REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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

C.T.A. CASE NO. 6418

Members:

\- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 11 2006

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DECISION

CASANOVA, C., J.:

This is a Petition for Review seeking the refund or issuance of a tax credit certificate in the amount of Five Hundred Seventy Two Thousand Seven Hundred Thirty Two Pesos and 27/100 (P572,732.27) allegedly representing unutilized input value-added taxes paid by petitioner on its domestic purchases and importation of goods and services which are attributable to its zero-rated sales of power generation services to the National Power Corporation for the taxable year 2000.

Petitioner Mirant (Navotas II), Corporation, *formerly Southern Energy Navotas II Power, Inc.*, is a domestic corporation duly organized and existing by virtue of Philippine laws with principal office located at the 5th Floor, CTC Building, 2232 Roxas Boulevard, Pasay City. Respondent is the duly appointed officer vested with the power to decide, approve and grant claims for refunds or tax credits of overpaid internal revenue taxes, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner 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 ("BOT") Scheme. It is registered with the Bureau of Internal Revenue as a value-added tax ("VAT) taxpayer with Taxpayer Identification Number 001-726-862-000.[1]

On April 26, 2001, petitioner secured from the Securities and Exchange Commission a Certificate of Filing of Amended Articles of Incorporation, reflecting its change of name from Southern Energy Navotas II Power, Inc. to Mirant (Navotas II) Corporation. However, prior to this change of name to Southern Energy Navotas II Power, Inc., petitioner was registered under the corporate name Hopewell Tileman (Philippines) Corporation.

Petitioner filed an Application for Zero Rate on November 26, 1999 with the Bureau of Internal Revenue ("BIR"), for the sale of power generation services to National Power Corporation under a BOT scheme for the period January 1, 2000 to December 31, 2000. This was duly approved by the BIR.[2]

For the four quarters of 2000, petitioner allegedly incurred unutilized input taxes amounting to P572,732.27 relative to its effectively zero-rated sales to NPC in the total amount of P250,359,011.20, which were declared in its Quarterly VAT Returns for the same period as follows:

VAT Returns	Exh.	Date Filed	Zero-rated Sales	Exh.	Input VAT	Exh.
1st qtr	B	April 24, 2000	P 66,015,556.52	B-7	P 139,573.83	B-3
2nd qtr	C	July 25, 2000	64,184,817.21	C-7	111,536.13	C-3
3rd qtr	D	October 25, 2000	68,893,032.03	D-9	141,403.68	D-3
4th qtr	E	January 23, 2001	51,265,605.44	E-7	180,218.63	E-3
TOTAL			P250,359,011.20		P 572,732.27	

[1] Exhibit A
[2] Exhibit F

On March 6, 2002, pursuant to Revenue Regulations No. 7-95, as amended, petitioner filed an administrative claim for refund/application for tax credit certificate of unutilized input VAT with the BIR.[3] Not wanting to be barred by prescription, petitioner filed this Petition for Review on March 26, 2002.

On June 4, 2002, respondent filed his Answer interposing the following Special and Affirmative Defenses:

"xxx xxx xxx

6. Petitioner's claim for refund/tax credit is still subject to administrative routinary investigation/examination by the respondent's Bureau;

7. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;

8. Petitioner's claim for refund/tax credit for the four quarters of calendar year 2000 in the amount of P572,732.27, representing the alleged unutilized input VAT paid on its domestic purchases and importations of goods and services were not fully substantiated;

9. It is incumbent upon petitioner to show that it has complied with the provisions of Section 229 of the Tax Code, as amended, as well as the requirements provided under Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88. Otherwise, its failure to prove the same is fatal to its claim for refund;

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)."

On December 2, 2005, the case was submitted for Decision sans the memorandum of respondent.

The parties agreed on the following issues for the resolution of the Court:

1. Whether or not the power generation services rendered by petitioner for supply 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 has unutilized creditable input VAT for CY 2000 arising from its domestic purchases and importation of goods and

[3] Par. 7, Jointly Stipulated Facts, page 61, Records

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services amounting to P572,732.27, 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 unutilized creditable input VAT of the Petitioner for CY 2000 were duly substantiated; and

4. Whether or not the unutilized creditable input VAT for CY 2000 were carried over to the succeeding taxable quarter(s) and applied against any of the output VAT liability of the petitioner.

The issue of whether or not the power generation services rendered by petitioner to NPC are subject to zero percent (0%) VAT, has already been resolved by this Court in the affirmative in a number of similar cases.[4]

Section 108(B)(3) of the National Internal Revenue Code provides:

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

(A) 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:

(1) xxx

(2) 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."

In relation thereto, Section 13 of Republic Act No. 6395 (NPC Charter), as amended, reads:

"Section 13. Non-profit Character of the Corporation: Exemption from All Taxes, Duties, 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 investment as well as excess revenues from its operations, 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

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[4] Mirant (Phils.) Mobile Corp. (formerly Southern Energy Mobile, Inc.) vs. Commissioner of Internal Revenue, CTA Case Nos. 5939 & 5969, January 15, 2002; Mirant Navotas Corp. (formerly Southern Energy Navotas, Inc.) vs. Commissioner of Internal Revenue, CTA Case Nos. 5936 & 5968, January 16, 2002; Mirant (Navotas II) Corp. (formerly Southern Energy Navotas II Power, Inc.) vs. Commissioner of Internal Revenue, CTA Case Nos. 5944 & 5963, January 21, 2002; Mirant Pagbilao Corp. (formerly Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 6041, March 5, 2002

> 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."

Clearly from the foregoing, NPC is an entity with a special charter, which categorically makes it exempt from payment of all taxes, whether direct or indirect, including VAT. Hence, by virtue of the said charter, the services rendered by a VAT registered entity, like herein petitioner, to NPC are effectively subject to zero percent (0%) VAT ***(Mirant Navotas Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6044, October 16, 2002; Mirant Navotas Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6257. June 16, 2003).***

The Highest Tribunal affirmed NPC's tax exemption in the case of *Maceda vs. Macaraig, Jr., 197 SCRA 771,* thus:

> "A chronological review of the NPC laws will show that it has been the lawmaker's intention that the NPC was to be completely tax-exempt from all forms of taxes — direct or indirect.
>
> xxx xxx xxx
>
> One common theme in all these laws is that the NPC must be enabled to pay its indebtedness xxx .The NPC must be and has to be exempt from all forms of taxes if this goal is to be achieved."

Moreover, the respondent himself approved petitioner's application for the zero-rating of its sales to NPC for the period of January 01, 2000 to December 31, 2000.[5]

Petitioner was likewise able to establish (through the various invoices and official receipts it issued to NPC[6] as summarized in *Exhibits N-1 to N-4)* that it actually generated revenues from its sale of power generation services to NPC for the four quarters of 2000 in the aggregate amount of P250,359,011.20. These were declared in its Quarterly VAT Returns for 2000.[7]

Petitioner's sales being effectively zero-rated sales pursuant to Section 108(B)(3) of the National Internal Revenue, consequently, the reported unutilized input taxes of

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[5] Exhibit F
[6] Exhibits O-1 to O-23
[7] Exhibits B, C, D and E

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P572,732.27 which are allegedly attributable thereto may be a proper subject of a claim for refund or issuance of a tax credit in accordance with Section 112(A) of the National Internal Revenue Code, 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 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."

Anent the substantiation issue on the claimed input VAT payment of P572,732.27, the commissioned independent CPA, Mr. R.R. Rubio, in his report dated January 2, 2003,[8] noted the following exceptions and observations as far as the total claimed amount of unutilized input taxes are concerned:

"Based on the procedures we performed, we present below our findings:

Findings		**1st Quarter**	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**Total**
I.	Erroneous computation of input taxes claimed on purchases of services (Annex A)	1,929.22	1,303.65	-	-	**3,232.87**
II.	Input taxes claimed on purchases of goods supported by VAT invoices issued not in the Company's name (Annex B)	3,272.73	-	173.79	7,739.70	**11,186.22**

[8] Exhibit U and its sub-markings

III.	Input taxes claimed on purchases of goods and services without supporting documents (Annex C)	52.14	-	-	616.74	**668.88**
Total		**5,254.09**	**1,303.65**	**173.79**	**8,356.44**	**15,087.97**

After a careful review of the above exceptions of the commissioned independent CPA, the Court finds the same to be correct. However, aside from these exceptions, the Court notes four other amounts of input taxes not supported by VAT OR/Invoice in the total amount of P2,397.62, detailed as follows:

Quarter	**Supplier**	**Gross Amount**	**Input Tax**
1st	Tri-Unio International Corp.	P 11,131.89	P 1,011.99
	Vaecare Enterprises	2,062.50	187.50
	Vaecare Enterprises	4,125.00	375.00
2nd	Molave Trading, Inc	9,054.43	823.13
Total			**P 2,397.62**

Hence, the above amounts, in addition to the exceptions made by the commissioned independent CPA, should be denied for failure to meet the substantiation requirements provided under Section 4.104-5 of Revenue Regulations No. 7-95 in relation to Sections 113 and 237 of the 1997 Tax Code.

Further, a portion of petitioner's claim should likewise be denied. In the same report of the commissioned independent CPA, it was stated thus:

> "Moreover, we would like to mention the following observations for the additional information of the Honorable Court:
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> 1. Input taxes amounting to **P10,435.80** were claimed in the first quarter of 2000 on purchases of goods for which the date of the related VAT invoices fall outside the period of claim (i.e. fourth quarter of 1999). We were able to ascertain that there were no double claiming relative to these input taxes. These input taxes were claimed only in the first quarter of 2000 and were not claimed in the fourth quarter of 1999. (Annex D)
>
> 2. Input taxes amounting to P73,123.52 were claimed on purchases of goods and services which were supported by VAT ORs issued in the name of Hopewell Tileman Philippines Corporation (HTPC), the former name of the Company. (Annex E)"

In the case of ***Lepanto Consolidated Mining Co. vs. Commissioner of Internal Revenue, CTA Case Nos. 6368 & 6480, December 15, 2004,*** this Court already ruled that input VAT supported by VAT invoices and official receipts dated earlier than the period of claims can no longer be claimed for refund. To quote:

"We agree with the respondent.

The alleged unutilized input VAT of P5,820,863.87 should be denied since the supporting invoices and official receipts thereof bore dates which were earlier than the period of petitioner's claim. Section 110(A)(2) of the 1997 Tax Code provides:

"Sec. 110. *Tax Credits.* -

A. *Creditable Input Tax.* -

2. The input tax on domestic purchase of goods or properties shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee."

It is clear from the above-quoted provisions of law that for purchases of goods, the corresponding input value added taxes of which is creditable to the purchaser upon consummation of sale, that is, upon the issuance of the corresponding invoice. On the other hand, for purchases of services, the corresponding input value added taxes of which is creditable to the purchaser upon payment of compensation, rental, royalty, or fee, that is, upon the date of official receipt. Section 110(A) is explicit. It states "upon consummation", in the case of domestic purchases of goods, and "upon payment", in the case of purchases of services. It does not provide any qualification, such as "upon delivery of invoice or official receipt" which is the main thesis of petitioner's contention.

In a resolution of the case entitled ***Telecommunications Technologies Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6168, promulgated on July 28, 2004,*** this Court elucidated that "the input VAT on domestic purchases of goods or properties shall be allowed as tax credit to the purchaser upon consummation of sale, which means upon issuance by the seller of the VAT sales invoices evidencing the sale of goods/properties. On the other hand, the input VAT on purchases of services shall be available as tax credit to the purchaser only upon payment of the compensation or fee, *i.e.,* upon issuance by the seller of the VAT official receipt evidencing receipts of the payment for services performed or yet to be performed."

Thus, it is indubitable on the part of the petitioner to declare the input value added taxes on domestic purchases of goods and services at the end of the corresponding taxable quarter where purchases of goods were consummated, as evidenced by VAT invoice and for payment of services, as evidenced by VAT official receipt.

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> Therefore, the amount of input VAT of P5,820,863.87 which is supported by VAT invoices and official receipts dated earlier than the period of petitioner's claims can no longer be claimed for refund pursuant to Section 110(A) in relation with Section 112(A) of the 1997 National Internal Revenue Code."

Moreover, in the case of ***Mirant Navotas Corporation v. Commissioner of Internal Revenue, CTA Case No. 6257, June 16, 2003***, this Court also denied portion of Mirant's claim on the ground that the dates of VAT official receipts and invoices fell outside the subject period of claim.

Thus, applying the above-quoted rulings of this Court, a portion of petitioner's claim in the amount of P10,435.80 cannot be granted since those input taxes should have been declared in the corresponding taxable quarters when purchases of goods were consummated as evidenced by VAT invoices or upon payment of the services as evidenced by VAT official receipts.

However, with regard to the observation made by the independent CPA that input taxes in the amount of P73,123.52 were claimed on purchases of goods and services supported by VAT Official Receipts issued in the name of Hopewell Tileman Philippines Corporation (the former name of the company), the Court holds that this should not deter petitioner from claiming the above amount since it was able to sufficiently establish that it is the same company as Hopewell Tileman Philippines. This fact was not only undisputed but was in fact admitted by respondent.[9] Moreover, to hold otherwise would run counter to the ruling of the Supreme Court in *BPI-FAMILY SAVINGS BANK, INC. vs. COURT OF APPEALS*:[10]

> "Substantial justice, equity and fair play are on the side of petitioner. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness."

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[9] Annex B Petition for Review and Paragraphs 3 of the Joint Stipulation of Facts
[10] 330 SCRA 507

With regard to the last issue, the Court finds that petitioner's claimed input taxes were not applied against any output tax as shown in its 2000 quarterly VAT returns.[11] Although, the total unutilized input tax for 2000 was carried-over to the succeeding quarters,[12] the same was deducted from its total available input tax for the first quarter of 2002.[13] In other words, the amount subject of the claim no longer formed part of the total input VAT to be carried over to the second quarter of 2002.

Finally, records show that petitioner's administrative claim filed on March 6, 2002 and its judicial appeal filed with this Court by way of Petition for Review on March 26, 2002 were within the two-year prescriptive period reckoned from the filing of its corresponding quarterly VAT returns for taxable year 2000.[14]

In sum, petitioner was able to substantiate by proper VAT invoices and/or official receipts only its input taxes of P544,810.88, computed as follows:

Claimed input tax			P 572,732.27
Less: Disallowances			
Exceptions noted by the Commissioned CPA		P 15,087.97	
Amount disallowed by this Court: a. Input taxes with no supporting Documents	P 2,397.62		
b. Input taxes on purchases of goods With VAT invoices dated outside the Period of claim	10,435.80	12,833.42	27,921.39
Substantiated Amount of Input Tax			**P 544,810.88**

WHEREFORE, respondent is hereby **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of P544,810.88 as above computed, representing unutilized input value-added taxes paid by petitioner on its

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11 Exhibits B to E
12 Exhibits H to K
13 Exhibit L
14 JIDECO Manufacturing Philippines Inc., v. Commissioner of Internal Revenue, CTA Case No. 6552, September 16, 2004.

domestic purchases and importation of goods and services which are attributable to its zero-rated sales of power generation services to the National Power Corporation for the taxable year 2000.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
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