REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

MIRANT SUAL CORPORATION (formerly SOUTHERN ENERGY PANGASINAN, INC.),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6259

Members:

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

Promulgated:

FEB 27 2008

1:05 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

Only VAT invoices can be used for the sale of goods that are subject to VAT. The corresponding taxes thereon shall be allowed as input tax credits for those subject to VAT. *Section 113 of the NIRC of 1997, as amended,* expressly provides for the invoicing and accounting requirements for VAT-registered persons. A VAT-registered status, as well as compliance with the invoicing requirements, is sufficient for the effective zero rating of the transactions of a taxpayer. Conversely, non-

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compliance with the invoicing requirements will not give rise to effective zero-rating of the transactions of a taxpayer.

THE CASE

This is a Petition for Review filed by Mirant Sual Corporation (hereafter "petitioner") praying for the refund or issuance of a tax credit certificate in the amount of P240,463,818.16, representing the sum of petitioner's (a) unutilized input taxes of P6,472,197.86 on domestic purchases and importation of goods and services which are attributable to its zero-rated sales to the National Power Corporation, and (b) unutilized input taxes of P233,991,620.30 on purchases of capital goods, both for the calendar year 1999.

THE FACTS

The facts of the case, as culled from the records, are as follows:

Petitioner is a corporation duly organized and existing by virtue of Philippine laws, with principal office located at Barrio Pangascasan, Sual, Pangasinan. It was originally registered with the Securities and Exchange Commission under the name "Pangasinan Electric Corporation" which was subsequently changed to "Southern Energy Pangasinan, Incorporated" on August 17, 1999. On June 28, 2001, petitioner's name was again changed from "Southern Energy Pangasinan, Incorporated" to

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"Mirant Sual Corporation". It is registered with the Bureau of Internal Revenue ("BIR") as a Value-Added Tax ("VAT") taxpayer engaged in the business of power generation services (*Exhibit "C"*).

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue ("CIR") vested with authority to act as such, including, *inter alia*, the power to decide, approve and grant claims for refunds or tax credits of overpaid internal revenue taxes as provided by law, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City, where he may be served with summons and other court processes.

In connection with petitioner's sales of power generation services to NPC, petitioner filed with respondent CIR an Application for Zero Rate for the sale of power generation services to National Power Corporation ("NPC") under a BOT scheme, which was subsequently approved covering the period May 13, 1999 to December 31, 1999 *(Exhibit "H")*.

For the four quarters of calendar year ("CY") 1999, petitioner filed with the BIR its VAT returns declaring zero-rated sales in the amount of P304,767,687.98 and unutilized input taxes in the amount of P240,463,818.16, detailed as follows:

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Exhibit	1999	Date filed with the BIR	Zero-rated Sales	Input VAT
D	1st quarter	04/12/99		P 100,093,399.85
E	2nd quarter	07/12/99		37,028,319.68
F	3rd quarter	10/22/99		41,382,566.80
G	4th quarter	01/25/00	P304,767,687.98	61,959,531.83
			P304,767,687.98	**P 240,463,818.16**

On March 1, 2001, pursuant to *Revenue Regulations No. 7-95, as amended*, petitioner filed an administrative claim for refund of its unutilized input VAT with the BIR.

For failure of the respondent to act on petitioner's claim for refund, on March 29, 2001, petitioner elevated its case to this Court by way of a Petition for Review.

In his Answer, respondent, by way of special and affirmative defenses, alleged that the petition states no cause of action because on the assumption that petitioner filed an administrative claim for input VAT refund with the BIR there was no showing that petitioner submitted complete documents in support of the application for respondent to properly act on it, as required by *Section 112(D) of the Tax Code*.

Petitioner presented Ruben Rubio, the Court-commissioned Independent CPA, Rosalinda Sempio, its Senior Accountant, and Vicente Romasanta, its Accounting Manager, as witnesses, and documentary evidence, marked as *Exhibits "A"* to *"FF"*, inclusive of their

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submarkings, which were all admitted by the Court in a Resolution dated February 14, 2003.

On the other hand, respondent presented Revenue Officer Bernadette Mangaoang, as witness, and formally offered documentary evidence, marked as *Exhibits "1"* and *"2"*, inclusive of their submarkings, which were all admitted by the Court in a Resolution dated September 5, 2003.

On rebuttal, petitioner presented Laura Baui, as witness, and formally offered documentary evidence, marked as *Exhibits "GG" to "D^5"*, inclusive of their submarkings, which were admitted by the Court, except for *Exhibits "FFF"* to *"ZZZ"*, *"AAAA"* to *"ZZZZ"*, *"A^5"* to *"D^5"*, which were denied admission for these documents could not be found in the records of the case.

Upon manifestation of counsel for respondent that he will not present sur-rebuttal evidence, respondent was granted thirty days from October 2, 2006 to file his memorandum, while petitioner was granted twenty days from notice.

Petitioner having filed its memorandum, without respondent filing the same, the case was deemed submitted for decision.

Hence, this decision.

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ISSUES

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

I

WHETHER PETITIONER HAS UNUTILIZED VAT INPUT TAXES FOR CY 1999 ARISING FROM ITS (A) DOMESTIC PURCHASES AND IMPORTATION OF GOODS AND SERVICES WHICH ARE ATTRIBUTABLE TO ITS ZERO-RATED SALES OF POWER GENERATION SERVICES TO NPC DURING CY 1999; AND (B) PURCHASES OF CAPITAL GOODS DURING CY 1999.

II

WHETHER PETITIONER'S UNUTILIZED VAT INPUT TAXES FOR CY 1999 ARE SUBSTANTIATED BY DOCUMENTARY EVIDENCE IN THE FORM OF INVOICES AND OFFICIAL RECEIPTS.

III

WHETHER PETITIONER'S VAT INPUT TAXES FOR CY 1999 WERE APPLIED AGAINST ANY VAT OUTPUT TAXES IN THE SUBSEQUENT TAXABLE QUARTERS.

IV

WHETHER PETITIONER'S ADMINISTRATIVE CLAIM FOR REFUND FILED ON MARCH 1, 2001 WAS SEASONABLY FILED.

The issues being interrelated will be discussed jointly.

THE COURT'S RULING

The petition is partly meritorious.

Records reveal that the subject claim in the amount of P240,463,818.16 represents the sum of petitioner's (a) unutilized input tax credits of P6,472,197.86 arising from domestic purchases of goods and services which are attributable to its zero-rated sales of power generation services to NPC; and (b) unutilized input tax credits of P233,991,620.30 generated from purchases of capital goods for the four quarters of 1999.

Petitioner's claim For Unutilized Input VAT of P6,472,197.86 on Domestic Purchases of Goods and Services which Are Attributable to its Zero-Rated Sales of Power Generation Services to NPC For the Four Quarters of 1999

Petitioner anchors its claim on *Section 112(A) and (B) 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 where made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales,

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> 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.
>
> **(B)** ***Capital Goods***. — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.
>
> xxx xxx."

The aforequoted *Section 112(A) of the NIRC of 1997, as amended*, allows the refund/tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales. Petitioner claims that its sale of electricity to NPC is effectively zero-rated, *pursuant to Section 108(B)(3) of the NIRC of 1997*, in relation to *Section 13 of Republic Act No. 6395*, otherwise known as the "NPC Charter", which provide, as follows:

> "**SEC. 108.** ***Value-Added Tax on Sale of Services and Use or Lease of Properties***.

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> xxx xxx.
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx.
>
> (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."
>
> "**Sec. 13. Non-profit Character of the Corporation, Exemption from All Taxes, Duties, Fees, 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 investments, as well as excess revenues from its operation, 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."

Pursuant to *Section 13 of RA 6395*, the NPC is exempt from payment of all forms of taxes, including VAT. Hence, by virtue of said charter, services rendered by a VAT registered entity, like petitioner to the NPC, are effectively subject to zero percent (0%) VAT in accordance with *Section 108(B)(3) of the NIRC of 1997, as amended.*

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In the case of *Maceda vs. Macaraig, Jr., (223 SCRA 217)*, the Supreme Court affirmed NPC's tax exemption and ruled as follows:

> "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.
>
> 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, the respondent Commissioner also approved petitioner's application for the zero-rating of its sales to NPC covering the period from May 13, 1999 to December 31, 1999 *(Exhibit "H")*.

However, *Section 108(B)(3) of the NIRC of 1997, as amended,* must be read in conjunction with *Section 113 of the same Code,* as implemented by *Section 4.108-1 of Revenue Regulations No. 7-95*, thus:

> "**SEC. 113.** ***Invoicing and Accounting Requirements for VAT-Registered Persons —***
>
> (A) Invoicing Requirements. — A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

ON

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax."

The law is very clear. *Section 113* provides that a VAT registered person, shall, for every sale issue a duly registered VAT invoice or receipt covering a "zero-rated" sale imprinted on the invoice or receipt, in order that petitioner's sales of electricity to the NPC shall qualify for zero-rating.

Corollary thereto, *Section 4.108-1 of Revenue Regulations No. 7-95* provides:

"**SEC. 4.108-1. Invoicing Requirements** — All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices, which must show:

1. the name, TIN and address of seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word 'zero rated' imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration.

In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual

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> consideration, the VAT shall be separately indicated in the invoice or receipt.
>
> Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or receipts and this shall be considered as a 'VAT Invoice'. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax.
>
> If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A 'VAT Invoice' shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the Code.
>
> The invoice or receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records."

Furthermore, a perusal of the approved Application/Certificate for Zero Rate issued by the respondent to petitioner on May 13, 1999 *(Exhibit "H")*, shows that the following was indicated:

> Valid only for sale of services from
> May 13, 1999 up to December 31, 1999 unless sooner revoked.
> Note: **Zero-Rated Sales must be indicated in the** invoice/**receipt**. (*Emphasis supplied*)

A careful scrutiny of the official receipts *(Exhibits "Z-1", "Z-3", "Z-5", "Z-7", "Z-9", "Z-11", "Z-13", "Z-15")* supporting petitioner's reported zero-rated sales for the year 1999 in the amount of P304,767,687.98 shows that while said receipts bear the TIN-VAT number of the petitioner

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and the printer's BIR Permit number, the word "zero-rated" was not imprinted thereon, in clear violation of *Section 4.108.1-1 of Revenue Regulations No. 7-95* and the conditions imposed on petitioner's approved Application/Certificate for Zero-Rate.

The law and regulations require strict compliance with the invoicing requirements. Without valid VAT official receipts, petitioner's sales of electricity to the NPC for the year 1999 in the amount of P304,767,687.98 cannot qualify for VAT zero-rating, under *Section 108(B)(3) of the NIRC of 1997*. Hence, the claimed unutilized input VAT attributable thereto in the amount of P6,472,197.86 cannot be granted.

<u>Petitioner's Claim For Unutilized Input Tax Credits In the Amount of P233,991,620.30 Generated From Purchases of Capital Goods</u>

We now proceed to petitioner's remaining claim for unutilized input tax credits in the amount of P233,991,620.30 generated from purchases of capital goods.

Pursuant to the aforequoted provisions of *Section 112(B) of the NIRC of 1997, as amended*, in order to be entitled to a refund/tax credit of input VAT paid on capital goods purchased, petitioner must prove the following:

1) That it is a VAT registered entity;

2) That the claimed input taxes were paid on capital goods;

3) That it did not offset or apply the claimed input taxes on capital goods purchased against any output VAT liability; and

4) That the claim for refund was filed within the two-year prescriptive period.

As regards the first requisite, the fact that petitioner is a VAT registered entity is not disputed (*Joint Stipulation of Facts and Issues, par. 1.2 and Exhibit "C"*).

Likewise, petitioner complied with the third requisite. Petitioner's claimed input VAT was not applied against any output VAT liability during the four quarters of 1999. Although petitioner carried-over the total claim of P240,463,818.16 (inclusive of the claimed input VAT on capital goods of P233,991,620.30) to the succeeding quarters until the second quarter of 2001, the same remained unutilized as petitioner had no output VAT liability during the said period. Moreover, the total claim of P240,463,818.16 was deducted as "Any VAT Refund/TCC Claimed" from the total available input tax of P487,922,591.54 as reflected in petitioner's VAT return for the second quarter of 2001 *(Exhibit "O-2")*. The resulting net creditable input tax of P246,597,452.38 to be carried-

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over to the succeeding third quarter of 2001 no longer included the subject claim of P240,463,818.16.

As regards the fourth requisite, it was established that the instant claim was filed within the two-year prescriptive period, both in the administrative and judicial levels, reckoned from the respective dates when petitioner filed its 1999 Quarterly VAT Returns on April 12, 1999, July 12, 1999, October 22, 1999 and January 25, 2000.

However, as to the second requisite, whether or not petitioner's paid input taxes on the purchases of capital goods in the amount of P233,991,620.30, petitioner submitted various suppliers' invoices and official receipts *(Exhibits "AA-1" to "AA-2273"),* which were examined by the Court-commissioned auditing firm, SGV & Co. As correctly noted by SGV & Co. in its report dated March 14, 2002 *(Exhibit "V")*, the Court finds that out of P233,991,620.30 input taxes on purchases of capital goods, the following input taxes amounting to P10,994,181.65 was not properly substantiated by VAT invoices or official receipts in accordance with *Sections 110(A) and 113(A) of the NIRC of 1997,* as implemented by *Sections 4.104-1 and 4.104-5 of Revenue Regulations No. 7-95*, and should therefore be disallowed from petitioner's claim:

1) Over-claimed Input Taxes on Purchases of Services

Supplier	Reference Invoice .#	Reference OR #	Disallowed Input VAT
First Quarter			
CEPA OPERATION PHILS. CORP.	0119	0368	P 69,554.93
CEPA OPERATION PHILS. CORP.	122	0368	20,742.91
CEPA OPERATION PHILS. CORP.	120	0368	56,837.11
GEC ALSTHOM TURBINE GENERATORS	0203	301	334,585.80
GEC ALSTHOM TURBINE GENERATORS	0204	301	334,585.80
CEPA OPERATION PHILS. CORP.	0123	384	8,262.21
SUAL CONSTRUCTION CORP.	33	0069	1,142,103.81
SUAL CONSTRUCTION CORP.	0039	0071	1,523,866.20
SUAL CONSTRUCTION CORP.	40	0072	1,530,294.54
SUAL CONSTRUCTION CORP.	41	0074	547,888.04
GEC ALSTHOM TURBINE GENERATORS	245	302	470,298.87
ACCENT-MICRO TECHNOLOGIES, INC.	001868B		1,996.14
GEC ALSTHOM ELECTOMECANIQUE	061	280	190,253.64
GEC ALSTHOM ELECTOMECANIQUE	060	280	108,715.86
Second Quarter			
SPATIAL DESIGN CONCEPTS, INC.	974		37,037.84
SIEMENS, INC.	33668		7,597.85
SUAL CONSTRUCTION CORPORATION	0042	0075	167,503.60
SUAL CONSTRUCTION CORPORATION	0043	0075	34,288.60
SUAL CONSTRUCTION CORPORATION	0045	0077	45,961.36
MUSTARD SEED CUSTOMS BROKERAGE	198		193.06
SPATIAL DESIGN CONCEPTS, INC.	1067		5,290.69
INT'L CONTAINER TERMINAL SERVICES		810830	5,248.60
Third Quarter			
GEC ALSTHOM TURBINE GENERATORS	262	303	404,589.72
GEC ALSTHOM TURBINE GENERATORS	287	304	287,170.04
GEC ALSTHOM TURBINE GENERATORS	288	309	456,093.65
SPATIAL DESIGNS, INC.	1076		2,734.01
Fourth Quarter			
GEC ALSTHOM TURBINE GENERATORS	289	305	612,982.33
GEC ALSTHOM TURBINE GENERATORS	292	306	511,220.06
GEC ALSTHOM TURBINE GENERATORS	65	308	254,240.00
GEC ALSTHOM TURBINE GENERATORS	66	308	254,240.00
GEC ALSTHOM TURBINE GENERATORS	67	308	254,240.00
GEC ALSTHOM TURBINE GENERATORS	68	308	181,600.00
GEC ALSTHOM TURBINE GENERATORS	69	308	181,600.00
		sub-total	**P10,043,817.27**

2. Input Taxes Claimed on Purchases of Services Supported by NV Official Receipts

Second Quarter			
MOF COMPANY (SUBIC), INC.	168	4239	P 1,400.85
MOF COMPANY (SUBIC), INC.	177	4224	599.06

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Third Quarter			
MOF COMPANY (SUBIC), INC.	211	4313	840.84
MOF COMPANY (SUBIC), INC.	213	4296	859.66
MOF COMPANY (SUBIC), INC.	208	4340	349.10
MOF COMPANY (SUBIC), INC.	208	4340	1,000.59
MOF COMPANY (SUBIC), INC.	209	4361	2,298.47
MOF COMPANY (SUBIC), INC.	209	4361	534.55
MOF COMPANY (SUBIC), INC.	209	4361	765.02
MOF COMPANY (SUBIC), INC.	209	4361	765.02
MOF COMPANY (SUBIC), INC.	212	4361	1,082.82
MOF COMPANY (SUBIC), INC.	212	4361	516.99
		subtotal	**P 11,012.97**

3. Input Taxes Claimed on Purchases of Services Supported by ORs with Stamped TIN-VAT Printed After July 31, 1991

Third Quarter			
TCM CONST AND EQUIPMENT	11	026	P 12,820.37
TCM CONST AND EQUIPMENT	12	035	65,000.00
WORLD ISLAND-LINK EXPRESS	234	0111	471.02
WORLD ISLAND-LINK EXPRESS	234	0111	835.01
WORLD ISLAND-LINK EXPRESS	234	0111	835.01
WORLD ISLAND-LINK EXPRESS	239	0114	613.50
WORLD ISLAND-LINK EXPRESS	239	0114	601.52
			P 81,176.43

4. Input Taxes Claimed on Purchases of Services Supported by Documents Other Than VAT ORs

Second Quarter			
ERNALYN ENGINEERING & CONS	2460		P 5,112.55
ERNALYN ENGINEERING & CONS	2461		3,381.82
ERNALYN ENGINEERING & CONS	2462		1,372.73
ERNALYN ENGINEERING & CONS	2463		2,727.28
Third Quarter			
SAN CARLOS MKTG CORP	21625		2,650.50
		subtotal	**P 15,244.88**

5. Input Taxes Claimed on Purchase of Services Supported by an OR With TIN only

Third Quarter			
MOTOR PLAZA, INC.	55502	52015	P 720.00
		subtotal	**P 720.00**

6. Input Taxes Claimed on Purchase of Services Supported by an OR Issued Not in Petitioner's Name

Third Quarter

CARGOHAUS, INC.	626021	463366	P	14.85
		subtotal	**P**	**14.85**

7. ***Input Taxes Claimed on Purchases of Goods Supported by Invoices Without BIR Permit***

Third Quarter				
MANILA MACHINERY & SUPP CO., INC.	23445	34587	P	12,000.00
MANILA MACHINERY & SUPP CO., INC.	23902	34587		6,000.00
TRIBOL TRADING & FABRICATION	0256	0302		3,036.55
TRIBOL TRADING & FABRICATION	280	0056		6,436.27
TRIBOL TRADING & FABRICATION	283	0318		3,150.00
TRIBOL TRADING & FABRICATION	284	0318		1,822.00
		subtotal	**P**	**32,444.82**

7. ***Input Taxes Claimed on Purchases of Goods Supported by Invoices With TIN only***

First Quarter				
AGP FURNITURE AND INTERIORS	PO#135	451	P	7,272.73
Second Quarter				
AGP FURNITURE AND INTERIORS	202	451		7,272.73
Third Quarter				
AGP FURNITURE AND INTERIORS	215	027		863.64
		subtotal	**P**	**15,409.10**

8. ***Input Taxes Claimed on Purchases of Goods Supported by Invoices Issued Not in the Name of Petitioner***

Third Quarter				
DON-DON SHIP SUPP & MARINE SERV	149	370		55,720.45
REPUBLIC COMMODITIES CORP.	74500	04252		20,000.00
TOYOTA DAGUPAN CITY, INC.	35338	13454		447.61
TOYOTA DAGUPAN CITY, INC.	35374	13454		895.22
		subtotal	**P**	**77,063.28**

9. ***Input Taxes Claimed on Purchases of Goods/Services Without Supporting Documents***

First Quarter				
AGP FURNITURE AND INTERIORS	PO#00129		P	863.64
MANILA BULLETIN PUBLISHING CORP.		3351935		752.00
EXECUTIVE EDITORS, INC.	M-PEC-3902A			500.00
UNIVERSAL FAR EAST CORPORATION	PO#131			5,479.92
Third Quarter				
INT'L CONTAINER TERMINAL SERVICES	864254			553.39
INT'L CONTAINER TERMINAL SERVICES	864253			553.39
MIASCOR LOGISTICS CORPORATION	3533			43.85
FAMOUS PACIFIC FORWARDING PHILS	207			362.20

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INT'L CONTAINER TERMINAL SERVICES	0210			421.41
		subtotal	**P**	**9,529.80**

10. Input Taxes Claimed on Purchases of Services Supported by ORs with Stamped TIN-V Printed Before July 31, 1991

Third Quarter				
WOLF DEVELOPMENT CORPORATION	47	455	P	428,105.94
		subtotal	**P**	**428,105.94**

11. Input Taxes Claimed on Payments to Transportation Contractors

First Quarter				
GERP RENT A CAR	964	221	P	236.36
GERP RENT A CAR	1076	226		327.27
Second Quarter				
HARLEY RENT A CAR	798	2106		390.91
HARLEY RENT A CAR	906	2117		190.00
HARLEY RENT A CAR	795	1635		1,880.00
Third Quarter				
HARLEY RENT A CAR	765	2125		736.37
HARLEY RENT A CAR	916	2125		190.00
HARLEY RENT A CAR	917	2125		305.00
HARLEY RENT A CAR	919	2131		410.00
HARLEY RENT A CAR	930	2133		2,305.00
HARLEY RENT A CAR	932	2132		185.00
HARLEY RENT A CAR	937	2133		370.00
HARLEY RENT A CAR	1001	2145		2,370.00
HARLEY RENT A CAR	1011	2145		395.00
HARLEY RENT A CAR	1021	2057		150.00
HARLEY RENT A CAR	935	2142		150.00
HARLEY RENT A CAR	946	2142		765.00
GERP RENT A CAR	1300	380		163.64
GERP RENT A CAR	1301	380		163.64
GERP RENT A CAR	1327	379		240.91
GERP RENT A CAR	1329	379		254.55
GERP RENT A CAR	1369	397		490.91
GERP RENT A CAR	1370	403		245.46
GERP RENT A CAR	1384	396		490.91
GERP RENT A CAR	1404	411		363.64
GERP RENT A CAR	1491	445		163.64
GERP RENT A CAR	1498	445		163.64
		subtotal	**P**	**14,096.85**

12. Input Taxes Claimed on Purchases of Goods Dated Outside the Period of Claim

First Quarter				
APPLESEED SYSTEMS AND TECH	919	852	P	836.37

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CITIMEX, INC.	15359/15271	12252	176,063.26
SAN MIGUEL CAMPOCARNE CORP	90010426	15208	272.73
		subtotal	**P 177,172.36**

13. ***Purchases of Goods Supported by Photocopies Of Certified True Copy Invoices***

First Quarter			
ACCENT MICRO TECHNOLOGIES	1894		P 32,832.57
DOTCOM, INC.	278	205	2,060.55
ACCENT MICRO TECHNOLOGIES	1937		33,326.34
Third Quarter			
GOLDEN POWER DIESEL SALES CTR	110	309	10,000.00
GOLDEN POWER DIESEL SALES CTR	112	0307	10,000.00
		subtotal	**P 88,219.46**

14. ***Input Taxes Claimed on Purchases of Goods Supported by Documents Other Than VAT Invoices***

ALAMINOS MARKETING CENTER	16285	P 153.64
		P 153.64
	Total	**P10,994,181.65**

Records show that the substantiated input VAT amount of P222,997,438.65 [P233,991,620.30 less P10,994,181.65] pertains to purchases of supplies, materials, equipment, plant and machinery as well as civil, architectural, engineering, management, personnel, mobilization, operational and other services which were incurred by petitioner in connection with the installation, erection and commissioning of its 2 x 609-megawatt coal-fired thermal power plants at Sual, Pangasinan *(Exhibits "P", "Q", "R" & "S"; Direct Testimony of Vicente Romasanta, TSN, October 30, 2001, pp. 12-14 & 17-21).* Petitioner's power plants and related

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facilities fall within the definition of "capital goods or properties" under *Section 4.106-1 of Revenue Regulations No. 7-95*, which states:

> *"Capital goods or properties" refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29 (f), used directly or indirectly in the production or sale of taxable goods or services.*

Notwithstanding the fact that petitioner's claimed input VAT amount of P222,997,438.65 is in the nature of input VAT paid on capital goods or properties, respondent however, objects to the refund thereof on the basis of the findings made by Revenue Officer, Ma. Bernadette B. Mangaoang, that the claimed input tax was not properly reflected in the balance sheet of petitioner as an asset or Deferred Input Tax. The revenue officer concluded that the input VAT on capital goods already formed part of the cost of the power plants that benefited petitioner in the form of depreciation expense deductible from its gross income (*Exhibit "1"*). Hence, it cannot claim tax refund or credit.

On rebuttal, however, petitioner was able to prove that the findings of the revenue officer are bereft of legal and factual bases.

Based on the examination and validation made by the Court-commissioned auditing firm, SGV & Co. on the rebuttal evidence submitted by petitioner, except for the amount of P8,275.14, the total

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claimed input VAT of P240,463,818.16 (including the substantiated input VAT of P222,997,438.65 on capital goods) was found to have been properly reflected in petitioner's Audited Financial Statements and Account Information Form. Below are the pertinent portions of the report of SGV & Co. (*Exhibit "HHHH", pp. 10-12*):

1. The input VAT per 1999 "Schedule of VAT – Input" was accounted as follows:

ITEM	***DESCRIPTION***	***AMOUNT***
a.	*Input VAT per 1999 "Schedule of VAT - Input" traced to the 1999 "Prepaid VAT - Input" account General Ledger*	*P239,300,564.82*
b.	*Input VAT per 1999 "Schedule of VAT - Input" traced to the 2000 "Prepaid VAT - Input" account General Ledger (please see **Annex J**)*	*P 1,154,978.20*
c.	*Input VAT per 1999 "Schedule of VAT - Input" not traced to the 1999 "Prepaid VAT - Input" account General Ledger. (please see **Annexes K and L**)*	*P 8,275.14*
Total		***P240,463,818.16***

2. During 1999 and 2000, the ending balance of Prepaid VAT – Input account amounted to P523,408,483.55 (where the 1999 input VAT amounting to P239,297,437.45 were included) and P419,443,087.24 (where the 1999 input VAT amounting to P1,154,978.20 were included), respectively. This account is presented in its Audited Financial Statements under the "Prepaid Expenses and Other Current Assets" account. Per 1999 and 2000 Audited Financial Statements, "Prepaid Expenses and Other Current Assets" account has a balance of P14,684,397.49 and P35,507,250.00, respectively, broken down in the 1999 and 2000 Detailed Comparative Balance Sheet as follows:

	1999	***2000***
Deferred Income Tax	*P 12,021,223.65*	*-*
Others	*390,397.25*	*P 9,987,805.15*
Prepayments (net)	*2,272,776.59*	*25,519,444.91*
TOTAL	***P 14,684,397.49***	***P 35,507,250.06***

"Prepayments" account is further broken down in the 1999 and 2000 trial balance as follows:

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	1999	2000
Prepaid General Insurance	P -	P 4,951,719.26
Prepaid Vehicle Insurance	644,592.93	578,699.56
Prepaid VAT Input	523,408,483.55	419,443,087.24
Prepaid Employee Medical Insurance	79,082.03	23,987.30
Prepaid Employee Life Insurance	83,914.12	201,014.01
Prepayments – Others	1,465,187.51	19,764,024.78
Total	P525,681,260.14	P444,962,532.15
Less: Allowance for Unrefundable Prepaid VAT	523,408,483.55	419,443,087.24
Prepayments (net)	**P 2,272,776.59**	**P 25,519,444.91**

The "Allowance for Unrefundable Prepaid VAT" account is presented in the Audited Financial Statements under the "Prepaid Expenses and Other Current Assets" account as presented previously.

3. *In 2001, the Company filed a claim for refund/tax credit for its excess input taxes for the calendar year 1999 amounting to P240,463,818.16. Below are the journal entries made by the Company in connection with the reclassification:*

Reclassification of Prepaid VAT – Input Account to Accounts Receivable – BIR Account upon filing for Claim for Refund/TCC of its Excess Input Taxes for the Calendar Year 1999

	Debit	Credit
Accounts Receivable – BIR	240,463,818.16	
Prepaid VAT – Input		240,463,818.16

Reclassification of the Related Allowance

	Debit	Credit
Allowance for Unrefundable Prepaid VAT – Input	240,463,818.16	
Allowance for Unrefundable VAT – Input		240,463,818.16

Moreover, we noted that the "Accounts Receivable – BIR" account has an ending balance of P841,035,674.08 during 2001. This amount is presented in the audited Financial Statements "Accounts Receivable" account. The "Accounts Receivable" account has a balance in the 2001 audited Financial Statements of P2,295,954,000.00 and is broken down as follows:

Accounts Receivable – Trade	P 2,236,788,000.00
Accounts Receivable - Others (net)	59,166,000.00
Total	**P 2,295,954,000.00**

The item "Accounts Receivable – Others" is broken in the trial balance as follows: aal

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		Debit	Credit
Advances - Employees	*P*	*61,980.68*	
Non-business Advances - Employees		*34,818.54*	
Sundry Receivables		*101,006,244.28*	
Advances - Suppliers		*41,401,527.98*	
A/R - Employee Associations Receivable		*5,850.00*	
Accounts Receivable – BIR		***841,035,674.08***	
Allowance for Unrefundable VAT - Input			***P841,035,674.08***
Deferred Value Added Tax Input		*21,372,791.39*	
Allowance for Deferred Value Added Tax Input			*21,372,791.39*
A/R – SSS		*120,766.67*	
Interest Receivable from Bank		*17,567,139.52*	
Accumulated Provision for Bad & Doubtful Debts			*101,032,541.52*
Total		*P1,022,606,793.14*	*P963,441,006.99*
Accounts Receivable - Others (net)		***P59,165,786.15***	

For the additional information of the Honorable Court, Accounts Receivable – BIR is broken down as follows:

CTA Case No.	Amount
Administrative Claim with the BIR	*P 29,763,958.71*
5654	*286,592,786.25*
6125	*284,215,110.96*
6259	*240,463,818.16*
Total	***P 841,035,674.08***

Considering that the above findings of SGV and Co. as regards the input VAT exception amounting to P8,275.14, which was not traced to the "Prepaid Input VAT" account of petitioner, is comprised of both input VAT on capital goods purchases and input VAT on purchases of goods/services attributable to zero-rated sales, only the input VAT of P4,783.40 (*Annex L of Exhibit "HHHH"*), pertaining to capital goods, as enumerated below, is hereby disallowed from petitioner's substantiated input VAT claim on capital goods of P222,997,438.65:

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Supplier	Ref.	Input Tax Claimed
Inter'l Container Terminal Services, Inc.	9757	P 1,102.63
Inter'l Container Terminal Services, Inc.	9758	344.60
Inter'l Container Terminal Services, Inc.	9760	1,018.42
Carried Lumber Company, Inc.	6419	1,883.65
SK Hardware & Gen. Mdse.	1530	434.10
Total		**P 4,783.40**

Hence, only the amount of P222,992,655.25 (P222,997,438.65 less P4,783.40) represents petitioner's valid input tax on purchases of capital goods, as reflected in petitioner's Audited Financial Statements and Account Information Form.

Furthermore, petitioner has proven that while the subject input VAT was capitalized and formed part of the cost of its power plants, petitioner did not benefit from the same in the form of deductible depreciation for income tax purposes, contrary to the revenue officer's allegation.

As clearly explained by petitioner's Financial Controller, Laura Baui, in her Affidavit and Supplemental Affidavit dated January 15, 2005 and March 30, 2005, respectively *(Exhibits "YY" and "EEE"),* the depreciation on the capitalized input VAT of P233,991,620.30 amounted to P1,836,834.00 for the year 1999 and P9,359,665.00 for every year thereafter, computed as follows:

For CY 1999

Capitalized Input VAT	P 233,991,620.30
Divided by useful life of the power plant (in months)	÷ 300.00
Depreciation per month	P 779,972.07
Multiplied by the number of months elapsed from October 1999 to December 1999	x 2.355
Depreciation for the year 1999	**P 1,836,834.00**

For Every Year Thereafter

Capitalized Input VAT	P 233,991,620.30
Divided by useful life of the power plant (in months)	÷ 300.00
Depreciation per month	P 779,972.07
Multiplied by 12 months	x 12
Depreciation for every year after 1999	**P 9,359,665.00**

The depreciation of P1,836,834.00 was not claimed as deductible expense in petitioner's income tax return for the year 1999, but was included in the non-deductible reconciling item of P22,316,013.00, captioned as "Excess of book over tax depreciation" (*Exhibit "MM-4")*. The same holds true as regards the full year's depreciation of P9,359,665.00, as clearly shown in the Lapsing Schedule of the Capitalized Provision for Unrefundable Input VAT (*Exhibit "TT"*), prepared by petitioner based on its declarations in the financial statements (*Exhibits "MM-7", "UU-4", "VV-4", "WW-4", "XX-4"*) and income tax returns from 1999 to 2003 (*Exhibits "MM-4", "UU-7", "VV-7", "WW-7" & "XX-5"*). The schedule reveals the consistent practice of petitioner in treating the depreciation on the capitalized input VAT as a non-deductible expense for tax purposes. Evidently, respondent's allegation that petitioner's

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capitalized input VAT was claimed as deduction in the form of depreciation expense is without factual and legal bases.

In sum, the Court, therefore, finds that petitioner is entitled to a refund or issuance of a tax credit certificate in the reduced amount of P222,992,655.25, representing unutilized input VAT on capital goods purchased for the four quarters of 1999.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Respondent is hereby **ORDERED to REFUND or to ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **TWO HUNDRED TWENTY TWO MILLION NINE HUNDRED NINETY TWO THOUSAND SIX HUNDRED FIFTY FIVE & 25/100 PESOS (P222,992,655.25),** representing unutilized input VAT on capital goods purchased for the four quarters of 1999.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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A T T E S T A T I O N

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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

C E R T I F I C A T I O N

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

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