REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

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

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7234

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

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7295

Members:

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

Promulgated:

OCT 2 4 2008
8:02 a.m.

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DECISION

UY, *J*.:

In these consolidated Petitions for Review, petitioner Mirant (Navotas II) Corporation seeks a claim for refund or issuance of a tax credit certificate from respondent Commissioner of Internal Revenue the total amount of

P2,198,528.34, allegedly representing unutilized input value-added taxes (VAT) which are attributable to effectively zero-rated sales for the four quarters of taxable year 2003, broken down as follows:

CTA Case No.	Period Covered	Amount of Claim
7234	1st Quarter 2003	P 492,837.25
7295	2nd, 3rd & 4th Quarters 2003	P 1,705,691.09
Total		**P 2,198,528.34**

THE FACTS

Culled from the parties' Joint Stipulation of Facts and Issues[1] and the records of these consolidated cases, the facts are as follows:

Petitioner is a corporation duly organized and existing by virtue of Philippine laws, with principal office located at 5F, CTC Building, 2232 Roxas Boulevard, Pasay City,[2] and primarily engaged in the business of power generation and the subsequent sale thereof to the National Power Corporation (NPC) under a Build, Operate and Transfer (BOT) scheme.[3]

It was originally registered with the Securities and Exchange Commission (SEC) under the name Hopewell Tileman (Philippines) Corporation. Thereafter its name was officially changed to Southern Energy Navotas II Power, Inc. on March 23, 1999, and further changed to Mirant (Navotas II) Corporation on April 26, 2001 as duly approved by the SEC.[4] Petitioner is also registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, with Taxpayer Identification Number (TIN) 001-726-862.[5]

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[1] Joint Stipulation of Facts and Issues (JSFI) dated November 9, 2005, Docket, pp. 77-80.
[2] Par. 1, Admitted Facts, JSFI, Docket, p. 77.
[3] Par. 1, Jointly Stipulated Facts, JSFI, Docket, ibid.
[4] Par. 3, Jointly Stipulated Facts, JSFI, Docket, p. 78.
[5] Par. 2, Jointly Stipulated Facts, JSFI, Docket, id.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue vested with the authority to decide, approve, and grant claims for refund or issuance of tax credit certificate of overpaid internal revenue taxes, as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City, where she may be served with summons and other court processes.[6]

On November 13, 2002, petitioner filed with the BIR an *Application for VAT Zero-Rate* of its supply of electricity to the NPC, which was subsequently approved.[7]

Petitioner filed with the BIR its Quarterly VAT Returns for the four quarters of taxable year 2003, including amendments thereto; reflecting zero-rated sales in the amount of P309,533,529.05, taxable sales in the amount of P59,861.82, with related output VAT of P5,986.18, and input taxes incurred in the amount of P2,198,528.34, broken down as follows:

Exh	Year 2003	Zero-Rated Sales/Receipts	Taxable Sales	Output VAT	Input VAT On Domestic Purchases Goods other capital goods	Input VAT On Domestic Purchases Services	Input VAT Total
A	1st qtr	P 25,868,276.90			P 29,542.44	P 463,294.81	P 492,837.25
B	2nd qtr	126,101,560.79			113,952.14	176,219.67	290,171.81
C	3rd qtr	52,103,456.06	P 29,261.82	P 2,926.18	81,563.40	277,257.19	358,820.59
E	4th qtr	105,460,235.30	30,600.00	3,060.00	85,105.21	971,593.48	1,056,698.69
		P309,533,529.05	**P 59,861.82**	**P 5,986.18**	**P 310,163.19**	**P1,888,365.15**	**P2,198,528.34**

On December 22, 2004, petitioner filed an administrative claim for refund of its unutilized input VAT in the total amount of P2,198,528.34 for the

[6] Par. 2, Admitted Facts, JSFI, Docket, p. 77.

[7] Par. 4, Jointly Stipulated Facts, JSFI, Docket, p. 78; Annex "D", Petition for Review, CTA Case No. 7234.

four quarters of taxable year 2003, with the Revenue District Office No. 51–Pasay City.[8]

Due to respondent's inaction, petitioner elevated its claim before this Court through the filing of two separate *Petitions for Review*, namely:

Case No.	Date of Filing of Petition for Review	Period Covered	Claimed Input VAT
7234	April 22, 2005	1st quarter 2003	P 492,837.25
7295	July 22, 2005	2nd, 3rd & 4th qtrs. 2003	1,705,691.09
			P 2,198,528.34

On August 24, 2005, petitioner filed a Motion for the consolidation of the said cases considering that the same involved the same parties and issues. The Court granted the said motion in the Resolution dated September 26, 2005.[9] Thus, CTA Case No. 7295 was ordered consolidated with CTA Case No. 7234, the case bearing the lower docket number.

During trial, petitioner presented its documentary and testimonial evidence, while counsel for the respondent manifested that there was no investigation conducted by the BIR on petitioner's claim and respondent thus waived the right to present evidence.[10] And on November 19, 2007, this case was deemed submitted for decision after petitioner filed its Memorandum on November 5, 2007, sans respondent's Memorandum.

Hence, this Decision.

THE ISSUES

The parties presented the following issues for this Court's resolution:

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[8] Par. 9, Jointly Stipulated Facts, JSFI, Docket, p. 79.
[9] CTA Case No. 7234, Docket, pp. 61-62.
[10] Minutes of the hearing held on September 5, 2007, Docket, p. 329.

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"1. Whether or not the power generation services rendered by petitioner to NPC are subject to zero percent (0%) VAT pursuant to Section 108(B)(3) of the Tax Code.

2. Whether or not petitioner has unapplied and unutilized input VAT for the four quarters of calendar year 2003 in the total amount of P2,198,528.34 arising from its domestic purchases of taxable goods and services and importation of goods.

3. Whether or not petitioner's unapplied and unutilized input VAT for the four quarters of 2003 are attributable to its zero-rated sale of power generation services to NPC.

4. Whether or not petitioner's administrative claim for refund was seasonably filed.

5. Whether or not petitioner's unapplied and unutilized input VAT for the four quarters of 2003 are properly substantiated by invoices and official receipts and other relevant documents.

6. Whether or not petitioner's unapplied and unutilized input VAT for the four quarters of 2003 were carried over to and utilized in the succeeding taxable quarters or applied against any of the output VAT liability of petitioner.

7. Whether or not petitioner is entitled to a refund or issuance of TCC for its unapplied and unutilized input VAT for the four quarters of 2003 in the total amount of P2,198,528.34."[11]

The aforequoted issues may be summed up into one issue, to wit: whether or not, based on the evidence presented, petitioner is entitled to the refund or issuance of tax credit certificate worth P2,198,528.34, representing unutilized input VAT which are attributable to effectively zero-rated sales for the four quarters of taxable year 2003.

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[11] Pars. 1-7, Jointly Stipulated Issues, JSFI, Docket, pp. 79-80.

THIS COURT'S RULING

The petition is partly meritorious.

Petitioner's claim is anchored on Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, which states:

> "**SEC. 112. Refunds or Tax Credits of Input Tax**. —
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> **(A) Zero-rated or Effectively Zero-rated Sales**. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

Based on the foregoing legal provision, to be entitled to a refund or tax credit of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied:

1. there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input VAT payments are directly attributable to zero-rated sales or effectively 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.

Anent the first requisite, the Court agrees with petitioner that its sale of electricity to NPC is effectively zero-rated, pursuant to Section 108(B)(3) of the NIRC of 1997, in relation to Section 13 of Republic Act No. 6395, as amended, otherwise known as the NPC Charter, which are all quoted hereunder for easy reference:

> "**SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties**. –
>
> xxx xxx xxx
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> **(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:
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> xxx xxx xxx
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> **(3) Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate**;" (*Emphasis Ours*)
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> "**Sec. 13. Non-profit Character of the Corporation; Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities**. — The corporation shall be non-profit and shall devote all its returns from its capital investments, as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance of effective implementation of the policy enunciated in Section One of this Act, **the Corporation, including its subsidiaries, is hereby declared exempt from the payment of all forms of taxes**, duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings." (*Emphasis Ours*)

This Court has consistently held that NPC is an entity with a special charter, which categorically makes it exempt from payment of all taxes, whether direct or indirect, including VAT. Hence, by virtue of the said charter, services rendered by a VAT-registered entity like herein petitioner to

NPC are effectively subject to zero percent (0%) VAT, in accordance with Section 108(B)(3) of the NIRC of 1997.

Moreover, the Supreme Court in a Resolution dated June 8, 1993, affirmed NPC's tax exemption in the case of ***Maceda vs. Macaraig, Jr.***,[12] thus:

> "A chronological review of the NPC laws will show that it has been the lawmaker's intention that the NPC was to be completely tax-exempt from all forms of taxes — direct or indirect.
>
> xxx xxx xxx
>
> One common theme in all these laws is that the NPC must be enabled to pay its indebtedness which, as of P.D. No. 938 was P12 Billion in total domestic indebtedness, at any one time, and US$4 Billion in total foreign loans at any one time. The NPC must be and has to be exempt from all forms of taxes if this goal is to be achieved."

Likewise, respondent approved petitioner's *Application for VAT Zero-Rate* covering its sales of electricity for the period January 2, 2003 to December 31, 2003.[13]

Further, petitioner was able to establish, through various invoices and official receipts it issued to NPC,[14] that it actually derived revenues from its sales of power generation services to NPC for the four quarters of taxable year 2003 in the total amount of P309,533,529.05, as reflected in its 2003 Quarterly VAT Returns.[15]

Proceeding to the second requisite, the Court-commissioned Independent CPA (ICPA), upon examination of the *Schedules/Summaries of*

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[12] G.R. No. 88291, June 8, 1993, 223 SCRA 217.
[13] Supra.
[14] Exhibits "U-1" to "U-24".
[15] Exhibits "A", "B", "C", and "E", Docket, pp. 244, 250, 256, and 265.

Domestic Purchases of Goods and Services for CY 2003[16] and suppliers' invoices and official receipts[17] submitted by petitioner in support of its claimed input VAT of P2,198,528.34, made the following findings in his Report dated July 21, 2006, to wit:[18]

	"Findings	1st QTR	2nd QTR	3rd QTR	4th QTR	TOTAL
I.	**Input taxes on purchase of goods supported by VAT invoices and purchases of services supported by VAT ORs (Annex 8)**	P433,565.12	P270,975.78	P349,547.03	P1,042,217.88	P2,096,305.81
II.	**Input taxes on purchases of goods:**					-
1	Supported by VAT invoices without BIR Permit Number (Annex 9-1)	3,218.74	4,552.48	-	-	7,771.22
2	Supported by documents other than VAT invoices (Annex 9-2)	-	8,992.65	5,081.04	-	14,073.69
3	Supported by VAT invoices issued not in the name of the company (Annex 9-3)	-	-	-	577.73	577.73
III.	**Input taxes on purchases of services:**					-
1	Supported by documents other than VAT ORs (Annex 10-1)	570.63	-	4,192.52	4,353.91	9,117.06
2	Without supporting documents (Annex 10-2)	-	-	-	1,818.19	1,818.19
3	Supported by VAT OR issued not in the name of the company (Annex 10-3)	-	-	-	577.91	577.91
4	Supported by VAT ORs with pre-printed TIN only (Annex 10-4)	17,430.00	5,490.00	-	-	22,920.00
5	Supported by VAT OR with pre-printed TIN V but without BIR Permit Number (Annex10-5)	-	160.90	-	-	160.90
	TOTAL	**P454,784.49**	**P290,171.81**	**P358,820.59**	**P1,049,545.62**	**P2,153,322.51"**

"Moreover, we would like to mention the following items for the additional information of the Honorable Court:

1. Input taxes amounting to **P9,226.76** were claimed on local purchases of goods which are supported by VAT invoices dated outside the period of claim. **(See Annex 11)**

   We were able to ascertain that there were no double claiming relative to these input taxes. These input taxes

[16] Exhibits "V-1" to "V-15".
[17] Exhibits "W-1" to "W-126", "X-1" to "X-231", "Y-1" to "Y-216", and "Z-1" to "Z-266".
[18] Exhibits "R-6" to "R-8".

Nb

were claimed only in the calendar year 2003 and were not claimed in the third and fourth quarters of 2002.

2. Input taxes amounting to **P28,826.03** were claimed on local purchases of services which are supported by VAT ORs dated outside the period of claim. **(See Annex 12)**

   We were able to ascertain that there were no double claiming relative to these input taxes. These input taxes were claimed only in the calendar year 2003 and were not claimed in the fourth quarter of 2002.

3. Input tax amounting to **P7,153.07** was claimed on a purchase of goods which is supported by a photocopied VAT Invoice. **(See Annex 13)**"

The Court agrees with the above findings.

Out of the total input VAT claim of P2,198,528.34, only the amount of P2,096,305.81[19] is duly substantiated by the required evidence under Sections 110(A) and 113(A) of the NIRC of 1997, as implemented by Sections 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations No. 7-95. The remaining input VAT claim of P102,222.53 shall be denied based on the above-stated reasons.

As regards the third and fourth requisites, although petitioner carried over the claimed unutilized input VAT for taxable year 2003 to the succeeding taxable quarters until the third quarter of taxable year 2005,[20] the same was deducted as "Any VAT Refund/TCC" claimed from the total available input tax of P6,619,092.59 as of the third quarter of taxable year 2005".[21] In other words, the subject claim no longer formed part of the excess input VAT of

[19] Under caption "I" of the Findings, ICPA Report.
[20] Exhibits "G," "H," "I," "L," "M," "N", and "O", Docket, pp. 275, 277, 279, 285, 287, 289, and 291.
[21] Exhibit "O", Docket, ibid.

P4,390,018.80 as of the third quarter of taxable year 2005 which was to be carried over/applied to the succeeding fourth quarter of taxable year 2005.

However, the Court notes that the input VAT used in computing the input VAT available for refund was not reduced by the amount of output VAT for sales subject to 10% VAT. Thus, the output VAT of P5,986.18[22] shall be deducted from the substantiated input VAT of P2,096,305.81; thereby leaving a refundable excess input VAT amount of P2,090,319.63, which is entirely attributable to petitioner's effectively zero-rated sales of P309,533,529.05 for the four quarters of taxable year 2003.

Finally, with respect to the fifth requisite, the Court finds full compliance therewith, as both petitioner's administrative and judicial claims for input VAT refund or issuance of tax credit certificates, were filed within the two year prescriptive period reckoned from the date of the filing of the corresponding Quarterly VAT Return/s.[23]

In C.T.A. Case No. 7243, petitioner's claim for refund or issuance of tax credit certificate pertains to the First Quarter of 2003. Counting from April 25, 2003,[24] the date when petitioner filed its Quarterly VAT Return for the first quarter of taxable year 2003, both the administrative claim filed on December 22, 2004 and the subject Petition for Review in said case filed on April 22, 2005,[25] fell within the two-year prescriptive period.

Likewise, in C.T.A. Case No. 7295 involving petitioners claim for the Second, Third and Fourth Quarters of 2003, counting from the dates when

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[22] Exhibits "C" and "E", Docket, supra.
[23] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 141104 and 148763, June 8, 2007.
[24] Exhibit "A", Docket, supra.
[25] CTA Case No. 7234.

petitioner filed its Quarterly VAT Returns for said quarters, on July 25, 2003,[26] October 27, 2003,[27] and January 26, 2004,[28] both the administrative claim filed on December 22, 2004 and the subject Petition for Review filed on July 22, 2005,[29] were well within the two-year prescriptive period.

In sum, petitioner has sufficiently proven that it is entitled to a refund or issuance of a tax credit certificate of its unutilized input taxes incurred in relation to its effectively zero-rated sales of electricity to NPC for the four quarters of taxable year 2003, but in the reduced amount of P2,090,319.63.

WHEREFORE, premises considered, the instant consolidated Petitions for Review are **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED to REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **TWO MILLION NINETY THOUSAND THREE HUNDRED NINETEEN PESOS AND 63/100 (P2,090,319.63)**, representing unutilized excess input taxes for the four quarters of taxable year 2003 attributable to its effectively zero-rated sales for the same period.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[26] Exhibit "B", Docket, supra.
[27] Exhibit "C", Docket, supra.
[28] Exhibit "D", Docket, p. 263.
[29] CTA Case No. 7295.

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.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice