REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MIRANT SUAL CORPORATION (formerly: SOUTHERN ENERGY PANGASINAN, INC.),
Petitioner,

- versus -

C.T.A. CASE NO. 6125

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

OCT 24 2002

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DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P284,215,110.96 allegedly representing unutilized input value-added tax (VAT, for brevity) on domestic purchases of capital goods and services for the period April 1, 1998 to December 31, 1998.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at Barangay Pangascasan, Sual, Pangasinan. It was originally registered with the Securities and Exchange Commission (SEC) as "Pangasinan Electric Corporation" *(Exhibits A to A-2)*. It is principally engaged in the business of power generation and subsequent sale thereof *(Exhibits B to B-4)*.

Petitioner registered with the Bureau of Internal Revenue as a VAT taxpayer with Certificate of Registration bearing RDO Control No. 05-0181, dated February 29, 2000[1]

[1] The original Certificate of Registration was issued on January 22, 1996 (Exhibits B to B-4).

(Exhibits C to C-4). For the period April 1, 1998 to December 31, 1998, petitioner seasonably filed its original Quarterly Value-Added Tax Returns reflecting no record of sales but with an accumulated input VAT arising from its domestic purchases of goods and services in the total amount of P284,215,110.96 *(Exhibits D, E, and F, inclusive of submarkings)*. Petitioner alleged that the aforementioned input taxes of P284,215,110.96 pertain to purchases of capital goods and services needed for the construction of its electric power generation plant and related facilities in Sual, Pangasinan *(TSN, November 20, 2000)*.

Pursuant to the procedures prescribed under Revenue Regulations No. 7-95, as amended, petitioner, on May 9, 2000, filed its application for the issuance of a tax credit certificate or refund of the aforementioned unutilized input VAT paid on capital goods with the Bureau of Internal Revenue, Revenue Region No. 5, Alaminos, West Pangasinan *(Paragraph 5, Joint Stipulation of Facts, Joint Stipulation of Facts and Restatement of Issues, CTA records, page 41; Exhibits G to G-2)*.

On June 28, 2000, petitioner instituted the instant Petition for Review in order to toll the running of the two-year prescriptive period under Section 229 of the Tax Code, as amended.

This case was submitted for decision on July 18, 2002, sans the evidence of the respondent.

The issues to be resolved by the court, as jointly stipulated by the parties, are the following:

1. Whether or not petitioner has unutilized creditable VAT input in the amount of P284,215,110.96 generated from the petitioner's purchase of capital goods during 2nd Quarter ended June 30, 1998; 3rd Quarter ended September 30, 1998; and 4th Quarter ended December 30, 1998, which is a proper object of a claim for refund pursuant to Section 112(b) of the National Internal Revenue Code, as amended;

2. Whether or not the unutilized creditable VAT input taxes of P284,215,110.96 generated from the petitioner's purchase of capital goods during the 2nd Quarter ended June 30, 1998; 3rd Quarter ended September 30, 1998; and 4th Quarter ended December 30, 1998, are properly substantiated by documentary evidence in the form of invoices and official receipts; and

3. Whether or not the amount of P284,215,110.96 unutilized Creditable VAT inputs generated from the petitioner's purchase of capital goods during the 2nd Quarter ended June 30, 1998; 3rd Quarter ended September 30, 1998; and 4th Quarter ended December 30, 1998, remained unapplied against any output tax liability of the petitioner. (*Restatement of Issues, Joint Stipulation of Facts and Restatement of Issues, CTA records, pages 41 and 42).*

Due to the voluminous nature of the evidence to be presented, petitioner availed of the services of Mr. Ruben R. Rubio, a Partner in the accounting firm SGV & Company, who was commissioned by the court to verify the accuracy of petitioner's summary of input taxes pursuant to CTA Circular No. 1-95, as amended by CTA Circular No. 10-97. In his report dated April 18, 2001, Mr. Rubio described the audit procedures performed and expressed the following findings (*Exhibits S to S-8*):

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

Findings	2nd Quarter	3rd Quarter	4th Quarter	Total
I. Input Taxes on Purchases of Services:				
1. Improper Computation of Input Tax (Annex A)	1,540,410.27	616,661.70	2,444,555.29	4,601,627.26
2. From Transportation Contractors Subject to 3% Percentage Tax (Annex B)	2,515.90	3,313.63	718.18	6,547.71
II. Input Tax on Purchase of Goods Not supported by Original Document (Annex C)			2,045.45	2,045.45
III. Input Taxes on Purchases of Goods and Services Without Supporting Documents (Annex D)		11,405.22	5,300.00	16,705.22
Total	**1,542,926.17**	**631,380.55**	**2,452,618.92**	**4,626,925.64**

On the other hand, respondent, in his memorandum, opined that some input taxes accumulated by petitioner on car rentals, transport services, janitorial services and furniture and fixtures do not pertain to payments of capital goods. They are not related to the construction of petitioner's power plant facilities and hence should be disallowed.

Thus, the court is tasked to resolve a corollary issue of what comprises capital goods.

In the cases of ***Hopewell Power (Philippines) Corp. vs. Commissioner of Internal Revenue, CTA Case No. 5321, dated October 7, 1998[2]; and Hopewell Power***

[2]With Court of Appeals' Entry of Judgment dated March 25, 1999.

(Philippines) Corp. vs. Commissioner of Internal Revenue, CTA Case No. 5389, dated January 4, 1999[3], the court clearly addressed said controversy in this manner –

> Section 2(o) of Revenue Regulations No. 5-87 of the Value-Added Tax Regulations defines capital goods as –
>
> > (o) "Capital goods" refer to goods with estimated useful life 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.
>
> Generally, a capital expenditure involves a payment which creates or enhances what is essentially a separate and distinct asset. Statutorily, capital expenditures are specified as amounts paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate or amounts expended in restoring property or in making good exhaustion thereof for which an allowance is or has been made (6 MERTENS Law of Federal Income Taxation, S25.37, pp. 114 to 115).
>
> In determining what constitutes capital goods, courts will look to the origin and character of the expenditure to determine whether it is a capital asset (6 MERTENS Law of Federal Income Taxation, S25.37, p. 115, ***supra***). For example, it was held that "the cost of a topographical survey made for the purpose of establishing boundary lines of the property, of ascertaining the topography of the land, and of recording the location on the property of valuable shrubs and shade trees is a capital expenditure" (Johnson vs. Comm., TC Memo 1955-247, cited in 6 MERTENS Law of Federal Income Taxation S25.63, p. 179). The same treatment is accorded to amounts expended for maps, abstracts, legal title opinions, recording fees and surveys (6 MERTENS Law of Federal Income Taxation, S25.63, p. 179, ***supra***).
>
> The records show that petitioner expended for engineering and structural services for the purpose of constructing power plant facilities needed in the production of electricity, which is petitioner's main product. We are therefore convinced that said expenses are necessary and should form part of the cost of the power plant facilities. (Underlining supplied).

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[3]With Supreme Court Resolution dated February 21, 2001, denying the petition for review for failure of petitioner Commissioner of Internal Revenue to show that a reversible error had been committed by the appellate court. Our decision was affirmed by the Court of Appeals in its Decision dated March 17, 2000.

The above pronouncement is on all fours with the case at bar and once again we adhere to the said conclusion. It was indubitably shown that petitioner expended for the construction of its electric power generation plant as evidenced by various VAT invoices and official receipts showing payments relevant to the erection of coal-fired thermal power plant in Sual, Pangasinan and interior works in its head office building *(Exhibits T-2 to T-56, U-2 to U-58, V-2 to V-45)*. The power plant and its related facilities are within the scope and meaning of capital goods ***(Commissioner of Internal Revenue vs. Hopewell Power (Phils.) Corporation, CA-G.R. SP No. 51617, dated March 17, 2000).*** Furthermore, office furniture and equipment are also classified as capital goods within the afore-quoted definition of capital goods. Consequently, the input taxes paid by petitioner on purchases of capital goods may be refunded pursuant to Section 112(B) of the Tax Code, as amended, to wit:

> SEC. 112. ***Refunds or Tax Credits of Creditable Input Tax.*** –
>
> *(A) Zero-rated or Effectively Zero-rated Sales.* – xxx.
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> *(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.

However, based on the afore-quoted law, petitioner must show compliance with the following requisites: (1) that it is a VAT registered person; (2) the input taxes claimed by petitioner were paid on capital goods; (3) the input taxes have not been applied against its output tax liability; and (4) the administrative claim for refund was seasonably filed ***(Air Liquide Philippines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case No. 5652, July 6, 2000)***.

Records reveal that petitioner satisfactorily complied with all the aforementioned requisites. Petitioner is registered with the Bureau of Internal Revenue as a VAT-taxpayer *(Exhibits B and C, inclusive of submarkings)*. The input taxes claimed, as discussed earlier, pertain to capital goods. The input taxes sought to be refunded/credited were not utilized by petitioner during the subject period because it had no output tax liability against which the said input taxes could be applied *(Exhibits D, E, and F, inclusive of submarkings)*. In fact, the claimed input taxes in the amount of P284,215,110.96 were already deducted from the accumulated input taxes as of September 30, 2000, as shown in the 2000 third quarterly VAT return *(Exhibit N, inclusive of submarkings)*. This means that petitioner can no longer utilize the claimed input VAT in its future output tax liabilities. Lastly, the administrative claim for refund was seasonably filed.

What is now left for the court to determine is the correct amount of input taxes that may be granted to petitioner on the basis of the evidence presented.

After conducting its own verification, the court deems it proper to adopt the exceptions noted by the independent CPA in his report in the sum of P4,626,925.64. Likewise, as correctly pointed out by respondent in his memorandum, the following input taxes pertaining to janitorial services as well as certain expenses for office supplies and representation (which did not form part of the findings of the independent CPA) are disallowed:

Supplier	Invoice/ OR No.	Exhibit	Amount	Remarks
Vaecare Enterprises	227	T-42,T-43	P 353.07	Janitorial services
Vaecare Enterprises	228	T-42,T-44	366.39	Janitorial services
Vaecare Enterprises	236	T-45,T-46	409.42	Janitorial services
Vaecare Enterprises	237	T-45,T-47	391.13	Janitorial services
Vaecare Enterprises	254	T-48,T-49	409.12	Janitorial services
Vaecare Enterprises	255	T-48,T-50	441.36	Janitorial services
Vaecare Enterprises	269	T-51,T-52	378.66	Janitorial services
Vaecare Enterprises	270	T-51,T-53	394.75	Janitorial services
Vaecare Enterprises	281	T-54,T-55	438.81	Janitorial services
Vaecare Enterprises	282	T-54,T-56	336.86	Janitorial services
Vaecare Enterprises	293	U-14,U-15	396.25	Janitorial services
Vaecare Enterprises	305	U-16,U-17	454.62	Janitorial services
Vaecare Enterprises	307	U-16,U-18	419.85	Janitorial services
Vaecare Enterprises	312	U-19,U-20	548.45	Janitorial services
Vaecare Enterprises	332	U-31,U-32	552.94	Janitorial services
Vaecare Enterprises	335	U-33,U-34	523.39	Janitorial services
Vaecare Enterprises	352	U-55,U-56	407.85	Janitorial services
Vaecare Enterprises	356	U-57,U-58	331.74	Janitorial services
Computrends Systems Tech	7943	U-23,U-24	454.54	Office supplies
Corporate Image Dimension	1080	U-25,U-26	12,500.00	Representation
Unison Computer Systems	39234	U-29,U-30	872.73	Office supplies
Floro Blue Printing, Inc.	29689	U-40,U-41	3,272.73	Office supplies
Vaecare Enterprises	370	V-36,V-37	345.34	Janitorial services
Vaecare Enterprises	383	V-38,V-39	379.02	Janitorial services
Vaecare Enterprises	396	V-40,V-41	361.71	Janitorial services
Vaecare Enterprises	441	V-42	450.42	Janitorial services
Total			P 26,191.15	

In sum, petitioner is entitled to refund/credit of input taxes in the amount of P279,561,994.17, computed as follows:

Amount sought to be refunded/credited		P284,215,110.96
Less: Disallowances		
a) Per independent CPA	P4,626,925.64	
b) Per court verification		
- Non capital goods	26,191.15	4,653,116.79
Amount refundable		P279,561,994.17

WHEREFORE, in view of the foregoing, petitioner's claim for refund is hereby ***PARTIALLY GRANTED***. Accordingly, respondent is **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in the amount of P279,561,994.17 representing input taxes paid on capital goods for the period April 1, 1998 to December 31, 1998.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge