

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

SPECIAL FIRST DIVISION

**KEIHIN-EVERETT FORWARDING
CO., INC.,**

C.T.A. CASE NO. 7351

Petitioner,

- versus-

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

X-----X

**KEIHIN-EVERETT FORWARDING
CO., INC.,**

C.T.A. CASE NO. 7472

Petitioner,

Members:

- versus-

**ACOSTA, Chairperson
BAUTISTA, and
CASANOVA, JJ.**

**COMMISSIONER OF INTERNAL
REVENUE,**

Promulgated:

Respondent.

APR 21 2010 ; 8:13 am

X-----X

DECISION

BAUTISTA, J.:

Before this Court are consolidated Petitions for Review filed by petitioner to seek the issuance of tax credit certificate in the total amount of P5,382,626.45, representing unutilized input value-added tax (VAT) on purchases of capital goods and input VAT on domestic purchases of goods and services

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attributable to zero-rated sales covering the third quarter of 2003 to the fourth quarter of 2004, broken down as follows:

CTA Case No.	Period Covered	Amount of Claim
7351	3rd and 4th Quarters-2003	P 1,616,942.11
7472	1st, 2nd, 3rd, and 4th Quarters-2004	3,765,684.34
	TOTAL	P 5,382,626.45

Petitioner Keihin-Everett Forwarding Co., Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at Room 501 B.F. Condominium Bldg., A. Soriano Avenue cor. Solana Street, Intramuros, Manila. It is principally engaged in the freight forwarding business, which includes the following: Freight Forwarding, Cargo Consolidator, Non-Vessel Operating Carrier (NVOCC), General Transport Services, and Customs Brokerage.¹ Petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC) of 1997, with Tax Identification No. 002-035-881-000.²

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

Petitioner filed its Quarterly VAT Returns for the period covering the third quarter of taxable year 2003 up to the fourth quarter of taxable year 2004 on the following dates:

¹ Exhibit "A"

² Exhibit "Q"

Period	Date Filed	Exhibit
3rd Quarter - 2003	27-Oct-03	Exhibit "D"
4th Quarter - 2003	27-Jan-04	Exhibit "E"
1st Quarter - 2004	26-Apr-04	Exhibit "H"
2nd Quarter - 2004	26-Jul-04	Exhibit "I"
3rd Quarter - 2004	25-Oct-04	Exhibit "K"
4th Quarter - 2004	25-Jan-05	Exhibit "L"

On December 21, 2004, petitioner filed with the BIR Revenue District Office (RDO) No. 33 an administrative claim for issuance of tax credit certificate for its alleged unutilized input VAT for the first, second, third, and fourth quarters of taxable year 2003, amounting to P3,105,321.58.³

On January 26, 2005, respondent issued Letter of Authority No. 00001294 against petitioner, in which it authorized Revenue Officer Rebecca Quiambao to examine the books of accounts of petitioner for VAT for the period covering January 1, 2003 to December 31, 2003.⁴

On May 10, 2005, petitioner filed with the BIR an administrative claim for issuance of tax credit certificate for its unutilized input VAT for the first, second, third, and fourth quarters of taxable year 2004, amounting to P3,765,684.34.⁵

Respondent has neither approved nor denied petitioner's claim for issuance of tax credit certificate for its unutilized input VAT for taxable year 2003 in the amount of P3,105,321.58, including petitioner's unutilized input VAT for the third and fourth quarters of taxable year 2003 amounting to P1,616,942.11; and for the four quarters of taxable year 2004 in the amount of P3,765,684.34. Hence, petitioner filed the first Petition for Review on October 25, 2005 and the second Petition for Review on April 24, 2006.

³ Exhibit "R"

⁴ Par. 3, Part II, Joint Stipulation of Facts and Issues, CTA Case No. 7351, docket, p. 67

⁵ Exhibit "S"



Respondent filed his Answers to the Petitions for Review on December 13, 2005 and June 13, 2006.

After issues were joined, and after the above-captioned cases were consolidated upon motion of petitioner, trial proceeded.

Petitioner presented evidence, both testimonial and documentary. On the other hand, during the August 7, 2008 hearing, counsel for respondent manifested that she has no witness to present and that she is submitting the cases for decision based on the pleadings.⁶

After the parties submitted their Memoranda on April 14, 2009 and April 17, 2009, the consolidated cases were submitted for decision on April 22, 2009.

The parties stipulated on the following issues⁷ for this Court's resolution:

"1. Whether or not petitioner is entitled to the issuance of a tax credit certificate ('TCC') in the amount of P5,382,626.45, representing unutilized input VAT on its purchases of capital goods and domestic purchases of goods and services attributable to zero-rated sales for the period 3rd quarter of CY 2003 to 4th quarter of CY 2004.

2. Whether or not petitioner incurred input tax credits on its purchases of capital goods for the period 3rd quarter of CY 2003 to 4th quarter of CY 2004.

3. Whether or not petitioner had effectively zero-rated sales during the period 3rd quarter of CY 2003 to 4th quarter of CY 2004.

4. Whether or not the input VAT incurred by the petitioner for the period 3rd quarter of CY 2003 to 4th quarter of CY 2004, in the aggregate amount of P5,382,626.45, are duly supported by VAT invoices and official receipts.

5. Whether or not petitioner has fully substantiated its claim for refund of excess and unutilized input VAT.

⁶ Docket, p. 361

⁷ Issues, Consolidated Joint Stipulation of Facts and Issues, docket, pp. 134-135



6. Whether or not the input VAT incurred by the petitioner for the period 3rd quarter of CY 2003 to 4th quarter of CY 2004, in the aggregate amount of P5,382,626.45, were applied against any output VAT or carried over to succeeding month(s)/quarter(s).

7. Whether or not petitioner's administrative and judicial claims for issuance of TCC for its unutilized input VAT on purchases of capital goods and domestic purchases of goods and services attributable to its zero-rated sales for CYs 2003 and 2004 were filed within the two-year period prescribed under Sections 112, paragraphs (A) and (B), 204(C), and 229 of the Tax Code."

Petitioner anchors its claim on Sections 112(A) and (B) of the NIRC of 1997, as amended, which provide:

"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.

(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."

Based on its Quarterly VAT Returns for the third quarter of 2003 to the fourth quarter of 2004, petitioner's input VAT in the amount of P5,382,626.45



consists of the following: (1) input VAT on domestic purchases of capital goods amounting to P237,968.65; and (2) input VAT on domestic purchases of services amounting to P5,144,657.80, detailed as follows:

Exhibit	Period Covered	Input VAT on		Total Input VAT
		Domestic purchases – capital goods	Domestic purchases – services	
"D"	3rd Qtr - 2003	P 31,032.22	P 771,384.62	P 802,416.84
"E"	4th Qtr - 2003	75,937.99	738,587.28	814,525.27
"F"	1st Qtr - 2004	24,361.00	750,910.07	775,271.07
"J"	2nd Qtr - 2004	14,508.05	791,267.65	805,775.70
"K"	3rd Qtr - 2004	38,083.99	781,383.77	819,467.76
"M"	4th Qtr - 2004	54,045.40	1,311,124.41	1,365,169.81
	TOTAL	P 237,968.65	P 5,144,657.80	P 5,382,626.45

According to petitioner's Accounting Manager, Ms. Amalia Lyn A. Vazquez, petitioner had no purchases of capital goods during the period covered by the instant claim and that the above input VAT in the amount of P237,968.65 should have been entered in its Quarterly VAT Returns as pertaining to "Domestic Purchases – Goods other than Capital Goods" instead of "Domestic Purchases-Capital Goods".⁸ Therefore, the entire input VAT claim for the third quarter of 2003 to the fourth quarter of 2004 in the amount of P5,382,626.45 is allegedly attributable to its zero-rated sales/receipts for the same period.

Section 112(A) of the NIRC of 1997 allows the refund or tax credit of input VAT attributable to zero-rated or effectively zero-rated sales subject to the taxpayer's compliance with the following requisites:⁹

1. that there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes are directly attributable to zero-rated or effectively zero-rated sales;

⁸ Transcript of Stenographic Notes (TSN), July 25, 2006; Exhibit "T", page 5

⁹ Philex Mining Corp. vs. Commissioner of Internal Revenue, CTA Case No. 7495, January 9, 2009

4. that the input taxes were not applied against any output VAT liability; and
5. that the claim for refund was filed within the two-year prescriptive period.

Anent the first requisite, it is undisputed that petitioner is a VAT taxpayer principally engaged in the "freight forwarding business, which includes the following: Freight Forwarding, Cargo Consolidator, Non-Vessel Operating Common Carrier (NVOCC), General Transport Services, and Customs Brokerage."¹⁰ Petitioner avers that a portion of its gross receipts for the subject period of claim was derived from the sale of services to entities registered with the Philippine Economic Zone Authority (PEZA) and Subic Bay Metropolitan Authority (SBMA). Petitioner posits that such sales of services are effectively subject to zero percent (0%) VAT under Section 108(B)(3) of the NIRC of 1997, as amended, which states:

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

xxx

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

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;

xxx

xxx

xxx"

This Court agrees with petitioner.

¹⁰ Exhibit "A"



Sections 12(b) and (c) of Republic Act (R.A.) No. 7227, otherwise known as the "Bases Conversion and Development Act of 1992," provide as follows:

"SECTION 12. *Subic Special Economic Zone.* —

xxx

xxx

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- (b) The Subic Special Economic Zone shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital within, into and exported out of the Subic Special Economic Zone, as well as provide incentives such as tax and duty free importations of raw materials, capital and equipment. However, exportation or removal of goods from the territory of the Subic Special Economic Zone to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Customs and Tariff Code and other relevant tax laws of the Philippines;
- (c) The provisions of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed within the Subic Special Economic Zone. In lieu of paying taxes, three percent (3%) of the gross income earned by all business and enterprises within the Subic Special Economic Zone shall be remitted to the National Government, one percent (1%) each to the local government units affected by the declaration of the zone in proportion to their population area, and other factors. In addition, there is hereby established a development fund of one percent (1%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone to be utilized for the Municipality of Subic, and other municipalities contiguous to be base areas.

In case of conflict between national and local laws with respect to tax exemption privileges in the Subic Special Economic Zone, the same shall be resolved in favor of the latter;

xxx

xxx

xxx"

Likewise, Section 24 of Republic Act No. 7916, as amended, otherwise known as "The Special Economic Zone Act of 1995", states that:



"SEC. 24. *Exemption from National and Local Taxes.* — Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:

- a. Three percent (3%) to the National Government;
- b. Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprises is located."

Both R.A. No. 7227 and R.A. No. 7916 are special laws which grant exemptions from national (including VAT) and local taxes to duly registered business establishments operating within their proper jurisdiction, except payment of the preferential tax rate of five percent (5%) on gross income earned. Considering so, sales of services by VAT-registered entities in the Customs Territory, like herein petitioner, to PEZA and SBMA-registered entities are effectively subject to zero percent (0%) VAT under Section 108(B)(3) of the NIRC of 1997, as amended.

In **Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.**¹¹, the Supreme Court explained:

"Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the **ECOZONE is a foreign territory**. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.

Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?

¹¹ G.R. No. 150154, August 9, 2005



The Philippine VAT system adheres to the **Cross Border Doctrine**, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, **actual export of goods and services from the Philippines to a foreign country must be free of VAT**; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT." (*Emphasis supplied*)

Similarly, in **Commissioner of Internal Revenue vs. Sekisui Jushi Philippines, Inc.**¹², the Highest Tribunal held that:

"Notably, while an ecozone is geographically within the Philippines, it is deemed a separate customs territory and is regarded in law as foreign soil. Sales by suppliers from outside the borders of the ecozone to this separate customs territory are deemed as exports and treated as export sales. These sales are zero-rated or subject to a tax rate of zero percent."

In its Quarterly VAT Returns for the period covering the third quarter of 2003 to the fourth quarter of 2004, petitioner reflected the amount of P40,412,982.78 as zero-rated sales/receipts, detailed as follows:

Exhibit	Period Covered	Zero-Rated Sales/Receipts
"D"	3rd Quarter - 2003	P 704,656.85
"E"	4th Quarter-2003	941,256.49
"F"	1st Quarter - 2004	9,547,272.69
"J"	2nd Quarter-2004	7,908,998.62
"K"	3rd Quarter- 2004	10,481,891.17
"M"	4th Quarter- 2004	10,828,906.96
Total		P 40,412,982.78

In order to prove that it actually generated zero-rated receipts in the amount of P40,412,982.78 from services rendered to PEZA and SBMA-registered entities for the third quarter of 2003 to the fourth quarter of 2004, petitioner submitted the Certifications issued by the Enterprise Services Division of PEZA on

¹² G.R. No. 149671, July 21, 2006

October 19, 2007¹³ and November 23, 2007¹⁴, Certification issued by the Investor Services Department of SBMA on October 1, 2007¹⁵, and the related official receipts¹⁶ issued by petitioner to its PEZA and SBMA clients.

A scrutiny of these documents shows however that only the reported zero-rated sales/receipts in the amount of P2,613,906.65 is duly supported by VAT zero-rated official receipts in accordance with Section 113(A), in relation to Section 108(C) of the NIRC of 1997, as amended, and Section 4.108-1 of Revenue Regulations No. 7-95. Below is the breakdown of the amount of P2,613,906.65:

		Official Receipt (OR)		Zero-Rated
Exhibit	Customer	Number	Date	Sales/Receipts
3rd Quarter - 2003				
"FFF-1"	Keihin Phils. Corp.	07686	07/04/03	46,900.00
"FFF-2"	Eightech Mfg. Corp.	07809	07/31/03	269,148.32
"FFF-3"	Keihin Phils. Corp.	07820	08/05/03	90,770.00
"FFF-4"	Keihin Phils. Corp.	07934	09/05/03	21,420.00
"FFF-8"	RG Trading Corp.	07680	07/04/03	7,140.35
"FFF-9"	RG Trading Corp.	07681	07/04/03	7,430.07
"FFF-10"	G. Schmerling	07754	07/11/03	3,480.00
"FFF-11"	Wistron Infocom Phils Corp	07761	07/16/03	900.00
"FFF-12"	Loopex Packaging Products	07772	07/18/03	91,105.15
"FFF-13"	Fly High Cargo Int'l Corp.	07777	07/22/03	775.00
"FFF-14"	PTGI Laguna Gas, Inc.	07792	07/25/03	10,450.00
"FFF-15"	Wistron Infocom Phils Corp	07827	08/07/03	850.00
"FFF-16"	Wistron Infocom Phils Corp	07828	08/07/03	850.00
"FFF-17"	Wistron Infocom Phils Corp	07829	08/07/03	850.00
"FFF-18"	Wistron Infocom Phils Corp	07830	08/07/03	850.00
"FFF-19"	Wistron Infocom Phils Corp	07846	08/12/03	850.00
"FFF-20"	Wistron Infocom Phils Corp	07847	08/12/03	850.00
"FFF-21"	Wistron Infocom Phils Corp	07863	08/18/03	850.00
"FFF-22"	Wistron Infocom Phils Corp	07876	08/20/03	850.00
"FFF-23"	Wistron Infocom Phils Corp	07889	08/26/03	850.00
"FFF-24"	Wistron Infocom Phils Corp	07890	08/26/03	850.00
"FFF-25"	Wistron Infocom Phils Corp	07913	09/01/03	850.00
"FFF-26"	Wistron Infocom Phils Corp	07914	09/01/03	850.00
"FFF-27"	Wistron Infocom Phils Corp	07919	09/03/03	1,320.00

¹³ Exhibit "KK"

¹⁴ Exhibit "II"

¹⁵ Exhibit "GG"

¹⁶ Exhibits "FFF-1" to "FFF-290"

"FFF-28"	Wistron Infocom Phils Corp	07942	09/09/03	850.00
"FFF-29"	Wistron Infocom Phils Corp	07949	09/12/03	850.00
"FFF-30"	Wistron Infocom Phils Corp	07959	09/16/03	1,920.00
"FFF-31"	Wistron Infocom Phils Corp	07971	09/23/03	850.00
Subtotal				P 565,508.89
4th Quarter - 2003				
"FFF-35"	Yutaka Mfg. Corp.	08111	10/10/03	P 120,479.34
"FFF-36"	Honda Parts Mfg. Corp	08109	10/10/03	446,050.00
"FFF-37"	Keihin Phils. Corp.	08121	10/14/03	94,647.64
"FFF-38"	Keihin Phils. Corp.	08223	10/31/03	14,890.00
"FFF-39"	Wistron Infocomm Phils Inc.	08138	10/28/03	1,920.00
"FFF-40"	Wistron Infocomm Phils Inc.	08149	10/28/03	1,800.00
"FFF-41"	Gerald Schmerling	08204	10/30/03	1,980.00
"FFF-44"	JP Latex	07988	10/03/03	28,950.00
"FFF-45"	Wistron Infocomm Phils Inc.	07997	10/07/03	1,920.00
"FFF-46"	Wistron Infocomm Phils Inc.	08102	10/08/03	850.00
"FFF-48"	Wistron Infocomm Phils Inc.	08117	10/13/03	850.00
Subtotal				P 714,336.98
2nd Quarter - 2004				
"FFF-132"	Keihin Phils. Corp.	08648	4/23/2004	P 113,500.00
"FFF-133"	Keihin Phils. Corp.	08862	6/28/2004	182,110.00
"FFF-141"	Jenny's Garments Inc.	08650	4/26/2004	900.00
"FFF-153"	Universal Harvester	08784	6/14/2004	10,500.00
Subtotal				P 307,010.00
3rd Quarter - 2004				
"FFF-190"	Everett Steamship Corp.	08866	7/1/2004	P 25,036.00
"FFF-191"	Keihin Phils. Corp.	08905	7/23/2004	57,790.00
"FFF-192"	F-Tech	08948	08/01/04	409,904.78
"FFF-193"	Keihin Phils. Corp.	08956	08/20/04	168,190.00
"FFF-194"	Keihin Phils. Corp.	09012	09/24/04	59,980.00
Subtotal				P 720,900.78
4th Quarter - 2004				
"FFF-259"	Keihin Phils. Corp.	09022	10/1/2004	P 69,600.00
"FFF-260"	Keihin Phils. Corp.	09080	10/29/2004	86,950.00
"FFF-261"	Fritz Logistics Phils. Inc.	09169	12/17/2004	149,600.00
Subtotal				P 306,150.00
Total Substantiated Zero-Rated Sales				P 2,613,906.65

The remaining reported zero-rated sales/receipts of P37,799,076.13 shall be denied VAT zero-rating for being supported by non-VAT official receipts in violation of the invoicing requirements under the VAT law and regulations.



After finding that petitioner's valid zero-rated sales/receipts for the third quarter of 2003 to the fourth quarter of 2004 amounted to only P2,613,906.65, the Court will now determine the amount of unutilized input VAT attributable thereto.

Petitioner submitted various suppliers' invoices and official receipts¹⁷ in support of the input VAT claim of P5,382,626.45. Upon verification of these documents, the Court-commissioned Independent Certified Public Accountant (CPA), Mr. Richard S. Querido, Partner of Mendoza Querido & Co., presented his findings and observations in his consolidated Report¹⁸ dated July 25, 2007 as follows:

	3rd Qtr 2003	4th Qtr 2003	1st Qtr 2004	2nd Qtr 2004	3rd Qtr 2004	4th Qtr 2004	Total
Input VAT from:							
A. Domestic Purchases of:							
1. Services supported by VAT ORs	387,699.05	684,380.61	762,644.23	795,899.65	770,206.27	957,201.62	4,358,031.43
2. Goods supported by VAT Invoices	19,672.23	14,268.20	6,394.94	9,876.05	17,837.04	21,681.60	89,730.06
3. Services supported by documents other than ORs (i.e., SOA, Billing Statements)	44,390.56	5,954.55		-	23,499.90	11,749.95	85,594.96
4. Goods supported by Documents Other than Invoices (i.e., Provisional Receipts)	303.69	-		-	7,911.30	46,776.78	54,991.77
5. Services supported by VAT ORs Not Named to the Company	7,517.30	248.13		-	13.25	100,560.97	108,339.65
6. Goods supported by Cash Register Tapes	406.92	-		-	-	7,887.41	8,294.33
7. Services supported by Photocopied ORs	271,450.63	107,298.16		-	-	627.27	379,376.06
8. Services supported by ORs with Printed "Non VAT" or "NV"	11,749.95	-		-	-	23,499.90	35,249.85
9. Without Supporting Documents	59,226.51	2,375.62	6,231.90	-	-	195,184.31	263,018.34
TOTAL	802,416.84	814,525.27	775,271.07	805,775.70	819,467.76	1,365,169.81	5,382,626.45

¹⁷ Exhibits "BBB-1" to "BBB-1523", "DDD-1" to "DDD-327", and "EEE-1" to "EEE-204"

¹⁸ Exhibit "CCC", page 5



This Court agrees with the Report of the Independent CPA.

Out of the P5,382,626.45 input VAT claim, covering the third and fourth quarters of 2003 and the four quarters of 2004, only the input VAT on domestic purchases of services supported by VAT official receipts and the input VAT on domestic purchases of goods supported by VAT invoices in the respective amounts of P4,358,031.43 and P89,730.06 or in the sum of P4,447,761.49 complied with the substantiation requirements under Sections 110(A) and 113(A) of the NIRC of 1997, as well as Sections 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations No. 7-95. The remaining input VAT in the amount of P934,864.96 shall be disallowed for the above-stated reasons.

However, a portion of the substantiated input VAT of P4,447,761.49 shall be applied against petitioner's output VAT liability for the third quarter of 2003 to the fourth quarter of 2004 in the amount of P1,868,052.44, detailed as follows:

Exhibit	Period Covered	Output VAT
"D"	3rd Qtr – 2003	P 395,921.53
"E"	4th Qtr – 2003	231,812.65
"F"	1st Qtr - 2004	262,021.00
"J"	2nd Qtr - 2004	479,165.64
"K"	3rd Qtr – 2004	166,053.33
"M"	4th Qtr – 2004	333,078.29
TOTAL		P 1,868,052.44

Consequently, only the remaining input VAT of P2,579,709.06 can be attributed to the entire zero-rated sales declared by petitioner in the amount of P40,412,982.78 and only the input VAT of P437,193.46 is attributable to the substantiated zero-rated sales of P2,613,906.65, as computed below:



Period Covered	Input VAT		Creditable Input VAT	Output VAT	Excess Input VAT
	Per VAT Return	Disallowances			
	(a)	(b)	(c) = (a) – (b)	(d)	(e) = (c) – (d)
2003					
3rd Qtr	P 802,416.84	P 395,045.56	P 407,371.28	P 395,921.53	P 11,449.75
4th Qtr	814,525.27	115,876.46	698,648.81	231,812.65	466,836.16
2004					
1st Qtr	775,271.07	6,231.90	769,039.17	262,021.00	507,018.18
2nd Qtr	805,775.70	-	805,775.70	479,165.64	326,610.06
3rd Qtr	819,467.76	31,424.45	788,043.31	166,053.33	621,989.98
4th Qtr	1,365,169.81	386,286.59	978,883.22	333,078.29	645,804.93
Total	P 5,382,626.45	P 934,864.96	P 4,447,761.49	P1,868,052.44	P2,579,709.06

Period Covered	Zero-Rated Sales/Receipts		% of Substantiated to Total Zero-Rated Sales/Receipts per VAT Return	Excess Input VAT	Excess Input VAT Attributable to Substantiated Zero-Rated Sales/Receipts
	Per VAT Return	Substantiated			
	(f)	(g)	(h) = (g) ÷ (f)	(i)	(j) = (h) × (i)
2003					
3rd Qtr	P 704,656.85	P 565,508.89	80.253089%	P 11,449.75	P 9,188.78
4th Qtr	941,256.49	714,336.98	75.891852%	466,836.16	354,290.61
2004					
1st Qtr	9,547,272.69	-	-	507,018.18	-
2 nd Qtr	7,908,998.62	307,010.00	3.881781%	326,610.06	12,678.29
3rd Qtr	10,481,891.17	720,900.78	6.877583%	621,989.98	42,777.88
4th Qtr	10,828,906.96	306,150.00	2.827155%	645,804.93	18,257.91
Total	P 40,412,982.78	P 2,613,906.65		P2,579,709.06	P 437,193.46

In its amended Quarterly VAT Returns for the first quarter of 2004¹⁹ and the first quarter of 2005²⁰, petitioner deducted from the total available input VAT the amounts of P3,105,321.58²¹ and P3,765,684.34²², representing petitioner's input VAT for taxable years 2003 and 2004. Thus, petitioner could not have possibly utilized the substantiated input VAT of P437,193.46 in the succeeding quarters.

¹⁹ Exhibit "F"

²⁰ Exhibit "O"

²¹ Exhibit "F-1"

²² Exhibit "O-1"

Finally, as to the timeliness of the filing of the instant claim, it has been held that the two-year prescriptive period for the filing of VAT refund claims is reckoned from the date of filing of the corresponding Quarterly VAT Returns.²³ Thus, counting from October 27, 2003²⁴, January 27, 2004²⁵, April 26, 2004²⁶, July 26, 2004²⁷, October 25, 2004²⁸, and January 25, 2005²⁹, the respective dates when petitioner originally filed its Quarterly VAT Returns for the third quarter of 2003 to the fourth quarter of 2004, petitioner's applications for issuance of tax credit certificate filed with the BIR on December 21, 2004³⁰ and May 10, 2005³¹, as well as the Petitions for Review filed on October 25, 2005 and April 24, 2006, all fall within the two-year prescriptive period.

Even though there is a recent case entitled **Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)**³², wherein the Supreme Court held that the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund starts from the close of the taxable quarter when the relevant sales were made, this Court finds it proper to only apply said ruling to cases filed after the promulgation date of the *Mirant Case*. To apply said ruling in the present case will in effect be giving the new doctrine retroactive application thereby impairing vested rights.³³

²³ Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 141104 and 148763, June 8, 2007

²⁴ Exhibit "D"

²⁵ Exhibit "E"

²⁶ Exhibit "H-2"

²⁷ Exhibit "I-2"

²⁸ Exhibit "K-2"

²⁹ Exhibit "L-2"

³⁰ Exhibit "R-1"

³¹ Exhibit "S-1"

³² G.R. No. 172129, September 12, 2008

³³ TeaM Energy Corporation (Formerly Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue, CTA Case Nos. 7229 and 7298, October 5, 2009



WHEREFORE, premises considered, the instant Petitions for Review are hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **FOUR HUNDRED THIRTY-SEVEN THOUSAND ONE HUNDRED NINETY-THREE PESOS AND 46/100 (P437,193.46)** in favor of petitioner Keihin-Everett Forwarding Co., Inc., representing its unutilized input VAT on purchases of capital goods and on domestic purchases of goods and services attributable to zero-rated sales covering the third quarter of 2003 to the fourth quarter of 2004.

SO ORDERED.



LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:



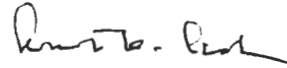
(With Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Associate Justice



CAESAR A. CASANOVA
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's Division.



ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division

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

Special First Division

**KEIHIN-EVERETT FORWARDING CO.
INC.,**

CTA Case No. 7351

Petitioner,

-versus-

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

**KEIHIN-EVERETT FORWARDING CO.
INC.,**

CTA Case No. 7472

Petitioner,

Members:

-versus-

**ACOSTA, P.J., Chairperson,
BAUTISTA, and
CASANOVA**

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

APR 21 2010 ; 8:13am

X

X

CONCURRING AND DISSENTING OPINION

I concur with the majority's decision that declared petitioner's sales of services to entities registered with the Philippine Economic Zone Authority (PEZA) and Subic Bay Metropolitan Authority (SBMA) to be effectively subject to zero-percent (0%) VAT under Sec. 108 (B) (3) of the NIRC of 1997, as amended.

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I likewise agree with the majority that despite the above, petitioner's claim cannot be granted in full because: (1) only the reported zero-rated sales/receipts in the amount of ₱ 2,613,906.65 are duly supported by VAT zero-rated official receipts in accordance with Section 113(A), in relation to Section 108 (C) of the NIRC of 1997, as amended, and Section 4.108-1 of Revenue Regulations 7-95; (2) based on the findings of the Independent Certified Public Accountant (ICPA), petitioner's claimed input VAT of ₱ 5,382,626.45 should be reduced by ₱ 934,864.96 for having failed to comply with substantiation requirements; and, (3) only the input VAT of ₱437,193.46 is attributable to the substantiated zero-rated sales of ₱ 2,613,906.65.

I, however, regret that I must dissent with the finding of the majority that the Petitions for Review before this Court were timely filed in accordance with the provisions of the NIRC of 1997, as amended.

In the cases at bar, the petitioner filed its applications for issuance of tax credit certificates before the BIR on December 21, 2004 (for first, second, third and fourth quarters of taxable year 2003) and on May 10, 2005 (for first, second, third and fourth quarters of taxable year 2004), respectively. Subsequently, after failing to receive any action on the claims by the respondent, it filed its petitions for review before this Court on October 25, 2005 and April 24, 2006, respectively.

It is clear, however, that a straightforward application of Section 112 (D) in relation to Section 112(A) of the NIRC of 1997 to the cases at bar belies a finding of timeliness of these judicial claims. The law provides:

Section 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

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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 of 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.

XXX XXX XXX

- (D) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the

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unacted claim with the Court of Tax Appeals.
(Emphasis Supplied.)

The foregoing provisions manifestly state that a VAT-registered taxpayer who desires to refund its unutilized or excess input VAT attributable to zero-rated sales may apply for the issuance of a tax credit certificate within two (2) years from the close of the taxable quarter. The Commissioner of Internal Revenue shall, in this case, issue a tax credit certificate within one hundred twenty (120) days from the submission of complete documents. In case of a denial or inaction by the Commissioner within the 120-day period, the VAT-registered taxpayer may appeal to the Court within thirty (30) days from receipt of the decision or the lapse of the 120-day period.

Proceeding from the above, the petitioner only had until May 20, 2005 (or thirty days after the lapse of the 120-day period from filing its administrative claim on December 21, 2004) to have filed its appeal before this Court following the inaction of the respondent Commissioner on its application for issuance of tax credit certificate for the first, second, third and fourth quarters of taxable year 2003. The same is true for its judicial claim of unutilized input VAT for first, second, third and fourth quarters of taxable year 2004 which it should have filed on or before October 7, 2005 (or thirty days after the lapse of the 120-day period from filing its administrative claim on May 10, 2005).

To reiterate, petitioner's filing of the petitions for review on October 25, 2005 and April 24, 2006 are both well beyond the reglementary period provided for in Section 112(D) of the NIRC of 1997. Specifically, 308 days lapsed from the filing of the administrative claim on December 21, 2004 before petitioner filed its appeal before this Court on October 25, 2005 for its unutilized input VAT claims for taxable year 2003. On the other hand, 349 days likewise passed from the filing of the administrative claim on May 10, 2005 to petitioner's filing an appeal before this Court on April 24, 2006 for its unutilized input VAT claims for taxable year

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2004. Hence, I am reiterating my dissent with respect to the portion of the Decision that found herein petitions for review to have been timely filed.

WHEREFORE, claims should be dismissed on account of prescription.


ERNESTO D. ACOSTA
Presiding Justice