REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

SPECIALTY PULP MANUFACTURING, INC., Petitioner,	**C.T.A. CASE NO. 7582**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUL 0 7 2009 9:05 a.m.

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DECISION

CASTAÑEDA JR., J.:

The Petition for Review seeks the refund or issuance of tax credit certificate in the amount of P4,174,350.54, representing petitioner's alleged unutilized input value-added tax (VAT) attributable to zero-rated sales for the first to fourth quarters of taxable year 2005.

Petitioner is a corporation duly registered in accordance with Philippine laws and has its principal office located at Room 403, CSP Building, No. 815 Quezon Avenue, Quezon City. Its principal line of business is as a manufacturer and exporter of pulp, paper and paperboard, and wholesaler of agricultural raw materials and live animate.[1]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), empowered to perform duties of said office, including among others, the power to decide, approve and grant refund of tax credits of erroneously or excessively paid taxes.

Petitioner filed its Quarterly VAT Returns for taxable year 2005 on the following dates:

Taxable Quarter	Date filed	Exhibit
First	April 13, 2005	A
First (Amended)	June 30, 2005	B
Second	July 20, 2005	C
Third	October 21, 2005	D
Fourth	January 20, 2006	E
Fourth (Amended)	April 4, 2006	F

On July 3, 2005, petitioner filed with the BIR an administrative claim for refund or issuance of tax credit certificate in the sum of P4,174,350.54 for the four quarters of taxable year 2005, with the BIR Revenue District Office No. 038, West Avenue, Quezon City.[2]

Due to respondent's failure to act on petitioner's application for refund or tax credit and in order to preserve its right to claim refund by judicial action, petitioner filed the instant Petition for Review on March 28, 2007.

Respondent, in his Answer filed on May 22, 2007, interposed the following Special and Affirmative Defenses:

> "5. The petitioner failed to prove that it is entitled to a probable refund of excess VAT credits in accordance with legal requirement on the carry-over of the credits to the succeeding period;

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[1] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and of Issues, *rollo*, p. 51.
[2] Exhibit "H".

6. The claim for refund is still under examination by the respondent's Bureau;

7. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund or issuance of tax credit certificate;

8. The grant of claim for refund tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;

9. The taxes sought to be refunded were paid in accordance with law, the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same."

During trial, petitioner presented its Formal Offer of Evidence[3] on June 12, 2008, submitting Exhibits "A" to "Q", inclusive of submarkings; while respondent was deemed to have waived his right to present evidence for failure to appear for presentation of evidence.[4]

On October 29, 2008, the case was submitted for decision despite the failure of both parties to file their respective Memorandum.

The parties jointly stipulated the following issues[5] for this Court's resolution:

"1. Whether or not the input value-added taxes of the Petitioner for the 1st, 2nd, 3rd and 4th quarters of taxable year 2005 arose from export sales or zero-rated sales;

2. Whether or not the input value-added tax, which allegedly are attributable to export sales or zero-rated sales, remains unapplied against any output value-added tax;

3. Whether or not petitioner has sufficiently substantiated by documentary evidence its claim for refund."

The above-enumerated issues can be summarized into a single issue, to wit: "Whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P4,174,350.54, arising from its purchases of goods and services for

[3] *Rollo*, pp. 100-108.
[4] Minutes of September 1, 2008 hearing, *rollo*, p. 149.
[5] *Rollo*, p. 52.

taxable year 2005, which are directly attributable to zero-rated export sales/receipts for the same period."

Petitioner relies on the provision of Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended:

> "**SEC. 112. Refunds or Tax Credits of Input Tax. —**
>
> **(A) Zero-rated or Effectively Zero-rated Sales.** – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."

Based on the afore-quoted provision of Section 112(A), in order to be entitled to issuance of tax credit certificate or refund of unutilized input VAT, the following requisites must be satisfied:

1. there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes are attributable to zero-rated sales or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and
5. that the claim for refund was filed within the two-year prescriptive period.

Petitioner is a VAT-registered entity, as such its export sales may fall within those transactions referred to as subject to VAT at zero percent (0%) as provided by

Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended. Furthermore, no output VAT due or collected from the export sales it made to foreign buyers can be collected. As a matter of fact, all input VAT paid can be refunded pursuant to Section 112(A), in relation to Sections 106(A)(2)(a)(1) and 110(B) of the NIRC of 1997, as amended. The said provisions are quoted hereunder for ready reference, thus:

> "**SEC. 106. Value-added Tax on Sale of Goods or Properties. —**
>
> **(A) Rate and Base of Tax. -**
>
> xxx xxx xxx
>
> **(2)** The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> **(a) Export Sales. —** The term 'export sales' means:
>
> **(1)** The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)."
>
> "**SEC. 110. Tax Credits. —**
>
> xxx xxx xxx
>
> **(B) Excess Output or Input Tax.** – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided*, That the input tax inclusive of input VAT carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output VAT: *Provided, however*, That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."

Under the afore-cited provisions, in order for an export sale to qualify as zero-rated, the following requisites must be present:

1. that there was a sale and actual shipment of goods from the Philippines to a foreign country;
2. the sale was made by a VAT-registered person;
3. the sale was paid for in acceptable foreign currency or its equivalent in goods or services; and
4. the payment was accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*.

After a careful examination of the evidence on record, the Court finds petitioner to have complied with all the above requirements.

Petitioner is a VAT-registered entity having been issued a VAT Certification No. OCN3RC0000144774.[6] For the period from January 1, 2005 to December 31, 2005, petitioner shipped its products abroad to foreign buyers and generated export sales in the amount of P10,074,970.00, with the peso equivalent of P556,145,086.45[7], as shown by its various export documents, such as export sales invoices, official receipts, export declarations, bills of lading, passbook entry and bank certification for inward remittances[8], customers' deposit general ledger[9] and journal vouchers for offsetting entry[10]. The generated export sales are detailed as follows:

Period	Sales Invoice Amount	
	US Dollars	**Peso**
January 2005 to March 2005	P 2,598,350.00	P 143,219,451.69
April 2005 to June 2005	1,228,500.00	66,785,647.50
July 2005 to September 2005	2,804,562.50	157,245,753.45
October 2005 to December 2005	3,443,557.50	188,894,233.81
TOTAL	**P 10,074,970.00**	**P 556,145,086.45**

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[6] Exhibit "I-1".
[7] Exhibit "N-23".
[8] Exhibit "N-29", pp. 1 to 297.
[9] Exhibit "N-31".
[10] Exhibit "N-32".

Considering that petitioner's export sales qualify as zero-rated sales, it is no longer liable to pay output VAT. Accordingly, petitioner can claim tax credit or refund of its unutilized input VAT paid on its domestic purchases of taxable goods or services and its importation of capital goods attributable to such zero-rated sales, pursuant to Section 112(A) of the NIRC of 1997, as amended.

The Court now proceeds to the issue of whether or not the excess input VAT arising from petitioner's purchases of goods and services for taxable year 2005 attributable to its zero-rated sales are duly supported by pertinent documents.

Petitioner submitted Summary List of Purchases[11] from first quarter to fourth quarter of 2005, the related suppliers' invoices/official receipts[12], and the Report of Mr. Edwin Ramos of CG & Co., the Court-commissioned Independent Certified Public Accountant (CPA) dated February 18, 2008. In the Independent CPA's Report, the following findings on petitioner's claim of input VAT were noted:

	Findings	Reference	Input VAT	Total
1	**Input taxes on domestic purchases of goods duly supported by original pre-printed TIN VAT invoices with BIR registration, issued in the name of the company, and claimable during the period January 2005 to December 2005.**			
	1st quarter	Annex 1Q-PSG	P 76,819.92	
	2nd quarter	Annex 2Q-PSG	91,881.85	
	3rd quarter	Annex 3Q-PSG	101,539.04	
	4th quarter	Annex 4Q-PSG	490,636.65	**P 760,877.46**
2	**Input taxes on domestic purchases of services duly supported by original pr-printed TIN VAT ORs with BIR registration, issued in the name of the company, and claimable during the period January 2005 to December 2005.**			
	1st quarter	Annex 1Q-PSS	142,906.56	
	2nd quarter	Annex 2Q-PSS	70,561.95	
	3rd quarter	Annex 3Q-PSS	126,358.66	
	4th quarter	Annex 4Q-PSS	144,791.84	**484,619.01**
3	**Input taxes on importation of goods duly supported by IEIRDs and BOC OR or LBP OR claimable during the period January 2005 to December 2005.**			
	1st quarter	Annex 1Q-PSI	412,333.72	
	2nd quarter	Annex 2Q-PSI	148,187.42	
	3rd quarter	Annex 3Q-PSI	52,215.28	

[11] Exhibit "N-7".
[12] Exhibits "N-24" to 'N-28".

	4th quarter	Annex 4Q-PSI	61,404.18	**674,140.60**
4	**Domestic purchases of goods supported by TIN No. VAT No., VAT No. TIN No., VAT Reg. TIN, TIN VAT No. invoices with BIR registration, issued in the name of the company, and claimable during the period January 2005 to December 2005.**			
	1st quarter	Annex 1Q-PSG-1	50,077.23	
	2nd quarter	Annex 2Q-PSG-1	169,006.12	
	3rd quarter	Annex 3Q-PSG-1	105,611.56	
	4th quarter	Annex 4Q-PSG-1	51,244.42	**375,939.33**
5	**Domestic purchases of services supported by TIN No. VAT No., VAT No. TIN No., VAT Reg. TIN, TIN VAT No. ORs with BIR registration, issued in the name of the company, and claimable during the period January 2005 to December 2005.**			
	1st quarter	Annex 1Q-PSS-1	16,585.94	
	2nd quarter	Annex 2Q-PSS-1	14,386.11	
	3rd quarter	Annex 3Q-PSS-1	37,055.08	
	4th quarter	Annex 4Q-PSS-1	32,815.23	**100,842.36**
6	**Input taxes on domestic purchases of goods duly supported by original pre-printed TIN VAT invoices with BIR registration, issued in the name of the company, not dated within the VAT-taxable quarter but within the VAT-taxable year.**			
	1st quarter	Annex 1Q-PSG-3	508.55	
	2nd quarter	Annex 2Q-PSG-3	25,499.22	
	3rd quarter	Annex 3Q-PSG-3	15,069.98	
	4th quarter	Annex 4Q-PSG-3	47,213.43	**88,291.18**
7	**Input taxes on domestic purchases of services duly supported by original pre-printed TIN VAT ORs with BIR registration, issued in the name of the company, not dated within the VAT-taxable quarter but within the VAT-taxable year.**			
	1st quarter	Annex 1Q-PSS-3	1,280.91	
	2nd quarter	Annex 2Q-PSS-3	1,853.65	
	3rd quarter	Annex 3Q-PSS-3	25,984.36	
	4th quarter	Annex 4Q-PSS-3	2,695.93	**31,814.85**
8	**Input VAT on domestic purchases of services which were supported by TIN V ORs for the period January 2005 to December 2005.**			
	2nd quarter	Annex 2Q-1a	508,786.83	
	3rd quarter	Annex 3Q-1a	101,719.00	
	4th quarter	Annex 4Q-1a	56,227.27	**666,733.10**
9	**Input VAT on domestic purchases of goods which were supported by TIN V Invoices for the period January 2005 to December 2005.**			
	1st quarter	Annex 1Q-2a	3,358.64	
	2nd quarter	Annex 2Q-2a	1,063.64	
	3rd quarter	Annex 3Q-2a	34.55	
	4th quarter	Annex 4Q-2a	54.55	**4,511.38**
10	**Input VAT on domestic purchases of goods and services that are properly supported by TIN VAT ORs and TIN VAT Invoices but the company's name was misspelled.**			
	1st quarter	Annex 1Q-3a	9.55	
	3rd quarter	Annex 3Q-3a	513.36	
	4th quarter	Annex 4Q-3a	80.09	**603.00**
11	**Input VAT on domestic purchases of goods that are properly supported by TIN VAT Invoice with no visible date of BIR printing.**			
	2nd quarter	Annex 2Q-4a	159.54	**159.54**
12	**Input VAT on domestic purchases of services that are properly supported by TIN VAT OR with no visible date of BIR printing.**			
	1st quarter	Annex 1Q-4b	127.18	**127.18**

13	**Input VAT on domestic purchases of goods/services duly supported by TIN VAT invoices/ORs with alterations in the company's name.**			
	1st quarter	Annex 1Q-7	6.36	
	2nd quarter	Annex 2Q-7	3,718.02	
	3rd quarter	Annex 3Q-7	2,913.64	
	4th quarter	Annex 4Q-7	19.08	**6,657.10**
14	**Input VAT on domestic purchases of services supported by documents other than TIN VAT ORs.**			
	1st quarter	Annex 1Q-1	12,631.50	
	2nd quarter	Annex 2Q-1	11,972.75	
	3rd quarter	Annex 3Q-1	6,663.43	
	4th quarter	Annex 4Q-1	33,895.15	**65,162.83**
15	**Input VAT on domestic purchases of services supported by TIN VAT tape official receipts dated January 2005 to December 2005, which do not bear company's name and/or TIN.**			
	1st quarter	Annex 1Q-1b	1,400.00	
	2nd quarter	Annex 2Q-1b	81.20	**1,481.20**
16	**Input VAT on domestic purchases of goods supported by documents other than TIN VAT Invoice.**			
	1st quarter	Annex 1Q-2	47,789.58	
	2nd quarter	Annex 2Q-2	23,593.54	
	3rd quarter	Annex 3Q-2	6,489.96	
	4th quarter	Annex 4Q-2	30,424.04	**108,297.12**
17	**Input VAT on purchases supported by documents not in the name of the company.**			
	1st quarter	Annex 1Q-3	331.84	
	2nd quarter	Annex 2Q-3	1,287.49	
	3rd quarter	Annex 3Q-3	193.37	
	4th quarter	Annex 4Q-3	21.81	**1,834.51**
18	**Input VAT on purchases supported by documents dated January 2005 to December 2005 where the date of BIR printing is not visible.**			
	3rd quarter	Annex 3Q-4	5,396.46	
	4th quarter	Annex 4Q-4	600.00	**5,996.46**
19	**Input VAT on domestic purchases of services claimed during the period January 2005 to December 2005 but the VAT ORs were not dated within the year 2005.**			
	1st quarter	Annex 1Q-5	3,764.26	
	2nd quarter	Annex 2Q-5	2,007.96	
	3rd quarter	Annex 3Q-5	4,160.13	
	4th quarter	Annex 4Q-5	554,083.72	**564,016.07**
20	**Input VAT on domestic purchases of goods claimed during the period January 2005 to December 2005 but the VAT Invoices were not dated within the year 2005.**			
	1st quarter	Annex 1Q-6	27,296.95	
	2nd quarter	Annex 2Q-6	3,304.42	
	4th quarter	Annex 4Q-6	15,727.27	**46,328.64**
21	**Input taxes on purchase transactions recorded during the period January 2005 to December 2005 not supported by any documents.**			
	1st quarter	Annex 1Q-8	51,217.99	
	2nd quarter	Annex 2Q-8	15,486.63	
	3rd quarter	Annex 3Q-8	9.55	
	4th quarter	Annex 4Q-8	6,677.53	**73,391.70**

22	**Input VAT on domestic purchases of services duly supported by original pre-printed TIN VAT ORs dated January 2005 to December 2005 but input VAT erroneously computed (overclaimed).**			
	1st quarter	Annex 1Q-10	82,771.00	
	2nd quarter	Annex 2Q-10	1,010.27	
	3rd quarter	Annex 3Q-10	1,043.43	
	4th quarter	Annex 4Q-10	36,272.41	**121,097.11**
23	**Input VAT on domestic purchases of goods duly supported by original pre-printed TIN VAT invoices dated January 2005 to December 2005 but input VAT erroneously computed (overclaimed).**			
	2nd quarter	Annex 2Q-11	9.33	
	3rd quarter	Annex 3Q-11	0.07	
	4th quarter	Annex 4Q-11	0.26	**9.66**
24	**Input tax on domestic purchases of services claimed in prior years but reversed in 2005.**			
	2nd quarter	Annex 2Q-14	(66,346.44)	**(66,346.44)**
25	**Input taxes on domestic purchases of goods supported by original pre-printed TIN non-VAT Invoices, stamped with the word "VAT", but not with the phrase "VAT-registered as of [effectivity date of RA No.9337]" as required by RR No.16-2005 effective November**			
	4th quarter	Annex 4Q-15	72.72	**72.72**
26	**Input VAT not properly supported (Difference of Input VAT claimed per Petition for Review and the Input VAT per Schedule of Purchases and Input VAT claimed).**			**57,692.87**
	TOTAL			**P4,174,350.54**

The Court finds the foregoing Report in order. However, out of the total claimed input VAT of P4,174,350.54, only the amount of P2,516,524.79 *(items 1, 2, 3, 4, 5, 6, and 7)* is properly substantiated by the required evidence under Sections 110(A) and 113(A) of the NIRC of 1997, as implemented by Sections 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations No. 7-95 and can be proper subject of a claim for refund or issuance of tax credit certificate. Thus, the remaining amount of P1,657,825.75 should be denied for the above-stated reasons.

Nevertheless, before petitioner can validly claim refund/tax credit, it must prove that the claimed input taxes were not applied against any output VAT liability during and in the succeeding periods of claim.

A scrutiny of petitioner's final amended Quarterly VAT Returns[13] for the four quarters of 2005 shows that it had no output VAT liability against which the claimed *Jc*

[13] Exhibits "B"/"N-3", "C"/"N-4", "D"/"N-5", and "F"/"N-6".

input VAT may be applied or credited. Even though petitioner carried over the claimed unutilized input VAT for the fourth quarter of taxable year of 2005 to the succeeding taxable quarters until the second quarter of 2006,[14] the same was deducted as "VAT Refund/TCC claimed"[15] from the total available input tax of P7,273,170.43. Hence, the subject claim no longer formed part of the input VAT in excess of the seventy percent (70%) ceiling to be carried to the next period and of the input tax on purchases of capital goods exceeding P1,000,000.00 deferred for the succeeding period or to the third quarter of 2006 in the amount of P2,987,177.25 and P111,642.64, respectively.

Finally, petitioner's claim for refund was timely filed within the two-year prescriptive period, both in the administrative and judicial levels. In the recent case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*[16], the Supreme Court held that the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund under Section 112(A) of the NIRC of 1997 starts from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT, regardless of whether said tax was paid or not.

The present claim pertains to input VAT incurred for the four quarters of 2005. Counting from December 31, 2005, which is the end of the fourth quarter of 2005, petitioner had until December 31, 2007, within which to file its claim both in the administrative and judicial levels. Hence, the original administrative claim[17] filed on

[14] Exhibit "G"/"N-22".
[15] Exhibit "G-2".
[16] G.R. No. 172129, September 12, 2008.
[17] Exhibit "H".

July 3, 2006 and the Petition for Review filed on March 28, 2007, fall within the two-year prescriptive period.

In view of the above findings, petitioner's claim for refund of its unutilized input VAT for the four quarters of taxable year 2005 can be granted, but in the reduced amount of P2,516,524.79.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of P2,516,524.79, representing petitioner's unutilized input VAT for the four quarters of taxable year 2005.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice