REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	C.T.A. EB Nos. 1037 & 1042 (C.T.A. CASE No. 8119)
- versus -	Present:
NORTHWIND POWER DEV'T. CORPORATION, Respondent.	DEL ROSARIO, *PJ* CASTAÑEDA, JR. BAUTISTA, UY,
x--------------------------x	
NORTHWIND POWER DEVELOPMENT CORPORATION, Petitioner,	CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
- versus -	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, Respondent.	DEC 16 2014 3:25 p.m.

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DECISION

***Fabon-Victorino, J.*:**

In this consolidated Petitions for Review, both Northwind Power Development Corporation (Northwind) and the Commissioner of Internal Revenue (CIR) assail the Decision dated March 12, 2013 and the Resolution dated June 26, 2013 promulgated by the Court in Division in C.T.A. CASE No. 8119.

The facts as established during the trial are summarized as follows:

The CIR is the head of the Bureau of Internal Revenue (BIR), vested with authority to decide claims for refund/tax credit of internal revenue taxes as provided under the National Internal Revenue Code (NIRC), as amended.

Northwind, on the other hand, is a Philippine corporation with principal office address at Unit 702, Net One Center, 3rd Avenue corner 26th Street, E-Square, Crescent Park West District, Bonifacio Global City, 1634 Taguig City.

Northwind is engaged in the business of general building of electric generating plants and sale of renewable power. It is a VAT-registered entity with Certificate of Registration OCN No. 9RC0000270238 issued by the BIR, Revenue Region No. 008, Revenue District Office (RDO) No. 044 on October 13, 2000.

Northwind is also registered with the Board of Investments (BOI) as a "New Operator of Wind Power Generation Plant", and was issued Certificate of Registration No. 2004-108 on September 20, 2004.

On July 19, 2002, Northwind entered into an Electricity Sales Agreement with Ilocos Norte Electric Cooperative (INEC) for the sale of renewable energy power generated from its wind turbine in Bangui Bay, Ilocos Norte. This sale of renewable power is subject to zero percent (0%) value-added tax (VAT) pursuant to Section 108(B)(7) of the NIRC, as amended.

For the taxable quarter covering the period of April 1 to June 30, 2008, Northwind imported and/or locally purchased goods and services in the aggregate amount of P432,807,965.00 and paid 12% VAT on these purchases in the amount of P51,936,956.05.

On November 14, 2008, Northwind filed with RDO No. 43 an administrative claim for refund or issuance of tax credit certificate for its unutilized input VAT covering the 2nd quarter of taxable year 2008 in the amount of P51,936,956.05.

Due to the inaction of RDO No. 43, Northwind elevated the matter to the Court in Division via a Petition for Review on June 29, 2010.

After trial, the Court in Division promulgated the assailed Decision of March 12, 2013, the dispositive portion of which reads as follows:

> "WHEREFORE, the Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent (CIR) is hereby ORDERED to REFUND or to ISSUE A TAX CREDIT CERTIFICATE to petitioner (Northwind) in the reduced amount of ONE MILLION NINE HUNDRED TWENTY SEVEN THOUSAND SEVEN HUNDRED NINE and 48/100 PESOS (P1,927,709.48) representing petitioner's unutilized input VAT attributable to zero-rated sales for the 2nd quarter of 2008, computed as follows:

Substantiated Input VAT	P3,187,886.90
Multiply by Rate of Zero-Rated Sales	60.46982019%
Refundable Input VAT attributable to zero-rated sales	P1,927,709.48

> SO ORDERED."

Both Northwind and the CIR moved for the reconsideration of the foregoing decision which were denied for lack of merit in the similarly assailed Resolution of June 26, 2013, in this wise:

> "WHEREFORE, finding no reversible (sic) in the Assailed Decision to warrant reconsideration thereof, petitioner's (Northwind) Motion for Partial Reconsideration and respondent's (CIR) Motion for Reconsideration are both DENIED for lack of merit.
>
> SO ORDERED."

Hence, the instant Petitions for Review which were consolidated in the Resolution dated August 5, 2013.

In her Petition, the CIR argues that the claim should be denied in its entirety since Northwind failed to substantiate the partially granted amount of P1,927,709.48 for refund.

The CIR's position is hinged on its perception that the official receipts/invoices presented by Northwind as evidence for the refund sought, do not bear its Tax Identification Number (TIN) required under Sections 113 and 237 of the 1997 NIRC, as implemented by Sections 4.110-1, 4.110-8, and 4.113-1 of Revenue Regulations (RR) No. 16-05.

Further, the domestic purchases of capital goods for the 2nd quarter of 2008 were erroneously supported by VAT official receipts instead of VAT invoices, another violation of the invoicing requirements under the cited laws and regulations.

Moreover, there is no indication in the said official receipts/invoices that they were duly registered with the BIR or that an Authority to Print them was secured from the BIR, in contravention of Sections 237 and 238 of the NIRC, in connection with Section 113 of the same Code, as well as RR No. 2-90. RR No. 2-90 mandates that "the registration of the printed receipts or invoices shall be evidenced by an appropriate stamp on the face of the taxpayer's copy of the authority to print as well as on the front cover, on the back of the middle invoice or receipt and on the back of the last invoice or receipt of the registered booklet or pad, authenticated by the signature of the office authorized to place the stamp thereon."

In view of the all the foregoing violations and given that tax refunds are strictly construed against the taxpayer, the CIR concludes that the official receipts/invoices presented by Northwind have no probative value, hence, must be disregarded. This, according to her, is in accord with Revenue Memorandum Circular (RMC) No. 42-2003 dated July 15, 2003 which provides that the failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for refund of input tax by the purchaser-claimant. In other words, without valid official receipts/invoices to substantiate Northwind's claim for refund, the same should be denied in full.

Finally, the CIR avers that the sales of services of Northwind do not qualify for VAT zero-rating in the light of the provision in its Articles of Incorporation stating that it is a general builder and contractor of electric generating plants, and maintenance or operation of power generating plants. Section 4.108-5(b)(7) of RR No. 16-2005 provides that zero-rated sale of services shall include "sale of power or fuel generated through renewable sources of energy" but "shall not extend to the sale of services related to the maintenance or operation of plants generating said power." Since Northwind is only engaged in the maintenance or operation of power generating plants, then its sales of services do not qualify for VAT zero-rating pursuant to Section 4.108-5(b)(7) of RR No. 16-2005.

On the contrary, says Northwind, it complied with all the legal invoicing requirements to qualify its importation and domestic purchases for VAT zero-rating.

On the alleged lack of TIN on its VAT official receipts/invoices, Northwind counters that the CIR failed to specify which of the numerous official receipts/invoices submitted and formally offered in evidence have this deficiency. A re-examination of these documents will surely negate CIR's submission. Even the Independent Certified Public Accountant (ICPA) confirmed that Northwind complied with the requirements for purposes of substantiating its claim for input VAT on its importation of goods.

On the allegations that Northwind was not issued an Authority to Print and that its official receipts/invoices were not duly registered with the BIR, Northwind cites the finding of the ICPA who categorically stated in her Report that Northwind had been authorized to cause the printing and issuance of official receipts as indicated in the lower left portion of its official receipts. Even the Court in Division declared that a portion of Northwind's gross receipts from sale of electricity as evidenced by official receipts qualify for VAT zero-rating. Such ruling simply shows that the Court in Division is convinced that Northwind complied with the registration requirements pertaining to its official receipts.

Also contrary to the contention of the CIR that Northwind is only engaged in the maintenance or operation of power generating plants, hence, its sales will not qualify for VAT zero-rating as a power generation company, suffice it to say that Northwind during trial ably established that it is a power generation company engaged in the sale of power or fuel generated through renewable source of energy, which is qualified as a VAT zero-rated sales. In evidence, Northwind submitted its Certificate of Registration with OCN No. 9RC0000270238 issued by the BIR, Certificate of Registration No. 2004-108 issued by the Board of Investments, and Electricity Sales Agreement dated July 19, 2002 between Northwind and its sole client Ilocos Norte Electric Cooperative (INEC). All these documents indicate that Northwind is a power generation company whose sales of power are qualified as VAT zero-rated sales. Amazingly, the CIR herself admitted this in the Joint Stipulation of Facts and Issues she and Northwind submitted to the Court. The same observation is also clearly stated in the Decision dated March 12, 2013.

On the other hand, Northwind faults the Court in Division for deducting the amount of P22,456,725.94 from its total gross receipts of P56,809,066.01 from the sale of electricity for the 2nd quarter of 2008, thereby also reducing the input VAT to be refunded originating from said gross receipts.

For Northwind, the deduction or disallowance of P22,456,725.94, on the ground that the said amount was not reported in its 2nd Quarter VAT Return, is erroneous. It insists that since it was able to prove its zero-rated sales through questioned invoices and official receipts, the Court should have granted full refund of its input VAT from such zero-rated sales.

Moreover, the non-inclusion of the disallowed amount of P22,456,725.94 in its 2nd Quarter VAT Return was merely due to inadvertence which it immediately rectified by declaring the same in its 3rd and 4th Quarter VAT Returns, as attested to by the ICPA.

Also the application of the ruling in the *Marubeni*[1] case, disallowing a portion of its zero-rated sales and its corresponding input VAT refund, is misplaced since the present case has a different factual milieu. In *Marubeni*,

[1] Marubeni Philipines Corporation vs. CIR, CTA EB Case No. 236, October 1, 2001

there were taxable, zero-rated, and exempt sales, hence, the need to apportion its total sales among the three categories of sales involved. In the case of Northwind, only zero-rated sales are involved which it was able to fully establish justifying full refund of the amount being claimed. Northwind also calls to mind the ruling in another case,[2] stating that in a claim for refund attributable to zero-rated sales, what should be closely scrutinized is the documentary substantiation of the input VAT rather than that for the zero-rated sales.

Northwind likewise points out that for the entire taxable period of 2008, it was solely engaged in zero-rated activities for VAT purposes. Moreover, its only business was and still is the sale of energy generated from renewable wind energy to its sole client, Ilocos Norte Electric Cooperative (INEC).

Likewise disputed is the ruling of the Court in Division that out of its claim for input VAT of P50,081,282.00 on its importation of capital goods, only the amount of P2,174,586.25 is refundable. Since the said importation exceeds P1Million and are in the nature of depreciable assets, the claim for input tax should be spread over 60 months or the estimated useful life of the capital goods, whichever is shorter pursuant to Section 110(A) of the NIRC. But no such requirement is stated in Section 112(A) of the NIRC, the provision that governs claims for refund/tax credit, says Northwind.

Further, the need to amortize input VAT on its importation of capital goods in 60 months or the estimated useful life of the capital goods, based on Section 4.110-3 of RR No. 16-2005 as held by the Court in Division, applies only when the input VAT will be credited or applied against output VAT. The instant case involves a claim for refund of input VAT paid on purchases or importation of capital goods which are directly attributable to zero-rated sales, hence, there is no output VAT against which the input VAT can be credited. In fine, Section 4.110-3 of RR No. 16-2005 is not applicable there being no output VAT upon which to credit or apply its input VAT.

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[2] Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 166732 dated April 27, 2007

Northwind also finds erroneous the disallowance of the amount of P824,373.40 paid on domestic purchases evidenced by official receipts dated outside the period of the claim. Since Northwind has satisfied all the requirements for out-of-period claims under RMC No. 42-2003, it is entitled to the refund of its input VAT evidenced by receipts dated outside the period of the claim.

Likewise flawed is the disallowance of input VAT in the total amount of P18,000.00 on the ground that the official receipts for the said amount did not separately show the amount of VAT. Admittedly, the Official Receipts did not separately show the amount of VAT, however each transaction is covered by a Sales Invoice containing all the details of the transaction and the corresponding VAT.

In lieu of a memorandum, the CIR filed a Manifestation and Motion dated April 2, 2014, adopting the arguments in her Petition for Review as her memorandum in this case. In addition, the CIR pointed out that the official receipts or invoices submitted to substantiate the claim for refund indicated only the name Northwind and not Northwind Power Development Corporation, the complete corporate name of the taxpayer-claimant, hence, should not be considered for purposes of refund.

Further, the Authority to Print (ATP) in Northwind's receipts was secured from RDO 01, Laoag, Ilocos Norte when its principal place of business falls within the jurisdiction of RDO 044, Taguig-Pateros, in violation of Revenue Memorandum Order (RMO) No. 83-90 and Revenue Regulations No. 18-2012. The cited RMO and RR mandate that all applications for issuance of an ATP invoices and receipts should be filed with the BIR RDO having jurisdiction over the business establishment that will use the invoice or receipts.

On CIR's Petition for Review:

On the CIR's contention that Northwind failed to substantiate its claim for refund as the official receipts/invoices submitted in support thereof either did not indicate the TIN, or were not BIR-registered, or did not indicate an Authority To Print (ATP), the same lacks merit.

Firstly, the CIR failed to specify or identify the particular receipts or invoices with the said deficiency.

Secondly, the ATP need not be reflected or indicated in the invoices or receipts in the absence of any law or regulations expressly requiring the same. Thus, the failure to print the ATP on the invoices or receipts should not result in outright denial of a claim or the invalidation of the invoices or receipts for purposes of claiming refund.

Thirdly, perusal of the official receipts of Northwind shows that they clearly indicate TIN: 208-101-373-001 and BIR Auth. No. RDO1-002281-05 / 10-17-05, negating the CIR's submission.

On the allegation that Northwind's domestic purchases of capital goods for the 2nd quarter of year 2008 are erroneously supported by official receipts instead of sales invoices, Section 113 of the National Internal Revenue Code (NIRC), as amended,[3] relevantly provides, to wit:

> "SEC. 113. **Invoicing and Accounting Requirements for VAT-Registered Persons.** -
>
> (A) *Invoicing Requirements.* - A VAT-registered person shall issue:
>
> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
>
> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> x x x x x x x x x"

Clearly, an invoice should be issued for the sale of goods, while an official receipt, for the sale of services. Thus, the CIR's argument that invoices should have been presented by Northwind instead of official receipt since the subject transaction involves the domestic purchases of capital goods, should be rejected. The assailed Decision of March 12, 2013 correctly observed that no input VAT was

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[3] As amended by R.A. No. 9337, effective July 1, 2005

actually derived by Northwind from domestic purchases of capital goods, thus:

> "**Regarding the input VAT of P1,501,871.00 representing input VAT from purchase of Capital Goods** as indicated in the 2^{nd} Quarterly VAT Return, the ICPA, Ms. Leticia Tagle, in her Report, noted that these pertain to the periodic payments for the turnkey supply of distribution lines from Power Dimension Inc. **This transaction is considered purchase of services for purposes of claiming input tax pursuant to Section 4.110-3 of RR 16-2005 as amended by RR 4-2007**, thus, not subject to amortization." (emphasis ours)

As to the CIR's contention that the sale of services by Northwind is not zero-rated because it is not a power generation company, obviously the CIR failed to recall the stipulation to the contrary stated in the Joint Stipulation of Facts and Issues dated October 27, 2010 which she and Northwind submitted to the Court.[4]

The said stipulation entered into during the pre-trial conference by the parties themselves must be treated as a judicial admission which requires no proof,[5] as provided under Section 4, Rule 129 of the Rules of Court. The admission may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made, either of which is not obtaining in the case at bar. The Court cannot lightly set aside this judicial admission especially when the opposing party relied upon the same and accordingly dispensed with further proof of the fact already admitted. Thus, there is no reason to change or modify the finding of Court in Division that Northwind is a power generating company engaged in the sale of power or fuel generated through renewable source of energy entitled for VAT zero-rating under Sections Section108(B)(7) of the NIRC of 1997, Section 4.108-5(b)(7), and Section 4.108-3(f) of RR No. 16-2005.

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[4] Division docket pp. 157-160

[5] Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue, G.R. No. 157594, March 9, 2010.

On Northwind's Petition for Review:

To summarize, Northwind finds the following rulings in the assailed Decision erroneous: (1) the disallowance of the amount of P22,456,725.94 as it was not reported in its 2nd Quarter VAT Return; (2) only the amount of P2,174,586.25 is refundable on its claim for input VAT on its importation of capital goods since the total of the said importation exceeds P1Million and in the nature of depreciable assets, hence, should be spread over 60 months or the estimated useful life of the capital goods; (3) the disallowance for refund of input VAT in the amount of P824,373.40 paid on domestic purchases supported by official receipts dated outside the period of the claim; and (4) the disallowance of the amount of P18,000.00 on the ground that the official receipts evidencing it did not separately show the VAT amount.

A run through of the assailed Decision readily shows that all the foregoing issues raised by Northwind in its Petition for Review had been determined and passed upon by the Court in Division in the assailed Decision of March 12, 2013 as well as in the Resolution of June 26, 2013. The rationale for each disallowance and partial grant of the claim for refund were elaborately discussed in this wise, thus:

> "Petitioner's gross receipts from sale of electricity to INEC, for the period from April 1, 2008 to June 30, 2008, amounted to P56,809,066.01, as evidenced by official receipts issued by petitioner to INEC for the same period. Such sales of electricity generated through a renewable source of energy particularly, wind power energy, qualify for VAT zero-rating pursuant to Section 108(B)(7) of the NIRC of 1997, as amended, and, as implemented by Section 4.108-5(b)(7) of Revenue Regulations No. 16-2005.
>
> However, in its Quarterly VAT Return for the 2nd quarter of 2008, only P34,352,340.07 was reflected as zero-rated receipts. The difference of P22,456,725.94 was allegedly recognized in the 3rd and 4th quarters of 2008. However, no evidence was presented to substantiate the said

allegations i.e. the difference of P22,456,725.94 was indeed reported in the said quarters. Besides, pursuant to Section 114(A) of the NIRC of 1997, as amended, in relation to Sec. 108 of the same Code, petitioner should have reported the zero-rated sales of P22,456,725.94 in its Quarterly VAT Returns in the period the payments were received, i.e., on June 2008 which is covered by the 2nd quarter of 2008.

Considering that the input VAT sought to be refunded, in the amount of P51,936,956.05 is attributable to petitioner's gross receipts from sale of electricity to INEC in the amount of P56,809,066.01, and, inasmuch as only the amount of P34,352,340.07 was declared in its 2nd Quarterly VAT Return, it is but proper to apportion the substantiated input VAT over the volume of zero-rated sales per official receipts and only the amount attributable to the zero-rated sales of P34,352,340.07 may be claimed for refund. The rate to be applied is computed as follows:

Declared Zero-Rated Sales	34,352,340.07
Divided by Total Zero-Rated Sales	56,809,066.01
Percentage of Zero-Rated Sales	**60.46982019%**

In the similarly assailed Resolution of June 26, 2013, which effectively affirmed the Decision of March 12, 2013, the Court in Division further explained, thus:

"As regards the first ground, We reiterate our findings/ruling in the Assailed Decision that only the amount of P34,352,340.07 was reflected as zero-rated receipts in petitioner's Quarterly VAT Return for the 2nd quarter of 2008.

The difference of P22,456,725.94 was allegedly recognized in the 3rd and 4th quarters of 2008. Petitioner, however, failed to substantiate the said allegations even if the difference of P22,456,725.94 was indeed reported in the said quarters.

Pursuant to Section 114(A) in relation to Section 108 of the NIRC of 1997, as amended, petitioner should have reported the zero-rated sales of P22,456,725.94 in its Quarterly VAT Returns for the period the payments were received, i.e. on June 2008 which is covered by the 2^{nd} quarter of 2008.

Since the input VAT sought to be refunded in the amount of P51,936,956.05 is attributable to petitioner's gross receipts from sale of electricity to Ilocos Norte Electric Cooperative (INEC), in the amount of P56,809,066.01, and, inasmuch as only the amount of P34,352,340.07 was declared in its 2^{nd} Quarterly VAT Return, it is but proper to apportion the substantiated input VAT over the volume of zero-rated sales per official receipts and only the amount attributable to the zero-rated sales of P34,352,340.07 may be claimed for refund.

Thus, there is no plausible reason why petitioner should be entitled to a refund of the substantiated input VAT without allocating its reported zero-rated sales to sales per official receipts because the substantiated input VAT covers the entire zero-rated sales, both reported and unreported sales for the quarter. In disallowing a portion of petitioner's zero-rated sales, it essentially follows that a portion of the claim for refund of input VAT attributable to such zero-rated sales should also be disallowed by the Court. Otherwise, We will be disregarding the substantiation of petitioner's zero-rated sales thereby negating its effect on the amount of unutilized input VAT claimed for refund.

In the instant case, since some of the zero-rated sales were not reported in the appropriate period when such sales were made, it is apt for the Court to apportion the input VAT because it is impossible to specifically pinpoint what input VAT is directly attributable to such reported zero-rated sales."

The Court in Division continued to say, thus:

"Pursuant to Section 110(A) of the NIRC of 1997, as amended, input VAT claim on capital goods purchases attributable to zero-rated sales may be claimed either in full during the month of acquisition or spread over a period of time depending on the aggregate acquisition cost of the capital goods in the calendar month. If the aggregate acquisition cost exceeds P1 Million, the claim for input tax should be spread over 60 months or the estimated useful life of the capital goods, whichever is shorter. On the other hand, if the aggregate acquisition cost does not exceed P1 Million, the total input taxes shall be allowed as credit/refund in the month of acquisition.

Petitioner submitted its Import Entry Internal Revenue Declaration (IEIRD) and validated bank deposit slips to substantiate its claim for input VAT of P50,081,282.00 on its importation of capital goods. However, not all of the substantiated input VAT of P50,081,282.00 is refundable since the said importations are in the nature of depreciable assets the monthly aggregate acquisition cost of which exceed P1M (regardless of the acquisition cost of each capital goods). Thus, the related input VAT shall be spread over 60 months. Consequently, out of the P50,081,282.00 input VAT on importations of capital goods, only the amount of P2,174,586.25 is refundable or creditable, computed as follows:

Exhibit	Supplier	OR Date	Input VAT	Estimated Useful Life	Number of Months to be Amortized for the Claim Period	Allowable Input VAT
AA1-AA3	Vestas Asia Pacific A/S	10-Apr-08	P17,453,885.00	60	3	P872,694.25
BB1-BB3	Vestas Asia Pacific A/S	10-Apr-08	15,157,717.00	60	3	757,885.85
CC1-CC3	Vestas Asia Pacific A/S	10-Apr-08	320,638.00	60	3	16,031.90
DD1-DD3	Vestas Asia Pacific A/S	10-Apr-08	236,006.00	60	3	11,800.30
EE1-EE3	Vestas Asia Pacific A/S	5-May-08	656,561.00	60	2	21,885.37
FF1-FF3	Vestas Asia Pacific A/S	8-May-08	678,853.00	60	2	22,628.43

GG1-GG3	Vestas Asia Pacific A/S	14-May-08	10,521,057.00	60	2	350,701.90
HH1-HH2	Vestas Asia Pacific A/S	21-May-08	2,200,931.00	60	2	73,364.37
II1-II2	Vestas Asia Pacific A/S	12-Jun-08	1,816,802.00	60	1	30,280.03
JJ1-JJ2	Vestas Asia Pacific A/S	20-Jun-08	1,038,831.00	60	1	17,313.85
	TOTAL		**P50,081,281.00**			**P2,174,586.25**

Regarding the input VAT of P1,501,871.00 representing input VAT from purchase of Capital Goods as indicated in the 2nd Quarterly VAT Return, the Independent Certified Public Accountant (ICPA), Ms. Leticia Tagle, in her Report, noted that these pertain to the periodic payments for the turnkey supply of distribution lines from Power Dimension Inc. This transaction is considered purchase of services for purposes of claiming input tax pursuant to Section 4.110-3 of RR 16-2005 as amended by RR 4-2007, thus, not subject to amortization.

xxx xxx xxx.

In support of its input VAT claim on domestic purchases of P1,855,674.05 (P1,501,871.00 plus 353,803.05), petitioner submitted various official receipts. However, only the input VAT amounting to P1,013,300.65 was duly substantiated while the remaining amount of P842,373.40, as presented herein below, was disallowed for petitioner's failure to comply/meet the substantiation requirements under Sections 110(A) and 113 of the NIRC of 1997, as amended, and implemented by Sections 4.110-8 and 4.113-1 of Revenue Regulations No. 16-05:

Findings	Exhibit	Input VAT
1. Input VAT on purchase of services supported by official receipt dated outside the period of claim		
Power Dimension Incorporated	KK1	**P824,373.40**
2. Input VAT on purchases of services wherein the VAT amount was not separately shown in the official receipts		
Broadband Everywhere Corp	LL1	P 6,000.00
Broadband Everywhere Corp	OO1	6,000.00
Textron Corp.	UU1	6,000.00
Sub-total		**P 18,000.00**
TOTAL		**P842,373.40**

In sum, petitioner's valid input VAT for the 2nd quarter of 2008 amounted to P3,187,886.90, computed as follows:

	Amount
Input VAT on importations of capital goods	P2,174,586.25
Input VAT on domestic purchases	1,013,300.65
Substantiated Input VAT	**P3,187,886.90**

Anent the issue of amortizing in 60 months the estimated life of capital goods, the Court in Division, in assailed Resolution of June 26, 2013, added, to wit:

> "Going now to petitioner's (Northwind) second assignment of error, petitioner argues that Section 4.110-3 of Revenue Regulations No. 16-2005 does not apply to claims for refund of input VAT paid on purchases or importation of capital goods which are directly attributable to zero-rated sales. We find the same unmeritorious.
>
> Section 110(A) of the NIRC of 1997, as amended, enumerates the transactions upon which the related input tax may be claimed as tax credits which include depreciable assets or capital goods. As explicitly stated under the first and second proviso of Section 110(A), if the aggregate acquisition cost of the capital goods, excluding the VAT component thereof, exceeds one million pesos in a calendar month, the input tax should be spread over 60 months or the estimated useful life of the capital goods, whichever is shorter.
>
> Further, the phrase "creditable against output tax" under the first paragraph of Section 110(A) means that the above input taxes are available as tax credits against the taxpayer's VATable transactions, be it VAT zero-rated or subject to the 12% VAT. It bears stressing that both taxable sales and zero-rated sales are considered transactions subject to output VAT. The difference lies only on the VAT rate used, i.e., 12% for taxable sales and 0% for zero-rated sales. Considering that the output tax due is 0% in the

case of zero-rated sales transactions, the creditable input tax attributable thereto in a taxable quarter becomes unutilized or excess input tax which may be the subject of a claim for refund or tax credit certificate under Sections 110(B) and 112(A) of the NIRC of 1997, as amended, which state:

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Note that Section 112(A) speaks of creditable input tax due or paid, *i.e.*, the input tax allowable as tax credit in a taxable quarter pursuant to Section 110(A) of the same Code including the amortized input tax on capital goods purchases with an aggregate cost in excess of P1Million. Thus, contrary to petitioner's allegation, the input tax on capital goods exceeding P1 Million, which may be refunded for a certain taxable quarter under Section 112(A), pertains only to the amortized portion of the input VAT. This is also recognized under Section 4.110-3 of RR No. 16-05, as amended by RR Nos. 2-07 and 4-07, which provides:

SEC. 4.110-3. *Claim for Input Tax on Depreciable Goods.* –

x x x x x x x x x

(b) If the estimated useful life of a capital good is less than five (5) years – The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of a capital good. The claim for input tax credit shall commence in the month that the capital goods were acquired.

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchases or imported during any calendar month does not exceed one million pesos

> (P1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition.
>
> *Capital goods or properties refers (sic) to goods or properties with estimated useful life greater than one (1) year and which are treated as depreciable assets under Sec. 34(F) of the Tax Code, used directly or indirectly in the production or sale of taxable goods or services.*
>
> The aggregate acquisition cost of depreciable assets in any calendar month refers to the total price, *excluding the VAT*, agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired on instalment for an acquisition cost of more than P1,000,000.00, *excluding the VAT*, will be subject to the amortization of input tax despite the fact that the monthly payments/instalments may not exceed P1,000,000.00.

In claiming refund for the amortization of the input VAT subsequent to the 2nd quarter of 2008, petitioner must be guided that the reckoning of the two-year prescriptive period under Section 112 (A) starts from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made and not when the input taxes were incurred or paid. Thus, petitioner's theory that the subsequent filing of an administrative claim for refund for the unrefunded or unamortized input VAT would run counter to the two-year prescriptive period under Section 112 (A) of the NIRC of 1997, as amended, is without merit.

Accordingly, the only amount which may be claimed for refund or tax credit certificate by petitioner as regards its capital goods purchases exceeding P1 Million is the monthly amortization of the input VAT for the second quarter of 2008.

> The remaining amount representing unamortized input VAT can be refunded or claimed as input tax credit in the subsequent quarters."

Anent the disallowed amount of P824,373.40 input VAT paid on domestic purchases which were supported by official receipts dated outside the period of the claim, the Court in Division, in its Resolution of June 26, 2013, correctly ruled as follows:

> "As to the last assignment of error in which petitioner argues that it complied with the substantiation requirements under Sections 110(A) and 113 of the NIRC of 1997, as amended, and implemented by Sections 4.110-8 and 4.113-1 of the RR No. 16-05, again, this Court stands by its previous findings/ruling in the Assailed Decision.
>
> The input VAT amount of P824,373.40 was disallowed for the official receipts supporting the purchase of services were dated outside the period of the claim. In this connection, Section 110(A) of the NIRC of 1997, as amended, is clear that the input tax shall be allowed as tax credit to the purchases only upon consummation of sale or upon payment of the compensation, as the case may be. Thus, it is imperative for petitioner to declare the input VAT on its domestic purchases of goods and services at the end of the corresponding quarter when purchases of goods were consummated, as evidenced by VAT invoices, and when purchases of services were paid as evidenced by VAT official receipts. It must be noted that the instant claim pertains to the 2nd quarter of 2008 and the input VAT of P824,373.40 was supported by invoice and official receipt both dated January 2008. Undeniably, the supporting documents bear dates outside the period of claim and cannot be considered as valid supports for petitioner's claimed tax credit in the same amount."

Finally, on the disallowed amount on account that the receipt/s to substantiate the same did not separately show the VAT amount, the matter had been addressed by the Court in Division in the assailed Resolution of June 26, 2013, which the Court *En Banc* hereby quotes with approval:

> "On the other hand, the input VAT of P18,000.00 was similarly disallowed for the VAT amount was not separately shown in the official receipts which is a clear violation of Section 113(B)(2)(a) of the NIRC of 1997, as amended, which provides thus:
>
> > SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.*-
> >
> > x x x x x x x x x
> >
> > (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* - The following information shall be indicated in the VAT invoice or VAT official receipt:"
> >
> > x x x x x x x x x
> >
> > (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided,* That:
> >
> > (a) The amount of the tax shall be shown as a separate item in the invoice or receipt;"

The law is clear, explicit and unequivocal. It admits no room for interpretation but merely application.[6]

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[6] Miramar Fish Company, Inc., vs. Commissioner of Internal Revenue, G.R. No. 185432, June 04, 2014

WHEREFORE, the Petition For Review dated July 23, 2013, filed by the Commissioner of Internal Revenue and the Petition For Review dated July 30, 2013, filed by Northwind Power Development Corporation, are hereby **DENIED,** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
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 the Court.

ROMAN G. DEL ROSARIO
Presiding Justice