

Republic of the Philippines  
COURT OF TAX APPEALS  
Quezon City

**SPECIAL FIRST DIVISION**

**KEPCO ILIJAN CORPORATION,**  
Petitioner,

**C.T.A. CASE NO. 6682**

Members:

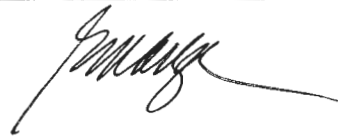
- versus -

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

**COMMISSIONER OF INTERNAL  
REVENUE,**  
Respondent.

Promulgated:

MAR 11 2010 9:50 am



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**AMENDED DECISION**

***CASANOVA, J.:***

This resolves petitioner-Kepeco Ilijan Corporation (KEPCO)'s Motion for Partial Reconsideration filed on September 25, 2009 seeking reconsideration of this Court's Decision (*Assailed Decision*) promulgated on September 1, 2009. During the scheduled hearing on October 9, 2009, counsel for respondent-Commissioner of Internal Revenue (CIR) moved for a period of ten (10) days from said date or until October 19, 2009 within which to file a Comment on the instant Motion. The Court granted the said motion. However, no compliance was made by the counsel for respondent, thus, submitting KEPCO's Motion for resolution. 

In support of the instant Motion, KEPCO raised the following arguments:

- I. THE PHP79,500,084.48 REFUND CLAIM WAS FILED WITHIN THE REGLEMENTARY PERIOD AND HAS NOT PRESCRIBED.
- II. THE NEW INTERPRETATION OF THE TWO YEAR PERIOD TO FILE CLAIM FOR REFUND/TAX CREDIT OF UNUTILIZED INPUT VAT BASED ON THE 2008 MIRANT PAGBILAO CASE SHOULD NOT BE APPLIED RETROACTIVELY TO THE PREJUDICE OF PETITIONER.
- III. THERE WAS NO DOUBLE CLAIM FOR PHP38,244,779.71 INPUT VAT ARISING FROM RAYTHEON EBASCO TRANSACTION.
- IV. IMPORT VAT WERE DULY SUPPORTED BY CERTIFIED TRUE COPIES OF IEDS.

After a careful study of the arguments proffered by the petitioner in its Motion for Reconsideration, this Court finds the same partly meritorious.

In the Assailed Decision, the Court denied KEPCO's claim for the first quarter of 2001 in the amount of P79,500,084.48 for being barred by prescription pursuant to the Supreme Court's ruling in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*<sup>1</sup> (Mirant case) wherein it was held that, "the reckoning of the two (2) year prescriptive period for the filing of input VAT refund claims should be counted from the close of the taxable quarter".

However, in CTA Case Nos. 7229 & 7298 entitled, "*Team Energy Corporation (Formerly Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue*," (Team Energy case) the Court held that the Mirant case is not applicable in the afore-mentioned consolidated cases. Quoted hereunder is a portion of the Court's Decision:

"Although there is a recent case entitled *Commissioner of Internal Revenue vs. Mirant Pagbilao Corp. (Formerly SOUTHERN ENERGY QUEZON, INC.)*, wherein the Supreme Court held that the reckoning of the two year prescriptive period for the filing of the claim for input VAT refund starts from the close of the taxable quarter when the relevant

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<sup>1</sup> G.R. No. 172129, September 12, 2008

sales were made, this Court finds it proper to apply said ruling to cases filed after the promulgation date of the *Mirant Case*. To apply said ruling in the present case will in effect be giving the new doctrine retroactive application thereby impairing vested rights.”

Thus, consistent with the Court’s pronouncement in the *Team Energy case*, the Court partly reconsiders its *Assailed Decision*.

Petitioner-KEPCO’s present claim in the amount of P338,279,058.65 (including the amount of P79,500,084.48) covering the four quarters of 2001 shall be considered to have been filed within the two (2) year prescriptive period reckoned from April 25, 2001<sup>2</sup>, July 25, 2001<sup>3</sup>, October 25, 2001<sup>4</sup> and January 25, 2002<sup>5</sup>, the dates when KEPCO filed its Quarterly VAT Returns for the first, second, third and fourth quarters of 2001, respectively<sup>6</sup>. However, as stated in the *Assailed Decision*, KEPCO had no zero-rated sales for the subject period of claim. Petitioner’s input VAT claim of P1,606,007.11<sup>7</sup> related to purchases of non-capital goods and services shall be deducted from the total claim of P338,279,058.65.

While the remaining amount of P336,673,051.54 pertaining to KEPCO’s purchases of capital goods/services may be the proper subject of claim for refund pursuant to Section 112 (B) of the 1997 NIRC, as amended, the amount of P3,265,235.41<sup>8</sup> as found by the Court-commissioned Independent CPA (ICPA) should be disallowed for petitioner’s failure to meet the substantiation requirements under Sections 110 (A) and 113 (A) of the 1997 NIRC, as implemented by Sections 4.104-1, 4.104-5 and 4.108-1 of Revenue Regulations No. 7-95 (RR 7-95). 

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<sup>2</sup> Exhibit “B”

<sup>3</sup> Exhibit “C”

<sup>4</sup> Exhibit “D”

<sup>5</sup> Exhibit “E”

<sup>6</sup> *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 141104 & 148763, June 8, 2007

<sup>7</sup> Exhibit “III”, page 11

<sup>8</sup> *Assailed Decision*, Docket pp. 590-591

Further, input taxes in the amount of P95,433,317.58 shall be denied for the following reasons:

| Reasons for Denial                                                                                                                                       | Exhibit                     | 1st Quarter         | 2nd Quarter          | 3rd Quarter          | 4th Quarter          | Total                |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|---------------------|----------------------|----------------------|----------------------|----------------------|
| <b>On Domestic Purchases</b>                                                                                                                             |                             |                     |                      |                      |                      |                      |
| 1. Input tax claimed on payment for construction services rendered by Raytheon Ebasco Overseas Ltd. supported by an OR dated outside the period of claim | L-1262                      |                     |                      |                      | 38,244,779.71        | 38,244,779.71        |
| <b>On Importations</b>                                                                                                                                   |                             |                     |                      |                      |                      |                      |
| 2. Input taxes claimed on importations supported by certified true copy of IEDs and photocopied bank statements of account                               | Exh. III, Annex 29          | 945,020.00          | 41,356,690.00        | 10,410,000.75        | 3,300,364.00         | 56,012,074.75        |
| 3. Input taxes claimed on importation supported only by certified true copy IEDs                                                                         | Exh. III, Annex 30          | 279,076.00          | 349,877.12           | 24,070.00            | -                    | 653,023.12           |
| 4. Input taxes claimed on importations without any BOC IEIRD/OR or bank debit advice/OR but supported only by photocopied bank statement                 |                             |                     |                      |                      |                      |                      |
| <b>Supplier</b>                                                                                                                                          |                             |                     |                      |                      |                      |                      |
| Aquatech International                                                                                                                                   | GG-1078 to GG-1083, GG-1673 |                     | 167,800.00           |                      |                      | 167,800.00           |
| Aquatech International                                                                                                                                   | GG-1329 to GG-1332, GG-1681 |                     | 355,640.00           |                      |                      | 355,640.00           |
| <b>TOTAL</b>                                                                                                                                             |                             | <b>1,224,096.00</b> | <b>42,230,007.12</b> | <b>10,434,070.75</b> | <b>41,545,143.71</b> | <b>95,433,317.58</b> |

With regard to petitioner's third argument, KEPCO alleges that, although the official receipt supporting the disallowed input VAT of P38,244,779.71<sup>9</sup> was a

<sup>9</sup> Input tax claimed on payment for construction services rendered by Raytheon Ebasco Overseas Ltd.

dated January 28, 2002, thus, already outside the period of claim, such input tax was never claimed in 2002 or in any other period. Thus, KEPCO argues that it is entitled to the refund of the said amount.

The Court disagrees.

It is obligatory on the part of the petitioner to declare the input VAT in the corresponding taxable quarters when the purchases of goods were consummated, as evidenced by VAT invoices and when the payments for services were made as evidenced by VAT official receipts, as held by this Court in the case of *Lepanto Consolidated Mining Co. vs. Commissioner of Internal Revenue*<sup>10</sup>, thus:

"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 

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<sup>10</sup> CTA Case Nos. 6368 & 6480, December 15, 2004

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."

Thus, the input VAT of P38,244,779.71 which is supported by an official receipt dated later than the period of claim cannot be subject of a claim of refund pursuant to Section 110 (A) in relation to Section 112 (A) of the 1997 NIRC, as amended.

With respect to the disallowance of input VAT in the amount of P55,441,001.87 (included under items No. 2 & 3) pertaining to KEPCO's importations, petitioner prays for the reversal of the said disallowance, or in the alternative, be given the opportunity to present additional supporting documents to prove its claim.

However, the Court is not inclined to grant KEPCO's prayer.

To reiterate, "the bank statements of account supporting the said input VAT cannot be given evidentiary value for being mere photocopies in violation of the Best Evidence Rule. The same holds true with the Bureau of Customs Import Entries and Internal Revenue Declarations (IEIRDs) stamped as 'certified true 

copy'. It cannot be ascertained whether the certifiers named therein are actually the authorized custodians of the said documents."<sup>11</sup>

**WHEREFORE**, premises considered, petitioner-KEPCO's Motion for Partial Reconsideration is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED** to **ISSUE** a tax credit certificate or **REFUND** to petitioner the amount of **P237,974,498.55**, representing unutilized input VAT on capital goods purchases for the four quarters of 2001, as computed below:

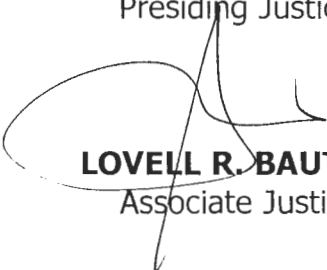
|                                                |                                                          |                  |
|------------------------------------------------|----------------------------------------------------------|------------------|
| Amount of Input VAT Claim                      |                                                          | P 338,279,058.65 |
| Less:                                          | Input VAT Claim Pertaining to Non-Capital Goods/Services | 1,606,007.11     |
| Input VAT Claim on Capital Goods/Services      |                                                          | P 336,673,051.54 |
| Less:                                          | Not Properly Substantiated Input VAT                     |                  |
|                                                | a. Per ICPA Report                                       | 3,265,235.41     |
|                                                | b. Per this Court's further verification                 | 95,433,317.58    |
| Refundable Input VAT on Capital Goods/Services |                                                          | P 237,974,498.55 |

**SO ORDERED.**

  
**CAESAR A. CASANOVA**  
Associate Justice

WE CONCUR:

  
**ERNESTO D. ACOSTA**  
Presiding Justice

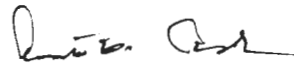
  
**LOVELL R. BAUTISTA**  
Associate Justice

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<sup>11</sup> Assailed Decision, Docket p. 593

## **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