REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. EB No. 435
(C.T.A. Case Nos. 7181 & 7278)

Present:

-*versus*-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

CE CEBU GEOTHERMAL POWER COMPANY, INC.,
Respondent.

Promulgated:
MAY 0 5 2009 ArApolinario 2:05 p.m.

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DECISION

BAUTISTA, J.:

The Case

Before Us is a Petition for Review[1] filed on December 15, 2008, assailing the Decision[2] dated May 9, 2008 of the Second Division of the Court ("Court in Division") in C.T.A. Case Nos. 7181 & 7278, partially granting herein

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[1] *Rollo*, C.T.A. EB No. 435 (C.T.A. Case Nos. 7181 & 7278), pp. 7 - 45 with Annexes.
[2] Penned by Associate Justice Juanito C. Castañeda, Jr., and concurred in by Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez.

respondent's claim for refund and/or tax credit certificate in the reduced amount of Twenty Million Six Hundred Fifty-Eight Thousand Three Hundred Twenty-Two Pesos and 14/100 (P20,658,322.14), representing respondent's unutilized input value-added tax ("VAT") from its purchases of goods and services and importation of goods attributable to zero-rated sales of power generation services for the four quarters of taxable year 2003; and the Resolution dated November 11, 2008, denying the "Motion for Partial Reconsideration" of herein petitioner.

Antecedent Facts

The antecedent facts, as narrated by the Court in Division in its Decision, are as follows:

> "CE Cebu Geothermal Power Company, Inc. (petitioner)[3] is a corporation duly organized and existing under Philippine laws, with principal office at 24/F 6750 Building, Ayala Avenue, Makati City. It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer in accordance with Section 236 of National Internal Revenue Code (NIRC), with Tax Identification No. 003-459-879-000. Petitioner is engaged in the business of power generation and the subsequent sale of generated power to the Philippine National Oil Corporation (PNOC) pursuant to a Power Purchase Agreement with the PNOC. It has been accredited and certified as such by the Department of Energy, as evidenced by its Certificate of Accreditation (OSAC 94-06) issued on April 6, 1994.
>
> Respondent,[4] on the other hand, is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes.
>
> Petitioner filed with the BIR its Original Quarterly VAT Returns for the First to the Fourth Quarters of taxable year 2003 on the following dates:

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[3] Herein Respondent.
[4] Herein Petitioner.

Taxable Quarter	**Date of Filing**
First Quarter	April 25, 2003
Second Quarter	July 24, 2003
Third Quarter	October 27, 2003
Fourth Quarter	January 26, 2004

Subsequently, petitioner filed its Amended Quarterly VAT Returns for the First to the Fourth Quarter of taxable year 2003 on November 24, 2004, which reflected the following:

2003 Taxable Quarter	Excess/Unutilized VAT Credits					
	Domestic purchases of capital goods	Domestic purchases of goods other than capital goods	Domestic purchases of services	Services rendered by non-residents	Importations other than capital goods	Total
1st	75,363.64	836,767.65	1,585,025.41	0	201,654.00	2,698,810.70
2nd	0	453,335.24	1,517,397.33	138,180.12	158,192.10	2,267,104.79
3rd	0	512,236.99	2,318,258.48	206,852.81	207,461.00	3,244,809.28
4th	0	988,720.19	8,490,081.86	0	5,956,562.00	15,435,364.05
Total Excess/Unutilized VAT credits for the First to Fourth quarters of 2003:						23,646,088.82

Petitioner filed an administrative claim for refund on the aforesaid unutilized input VAT with the BIR, on the following dates:

Taxable Quarter	**Date of Filing**
First Quarter	January 20, 2005
Second Quarter	March 31, 2005
Third and Fourth Quarter	June 7, 2005

Since no action has been taken by respondent and in order to suspend the running of the two-year prescriptive period under the National Internal Revenue Code (NIRC) of 1997, as amended and Revenue Regulations No. 7-95; petitioner filed on March 30, 2005 a Petition for Review which was docketed as CTA Case No. 7181, seeking refund or issuance of tax credit certificate in the amount of P2,698,810.70, representing its unutilized input VAT from purchases of taxable goods and services and importation of goods for the First Quarter of taxable year 2003.

On June 30, 2005, another Petition for Review was filed by petitioner which was docketed as CTA Case No. 7278, praying for refund or issuance of tax credit certificate to petitioner in the total amount of P21,789,154.29, representing unutilized input VAT from its domestic purchases, services rendered by non-residents, and importation of goods and services for the Second to the Fourth Quarters of taxable year 2003.

On August 8, 2005, petitioner moved for the consolidation of CTA Case Nos. 7278 and 7181 inasmuch as both cases involve the same parties and issues. The motion was granted by the Court in a Resolution promulgated on October 12, 2005.

Respondent interposed the following Special and Affirmative Defenses in his Answer:

> '4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue;
>
> 5. The amount of P2,698,810.70 being claimed by petitioner as alleged unutilized input VAT on purchases of goods and services for the first quarter of 2003 is not properly documented;
>
> 6. In an action for refund/credit, 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/credit;
>
> 7. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the 1997 Tax Code on prescriptive period for claiming tax refund/credit;
>
> 8. 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)**.'

Petitioner pleaded the same Special and Affirmative Defenses in CTA Case No. 7278, except for the amount of P20,947,278.12, claimed by petitioner as its alleged unutilized input VAT from its domestic purchases, services rendered by non-residents, and importation of goods and services for the Second to the Fourth Quarters of taxable year 2003.

Petitioner presented testimonial and documentary evidence, while respondent merely submitted the case for decision without presenting evidence.

On September 25, 2007, the case was submitted for decision after petitioner filed its Memorandum sans respondent's Memorandum."[5] *(Citations omitted)*

The Ruling of the Court in Division

The following issues were submitted by the parties for resolution by the Court in Division:

> "1. Whether or not the unutilized input VAT of the Petitioner[6] for the first to fourth quarters of 2003 amounting to P23,646,088.82

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[5] *Rollo*, pp. 21 - 24.
[6] Herein Respondent.

are substantiated by documentary evidence in the form of invoices and official receipts.

2. Whether or not the said unutilized input VAT credits of the Petitioner for the first to fourth quarters of 2003 amounting to P23,646,088.82 were applied against any output tax of the Petitioner in the subsequent quarters.

3. Whether or not the Petitioner is entitled to a refund and/or issuance of tax credit certificate in the total amount of P23,646,088.82, representing its unutilized input VAT from purchases of taxable goods and services and importation of goods for the first to fourth quarters of 2003."[7]

The Court in Division summed up the issues as: whether or not, based on the evidence presented, respondent is entitled to a refund or issuance of a tax credit certificate worth P23,646,088.82, representing unutilized input VAT from its purchases of goods and services and from importation of goods attributable to its zero-rated sales for taxable year 2003.[8]

Before going to the merits of the case, the Court in Division noted that the claimed amount of P23,646,088.82 pertains to the unutilized input VAT declared by respondent in its VAT Returns for the four quarters of taxable year 2003, which is lower by P841,876.17 when compared with the amount of P24,487,964.99 being prayed for in the two separate Petitions for Review filed by respondent, docketed as C.T.A. Case Nos. 7181 and 7278, which were later on consolidated. But since respondent did not pursue the discrepancy of P841,876.17, the Court in Division used the amount of P23,646,088.82 as the reference point in its Decision.

It then proceeded to determine whether respondent complied with the four requisites set out in Section 112 (A) of the National Internal Revenue Code of 1997 ("NIRC"), namely: (1) there must be zero-rated or effectively zero-rated

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[7] *Rollo*, pp. 24 – 25.
[8] *Id.*, p. 25.

sales; (2) that input taxes were incurred or paid; (3) that such input VAT payments are directly attributable to zero-rated sales; (4) that the input VAT payments were not applied against any output VAT liability; and (5) that the claim for refund was filed within the two year prescriptive period.

After a careful examination of the evidence, the Court in Division ruled that respondent complied with the first requirement. It concurred with the findings and observations of the Court-commissioned Independent Certified Public Accountant ("ICPA") and found that respondent actually generated gross receipts in the amount of P2,220,147,336.43 from sales of generated power to PNOC-EDC for taxable year 2003, which qualify for VAT zero-rating, pursuant to Section 6 of Republic Act No. 9136 ("RA 9136"), otherwise known as the "Electric Power Industry Reform Act of 2001."

Anent the amount of unutilized input VAT attributable thereto, the Court in Division, based on the findings of the ICPA, declared that from the P23,646,688.82 input VAT alleged by respondent, only the amount of P20,658,322.14 was properly substantiated by VAT invoices or official receipts. The amount of P2,501,652.50, classified under caption "B. Other Findings," was disallowed for failure to comply with the invoicing requirements under Section 113 (A) of the NIRC. Input taxes in the amounts of P34,923.31 and P450,950.01, under finding Nos. 5 and 8, respectively, of caption "A. Supported by VAT Invoices/Receipts/IEIRDs/BIR Forms," were also disallowed as these domestic purchases of goods and services were supported by invoices and official receipts with preprinted "TIN-V" instead of "TIN-VAT," in violation of Section 4.108-1 of

Revenue Regulations No. 7-95 ("RR 7-95"). In addition, input taxes under findings No. 13 described as "Input tax on OCT (Overseas Communications Tax) included in the payments to telecommunication service provider" in the amount of P240.87 was likewise disallowed because overseas communications are VAT-exempt, pursuant to Section 109 (J) of the NIRC, as amended, in relation to Section 120 (A) of the same Code.

Since respondent's VAT Returns for taxable year 2003 showed that it had no taxable sales/receipts but only zero-rated sales in the amount of P2,220,147,336.43, the substantiated input VAT of P20,658,322.14 was found by the Court in Division to be entirely attributable to the reported zero-rated receipts of P2,220,147,336.43, in compliance with the third requirement.

As to the fourth requirement, the Court in Division said that although respondent carried over its excess input tax credits for taxable year 2003 worth P23,646,088.82 to the succeeding quarters of 2004, the same remained unutilized since respondent had no output VAT liability for the said taxable period. In addition, respondent deducted the amount of P23,646,088.82 in its VAT Returns for the First and Second Quarters of taxable year 2005. Hence, the input VAT of P23,646,088.82 was no longer carried over to the succeeding Third Quarter of taxable year 2005.

Since both administrative and judicial claims were found to have been filed well within the two-year prescriptive period, the Court in Division found respondent to have complied with all the requirements set forth in Section 112 (A) of the NIRC. Accordingly, it found respondent entitled to a refund of its unutilized input VAT in the reduced amount of P20,658,322.14, computed as follows:

"Amount of Claimed Input VAT			P23,646,088.82
Less:	Disallowances		
	a.	Input VAT under caption 'B. Other Findings' of the CPA Report *(Exhibit II, pages 6 & 7)*	P 2,501,652.49
	b.	Input VAT under caption 'A. Supported by VAT Invoices/Receipts/IEIRDs/BIR Form 1600' (nos. 5, 8 & 13) of the CPA Report *(Exhibit II, page 5)*	486,114.19
	Total disallowances		P 2,987,766.68
Refundable Input VAT			**P20,658,322.14"**[9]

Thus, the Court in Division disposed of the case in this wise:

> "**WHEREFORE,** the consolidated Petitions for Review are hereby **PARTIALLY GRANTED**. Accordingly, respondent[10] is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner[11] in the reduced amount of **TWENTY MILLION SIX HUNDRED FIFTY-EIGHT THOUSAND THREE HUNDRED TWENTY-TWO PESOS and 14/100 (P20,658,322.14),** representing petitioner's unutilized input VAT from its purchases of goods and services and importation of goods attributable to zero-rated sales of power generation services for the four quarters of taxable year 2003.
>
> **SO ORDERED."**[12]

On May 30, 2008, petitioner filed a "Motion for Partial Reconsideration"[13] to which respondent filed its "Comment/Opposition."[14]

On June 2, 2008, respondent likewise filed its "Motion for Partial Reconsideration."[15] To this, petitioner filed his "Comment."[16] Respondent in turn filed its "Reply."[17]

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[9] *Rollo*, p. 35.
[10] Herein Petitioner.
[11] Herein Respondent.
[12] *Id.*, p. 36.
[13] *Records*, C.T.A. Case Nos. 7181 & 7278, pp. 335 - 343.
[14] *Id.*, pp. 371 - 378.
[15] *Id.*, pp. 344 - 357.
[16] *Id.*, pp. 380 – 387.
[17] *Id.*, pp. 388 – 393.

On November 11, 2008, the Court in Division denied both Motions for Partial Reconsideration for lack of merit.[18]

The Issue

Hence, the instant Petition for Review where petitioner raises the issue of whether or not respondent is entitled to a refund and/or issuance of tax credit certificate, representing its unutilized input VAT from purchases of taxable goods and services and importation of goods and services for the first to fourth quarters of 2003.[19]

Petitioner's Arguments

Petitioner contends that the Court in Division erred in ruling that respondent is entitled to a refund or tax credit representing its unutilized input VAT for the following reasons:

> "I.
>
> THE SECOND DIVISION ERRED IN RULING THAT RESPONDENT IS ENTITLED TO REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE AMOUNT OF TWENTY MILLION SIX HUNDRED FIFTY-EIGHT THOUSAND THREE HUNDRED TWENTY TWO PESOS AND 14/100 (P20,658,322.14) BECAUSE PETITIONER CARRIED OVER ITS EXCESS INPUT TAX CREDITS FOR TAXABLE YEAR 2003 WORTH P23,646,088.82 TO THE SUCCEEDING QUARTERS OF 2004.
>
> II.
>
> THE SECOND DIVISION ERRED IN ALLOWING RESPONDENT'S INPUT TAXES IN THE AMOUNTS OF P65,453.72, P44,601.76 AND P684,884.47 BECAUSE RESPONDENT FAILED TO STATE WITH PARTICULARITY THE TAXABLE QUARTER WITHIN WHICH THE TRANSACTION TOOK PLACE.

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[18] *Rollo*, pp. 38 – 42.
[19] *Id.*, p. 11.

III.

THE HONORABLE CTA HAS NO JURISDICTION OVER THE INSTANT CLAIM FOR REFUND BECAUSE THE RIGHT OF RESPONDENT TO FILE A PETITION FOR REVIEW HAS ALREADY PRESCRIBED."[20]

Respondent's Counter-Arguments

For its part, respondent counters that the allegations and matters raised by petitioner are a mere rehash of petitioner's arguments, which the Court in Division has already studiously and judiciously weighed, discussed and disposed of.

Respondent insists that although it carried over the claimed input VAT of P23,646,088.82 to the succeeding quarters, it however, deducted the same amount of input VAT from its First and Second Quarter VAT Returns, at the time it filed the corresponding administrative claims for refund with the Bureau of Internal Revenue ("BIR"). It also argues that there is nothing in the law that prohibits it from carrying over its excess input tax credits to the succeeding quarter/quarters. Nor is there any provision declaring that the exercise of the option to carry over input taxes is irrevocable, and that it forfeits the taxpayer's right to claim refund of such input taxes once exercised.

In addition, respondent maintains that the claims of input VAT as evidenced by official receipts dated within the same taxable year are allowed to be refunded as long as they complied with the conditions set by Revenue Memorandum Circular No. 42-03 ("RMC No. 42-03"), to wit:

[20] *Rollo*, pp. 11 - 12.

(1) the VAT invoices and official receipts were issued and cover transactions within the taxable year that the claim was made; and

(2) that they have not been claimed in any other quarter of the same or different taxable year.

Furthermore, respondent asserts that the doctrine of exhaustion of administrative remedies is not an absolute rule. Such rule may be relaxed when its application may cause great and irreparable damage, which cannot otherwise be prevented except by taking the opportune appropriate court action. In this case, respondent claims that it was constrained to file its judicial claim despite the fact that the 120-day period has not lapsed since the two-year period for filing the same was about to prescribe.

Finally, respondent points out that assuming, without admitting, that respondent indeed failed to submit the complete documents within the 120-day period, this does not make the administrative claim for refund invalid or *pro forma*. In fact, there is nothing in Section 112 (D) of the NIRC which states that the non-submission of documents in support of a taxpayer's claim for refund bars the taxpayer from resorting to available judicial remedies.

The Ruling of the Court En Banc

The Petition for Review is bereft of merit.

The arguments raised by petitioner are mere reiterations of his previous arguments, which were thoroughly discussed and passed upon by the Court in

Division. Nevertheless, for emphasis, We shall discuss the matters raised by petitioner.

We shall first resolve the third issue raised by the petitioner inasmuch as it deals with a jurisdictional question.

The Court in Division has jurisdiction over the instant claim for refund or tax credit

We have consistently ruled that when the 2-year period is about to prescribe and the claim for refund with the Commissioner of Internal Revenue ("CIR") has not been acted upon, for the protection of the interest of the taxpayer, he should file a Petition for Review with the Court of Tax Appeals within the said 2-year period; otherwise, if the decision of the Commissioner is adverse to the taxpayer and it was made after the 2-year period, he can no longer appeal the same to the Court of Tax Appeals.[21] In other words, a taxpayer need not wait for the lapse of the 120-day period.

As to whether the non-submission of the complete supporting documents is fatal to a claim for refund or tax credit, We rule in the negative.

Section 112 (D) of the NIRC provides that:

> "**SEC. 110.** ***Tax Credits. -***
>
> xxx xxx xxx
>
> **(D) Period within which Refund or Tax Credit of Input of Taxes shall be Made.** — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

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[21] Commissioner of Internal Revenue v. San Roque Power Corporation, C.T.A. EB No. 408 (C.T.A. Case No. 6647), March 25, 2009.

> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim the Court of Tax Appeals.
>
> xxx xxx xxx"

While it is true that the submission of the complete supporting documents is necessary for the granting of refund or tax credit certificate, Section 112 (D) does not state, much less suggest, that the non-submission with petitioner of the supposed complete documents makes the administrative claim for refund or tax credit certificate invalid or *pro forma,* the effect of which makes the judicial appeal dismissible for lack of jurisdiction. What is clearly required is that the taxpayer must elevate its claim before the Court within 30 days from receipt of the denial of its claim for refund/tax credit or after the expiration of the 120-day period granted to respondent to decide on the taxpayer's, which must all be done within two years from payment of the tax or penalty.[22]

Having settled the jurisdictional issue, We shall now proceed to discuss the two remaining issues.

Respondent did not apply its excess input VAT for taxable year 2003 to the succeeding quarters of 2004

Petitioner is of the view that since respondent carried over its excess input tax credits, it has already lost the privilege to claim for refund or tax credit. Such reasoning is flawed.

The pertinent NIRC provisions are as follows:

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[22] CE Cebu Geothermal Power Company, Inc. v. Commissioner of Internal Revenue, C.T.A. Case Nos. 6791 and 6836, October 6, 2008.

> "**SEC. 110.** ***Tax Credits.*** **-**
>
> xxx xxx xxx
>
> **(B) Excess Output or Input Tax.** — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.
>
> xxx xxx xxx"
>
> "**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: xxx xxx xxx"

From the foregoing, it is clear that within 2 years after the filing of the quarterly VAT return, a taxpayer is allowed to carry over the excess of the input tax over the output tax of a given quarter to the next quarter until it becomes apparent that it would not be able to utilize such credits. And in the event that it would not be able to utilize such credits, the taxpayer may opt to formally file a claim for refund with the BIR as long as it is still within the 2-year prescriptive period. This is precisely what respondent did.

Although respondent carried over the claimed input VAT of P23,646,088.82 to the succeeding quarters of 2004, it however deducted the amount from its First and Second Quarterly VAT Returns for the taxable year 2005. For this reason, We find no error on the part of the Court in Division when it ruled that:

"As regards the fourth requisite, while petitioner carried over its excess input tax credits for taxable year 2003 worth P23,646,088.82 to the succeeding quarters of 2004, the same remained unutilized because petitioner had no output VAT liability for the said taxable period. Moreover, petitioner deducted the amount of P23,646,088.82 in its VAT Returns for the First and Second Quarters of taxable year 2005, specifically, under Line 25A, as follows:

First Quarter	Line 25A Any VAT Refund/TCC Claimed	P4,965,915.49	Exhibit Q
Second Quarter	Line 25A "Any VAT Refund/TCC Claimed	18,680,173.33	Exhibit R
	TOTAL	23,646,088.82	

Therefore, the input VAT claim of P23,646,088.82 was no longer carried over to the succeeding Third Quarter of taxable year 2005."[23]

As We see it then, the claimed input VAT payment in the amount of P23,646,088.82 was not applied against any output VAT liability.

Respondent's input VAT in the amounts of P65,453.72, P44,601.76 and P684,884.47 were properly allowed by the Court in Division

The contention of petitioner that respondent's failure to indicate with particularity the VAT taxable quarter within which the transactions for domestic purchases and importation of goods took place casts doubt on its claim for refund or tax credit, likewise holds no water.

RMC No. 42-03 has clarified this matter. It states that:

"Q-1: In case the supporting documents (invoices/receipts) evidencing the sources of input tax credits were issued outside the taxable period covered by the claims (out-of-period claims), can the input taxes generated therefrom still be credited upon verification that the same have not yet been claimed?

A-1: Out-of-period claims may be allowed provided that they comply with all the following requirements, viz:

1. **That the VAT invoices receipts are issued within the taxable year that the claim was made;**

[23] *Rollo*, pp. 34 – 35.

> 2. That the VAT invoices/receipts cover transactions for the same taxable year;
>
> 3. That they have not been claimed in any other quarter of the same or different taxable year; and
>
> 4. The invoices/receipts are not claimed in any period ahead of the actual date of the said invoices/receipts.
>
> It is to be emphasized that provided the VAT invoices/receipts are claimed within the taxable year, any excess input taxes generated therefrom can be carried over to the following taxable year.
>
> (Invoice is the supporting document for the claim of input tax on purchase of goods whereas official receipt is the supporting document for the claim of input tax on purchase of services)." *(Emphasis supplied)*

Without a doubt, RMC No. 42-03 allows claims of input VAT evidenced by official receipts dated within the same taxable year to be refunded as long as the VAT invoices and official receipts are issued and cover transactions within the taxable year that the claim was made, and as long as these have not been claimed in any other quarter of the same taxable year.

Applying the foregoing to the instant case, the Court in Division correctly allowed the claims for input VAT considering that respondent was able to prove that these have not been claimed in any other quarter of the same taxable year.

However, after a careful examination of the records of the case, We found that the input VAT in the amount of **P2,501,652.50**[24] classified under caption "B. Other Findings," which was denied for failure to comply with the invoicing requirements under Section 113 (A) of the NIRC, was erroneously typed as **P2,501,652.49**[25] in the computation of the unutilized input VAT. For this reason, the refundable input VAT must be recomputed, as follows:

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[24] *Rollo*, p. 31; and *Records*, p. 154.
[25] *Rollo*, pp. 34 – 35.

Amount of Claimed Input VAT			P23,646,088.82
Less:	Disallowances		
	a.	Input VAT under caption 'B. Other Findings' of the CPA Report *(Exhibit II, pages 6 & 7)*	P 2,501,652.50
	b.	Input VAT under caption 'A. Supported by VAT Invoices/Receipts/IEIRDs/BIR Form 1600' (nos. 5, 8 & 13) of the CPA Report *(Exhibit II, page 5)*	486,114.19
	Total disallowances		**P 2,987,766.69**
Refundable Input VAT			**P20,658,322.13**

Accordingly, We find respondent entitled to a refund or tax credit in the reduced amount of P20,658,322.13.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED**. The assailed Decision dated May 9, 2008 is hereby **AFFIRMED** with modification as above stated, regarding the computation of respondent's unutilized input VAT.

Accordingly, petitioner is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of respondent in the reduced amount of **TWENTY MILLION SIX HUNDRED FIFTY-EIGHT THOUSAND THREE HUNDRED TWENTY-TWO PESOS and 13/100 (P20,658,322.13),** representing respondent's unutilized input VAT from its purchases of goods and services and importation of goods attributable to zero-rated sales of power generation services for the four quarters of taxable year 2003.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(Separate Concurring Opinion)
ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice