REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

CE CASECNAN WATER AND ENERGY COMPANY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 7917

Members:

ACOSTA, *Chairperson*
UY, *and*
FABON-VICTORINO, *JJ.*

Promulgated:

AUG 23 2012 ; 10:00 a.m.

x- -x

DECISION

UY, *J.*:

This Petition for Review filed by CE Casecnan Water and Energy Company, Inc., petitioner, against the Commissioner of Internal Revenue seeks the refund or the issuance of tax credit certificate in the aggregate amount of ₱ 61,456,346.70, representing alleged erroneous payment of income tax for taxable year 2006.

THE FACTS

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office at Pantabangan, Nueva Ecija. It was incorporated on September 21, 1994, the primary purpose of which is "(t)o design, develop, construct, erect, assemble, commission, finance, own and operate a combined irrigation and hydro-electric power project and related facilities in Central Luzon, Philippines for the conversion into electricity of water provided by and under contract with the National Irrigation Administration (NIA) and for the supply of water for agricultural purposes to the National Irrigation Administration (the "Project"); provided that, in no event shall the corporation itself engage in the general supply or distribution of electricity, in retail trade or in the business of a public utility, or furnish electricity to end-users or consumers, or provide a public service or engage in industries or activities reserved by the Constitution or by law to corporations wholly or partially owned by Filipino citizens. (As amended on 26 October 1995)."[1]

Petitioner is registered with the Board of Investments (BOI) as a New Operator of Hydro-Electric Power Plant, having a pioneer status, pursuant to BOI Certificate of Registration No. 94-388 issued on September 30, 1994.[2] On February 28, 2007, petitioner was issued a Certificate of ITH[3] Entitlement by the BOI, whereby it was given an income tax holiday from December 11, 2001 to December 10, 2007.[4] It is likewise a registered value-added tax (VAT) taxpayer with the Bureau of Internal Revenue (BIR), as evidenced by its Certificate of Registration No. 0000017028 dated July 1, 1998, with Tax Identification Number 004-500-931-000.[5]

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue, vested with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously

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[1] Exhibit "A"; Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 106.
[2] Exhibit "C".
[3] Income Tax Holiday.
[4] Exhibit "N".
[5] Exhibit "B"; Par. 2, Stipulation of Facts, JSFI, Docket, p. 107.

or excessively paid taxes. She may be served with summons, pleadings and other legal processes at her office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner filed its Quarterly Income Tax Returns for taxable year 2006, through the Electronic Filing Payment System (EFPS), on the following dates:

Exhibit	Period Covered	Date of Filing
"E"	January to March 2006	May 29, 2006
"G"	April to June 2006	August 29, 2006
"I"	July to September 2006	November 29, 2006

Likewise, petitioner filed through EFPS, its Annual Income Tax Return (AITR) for taxable year 2006, on April 13, 2007 with Reference 120700001569890.[6]

On April 15, 2009, petitioner filed with respondent, through the Large Taxpayers Audit and Investigation Division I, the appropriate administrative claim for refund in the total amount of ₱ 61,456,346.70, representing its income tax payment for taxable year 2006, on its revenues derived from water delivery to the NIA, a government-owned or -controlled corporation (GOCC).[7] As admitted by the parties, petitioner seasonably filed said administrative claim.[8]

To date, respondent has not finally resolved petitioner's administrative claim for refund.[9] Thus, petitioner filed the instant Petition for Review on April 16, 2009.

In her Answer[10] filed on July 14, 2009, respondent interposes the following arguments and defenses:

> "7. He (She) reiterates and re-pleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses.

[6] Exhibit "K".
[7] Exhibit "D".
[8] Par. 5, Stipulation of Facts, JSFI, Docket, p. 107.
[9] Par. 6, Stipulation of Facts, JSFI, Docket, p. 107.
[10] Docket, pp. 68 to 75.

8. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

9. Petitioner failed to demonstrate that the tax subject in the case at bar was erroneously or illegally collected.

   a. That the claim for refund in the amount of Sixty One Million Four Hundred Fifty Six Thousand Three Hundred Forty Six Pesos and 70/100 (61,456,346.70) representing erroneous income payments for taxable year 2006 was filed within two (2) years in accordance with 229 of the Tax Code of 1997, as amended;

   b. That it has complied with the governing rules and regulations with regard to recovery of taxes as provided in Section 229 of the NIRC, as amended.

   Section 229 of the NIRC of 1997 provides:

   '*Section 229. Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner xxx.'

10. Petitioner must likewise establish that:

   a. It is duly registered with the Board of Investments (BOI) in accordance with the provision of the Omnibus Investment Code of 1987.

   b. It is entitled to full exemption from Income Tax payments allegedly based on its Income Tax Holiday incentives granted on its registered activities pursuant to Section 39 of Executive Order No. 226 otherwise known as Omnibus Investment Code of 1987.

   In relation thereto, Article 39 of Executive Order No. 226 provides:

'Article 39. Incentives to Registered Enterprises —

All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment;

(a) Income Tax Holiday. —
(1) For six (6) years from commercial operation for pioneer firms and four (4) years for non-pioneer firms, new registered firms shall be fully exempt from income taxes levied by the National government. Subject to such guidelines as may be prescribed by the Board, the income tax exemption will be extended for another year in each of the following cases. xxx'

c. That its supply/or delivery of water to the National Irrigation Authority (NIA) which resulted to the recognition of income for taxable year 2006 is part and parcel of its registered activities covered by provisions of E.O. No. 226 for purposes of its entitlement to the full exemption from the payment of income tax.

11. For a valid claim for refund should consist of the following:

 a. There must be a written claim for refund filed by the taxpayer with the Commissioner of Internal Revenue. This is a mandatory requirement. Without this requirement, the CIR is without any authority to refund.

 b. The claim for refund must be a categorical demand for reimbursement.

 c. The claim for refund must be filed within two years from date of payment of the tax or penalty regardless of any supervening cause. In claims for refund, the thirty-day period to appeal should be within the two-year prescriptive period.

12. 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.

13. Taxes collected are presumed to be in accordance with laws and regulations.

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

15. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed in strictissimi juris against the person or entity claiming the exemption (*Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005*). The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted (Sea-Land Service Vs. Court of Appeals, 357 SCRA 444)."

During trial, petitioner presented two (2) witnesses: Leilah Yasmin E. Alpad, the Head of its Tax Services,[11] and the court commissioned Independent Certified Public Accountant (ICPA), Jerome Antonio B. Constantino[12], to establish its refund claim. On the other hand, counsels for respondent manifested during the hearing held on April 1, 2011, that respondent was not presenting evidence, and instead submitted the case for decision based on the pleadings.[13] Thus, the parties were given a period of thirty (30) days from notice within which to submit their respective Memorandum.

In the Resolution dated August 24, 2011, this case was submitted for decision, considering respondent's Memorandum filed on July 28, 2011 and petitioner's Memorandum filed on August 18, 2011.[14]

Subsequently, petitioner filed a Motion with Leave of Court to Allow Presentation of Additional on November 14, 2011, seeking the Court's permission to present Erwin Ray D. Aragon, petitioner's Plant Manager to elaborate further on the

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[11] Docket, pp. 162 and 237.
[12] Docket, p. 210.
[13] Docket, p. 353.
[14] Docket, p. 415.

nature and operational processes of hydro-electric power plant, to prove that the generation of electrical energy and delivery/transport of water to the NIA are part and parcel of its operation of the hydro-electric power plant. The reason, among others given by petitioner, was respondent's alleged failure to fully appreciate the nature and operational process of the hydro-electric power plant of petitioner.

Respondent filed her Comment thereto on December 21, 2011 opposing said motion on the ground that petitioner's ground therefor cannot be considered as a valid and strong basis that would warrant the reopening of the case; and that the documents sought to be presented before the Court cannot be considered as newly-discovered evidence, warranting a trial de novo as the same has long been available, existing and within the custody of petitioner.

The motion was denied in the Resolution dated January 18, 2012, as the facts and circumstances of the instant case do not warrant a liberal application of the rules of procedure.

THE ISSUES

As agreed upon, the following are the parties' jointly stipulated issues[15] for this Court's resolution:

> "a. Petitioner submits that the issue to be resolved in the trial of this case is whether the Petitioner is entitled to a refund and/or tax credit certificate amounting to Sixty-One Million Four Hundred Fifty-Six Thousand Three Hundred Forty-Six and 70/100 (P61,456,346.70) representing erroneous income taxes payments for the taxable year 2006.

[15] Docket, p. 108.

b. Whether or not Petitioner has complied with the invoicing and accounting requirements pursuant to the provisions of the Tax Code and Revenue issuances.

c. Whether or not Petitioner submitted the supporting documents as provided in Revenue Memorandum Order (RMO) 53-98 in relation to the administrative claim for refund.

d. Whether or not Petitioner's claim for tax credit or refund allegedly on account of erroneous income tax payments was filed within the period prescribed by law as mandated under Section 229 of the Tax Code.

e. Whether or not the water delivery fees earned by Petitioner is covered under the Certificate of Entitlement to the Income Tax Holiday allegedly issued by the BOI in its favor.

f. Whether or not the water delivery fees earned by Petitioner may be considered incidental to its operation of hydroelectric power plant."

THE COURT'S RULING

Petitioner claims that it is entitled to a refund or issuance of tax credit certificate for the previously paid income tax for taxable year 2006 in the aggregate amount of ₱ 61,456,346.70, pursuant to Article 39(a) of Executive Order (E.O.) No. 226, as amended by Republic Act (R.A.) No. 7918, which supposedly exempts petitioner from all income taxes by virtue of its BOI Certificate of Registration.

Respondent counters that the amount of ₱ 61,456,346.70 being claimed by petitioner as alleged erroneous payment of income tax for its water delivery to NIA is not entitled to exemption based on its Income Tax Holiday (ITH) incentives granted on its registered activities pursuant to Article 39 of E.O. No. 226, otherwise known as Omnibus Investments Code of 1987; that petitioner applied with the BOI for ITH entitlement only in relation to its being an operator of a hydro-electric power plant; that the water delivery fees earned by petitioner may not be considered incidental to its operation of hydro-electric power plant; and that it failed to comply with Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Before going into the merits of this case, We look at the timeliness of the filing of the instant petition.

In this regard, Section 229 of the NIRC of 1997, provide:

> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**; *Provided however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Based on the foregoing, petitioner has two (2) years from its date of payment of tax within which to file both its administrative and judicial claims for tax refund or issuance of tax credit certificate of taxes, supposedly collected erroneously or illegally.

Where the claims for refund involve excess corporate income tax, the Supreme Court ruled that the two-year prescriptive period for the filing of a claim for refund should be counted from the time of filing of the Final Adjustment Return or

Annual Income Tax Return, because it is only then that the taxpayer could ascertain whether it made profits or incurred losses in its business and if the taxpayer still has to pay additional income tax or he is entitled to a refund of overpaid income tax.[16]

The present claim involves petitioner's alleged erroneous payment of corporate income tax incurred for taxable year 2006. Petitioner filed its Annual Income Tax Return through EFPS on April 13, 2007, with Reference No. 120700001569890[17]; and subsequently paid the corresponding tax due on April 16, 2007.[18] Counting from the date of payment, the filing of the administrative claim by petitioner on April 15, 2009[19] and the subsequent appeal by way of a Petition for Review on April 16, 2009, fell within the two-year prescriptive period.

We shall now consider the merits of this case.

The issues stipulated by the parties, except the issue pertaining to the timeliness of the instant Petition for Review, is under the first issue, which states: whether the Petitioner is entitled to a refund and/or tax credit certificate amounting to Sixty-One Million Four Hundred Fifty-Six Thousand Three Hundred Forty-Six and 70/100 (₱ 61,456,346.70) representing erroneous income taxes payments for the taxable year 2006.

Petitioner anchors its alleged exemption from income tax payment on Article 39(a) of E.O. No. 226, as amended by R.A. No. 7918[20], which provides:

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[16] *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Tax Appeals*, G.R. No. 83736, January 15, 1992; *ACCRA Investments Corporation vs. The Honorable Court of Appeals, Commissioner of Internal Revenue and the Court of Tax Appeals*, G.R. No. 96322, December 20, 1991.

[17] Exhibit "K".

[18] Exhibit "L".

[19] Exhibit "D"; Par. 5, Stipulation of Facts, JSFI, docket, p. 107.

[20] An Act Amending Article 39, Title III of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, as Amended, and for Other Purposes.

"ARTICLE 39. ***Incentives to Registered Enterprises.*** – All registered enterprises shall be granted the following incentives **to the extent engaged in a preferred area of investment**:

(a) *Income Tax Holiday.* –

(1) **For six (6) years from commercial operation for pioneer firms** and four (4) years for non-pioneer firms, **new registered firms shall be fully exempt from income taxes levied by the National Government**. xxx" *(Emphasis supplied)*

Based on the foregoing, the law grants to all BOI-registered enterprises an Income Tax Holiday (ITH) or exemption from the payment of income taxes levied by the National Government for a period of six (6) years in case of pioneer firms, and a period of four (4) years for non-pioneer firms, to the extent that these entities are engaged in a preferred area of investment.

Petitioner asserts that as a *bona fide* BOI-registered enterprise with BOI Certificate of Registration No. 94-388[21], it is entitled to ITH incentives. Petitioner allegedly earns water delivery fees from its delivery of water to the NIA from which a final VAT of five percent (5%) were withheld by NIA pursuant to Section 114(C) of the NIRC of 1997, as amended by R.A. No. 9337, which states:

"**SEC. 114. *Return and Payment of Value-added Tax.* –**

xxx xxx xxx

(C) *Withholding of Value-added Tax.* – The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold a final value-added tax due at the rate of five percent (5%) of the gross payment thereof: *Provided,* That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding

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[21] Exhibit "C".

> tax at the time of payment. For purposes of this Section, the payor or person in control of the payment shall be considered as the withholding agent."

Additionally, Section 4.114-2 of Revenue Regulations (R.R.) No. 16-2005, implementing R.A. No. 9337, provides that the government, NIA in this case, shall deduct and withhold a final VAT due at the rate of 5% on gross payment on account of each purchase of goods and services subject to ten percent (10%) VAT (12% effective February 1, 2006). The 5% final VAT withholding rate shall represent the net VAT payable of the seller. The remaining 5% (7% effective February 1, 2006) effectively accounts for the standard input VAT for sale of goods or services to government or any of its political subdivisions, instrumentalities or agencies including GOCCs, in lieu of the actual input VAT directly attributable or ratably apportioned to such sales.

For income tax purposes, the difference between the actual input VAT related to sales to government and the 5% or 7% standard input VAT, as the case may be, shall be adjusted to the seller's cost or expense. Hence, the seller may incur additional cost if the actual input VAT exceeds the 5% or 7% standard input VAT. On the other hand, if actual input VAT is less than the said standard input VAT, the seller, in effect, recognizes additional income.

In the present case, petitioner alleges that the 7% standard input VAT exceeded its actual input VAT attributable to its water delivery fees to NIA in the amount of ₱ 175,589,562.00, which petitioner recognized as "Other Income" and was subjected to an income tax rate of 35%. The income resulting therefrom was included in the total amount of other income reported on Quarterly Income Tax

Returns[22] and Annual Income Tax Return[23] for the period covering January 1 to December 31, 2006, as detailed below:

Income Tax Returns	Total amount of other income reported	Excess standard input VAT included in other income[24]	Income tax rate	Income tax payments
1st Quarter	₱ 79,323,662.51	₱ 34,767,763.41	35%	₱ 12,168,717.19
2nd Quarter	82,487,563.58	45,848,816.98	35%	16,047,085.94
3rd Quarter	81,641,696.10	47,164,714.97	35%	16,507,650.24
4th Quarter	84,109,448.81	47,808,266.64	35%	16,732,893.32
Total	**₱ 327,562,371.00**	**₱ 175,589,562.00**		**₱ 61,456,346.70**

Petitioner argues that it is registered with the BOI for its new operation of a hydro-electric power plant, which has a registered capacity of one hundred (100) MW, including water diversion and irrigation system; thus, it was granted all the benefits and incentives granted to pioneer firms, which include ITH for six (6) years from the start of its actual commercial operations on December 11, 2001 as reflected in its BOI Certificate of ITH Entitlement for taxable year 2006 with CE No. 2007-000032, and that the total amount of ₱ 61,456,346.70 as shown in the above table is a proper subject of a claim for refund or issuance of tax credit certificate.

In this case, petitioner has sufficiently proven that it has a BOI-registered "PIONEER" status as evidenced by its BOI Certificate of Registration No. 94-388[25], its General Terms and Conditions[26], its Specific Terms and Conditions[27], its Amended

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[22] Exhibits "E", "G", and "I".
[23] Exhibit "K".
[24] Independent CPA Report, Exhibit "WWW".
[25] Exhibit "C".
[26] Exhibit "C-1".
[27] Exhibit "C-2".

General Terms and Conditions[28], and its BOI Certificate of ITH Entitlement for taxable year 2006 with CE No. 2007-000032.[29]

Under Article 17 of E.O. No. 226, a "pioneer enterprise" is defined as follows:

> "ARTICLE 17. **'Pioneer enterprise'** shall mean a registered enterprise (1) engaged in the manufacture, processing or production, and not merely in the assembly or packaging of goods, products, commodities or raw materials that have not been or are not being produced in the Philippines on a commercial scale or (2) which uses a design, formula, scheme, method, process or system of production or transformation of any element, substance or raw materials into another raw material or finished goods which is new and untried in the Philippines or (3) engaged in the pursuit of agricultural, forestry and mining activities and/or services including the industrial aspects of food processing whenever appropriate, pre-determined by the Board, in consultation with the appropriate Department, to be feasible and highly essential to the attainment of the national goal, in relation to a declared specific national food and agricultural program for self-sufficiency and other social benefits of the project or (4) **which produces non-conventional fuels or manufactures equipment which utilize non-conventional sources of energy or uses or converts to coal or other non-conventional fuels or sources of energy in its production, manufacturing or processing operations**. *Provided*, That the final product in any of the foregoing instances, involves or will involve substantial use and processing of domestic raw materials, whenever available; taking into account the risks and magnitude of investment: *Provided, further*, That the foregoing definitions shall not in any way limit the rights and incentives granted to less-developed-area enterprises provided under Title V, Book I, hereof." *(Emphasis supplied)*

A "pioneer enterprise" shall mean a registered enterprise whose *status of registration is reflected as such in its BOI Certificate of Registration.*[30]

In the Specific Terms and Conditions[31], petitioner's status is "PIONEER", with registered capacity of "ONE HUNDRED (100) MW INCLUDING WATER DIVERSION AND IRRIGATION SYSTEM".

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[28] Exhibit "C-3".
[29] Exhibit "N".
[30] Rule II, Section 1, Revised Rules and Regulations in the Availment of Income Tax Holiday.

Based on the said terms and conditions of registration, "water diversion and irrigation system" is included in its registered capacity. In Paragraph 1 of the said Specific Terms and Conditions, it was made a condition that:

> "1. The enterprise shall submit a copy of the Final Contract with NIA covering the registered project. It is understood that the registration shall be automatically cancelled when the enterprise fails to secure the final contract with the government on this project."

The foregoing condition was complied with, as petitioner presented in evidence the Amended and Restated Casecnan Project Agreement by and between CE Casecnan Water and Energy Company, Inc. and National Irrigation Administration dated June 26, 1995.[32]

Paragraph 2.9, Article 2 of the Scope of Management portion of petitioner's contract with NIA states that:[33]

> **"2.9 ELECTRICAL ENERGY AND WATER DELIVERY.** The operator will transport water from the Casecnan Watershed to the Pantabangan Reservoir and, in the process of such transport, generate electrical energy, and NIA shall accept all electrical energy generated by the Project and all water delivered to the Pantabangan Reservoir by the Project and shall pay to the Operator the fees provided in Part B of Article 7 and in the Fifth Schedule (Delivery of Water and Electrical Energy)."

In the same contract, Paragraph 7.1, Article 7, Part A, Delivery of Electrical Energy and Water by Operator[34] also provides that:

> **"7.1 DELIVERY.** NIA agrees to accept all water delivered from the Casecnan Watershed to the Pantabangan Reservoir by the Project and all electrical energy generated by the Project and to pay the fees as specified in the Fifth Schedule (Delivery of Water and Electrical Energy). The Operator shall dedicate the entire electrical

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[31] Exhibit "C-2".
[32] Exhibit "P" .
[33] Exhibit "P", pages 9 to 10.
[34] Exhibit "P-1".

output of the Project (net of Project usage) to NIA and shall deliver all water diverted by the Project to the Pantabangan Reservoir."

In relation thereto, Paragraph 7.5, Article 7, Part B, Fees[35] provides that NIA shall pay water delivery fee, guaranteed energy delivery fee and excess energy delivery fee to petitioner, to wit:

> "**7.5 <u>FEES</u>**. With respect to each Month, or part thereof, NIA shall pay to the Operator the Water Delivery Fee, the Guaranteed Energy Delivery Fee, and the Excess Energy Delivery Fee, as applicable, in each case calculated as provided in the Fifth Schedule (Delivery of Water and Electrical Energy), plus, to the extent a separate billing therefore is not permitted or advisable under Philippine law, any present or future value-added taxes or similar incremental Taxes payable or to be payable by the Operator in respect of such amounts, such that after the Operator has paid any and all value-added taxes or similar incremental Taxes required to be paid by it in respect of such amounts there remains a sum equal to the Water Delivery Fee, the Guaranteed Energy Delivery Fee, and the Excess Energy Delivery Fee, as applicable, for such month."

Evidently, the contract with NIA, which involved a "water diversion and irrigation system" contemplated by the specific terms and conditions of the registration, is covered by the registration as such "pioneer enterprise".

While it is true that the Certificate of ITH Entitlement[36] issued by the BOI for taxable year 2006 did not mention "water diversion and irrigation system" as registered capacities, what is controlling is the specific terms and conditions which formed part of the Certificate of Registration No. 94-388[37] issued by the BOI on September 30, 1994. The said Certification, including the specific terms and conditions thereof, has not been shown to have been cancelled, modified, or amended. In fact, said Certificate of ITH Entitlement referred to the original

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[35] Exhibit "P-2".
[36] Exhibit "N".
[37] Exhibit "C".

registration of petitioner under Certificate of Registration No. 94-388 dated September 30, 1994, which is the registration document of petitioner as a "pioneer enterprise".

Respondent's argument that the business operation of a hydro-electric power plant, on one hand, and the supposed operation of an irrigation project of petitioner, on the other hand, should be distinguished, is untenable because petitioner's "pioneer status" specifically covers "water diversion and irrigation system", and the contract with NIA has been categorically mentioned or contemplated by the issuance of the said Certificate of Registration as such pioneer enterprise.

Clearly, the water diversion supports the business of petitioner as a hydro-electric power company. If such diversion or supply of water also serves NIA for agricultural purposes, this circumstance should not be the cause to limit the exemption of petitioner as a "pioneer enterprise". To do so would be to render nugatory the purposes envisioned by the BOI incentives granted to pioneer enterprises.

Under the Specific Terms and Conditions[38] of its registration, petitioner is entitled to the following incentives:

> "4. The enterprise shall be entitled to the following incentives:
>
> a. Exemption from all income taxes imposed by the Republic of the Philippines for a minimum period of six (6) years from the commencement of the Cooperation Period (the date of actual commercial operation, currently estimated to occur no later than December 31, 1998) under the project agreement, with the right to apply for extension allowable under the law;

[38] Exhibit "C-2".

b. Full exemption from custom duties and national internal revenue taxes (including Value Added Tax) on importation of all capital equipment and spare parts necessary to develop, construct, start-up, test and operate the Power Plant (in accordance with E.O. 226, as amended by R.A. 7369) through December 31, 1994 or such later date as may be provided by law, provided the tax exemption privilege can only be availed of if the firm is registered before the date of implementation of the Expanded VAT Law (RA 7716), provided further, that CE Casecnan is in compliance with the provisions of the law granting such extension; (Importation of capital equipment will only be allowed upon submission of DOE Accreditation);

c. Tax credits equivalent to 100% of custom duties and national internal revenue taxes for locally supplied equipment necessary to develop, start-up, test and operate the Power Plant through December 31, 1994, or such later date as may be determined by law, provided the tax exemption privilege can only be availed of if the firm is registered before the date of implementation of the Expanded VAT Law (RA7716), provided further that the provisions of any such law granting such extension are complied with by CE Casecnan;

d. Exemption from custom duties and national internal revenue taxes for the importation and unrestricted use of the consigned equipment for the development, construction, start-up, testing and operation of the Power Plant; and

e. Employment of foreign nationals."

Consequently, petitioner's income from the delivery of water to NIA is covered by the income tax exemption.

Having determined that petitioner is a "pioneer enterprise" with registered capacity of "water diversion and irrigation system", We now look into petitioner's compliance with substantiation requirements of the refund claim.

Petitioner proffered various documents to substantiate its claim that the NIA withheld 5% final VAT on its gross payments for water deliveries made by petitioner, and that the resulting excess final VAT withheld was declared as Other Income in its Annual Income Tax Return, which was subjected to regular income tax rate of 35%. Among the documents presented were:

1. Petitioner's Amended Quarterly VAT Returns for taxable year 2006 (BIR Form 2500-Q);[39]

2. Certificates of Creditable Tax Withheld at Source (BIR Form 2307);[40]

3. Quarterly[41] and Annual[42] Income Tax Return for taxable year 2006;

4. BIR EFPS Payment Confirmation;[43]

5. Final and Consolidated Reports of the Independent CPA for CTA Case Nos. 7739 and 7917;[44]

6. Petitioner's VAT official receipts[45] issued to NIA, supporting the proceeds of the sales to government subject to 12% VAT; and

7. VAT official receipts/invoices from its domestic purchases/importation of goods and services[46], supporting the actual input VAT for the period January 1 to December 31, 2006.

A careful scrutiny of the foregoing documents show that the NIA indeed withheld a 5% final VAT on its payments to petitioner, and that the remaining 5% or 7% standard input VAT exceeded the actual input VAT of petitioner attributable to its water delivery fees. Such excess input VAT was declared by petitioner in its AITR as Other Income and was subjected to the regular tax rate of 35%. Thus, petitioner was able to substantiate its claim for refund.

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39 Exhibits "ZZ", "AAA", "BBB", and "CCC".
40 Exhibits "AA" to "LL".
41 Exhibits "E", "G", and "I".
42 Exhibit "K".
43 Exhibits "W", "X", "Y", and "Z".
44 Exhibits "WWW" and "QQQ".
45 Exhibits "O-9.1" to "O-9.12" of CTA Case No. 7739.
46 Exhibits "O-11-1Q.1" to "O-11-4Q.835" of CTA Case No. 7739.

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **SIXTY-ONE MILLION FOUR HUNDRED FIFTY-SIX THOUSAND THREE HUNDRED FORTY-SIX and 70/100 PESOS (₱ 61,456,346.70)** in favor of petitioner CE Casecnan Water and Energy Company, Inc., representing income tax payments for taxable year 2006.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

ESPERANZA FABON-VICTORINO
Associate Justice

CERTIFICATION

I hereby certify that this Decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Chairperson
Presiding Justice