REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

VISAYAS GEOTHERMAL POWER COMPANY, Petitioner,	CTA Case No. 7889
	Members:
- versus -	UY, and FABON-VICTORINO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 04 2019 ; 11:35a.m.

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AMENDED DECISION

Fabon-Victorino, J.:

This case has been remanded by the Supreme Court per its Resolution[1] dated April 26, 2017 in G.R. No. 205279 entitled *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*, for this Court to determine petitioner Visayas Geothermal Power Company's entitlement to the tax refund sought.

First, a brief narration of the factual antecedents.

Petitioner is a special purpose limited partnership established primarily to "*invest in, acquire, finance, complete, construct, develop, improve, operate, maintain and hold that certain partially constructed power production geothermal electrical generating facility in Malitbog, Leyte Province, Philippines (the "Project"), and other property incidental thereto, for the production and sale of electricity from geothermal resources, to sell or otherwise dispose of*

[1] Docket, pp. 1477-1481.

the Project and such other property."[2] It is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer with Taxpayer Identification No. 003-832-538-000.[3]

On February 13, 2009, petitioner filed with the BIR an administrative claim for refund of unutilized input VAT covering the taxable year 2007 in the amount of ₱11,902,576.07.[4]

Claiming inaction, petitioner then proceeded to file its *Petition for Review* before this Court on March 30, 2009.

In his *Answer*[5] filed on April 14, 2009, respondent mainly assailed the Court's jurisdiction, claiming that the petition was prematurely filed.

During the trial only petitioner presented evidence in support of its claim.

In its Decision[67] promulgated on October 19, 2011, the Court sustained respondent's position and denied the *Petition for Review* for being prematurely filed. The Court explained that under Section 112(C) of the 1997 NIRC, the Commissioner of Internal Revenue (CIR) has 120 days from submission of complete supporting documents, within which to act on the application for refund or tax credit. Since the administrative claim for refund was filed on February 13, 2009, the CIR had until June 13, 2009 to decide on the claim. However, the *Petition for Review* was filed on March 30, 2009, or merely 45 days from the filing of the administrative claim with the Bureau of Internal Revenue, hence, prematurely filed.

Petitioner moved for reconsideration but the same was denied in the Resolution[8] dated January 16, 2012, prompting

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[2] Exhibit A.
[3] Exhibit C.
[4] Exhibit M.
[5] Docket, pp. 147-152.
[6] Docket, pp. 629-648.
[7] Docket, pp. 629-648.
[8] Docket, pp. 722-729.

petitioner to appeal its case to the Court *En Banc.* The appeal was docketed as CTA EB Case No. 864.

The CTA *En Banc* affirmed the ruling of this Court in its Decision[9] dated October 8, 2012. Petitioner moved for reconsideration, but it was denied in the Resolution[10] dated January 7, 2013.

Petitioner elevated its case to the Supreme Court *via* a *Petition for Review on Certiorari*[11] entitled *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*, docketed as No. G.R. No. 205279.

In its Resolution[12] dated April 26, 2017, the Supreme Court partly granted petitioner's *Petition for Review on Certiorari*. The Supreme Court ruled that the Tax Court erred in ruling that petitioner's judicial claim was prematurely filed considering that the 120+30-day mandatory periods admit of an exception. Citing its previous ruling in the case of *CIR vs. San Roque Power Corporation*[13], the Final Arbiter declared that *"strict compliance with the 120+30-day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the Atlas doctrine,* ***except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the Aichi doctrine was adopted,*** *which again reinstated the 120+30-day periods as mandatory and jurisdictional".* In other words, petitioner seasonably filed its claim for refund/tax credit, hence, this Court has the competence to determine its case. Considering however that no ruling was made on the merits of petitioner's claim for tax refund, the case was remanded to this Court for disposition on the matter. The decretal portion of the Resolution dated April 26, 2017 reads:

> **WHEREFORE**, the petition is **PARTLY GRANTED**. The Decision dated October 8, 2012 and Resolution dated January 7, 2013

[9] Docket, pp. 919-942.
[10] Docket, pp. 978-981.
[11] Docket, pp. 983-1015.
[12] Docket, pp.1477-1481.
[13] 703 Phil.310 (2013).

> of the Court of Tax Appeals *en banc* in CTA EB Case No. 864 are **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the Court of Tax Appeals, which is **DIRECTED** to determine petitioner Visayas Geothermal Power Company's entitlement to a tax refund.
>
> **SO ORDERED.**

The Resolution of April 26, 2017 in G.R. No. 205279 became final and executory on July 7, 2017 when Entry of Judgment[14] was issued by the Supreme Court.

On July 25, 018, the Court *En Banc* issued a Resolution[15] the dispositive portion of which reads:

> **WHEREFORE**, premises considered, in compliance with the above Supreme Court Resolution dated April 26, 2017, CTA Case No. 7889 entitled Visayas Geothermal Power Company vs. Commissioner of Internal Revenue is hereby **REMANDED** to the CTA-Former First Division for determination of petitioner's entitlement to a tax refund.
>
> **SO ORDERED.**

Hence, this Amended Decision.

THE ISSUES

Per stipulation, the following issues were submitted by the parties for the resolution of the Court, to wit:

1. Whether or not petitioner's unutilized input VAT for the period from the 1st quarter to the 4th quarter of CY 2007 amounting to ₱11,902,576.07 is substantiated by

[14] Docket, pp.1484.
[15] Docket, pp. 1497-1499.

documentary evidence in the form of invoices and official receipts;

2. Whether or not petitioner's unutilized input VAT for the period from the 1st quarter to the 4th quarter of CY 2007 amounting to ₱11,902,576.07 was applied or credited against any output VAT of the petitioner in the subsequent quarter or quarters;

3. Whether or not petitioner is entitled to a refund of and/or issuance of a tax credit certificate (TCC) for its unutilized input VAT amounting to ₱11,902,576.07, which input VAT: (i) arose from petitioner's domestic purchases of non-capital goods and services, services rendered by non-residents and importation on non-capital goods; and (ii) are all attributable to petitioner's zero-rated sales of generated power to Energy Development Corporation (EDC) [formerly Philippine National Oil Company-Energy Development Corporation]; and

4. Whether or not this Honorable Court has jurisdiction to act on the instant Petition for Review.

THE COURT'S RULING

Petitioner anchors its claim for tax refund/tax credit under Section 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, which reads:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* —
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> (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 sales 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 nonzero-rated sales.

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.*- In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

Thus, to be entitled to a refund/tax credit of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied:

1) the taxpayer is VAT-registered;

2) there must be zero-rated or effectively zero-rated sales;

3) input taxes were incurred or paid;

4) such input taxes are attributable to zero-rated or effectively zero-rated sales;

5) the said input taxes were not applied against any output VAT liability; and

6) the claim was filed within the prescribed periods both in the administrative and judicial levels.

The Court shall determine first the last requisite which is the timeliness of filing of the administrative and judicial claims.

Petitioner's administrative and judicial claims were timely filed

In accordance with Section 112(A) of the NIRC of 1997, as amended, the administrative claim for the issuance of a tax credit certificate or refund of input VAT must be filed with BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

Considering that the subject claim is for the first, second, third and fourth quarters of CY 2007, the administrative claim must be filed on or before March 31, 2009, June 30, 2009, September 30, 2009 and December 31, 2009, respectively. Thus, petitioner timely filed its administrative claim for the subject periods on February 13, 2009.[16]

Anent the timeliness of petitioner's judicial claim, the same has been put to rest when the Final Arbiter declared in its Resolution dated April 26, 2017 that petitioner's case falls under the exception in the observance of the 120+30-day periods under Section 112 of the NIRC of 1997, as amended, hence, the Court has jurisdiction over the case.

Petitioner is a VAT taxpayer and had zero-rated sales/receipts during the subject periods

It has been established that petitioner is a VAT-registered taxpayer as evidenced by its BIR Certificate of Registration No. 9RC0000232420 dated January 1, 1996.[17]

On the second requisite, *i.e.*, the existence of zero-rated sales/receipts, Section 108(B)(7) of the NIRC of 1997, as amended by Republic Act (R.A.) No. 9337, provides that sale of power generated through renewable sources of energy is among the transactions subject to zero percent (0%) VAT rate, to wit:

> (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.

Further, Section 4.108-5 (b) (7) of Revenue Regulations (RR) No. 16-05, which implements the foregoing provision, qualified the applicability of such zero-rating as follows:

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[16] Par. 3, Admitted Facts, JSFI , Docket, p. 184; Exhibit M, Docket, pp. 387-388.
[17] Exhibit C, Docket, p. 357.

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

Corollarily, Section 4.108-3(f) of the RR No. 16-05 provides:

> SEC. 4.108-3. *Definitions and Specific Rates on Selected Services.-*
>
> xxx xxx xxx
>
> (f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10% VAT on their gross receipts: *Provided,* That sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels shall be subject to 0% VAT.
>
> "*Generation companies*" refers to persons or entities authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity. For this purpose, generation of

> electricity refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of the R.A. No. 9136 (EPIRA). They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities.

Thus, to qualify for VAT zero-rating, petitioner must prove by sufficient evidence that its sales/receipts were derived from the sale of power or fuel generated through renewable sources of energy.

Per its Amended Articles of Partnership[18], petitioner's business purpose is "*to invest in, acquire, finance, complete, construct, develop, improve, operate, maintain and hold that certain partially constructed power production geothermal electrical generating facility in Malitbog, Leyte Province, Philippines (the "Project"), and other property incidental thereto, for the production and sale of electricity from geothermal resources, to sell or otherwise dispose of the Project and such other property, and to engage in any other activities related or incidental hereto*".

Petitioner's 216-megawatt geothermal power plant located in Malitbog, Leyte Province has been accredited by the Department of Energy as a Block Power Production Facility under the Implementing Rules and Regulations of Executive Order No. 215, as amended.[19] The said power plant was likewise issued with Certificate of Compliance[20] by the Energy Regulatory Commission.

By virtue of the Energy Conversion Agreement ("ECA")[21] entered into between Energy Development Corporation ("EDC") [formerly Philippine National Oil Company – Energy Development Corporation] and petitioner's predecessor-in-interest, Magma Power Company,

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[18] Exhibit A, Docket, pp. 350-355.
[19] Exhibit B, Docket, p. 356.
[20] Exhibit Z, Docket, p. 476.
[21] Exhibit D.

petitioner generates power and subsequently sells it only to EDC.

For the period covering January 1, 2007 to December 31, 2007, petitioner's gross receipts from sales of power generation services to EDC amounted to ₱1,981,657,214.27, as evidenced by VAT zero-rated official receipts[22] and invoices[23] issued by petitioner to EDC for the same period. Such sales of electricity generated through a renewable source of energy, particularly, *geothermal energy*, qualify for VAT zero-rating pursuant to Section 108(B)(7) of the NIRC of 1997, as amended by R.A. No. 9337, and as implemented by Section 4.108-5 (b) (7) of RR No. 16-05. The table below shows the breakdown of the zero-rated sales/receipts of ₱1,981,657,214.27:

Exhibit	OR No.	Date	Paid in Pesos	Paid In US$			Withholding Tax	Total
				Amount	Forex	Peso Equivalent		
T-4.1	533	02-Jan-07	34,812,502.59				710,459.24	35,522,961.83
T-4.2	534	02-Jan-07	7,556,740.80				154,219.20	7,710,960.00
T-4.3	535	02-Feb-07		4,186,973.04	48.65	203,696,238.40	4,157,066.12	207,853,304.52
T-4.4	536	02-Feb-07	34,741,092.33				709,001.88	35,450,094.21
T-4.5	537	02-Feb-07	7,556,740.80				154,219.20	7,710,960.00
T-4.6	538	02-Mar-07	2,234,400.00				45,600.00	2,280,000.00
T-4.7	539	02-Mar-07	8,003,620.80				163,339.20	8,166,960.00
T-4.8	540	02-Mar-07	34,602,308.67				-	34,602,308.67
T-4.9	541	02-Mar-07		4,186,973.04	48.45	202,858,843.79	4,139,976.43	206,998,820.22
T-4.10	542	03-Apr-07	34,375,814.51				701,547.23	35,077,361.74
T-4.11	543	03-Apr-07	8,003,620.80				163,339.20	8,166,960.00
T-4.12	544	03-Apr-07		4,187,499.65	48.10	201,418,733.17	4,110,586.56	205,529,319.72
T-4.13	545	03-May-07	33,875,542.78				691,337.61	34,566,880.39
T-4.14	546	03-May-07	8,003,620.80				163,339.20	8,166,960.00
T-4.15	547	03-May-07		4,187,499.65	47.40	198,487,483.41	4,050,765.13	202,538,248.54
T-4.16	548	01-Jun-07	32,803,531.94				669,459.83	33,472,991.77
T-4.17	549	01-Jun-07	8,003,620.80				163,339.20	8,166,960.00
T-4.18	550	01-Jun-07		4,187,499.65	45.90	192,206,233.94	3,922,576.36	196,128,810.30
T-4.19	551	02-Jul-07	32,415,141.50				661,533.50	33,076,675.00
T-4.20	552	02-Jul-07	7,656,887.17				156,263.00	7,813,150.17
T-4.21	553	02-Jul-07		4,174,297.40	45.50	189,930,531.70	3,876,133.17	193,806,664.87
T-4.22	554	02-Aug-07	7,882,948.37				-	7,882,948.37
T-4.23	555	02-Aug-07	32,292,050.44				-	32,292,050.44
T-4.24	556	02-Aug-07		4,176,805.77	45.30	189,209,301.38	3,861,414.13	193,070,715.51
T-4.25	557	04-Sep-07	7,831,845.72					7,831,845.72
T-4.26	558	04-Sep-07	32,637,311.00				-	32,637,311.00
T-4.27	559	04-Sep-07		1,643,227.09	46.20	75,917,091.56	3,902,699.72	79,819,791.28
								115,315,200.00

[22] Exhibits T-4.1 to T-4.27.
[23] Exhibits T-2.1 to T-2.8.

							115,315,200.00	
Total per Official Receipts			**375,289,341.82**			**1,453,724,457.33**	**152,643,200.00**	**1,981,657,214.27**

However, a comparison of the substantiated zero-rated sales/receipts of ₱1,981,657,214.27 with that reflected in petitioner's Quarterly VAT Returns for the four quarters of CY 2007 disclosed a discrepancy in the amount of ₱2,338,260.67, computed as follows:

Per CY 2007 Quarter VAT Returns			
	1st Quarter (*Exh. "E-2"*)	₱ 546,988,419.76	
	2nd Quarter (*Exh. "F-1"*)	731,814,492.47	
	3rd Quarter (*Exh. "G-1"*)	705,192,562.71	
	4th Quarter (*Exh. "H-1"*)	-	₱1,983,995,474.94
Per Supporting Official Receipts			1,981,657,214.27
Discrepancy			**₱ 2,338,260.67**

For being unsupported by VAT zero-rated official receipts, the amount of ₱2,338,260.67 shall be denied VAT zero-rating.

With the finding that petitioner has VAT zero-rated sales/receipts for the subject periods in the total amount of ₱1,981,657,214.27, the Court shall now determine whether petitioner incurred input taxes in connection therewith and whether the said input taxes were not applied against any output VAT liability of petitioner.

Petitioner incurred/paid input taxes attributable to zero-rated sales/receipts which were not applied against any output VAT liability

In its Quarterly VAT Returns for CY 2007, petitioner reported the following input taxes in the total amount of ₱11,902,576.07 arising from its domestic purchases and importation of goods other than capital goods, domestic purchases of services, and services rendered by non-residents, broken down as follows:

	1st Quarter (*Exh. "E-2"*)	2nd Quarter (*Exh. "F-1"*)	3rd Quarter (*Exh. "G-1"*)	4th Quarter (*Exh. "H-1"*)	CY 2007
Domestic Purchases of Goods other than Capital Goods	₱ 680,514.19	₱ 1,034,965.28	₱ 592,237.04	₱ 113,437.87	₱ 2,421,154.38
Importation of Goods other than Capital Goods	497,875.15	169,177.56	279,294.92	114,999.00	1,061,346.63
Domestic Purchases of Services	2,869,268.38	2,654,665.21	2,098,020.51	272,555.86	7,894,509.96
Services Rendered by Non-Residents	77,537.69	388,342.52	59,684.89	-	525,565.10
Total	**₱4,125,195.41**	**₱4,247,150.57**	**₱3,029,237.36**	**₱ 500,992.73**	**₱11,902,576.07**

In support of these input taxes, petitioner presented its Schedule of Input VAT for CY 2007[24] and the corresponding suppliers' invoices, official receipts, Bureau of Customs ("BOC") Import Entry and Internal Revenue Declarations (IEIRDs) and BIR Form Nos. 1600[25], which were all examined by the Court-commissioned Independent Certified Public Accountant (ICPA), Katherine O. Constantino. In her report, the total input tax of ₱11,902,576.07 was accounted as follows:[26]

Findings	Reference to ICPA Report (*Exh. "T"*)	Amount of Input VAT
Input VAT Properly Substantiated		
1. Domestic purchase of goods and services properly supported by VAT invoices and OR	Annex 2-1Q-1, Annex 2-2Q-1, Annex 2-3Q-1, Annex 2-4Q-1	₱ 8,607,072.90
2. Importation of goods and services properly supported by IEIRDs/BOC O.R. Form 1600	Annex 2-1Q-2, Annex 2-2Q-2, Annex 2-3Q-2, Annex 2-4Q-2	1,534,755.46
3. Domestic purchase of goods properly supported by a VAT invoice not dated within the VAT-taxable quarter but within the VAT-taxable year. (The ICPA ascertained that the input VAT on the purchase of goods were not claimed twice during the taxable year.)	Annex 2-2Q-3, Annex 2-3Q-3, Annex 2-4Q-3	494,801.50
4. Domestic purchase of services properly supported by a VAT OR not dated within the taxable quarter but within the VAT-taxable year. (The ICPA ascertained that the input VAT on the purchase of goods were	Annex 2-2Q-4, Annex 2-3Q-4	42,022.90

[24] Exhibits T-5-1Q.1 to T-5-1Q.3, T-5-2Q.1 to T-5-2Q.3, T-5-3Q.1 to T-5-3Q.3, and T-5-4Q.1 to T-5-4Q.2.
[25] Exhibits T-6-V-1Q-00001 to T-6-V-1Q-00461, T-6-V-1Q-00462 to T-6-V-1Q-00994, T-6-V-2Q-00001 to T-6-V-2Q-00530, T-6-V-2Q-00534 to T-6-V-2Q-01148, T-6-V-3Q-000001 to T-6-V-3Q-000603, and T-6-V-4Q-1 to T-6-V-4Q-148 (*With excluded Exhibits as indicated in Petitioner's Formal Offer of Evidence*)
[26] Exhibit T, pp. 9-13.

not claimed twice during the taxable year.)		
5. Importation of goods supported by original BOC OR and/or LBP OR only	Annex 2-1Q-3, Annex 2-2Q-5, Annex 2-3Q-5	8,696.00
Subtotal		***₱10,687,348.76***
Other Findings		
1. Domestic purchase of goods/services supported by VAT invoice/OR with countersigned changes by supplier, as represented by the Petitioner. (The ICPA ascertained from the additional supporting documentation (i.e. VAT invoice for services/OR for goods) that input VAT was passed on to the Petitioner.	Annex 2-1Q-4, Annex 2-2Q-6, Annex 2-3Q-6	₱ 290,778.85
2. Domestic purchase of goods/services supported by a VAT invoice/OR with countersigned changes in the Company's name and or TIN by the supplier as represented by the Petitioner.	Annex 2-1Q-5, Annex 2-2Q-7, Annex 2-3Q-7	230,520.81
Subtotal		***₱ 521,299.66***
Other Findings		
1. Domestic purchase of goods supported by a VAT Invoice issued in the Company's name but without or with wrong Company's TIN and/or address	Annex 2-1Q-6, Annex 2-4Q-4	₱ 27,600.66
2. Domestic purchase of services supported by a VAT OR issued in the Company's name but without or with wrong Company's TIN	Annex 2-1Q-7, Annex 2-4Q-5	23,179.09
3. Domestic purchase of goods/service supported by a VAT Invoice/OR wherein VAT was not shown separately	Annex 2-1Q-8, Annex 2-2Q-10, Annex 2-4Q-6	50,738.83
4. Domestic purchase of goods supported by documents other than a VAT invoice	Annex 2-1Q-9, Annex 2-2Q-11, Annex 2-4Q-7	7,709.95
5. Domestic purchase of goods supported by a VAT invoice but not an original copy	Annex 2-1Q-10, Annex 2-2Q-12	11,127.69
6. Domestic purchase of goods supported by a VAT invoice not issued in the name of the Company	Annex 2-1Q-11, Annex 2-2Q-13, Annex 2-3Q-10	4,909.03
7. Domestic purchase of services supported by a VAT OR not issued in the name of Company	Annex 2-4Q-12	7,869.43
8. Domestic purchase of goods supported by TIN-V invoice	Annex 2-1Q-12, Annex 2-2Q-17	8,601.43
9. Domestic purchase of goods supported by a VAT invoice not dated within the VAT-taxable year	Annex 2-1Q-13, Annex 2-2Q-18	111,860.28
10. Domestic purchase of goods supported by a VAT invoice with changes in the name and TIN of the Company without countersign	Annex 2-1Q-14, Annex 2-2Q-19, Annex 2-3Q-12, Annex 2-4Q-9	7,124.76

