

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL SECOND DIVISION

**CBK POWER COMPANY
LIMITED,**

Petitioner,

- versus -

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

C.T.A. CASE NO. 7621

Members:

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

Promulgated:

MAR 03 2010

4:07 p.m.

X-----X

DECISION

UY, J.:

This is a petition for the issuance of tax credit certificate in the total amount of ₱ 39,741,256.54, representing petitioner's alleged unutilized input taxes for the period covering January 1, 2005 to September 30, 2005, pursuant to Sections 112(A) and 112(B) of the National Internal Revenue Code (NIRC) of 1997.

THE FACTS

Petitioner, CBK Power Company Limited, is a partnership duly organized and existing under and by virtue of the laws of the Philippines, with principal office at the NPC Compound, Kalayaan, Laguna.¹ It was registered as a value-added tax (VAT) entity on April 10, 2000 with TIN/VAT No. 205-760-474-000, and was issued Bureau

¹ Par. 1, Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 220.



of Internal Revenue (BIR) Certificate of Registration OCN 1RC0000195405 by the BIR Revenue District Office (RDO) No. 55 (San Pablo City, Laguna) on May 11, 2005.²

Petitioner is a special purpose entity, the sole purpose of which is to engage in all aspects of (a) the design, financing, construction, testing, commissioning, operation, maintenance, management and ownership of Kalayaan II pumped-storage hydroelectric power plant, the new Caliraya Spillway, and other assets located in the Province of Laguna; and (b) the rehabilitation, upgrade, expansion, testing, commissioning, operation, maintenance and management of the Caliraya, Botocan and Kalayaan I hydroelectric power plants and their related facilities located in the Province of Laguna.³

Respondent is the duly appointed Commissioner of Internal Revenue vested with authority to act as such, including *inter alia*, the power to decide, approve, and grant refunds or tax credit of erroneously or illegally collected internal revenue taxes as provided by law, with office at the BIR National Office Building, Diliman, Quezon City.⁴

On December 29, 2004, petitioner filed an Application for VAT Zero-Rate with the BIR in accordance with Section 108(B)(3) of the NIRC of 1997, as amended.⁵ The said application was duly approved by the BIR, wherein the BIR declared that petitioner's sale of electricity to the National Power Corporation (NPC) for the period from January 1, 2005 to October 31, 2005, is entitled to the benefit of effectively zero-rated VAT.⁶

² Par. 5, Facts Admitted, JSFI, Docket, p. 221.

³ Exhibit "B".

⁴ Par. 2, Facts Admitted, JSFI, Docket, p. 220.

⁵ Par. 6, Facts Admitted, JSFI, Docket, p. 221.

⁶ Par. 7, Facts Admitted, JSFI, Docket, p. 221. Exhibit "X".

Petitioner filed with the BIR its Original and Amended Quarterly VAT Returns for the first three quarters of 2005 on the following dates:

Period Covered	Original Return Filed On	Exhibit	Amended Return Filed On	Exhibit
1st Quarter - 2005	April 19, 2005	CC ⁷	June 29, 2005	DD ⁸
2nd Quarter - 2005	July 22, 2005	EE	September 14, 2005	FF ⁹
3rd Quarter - 2005	October 21, 2005	GG	October 27, 2005	HH ¹⁰

Petitioner, through its tax counsel, filed with the BIR RDO No. 55 of Laguna, its administrative claims for the issuance of tax credit certificates for its alleged unutilized input taxes on its purchase of capital goods and alleged unutilized input taxes on its local purchases and/or importation of goods and services, other than capital goods, for the period covering January 1, 2005 to September 30, 2005, pursuant to Sections 112(A) and 112(B) of the NIRC of 1997, as amended, on June 30, 2005, September 15, 2005, and October 28, 2005, respectively, with the following details:¹¹

Dates filed	Input taxes on purchase of capital goods	Input taxes on local purchase of goods and services, other than capital goods, attributable to zero-rated sales	Total
June 30, 2005	₱ 7,740,737.65	₱ 3,687,781.69	₱ 11,428,519.34
September 15, 2005	10,157,799.73	5,217,557.29	15,375,357.02
October 27, 2005	7,920,772.94	5,016,607.24	12,937,380.18
	₱ 25,819,310.32	₱ 13,921,946.22	₱ 39,741,256.54

⁷ BIR Records, pp. 236 to 237.

⁸ BIR Records, pp. 238 to 240.

⁹ BIR Records, pp. 155 to 157.

¹⁰ BIR Records, pp. 20 to 21.

¹¹ Par. 8, Facts Admitted, JSFI, Docket, pp. 221 to 222.

Considering that respondent has not issued a final decision on the said administrative claims, petitioner filed the instant Petition for Review on April 18, 2007, to toll the running of the two-year period for judicially claiming a tax refund/credit as provided in the NIRC of 1997, as amended.¹²

In his Answer¹³ filed on June 6, 2007, respondent interposed the following Special and Affirmative Defenses:

"4. Petitioner has no cause of action against respondent. Petitioner failed to submit all documents in support of its claim for refund as attested to by Revenue Officer Emily E. Garcia in a Memorandum dated April 27, 2006. In fact, this failure is admitted by petitioner in a letter dated April 26, 2006 wherein it is stated that the documents are available at its office at NPC Compound, San Juan, Kalayaan, Laguna. Petitioner's failure to submit the documents to respondent violates Section 112 (D) of the National Internal Revenue Code of 1997 (NIRC of 1997) which provides as follows:

'Section 112. *Refunds or Tax credits of Input Tax.* —

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(D) *Period within which Refund or tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and B hereof. In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.'

5. The petition was not filed within the reglementary period. Section 112(D) of the NIRC of 1997 specifically requires that petitioner should appeal to this Honorable Court of Tax Appeals the denial of its claim for refund within thirty days from receipt of the

¹² Par. 4, Facts Admitted, JSFI, Docket, pp. 220 to 221.

¹³ Docket, pp. 184-188

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denial of the claim or the expiration of the one-hundred twenty day-period granted to respondent to grant or deny the claim for refund.

On one hand, as of April 27, 2006, petitioner has not yet submitted all documents in support of its claim for refund. Therefore, the period within which this judicial claim for refund may be filed has not yet commenced. Petitioner must submit to respondent all documents in support of its claim as this is the reckoning point in the determination of the timeliness of its appeal to this Honorable Court.

On the other hand, if petitioner had submitted all documents in support of its claim for refund, the date should be specifically alleged in the petition to ascertain the timeliness of the appeal.”

On June 7, 2007, respondent, through counsel, transmitted to this Court the *BIR Records* of the instant case consisting of two hundred sixty one (261) pages in two (2) folders.¹⁴

The parties filed their Joint Stipulation of Facts and Issues on September 4, 2007, which was subsequently approved by this Court through Resolution dated September 17, 2007.¹⁵

Trial on the merits then proceeded.

During trial, petitioner presented testimonial and voluminous documentary evidence primarily aimed at proving its supposed entitlement to the issuance of a tax credit certificate in the amount of ₱ 39,741,256.54, representing petitioner's alleged unutilized input taxes for the period covering January 1, 2005 to September 30, 2005.

At the hearing held on December 3, 2008, counsel for respondent manifested that respondent is waiving his right to present evidence and moved for a thirty (30)-day period to file a Memorandum. Both parties were granted thirty (30) days from such date or until January 2, 2009 within which to file their respective

¹⁴ Docket, p. 190.

¹⁵ Docket, p. 227.

Memorandum.¹⁶

On December 12, 2008, respondent filed a Manifestation and Compliance¹⁷ stating that, upon being requested to submit a status report, the revenue officers who conducted the administrative investigation of this case responded that "the verification is still in progress considering the volume of receipts to be verified and to establish factual existence of the input tax being claimed for refund."

On December 15, 2008, petitioner filed its Memorandum. On the other hand, respondent filed his Memorandum on March 3, 2009 after having been granted two extensions, upon motions filed on January 5, 2009 and February 2, 2009.

Thereafter, in the Resolution promulgated on March 10, 2009, this case was considered submitted for decision.

Hence, this Decision.

THE ISSUES

The following are the parties' jointly stipulated issues¹⁸, submitted for this Court's resolution:

"1. Whether or not Petitioner is entitled to a tax credit certificate in the amount of P25,819,310.32 representing unutilized input taxes paid on its purchases of capital goods for the period January 1, 2005 to September 30, 2005;

2. Whether or not the unutilized input taxes amounting to P25,819,310.32 paid by Petitioner for the period January 1, 2005 to September 30, 2005 were related to payments to its contractors for the construction of the hydroelectric power plants in Laguna, as well as all related expenditures in pursuance of the rehabilitation, construction and operation of the power plant complex;

3. Whether or not Petitioner has duly substantiated its claim for the issuance of a tax credit certificate for unutilized input taxes amounting to P25,819,310.32 paid on its purchases of capital goods for the period January 1, 2005 to September 30, 2005;

¹⁶ Minutes of Hearing held on December 3, 2008, Docket, p. 515.

¹⁷ Docket, pp. 584 to 586.

¹⁸ Issues to be Tried or Resolved, JSFI, Docket, pp. 222 to 225.

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4. Whether or not the input taxes amounting to P25,819,310.32 paid by Petitioner on its purchases of capital goods for the period January 1, 2005 to September 30, 2005 have not been carried over to the succeeding quarters and have not been unutilized against any output tax;

5. Whether or not Petitioner is entitled to a tax credit certificate in the amount of P13,921,946.22 representing unutilized input taxes paid or incurred on local purchase of goods and services, other than capital goods, attributable to Petitioner's zero-rated sales to the National Power Corporation (NPC) for the period January 1, 2005 to September 30, 2005;

6. Whether or not Petitioner's sale of services to the National Power Corporation (NPC) for the period January 1, 2005 to September 30, 2005 qualify as zero rated sales;

7. Whether or not unutilized input taxes amounting to P13,921,946.22 representing unutilized input taxes paid or incurred on local purchase of goods and services, other than capital goods, for the period January 1, 2005 to September 30, 2005 were attributable to Petitioner's zero rated sales for the same period;

8. Whether or not Petitioner has duly substantiated its claim for the issuance of a tax credit certificate for its unutilized input taxes amounting to P13,921,946.22 representing unutilized input taxes paid or incurred on local purchase of goods and services, other than capital goods, attributable to its zero-rated sales for the period January 1, 2005 to September 30, 2005;

9. Whether or not the unutilized input taxes amounting to P13,921,946.22 representing unutilized input taxes paid or incurred on local purchase of goods and services, other than capital goods, for the period January 1, 2005 to September 30, 2005 have not been carried over to the succeeding quarters and have not been utilized against any output tax;

10. If any portion of Petitioner's unutilized input taxes paid on its purchase of capital goods amounting to P25,819,310.32 for the period January 1, 2005 to September 30, 2005, is disallowed for not falling under the category of 'capital goods' under then Section 112(B) of the Tax Code, whether or not Petitioner is entitled to claim the same as a tax credit under then Section 112(A) of the Tax Code, as unutilized/excess input taxes paid or incurred on its local purchases of goods and services for the period January 1, 2005 to September 30, 2005 attributable to its zero-rated sales for the same period;



11. Whether or not Petitioner had timely and duly filed its administrative and judicial claims for the refund or issuance of tax credit certificates amounting to P25,819,310.32 representing unutilized input taxes paid on its purchases of capital goods for the period January 1, 2005 to September 30, 2005; and for P13,921,946.22 representing unutilized input taxes paid or incurred on local purchase of goods and services, other than capital goods, attributable to Petitioner's zero-rated sales to the National Power Corporation (NPC) for the period January 1, 2005 to September 30, 2005, respectively; and,

12. Whether or not Petitioner is entitled to a tax credit certificate in the total amount of Thirty Nine Million Seven Hundred Forty One Thousand Two Hundred Fifty Six Pesos And 54/100 (P39,741,256.54) representing its unutilized input taxes for the period January 1, 2005 to September 30, 2005."

Being closely intertwined, We simplify the foregoing issues as follows:

"Whether or not petitioner is entitled to the issuance of tax credit certificate in the total amount of ₱ 39,741,256.54, representing petitioner's alleged unutilized input taxes for the period covering January 1, 2005 to September 30, 2005, pursuant to Sections 112(A) and 112(B) of the NIRC of 1997."

Petitioner's arguments

Petitioner asserts that it had sufficiently proven that it has complied with all the basic requirements in order to be entitled to the issuance of a tax credit certificate. It points out that it is a VAT-registered person; that its sales for the period January 1, 2005 to September 30, 2005 are zero-rated sales; that the input taxes being claimed were paid and are attributable to petitioner's zero-rated sales; that said input taxes have not been applied against its output tax liability; and that its administrative and judicial claims for refund or the issuance of a tax credit certificate were seasonably filed.

Respondent's counter-argument

Respondent contends that petitioner is not entitled to a refund or issuance of tax credit certificate for its alleged input VAT for the first, second and third quarters of

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calendar year 2005 in the total amount of ₱ 39,741,256.54 because petitioner's official receipts do not bear the imprinted words "zero-rated" on the face thereof and the official receipts do not have the word "VAT" and its taxpayer's identification number, the claim for refund must be denied.

Moreover, respondent avers that petitioner failed to meet one of the requirements in order to be entitled to a refund or issuance of a tax credit certificate of input VAT on capital goods, *i.e.*, that petitioner paid the input VAT on the capital goods purchased, since some of the invoices presented by petitioner in support of the claim do not pertain to capital goods and other taxable goods and services which are attributable to its alleged zero-rated sales.

Lastly, respondent claims that the petition was not filed within the reglementary period for failure to comply with the requirements of Section 112(D) of the NIRC of 1997.

THIS COURT'S RULING

Sections 112(A) and 112(B) of the NIRC of 1997 lay down the requisites for claims for issuance of tax credit certificate or refund of input tax attributable to zero-rated or effectively zero-rated sales and capital goods, respectively, 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 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.

(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.”

Based on the foregoing provisions, the refund/tax credit of excess input VAT is allowed in two instances, namely: (a) when the excess input VAT is attributable to zero-rated or effectively zero-rated sales; and (b) when the excess input VAT refer to those paid on capital goods imported or locally purchased.

However, it must be noted that the above-quoted Section 112(B)—referring to the refund of input VAT on capital goods—has been deleted by virtue of the enactment of Republic Act No. 9337¹⁹, which took effect on July 1, 2005²⁰. Thus, at this juncture, it must be said that petitioner's alleged input VAT on capital goods for the third quarter of 2005 may not be refunded on the basis of the said Section 112(B).

At any rate, the subject claim in the amount of ₱ 39,741,256.54 allegedly comprised of: (1) input VAT in the amount of ₱ 25,819,310.32 incurred/paid on capital goods purchased; and (2) input VAT in the amount of ₱ 13,921,946.22 incurred/paid on importation and/or local purchases of goods and services other than capital goods, which are all attributable to zero-rated sales. Below is the breakdown

¹⁹ AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

²⁰ Section 26, Republic Act No. 9337; *Abakada Guro Party List (formerly AASJAS) Officers Samson S. Alcantara and Ed Vincent S. Albano vs. Executive Secretary, et al.*, G.R. Nos. 168056, 168207, 168461, 168463, and 168730, September 1, 2005; *Quezon City, et al. vs. ABS-CBN Broadcasting Corp.*, G.R. No. 166408, October 6, 2008; Footnote no. 57, *Intel Technology Phils., Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; and Footnote no. 22, *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007.

of the amount of ₱ 39,741,256.54:

Quarter	Input Tax on Capital Goods	Input Tax on Goods and Services Other Than Capital Goods	Total
1st	₱ 7,740,737.65	₱ 3,687,781.69	₱ 11,428,519.34
2nd	10,157,799.73	5,217,557.29	15,375,357.02
3rd	7,920,772.94	5,016,607.24	12,937,380.18
	₱ 25,819,310.32	₱ 13,921,946.22	₱ 39,741,256.54

To claim refund or tax credit based on Section 112(A) of the NIRC of 1997, petitioner must comply with the following requisites, to wit:

1. the claimant must be a VAT-registered person;
2. there must be zero-rated or effectively zero-rated sales;
3. input taxes were incurred or paid;
4. such input taxes are attributable to said zero-rated or effectively zero-rated sales;
5. said input taxes were not applied against any output VAT liability during; and
6. the claim for refund was filed within the two-year prescriptive period.

Before delving on the first five (5) requisites, the Court finds it appropriate to first determine petitioner's compliance with the last requisite, *i.e.*, the timeliness of the filing of the instant claim, considering that claims filed beyond the reglementary period will not prosper outright.

The Supreme Court, in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*²¹, held that the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund under Section 112(A) of the NIRC of 1997 starts from the close of the taxable

²¹ G.R. No. 172129, September 12, 2008.

quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.

Counting from the close of the first, second, and third taxable quarters of 2005, petitioner had until the following dates within which to file its claim both in the administrative and judicial levels:

Taxable Quarter		Last Day to File Claim for Refund
2005	Close of the quarter	
1st quarter	March 31, 2005	March 31, 2007
2nd quarter	June 30, 2005	June 30, 2007
3rd quarter	September 30, 2005	September 30, 2007

Petitioner filed its administrative claims on June 30, 2005²², September 15, 2005²³, and October 28, 2005²⁴ for the first, second, and third quarters of 2005, respectively, and the Petition for Review on April 18, 2007. While the administrative claim for refund for the first quarter of 2005 was timely filed within the two-year prescriptive period, the judicial claim thereon was filed out of time. Thus, petitioner is barred from claiming refund of the input taxes for the first quarter of 2005 in the amount of ₱ 11,428,519.34, representing the sum of the input VAT claim on capital goods purchases amounting to ₱ 7,740,737.65 and of the input VAT claim on other goods and services amounting to ₱ 3,687,781.69.

Only the remaining claims covering the second and third quarters of 2005 in the respective amounts of ₱ 15,375,357.02 and ₱ 12,937,380.18 or in the sum of ₱ 28,312,737.20 were seasonably filed both administratively and judicially.

Accordingly, the Court shall evaluate petitioner's refund claim of unutilized input VAT pertaining only to the second and third quarters of 2005 in the total amount of ₱ 28,312,737.20, consisting of the following: (1) input VAT claim on

²² Exhibit "G".

²³ Exhibit "H".

²⁴ Exhibit "I".

capital goods amounting to ₱ 18,078,572.67 and (2) input VAT claim on other goods and services amounting to ₱ 10,234,164.53.

Anent the first requisite, it is undisputed that petitioner is a VAT-registered entity.²⁵

With regard to the second requisite, there is no argument that the sale of electricity by a VAT-registered taxpayer, like herein petitioner, to NPC is effectively subject to zero percent (0%) VAT, pursuant to Section 108(B)(3) of the NIRC of 1997. This issue has been settled in the case of *Maceda vs. Macaraig, et al.*²⁶, where the Highest Tribunal held that:

“The NPC is a non-profit public corporation created for the general good and welfare, wholly owned by the government of the Republic of the Philippines. From the very beginning of its corporate existence, the NPC enjoyed preferential tax treatment, to enable the Corporation to pay the indebtedness and obligation and in furtherance and effective implementation of the policy enunciated in Section one of ‘Republic Act No. 6395’ which provides:

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(P)residential Decree No. 938 amended the tax exemption by simplifying the same law in general terms. It succinctly exempts NPC from ‘*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’.

The use of the phrase ‘all forms’ of taxes demonstrate the intention of the law to give NPC all the tax exemptions it has been enjoying before. The rationale for this exemption is that being non-profit the NPC ‘shall devote all its returns from its capital investment as well as excess revenues from its operation, for expansion. xxx’

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It is evident from the provision of P.D. No. 938 that its purpose is to maintain the tax exemption of NPC from *all forms* of taxes including indirect taxes as provided for under R.A. No. 6395 and P.D. No. 380 if it is to attain its goals.”

²⁵ Par. 5, Facts Admitted, JSFI, Docket, p. 221.

²⁶ G.R. No. 88291, May 31, 1991.

Moreover, in the same case, NPC's tax exemption was affirmed and further explained as follows:

"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.

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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".²⁷

In keeping with the foregoing jurisprudence, the Court has consistently ruled that NPC is an entity with a special charter, which categorically exempts it 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. Moreover, the BIR itself approved petitioner's application for zero-rating on December 29, 2004.²⁸

It was also established that petitioner entered into a Second Accession Undertaking with NPC and its affiliates, Industrias Metalurgicas Pescarmona S.A. (IMPISA) and CBK Power Corporation (CBK Power) on September 20, 2000,²⁹ wherein petitioner became a party to a BROT Agreement dated November 6, 1998 to rehabilitate, construct, operate, and maintain the Caliraya, Botocan, and Kalayaan hydroelectric power plants in the Province of Laguna.³⁰ Under the BROT Agreement, petitioner shall generate and supply electricity to NPC and shall receive fees in consideration thereof.³¹

²⁷ Resolution dated June 8, 1993, G.R. No. 88291.

²⁸ Exhibits "X" and "Y".

²⁹ Exhibit "D".

³⁰ Exhibit "C".

³¹ Exhibit "C-6".

In its Original and Amended Quarterly VAT Returns³² for the second and third quarters of taxable year 2005, petitioner's reported zero-rated sales/receipts amounted to ₱ 3,164,279,760.56. However, out of the reported zero-rated sales/receipts of ₱ 3,164,279,760.56, only the amount ₱ 3,130,907,752.25 is duly covered by official receipts.³³ Therefore, only a portion of the input VAT claim attributable to the substantiated zero-rated sales will be considered for refund. The rate to be applied is computed as follows:

Supported zero-rated sales	₱ 3,130,907,752.25
Divided by total declared zero-rated sales	₱ 3,164,279,760.56
Rate of supported zero-rated sales	98.945352154%

In order to prove compliance with the third requisite, petitioner submitted its suppliers' invoices and official receipts to support its purchases of goods other than capital goods and services for the first three quarters of 2005, which has corresponding input VAT in the aggregate amount of ₱ 13,921,946.22. As already mentioned, the input VAT arising from the purchase of goods and services other than capital goods pertaining to the first quarter of 2005 in the amount of ₱ 3,687,781.69 shall be disallowed due to prescription.

Upon verification of the submitted documents, the court-commissioned independent Certified Public Accountant (ICPA) came up with the following findings:³⁴

A. Purchases of Services	1st Quarter	2nd & 3rd Qtrs.	TOTAL
A.1. Missing ORs (Exhibit EEEE)	₱ 23,003.84	₱ 151,953.17	₱ 174,957.01
A.2. Without ORs - machine validated SIs only (Exhibit EEEE-1 to EEEE-51 and EEEE-1A to EEEE-51A)	6,984.13	29,571.04	36,555.17
A.3. ORs not in the name of the company (Exhibit EEEE-52 to EEEE-52A)	75.47	-	75.47
A.4. ORs without specified year (Exhibit EEEE-53 to EEEE-66 and EEEE-53A to EEEE-66A)	-	1,974.01	1,974.01

³² Exhibits "EE", "FF", "GG", and "HH".

³³ See Annex "A-1" of this Decision.

³⁴ Pages 13 to 15, Exhibit "BBBBB".

