or, in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of P2,713,836.95 representing unutilized input VAT payments directly attributable to effectively zero-rated sales of services for the four quarters of 1999.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

LOVELL R. BAUTISTA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge