REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

VISAYAS GEOTHERMAL POWER COMPANY,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7394

Members:

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

Promulgated:

FEB 26 2009
4:08 p.m.

x- x

DECISION

UY, *J*.:

Before Us is a Petition for Review seeking the refund or issuance of a tax credit certificate in the amount of P18,479,711.17 allegedly representing petitioner's unutilized input value-added tax (VAT) from domestic purchases of taxable goods and services, services rendered by non-residents, and importations of goods for the four quarters of taxable year 2004.

THE FACTS

Petitioner is a special purpose limited partnership duly organized and existing under Philippines laws, with principal office at Milagro, Ormoc City,

407

Province of Leyte.[1] It is principally engaged in the business of power generation and operates a geothermal power plant in Leyte and all the electricity produced by the facility is sold to the Philippine National Oil Corporation-Energy Development Corporation (PNOC-EDC), pursuant to an Energy Conversion Agreement.[2] It has been accredited and certified as such by the Department of Energy (DOE) on June 15, 1994, as evidenced by its Certificate of Accreditation.[3] And, it is a registered value-added tax (VAT) taxpayer, with Tax Identification No. 003-832-538-VAT.[4]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of the said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes.[5] He holds office at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

Petitioner filed with the BIR its original Quarterly VAT Returns for taxable year 2004 on the following dates:[6]

Taxable Quarter	Date of Filing of Original Return
1st	April 24, 2004[7]
2nd	July 26, 2004[8]
3rd	October 25, 2004[9]
4th	January 25, 2005[10]

[1] Par. 1, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 144.
[2] Exhibit "CC".
[3] Exhibit "B", Docket, p. 255.
[4] Par. 2, Stipulated Facts, JSFI, Docket, p. 145; Annex "B", Petition for Review.
[5] Par. 3, Stipulated Facts, JSFI, Docket, p. 145.
[6] Par. 5 (should be paragraph 6), Stipulated Facts, JSFI, Docket, p. 146.
[7] Exhibit "E", Docket, p. 260.
[8] Exhibit "G", Docket, p. 262.
[9] Exhibit "K", Docket, p. 266.
[10] Exhibit "O", Docket, p. 270.

Petitioner also filed its final amended Quarterly VAT Returns for the same year, the details of which are as follows:[11]

2004	Date of Filing of Final Amended Return	Excess/Unutilized VAT Credits			Total
		Domestic Purchases	*Services* Rendered by Non-Residents	*Importation* of Goods	
1st	11/26/2004[12]	P 7,536,157.17	P 29,886.44	P 96,153.06	P 7,662,196.67
2nd	11/18/2005[13]	2,973,765.99	51,129.33	356,141.00	3,381,036.32
3rd	11/18/2005[14]	2,973,552.47	54,373.00	111,418.88	3,139,344.35
4th	11/18/2005[15]	3,230,092.46	493,812.34	573,229.00	4,297,133.80
Total					**P 18,479,711.14**

Believing that the amount incurred and the accumulated input VAT on its domestic purchases of goods and services, services rendered by non-residents, and importation of goods are attributable to its zero-rated sales of power generation services to PNOC-EDC and such was not utilized against any output VAT liability for the said period and subsequent quarters, petitioner filed its administrative claim for refund with the BIR on the following dates:[16]

Taxable Quarter	Date of Filing of Administrative Claim
1st	June 7, 2005[17]
2nd to 4th	December 19, 2005[18]

Claiming inaction on the part of the respondent on its claims and in order to suspend the running of the two-year prescriptive period under Section 112(D) of the National Internal Revenue Code (NIRC) of 1997 and Section

[11] Par. 6 (should be paragraph 7), Stipulated Facts, JSFI, Docket, pp. 146-147.
[12] Exhibit "F", Docket, p. 261.
[13] Exhibit "J", Docket, p. 265.
[14] Exhibit "N" Docket, p. 269.
[15] Exhibit "Q", Docket, p. 272.
[16] Par. 7 (should be paragraph 8), Stipulated Facts, JSFI, Docket, p. 147.
[17] Exhibit "C", Docket, pp. 256-257.
[18] Exhibit "D", Docket, pp. 258-259.

409

4.106-2(c) of Revenue Regulations No. 7-95, as amended, petitioner filed the instant Petition for Review on December 29, 2005.

In respondent's Answer filed on March 14, 2006,[19] he averred the following Special and Affirmative Defenses:

> "4. Petitioner's claim for refund is subject to administrative investigation/examination by the respondent;
>
> 5. 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 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;
>
> b. The invoicing and accounting requirements for VAT- registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code as amended;
>
> 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.

[19] Docket, pp. 101-106.

410

d. That the input taxes of P18,479,711.14 allegedly paid by the petitioner on its purchases of goods and services for the taxable year 2004 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 Tax Code, as amended;

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 Tax Code as amended, and in pursuance to Section 4.104-5 (a) & (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for 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);

6. Furthermore, 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. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications (Asiatic Petroleum Co. {P.I.} v. Llanes, 49 Phil. 446 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc. 98 Phil. 670);

7. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation."

411

During trial, respondent did not present evidence. Thus, this case was deemed submitted for decision on April 15, 2008,[20] taking into consideration petitioner's Memorandum filed on April 8, 2008; respondent's Memorandum filed on April 4, 2008; and petitioner's Supplemental Memorandum (To the Memorandum dated April 4, 2008) admitted on May 15, 2008.

THE ISSUES

The parties have jointly stipulated on the following issues for this Court's resolution:

> "1. Whether or not Petitioner is entitled to the refund in the amount of Eighteen Million Four Hundred Seventy-Nine Thousand Seven Hundred Eleven and 14/100 Pesos (P18,479,711.14) representing its alleged unutilized input Value-Added Tax ('VAT') for the 1st to 4th quarters of 2004;
>
> 2. Whether or not the input VAT amount of Eighteen Million Four Hundred Seventy-Nine Thousand Seven Hundred Eleven and P14/100 Pesos (P18,479,711.14) allegedly paid by Petitioner from its domestic purchases of goods and services, services rendered by non-residents and importation of goods was attributable to its zero-rated sales and such input VAT has not been applied against any output tax;
>
> 3. Whether or not the administrative claims for refund were filed within the period allowed under the law;
>
> 4. Whether or not Petitioner's domestic purchases of goods and services during the 1st to 4th quarters of 2004 were made in the course of its trade or business; and
>
> 5. Whether or not the claim for refund is properly substantiated."[21]

The foregoing stipulated issues are inter-related and boil down to one central issue: whether or not petitioner is entitled to its claim for refund or

---

[20] Ibid., at p. 389.
[21] Submitted Issues for Trial, JSFI, Docket, pp. 147-148.

42

issuance of a tax credit certificate amounting to P18,479,711.14, representing unutilized input VAT from its domestic purchases of goods and services, services rendered by non-residents, and importation of goods attributable to zero-rated sales for taxable year 2004.

THE COURT'S RULING

In claims for refund of input taxes attributable to zero-rated or effectively zero-rated sales, the general legal provision thereon is Section 112(A) of the NIRC of 1997, as amended, which provides as follows:

> "**SEC. 112. Refunds or Tax Credits of Input Tax**. —
>
> **(A) Zero-rated or Effectively Zero-rated Sales**. – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

Based on the afore-quoted provision, to be entitled to a refund or issuance of a tax credit certificate of its unutilized input VAT, the following requisites must be satisfied by the claimant-taxpayer:

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 directly attributable to zero-rated sales or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and
5. that the claim for the refund was filed within the two-year prescriptive period.

This Court finds it appropriate to determine first the timeliness of the filing of the instant claim.

The Supreme Court recently held in the case of ***Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)***[22] that Section 112(A) of the NIRC of 1997 provides for the period within which to file the claim for refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales. The pertinent portion of the High Court's Decision reads:

> "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 <u>when the sales were made</u>, apply for the issuance of a tax credit certificate or refund of creditable input tax <u>due or paid</u> attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: xxx. (Emphasis ours.)
>
> **The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise**

[22] G.R. No. 172129, September 12, 2008.

44

> **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**. xxx" (*Emphasis Ours*)

From the foregoing, the reckoning of the prescriptive period shall commence from the close of the taxable quarter when the relevant sales were made, whether or not the input VAT was paid.

The present claim involves petitioner's input VAT incurred for the four quarters of taxable year 2004. Counting from the close of each of the said taxable quarters, petitioner had until the following dates within which to file its claim both in the administrative and judicial levels:

Taxable Quarter		**Last Day to File Claim for Refund**
2004	**End Date**	
1st quarter	March 31, 2004	March 31, 2006
2nd quarter	June 30, 2004	June 30, 2006
3rd quarter	September 30, 2004	September 30, 2006
4th quarter	December 31, 2004	December 31, 2006

Records reveal that the administrative claim for the first quarter of taxable year 2004 was filed on June 7, 2005[23] and the administrative claim for the second to fourth quarters of taxable year 2004 were filed on December

[23] Exhibit "C", Docket, pp. 256-257.

19, 2005[24], while the Petition for Review covering said claims was filed on December 29, 2005. Clearly, both the administrative and judicial claims were filed within the two-year prescriptive period reckoned from March 31, 2004 or the close of the first quarter of taxable year 2004; which is the earliest quarter covered by the instant Petition.

The Court will now determine petitioner's compliance with the other requisites of a refund claim.

We hold that the power generation services rendered by petitioner to PNOC-EDC are subject to zero (0%) percent VAT pursuant to Chapter II, Section 6 of Republic Act (R.A.) No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA)[25] and Rule 5, Section 6 of its Implementing Rules and Regulations.[26] Said provisions read as follows:

"Republic Act No. 9136
Electric Power Industry Reform Act of 2001 (EPIRA)

CHAPTER II
Organization and Operation of the
Electric Power Industry
xxx xxx xxx

> SEC. 6. *Generation Sector* – Generation of electric power, a business affected with public interest shall be competitive and open.
>
> Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.
>
> Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For

[24] Exhibit "D", Docket, pp. 258-259.
[25] Took effect on June 26, 2001.
[26] Took effect on March 22, 2002.

46

this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.

Upon the implementation of retail competition and open access, the prices charged by a generation company for the supply of electricity shall not be subject to regulation by the ERC except as otherwise provided in this Act.

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.

The ERC shall, in determining the existence of market power abuse or anti-competitive behavior, require from generation companies the submission of their financial statements" *(Emphasis and underscoring Ours)*

"**Rules and Regulations to Implement Republic Act No. 9136, entitled 'Electric Power Industry Reform Act of 2001'**

RULE 5
Generation Sector
xxx xxx xxx

SECTION 6. Generation Charges and VAT. —
xxx xxx xxx

(b) Pursuant to the policy of reducing electricity rates to End-users, sales of generated power by a Generation Company shall, from the effectivity of the Act, be zero-rated for the purpose of imposition of value-added tax. Towards this end, the imposition of zero percent (0%) VAT shall apply to the sale of generated power by a Generation Company through all stages of sale until it reaches the End-user. The DOF, through the BIR, shall issue the necessary revenue regulation within sixty (60) calendar days from effectivity of these rules."

The EPIRA law was formulated by the legislature to ordain reforms in the electric power industry, highlighting, among others, the importance of ensuring the reliability, security and affordability of the supply of electric power to end-users. And under the aforequoted provisions of the EPIRA law and its implementing rules and regulations, the delivery and supply of electric energy

47

by generation companies became VAT zero-rated, which prior thereto, were subject to ten (10%) percent VAT.

However, with the effectivity of R.A. No. 9136 on June 26, 2001, petitioner's sales of power generation to PNOC-EDC became subject to zero (0%) percent VAT. Correspondingly, the pertinent provisions of the NIRC of 1997 are deemed amended by the provisions of R.A. No. 9136, by modifying the VAT rate applicable to sales of generated power by generation companies from ten (10%) percent to zero (0%) percent. Otherwise stated, petitioner's power generation services are no longer subject to ten (10%) percent VAT as provided under the NIRC of 1997, but are now subject to zero (0%) percent VAT by virtue of the amendatory provision of the EPIRA.

This Court would like to emphasize that in order to qualify for VAT zero-rating under R.A. No. 9136, petitioner must prove that: (1) it is a generation company; and (2) it derived sales from power generation.

Petitioner was able to prove that it is engaged in the sale of power generation services to PNOC-EDC based on the Certificate of Accreditation issued by the DOE,[27] and by virtue of the Energy Conversion Agreement entered into between PNOC-EDC and petitioner's predecessor-in-interest, Magma Power Company.[28]

From January 1, 2004 to December 31, 2004, petitioner generated gross receipts from power generation services rendered to PNOC-EDC amounting to P4,017,549,159.70, the same amount declared in its VAT

[27] Exhibit "B".
[28] Exhibit "CC".

418

Returns for the first quarter to the fourth quarter of taxable year 2004.[29] Said amount is supported by petitioner's VAT invoices and/or official receipts.[30]

From the foregoing, petitioner has proven that it is a generation company and that it derived sales from power generation for the period from January 1, 2004 to December 31, 2004. Therefore, petitioner is qualified for VAT zero-rating under R.A. No. 9136.

Anent the question of whether or not petitioner's alleged total unutilized input VAT amounting to P18,479,711.14 may be the subject of a claim for refund, We find the applicability of Sections 110(B) and 112(A) of the NIRC of 1997, as amended, which read as follows:

> "**SEC. 110. Tax Credits. —**
>
> xxx 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 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

[29] Exhibits "F", "J", "N", and "Q".
[30] Exhibits "GG-1 to 12" and "II-1 to 39".

49

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."

Based on the Report[31] of the Court-commissioned Independent Certified Public Account (ICPA), the Court finds that out of the reported input VAT of P18,479,711.14, only the amount of P16,084,459.81 is properly substantiated by the required evidence under Sections 110(A) and 113(A) of the NIRC of 1997, and as implemented by Sections 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations No. 7-95. The remaining amount of P2,395,251.33 should be disallowed, details of which are as follows:

	Findings	Reference (Annex to Exhibit EE)	Input VAT	Total
1	**Input VAT on domestic purchases of goods supported by invoice pre-printed with TIN-V after July 31, 1991 but before January 1, 1996.**			
	1st qtr	V-1Q-A12	P 2,268.18	
	2nd qtr	V-2Q-A12	19,710.61	
	3rd qtr	V-3Q-A12	8,482.73	
	4th qtr	V-4Q-A12	4,702.55	P 35,164.07
2	**Input VAT on domestic purchase of goods supported only by a certified true copy of the VAT invoice**			
	3rd qtr	V-3Q-A18	3,010.91	3,010.91
3	**Input VAT on domestic purchases of services supported by OR pre-printed TIN-V after July 31, 1991 but before January 1, 1996.**			
	1st qtr	V-1Q-B12	5,835.45	
	2nd qtr	V-1Q-B12	7,211.92	
	3rd qtr	V-1Q-B12	32,154.22	
	4th qtr	V-1Q-B12	9,045.45	54,247.04
4	**Input tax on OCT included in payments to telecommunications service providers.**			
	1st qtr	V-1Q-G3	203.97	
	2nd qtr	V-2Q-G3	0.33	
	3rd qtr	V-3Q-G3	2.56	
	4th qtr	V-4Q-G3	13.07	219.93
5	**Input tax on purchase of petroleum products.**			

[31] Exhibit "EE".

420

	1st qtr	V-1Q-G4	10,116.06	
	2nd qtr	V-2Q-G4	9,453.20	19,569.26
6	**Input tax on DST and local taxes included in payments to purchase of services.**			
	1st qtr	V-1Q-G7	0.91	
	2nd qtr	V-2Q-G7	0.91	
	4th qtr	V-4Q-G7	1.81	3.63
7	**Input VAT on domestic purchases of goods supported by documents other than a VAT invoice**			
	2nd qtr	V-2Q-A1	2,187.54	
	3rd qtr	V-3Q-A1	8,140.03	
	4th qtr	V-4Q-A1	2,523.93	12,851.50
8	**Input VAT on domestic purchases of goods supported by VAT invoice but not an original copy.**			
	1st qtr	V-1Q-A3	9,143.94	
	2nd qtr	V-2Q-A3	13,620.27	
	3rd qtr	V-3Q-A3	1,103.25	
	4th qtr	V-4Q-A3	6,165.00	30,032.46
9	**Input VAT on domestic purchases of goods supported by a VAT invoice not issued in the name of the Company.**			
	2nd qtr	V-2Q-A4	1,282.67	1,282.67
10	**Input VAT on domestic purchases of goods supported by a VAT invoice not issued in the name of the Calenergy/ CE Cebu/ CE Luzon.**			
	1st qtr	V-1Q-A5	7,047.34	
	2nd qtr	V-2Q-A5	340.80	
	3rd qtr	V-3Q-A5	274.81	7,662.95
11	**Input VAT on domestic purchases of goods supported by TIN # only; TIN-NV/ NON VAT Invoice; stamped/ handwritten TIN-V/VAT.**			
	1st qtr	V-1Q-A7	8,772.77	
	2nd qtr	V-2Q-A7	6,360.99	
	3rd qtr	V-3Q-A7	38,992.68	
	4th qtr	V-4Q-A7	36,064.43	90,190.87
12	**Input VAT on domestic purchases of goods supported by VAT invoice not dated within the taxable year.**			
	1st qtr	V-1Q-A14	64,902.67	
	2nd qtr	V-2Q-A14	5,852.85	70,755.52
13	**Input VAT on domestic purchases of goods supported by a VAT Invoice with changes in the name of the Company.**			
	1st qtr	V-1Q-A15	1,748.00	
	3rd qtr	V-3Q-A15	1,664.91	
	4th qtr	V-4Q-A15	2,725.00	6,137.91
14	**Input VAT on domestic purchases of goods supported by a VAT invoice but is not BIR-registered.**			
	1st qtr	V-1Q-A17	3,004.08	
	2nd qtr	V-2Q-A17	15,048.19	
	3rd qtr	V-3Q-A17	4,223.75	
	4th qtr	V-4Q-A17	7,359.32	29,635.34
15	**Input VAT on domestic purchases of services supported by documents other that a VAT OR.**			
	2nd qtr	V-2Q-B1	1,942.27	
	3rd qtr	V-3Q-B1	1,145.84	
	4th qtr	V-4Q-B1	2,993.32	6,081.43
16	**Input VAT on domestic purchases of services supported by a VAT OR but not an original copy.**			
	1st qtr	V-1Q-B3	12,820.00	12,820.00
17	**Input VAT on domestic purchases of services supported by a VAT OR issued in the name of Calenergy/ CE Cebu/ CE Luzon.**			
	2nd qtr	V-2Q-B5	120.36	

	3rd qtr	V-3Q-B5	73.47	
	1st qtr	V-4Q-B5	900.00	1,093.83
18	**Input VAT on domestic purchases of services supported by a TIN # only; TIN-NV/NON VAT OR; stamped/handwritten TIN-V/VAT.**			
	1st qtr	V-1Q-B7	4,043.89	
	4th qtr	V-4Q-B7	7,601.55	11,645.44
19	**Input VAT on domestic purchases of services supported by a VAT OR but without OR date.**			
	2nd qtr	V-2Q-B10	2,057.31	2,057.31
20	**Input VAT on domestic purchases of services supported by a VAT OR not dated within the VAT taxable year.**			
	1st qtr	V-1Q-B14	232,509.10	
	3rd qtr	V-3Q-B14	28,146.55	260,655.65
21	**Input VAT on domestic purchases of services supported by a VAT OR but is not BIR-registered.**			
	1st qtr	V-1Q-B17	16,960.68	
	2nd qtr	V-2Q-B17	6,975.92	
	3rd qtr	V-3Q-B17	16,918.31	
	4th qtr	V-4Q-B17	27,740.88	68,595.79
22	**Input VAT on importation of goods supported by documents other than an original copy of the IEIRD.**			
	4th qtr	V-4Q-C1	4,780.00	4,780.00
23	**Input VAT on importation of goods supported by an original IEIRD and BOC OR not dated within the year.**			
	1st qtr	V-1Q-C3	49,680.31	
	4th qtr	V-4Q-C3	9,987.00	59,667.31
24	**Over-claimed input tax on domestic purchases of goods/services due to erroneous computation.**			
	2nd qtr	V-2Q-E1	30.45	
	3rd qtr	V-3Q-E1	302.00	
	4th qtr	V-4Q-E1	211.04	543.49
25	**Effect of foreign currency denominated purchases of goods and services-overstatement.**			
	1st qtr	V-1Q-J1	788.21	
	2nd qtr	V-2Q-J1	5,484.45	
	3rd qtr	V-3Q-J1	3,517.99	
	4th qtr	V-4Q-J1	246.53	10,037.18
26	**Supporting documents not available.**			
	1st qtr	V-1Q-F	208,278.96	
	2nd qtr	V-2Q-F	73,981.35	
	3rd qtr	V-3Q-F	103,503.54	
	4th qtr	V-4Q-F	277,574.63	663,338.48
27	**Input VAT on domestic purchase of goods supported by invoice pre-printed with TIN-V after January 1, 1996.**			
	1st qtr	V-1Q-A7-1	1,911.36	
	2nd qtr	V-2Q-A7-1	9,942.53	
	3rd qtr	V-3Q-A7-1	14,632.27	
	4th qtr	V-4Q-A7-1	6,502.16	32,988.32
28	**Input VAT on domestic purchase of services supported by OR pre-printed with TIN-V after January 1, 1996.**			
	1st qtr	V-1Q-B7-1	61,084.27	
	2nd qtr	V-2Q-B7-1	209,234.56	
	3rd qtr	V-3Q-B7-1	123,916.61	
	4th qtr	V-4Q-B7-1	505,947.60	900,183.04
TOTAL				**P 2,395,251.33**

422

In addition, before petitioner can validly claim for a refund or an issuance of tax credit certificate in its favor, it must prove first that the claimed input taxes were not applied against any output liability during the period of claim and in the succeeding period.

A perusal of petitioner's final amended Quarterly VAT Returns[32] for the four quarters of taxable year 2004 indicates that it had no output VAT liability against which the claimed input VAT may be applied or credited.

Petitioner carried over the claimed unutilized input VAT for the first quarter of taxable year 2004 to the succeeding taxable quarters until the second quarter of taxable year 2005,[33] and the claimed input VAT for the second to fourth quarters of taxable year 2004 to the succeeding taxable quarters until the fourth quarter of taxable year 2005.[34] However, the same was deducted as "Any VAT Refund/TCC" claimed from the total available input tax of P44,693,834.49 and P26,005,576.71 in the second quarter[35] and fourth quarter[36] of taxable year 2005, respectively.

In other words, the subject claim no longer formed part of the excess input VAT of P15,188,062.24 as of the fourth quarter of taxable year 2005, which was to be carried over/applied to the succeeding first quarter of taxable year 2006.

---

[32] Supra.
[33] Exhibit "V" (Note: the claimed VAT refund/TCC amounting to P24,550,982.98 included the claimed input VAT of P7,662,196.67 for the first quarter of 2004. The breakdown is found in page 292 of the Docket).
[34] Exhibit "Z".
[35] Supra.
[36] Supra.

In fine, this Court finds petitioner to have sufficiently proven its entitlement to the issuance of tax credit certificate or refund of its unutilized and unapplied input VAT but only in the reduced amount of P16,084,459.81.

WHEREFORE, in view of the foregoing considerations, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or, in the alternative, **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the reduced amount of **SIXTEEN MILLION EIGHTY-FOUR THOUSAND FOUR HUNDRED FIFTY NINE PESOS AND 81/100** (P16,084,459.81) representing unutilized input VAT from its domestic purchases of goods and services, services rendered by non-residents, and importations of goods for the four quarters of taxable year 2004.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

424

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

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

425