

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

SPECIAL FIRST DIVISION

**TEAM SUAL CORPORATION (Formerly:
MIRANT SUAL CORPORATION,**
Petitioner,

C.T.A. CASE NO. 7470

Members:

- versus -

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

**COMMISSIONER OF INTERNAL
REVENUE,**
Respondent.

Promulgated:

MAR 04 2010 ; 2:02 pm

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DECISION

BAUTISTA, J.:

This is a Petition for Review filed by petitioner on April 24, 2006, to seek the refund or issuance of tax credit certificate in the total amount of P103,302,627.88, 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 (NPC) for the four quarters of taxable year 2004.

Petitioner Team Sual Corporation is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office at Barangay Pangascasan, Sual, Pangasinan.¹ It is principally engaged in the business of power generation and subsequent sale thereof to NPC under a Build-Operate-Transfer (BOT) Scheme.² It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, as evidenced by BIR Certificate of Registration bearing RDO Control No. 05-0181, with Taxpayer Identification No. 003-841-103.³

Petitioner was originally registered with the Securities and Exchange Commission (SEC) under the name "Pangasinan Electric Corporation". Over the years, petitioner changed its name to "Southern Energy Pangasinan, Inc." on August 17, 1999; "Mirant Sual Corporation" on June 28, 2001; and Team Sual Corporation on July 23, 2007.⁴

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 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 Revenue District Office No. 5-Alaminos, Pangasinan an Application for VAT Zero-Rate of its supply of electricity to the National Power Corporation for the period covering January 1, 2004 to December 31, 2004, which was subsequently approved.⁵

¹ Annex "A", Petition for Review, *rollo*, p. 13

² Par. 1, Jointly Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), *rollo*, p. 383

³ Annex "A", Petition for Review, *rollo*, p. 13

⁴ Par. 3, Jointly Stipulated Facts, JSFI, *rollo*, p. 383; Petitioner's "Certificate of Filing of Amended Articles of Incorporation", *rollo*, p. 894

⁵ Exhibits "A" and "A-1"



On April 26, 2004⁶, July 26, 2004⁷, October 25, 2004⁸, and January 25, 2005,⁹ petitioner filed its Quarterly VAT Returns for the four quarters of 2004 with the BIR, through the Electronic Filing and Payment System (EFPS), pursuant to Revenue Regulations No. 9-2001, as amended. On July 26, 2004¹⁰ and on August 3, 2005¹¹, petitioner filed its amended Quarterly VAT Returns for the first and fourth quarters of taxable year 2004, respectively, through the EFPS.

In the said Returns, petitioner declared zero-rated sales amounting to P14,915,836,460.42, taxable sales amounting to P1,712,409.36, output VAT of P171,240.93, and excess input VAT of P103,131,386.94; detailed as follows:

Exh.	Zero-Rated Sales/Receipts	Taxable Sales	Output VAT	Input VAT	Excess Input VAT
D	P 3,698,654,169.48	P 0.00	P 0.00	P 13,134,435.00	P 13,134,435.00
E	3,653,185,715.68	202,558.14	20,255.81	31,973,996.35	31,953,740.54
F	3,744,693,428.11	465,744.07	46,574.41	19,967,007.14	19,920,432.73
H	3,819,303,147.15	1,044,107.15	104,410.71	38,227,189.38	38,122,778.67
	P 14,915,836,460.42	P1,712,409.36	P171,240.93	P103,302,627.87	P103,131,386.94

Pursuant to the procedure prescribed in Revenue Regulations No. 7-95, petitioner filed an administrative claim for refund of the unutilized input VAT with the BIR Revenue District Office No. 5 at Alaminos City on December 21, 2005, in the total amount of P103,302,627.88, incurred during the four quarters of taxable year 2004.¹²

Due to respondent's inaction on the said administrative claim for refund, petitioner filed this instant Petition for Review on April 24, 2006, praying for the refund or issuance of tax credit certificate in the amount of P103,302,627.88, for its alleged unutilized input VAT for taxable year 2004.

⁶ Par. 5, Jointly Stipulated Facts, JSFI, *rollo*, p. 384

⁷ Par. 6, Jointly Stipulated Facts, JSFI, *rollo*, p. 384

⁸ Par. 7, Jointly Stipulated Facts, JSFI, *rollo*, p. 384

⁹ Par. 8, Jointly Stipulated Facts, JSFI, *rollo*, p. 384

¹⁰ Par. 5, Jointly Stipulated Facts, JSFI, *rollo*, p. 384

¹¹ Par. 8, Jointly Stipulated Facts, JSFI, *rollo*, p. 384

¹² Exhibits "B" to "B-3"

In his Answer¹³, respondent interposed the following defenses:

- "6. Petitioner's alleged claim for refund is subject to administrative investigation by the Bureau;
7. Petitioner must prove that it paid the alleged VAT input taxes for the periods stated;
8. Petitioner must prove that its sales of electricity is subject to VAT at zero percent (0%) rate;
9. Petitioner must prove that the alleged input VAT is directly attributable to such alleged zero-rated sales;
10. Petitioner must prove that its alleged unutilized input VAT has not been applied against any output tax liabilities;
11. Petitioner must prove that the alleged claim was filed within the two (2) year period prescribed in Section 112 of the NIRC of 1997;
12. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;
13. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation."

During trial, petitioner presented both testimonial and documentary evidence to support its claim. On April 21, 2008, petitioner filed its Formal Offer of Evidence, offering Exhibits "A" to "HH-1" and "JJ-1" to "UU-1", inclusive of submarkings. On the other hand, during the September 9, 2008 hearing and upon motion of petitioner's counsel, respondent was considered to have waived his right to present evidence, for failure to appear during the scheduled hearings for presentation of its evidence.¹⁴

On March 10, 2009, a Resolution¹⁵ was issued by this Court upon motion of petitioner, changing the caption of this case from "Mirant Sual Corporation (formerly Southern Energy Pangasinan, Inc.) vs. Commissioner of Internal Revenue" to "Team Sual Corporation (Formerly: Mirant Sual Corporation) vs. Commissioner of Internal

¹³ *Rollo*, pp. 349-352

¹⁴ Resolution dated October 9, 2008, *rollo*, p. 828

¹⁵ *Rollo*, pp. 907-908



Revenue". Likewise, in said Resolution, this case was submitted for decision, taking into consideration respondent's Memorandum filed on February 9, 2009 and petitioner's Memorandum filed on January 27, 2009.

The following are parties' jointly stipulated issues¹⁶ submitted for this Court's resolution:

- "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 National Internal Revenue Code of 1997 ('Tax Code');
2. Whether or not Petitioner had unutilized creditable input VAT for the four quarters of CY 2004 arising from its domestic purchases of goods and services and importations of goods amounting to P103,302,627.88 that can be a proper object of a claim for refund pursuant to Section 108 (B)(3) and Section 112 (A) of the Tax Code;
3. Whether or not the alleged unutilized creditable input taxes for the first, second, third and fourth quarters of CY 2004 are substantiated by proper invoices and official receipts;
4. Whether or not the alleged unutilized creditable input VAT for the four quarters of CY 2004 was carried over to the succeeding taxable quarter(s) and applied against any of the output VAT liability of the Petitioner; and,
5. Whether or not Petitioner is entitled to a refund and/or issuance of tax credit certificate for the unutilized input VAT payments for the four quarters of CY 2004 in the amount of P103,302,627.88.
6. Whether or not petitioner paid the alleged VAT input taxes for the period stated.
7. Whether or not petitioner's alleged input VAT is directly attributable to such alleged zero-rated sales.
8. Whether or not petitioner's claim was filed within the two (2) year period prescribed in Section 112 of the NIRC of 1997."



¹⁶ Stipulation of the Issues, JSFI, *rollo*, pp. 384-385

The issues boil down into one major issue, *viz.*, "whether or not petitioner is entitled to a refund or issuance of tax credit certificate for its alleged unutilized input VAT payments amounting to P103,302,627.88, arising from its domestic purchases of goods and services and importations of goods attributable to its effectively zero-rated sales to NPC for the four quarters of taxable year 2004."

Section 112(A) of the National Internal Revenue Code (NIRC) of 1997 lays down the requisites for refunds or issuance of tax credit certificate of input tax due or paid attributable to zero-rated or effectively zero-rated sales, which reads as follows:

"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."

From the foregoing, 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.



Petitioner posits that its sale of electricity to NPC is effectively zero-rated for VAT purposes, pursuant to Section 108(B)(3) of the NIRC of 1997, in relation to Section 13 of Republic Act No. 6395, as amended, otherwise known as the NPC Charter, which are all quoted hereunder for easy reference:

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

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(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:

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(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, impost as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds in any court or administrative proceedings."

The Court agrees with petitioner.

This Court, in a number of cases¹⁷ involving the same parties and issues, although involving different taxable periods, consistently held that NPC is an entity with a special charter which categorically exempts it from payment of all taxes, direct or

¹⁷ Team Sual Corporation (Formerly: Mirant Sual Corporation), vs. Commissioner of Internal Revenue, C.T.A. Case Nos. 6630 and 6733, June 9, 2009; Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue, C.T.A. Case No. 6133, March 18, 2003



indirect, including VAT. By virtue of the said charter, services rendered by a VAT-registered entity, like herein petitioner, to NPC are 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.**¹⁸, 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...

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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 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...

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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."

¹⁸ 197 SCRA 771



It is undisputed that herein petitioner is principally engaged in the business of power generation and the subsequent sale thereof to NPC under a Build-Operate-Transfer Scheme.¹⁹ In addition, respondent himself approved petitioner's Application for VAT Zero-Rate of its supply of electricity to NPC for the period covering January 1, 2004 to December 31, 2004.²⁰ Consequently, such sale by petitioner of electricity to NPC is a VAT zero-rated transaction, pursuant to Section 108(B)(3) of the NIRC of 1997, as amended, in relation to Section 13 of Republic Act No. 6395, as amended by Presidential Decree Nos. 380 and 938.

Petitioner's Quarterly VAT Returns for the four quarters of 2004, showed zero-rated sales/receipts amounting to P14,915,836,460.42, broken down as follows:

Quarter	Exhibit	Zero-rated sales
1st	D	P 3,698,654,169.48
2nd	E	3,653,185,715.68
3rd	F	3,744,693,428.11
4th	H	3,819,303,147.15
Total		P 14,915,836,460.42

A scrutiny of petitioner's Schedule of Gross Receipts/Summary of Zero-Rated Sales²¹ and supporting VAT invoices and official receipts²² shows that out of the P14,915,836,460.42, treated by petitioner as zero-rated sales/receipts, the amount of P568,628,238.98 pertained to petitioner's sales of electricity to Mirant Philippines Energy Corporation, Mirant Philippines Industrial Power Corporation, and Mirant Philippines Industrial Power II Corporation, detailed as follows:

Per Summary Annexed to Exhibit S	Customer	Exhibit No. (OR/Invoice)	Gross Receipts
C-1	Mirant Philippines Industrial Power Corp.	QQ-3, QQ-3a	P 1,027,856.01
C-1	Mirant Philippines Industrial Power Corp.	QQ-4	1,176,276.63

¹⁹ Par. 1, Jointly Stipulated Facts, JSFI, *rollo*, p. 383

²⁰ Exhibits "A" and "A-1"; par. 4, Jointly Stipulated Facts, JSFI, *rollo*, p. 383

²¹ Exhibits "MM-1", "NN-1", "OO-1", "PP-1", and "S", Annexes "C-1", "C-2", "C-3", and "C-4"

²² Exhibits "QQ-1" to "QQ-21d", "RR-1" to "RR-17", "SS-1" to "SS-19", and "TT-1" to "TT-18"

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C-1	Mirant Philippines Industrial Power Corp.	QQ-4	1,196,276.63
C-1	Mirant Philippines Industrial Power II Corp.	QQ-5, QQ-5a	11,353,585.65
C-1	Mirant Philippines Industrial Power II Corp.	QQ-6, QQ-6a	11,436,611.20
C-1	Mirant Philippines Energy Corp.	QQ-10a	26,047,498.86
C-1	Mirant Philippines Industrial Power Corp.	QQ-11, QQ-11a	1,018,451.28
C-1	Mirant Philippines Industrial Power Corp.	QQ-12a	796,716.36
C-1	Mirant Philippines Industrial Power II Corp.	QQ-13, QQ-13a	11,430,506.38
C-1	Mirant Philippines Industrial Power II Corp.	QQ-19a	11,398,964.81
C-1	Mirant Philippines Energy Corporation	QQ-20a	29,440,993.39
C-2	Mirant Philippines Industrial Power II Corp.	RR-3, RR-3a	7,384,842.71
C-2	Mirant Philippines Industrial Power II Corp.	RR-4a	7,388,916.68
C-2	Mirant Philippines Industrial Power Corp.	RR-5, RR-5a	162,290.56
C-2	Mirant Philippines Industrial Power Corp.	RR-9, RR-9a	545,810.99
C-2	Mirant Philippines Energy Corporation	RR-10, RR-10a	29,165,037.43
C-2	Mirant Philippines Energy Corporation	RR-14, RR-14a	28,433,612.25
C-2	Mirant Philippines Industrial Power Corp.	RR-15, RR-15a	1,081,058.48
C-2	Mirant Philippines Industrial Power II Corp.	RR-16, RR-16a	11,474,476.93
C-3	Mirant Philippines Energy Corporation	SS-1, SS-1a	22,857,026.47
C-3	Mirant Philippines Energy Corporation	SS-2, SS-2a	15,119,128.64
C-3	Mirant Philippines Energy Corporation	SS-3, SS-3a	43,304,447.70
C-3	Mirant Philippines Industrial Power Corp.	SS-4, SS-4a	899,446.76
C-3	Mirant Philippines Industrial Power II Corp.	SS-5, SS-5a	11,490,756.46
C-3	Mirant Philippines Energy Corporation	SS-11, SS-11a	43,617,836.78
C-3	Mirant Philippines Industrial Power Corp.	SS-12, SS-12a	1,064,537.16
C-3	Mirant Philippines Industrial Power II Corp.	SS-13, SS-13a	11,521,687.60
C-3	Mirant Philippines Energy Corporation	SS-15, SS-15a	45,377,259.93
C-3	Mirant Philippines Industrial Power Corp.	SS-16, SS-16a	1,205,781.25
C-3	Mirant Philippines Industrial Power II Corp.	SS-17, SS-17a	11,511,919.88
C-4	Mirant Philippines Industrial Power Corp.	TT-3, TT-3a	1,290,801.92
C-4	Mirant Philippines Industrial Power II Corp.	TT-4, TT-4a	11,493,808.88
C-4	Mirant Philippines Industrial Power Corp.	TT-8, TT-8a	1,009,778.21
C-4	Mirant Philippines Industrial Power II Corp.	TT-9, TT-9a	11,582,735.88
C-4	Mirant Philippines Energy Corporation	TT-13, TT-13a	43,522,109.56
C-4	Mirant Philippines Energy Corporation	TT-14, TT-14a	43,126,679.34
C-4	Mirant Philippines Energy Corporation	TT-15, TT-15a	44,911,797.61
C-4	Mirant Philippines Industrial Power Corp.	TT-16, TT-16a	1,363,603.71
C-4	Mirant Philippines Industrial Power II Corp.	TT-17, TT-17a	11,573,578.64
TOTAL			P568,628,238.98

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However, a reading of petitioner's letter-claim for refund dated December 19, 2005, which was filed before the BIR on December 21, 2005, discloses that it included zero-rated sales to NPC alone, and did not cover zero-rated sales to Mirant Philippines Energy Corporation, Mirant Philippines Industrial Power Corporation, and Mirant Philippines Industrial Power II Corporation. It must be noted that the parties in this case did not submit the issue of whether or not sales to entities, other than NPC, is considered zero-rated. Necessarily, the appeal to this Court will be limited to claim for refund related to zero-rated transactions to NPC only.

The long settled rule in this jurisdiction is that a party is not allowed to change his theory of the case or his cause of action on appeal. The Court had previously held that "courts of justice have no jurisdiction or power to decide question not in issue" and that a judgment going outside the issues and purporting to adjudicate something upon which the parties were not heard is not merely irregular, but extrajudicial and invalid.²³

Even if this court will consider the sales to Mirant Philippines Energy Corporation, Mirant Philippines Industrial Power Corporation, and Mirant Philippines Industrial Power II Corporation as part of the issues for adjudication, the same claim for refund in the amount of P568,628,238.98, as determined above, are not subject to zero percent (0%) VAT; considering that petitioner failed to substantiate and provide legal basis that said transactions are subject to zero percent. Settled is the rule that a claim for refund is in the nature of a claim for exemption; hence, it should be construed in *strictissimi juris* against the taxpayer.²⁴

A careful review of the remaining declared zero-rated sales/receipts of P14,347,208,221.44, pertaining to petitioner's alleged sales of electricity to NPC, reveals

²³ Graciano Bernas vs. The Honorable Court of Appeals, *et al.*, G.R. No. 85041, August 5, 1993

²⁴ Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., *et al.*, G.R. No. L-68252 May 26, 1995



that the portion representing the amount of P2,430,229,567.30 are not properly supported by VAT official receipts and should, therefore, be denied VAT zero-rating, to wit:

Per Summary Annexed to Exhibit S	Exhibit No. (OR/Invoice)	Gross Receipts
1.) Supporting ORs were dated outside the period of claim and pertained to sales transactions different from the subject claim		
C-2	RR-6, RR-6a to RR-6d	P 1,201,716,784.13
C-1	QQ-15, QQ-15a	4,623,969.67
C-1	QQ-15, QQ-15b	2,489,087.85
C-1	QQ-18, QQ-18a	4,623,969.67
C-1	QQ-18, QQ-18b	2,000,836.43
C-1	QQ-21, QQ-21a	586,981,927.69
C-1	QQ-21, QQ-21b	586,981,927.69
C-1	QQ-21, QQ-21c	18,438,045.70
C-1	QQ-21, QQ-21d	15,960,094.60
Subtotal		P 2,423,816,643.43
2.) Supported by cancelled official receipt		
C-1	QQ-17, QQ-17a	P 4,623,969.67
C-1	QQ-17, QQ-17b	1,788,954.20
Subtotal		P 6,412,923.87
Total		P 2,430,229,567.30

Thus, petitioner's total valid zero-rated sales/receipts amounted only to P11,916,978,654.14, computed as follows:

Declared Zero-Rated Sales/Receipts		P14,915,836,460.42
Less: Disallowed Zero-Rated Sales/Receipts		
Sales to entities other than NPC	P 568,628,238.98	
Sales to NPC without proper VAT ORs	2,430,229,567.30	2,998,857,806.28
Valid Zero-Rated Sales/Receipts		P11,916,978,654.14

The Court will now determine the amount of input taxes attributable to petitioner's effectively zero-rated sales of electricity to NPC for taxable year 2004 in the amount of P11,916,978,654.14.

In its VAT Returns for the four quarters of taxable year 2004, petitioner reported input taxes amounting to P103,302,627.87, broken down as follows:



Quarter	Exhibit	Input VAT
1st	D	P 13,134,435.00
2nd	E	31,973,996.35
3rd	F	19,967,007.14
4th	H	38,227,189.38
Total		P 103,302,627.87

This Court notes that there is a discrepancy of P0.01 in petitioner's input VAT Returns for the four quarters of taxable year 2004 vis-à-vis the input VAT claimed by petitioner.

In support of the alleged input VAT of P103,302,627.87, petitioner presented various suppliers' invoices and official receipts, Bureau of Customs (BOC) Import Entry and Internal Revenue Declarations (IEIRDs), and BOC official receipts.²⁵ Upon examination of these documents, the Court-commissioned Independent Certified Public Accountant (CPA)²⁶ in his Report²⁷ dated October 26, 2007, noted that out of the total claim of P103,302,627.88, only the amount of P102,210,310.26 was ascertained to be properly substantiated. The Independent CPA's findings on the remaining claim of P1,092,317.62 are as follows:

	Finding/Observation	Amount
1.	Unreconciled difference between the input VAT claim per schedule and the input VAT per Quarterly VAT Returns	P 441.76
2.	Input VAT on domestic purchases of services supported by documents other than ORs	8,329.37
3.	Input VAT on domestic purchases of goods supported by documents other than invoices	70,399.42
4.	Input VAT on domestic purchases of services supported by ORs with no BIR authority to print	994.23
5.	Input VAT on domestic purchases of goods supported by invoices with no BIR authority to print	25,642.16
6.	Input VAT on domestic purchases of services supported by ORs with preprinted "TIN" and "Non VAT/NV"	128,643.32
7.	Input VAT on domestic purchases of goods supported by invoices with preprinted "TIN" and "Non VAT/NV"	5,454.54
8.	Input VAT on domestic purchases of services supported by ORs with preprinted "TIN" only	81,609.16
9.	Input VAT on domestic purchases of goods supported by	27,783.68

²⁵ Exhibits "BB-1" to "BB-1168", "CC-1" to "CC-1575", "DD-1" to "DD-1965", and "EE-1" to "EE-2470"

²⁶ Mr. Emmanuel Y. Mendoza, Partner of Mendoza Querido & Co.

²⁷ Exhibit "S", pages 4-9

	invoices with preprinted "TIN" only	
10.	Input VAT on domestic purchases of goods supported by invoices with no "TIN"	2,090.91
11.	Input VAT on domestic purchases of services supported by ORs with stamped "TIN VAT"	79,788.40
12.	Input VAT on domestic purchases of services supported by photocopied ORs	10.00
13.	Input VAT on domestic purchases of services supported by ORs dated before the taxable year of claim	296,113.72
14.	Input VAT on domestic purchases of goods supported by invoices dated before the taxable year of claim	139,587.92
15.	Input VAT on domestic purchases of services supported by ORs dated after the taxable year of claim	41,489.29
16.	Input VAT on domestic purchases of services supported by ORs with zero-rated "TIN"	7,794.03
17.	Input VAT on domestic purchases of services supported by ORs of which the amount in the supporting document is in excess as compared to the schedule	14,368.14
18.	Input VAT on domestic purchases of goods supported by invoices of which the amount in the supporting document is in excess as compared to the schedule	2,947.27
19.	Input VAT on domestic purchases of services and goods with no available supporting documents	143,218.30
20.	Input VAT on importation of goods with no available supporting documents	15,612.00
	Total	P 1,092,317.62

Further examination of the records proves that the claimed input VAT in the amount of P4,398,315.03 must 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:

1. Input VAT claim on domestic purchases of services wherein amount does not tally with OR				
Annex	Exhibit	Input VAT		Difference
		Per Claim	Per Supporting Documents	
A-18	CC-59 & 59a	291,980.95	255,483.33	P 36,497.62
A-18	CC-60 & 60a	440,940.95	385,823.33	55,117.62
A-18	CC-122	28,103.41	24,271.13	3,832.28
A-18	CC-182	27,300.24	23,391.34	3,908.90
A-18	CC-312	160,350.47	140,306.66	20,043.81
A-34	DD-5	126,724.14	114,051.67	12,672.47
A-34	DD-6	60,526.31	54,473.68	6,052.63
A-34	DD-46	234,350.83	205,056.98	29,293.85
A-34	DD-218 & 218a	135,202.45	121,682.20	13,520.25
A-34	DD-220 & 220a	97,092.84	87,383.56	9,709.28
A-34	DD-221 & 221a	51,341.09	46,206.97	5,134.12
A-34	DD-222 & 222a	27,454.55	24,709.09	2,745.46
A-34	DD-223 & 223a	56,181.82	50,563.64	5,618.18

A-34	DD-1852 & 1852a	37,090.91	32,454.55	4,636.36
A-34	DD-1853 & 1853a	42,777.96	37,430.71	5,347.25
A-34	DD-236 & 236a	58,722.98	51,382.61	7,340.37
A-34	DD-238 & 238a	40,850.78	35,744.43	5,106.35
A-34	DD-240 & 240a	150,637.23	131,807.58	18,829.65
A-34	DD-324 & 324a	142,533.75	124,717.03	17,816.72
A-34	DD-325 & 325a	181,890.91	159,154.55	22,736.36
A-34	DD-327 & 327a	137,527.28	120,336.36	17,190.92
A-34	DD-328 & 328a	102,036.36	89,281.82	12,754.54
A-34	DD-336 & 336a	60,941.50	53,323.83	7,617.67
A-34	DD-337 & 337a	53,807.92	47,421.27	6,386.65
A-34	DD-374 & 374b	29,508.68	11,770.61	17,738.07
A-50	EE-210 & 210a	68,257.89	58,506.76	9,751.13
A-50	EE-316 & 316a	120,262.85	105,229.99	15,032.86
A-50	EE-317 & 317a	39,600.00	35,640.00	3,960.00
A-50	EE-319 & 319a,b	44,452.72	38,896.13	5,556.59
A-50	EE-322 & 322a	6,039.44	5,284.51	754.93
A-50	EE-422 & 422a,b	143,181.82	122,727.27	20,454.55
Subtotal				P 403,157.45

2. Input VAT claim on domestic purchases of goods wherein amount does not tally with invoice

Input VAT				
Annex	Exhibit	Per Claim	Per Supporting Documents	Difference
A-19	CC-965	7,190.00	7,183.64	P 6.36
A-35	DD-878	2,628.50	1,818.50	810.00
A-35	DD-1215	64,800.00	32,400.00	32,400.00
A-35	DD-1640	1,527.28	763.64	763.64
A-51	EE-799	3,906.55	1,792.91	2,113.64
A-51	EE-837	1,431.82	572.73	859.09
Subtotal				P 36,952.74

3. Importation of goods supported by BOC IEIRD & OR's issued by BOC but amount does not tally

Input VAT				
Annex	Exhibit	Per Claim	Per Supporting Documents	Difference
A-29	CC-1519a	282,260.00	101,952.00	P 180,308.00
Subtotal				P 180,308.00

4. Input VAT on purchases supported by documents not in the name of the company

Annex	Exhibit	Input VAT		
A-35	DD-949			P 1,288.64
Subtotal				P 1,288.64

5. Input VAT on domestic purchases of goods/services supported by TIN-V invoices/OR's

Annex	Exhibit	Input VAT		
A-19	CC-952			P 11,363.64
A-19	CC-953			11,363.64
A-19	CC-954			11,363.64
A-19	CC-955			11,363.64

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A-19	CC-956			11,363.64
A-19	CC-957			11,363.64
A-19	CC-958			11,363.64
A-19	CC-959			11,363.64
A-19	CC-960			11,363.64
A-19	CC-961			11,363.64
A-19	CC-962			11,363.64
A-19	CC-963			11,363.64
A-34	DD-241 & 241b			73,000.00
A-35	DD-1705			2,730.00
A-35	DD-1706			1,750.00
A-35	DD-1707			2,084.50
A-35	DD-1708			1,554.00
A-35	DD-1709			4,700.00
A-50	EE-141			4,000.00
A-50	EE-142			4,727.27
A-50	EE-142			4,253.00
A-50	EE-211			1,560.00
A-50	EE-212			780.00
A-50	EE-375			11,770.61
A-50	EE-376			35,698.77
A-50	EE-377			20,596.14
A-50	EE-378			7,847.08
A-51	EE-2153			11,645.00
A-51	EE-2154			7,878.00
A-51	EE-2155			910.00
Subtotal			P	333,848.05

6. Input VAT on domestic purchases of goods/services dated outside the period of claim

Annex	Exhibit	Date	Input VAT
A-18	CC-1575	11/10/05	P 200,000.00
A-19	CC-1405	03/21/02	1,341.27
A-19	CC-1406	03/21/02	1,136.18
A-51	EE-1950	01/07/05	106.36
Subtotal			P 202,583.81

7. Input VAT on domestic purchases of services not supported by OR

Annex	Exhibit	Input VAT
A-18	CC-209	P 19.34
A-18	CC-210	36.22
A-18	CC-211	19.44
A-18	CC-212	19.54
A-18	CC-213	23.63
A-18	CC-214	19.37
A-18	CC-215	19.27
A-18	CC-216	203.85
A-18	CC-217	20.23
A-18	CC-217	21.29
A-18	CC-218	49.37
A-18	CC-219	100.75
A-18	CC-220	19.31

A-18	CC-221			151.28
A-18	CC-222			19.31
A-18	CC-223			23.36
A-18	CC-224			24.98
A-18	CC-225			50.72
A-18	CC-226			63.28
A-18	CC-227			20.08
A-18	CC-228			21.56
A-18	CC-229			24.87
A-18	CC-230			33.02
A-18	CC-231			383.55
A-18	CC-232			19.34
A-18	CC-233			134.51
A-18	CC-234			280.66
A-18	CC-235			61.10
A-18	CC-236			19.71
A-18	CC-237			297.72
A-18	CC-238			66.65
A-18	CC-239			19.58
A-18	CC-240			19.31
A-18	CC-241			22.22
A-18	CC-242			19.75
A-34	DD-241a			73,000.00
A-50	EE-2255			69,634.55
Subtotal			P	144,982.72
8. Input VAT on services rendered by non-resident supported by BIR Form 1600 but no proof of payment				
Annex	Exhibit			Input VAT
A-16	BB-1166 to 1168		P	1,793,642.33
A-32	CC-1572 to 1574			684,145.29
A-48	DD-1964 to 1965			23,423.10
A-64	EE-2467 to 2469			593,982.90
Subtotal			P	3,095,193.62
Total			P	4,398,315.03

To recapitulate, out of the total input VAT claim of P103,302,627.88, only the amount of P97,811,995.23 is duly substantiated by valid supporting documents, broken down as follows:

Total Input VAT Claim		P	103,302,627.88
Less: Disallowances			
Per ICPA	P	1,092,317.62	
Per this Court's further verification		4,398,315.03	5,490,632.65
Valid Input VAT		P	97,811,995.23



However, a portion of the valid input VAT of P97,811,995.23 shall be applied against petitioner's reported output VAT liability of P171,240.93, broken down as follows:

Quarter	Exhibit	Taxable Sales	Output VAT
1st	D	P -	P -
2nd	E	202,558.14	20,255.81
3rd	F	465,744.07	46,574.41
4th	H	1,044,107.15	104,410.71
Total		P 1,712,409.36	P 171,240.93

Consequently, only the remaining input VAT of P97,640,754.30 can be attributed to the entire zero-rated sales/receipts declared by petitioner in the amount of P14,915,836,460.42; and only the input VAT of P78,009,891.56 is attributable to the valid zero-rated sales/receipts of P11,916,978,654.14, as computed below:

Valid Input VAT	P 97,811,995.23
Less: Output VAT	171,240.93
Valid Excess Input VAT	P 97,640,754.30
Valid Zero-Rated Sales/Receipts	P 11,916,978,654.14
Divided by Total Reported Zero-Rated Sales/Receipts	÷ P 14,915,836,460.42
Multiplied by Valid Excess Input VAT	× P 97,640,754.30
Excess Input VAT attributable to the Valid Zero-Rated Sales/Receipts	P 78,009,891.56

Although petitioner carried over the claimed unutilized input VAT for taxable year 2004 to the succeeding taxable quarters until the fourth quarter of taxable year 2005²⁸, petitioner deducted the amount of P206,891,158.45²⁹, of which the valid input VAT of P78,009,891.56 forms part, as "VAT Refund/TCC Claimed". Therefore, petitioner could not have possibly utilized the input VAT of P78,009,891.56 in the succeeding quarters.

²⁸ Exhibit "O"

²⁹ Exhibit "O", line 23D

Finally, it has been held in the case of **Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue**³⁰ that the reckoning of the two-year prescriptive period for the filing of a claim for refund/credit of input VAT on zero-rated sales is counted from the date of filing of the corresponding Quarterly VAT Return and payment of the tax due. The present claim pertains to input VAT on zero-rated sales incurred for the first to fourth quarters of taxable year 2004.

Records indicate that petitioner originally filed on April 26, 2004³¹, July 26, 2004³², October 25, 2004³³, and January 25, 2005³⁴ its Quarterly VAT Returns for the first, second, third, and fourth quarters of 2004, respectively. It filed the administrative and judicial claims for refund on December 21, 2005 and April 24, 2006, respectively. Applying the afore-mentioned jurisprudence, both the administrative and the judicial claims of petitioner were filed well within the two-year prescriptive period.

In sum, the Court finds petitioner entitled to a refund or issuance of tax credit certificate in the reduced amount of P78,009,891.56, representing unutilized excess input VAT incurred in relation to its effectively zero-rated sales to NPC for the four quarters of taxable year 2004.

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the amount of **SEVENTY EIGHT MILLION NINE THOUSAND EIGHT HUNDRED NINETY ONE PESOS AND 56/100**

³⁰ G.R. Nos. 141104 and 148763, June 8, 2007

³¹ Exhibit "C-1"

³² Exhibit "E-1"

³³ Exhibit "F-1"

³⁴ Exhibit "G-1"

(P78,009,891.56) to petitioner, 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:



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