11. Domestic purchase of goods supported by a VAT OR with changes in the name and TIN of the Company without countersigned	Annex 2-4Q-10	1,458.70
12. Domestic purchase of goods supported by TIN # only; TAN V; TAN-VAT; TIN NV/NON VAT OR; stamped/handwritten TIN-V/VAT Tape Receipt	Annex 2-1Q-15	790.09
13. Domestic purchase of services supported by TIN # only; TAN V; TAN-VAT'TIN NV/NON VAT OR; stamped/handwritten TIN-V/VAT Tape Receipt	Annex 2-4Q-12	110.14
14. Domestic purchase of services supported by documents other than a VAT OR	Annex 2-1Q-16, Annex 2-2Q-20, Annex 2-3Q-13, Annex 2-4Q-11	157,801.40
15. Domestic purchase of services supported by a VAT OR but not an original copy	Annex 2-1Q-17, Annex 2-3Q-14	1,896.86
16. Domestic purchase of services supported by a VAT OR not issued in the name of the Company	Annex 2-3Q-15	32,103.20
17. Domestic purchase of services supported by TIN # only; TAN-V; TAN-VAT; TIN-NV/NON VAT OR; stamped/handwritten TIN-V/VAT OR	Annex 2-1Q-18, Annex 2-2Q-21, Annex 2-3Q-16	37,315.23
18. Domestic purchase of services supported by a Zero-rated VAT OR	Annex 2-3Q-17	415.74
19. Domestic purchase of services supported by a VAT OR not dated within the VAT-taxable year	Annex 2-1Q-19, Annex 2-2Q-23, Annex 2-3Q-18	36,523.44
20. Domestic purchase of goods supported by a Zero-rated VAT invoice	Annex 2-4Q-8	840.00
21. Importation of goods supported by documents other than an original copy of the IEIRD	Annex 2-3Q-19	27,991.92
22. 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	Annex 2-2Q-8, Annex 2-3Q-8	6,492.77
23. 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 TIN and/or address changed/added on the support but without countersign	Annex 2-2Q-9, Annex 2-3Q-9	56,197.42
24. Domestic purchase of goods supported by TIN # only; TAN-V; TAN-VAT; TIN-NV/NON VAT OR; stamped/handwritten TIN-V/VAT invoice	Annex 2-2Q-14, Annex 2-3Q-11	3,295.93
25. Domestic purchase of goods supported by tape receipt without the Company's name and/or TIN	Annex 2-2Q-15	321.15
26. Domestic purchase of goods supported by a VAT invoice but without invoice date	Annex 2-2Q-16	237.88
27. Domestic purchase of services supported by a TIN-V OR	Annex 2-2Q-22	1,620.00
28. Domestic purchase of services supported by a VAT OR but is not BIR-registered	Annex 2-2Q-24	12,387.02

29. Over-claimed input tax on domestic/importation purchases of goods/services due to erroneous computation (i.e., arithmetical error)	Annex 2-1Q-20, Annex 2-2Q-25, Annex 2-3Q-20, Annex 2-4Q-114	3,819.12
30. Effect of forex on foreign currency denominated purchases of goods and services – overstatement	Annex 2-1Q-21, Annex 2-2Q-26, Annex 2-3Q-21, Annex 2-4Q-15	29,654.66
31. Supporting documents not available	Annex 2-1Q-22, Annex 2-2Q-27, Annex 2-3Q-22, Annex 2-4Q-16	21,934.12
32. Rounding difference		(0.29)
Subtotal		**₱ 693,927.65**
Total Input VAT accounted for by the ICPA		**₱11,902,576.07**

The Court finds the ICPA report in order. The input VAT in the total amount of ₱693,927.65 under the second "*Other Findings*" must be disallowed from petitioner's claim as it was not properly substantiated by VAT invoices or official receipts as prescribed under Sections 110 (A) and (B), 237, and 238 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-8, and 4.113-1 of RR No. 16-05, as amended.

In addition, the following input VAT in the total amount of ₱116,232.98 shall likewise be disallowed for the following reasons:

Exhibit	Reference to ICPA Report	Vendor Name	Date	Amount
Importation of Goods supported by IEIRD but without machine validation for payment of duties and taxes (including VAT) or corresponding BOC official receipt or any other proof of VAT payment in violation of Section 4.110-8 of RR No. 16-05, as amended				
T-6-V-1Q-00979	Annex 2-1Q-2	ABB Automation, Inc.	16-Feb-17	₱ 13,503.75
T-6-V-3Q-000506	Annex 2-3Q-2	Siemens LTDA	12-Jul-07	100,974.50
Subtotal				*₱ 114,478.25*

Exhibit	Reference to ICPA Report	Vendor Name	Amount
Supported by documents which were denied admission by the Court for lack of authentication[27]			

[27] Resolution dated September 9, 2010, Docket, p. 498.

T-6-V-2Q-00206	Annex 2-2Q-3	Codillas Petron Super Service Station	₱ 230.33
T-6-V-2Q-00207	Annex 2-2Q-3	Codillas Petron Super Service Station	319.01
T-6-V-2Q-00208	Annex 2-2Q-3	Codillas Petron Super Service Station	146.67
T-6-V-2Q-00210	Annex 2-2Q-3	Codillas Petron Super Service Station	408.26
T-6-V-2Q-00213	Annex 2-2Q-3	Codillas Petron Super Service Station	14.04
T-6-V-2Q-00214	Annex 2-2Q-3	Codillas Petron Super Service Station	150.56
T-6-V-2Q-00598	Annex 2-2Q-1	Mercury Drug Corporation	202.86
T-6-V-2Q-00599	Annex 2-2Q-1	Mercury Drug Corporation	52.43
T-6-V-3Q-000067	Annex 2-3Q-3	Codillas Petron Super Service Station	230.57
Subtotal			*₱ 1,754.73*
Total			**₱116,232.98**

Thus, out of the ₱11,902,576.07 input VAT claim for the four quarters of CY 2007, only the amount of ₱11,092,415.44 represents petitioner's valid input VAT, as computed below:

Total Input VAT claim		₱ 11,902,576.07
Less: Disallowances		
Per ICPA Report	₱ 693,927.65	
Per this Court's further verification	116,232.98	810,160.63
Valid Input VAT		**₱11,092,415.44**

Petitioner had no output tax liability against which the input VAT of ₱11,092,415.44 may be applied or credited, since it had no other sales/receipts but zero-rated sales/receipts for the four quarters of CY 2007. Moreover, the input VAT of ₱11,092,415.44 is attributable to the entire declared zero-rated sales/receipts of ₱1,983,995,474.94. However, only the input VAT of ₱11,079,342.33 is attributable to the properly substantiated zero-rated sales/receipts of ₱1,981,657,214.27, computed as follows:

Valid Input VAT	₱ 11,092,415.44
Less: Output tax due	-
Excess Input VAT	**₱ 11,092,415.44**
Divided by Total Declared Zero-Rated Sales	÷1,983,995,474.94
Multiply by Valid Zero-Rated Sales	×1,981,657,214.27
Excess Input VAT attributable to Valid Zero-Rated Sales/Receipts	**₱ 11,079,342.33**

Although the claimed input VAT was carried-over by petitioner in its succeeding Quarterly VAT Returns[28], the

[28] Exhibits I, J, K, and L (1st to 4th Quarters of CY 2008), Docket, pp. 382-386; and Exhibit R (1st Quarter of CY 2009), Docket, pp. 421-422.

same remained unutilized until it was deducted as "VAT Refund/TCC Claimed"[29] in its Quarterly VAT Return for the first quarter of CY 2009. Therefore, the subject claim no longer formed part of the excess input VAT of ₱2,659,463.39[30] as of the end of the first quarter of CY 2009 that was to be carried over/applied to the succeeding taxable quarters rendering the possibility of the present claim being applied to future output VAT liability nil.

In fine, petitioner was able to sufficiently establish its entitlement to the refund/tax credit in the amount of **₱11,079,342.33**, representing its unutilized excess input VAT for the four taxable quarters of CY 2007 which is attributable to its zero-rated sales/receipts for the same period.

WHEREFORE, the instant *Petition for Review* is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Visayas Geothermal Power Company in the amount of **₱11,079,342.33,** representing petitioner's unutilized input VAT for the four quarters of CY 2007 attributable to its zero-rated sales for the same taxable period.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I CONCUR:

ERLINDA P. UY
Associate Justice

[29] Exhibit R, Line 23D, Docket, p. 421.
[30] Exhibit R, Line 29, Docket, p. 421.

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERLINDA P. UY
Associate Justice
Acting Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice