**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

**THE COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

-versus-

**MIRANT(NAVOTAS II) CORPORATION (Formerly Southern Energy Navotas II Power, Inc.),**
Respondent.

**C.T.A. EB No. 203**
(C.T.A. Case No. 6418)

Members:

**Acosta,** ***P.J.,***
**Castañeda, Jr.,**
**Bautista,**
**Uy,**
**Casanova,** and
**Palanca-Enriquez,** ***JJ.:***

**Promulgated:**

AUG 2 3 2007 [signature]

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# DECISION

**CASTAÑEDA, JR., J.:**

On appeal are the Decision dated April 11, 2006 and the Resolution dated July 11, 2006 issued by the Court in Division in the case entitled, "MIRANT (NAVOTAS II) CORPORATION (formerly Southern Energy

Navotas II Power, Inc.) vs. Commissioner of Internal Revenue", docketed as C.T.A. Case 6418.

The facts are undisputed:

Mirant (Navotas II) Corporation ("Mirant"), a domestic corporation duly organized and existing by virtue of the Philippine laws is primarily engaged in the production and sale of electricity to the National Power Corporation ("NPC"), pursuant to a Build, Operate, Transfer ("BOT") Scheme. It is previously known under the corporate names Southern Energy Navotas II Power, Inc. and Hopewell Tileman (Philippines) Corporation ("Hopewell")[1], and registered with the Bureau of Internal Revenue ("BIR") as a value-added tax ("VAT") taxpayer with Taxpayer Identification Number 001-726-862-000.

The Commissioner of Internal Revenue ("Commissioner"), on the other hand, is vested with authority to perform, *inter-alia*, decide disputed assessments, refund of internal revenue taxes, fees or other charges, penalties, or other matters arising under the 1997 National Internal Revenue Code ("NIRC"), as amended or other laws administered by the BIR. *gr*

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[1] Rollo, p. 22.

For the period January 1, 2000 to December 31, 2000, the BIR approved Mirant's application for zero rating for the sale of power generation services to NPC, under a BOT Scheme.[2]

Mirant filed quarterly VAT Returns for the four quarters of 2000 showing that it allegedly incurred unutilized input VAT of P572,732.27 attributed to effectively zero-rated sales to NPC in the amount of P250,359,011.20 covering the same period.[3]

On March 6, 2002, Mirant commenced an administrative claim with the BIR for the refund or application of tax credit certificate of unutilized input VAT of P572,732.27.[4]

Due to the inaction of the BIR on its claim for refund, on March 26, 2002, Mirant filed a Petition for Review, docketed as C.T.A. Case 6418 before the Court in Division.[5]

On April 11, 2006, the Court in Division issued a Decision ordering the Commissioner, to refund or issue a tax credit certificate in the reduced amount of P544,810.88 representing unutilized input VAT paid on domestic purchases and importation of goods and services which are attributable to the zero-rated sales of power generation services of Mirant to NPC for the

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[2] Exhibit F.
[3] See Rollo, p. 22 and C.T.A. Case No. 6418, pp. 60-61.
[4] See CTA Case No. 6418, p. 61.
[5] See CTA Case No. 6418, p. 1.

taxable year 2000.[6] The pertinent excerpts of the Decision dated April 11, 2006 read:

> Clearly from the foregoing, NPC is an entity with a special charter, which categorically makes it exempt from payment of all taxes, whether direct or indirect, including VAT. Hence, by virtue of the said charter, the services rendered by a VAT registered entity, like herein petitioner, to NPC are effectively subject to zero percent (0%) VAT. x x x
>
> Petitioner was likewise able to establish (through the various invoices and official receipts it issued to NPC[7] as summarized in *Exhibits N-1 to N-4)* that it actually generated revenues from its sale of power generation services to NPC for the four quarters of 2000 in the aggregate amount of P250,359,011.20. These were declared in its Quarterly VAT Returns for 2000.[8]
>
> Petitioner's sales being effectively zero-rated sales pursuant to Section 108(B)(3) of the National Internal Revenue, consequently, the reported unutilized input taxes of P572,732.27 which are allegedly attributable thereto may be a proper subject of a claim for refund or issuance of a tax credit in accordance with Section 112(A) of the National Internal Revenue Code x x x.
>
> Anent the substantiation issue on the claimed input VAT payment of P572,732.27, the commissioned independent CPA, Mr. R.R. Rubio, in his report dated January 2, 2003,[9] noted the following exceptions and observations as far as the total claimed amount of unutilized input taxes are concerned:
>
> "Based on the procedures we performed, we present below our findings:

| | **Findings** | **1st Quarter** | **2nd Quarter** | **3rd Quarter** | **4th Quarter** | **Total** |
|---|---|---|---|---|---|---|
| I. | Erroneous computation of input taxes claimed on purchases of services (Annex A) | 1,929.22 | 1,303.65 | - | - | **3,232.87** |
| II. | Input taxes claimed on purchases of goods supported by VAT invoices issued not in the Company's Name (Annex B) | 3,272.73 | - | 173.79 | 7,739.70 | **11,186.22** |
| III. | Input taxes | | | | | |

6 Rollo, pp. 30-31.
7 Exhibits O-1 to O-23.
8 Exhibits B, C, D and E.
9 Exhibit U and its sub-markings. The Report is actually dated April 24, 2003.

| | | | | | |
|---|---|---|---|---|---|
| claimed on purchases of goods and services without supporting documents (Annex C) | 52.14 | - | - | 616.74 | **668.88** |
| **Total** | **5,254.09** | **1,303.65** | **173.79** | **8,356.44** | **15,087.97** |

After a careful review of the above exceptions of the commissioned independent CPA, the Court finds the same to be correct. However, aside from these exceptions, the Court notes four other amounts of input taxes not supported by VAT OR/Invoice in the total amount of P2,397.62, detailed as follows:

| Quarter | Supplier | Gross Amount | Input Tax |
|---|---|---|---|
| 1st | Tri-Unio International Corp. | P 11,131.89 | P 1,011.99 |
| | Vaecare Enterprises | 2,062.50 | 187.50 |
| | Vaecare Enterprises | 4,125.00 | 375.00 |
| 2nd | Molave Trading, Inc | 9,054.43 | 823.13 |
| **Total** | | | **P 2,397.62** |

Hence, the above amounts, in addition to the exceptions made by the commissioned independent CPA, should be denied for failure to meet the substantiation requirements provided under Section 4.104-5 of Revenue Regulations No. 7-95 in relation to Sections 113 and 237 of the 1997 Tax Code.

Further, a portion of petitioner's claim should likewise be denied. In the same report of the commissioned independent CPA, it was stated thus:

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

1. Input taxes amounting to **P10,435.80** were claimed in the first quarter of 2000 on purchases of goods for which the date of the related VAT invoices fall outside the period of claim (i.e. fourth quarter of 1999). We were able to ascertain that there were no double claiming relative to these input taxes. These input taxes were claimed only in the first quarter of 2000 and were not claimed in the fourth quarter of 1999. (Annex D)

2. Input taxes amounting to P73,123.52 were claimed on purchases of goods and services which were supported by VAT ORs issued in the name of Hopewell Tileman Philippines Corporation (HTPC), the former name of the Company. (Annex E)"

x x x a portion of petitioner's claim in the amount of P10,435.80 cannot be granted since those input taxes should have been declared in the corresponding taxable quarters when purchases of goods were consummated as evidenced by VAT invoices or upon payment of the services as evidenced by VAT official receipts.

However, with regard to the observation made by the independent CPA that input taxes in the amount of P73,123.52 were claimed on purchases of goods and services supported by VAT Official Receipts issued in the name of Hopewell Tileman Philippines Corporation (the former name of the company), the Court holds that this should not deter petitioner from claiming the above amount since it was able to sufficiently establish that it is the same company as Hopewell Tileman Philippines. This fact was not only undisputed but was in fact admitted by respondent.[10] X x x

With regard to the last issue, the Court finds that petitioner's claimed input taxes were not applied against any output tax as shown in its 2000 quarterly VAT returns.[11] Although, the total unutilized input tax for 2000 was carried-over to the succeeding quarters,[12] the same was deducted from its total available input tax for the first quarter of 2002.[13] In other words, the amount subject of the claim no longer formed part of the total input VAT to be carried over to the second quarter of 2002.

Finally, records show that petitioner's administrative claim filed on March 6, 2002 and its judicial appeal filed with this Court by way of Petition for Review on March 26, 2002 were within the two-year prescriptive period reckoned from the filing of its corresponding quarterly VAT returns for taxable year 2000.[14]

In sum, petitioner was able to substantiate by proper VAT invoices and/or official receipts only its input taxes of P544,810.88, computed as follows:

| | | | |
|---|---|---|---|
| **Claimed input tax** | | | P 572,732.27 |
| Less: Disallowances | | | |
| Exceptions noted by the Commissioned CPA | | P 15,087.97 | |
| Amount disallowed by this Court: | | | |
| a. Input taxes with no supporting Documents | P 2,397.62 | | |
| b. Input taxes on purchases of goods With VAT invoices dated outside the Period of claim | 10,435.80 | 12,833.42 | 27,921.39 |
| **Substantiated Amount of Input Tax** | | | **P 544,810.88** |

**WHEREFORE**, respondent is hereby **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of P544,810.88 as above computed, representing unutilized input value-added taxes paid by petitioner on its domestic purchases and importation of goods and services which are

10 See CTA Case No. 6418, Annex B Petition for Review and p. 60.
11 Exhibits B to E.
12 Exhibits H to K.
13 Exhibit L.
14 JIDECO Manufacturing Philippines Inc., v. Commissioner of Internal Revenue, CTA Case No.6552, September 16, 2004.

attributable to its zero-rated sales of power generation services to the National Power Corporation for the taxable year 2000.

**SO ORDERED.**[15]

Unfazed, the Commissioner filed a Motion for Reconsideration seeking the reversal of the assailed Decision which the Court denied in a Resolution dated July 11, 2006. Hence, this appeal by the Commissioner, now as the "petitioner", under Section 18 of Republic Act 1125, as amended by Republic Act 9282 ascribing the following errors committed by the Court in Division in favoring Mirant, now as the "respondent":

**i.**

**THE HONORABLE FIRST DIVISION OF THE CTA ERRED IN HOLDING THAT RESPONDENT IS ENTITLED TO ITS CLAIMED REFUND IN THE TOTAL AMOUNT OF P544,810.88 AS ALLEGED UNUTILIZED INPUT VAT PAID ON ITS DOMESTIC PURCHASES AND IMPORTATION OF GOODS AND SERVICES ATTRIBUTABLE TO ITS ZERO-RATED SALES OF POWER GENERATION SERVICES TO THE NATIONAL POWER CORPORATION FOR THE TAXABLE YEAR 2000, WITHOUT CONSIDERING THE SUBSTANTIATION REQUIREMENTS PRESCRIBED UNDER SECTION 4.104-5 OF REVENUE REGULATIONS NO. 7-95 IN RELATION TO SECTIONS 110 AND 113 OF THE NIRC OF 1997.**

**ii.**

**THE HONORABLE FIRST DIVISION OF THE CTA ERRED IN NOT APPLYING THE RULE THAT TAX REFUNDS BEING IN THE NATURE OF TAX EXEMPTION ARE CONSTRUED STRICTISSIMI JURIS AGAINST THE PERSON OR ENTITY CLAIMING THE EXEMPTION.**[16]

In its Comment to the Petition, Mirant interposes the following grounds:

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[15] Rollo, pp. 25-31.
[16] Rollo, p. 13.

I. The invoices are valid documents which properly support its claim for refund;

II. The VAT official receipts or invoices are in accordance with Section 4.108-1 of Revenue Regulations 7-95; and

III. The input VAT on the purchases covered by invoices issued in the name of Hopewell can be claimed by Mirant.

The Petition is devoid of merit.

The refund of input VAT is premised on the existence of zero-rated or effectively zero-rated sales, pursuant to Section 112(A) of the 1997 NIRC, as amended, stating:

> 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 (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.

Among the services classified as effectively zero-rated sales are the services rendered by VAT registered persons to entities granted tax exemption under special laws or international agreements, pursuant to Section 108 (B) (3) of the 1997 NIRC, as amended, reading:

> SEC. 108. **Value-added Tax on Sale of Services and Use or Lease of Properties.** –
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero(0%) percent rate.
>
> xxx 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;

Here, Mirant's sale of power generation services to NPC whose charter exempts it from payment of all taxes, whether direct or indirect[17], qualifies as effectively zero-rated sale.

The existence of zero-rated or effectively zero-rated sales should either be substantiated by VAT invoices and/or official receipts as mandated by Sections 113 and 237 of the 1997 NIRC, as amended which provide:

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

[17] See Section 13 of Republic Act 6395, or also known as "An Act Revising the Charter of the National Power Corporation" and Maceda vs. Macaraig, G.R. 88291, June 8, 1993, 223 SCRA 217.

(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.

xxx xxx xxx

SEC. 237. **Issuance of Receipts or Sales or Commercial Invoices.** - All persons subject to an internal revenue tax shall for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos(P25.00) or more, issue duly registered receipts or sales of commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however,* That in the case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of amount, where the sale or transfer is made by a person liable to value-added tax to another person is also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any and address of the purchaser, customer or client: *Provided, further*, that where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer's Identification Number of the purchaser.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to an internal revenue tax from compliance with the provisions of this Section.

In this case, the Commissioner alleges that the Court in Division erred in finding Mirant generating revenues from the sale of power services to NPC in the cumulative amount of P250,359,011.20 for the four quarters of 2000 as supported by various VAT invoices and official receipts. It actually failed to sufficiently present official receipts and/or invoices on its zero-rated transactions with NPC. Assuming for the sake of argument that Mirant proffered VAT invoices and/or official receipts, the same are not imprinted with the wordings, "zero-rated sales".

We disagree. gr

Contrary to the stance of the Commissioner, Mirant duly presented VAT official receipts and invoices or identified as, Exhibits "O-1 to O-23" which were issued to NPC for the period January 1, 2000 to December 31, 2000.[18] These documents duly establish that Mirant actually earned revenues from its sale of power services to NPC for the year 2000 in the aggregate amount of P250,359,011.20 evidenced by 2000 Quarterly VAT Returns.[19]

The VAT official receipts and/or invoices proffered by Mirant on its zero-rated sales should be in conformity with Sections 113, 237 of the 1997 NIRC, as amended, to be read in conjunction with Section 4.108-1 of R.R. 7-95, or also known as the "Consolidated Value-Added Tax Regulations", stating the following:

> **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.

Similar to Sections 113 and 237 of the 1997 NIRC, as amended, Section 4.108-1 of R.R. 7-95 pertains to the invoicing requirements for

[18] Summarized in Exhibits N-1 to N-4.
[19] Marked as Exhibits "B","C", "D" and "E".

VAT registered persons. However, Section 4.108-1 of R.R. 7-95 specifically enumerates the contents required to be specified in VAT invoices and/or official receipts, and these include the imprinting of zero-rated sales on the said documents.

After a careful re-examination of Mirant's VAT invoices and/or official receipts, the Court observes that on their face bear the wordings, "zero-rated sales".

In a litany of cases, the Court En Banc has consistently ruled that the imprinting of "zero-rated sales" on the VAT official receipts or invoices is imperative, pursuant to Section 4.108-1 of R.R. 7-95[20]. Administrative rules and regulations such as R.R. 7-95 have the force and effect of the law.[21] In the absence of the wordings, "zero-rated sales" imprinted on VAT invoices and/or receipts, the claim for input VAT will be disallowed.[22] The relevance of imprinting the wordings, "zero-rated sales" on VAT invoices and/or official receipts was discussed in the case of *Kepco*

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[20] See *Southern Philippines Power Corporation vs. Commissioner of Internal Revenue*, C.T. A. EB No. 214, July 31, 2007, *Kepco Philippines Corp. vs. Commissioner of Internal Revenue*, C.T.A. EB No. 186, May 17, 2007, *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, C.T. A EB No. 174, May 9, 2007, *Applied Food Ingredients Co., Inc. vs. Commissioner of Internal Revenue*, C.T.A. E.B. No. 220, May 7, 2007, *Intel Technology Philippines Inc. vs. Commissioner of Internal Revenue*, C.T. A. EB No. 181, March 27, 2007, *Panasonic Communications Imaging Corporation of the Philippines, (formerly, MATSUSHITA BUSINESS MACHINE CORPORATION OF THE PHILIPPINES) vs. Commissioner of Internal Revenue*, C.T.A. EB No. 239, May 23, 2007, and *J.R.A. Philippines Inc. vs. Commissioner of Internal Revenue*, C.T.A. EB No. 128, January 15, 2007 and *Taganito Mining Corporation vs. CIR*, C.T.A. E.B. No. 7, January 31, 2006.

[21] *Victorias Milling Co., Inc. vs. Office of the Presidential Assistant for Legal Affairs,* G.R. No. 73705, August 27, 1987, 153 SCRA 317.

[22] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, E.B. No. 107, June 29, 2007, *Commissioner of Internal Revenue and Applied Food Ingredients Co., Inc. vs. Commissioner of Internal Revenue*, C.T.A. E.B. No. 220, May 7, 2007.

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*Philippines Corporation vs. Commissioner of Internal Revenue*[23], where the Court En Banc reasoned that:

> The imprinting of "zero-rated" is necessary to distinguish sales subject to 10% VAT, those that are subject to 0% VAT (zero-rated) and exempt sales, to enable the Bureau of Internal Revenue to properly implement and enforce the other provisions of the 1997 NIRC on VAT, namely:
>
> 1. Zero-rated sales [Sec. 106(A)(2) and Sec. 108(B)];
> 2. Exempt transactions[Sec. 109] in relation to Sec. 112(A);
> 3. Tax Credits [Sec.110]; and
> 4. Refunds or tax credits of input tax [Sec. 112].
>
> xxx xxx xxx
>
> Furthermore, Section 110 of the NIRC of 1997, as amended, provides that: "Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: . . ." If the invoice or official receipt was not imprinted with "zero-rated", there is a danger that the purchaser of the goods or services may be able to claim input tax on the sale to it by the taxpayer of the goods or services, as the case may be, notwithstanding the fact that no VAT was actually paid on such goods or services since the taxpayer is zero-rated. This is the rationale for the mandatory requirement in Revenue Regulations No. 7-95 that the words "zero-rated" be imprinted in the invoice or receipt, as the case may be. The zero-rated taxpayer should be entitled to a tax credit/refund on input taxes paid on its purchase of goods or services subject to the mandatory compliance with the invoicing requirements under the regulations. Otherwise, there may result the absurd situation where the government would be crediting/refunding non-existent input tax to purchasers of goods or services of such zero-rated taxpayer. [24]

The imprinting of zero-rated sales primarily seeks to avert the incidence of fictitious claims for refund or the issuance of tax credit certificate of input VAT actually unpaid on the sale of goods or services rendered by the taxpayer, simply because the transaction involved is zero-rated. Thus, Section 4.108-1 of R.R. 7-95 does not in any way amplify the context of Sections 113 and 237 of the 1997 NIRC, but should be treated

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[23] EB Case No. 107, June 29, 2007 citing the case of *J.R.A. Philipines Inc. vs. Commissioner of Internal Revenue*, C.T.A Case No. 6454, June 30, 2005.

[24] Also cited in the case of *Applied Food Ingredients Co., Inc. vs. Commissioner of Internal Revenue*, supra.

as a preventive measure to ensure the effective implementation of the Tax Code.

The Commissioner asserts that VAT invoices are not valid documents to support Mirant's claim for refund of input VAT arising from its zero-rated sales of power generation services to NPC for the four quarters of 2000. Mirant should have presented VAT official receipts since its domestic purchases were attributable to zero-rated sales of power generation services to NPC and that the wordings of "zero-rated sales" are not imprinted in these VAT official receipts or invoices.

The Court is not persuaded.

The Commissioner is drawn into a web of confusion. Apparently, he miserably failed to distinguish between substantiating zero-rated sales from input VAT. The substantiation of input VAT on the purchase of goods and services is governed by the provisions of Section 110 of the 1997 NIRC, as amended, in relation to Sections 106 and 108 of the same Code, which read:

> SEC. 106. **Value-added Tax on Sale of Goods or Properties. –**
>
> xxx xxx xxx
>
> (1) The term *"goods or properties"* shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include: xxx
>
> xxx xxx xxx
>
> (D) *Determination of the Tax*. –

(1) The tax shall be computed by multiplying the total amount indicated in the invoice by one-eleventh (1/11) (Underscoring Ours for emphasis).

xxx xxx xxx

SEC. 108. **Value-added Tax on Sale of Services and Use of Lease of Properties. –**

xxx xxx xxx

The phrase "*sale or exchange of services*" means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including x x x

(C) *Determination of the Tax*. – The tax shall be computed by multiplying the total amount indicated in the official receipt by one-eleventh (1/11) (Underscoring Ours for emphasis.)

xxx xxx xxx

SEC. 110. **Tax Credits**. –

(A) *Creditable Input Tax*. –

(1) Any input tax evidenced by VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: x x x

Section 4.104-5 of Revenue Regulations 7-95 further provides:

**SEC. 4.104-5. Substantiation of claims for input tax credit. –** (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Section 108 (a) and 238 of the Code. x x x[25]

Clearly, to be entitled to the claimed input VAT, the purchase of goods must be supported by VAT invoices; while the purchase of services must be evidenced by official receipts.

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[25] Sections 108 of the Tax Code referred to by Section 4.104-5 of Revenue Regulation 7-95 is now Section 113 of the 1997 NIRC, as amended, and Section 238 of the Tax Code referred to by the same Revenue Regulation is now Section 237 of 1997 NIRC, as amended.

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During the April 29, 2003 hearing, independent CPA Ruben Rubio attested that Mirant's domestic purchases of goods are substantiated by VAT invoices, and domestic purchases of services by VAT official receipts. He further testified on direct examination that:

> We also performed procedures with respect to the Summary List of Purchases supporting the input taxes. Essentially, this includes the procedure of checking/examining the original copies of the documents such as the Summary List of Purchases, the supporting documents such as VAT invoices and official receipts. For domestic purchases of goods and services, the import entry declaration and the documents showing actual payment of VAT for imported goods. We checked that the details of these supporting documents agree with the details as indicated in the Summary of Purchases. <u>Domestic purchases of goods are supported by VAT invoices. Domestic purchases of services are supported by VAT official receipts.</u> Importations are supported by import entry declarations and other documents evidencing actual payment of VAT represented by the original copies of the bank's statement, Bureau of Customs official receipts and bank's official receipts. That the amount reflected as VAT is reconciled with the amount of payment. That the input taxes are correctly computed and the documents are issued in the name of the company (Underscoring Ours for emphasis.).[26]

The VAT official receipts and invoices evidencing input VAT on Mirant's domestic purchases and importation of goods and services attributable to zero-rated sales do not require the imprinting of the wordings "zero-rated sales". Otherwise, the imprinting of the wordings, "zero-rated sales" would negate the fact of payment of said input VAT by the claimant. And if the claimant such as Mirant failed to pay input VAT, it cannot avail of a refund. Furthermore, the law and regulations provide that only the invoices or official receipts covering zero-rated transactions should bear the imprinted wordings, "zero-rated".

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[26] TSN dated April 29, 2003, pp. 10-11.

According to the Commissioner, the VAT official receipts on input taxes of P 73,123.52 paid on the purchase of goods and services were issued in the name of Hopewell, and not in Mirant's name. Despite the change of name jointly stipulated by the parties, this admission was made through palpable mistake.

The contention of the Commissioner must fail. Admissions made by the parties in the pleadings, or in the course of the trial or other proceedings do not require proof and can not be contradicted, unless previously shown to have been made through palpable mistake.[27] The Commissioner failed to show any palpable mistake committed by the parties in admitting during the course of the proceedings that Mirant was previously registered in the name of Hopewell. Since Mirant was earlier known as Southern Energy Navotas II Power, Inc.[28], and in the document denominated as, "Application/Certificate for Zero-Rate"[29], Southern Energy was referred to as, "formerly HOPEWELL TILEMAN (PHILS.) Corp.)", logically, Hopewell and Mirant are one and the same entity.

**WHEREFORE**, premises considered, the Petition for Review is hereby **DISMISSED** for lack of merit. The assailed Decision dated April 11, 2006 and the Resolution dated July 11, 2006 are **AFFIRMED**.

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[27] See Section 4, Rule 129 of the Revised Rules of Court.
[28] See CTA Case 6418, p.60.
[29] Exhibit F.

**SO ORDERED.**

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**WE CONCUR:**

**ERNESTO D. ACOSTA**
Presiding Justice

**LOVELL R. BAUTISTA**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

**OLGA PALANCA-ENRIQUEZ**
Associate Justice

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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