

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

MIRANT (NAVOTAS II)
CORPORATION (formerly:
Southern Energy Navotas II
Power, Inc.),

Petitioner,

- versus -

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

C.T.A. CASE NO. 7619

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, JJ.

Promulgated:

JUN 04 2010

✓ 4:08 p.m.

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DECISION

CASTAÑEDA, JR., J.:

This is a Petition for Review filed on April 18, 2007 by petitioner, pursuant to Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals, in relation to Rule 4 thereof, to review by appeal the inaction of respondent Commissioner of Internal Revenue over petitioner's administrative claim for tax refund or issuance of tax credit certificate in the amount of P1,471,810.90, representing unutilized input value-added tax (VAT) incurred from its domestic purchases of goods and services attributable to its zero- 

rated sales of electricity to the National Power Corporation (NPC), for the period covering January 1, 2005 to October 31, 2005.

Mirant (Navotas II) Corporation (Petitioner) is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office located at 5F, CTC Building, 2232 Roxas Boulevard, Pasay City.¹

It is principally engaged in the business of power generation. The primary purpose of its formation is "to design, construct, erect, assemble, commission, operate, maintain, rehabilitate, and manage gas-turbine and other power generating plants and related facilities for the conversion into electricity of coal, distillate, and other fuel provided by and under contract with the Government of the Republic of the Philippines, or any subdivision, instrumentality or agency thereof, or any government-owned or controlled corporations or other entity engaged in the development, supply or distribution of energy."²

It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, with Taxpayer's Identification Number (TIN) 001-726-862-000.³

Petitioner was originally registered with the Securities and Exchange Commission (SEC) under the name "Hopewell Tileman (Philippines) Corporation". On March 23, 1999, petitioner's name was changed to "Southern Energy Navotas II Power, Inc. On April 26, 2001, the SEC 

¹ Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 168; Exhibits "A" and "B", docket, pp. 398-425

² Exhibit "B-2", docket, p. 415; Exhibit "II" Judicial Affidavit of Ms. Taryn F. Uberita, docket, p. 1184

³ Exhibit "C", docket p. 426

approved the application of petitioner to further change its corporate name to Mirant (Navotas II) Corporation.⁴

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, with the authority to act as such, including the power to decide, approve, and grant claims for issuance of tax credit certificate or refund 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 17, 2004, petitioner filed with the BIR an Application for VAT Zero-Rate of its supply of electricity to the NPC, which was subsequently approved to cover the period from January 1, 2005 to October 31, 2005.⁵

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

Exhibit	Year 2005	Date Filed
"F" and "I"	1st Qtr	April 25, 2005
"J" and "M"	2nd Qtr	July 26, 2005
"N" and "Q"	3rd Qtr	October 25, 2005
"R" and "T"	4th Qtr (Original VAT Return)	January 26, 2006
"U"	4th Qtr (Amended VAT Return)	February 16, 2006
"W"	4th Qtr (Second Amended VAT Return)	February 22, 2006
"Y"	4th Qtr (Third Amended VAT Return)	April 25, 2006

On December 20, 2006, petitioner filed an administrative claim with the BIR Revenue District Office No. 51, Pasay City for the refund or issuance of tax credit certificate in the amount of P1,471,810.90, representing its unutilized input VAT for the period covering January to October 2005.⁶ *gc*

⁴ Exhibits "A" and "B", docket, pp. 398-425

⁵ Exhibit "AA", docket, p. 509

⁶ Exhibit "Z", docket, pp. 468-471

Due to respondent's inaction and in order to suspend the running of the two-year prescriptive period on the said administrative claim for refund, petitioner filed this instant Petition for Review on April 18, 2007.

On June 26, 2007, respondent filed his Answer⁷ interposing 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 periods 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."

On April 24, 2008, the Court appointed Atty. Raymund S. Gallardo as Independent Certified Public Accountant (CPA), upon Motion⁸ of petitioner.

During trial, petitioner presented as witnesses Atty. Raymund S. Gallardo⁹ and Ms. Taryn F. Uberita¹⁰ to support its claim. Thereafter, on *je*

⁷ Docket, p. 104

⁸ Docket, pp. 188-189 and Minutes, docket, p. 197

⁹ Hearing, Atty. Raymund S. Gallardo, TSN dated July 9, 2008

September 19, 2008, it filed its Formal Offer of Evidence¹¹, offering Exhibits "A" to "D", and "F" to "II", inclusive of submarkings. On December 19, 2008, it also filed its Supplementary Formal Offer of Evidence¹², offering Exhibits "BB-1-13", "BB-1-49", "BB-1-54", "BB-1-140", "BB-1-142", "BB-1-144", "BB-1-148", "BB-1-154" to "BB-1-186", "BB-1-195", "BB-1-197", "BB-1-203", "BB-1-204", "BB-2-23", "BB-3-78", and "BB-3-105". This Court, in Resolutions dated November 11, 2008 and December 12, 2008, admitted in evidence all of petitioner's formally offered exhibits.

On the other hand, during the April 27, 2009 hearing and upon motion of petitioner's counsel, the right of respondent to present his evidence was considered waived and respondent was deemed to have rested his case, for failure of respondent's counsel to appear during the scheduled hearings for the presentation of his evidence.¹³

In a Resolution¹⁴ dated June 16, 2009, the case was submitted for decision, taking into consideration petitioner's Memorandum filed on May 27, 2009 and respondent's Memorandum filed on June 11, 2009.

The following are the parties' jointly stipulated issues¹⁵ submitted for this Court's resolution:

- "1. Whether petitioner paid the alleged VAT input taxes for the periods stated;
2. Whether petitioner's sale of electricity is subject to VAT at zero percent (0%) rate;
3. Whether petitioner's alleged input VAT is directly attributable to the alleged zero-rated sales; *jc*

¹⁰ Hearing, Taryn F. Uberita, TSN dated July 30, 2008

¹¹ Docket, pp. 377-395

¹² Docket, pp. 1213-1219

¹³ Resolution dated April 27, 2009, docket, p. 1276

¹⁴ Docket, p. 1335

¹⁵ Issues to be Tried or Resolved, JSFI, docket, pp. 173-174

4. Whether petitioner's alleged input VAT has not been applied against any output tax liability;
5. Whether the claim for refund was filed within the period prescribed in Section 112 of the NIRC of 1997;
6. Whether petitioner is entitled to a refund or issuance of Tax Credit Certificate for its alleged unapplied or unutilized creditable input VAT for taxable year 2005 in the amount of P1,424,854.19¹⁶.

The above-enumerated issues can be summarized as follows:

"Whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P1,471,810.90, representing unutilized input VAT arising from its domestic purchases of goods and services, and services rendered by non-residents attributable to its effectively zero-rated sales to the NPC for the period covering January 1, 2005 to October 31, 2005".

Section 112(A) of the NIRC of 1997 lays down the requisites for refunds or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales, 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 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

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¹⁶ Should be P1,471,810.90

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 or tax credit of input taxes attributable to zero-rated or effectively zero-rated sales:

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.

The Court will first resolve petitioner’s compliance with the fifth requirement pertaining to prescription.

Anent the fifth requisite, Section 112(A) of the NIRC of 1997 requires that the taxpayer’s application for refund or tax credit of unutilized or excess creditable input VAT, which are attributable to its zero-rated or effectively zero-rated sales, must be made within two years after the close of the taxable quarter when such sales were made.

In the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*¹⁷, the Supreme Court aptly stated that:

“The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Sec. 112(A) of the NIRC pertinently reads: *jc*

¹⁷ G.R. No. 172129, September 12, 2008

(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: xxx (Emphasis ours.)

The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years **reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.** As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112(A), '[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued.' Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid. Be that as it may, and given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years after September 30, 1996 or, to be precise, on September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed."

Based on the above-quoted provision of law and applicable jurisprudence, the reckoning of the two-year prescriptive period for the filing of a claim for refund or tax credit of input VAT on zero-rated sales is reckoned not from the date of filing of the corresponding Quarterly VAT Return and payment of the tax but **from the close of the taxable quarter** when the pertinent sale or transaction was made. *gc*

The present claim pertains to input VAT on zero-rated sales incurred for the period from January 1, 2005 to October 31, 2005. Petitioner had until the following dates to file its claim for refund or issuance of tax credit certificate:

Year 2005	Close of Taxable Quarter	Last Day for Filing Administrative and Judicial Claims
1st Qtr	March 31, 2005	March 31, 2007
2nd Qtr	June 30, 2005	June 30, 2007
3rd Qtr	September 30, 2005	September 30, 2007
4th Qtr	December 31, 2005	December 31, 2007

Records reveal that petitioner filed its administrative claim¹⁸ on December 20, 2006 and its Petition for Review on April 18, 2007. Since March 31, 2007 fell on a Saturday, petitioner had until April 2, 2007, to file administrative and judicial claims for refund covering the first quarter of 2005. Petitioner made its judicial claim for refund only on April 18, 2007. Clearly, petitioner's claim for the first quarter of 2005 was filed beyond the two-year prescriptive period; hence, the claimed excess and unutilized creditable input taxes pertaining to the first quarter of 2005 shall be disallowed.

The Court will now proceed to determine petitioner's compliance with the other requisites.

Anent the first requisite, petitioner submitted to this Court VAT invoices¹⁹ and official receipts²⁰ it issued to NPC, together with its Quarterly VAT Returns²¹ for all the quarters of taxable year 2005, including the amendments thereto. *je*

¹⁸ Exhibit "Z", docket, pp. 468-471

¹⁹ Exhibits "BB-6-a" to "BB-6-i"

²⁰ Exhibit "BB-7-a" to "BB-7-g"

²¹ Exhibits "F"/"I" "J"/"M", "N"/"Q", "R"/"T", "U", "W", and "Y"

In its Original Quarterly VAT Returns for the four quarters of 2005, petitioner declared, among others, zero-rated sales in the amount of P183,735,263.00, taxable sales in the amount of P305,454.55, with the corresponding output VAT of P30,545.45 and input VAT in the total amount of P1,489,845.14, broken down as follows:

Exhibit	Year 2005	Zero-Rated Sales	VAT Sales	Output VAT	Total Sales	Input Tax Carried Over from Previous Quarter	Input VAT	Total Available Input Tax
"F"/"I"	1st Qtr	P 79,067,635.50			P 79,067,635.50	P5,194,238.40	P 311,469.06	P5,505,707.46
"J"/"M"	2nd Qtr	104,667,627.50			104,667,627.50	5,505,707.46	803,646.33	6,309,353.79
"N"/"Q"	3rd Qtr		P305,454.55	P30,545.45	305,454.55	6,309,353.79	309,738.80	6,619,092.59
"R"/"T"	4th Qtr				-	4,390,018.80	64,990.95	4,455,009.75
		P183,735,263.00	P305,454.55	P30,545.45	P184,040,717.55		P1,489,845.14	

On February 16, 2006, petitioner amended its Quarterly VAT Return for the fourth quarter of taxable year 2005,²² which was further amended on February 22, 2006²³, reflecting an amended input VAT of P46,956.71, arriving at a total input VAT of P1,471,810.90; which is the amount being claimed for refund in the instant case. The amount of P1,471,810.90 represents the input taxes paid by petitioner on its domestic purchases of goods and services during the period from January 1, 2005 to October 31, 2005, which are said to be attributable to petitioner's zero-rated sales of power generation services to the NPC.²⁴

Exhibit	Year 2005	Zero-Rated Sales	VAT Sales	Output VAT	Total Sales	Input Tax Carried Over from Previous Quarter	Input VAT	Total Available Input Tax
"F"/"I"	1st Qtr	P 79,067,635.50			P 79,067,635.50	P5,194,238.40	P 311,469.06	P5,505,707.46
"J"/"M"	2nd Qtr	104,667,627.50			104,667,627.50	5,505,707.46	803,646.33	6,309,353.79

²² Exhibit "U"

²³ Exhibit "W"

²⁴ Exhibit "Z", page 3

"N"/"Q"	3rd Qtr		P305,454.55	P30,545.45	305,454.55	6,309,353.79	309,738.80	6,619,092.59
"W"	4th Qtr				-	4,390,018.80	46,956.71	4,436,975.51
		P183,735,263.00	P305,454.55	P30,545.45	P184,040,717.55		P1,471,810.90	

The third and final amended Quarterly VAT Return for the fourth quarter of 2005 was filed on April 25, 2006, showing the following:

Exhibit	Year 2005	Zero-Rated Sales	VAT Sales	Output VAT	Total Sales	Input Tax Carried Over from Previous Quarter	Input VAT	Transitional Input Tax	Total Available Input Tax
"F"/"I"	1st Qtr	P 79,067,635.50			P 79,067,635.50	P5,194,238.40	P 311,469.06		P5,505,707.46
"J"/"M"	2nd Qtr	104,667,627.50			104,667,627.50	5,505,707.46	803,646.33		6,309,353.79
"N"/"Q"	3rd Qtr		P305,454.55	P30,545.45	305,454.55	6,309,353.79	309,738.80		6,619,092.59
"Y"	4th Qtr				-			P4,436,975.51	4,436,975.51
		P183,735,263.00	P305,454.55	P30,545.45	P184,040,717.55		P1,424,854.19	P4,436,975.51	

A careful evaluation of petitioner's evidence shows that in the final amended Quarterly VAT Return for the fourth quarter of 2005, petitioner commingled the input tax carried over from previous quarter in the amount of P4,390,018.80 with the current input tax of P46,956.71, which is solely attributable to the month of October 2005,²⁵ and reflected the same as Transitional Input Tax of P4,436,975.51. Nevertheless, in both Exhibits "W" and "Y", the Total Available Input Tax amounts to P4,436,975.51.

Ms. Taryn Uberita, petitioner's Tax Manager, explained in her Affidavit²⁶ that petitioner's Original VAT Return for the fourth quarter of 2005 was amended to comply with the provisions of Revenue Memorandum Circular (RMC) No. 61-2005, regarding the treatment of the unapplied excess input VAT as of October 31, 2005, arising from VAT zero-rated transactions. *je*

²⁵ Exhibit "BB-10"

²⁶ Exhibit "II", page 12

Furthermore, a cursory examination of petitioner's Quarterly VAT Returns for taxable year 2005 reveals that it had no record of zero-rated sales for the third and fourth quarters of 2005. It is clear from Section 112(A) of the NIRC of 1997 that in order to claim for a refund or tax credit of input VAT, there must be zero-rated or effectively zero-rated sales to which the input VAT sought to be refunded are attributable. Consequently, petitioner's claimed input VAT for the third and fourth quarters of 2005 in the respective amounts of P309,738.80 and P46,956.71, which are allegedly attributable to zero-rated sales, cannot be granted.

Likewise, since the first quarter of 2005 is barred by prescription, the zero-rated sales of P79,067,635.50 and the input VAT of P311,469.06 attributable thereto shall be disallowed. This Court is inclined therefore to consider only the reported zero-rated sales for the second quarter of 2005 in the amount of P104,667,627.50.

Petitioner alleged 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 (R.A.) No. 6395²⁷, 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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²⁷ An Act Revising the Charter of the National Power Corporation

(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 on this point.

This Court, in a number of cases²⁸ involving the same parties and issues, although involving different taxable periods, consistently held that sale of electricity of a VAT-registered entity like herein petitioner to NPC are effectively subject to zero percent (0%) VAT, pursuant to Section 108(B)(3) of the NIRC of 1997.

Moreover, NPC's tax-exempt status was confirmed by the High Court in the case of *Ernesto M. Maceda vs. Catalino Macaraig, Jr., et al.*²⁹, 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 

²⁸ *Mirant (Navotas II) Corporation (formerly Southern Energy Navotas II Power, Inc.) vs. Commissioner of Internal Revenue*, C.T.A. Case No. 7469, March 24, 2009; *Mirant Navotas Corporation (formerly Southern Energy Navotas, Inc.) vs. Commissioner of Internal Revenue*, C.T.A. Case Nos. 6637 and 6729, January 12, 2007; *Mirant (Navotas II) Corporation (formerly Southern Energy Navotas II Power, Inc.) vs. Commissioner of Internal Revenue*, C.T.A. Case No. 6959, September 26, 2007; and *Mirant (Navotas II) Corporation (formerly Southern Energy Navotas II Power, Inc.) vs. Commissioner of Internal Revenue*, C.T.A. Case No. 6418, April 11, 2006

²⁹ G.R. No. 88291, May 31, 1991

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. xxx

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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." (Emphasis supplied)

It is undisputed that herein petitioner is principally engaged in the business of power generation and subsequent sale thereof to the National Power Corporation under a Build, Operate, and Transfer (BOT) Scheme.³⁰ In addition, respondent himself approved petitioner's Application for Effective Zero-Rate of its supply of electricity to the NPC for the period from January 1, *jr*

³⁰ Exhibit "B-2", docket, p. 415; Exhibit "II" Judicial Affidavit of Ms. Taryn F. Uberita dated July 28, 2008, docket, p. 1184-1185

2005 to October 31, 2005.³¹ Consequently, such sale by petitioner of electricity to the 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.

After finding that petitioner's sales of electricity to the NPC in the amount of P104,667,627.50 for the second quarter of 2005 qualified as zero-rated sales, the Court will now proceed to the question of whether or not petitioner's reported input taxes for the second quarter of 2005 in the total amount of P803,646.33 have been substantiated by the required documentary evidence.

Petitioner submitted in evidence its Schedule of Input VAT³², with the corresponding suppliers' invoices and official receipts³³ duly examined by the Court-commissioned Independent CPA.³⁴

Upon scrutiny of the Independent CPA's Report³⁵ dated June 23, 2008, the Court finds that out of the P803,646.33 input VAT claim for the second quarter of 2005, the amount of P11,821.02 shall be disallowed due to the following reasons:

	FINDINGS	Exhibit	Input VAT
1	Input VAT on purchases of goods/services supported by Invoice/ORs dated not within the quarter of claim.	"BB-4"	P 11,571.15

³¹ Exhibit "AA", docket, p. 509; Exhibit "II" Judicial Affidavit of Ms. Taryn F. Uberita dated July 28, 2008, docket, p. 1185

³² Exhibits "BB", "BB-1", "BB-2", "BB-3", "BB-4", "BB-5", "BB-5-a", "BB-5-b", "BB-5-c", "BB-5-d", "BB-5-e", and "BB-5-f"

³³ Exhibits "BB-1-1" to "BB-1-280", "BB-2-1" to "BB-2-64", "BB-3-1" to "BB-3-104", "BB-4-1" to "BB-4-30", "BB-5-a-1" to "BB-5-a-26", "BB-5-b-1" to "BB-5-b-2", and "BB-5-f-1" to "BB-5-F-2"

³⁴ Atty. Raymund S. Gallardo, Tax & Advisory Partner of Punongbayan & Araullo

³⁵ Exhibit "BB"

2	Input VAT supported with VAT invoices/official receipts dated outside the taxable year 2005	"BB-5-b"	490.91
3	Discrepancy in input VAT claimed based on the supporting VAT invoices/official receipts	"BB-5-d"	9.52
4	Discrepancy in input VAT claimed due to difference in the conversion rates	"BB-5-e"	(2,114.20)
5	Input VAT supported by non-VAT official receipt	"BB-5-f"	1,863.64
	TOTAL		P11,821.02

Likewise, the following additional input VAT of P5,097.30 on purchase of services with no supporting official receipts shall be disallowed:

Exhibit	Date	Supplier	Amount
"BB-1-148"	April 6, 2005	Maynilad Water Services, Inc.	P 2,583.47
"BB-1-204"	May 5, 2005	Maynilad Water Services, Inc.	2,513.83
TOTAL			P 5,097.30

Therefore, out of petitioner's input VAT claim for the second quarter of 2005 in the amount of P803,646.33, only the input VAT of P786,728.01 was properly substantiated by VAT invoices or official receipts, as computed below:

Input VAT per Return (second quarter)		P803,646.33
Less: Disallowances		
Per ICPA Findings	P11,821.02	
Per this Court's Findings	<u>5,097.30</u>	<u>16,918.32</u>
Substantiated Input VAT		P 786,728.01

Since petitioner had no taxable but only zero-rated sales for the second quarter of 2005 in the amount of P104,667,627.50, the substantiated input VAT of P786,728.01 is entirely attributable thereto.

Regarding the issue of whether the said input VAT was applied against any output VAT and/or carried over to the succeeding taxable quarter(s), the answer is in the negative. In fact, at the end of the fourth quarter of 2005,³⁶

³⁶ Exhibit "Y"

the input taxes sought to be refunded/credited were already deducted as "Any VAT Refund/TCC" claimed from the total available input tax of P4,436,975.51. In other words, the subject claim no longer formed part of the excess input VAT of P658,302.39 as of the end of the said fourth quarter of 2005, which was carried over/applied to the succeeding first quarter of 2006.³⁷

In sum, the Court finds petitioner entitled to a refund or issuance of tax credit certificate in the reduced amount of P786,728.01, representing petitioner's unutilized input VAT incurred in relation to its effectively zero-rated sales to the NPC for the period covering January 1, 2005 to October 31, 2005.

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **SEVEN HUNDRED EIGHTY SIX THOUSAND SEVEN HUNDRED TWENTY EIGHT PESOS AND 01/100 (P786,728.01)**, representing unutilized input VAT attributable to its zero-rated sales to the NPC for the period covering January 1, 2005 to October 31, 2005.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:


ERLINDA P. UY
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

³⁷ Exhibit "GG"

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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, Former 2nd Division