REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SOUTHERN ENERGY QUEZON, INC. (Formerly: HOPEWELL POWER (PHILIPPINES) CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5658

COMMISSIONER OF INTERNAL REVENUE
Respondent.

Promulgated:
JUL 11 2000

x - x

DECISION

Petitioner, by way of this petition for review, is seeking for the issuance of a tax credit certificate in the amount of P39,330,500.15, representing unutilized input value-added tax (VAT, for brevity) on capital goods for the period April 1, 1996 to December 31, 1996.

The facts as borne out by the records and pleadings of the case are as follows:

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office address in Pagbilao Grande Island, Pagbilao, Quezon. It is licensed by the Securities and Exchange Commission to principally engage in the business of power generation and subsequent sale thereof (Exh. A). It is registered with the Bureau of Internal Revenue as a VAT registered entity with

Certificate of Registration bearing RDO Control No. 96-600-002498, dated January 26, 1996.

For the period April 1, 1996 to December 31, 1996, Petitioner seasonably filed its Quarterly VAT Returns reflecting an accumulated input taxes in the amount of P39,330,500.85 (Exhs. B, C, and D). These input taxes were allegedly paid by Petitioner to the suppliers of capital goods and services for the construction and development of the power generating plant and other related facilities in Pagbilao, Quezon (TSN, November 16, 1998, p. 11).

Pursuant to the procedures prescribed under Revenue Regulations No. 7-95, as amended, Petitioner filed on June 30, 1998, an application for tax credit or refund of the aforementioned unutilized VAT paid on capital goods (Exhibit "I").

Without waiting for an answer from the Respondent, Petitioner filed the instant petition for review on July 10, 1998, in order to toll the running of the two-year prescriptive period for claiming a refund under the law.

In answer to the Petition, Respondent advanced as special and affirmative defenses that "[P]etitioner's claim for refund is still pending investigation and consideration before the office of Respondent, accordingly, the filing of the present petition is premature; well-settled is the doctrine that provisions in tax refund and credit are construed strictly against the taxpayer as they are in the nature of a tax exemption; in an action for refund or tax credit, the taxpayer has the burden to show that the taxes paid were erroneously or illegally paid and failure to sustain the said burden is fatal to the action for refund; it is incumbent upon Petitioner to show that the claim for tax credit has been filed within the prescriptive period under the Tax Code and the taxes allegedly paid by Petitioner are presumed to have been collected and received in accordance with law and revenue regulations.

On July 14, 1998, while this case was pending trial, Revenue Officer, Rosemarie M. Vitto, was assigned by Revenue District Officer, Ma. Nimfa Penalosa-Asensi, of Revenue District No. 60 to investigate Petitioner's application for tax credit or refund of input taxes (Exhs. 1 and 1-a). As a result, a memorandum report, dated August 27, 1998, was submitted recommending a favorable action but in a reduced amount of P49,616.40 representing unapplied input taxes on capital goods (Exhs. 2, 2-a, 3, and 3-a).

Petitioner, due to the voluminous nature of evidence to be presented, availed of the services of an independent Certified Public Accountant pursuant to CTA Circular No. 1-95, as amended. As a consequence, Mr. Ruben R. Rubio, Partner of SGV & Company, was commissioned to verify the accuracy of Petitioner's summary of input taxes (TSN, October 15, 1998, pp. 3 to 5). A report, dated March 8, 1999, was presented stating the audit procedures performed and the finding that out of the total claimed input taxes of P39,330,500.85, only the sum of P28,745,502.40 was properly supported by valid invoices and/or official receipts (Exh. G; see also TSN, March 3, 1999, p. 12).

The sole legal issue involved in this case is whether or not Petitioner is entitled to the refund of the alleged unutilized input value-added taxes it paid for the period covering April 1, 1996 to December 31, 1996 in the amount of P39,330,500.85.

After taking into consideration the aforementioned reports together with the pleadings and records of the case, the Court finds Petitioner entitled to refund/credit sought pursuant to the provision of Section 106(b) of the 1996 Tax Code, to wit:

> **SEC. 106.** ***Refunds or tax credits of creditable input tax.*** —
> (a) xxx;
>
> (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 (Emphasis supplied)

The legal basis of Petitioner's claim for refund which is also the legal issue in this case is founded on the provisions of the aforementioned Section 106(b) [now Section 112(B) of the Tax Reform Act of 1997), which states that a VAT-registered taxpayer may apply for tax credit or a claim for refund of input taxes paid on purchases of capital goods imported or locally purchased, to the extent that such input taxes have not been applied.

In fact, the legal issue in this case has already been settled in two previous cases decided by this Court to wit:

1. *Hopewell Power (Philippines) Corp. vs. Commissioner of Internal Revenue, CTA Case No 5310, dated November 18, 1998*[1];
2. *Hopewell Power (Philippines) Corp. vs. Commissioner of Internal Revenue, CTA Case No. 5389, dated January 4, 1999*[2].

This Court's own study shows that the input taxes sought to be refunded/credited were not applied against any output tax liability of the Petitioner (Exhs. F and F-1).

As regards the argument raised by Respondent in his memorandum that the taxes which Petitioner seeks to refund were not creditable input taxes under Section 104(a)(1) and (2) of the Tax Code, as amended by Republic Act No. 7716, the same has no merit. The VAT invoices and official receipts presented by Petitioner overwhelmingly prove

[1] With Court of Appeals' Entry of Judgment, dated March 25, 1999.

[2] With Court of Appeals' decision, dated March 17, 2000, affirming Our decision, dated January 4, 2000.

that the purchases of goods and services were necessary in the construction of power plant facilities which were used by Petitioner in its business of power generation and sale. At this point, it is worth mentioning that the same argument was raised by Respondent in an appealed case entitled **Commissioner of Internal Revenue vs. Hopewell Power (Phils) Corporation, CA-G.R. SP. No. 51617, dated March 17, 2000,** involving the same issue and parties wherein the Court of Appeals answered the said argument in this wise:

> "From the evidence on record, the goods purchased on which input VAT was paid were necessary for Hopewell's business of power establishment and generation. They are within the scope and meaning of Revenue Regulations No. 7-95 – the Consolidated Value Added Tax Regulations – under the term "goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under section 29(f), used directly or indirectly in the production or sale of taxable goods and services".xxx.

The above pronouncement is in all fours with the case at bar hence, We need not depart from such a conclusion. Likewise, We find that Petitioner need not present proof that its sales were effectively zero-rated as required under Section 3 of Revenue Regulations No. 3-88 because Petitioner is not claiming a refund/credit of input taxes attributable to effectively zero-rated sales but on purchases of capital goods and services.

Having settled the legal issue in favor of Petitioner, what is now left for the Court to determine is the correct amount of input taxes that may be granted on the basis of the evidence presented.

The records show that both the revenue examiner and the independent auditor find Petitioner to be entitled to a refund. However, in the recommendation made by the revenue examiner only those input taxes that pertain to purchases of computers were considered as capital assets. She did not consider the payments for progress work, engineering services and purchases of construction supplies in her final recommendation. As discussed earlier, the Court finds that these should have been considered as necessary in the construction of power plant facilities. In determining what constitutes capital goods, courts should look to the origin and character of the expenditure so as to ascertain whether or not these goods shall be considered as capital asset.

A scrutiny of the invoices and/or official receipts supporting Petitioner's claim for refund, together with the findings of the commissioned independent auditor, reveals that the amount of P875.45 should be disallowed for being expended on xerox and office supplies which cannot be capitalized and not necessary in the construction of power plant facilities (Exhs. G-3-B-11 and G-3-B-20). Below is the recomputation of Petitioner's entitlement to the refund of input taxes on capital goods:

Total amount of the claim for refund		P39,330,500.85
Less: Disallowances		
a. Per independent auditor	P10,584,998.45	
b. Per CTA's examination	875.45	10,585,873.90
Amount refundable		P28,744,626.95

WHEREFORE, in view of the foregoing, Petitioner's claim for refund is hereby partially **GRANTED**. Respondent is **ORDERED** to **ISSUE A TAX CREDIT** CERTIFICATE in the amount of P28,744,626.95 representing input taxes paid on capital goods for the period April 1, 1996 to December 31, 1996.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge