REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SAN ROQUE POWER CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A CASE NO. 6916

Members:

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

Promulgated:

MAR 2 3 2006

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DECISION

***CASTAÑEDA, JR., J.*:**

This case involves a claim for refund or issuance of a tax credit certificate in the total amount of **TWO HUNDRED FORTY NINE MILLION THREE HUNDRED NINETY SEVEN THOUSAND SIX HUNDRED TWENTY AND 18/100 PESOS (P249,397,620.18**) allegedly representing petitioner's unutilized input value-added taxes paid on its purchases of capital and other taxable goods and services for the period covering January 1 to December 31, 2002.

The facts as stipulated and admitted by the parties are as follows:

Petitioner, San Roque Power Corporation, is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at Barangay San Roque, San Manuel, Pangasinan. It was incorporated on October 14, 1997 to design, construct, erect, assemble, own, commission, and operate power-generating plants and related facilities pursuant to 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 corporation, or other entity engaged in the development, supply, or distribution of energy.

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue and empowered to perform the duties of his office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law.

Petitioner was incorporated solely for the purpose of building and operating the San Roque Multipurpose Project, which is an indivisible project consisting of the power station, the dam, spillway, and other related facilities. And as a seller of services, petitioner is registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer covered under the Certificate of Registration No. OCN-98-006-007394. Likewise, it is registered with the Board of Investments (BOI) on a preferred pioneer status to engage in the design, construction, erection, assembly, as well as, own, commission, and operate electric power-generating plants and related activities, for which it was issued the Certificate of Registration No. 97-356 dated February 11, 1998.

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On October 11, 1997, petitioner entered into a Power Purchase Agreement (PPA) with the National Power Corporation (NPC) to develop the hydropotential of the Lower Agno River, and to be able to generate additional power and energy for the Luzon Power Grid, by building the San Roque Multi-purpose Project at San Manuel, Pangasinan.

The PPA provides, among others, that petitioner shall be responsible for the design, construction, installation, completion, testing and commissioning of the Power Station and shall operate and maintain the same, subject to NPC instructions. During the co-operation period of twenty-five (25) years commencing from the completion date of the Power Station, NPC will take and pay for all electricity available from the Power Station. In other words, the electricity to be generated by the Power Plant will be sold to and purchased by NPC in its entirety.

In view thereof, petitioner applied for and was approved a zero-rating certificate by respondent, through the Chief Regulatory Operations Monitoring Division, now the Audit Information, Tax Exemption & Incentive Division, which approval covered the year 2002.

For the period covering January 1 to December 31, 2001, petitioner filed with the respondent its Monthly Value-Added Tax Declarations and Quarterly Value-Added Tax Returns. Its Quarterly VAT Returns showed excess input VAT payments on account of its importation and purchases of capital and other taxable goods and services, as follows:

Period Covered	Date Filed	Particulars	Amount
1st Quarter (January 1, 2002 to March 31, 2002)	April 10, 2002	Tax Due for the Quarter (Box 13C)	P 26,247.27
		Input Tax carried over from previous qtr (22B)	296,124,429.21
		Input VAT on Domestic Purchases for the Qtr (22D)	95,003,348.91

		Input VAT on Importation of Goods for the Qtr (22F)	20,758,668.00
		Total Available Input tax (23)	411,886,446.12
		VAT Refund/TCC Claimed (24A)	173,909,435.66
		Net Creditable Input Tax (25)	237,977,010.46
		VAT Payable (Excess Input Tax) (260	(237,950,763.19)
		Tax Payable (overpayment) (28)	(237,950,763.19)

2nd Quarter (April 1, 2002 to June 30. 2002)	July 24, 2002	Tax Due for the Quarter (Box 13C)	P blank
		Input Tax carried over from previous qtr (22B)	237,950,763.19
		Input VAT on Domestic Purchases for the Qtr (22D)	65,206,499.83
		Input VAT on Importation of Goods for the Qtr (22F)	18,485,758.00
		Total Available Input tax (23)	321,643,021.02
		VAT Refund/TCC Claimed (24A)	237,950,763.19
		Net Creditable Input Tax (25)	83,692,257.83
		VAT Payable (Excess Input Tax) (26)	(83,692,257.83)
		Tax Payable (overpayment) (28)	(83,692,257.83)

3rd Quarter (July 1, 2002 to September 30, 2002)	October 25, 2002	Tax Due for the Quarter (Box 13C)	P blank
		Input Tax carried over from previous qtr (22B)	199,428,027.47
		Input VAT on Domestic Purchases for the Qtr (22D)	28,924,020.79
		Input VAT on Importation of Goods for the Qtr (22F)	1,465,875.00
		Total Available Input tax (23)	229,817,923.26
		VAT Refund/TCC Claimed (24A)	blank
		Net Creditable Input Tax (25)	229,817,923.26
		VAT Payable (Excess Input Tax) (26)	(229,817,923.26)
		Tax Payable (overpayment) (28)	(229,817,923.26)

4th Quarter (October 1, 2002 to December 31, 2002)	January 23, 2003	Tax Due for the Quarter (Box 3C)	P 34,996.36
		Input Tax carried over from previous qtr (22B)	114,082,153.62
		Input VAT on Domestic Purchases for the Qtr (22D)	18,166,330.54
		Input VAT on Importation of Goods for the Qtr (22F)	2,308,837.00
		Total Available Input tax (23)	134,557,321.16
		VAT Refund/TCC Claimed (24A)	83,692,257.83
		Net Creditable Input Tax (25)	50,865,063.33
		VAT Payable (Excess Input Tax) (26)	(50,830,066.97)
		Tax Payable (overpayment) (28)	(50,830,066.97)

Thus, petitioner filed with the respondent separate claims for refund in the total amount of P250,258,094.44 representing its excess unutilized input value-added taxes paid on its importation and purchases of capital and other taxable goods relative to its construction of the San Roque Multipurpose Project, with breakdown as follows:

Qtr Involved	Output Tax	Input Tax		
		Domestic Purchases	Importations	Excess Input Tax

	(A)	(B)	(C)	(D) = (B) +(C) - (A)
1st	P26,247.27	P 95,003,348.91	20,758,668.00	115,735,769.64
2nd	-	65,206,499.83	18,485,758.00	83,692,257.83
3rd	-	28,924,020.79	1,465,875.00	30,389,895.79
4th	34,996.36	18,166,330.54	2,308,837.00	20,440,171.18
	P61,243.63	P207,300,200.07	P43,019,138.00	**P250,258,094.44**

(Annexes D, E, F, & G, Petition for Review)

However, petitioner amended its Quarterly Value-Added Tax Returns to read as follows:

Period Covered	Date Filed	Particulars	Amount
1st Quarter (January 1, 2002 to March 31, 2002)	April 24, 2003	Tax Due for the Quarter (Box 13C)	P 26,247.27
		Input Tax carried over from previous qtr (22B)	297,719296.25
		Input VAT on Domestic Purchases for the Qtr (22D)	95,126981.69
		Input VAT on Importation of Goods for the Qtr (22F)	20,758,668.00
		Total Available Input tax (23)	413,604,945.94
		VAT Refund/TCC Claimed (24A)	175,544,002.27
		Net Creditable Input Tax (25)	175,544,002.27
		VAT Payable (Excess Input Tax) (260	(238,060,943.67)
		Tax Payable (overpayment) (28)	(238,034.696.40)
2nd Quarter (April 1, 2002 to June 30, 2002)	April 24, 2003	Tax Due for the Quarter (Box 13C)	P blank
		Input Tax carried over from previous qtr (22B)	238,034,696.40
		Input VAT on Domestic Purchases for the Qtr (22D)	65,206,499.83
		Input VAT on Importation of Goods for the Qtr (22F)	18,485,758.00
		Total Available Input tax (23)	321,643,021.02
		VAT Refund/TCC Claimed (24A)	237,950,763.19
		Net Creditable Input Tax (25)	83,692,257.83
		VAT Payable (Excess Input Tax) (26)	(83,692,257.83)
		Tax Payable (overpayment) (28)	(83,692,257.83)
3rd Quarter (July 1, 2002 to September 30, 2002)	October 25, 2002	Tax Due for the Quarter (Box 13C)	P blank
		Input Tax carried over from previous qtr (22B)	83,692,257.83
		Input VAT on Domestic Purchases for the Qtr (22D)	28,924,020.79
		Input VAT on Importation of Goods for the Qtr (22F)	1,465,875.00
		Total Available Input tax (23)	114,082,1532.62
		VAT Refund/TCC Claimed (24A)	Blank
		Net Creditable Input Tax (25)	114,082,153.62
		VAT Payable (Excess Input Tax) (26)	(114,082,153.62)
		Tax Payable (overpayment) (28)	(114,082,153.62)
4th Quarter (October 1, 2002 to December 31, 2002)	January 23, 2003	Tax Due for the Quarter (Box 13C)	P 34,996.36
		Input Tax carried over from previous qtr (22B)	114,082,153.62
		Input VAT on Domestic Purchases for the Qtr (22D)	17,918,056.50
		Input VAT on Importation of Goods for the Qtr (22F)	1,573,004.00
		Total Available Input tax (23)	133,573,214.12
		VAT Refund/TCC Claimed (24A)	83,692,257.83
		Net Creditable Input Tax (25)	49,880,956.29
		VAT Payable (Excess Input Tax) (26)	(49,845,959.93)
		Tax Payable (overpayment) (28)	(49,845,959.93)

(par. 16, Joint Stipulation of Facts and Simplification of Issues)

Consequently, in view of the reduced amount of input value-added taxes for the period covering January 1 to December 31, 2002, petitioner, on May 20, 2003 and July 31, 2003, filed with the respondent separate letters to amend its claims for refund or issuance of tax credit certificates to show the amount of P249,397,620.18 representing its unutilized excess value-added taxes on its importation of capital and other taxable goods and services, as follows:

Qtr Involved	Date Filed	Output Tax	Input Tax		
			Domestic Purchases	Importations	Excess Input Tax
		(A)	(B)	(C)	(D) = (B) + (C) - (A)
1st	30-May-03	P26,247.27	P 95,126,981.69	P20,758,668.00	P115,859,402.42
2nd	25-Oct-02	-	65,206,499.83	18,485,758.00	83,692,257.83
3rd	27-Feb-03	-	28,924,020.79	1,465,875.00	30,389,895.79
4th	31-Jul-03	34,996.36	17,918,056.50	1,573,004.00	19,456,064.14
		P61,243.63	P207,175,558.81	P42,283,305.00	**P249,397,620.18**

(Exhibits "E", "F", "G" and "H")

Due to the inaction of the respondent, and before it could be barred by the two-year prescriptive period within which to file its claim, petitioner then filed this instant Petition for Review with this Court on April 5, 2004.

In his Answer filed on May 19, 2004, respondent raised the following as his Special and Affirmative Defenses:

> 4. Petitioner failed to comply with the provisions of Section 8 (d) of Revenue Regulations No. 5-87 and Section 4.107-1 of Revenue Regulations No. 7-95 which provide, thus:
>
> "Section 8. *Zero Rating* – (a) x x x
>
> (d) *Application for the imposition of zero rate.* - Any person claiming that his sales of goods or services are effectively zero-rated under Sections 100 and 102 shall file an application in a form prescribed therefore *(sic)* with the Commissioner of Internal Revenue justifying the imposition of zero-rate on the said transactions. Upon approval, his status as a zero-rated taxpayer shall remain valid until revoked."
>
> "Section 4.107-1 - *Registration of Value-Added Taxpayers*

(a) x x x

(d) *Application for effective zero-rating.* - Except for actual export sale, other cases of zero-rated sales in Section 4.100-3 and Section 4.102-2(c) shall require prior application with Revenue District Office for effective zero-rating, the transaction otherwise entitled to zero-rating shall be considered exempt."

5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue;

6. The amount of P249,397,610.18 being claimed by petitioner as alleged unutilized input VAT on purchases of capital goods and services for the period January 1 to December 31, 2002 is not properly documented;

7. 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;

8. Petitioner must show that it has complied with the provisions of Section 205 (C) and 229 of the 1997 Tax Code on the prescriptive period for claiming tax refund/credit;

9. 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).

As both parties filed their respective Memoranda on time, this case was considered submitted for decision on November 9, 2005.

The parties stipulated the following as the issues of the case:

1. Whether or not petitioner's sales are subject to value-added taxes at effectively zero percent (0%) rate;

2. Whether or not petitioner incurred input taxes which are attributable to its effectively zero-rated transactions;

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3. Whether or not petitioner's importation and purchases of capital goods and related services are within the scope and meaning of "capital goods" under Revenue Regulations No. 7-95;

4. Whether or not petitioner's input taxes are sufficiently substantiated with VAT invoices or official receipts;

5. Whether or not the VAT input taxes being claimed for refund/tax credit by petitioner has been credited or utilized against any output taxes or has been carried forward to the succeeding quarter or quarters;

6. Whether or not petitioner is entitled to a refund of VAT input taxes it paid from January 1, 2002 to December 31, 2002 in the total amount of Two Hundred Forty Nine Million Three Hundred Ninety Seven Thousand Six Hundred Twenty Pesos and 18/100 (Php249,397,620.18).

After a close examination of petitioner's arguments, the main issue of this case boils down to whether or not petitioner is entitled to a refund or issuance of a tax credit certificate in the amount of P249,397,620.18 representing its unutilized input VAT paid on the importation and purchases of capital and other taxable goods and services for the period covering from January 1 to December 31, 2002.

Petitioner contends that it is entitled to the claim for refund or issuance of a tax credit certificate in the amount of P249,397,620.18 since its sales of services to NPC is subject to VAT at zero percent (0%). To bolster its claim, petitioner cites Section 13 of Republic Act (R.A.) No. 6395, otherwise known as the NPC Charter, which provides that:

"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 in furtherance and effective implementation for the policy enunciated in Section 1 of this Act, the Corporation, including its subsidiaries, is hereby declared exempt from all taxes, duties, fees,

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

Petitioner maintains that NPC's VAT rate of zero percent (0%) has been confirmed by respondent himself through his issuance of VAT Ruling No. 015-99, dated February 12, 1999, which states, in part:

> "In view of the foregoing and using the power to review granted to the Secretary of Finance under Section 4 of RA 8424, the Department of Finance upholds the ruling of the Supreme Court that the NPC is exempt under its charter and subsequent laws from all direct and indirect taxes on its purchases of petroleum products and electricity. Thus, the purchases of NPC of electricity from independent producers are subject to VAT at zero rate.
>
> In view thereof, the sale of electricity by San Roque to NPC is subject to zero percent (0%) VAT pursuant to Section 108 (B)(3) of the Tax Code of 1997."

Further, petitioner alleges that in the case of Southern Energy Quezon, Inc. vs. Commissioner of Internal Revenue, CTA Case Nos. 5933 and 5984, January 15, 2002, this Court held that:

> "the affirmations of both the Supreme Court (Maceda vs. Macaraig, G.R. No. 88291, May 31, 1991) and the Secretary of Finance (Memorandum dated January 26, 1998) regarding NPC's exemption from all kinds of taxes should be enough bases for the Revenue District Officer (of RDO No. 51) to approve the pending application of Petitioner. x x x In fact, in numerous VAT and BIR rulings, the Respondent had already acknowledged that purchases of NPC of electricity from independent power producers are subject to VAT at zero-rate. To this Court's mind, the admission of Respondent regarding the issue qualifiedly approved all the pending applications for effective zero-rating filed with any district or regional offices of the Bureau of Internal Revenue considering that Respondent had already expressed its decision over the matter. Moreover, Respondent, being the agency head of the Bureau of Internal Revenue, has the authority and supervision over all district and regional offices of the Bureau, hence, any actions, rulings, or pronouncements made by him can be adopted by the district officers or regional directors with respect to resolving similar issues. x x x In the Court's resolution in the case entitled Mirant (Navotas II) Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5911, December 12, 2001, we ruled that the absence of an approved application for effective zero-rating under such peculiar circumstances, should not be a deterrent to the claim for refund."

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Petitioner submits that it has applied for and was granted five (5) separate Certificates of Zero-rate by respondent Commissioner, through the Chief of Regulatory Operations Monitoring Division, now the Audit Information, Tax Exemption & Incentive Division, covering the periods 1998 to 2002.

This Court agrees with petitioner.

It has been resolved in a number of cases[1] that sales of services to NPC, a corporation which is exempt from all forms of taxes, is subject to VAT at zero-percent (0%) in accordance with the provisions of Section 108 (B) of the National Internal Revenue Code of 1997, which provides:

> **Section 108.** ***Value-Added Tax on Sale of Services and Use or Lease of Properties. -***
>
> *(A) x x x*
>
> (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) x x x*
> *(2) x x x*
> *(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 services to zero percent (0%) rate.** *(Emphasis supplied.)*

[1] Magellan Cogeneration, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6033, May 19, 2003; Mirant (Phils.) Mobile Corp. (formerly Southern Energy Mobile, Inc.) vs. Commissioner of Internal Revenue, CTA Case Nos. 5935 & 5969, January 15, 2002; Southern Energy Quezon, Inc. (formerly Hopewell Power (Phils.) Corp.) vs. Commissioner of Internal Revenue, CTA Case Nos. 5933 & 5984, 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; Magellan Cogeneration, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5765, February 26, 2002; Mirant Pagbilao Corp. (formerly Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 6041, March 5, 2002

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Corollary thereto, petitioner is entitled to the refund or issuance of a tax credit certificate of input VAT attributable to zero-rated sales pursuant to Section 112 (A) of the National Internal Revenue Code of 1997, 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 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 sales 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.

Additionally, petitioner may also claim for a refund or issuance of a tax credit certificate on input VAT paid on capital goods or other taxable goods and services in accordance with Section 112 (B) of the same Code, *viz*:

> **Section 112.** ***Refunds or Tax Credits of Input Tax*** -
>
> (A) x x x
>
> (B) ***Capital Goods.*** - A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years, after the close of the taxable quarter when the importation or purchase was made.

Effectively, consistent with this Court's other decisions regarding the same nature of transactions, petitioner is entitled to its claim for refund or issuance of a tax credit certificate, for the amount it had actually paid representing excess unutilized input value-added taxes on its importation and purchases of capital goods and other taxable goods and services.

However, for petitioner to be entitled to the refund or issuance of a tax credit certificate, it is most important that petitioner prove through sufficient documents that it had actually incurred effectively zero-rated sales for the taxable year 2002. The issue of substantiation must be convincingly established so as to entitle petitioner to its claim.

Petitioner is a VAT-registered entity as evidenced by its Certificate of Registration No. OCN 98-006-007394 dated August 31, 1998. As a VAT-registered entity, it had dutifully filed its amended Quarterly VAT Returns for the taxable year 2002 reflecting the following amounts:

Qtr Involved	Date Filed	Output Tax	Input Tax		
			Domestic Purchases	Importations	Excess Input Tax
		(A)	(B)	(C)	(D) = (B) + (C)- (A)
1st	30-May-03	P26,247.27	P 95,126,981.69	P20,758,668.00	P115,859,402.42
2nd	25-Oct-02	-	65,206,499.83	18,485,758.00	83,692,257.83
3rd	27-Feb-03	-	28,924,020.79	1,465,875.00	30,389,895.79
4th	31-Jul-03	34,996.36	17,918,056.50	1,573,004.00	19,456,064.14
		P61,243.63	**P207,175,558.81**	**P42,283,305.00**	**P249,397,620.18**

Petitioner maintains that its amended quarterly returns showed its input value-added tax payments on its purchases of capital goods and other taxable goods and services for the period covering January 1 to December 31, 2002, for which it is entitled to claim as refund or issuance of a tax credit certificate.

We do not agree. Contrary to petitioner's contentions, records reveal that petitioner actually had no effectively zero-rated sales for the taxable year 2002. This is affirmed by the report submitted by the Court-commissioned Independent

Certified Public Accountant (CPA), Mr. Angel A. Aguilar *(Exhibit J)*, a portion of which reads:

> "1. With respect to procedure A1, we noted and confirmed that the BIR issued to the Company the approved Application for VAT Zero-Rating on the sale of electricity by the Company to NPC pursuant to Section 108 (B)(3) of the National Internal Revenue Code of 1997 and the BIR VAT Ruling No. 018-03; and
>
> 2. With respect to procedure A2, **we have ascertained that the Company has no sales of electricity to NPC during the period covered in the claim. The Company started selling electricity to NPC in May 2003."** *(Emphasis supplied)*

Furthermore, even petitioner's Vice-President and Director for Finance through his affidavit *(Exhibit L)* confirmed that indeed the project was still under construction during the year 2002 and that no sale had incurred during that year. For expediency, the pertinent portion of the affidavit is quoted below:

> "**Q**: Based on your statements, what sale, if any, did San Roque Power Corporation make for the year 2002?
>
> **A**: San Roque Power Corporation has had no sale yet during 2002. The Php42,400,000.00 which was paid to us by Napocor was something similar to a mere cost recovery scheme. The pre-agreed amount would be about equal to our costs for producing the electricity during the testing period and we just reflected this in our 4^{th} quarter return as a zero-rated sale. **During this period, the company is still at its pre-operating stage and has not made any commercial sale yet."**

It must be emphasized that this Court had consistently held that a taxpayer cannot claim for a refund or issuance of a tax credit certificate representing unutilized input VAT payments on its purchases of goods and services attributable to zero-rated sales unless there exists a zero-rated or effectively zero-rated sales *(Kepco Philippines Corporation vs. Commissioner of Internal Revenue, CTA Case Nos. 5675 & 5704, March 18, 2003; Kepco*

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Philippines Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5761, July 14, 2003; Placer Dome Technical Services vs. Commissioner of Internal Revenue, CTA Case No. 6106, May 14, 2002; La Frutera vs. Commissioner of Internal Revenue, CTA Case Nos. 5898 & 5937, September 17, 2001). Therefore, petitioner's claimed input VAT alleged to be attributable to effectively zero-rated sales cannot be granted.

Nevertheless, petitioner may still claim for a refund or issuance of a tax credit certificate of its input VAT paid on capital goods purchased pursuant to Section 112(B) earlier cited. It only has to prove:

1. that it is VAT registered entity;
2. that it paid input VAT on capital goods purchased;
3. that its input VAT payments on capital goods are duly supported by VAT invoices or official receipts;
4. that it did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability;
5. that the administrative and judicial claims for refund were filed within the two-year prescriptive period.[2]

As the first requisite has already been resolved earlier on, this Court shall now discuss the second and third requisites, considering that both are interrelated and refer to the subject matter of "capital goods".

Sections 4.104.5(a) and 4.106-1(b) of Revenue Regulations No. 7-95 provide and define "capital goods or properties" as follows:

> **Section 4.104-5. Substantiation of claims for input tax credit. –** (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Sections 108 (a) and 238 of the Code x x x.

[2] Air Liquide Philipines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5652, July 6, 2000

Section 4.106-1. Refunds or tax credits of input tax. – (a) xxx

xxx xxx xxx

(b) **Capital Goods** – Only a VAT registered person may apply for issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased. The refund shall be allowed to the extent that such input taxes have not been applied against output taxes. The application should be made within two (2) years after the close of the taxable quarter when the importation or purchase was made.

Refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT taxable business. If it is also used in exempt operations, the input tax refundable shall only be the ratable portion corresponding to the taxable operations.

"Capital goods or properties" *refer to goods or properties with an estimated useful life of greater than one year and which are treated as depreciable assets under Section 29 (f), used directly or indirectly in the production or sale of taxable goods or services."*

Clearly, from the foregoing, in order that the subject purchases can be classified as "capital goods or properties", the following conditions must be present:

a) that the goods or properties must have estimated useful life or more than one year;

b) they are treated as depreciable assets under Section 29(f); and

c) they are used directly or indirectly in the production or sale of taxable goods or services.

To prove its alleged purchases of capital goods, petitioner presented and offered in evidence various suppliers' invoices and official receipts, Import Entries and Internal Revenue Declarations (*Exhibits 'J-4-A1' to 'J-4-A268', 'J-4-B1' to 'J-4-B265', 'J-4-C1' to 'J-4-C285', 'J-4-D1' to 'J-4-D259', 'J-4-E1' to 'J-4-E272', 'J-4-F1' to 'J-4-F321', 'J-4-G1' to 'J-4-G332', 'J-4-H1' to 'J-4-H450', except 'J-4-H435', 'J-4-I1' to 'J-4-I278', 'J-4-J1' to 'J-4-J389', 'J-4-K1' to 'J-4-K303', 'J-4-L1' to 'J-4-*

L264'), as well as the report of the Court-commissioner Independent CPA (*Exhibit 'J'*).

A thorough examination of these documents presented failed to show and convince this Court that indeed the importations and purchases made by petitioner can be classified as capital goods which may form part of the "Property, Plant and Equipment – Net" account of the petitioner. Moreover, petitioner failed to prove that the same importations and purchases fall squarely within the meaning of "capital goods and properties" as defined under Section 4.106-1(b) of Revenue Regulations No. 7-95. Although valid invoices were presented, this Court cannot properly verify if these importations and purchases pertain to capital goods subject of this claim.

In sum, this Court finds that petitioner failed to validate its claim for refund or issuance of a tax credit certificate, thus, the same cannot be granted.

WHEREFORE, this instant Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTANEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice

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