

4000-PJ

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

FIRST DIVISION

TEAM ENERGY CORPORATION
(formerly Mirant Pagbilao
Corporation and Southern
Energy Quezon, Inc.),
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL
REVENUE,**
Respondent.

C.T.A. CASE NO. 7461

Members:

ACOSTA, Chairperson
BAUTISTA, and
CASANOVA, JJ.

Promulgated:

JAN 05 2010 3:00pm

X -----X

DECISION

BAUTISTA, J.:

This is a Petition for Review filed by petitioner on April 21, 2006, to seek the refund or issuance of tax credit certificate in the total amount of P114,379,790.80, allegedly representing unutilized input value-added tax (VAT) paid on its domestic purchases of capital goods, domestic purchases of goods other than capital goods, domestic purchases of services, services rendered by non-residents, importation of capital goods, and importation of goods other than capital goods, attributable to petitioner's zero-rated sales to National Power Corporation for the four quarters of taxable year 2004.

TeaM Energy Corporation (Petitioner) is a domestic corporation organized and existing under and by virtue of Philippine Laws, with principal office at Pagbilao Grande Island, Pagbilao, Quezon. It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer in accordance with Section 107 of the 1977 Tax Code (now Section 236 of the National Internal Revenue Code of 1997), with BIR Certificate of Registration bearing RDO Control No. 96-600-00248 and Taxpayer Identification No. 001-726-870. It is principally engaged in the business of power generation and the subsequent sale thereof to the National Power Corporation (NPC) under a Build, Operate, Transfer scheme.¹

Petitioner was originally registered with the Securities and Exchange Commission (SEC) under the name "Hopewell Power (Philippines), Corporation," which was subsequently changed to "Southern Energy Quezon, Inc." on September 22, 1999.² On June 28, 2001, the SEC issued another Certificate of Filing of Amended Articles of Incorporation, approving the application of herein petitioner for a change of its corporate name to "Mirant Pagbilao Corporation"³, which was thereafter changed to "TeaM Energy Corporation" on July 23, 2007⁴.

Respondent is the Commissioner of the Bureau of Internal Revenue who is duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund or issuance of tax credit certificate of overpaid internal revenue taxes as provided by law. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On December 19, 2003, petitioner filed with the BIR Audit Information, Tax Exemption and Incentives Division an Application for Effective Zero-Rate for the supply

¹ Pars. 1, 2, and 4, Jointly Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), docket, pp. 434-435

² Par. 5, Jointly Stipulated Facts, JSFI, docket, p. 435

³ Par. 6, Jointly Stipulated Facts, JSFI, docket, p. 435

⁴ Annex "A", Supplemental Formal Offer of Evidence with Motion to Change Caption, docket, p. 970



of electricity to NPC for the period covering January 1, 2004 to December 31, 2004, which was subsequently approved by the BIR.⁵

On April 26, 2004, July 26, 2004, October 25, 2004, and January 25, 2005, petitioner filed its Quarterly VAT Returns⁶ for the four quarters of 2004 and its Amended Quarterly VAT Return for the fourth quarter on April 25, 2005⁷, showing excess input VAT paid on domestic purchases and importations of taxable goods and services attributable to its zero-rated sales of power generation services to NPC in the amount of P114,379,790.83, detailed as follows:

Exh.	Year 2004	Zero-Rated Sales	Taxable Sales	Output VAT	Input VAT
QQ	1st Qtr	P 3,139,226,564.73	P 830.46	P 83.05	P 13,773,439.14
RR	2nd Qtr	3,095,243,127.54	2,370.76	237.08	27,011,754.10
SS	3rd Qtr	3,097,411,778.69	726,791.35	72,679.13	34,332,257.36
TT	4th Qtr	3,120,591,238.44	-	-	39,262,340.23
	Total	P12,452,472,709.40	P 729,992.57	P 72,999.26	P114,379,790.83

On December 19, 2005, petitioner instituted an administrative claim for refund before the BIR in the amount of P114,379,790.80 for the four quarters of taxable year 2004.⁸ However, due to respondent's inaction on the administrative claim for refund, petitioner instituted the present action on April 21, 2006.

In his Answer⁹, respondent interposed the following Special and Affirmative Defense:

"5. The Petition is prematurely filed. Under Section 112 of the NIRC of 1997, respondent has 120 days from the submission of complete documents in support of the application for refund within which to grant or deny the claim. In a Memorandum dated May 17, 2006, Revenue District Officer Muriel P. Flores, Revenue District No. 60, Lucena City, stated that petitioner submitted the documents in support of its claim for refund only on May 15, 2006. Petitioner filed this Petition on April 21, 2006. Clearly, petitioner filed this judicial claim for refund before the expiration of the 120-day period granted

⁵ Par. 7, Jointly Stipulated Facts, JSFI, docket, p. 435

⁶ Pars. 8, 9, 10, and 11, Jointly Stipulated Facts, JSFI, docket, pp. 435-436

⁷ Par. 11, Jointly Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 436

⁸ Exhibit "B"; Annex "K", Petition for Review, docket, p. 379

⁹ Docket, pp. 396-397



to respondent to process the administrative claim for refund. Thus, this Honorable Court is without jurisdiction to even entertain this claim for refund, much more, grant the same."

The case was set for Pre-Trial Conference on July 7, 2006.¹⁰ Petitioner and respondent filed their Pre-Trial Briefs on June 30, 2006¹¹ and July 5, 2006¹², respectively. On August 8, 2006, the parties filed their Joint Stipulation of Facts and Issues¹³.

During trial, petitioner was able to present and formally offer its documentary and testimonial evidence; while respondent manifested that he is waiving his right to present evidence.

On October 3, 2008, a Resolution¹⁴ was issued by this Court as per motion of petitioner, changing the caption of this case from "Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue" to "TeaM Energy Corporation (formerly 'Mirant Pagbilao Corporation' and 'Southern Energy Quezon, Inc.') vs. Commissioner of Internal Revenue".

The case was submitted for decision on January 12, 2009, taking into consideration petitioner's "Memorandum" filed on November 18, 2008 and respondent's "Memorandum" filed on January 8, 2009.¹⁵

The parties submitted the following issues¹⁶ for this Court's disposition:

"1. Whether or not the power generation services rendered by Petitioner to NPC are subject to zero percent (0%) VAT pursuant to Section 108(B)(3) of the Tax Code;

2. Whether or not Petitioner has unutilized creditable input VAT for the four quarters of CY 2004 arising from its domestic purchases of goods and services and importation of goods amounting to

¹⁰ Docket, p. 400

¹¹ Docket, pp. 401-410

¹² Docket, pp. 411-419

¹³ Docket, pp. 431-437

¹⁴ Docket, pp. 983-984

¹⁵ Docket, p. 1057

¹⁶ Jointly Stipulated Issues, JSFI, docket, pp. 436-437



Php114,379,790.80 that can be a proper object of a claim for refund pursuant to Sections 108(B)(3) and 112(A) of the Tax Code;

3. Whether or not the unutilized creditable input taxes for the four quarters CY 2004 are substantiated by proper invoices and official receipts;

4. Whether or not the unutilized creditable input VAT payments for the four quarters of CY 2004 were carried over to and utilized in the succeeding taxable quarter(s) or applied against any of the output VAT liability of the Petitioner;

5. Whether or not Petitioner is entitled to a refund and/or issuance of tax credit certificate for the unutilized input VAT payments in the amount of Php114,379,790.80; and,

6. Whether or not Petitioner had given Respondent the 120-day period to grant or deny the administrative claim for refund before filing the subject judicial claim for refund."

In addressing the first stipulated issue, this Court hereby quotes the provisions of Section 108(B)(3) of the NIRC of 1997, as amended, in relation to Section 13 of Republic Act No. 6395 (NPC Charter), the pertinent portions of which provide as follows:

"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."

"SECTION 13. Non-profit Character of the Corporation, Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities. — The Corporation shall be non-profit and shall devote all its returns from its capital investments,



as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance of effective implementation of the policy enunciated in Section one of this Act, the Corporation, including its subsidiaries, is hereby declared exempt from the payment of all forms of taxes, duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds in any court or administrative proceedings."

Petitioner claims that its sale of electricity to NPC is effectively zero-rated for VAT purposes pursuant to the above-mentioned provisions of law.

The Court agrees with petitioner.

NPC is an entity with a special charter. Its charter, which is Republic Act No. 6395, as amended, categorically makes it exempt from payment of all taxes, whether direct or indirect, including VAT. Accordingly, the said exemption provided for under NPC's Charter necessarily makes the services rendered by a VAT-registered entity, like herein petitioner to NPC, effectively subject to zero percent (0%) VAT, in accordance with Section 108(B)(3) of the NIRC of 1997.

Moreover, NPC's tax-exempt status was confirmed by the Supreme Court in the case of **Ernesto M. Maceda vs. Catalino Macaraig, Jr., et al.**¹⁷, in the following manner:

"The NPC is a non-profit public corporation created for the general good and welfare, wholly owned by the government of the Republic of the Philippines. From the very beginning of its corporate existence, the NPC enjoyed preferential tax treatment, to enable the Corporation to pay the indebtedness and obligation and in furtherance and effective implementation of the policy enunciated in Section one of Republic Act No. 6395...

xxx

xxx

xxx

It is noted that in the earlier law, R.A. No. 358 the exemption was worded in general terms, as to cover 'all taxes, duties, fees, imposts, charges, etc...'. However, the amendment under Republic Act No. 6395 enumerated the details covered by the exemptions. Subsequently, P.D. No. 380, made even more specific the details of the exemption of NPC

¹⁷ 197 SCRA 771



to cover, among others, both direct and indirect taxes on all petroleum products used in its operation. Presidential Decree No. 938 amended the tax exemption by simplifying the same law in general terms. It succinctly exempts NPC from 'all forms of taxes, duties, fees, imposts, as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings.'

The use of the phrase 'all forms' of taxes demonstrate the intention of the law to give NPC all the tax exemptions it has been enjoying before. The rationale for this exemption is that being non-profit the NPC 'shall devote all its returns from its capital investment as well as excess revenues from its operation, for expansion...

XXX

XXX

XXX

It is evident from the provisions of P.D. No. 938 that its purpose is to maintain the tax exemption of NPC from all forms of taxes including indirect taxes as provided for under R.A. No. 6395 and P.D. No. 380 if it is to attain its goals."

Equally noteworthy is the fact that it was respondent himself who approved petitioner's application for zero-rating of its sales to NPC, covering the period from January 1, 2004 to December 31, 2004;¹⁸ thus, petitioner's sale of electricity to NPC is indeed effectively zero-rated for VAT purposes.

Now as to the remaining issues, it may be gleaned that the same are mainly factual issues evolving from the crux of the controversy in this case, which is petitioner's entitlement to a refund. The same may be resolved by ascertaining petitioner's compliance with Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, to wit:

"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

¹⁸ Exhibit "A"



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."

From the foregoing provision, petitioner must comply with the following requisites to be entitled to a refund:

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 attributable to zero-rated sales or effectively zero-rated sales;
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.

As to the first requisite, this Court finds that petitioner was able to establish that it actually generated gross receipts from sale of power generation services to NPC for the four quarters of 2004, as substantiated by various invoices and official receipts it issued to NPC¹⁹, in the total amount of P12,452,472,709.40, which was reflected in its Quarterly VAT Returns as follows:

Exhibit	Year (2004)	Zero-rated Sales/ Receipts
QQ	1st Quarter	P 3,139,226,564.73
RR	2nd Quarter	3,095,243,127.54
SS	3rd Quarter	3,097,411,778.69
TT	4th Quarter	3,120,591,238.44
	TOTAL	P12,452,472,709.40

After establishing that petitioner's gross receipts from sale of power generation services to NPC in the amount of P12,452,472.709.40 qualify for VAT zero-rating, this Court shall now determine the amount of input VAT attributable thereto.

¹⁹ Exhibits "MM-1" to "MM-10b", "NN-1" to "NN-11b", "OO-1" to "OO-9b", and "PP-1" to "PP-9d"



In order to substantiate its claim, petitioner presented its Schedules of Input VAT²⁰ and the related suppliers' invoices and official receipts, Bureau of Customs (BOC) Import Entries and Internal Revenue Declarations (IEIRDs), BOC official receipts, bank debit advices, and other documents²¹ in support of the P114,379,790.83 input VAT reflected in its Quarterly VAT Returns for the four quarters of 2004 as follows:

Exhibit	Year 2004	Input VAT
QQ	1st Quarter	P 13,773,439.14
RR	2ndQuarter	27,011,754.10
SS	3rd Quarter	34,332,257.36
TT	4th Quarter	39,262,340.23
	Total	P 114,379,790.83

After verification of the aforesaid documents, the Court-commissioned Independent Certified Public Accountant (CPA)²² found that only the input VAT claim of P110,853,504.19, detailed below, was properly substantiated:²³

FIRST QUARTER	Amount	Exh. VV-2
Input VAT on domestic purchases of services supported by VAT ORs	P 6,698,257.75	Annex A-1
Input VAT on domestic purchases of goods supported by VAT Invoices	2,561,199.06	Annex A-2
Input VAT on Importation of goods supported by BOC IEIRDs and ORs issued by BOC	2,538,043.00	Annex A-10
Input VAT on Importation of goods supported by BOC IEIRDs and ORs issued by Banks	1,660,367.00	Annex A-11
Input VAT on Importation of goods supported by BOC IEIRD only	4,120.00	Annex A-12
Input VAT on Importation of goods supported by ORs issued by BOC	18,398.00	Annex A-13
Input VAT on Importation of goods supported by ORs issued by Banks	9,517.00	Annex A-14
Subtotal	P 13,489,901.81	
SECOND QUARTER		
Input VAT on domestic purchases of services supported by VAT ORs	16,726,111.79	Annex A-17
Input VAT on domestic purchases of goods supported by VAT Invoices	3,681,562.39	Annex A-18
Input VAT on services rendered by non resident supported by documents other than ORs	570,550.91	Annex A-20
Input VAT on Importation of goods supported by BOC IEIRD's and ORs issued by BOC	1,654,443.00	Annex A-30
Input VAT on Importation of goods supported by BOC IEIRD's and ORs issued by Banks	3,883,440.00	Annex A-31
Input VAT on Importation of goods supported by BOC IEIRD's only	47,363.00	Annex A-32
Input VAT on Importation of goods supported by ORs issued by BOC	29,155.00	Annex A-33
Input VAT on Importation of goods supported by ORs issued by Banks	52,848.00	Annex A-34
Subtotal	P 26,645,474.09	

²⁰ Exhibits "U", "V", "W", and "X"

²¹ Exhibits "Y-1" to "Y-1170", "Z-1" to "Z-1769", "AA-1" to "AA-1945", and "BB-11" to "BB-2451"

²² Mr. Emmanuel Y. Mendoza, Partner of Mendoza Querido & Co.

²³ Exhibit "VV", page 4 and Exhibit "VV-2"



THIRD QUARTER		
Input VAT on domestic purchases of services supported by VAT ORs	P 12,143,092.02	Annex A-37
Input VAT on domestic purchases of goods supported by VAT Invoices	3,990,654.55	Annex A-38
Input VAT on Importation of goods supported by BOC IEIRD's and ORs issued by BOC	12,608,801.00	Annex A-43
Input VAT on Importation of goods supported by BOC IEIRD's and ORs issued by Banks	4,565,181.00	Annex A-44
Input VAT on Importation of goods supported by BOC IEIRD's only	131.00	Annex A-45
Input VAT on Importation of goods supported by ORs issued by BOC	37,320.00	Annex A-46
Input VAT on Importation of goods supported by ORs issued by Banks	28,907.00	Annex A-47
Subtotal	P 33,374,086.57	
FOURTH QUARTER		
Input VAT on domestic purchases of services supported by VAT ORs	18,426,892.22	Annex A-49
Input VAT on domestic purchases of goods supported by VAT Invoices	6,810,600.50	Annex A-50
Input VAT on Importation of goods supported by BOC IEIRD's and ORs issued by BOC	4,365,596.00	Annex A-59
Input VAT on Importation of goods supported by BOC IEIRD's and ORs issued by Banks	7,655,011.00	Annex A-60
Input VAT on Importation of goods supported by BOC IEIRD's only	1,877.00	Annex A-61
Input VAT on Importation of goods supported by ORs issued by BOC	84,065.00	Annex A-62
Subtotal	P 37,344,041.72	
TOTAL	P110,853,504.19	

As regards the remaining input VAT of P3,526,286.44, the Independent CPA made the following observations²⁴:

		Amount	Exh. VV-2
1.)	Input VAT on domestic purchases of services supported by documents other than ORs	P 1,840,044.80	Annexes A-19, A-39 & A-51
2.)	Input VAT on domestic purchases of goods supported by documents other than invoices	124,571.89	Annexes A-3, A-21, A-40 & A-52
3.)	Input VAT on domestic purchases of services supported by ORs with no BIR authority to print	17,500.00	Annex A-22
4.)	Input VAT on domestic purchases of services supported by ORs with preprinted "TIN" and "NON VAT/NV"	17,693.22	Annexes A-4 & A-53
5.)	Input VAT on domestic purchases of goods supported by invoices with preprinted "TIN" and "NON VAT/NV"	1,471.96	Annex A-23
6.)	Input VAT on domestic purchases of services supported by ORs with preprinted "TIN" only	20,872.73	Annex A-24
7.)	Input VAT on domestic purchases of goods supported by invoices with preprinted "TIN" only	954.55	Annex A-25
8.)	Input VAT on domestic purchases of services supported by ORs with stamped "TIN VAT"	909.09	Annex A-5
9.)	Input VAT on domestic purchases of goods supported by invoices with stamped "TIN VAT"	17,772.70	Annex A-54
10.)	Input VAT on domestic purchases of services supported by ORs with preprinted "TAN VAT"	652.50	Annex A-55

²⁴ Exhibit "VV", pages 5-8

11.)	Input VAT on domestic purchases of services supported by photocopied ORs	21,432.04	Annexes A-6, A-26 & A-56
12.)	Input VAT on domestic purchases of goods supported by photocopied invoices	486,634.16	Annexes A-7, A-27, A-41 & A-57
13.)	Input VAT on domestic purchases of goods supported by invoices dated before the taxable year of claim	328,716.44	Annexes A-8, A-28 & A-42
14.)	Input VAT on domestic purchases of services supported by ORs dated after the taxable year of claim	11,840.00	Annexes A-9 & A-58
15.)	Input VAT on domestic purchases of services supported by ORs with stamped TIN only	3,159.09	Annex A-29
16.)	Input VAT on domestic purchases of services and goods with no available supporting documents presented to us	613,672.27	Annexes A-15, A-36, A-48 & A-63
17.)	Input VAT on importation of goods with no available supporting documents presented to us	18,389.00	Annexes A-16 & A-35
	TOTAL	P 3,526,286.44	

This Court finds the Report of the Independent CPA to be in order. The input VAT claim of P3,526,286.44 should be denied for failure to meet the substantiation requirements 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.

However, the input VAT claim of P110,853,504.19 which was found by the Independent CPA to be valid should be reduced by the following input taxes totaling P3,593,103.16:

		Exhibit	Input VAT Claim	Listed in Exhibit VV-2
1.)	Input VAT on importation of goods supported only by BOC IEIRD which does not reflect an entry date and/or machine validation for the amount of customs duties and taxes paid			
	1st Quarter	Y-1161	P 4,120.00	Annex A-12
	2nd Quarter	Z-1737 to Z-1750	47,363.00	Annex A-32
	3rd Quarter	AA-1923	131.00	Annex A-45
	4th Quarter	BB-2271	1,877.00	Annex A-61
2.)	Input VAT on importation of goods supported by BOC OR with no date indicated or that the date shown does not include the year			
	2nd Quarter	Z-1760	2,955.00	Annex A-33
		Z-1761	2,068.00	Annex A-33
		Z-1764	2,065.00	Annex A-33
	3rd Quarter	AA-1927	923.00	Annex A-46

		AA-1928	542.00	Annex A-46
		AA-1941	1,616.00	Annex A-46
	4th Quarter	BB-2414	893.00	Annex A-62
		BB-2415	1,145.00	Annex A-62
		BB-2432	1,719.00	Annex A-62
		BB-2434	660.00	Annex A-62
		BB-2437	2,538.00	Annex A-62
		BB-2438	3,129.00	Annex A-62
		BB-2447	1,123.00	Annex A-62
		BB-2448	1,270.00	Annex A-62
		BB-2449	1,567.00	Annex A-62
		BB-2450	2,158.00	Annex A-62
3.)	Input VAT claim on importation of goods is not separately indicated in the supporting bank OR (2nd Quarter)	Z-1766	5,409.00	Annex A-34
4.)	Input VAT on importation of goods supported by IEIRD and BOC OR but the payment shown in both the IEIRD and BOC OR pertains to Final Duties amounting to P336,063.00 and not the claimed input VAT of P1,060,115.00 (3rd Quarter)	AA-1850 & AA-1850a	1,060,115.00	Annex A-44
5.)	Input VAT on services rendered by non-residents supported merely by invoices. Pursuant to Sections 4 and 6 of Revenue Regulations No. 04-02, these input taxes must be supported by Monthly Remittance Return of VAT and Other Percentage Taxes Withheld (BIR Form No. 1600)	Z-1555 to Z-1559	570,550.91	Annex A-20
6.)	Input VAT supported by invoices or ORs with preprinted TIN-V/Non-VAT instead of TIN-VAT as required under Section 4.108-1 of Revenue Regulations No. 7-95			
	1st Quarter			
	Fleet Maintenance Consultancy	Y-153	49,590.91	Annex A-1
	Ansul Technologies Products	Y-450	56,672.73	Annex A-2
	Ansul Technologies Products	Y-451	75,563.64	Annex A-2
	2nd Quarter			
	Cotta Builders Construction	Z-123	155,482.11	Annex A-17
	Cotta Builders Construction	Z-124	116,988.97	Annex A-17
	Cotta Builders Construction	Z-125	83,590.50	Annex A-17
	Health Safety Environmental Mgt	Z-170	14,715.00	Annex A-17
	Health Safety Environmental Mgt	Z-170	39,702.28	Annex A-17
	New Ro-bel Trading	Z-209	2,000.00	Annex A-17
	New Ro-bel Trading	Z-210	21,879.00	Annex A-17
	Romulo Mabanta	Z-315	242,727.32	Annex A-17
	Technical Experts	Z-365	1,250.00	Annex A-17
	Technical Experts	Z-366	13,000.00	Annex A-17

	Unidynamics Philippines Corporation	Z-405	4,993.52	Annex A-17
	Unidynamics Philippines Corporation	Z-406	(20,000.00)	Annex A-17
	Unidynamics Philippines Corporation	Z-406	66,900.00	Annex A-17
	Unidynamics Philippines Corporation	Z-407	610.96	Annex A-17
	Unidynamics Philippines Corporation	Z-408	4,600.00	Annex A-17
	Unidynamics Philippines Corporation	Z-409	4,337.75	Annex A-17
	3rd Quarter			
	Cotta Builders Construction	AA-114	32,549.35	Annex A-37
	Cotta Builders Construction	AA-114	(9,764.80)	Annex A-37
	Fleet Maintenance Consultancy	AA-136	43,090.91	Annex A-37
	Philipps Technical Consultants	AA-318	264,811.81	Annex A-37
	Philipps Technical Consultants	AA-318	(58,674.81)	Annex A-37
	Tetra Tech	AA-397	11,863.64	Annex A-37
	Unidynamics Philippines Corporation	AA-436	34,861.99	Annex A-37
	Unidynamics Philippines Corporation	AA-437	4,600.00	Annex A-37
	Unidynamics Philippines Corporation	AA-437	4,600.00	Annex A-37
	Unidynamics Philippines Corporation	AA-437	4,600.00	Annex A-37
	Unidynamics Philippines Corporation	AA-437	4,600.00	Annex A-37
	Unidynamics Philippines Corporation	AA-438	11,103.85	Annex A-37
	Ansul Technologies Products	AA-496	2,372.73	Annex A-38
	Ansul Technologies Products	AA-497	395.46	Annex A-38
	Ansul Technologies Products	AA-498	1,604.55	Annex A-38
	Ansul Technologies Products	AA-499	47,227.28	Annex A-38
	Valley Technologies Inc.	AA-1661	31,500.60	Annex A-38
	Valley Technologies Inc.	AA-1662	245.82	Annex A-38
	Valley Technologies Inc.	AA-1663	660.00	Annex A-38
	Valley Technologies Inc.	AA-1664	909.00	Annex A-38
	Valley Technologies Inc.	AA-1665	1,352.50	Annex A-38
	Valley Technologies Inc.	AA-1666	1,426.50	Annex A-38
	Valley Technologies Inc.	AA-1667	310.00	Annex A-38
	Valley Technologies Inc.	AA-1668	5,364.00	Annex A-38
	4th Quarter			
	Cotta Builders Construction	BB-112	90,991.31	Annex A-49
	MOF Company Subic, Inc.	BB-200	58,285.69	Annex A-49
	MOF Company Subic, Inc.	BB-201	855.36	Annex A-49
	Skyclimber Corporation	BB-358	84,500.00	Annex A-49
	Skyclimber Corporation	BB-359	84,500.00	Annex A-49
7.)	Overclaimed Input VAT (2nd Quarter)	Z-192	181,818.82	A-17
	TOTAL		P3,593,103.16	

This Court notes that there is a P.17 discrepancy between the P114,379,790.80 input VAT claim per Petition for Review and the P114,379,790.63 input VAT shown per petitioner's Schedule of Input VAT.



In sum, petitioner's valid input VAT for the four quarters of 2004 amounted only to P107,260,401.03, computed as follows:

Input VAT Claim		P114,379,790.80
Less: Disallowances		
Per ICPA's Report	P 3,526,286.44	
Per this Court's further verification	3,593,103.16	7,119,389.60
Discrepancy in the input VAT claim		
Per Petition for Review	P114,379,790.80	
Per Schedule of Input VAT	114,379,790.63	0.17
Valid Input VAT		P107,260,401.03

A portion of the substantiated input VAT of P107,260,401.03 shall be applied against petitioner's reported output VAT liability of P72,999.26²⁵. Hence, only the remaining input VAT of P107,187,401.77, as computed below, can be attributed to petitioner's zero-rated sales for the four quarters of 2004 in the amount of P12,452,472,709.40.

Valid Input VAT	P107,260,401.03
Less: Output VAT	72,999.26
Input VAT attributable to zero-rated sales	P107,187,401.77

Although petitioner carried over the subject claim to the succeeding quarters until the fourth quarter of 2005²⁶, the same was not applied against any output VAT. Moreover, the subject claim was included in the amount of P194,516,042.40 deducted as "Any VAT Refund/TCC Claimed"²⁷ from the total available input tax of P209,644,368.49²⁸ as of the fourth quarter of 2005. In other words, the subject claim no longer formed part of the excess input VAT of P5,570,968.29²⁹ as of the fourth quarter of 2005 which was carried over to the succeeding first quarter of 2006 as "Transitional Input Tax"³⁰.

²⁵ Exhibits "QQ", "RR", and "SS"

²⁶ Exhibits "J", "K", "L", and "N"

²⁷ Exhibit "N", line 23D and Exhibit "O", page 6

²⁸ Exhibit "N", line 22

²⁹ Exhibit "N", line 29

³⁰ Exhibit "YY", line 20C

As to the last requisite, petitioner's claim was timely filed within the two-year prescriptive period. The reckoning of the two-year prescriptive period for the filing of a claim for VAT refund starts from the date of filing of the corresponding Quarterly VAT Return³¹. The earliest quarter covered by the subject claim is the quarter ending March 31, 2004 for which petitioner filed its VAT Return on April 26, 2004.³² Counting from this date, petitioner had until April 26, 2006 within which to file its claim administratively and judicially. Thus, the administrative claim filed on December 19, 2005³³ as well as the Petition for Review filed on April 21, 2006 fall within the two-year prescriptive period. Moreover, respondent's contention that this Court has no jurisdiction to take cognizance of the instant case due to petitioner's filing of the petition before the lapse of the one hundred twenty (120) days provided under Section 112(D) of the NIRC of 1997, as amended, is bereft of merit.

Section 112(D) of the NIRC of 1997, as amended, providing for the 120-day period must be read in conjunction with Section 229 of the same law, which are hereunder quoted for ready reference:

"SEC. 112. Refunds or Tax Credits of Input Tax. –

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

³¹ Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 141104 and 148763, June 8, 2007

³² Exhibit "G-1"

³³ Exhibit "B-1"



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 unacted claim with the Court of Tax Appeals.**" (*Emphasis supplied*)

"SEC. 229. Recovery of Tax Erroneously or Illegally Collected. –

XXX

XXX

XXX

In any case, **no such suit or proceedings 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." (*Emphasis supplied*)

When the two-year period is about to prescribe and the claim for refund with the Commissioner of Internal Revenue has not been acted upon, the taxpayer should file a Petition for Review with the Court of Tax Appeals within the said two-year period; otherwise, if the decision of the Commissioner is adverse to the taxpayer and it was made after the 2-year period, he can no longer appeal the same to the Court of Tax Appeals.³⁴

Clearly, the 120 days given to the Commissioner within which to act upon the application, and the thirty (30) days within which to elevate the case to this Court, must be made within the two-year prescriptive period. Therefore, as long as petitioner's administrative claim is filed prior to the filing of its judicial case, and both within the two-year prescriptive period, this Court has jurisdiction to take cognizance of the claim.

WHEREFORE, premises considered, petitioner's claim for refund or issuance of tax credit certificate is hereby **PARTIALLY GRANTED.** Accordingly, respondent is

³⁴ Commissioner of Internal Revenue vs. Dash Engineering Philippines, Inc., CTA EB Case No. 357, July 17, 2008, citing Commissioner of Internal Revenue vs. Hitachi Computer Products (Asia) Corporation, CA-G.R. SP No. 63340, February 7, 2002



hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of P107,187,401.77, representing unutilized excess input VAT attributable to its effectively zero-rated sales to NPC for the four quarters of taxable year 2004.

SO ORDERED.



LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:



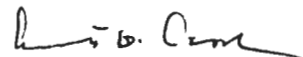
(With Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice



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