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A.5. Non-VAT ORs/VAT Zero-rated ORs (Exhibit EEEE-67 to EEEE-77 and EEEE-67A to EEEE-77A)	-	90,406.86	90,406.86
A.6. Transaction/Provisional receipts (Exhibit EEEE-78 to EEEE-79 and EEEE-79A)	-	1,068.82	1,068.82
A.7. Original ORs not available (Exhibit EEEE-80 to EEEE-88 and EEEE-80A to EEEE-88A)	-	15,850.37	15,850.37
A.8. Out of period ORs (Exhibit EEEE-89 to EEEE-128 and EEEE-89A to EEEE-128A)	-	184,149.05	184,149.05
A.9. Discrepancies due to difference in foreign currency rate used by company against per examination (Exhibit "HHHH-1" to "HHHH-19", "HHHH-1A" and "HHHH-6A" to "HHHH-19A")	7,158.38	10,654.65	17,813.03
A.10. Incorrectly computed input VAT on purchases of services (Exhibit "HHHH-19" to "HHHH-39", "HHHH-19A" to "HHHH-37A" and "HHHH-39A")	2,778.76	7,355.52	10,134.28
Subtotal	P 40,000.58	P 492,983.49	P 532,984.07
B. Purchases of Goods other than Capital Goods			
B.1. Missing SIs (Exhibit "FFFF" and "FFFF-1" to "FFFF-2")	P 14,222.97	P 4,037.53	P 18,260.50
B.2. Without SIs - statement of account only (Exhibit "FFFF-3" to "FFFF-18" and "FFFF-3A to "FFFF-18A")	20,677.65	45,510.20	66,187.85
B.3. SIs not in the name of the company (Exhibit "FFFF-19" to "FFFF-20" and "FFFF-19A" to "FFFF-20A")	1,936.36	145.46	2,081.82
B.4. SIs without BIR authority to print (Exhibit "FFFF-21" to "FFFF-38" and "FFFF-21A" to "FFFF-38A")	2,365.62	4,402.06	6,767.68
B.5. Original SIs not available (Exhibit FFFF-39 to FFFF-49, FFFF-45A and FFFF-47A to FFFF-49A)	-	26,839.15	26,839.15
B.6. Out of period SIs (Exhibit "FFFF-50" to "FFFF-51" and "FFFF-50A" to "FFFF-54A")	603.18	1,361.82	1,965.00
B.7. Non-VAT SI (Exhibit "FFFF-52" to "FFFF-54" and "FFFF-52A" to "FFFF-54A")	1,181.82	537.51	1,719.33
B.8. Discrepancies due to difference in foreign currency rate used by company against per examination (Exhibit "IIII-1" to "IIII-6" and "IIII-1A" to "IIII-6A")	0.15	178.99	179.14
B.9. Incorrectly computed input VAT on purchases of goods (Exhibit IIII-7 and IIII-7A)	-	1.82	1.82
Subtotal	P 40,987.75	P 83,014.54	P 124,002.29
TOTAL	P 80,988.33	P 575,998.03	P 656,986.36

Moreover, the said ICPA found that out of the ₱ 18,078,572.67 input VAT claim on capital goods for the second and third quarters of 2005, the amount of

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₱ 277,012.39 should be disallowed for petitioner's failure to present VAT official receipts as supporting documents and discrepancies in foreign currency rate used by petitioner vis-à-vis per examination of the said Independent CPA, as shown below:³⁵

Particulars	1st Quarter	2nd & 3rd Quarters	Total
Missing ORs (Exhibit GGGG and GGGG-1)	₱ 6,063.77	₱ 21,625.22	₱ 27,688.99
Original ORs not available (Exhibit GGGG-2 and GGGG-2A)	-	204,090.91	204,090.91
Discrepancies due to difference in foreign currency rate used by Company against per examination (Exhibit JJJJ-1 to JJJJ-64, JJJJ-1A to JJJJ-34A, and JJJJ-36A to JJJJ-64A)	58,748.56	51,296.26	110,044.82
TOTAL	₱ 64,812.33	₱ 277,012.39	₱ 341,824.72

The Court finds the ICPA Report to be in order. Consequently, petitioner's input VAT claim on purchases of goods and services other than capital goods for the second and third quarters of 2005 in the amount of ₱ 10,234,164.53 will be reduced by ₱ 575,998.03; while petitioner's input VAT claim on capital goods for the second and third quarters of 2005 in the amount of ₱ 18,078,572.67 will be reduced by ₱ 277,012.39.

As regards the fourth and fifth requisites, the Court finds that all of petitioner's input taxes are attributable to its zero-rated sales. All of petitioner's sales were zero-rated and there was no output VAT thereon; hence, the input taxes were not applied against any output VAT liability. The said unutilized input VAT was not carried over to the succeeding taxable quarters, as evidenced by petitioner's Quarterly VAT Returns for the fourth quarter of 2005 and for the four quarters of 2006.³⁶

In sum, petitioner has sufficiently proven its entitlement to the issuance of tax credit certificate, representing unutilized input VAT attributable to zero-rated sales for the second and third quarters of 2005 in the amount of ₱ 27,170,123.36, computed

³⁵ Page 15, Exhibit "BBBBB".

³⁶ Exhibits "II", "JJ", "KK", "LL", "MM", and "NN".

as follows:

Total amount of input VAT claim for the first three quarters of 2005	P	39,741,256.54
Less: 1st quarter input VAT claim barred by prescription		<u>11,428,519.34</u>
Unprescribed input VAT claim – 2nd and 3rd quarters of 2005	P	28,312,737.20
Less: Input VAT claim not properly substantiated by VAT invoices or official receipts		
a. Purchases of Capital Goods	P	277,012.39
b. Purchase of Goods and Services Other than Capital Goods		<u>575,998.03</u>
Validly supported input VAT	P	<u>27,459,726.78</u>
Rate of supported zero-rated sales		98.945352154%
Refundable input VAT attributable to zero-rated sales	P	<u><u>27,170,123.36</u></u>

In view of the foregoing findings that petitioner is entitled to claim refund or tax credit under Section 112(A) of the NIRC of 1997, or on the basis of effectively zero-rated sales, it becomes unnecessary to further determine petitioner's right to make the same claim under the former Section 112(B) of the NIRC of 1997, or on the basis of the purchase of capital goods³⁷, for the second quarter of 2005.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **TWENTY-SEVEN MILLION ONE HUNDRED SEVENTY THOUSAND ONE HUNDRED TWENTY-THREE PESOS AND THIRTY SIX CENTAVOS (P 27,170,123.36)**, representing unutilized excess input taxes on local purchases of goods and services attributable to petitioner's effectively zero-rated sales to NPC for the second and third quarters of 2005.

SO ORDERED.


ERLINDA P. UY
Associate Justice

³⁷ *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009.

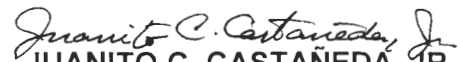
WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


OLGA PALANCA-ENRÍQUEZ
Associate Justice

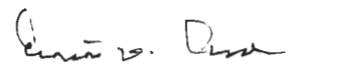
ATTESTATION

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.
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

ANNEX A

ZERO-RATED SALES SUPPORTED BY OFFICIAL RECEIPTS **Second and Third Quarters of 2005**

Exh.	OR #	US\$	Exchange Rate (per Exh. MMMM)	PhP
0000-37	1436	1,994,160.00	54.249	108,181,185.84
0000-38	1433			9,351,810.64
0000-39	1437	1,994,160.00	54.249	108,181,185.84
0000-40	1434			9,351,810.64
0000-41	1431			9,702,503.54
0000-42	1438	2,068,941.00	54.249	112,237,980.31
0000-43	1439	2,068,941.00	54.249	112,237,980.31
0000-44	1432			9,702,503.54
0000-45	1440	134,131.00	54.249	7,276,472.62
0000-46	1429			629,020.60
0000-47	1441	134,131.00	54.249	7,276,472.62
0000-48	1426			629,020.60
0000-49	1442	118,700.00	54.249	6,439,356.30
0000-50	1430			556,655.40
0000-51	1443	118,700.00	54.249	6,439,356.30
0000-52	1427			556,655.40
0000-53	1444	1,774.80	54.249	96,281.13
0000-54	1428			8,323.11
0000-55	1454	1,994,160.00	54.448	108,578,023.68
0000-56	1452			9,477,790.95
0000-57	1455	1,994,160.00	54.448	108,578,023.68
0000-58	1453			9,477,790.95
0000-59	1456	2,068,941.00	54.448	112,649,699.57
0000-60	1450			9,833,208.11
0000-61	1457	2,068,941.00	54.448	112,649,699.57
0000-62	1451			9,833,208.11
0000-63	1458	134,131.00	54.448	7,303,164.69
0000-64	1445			637,494.27
0000-65	1459	134,131.00	54.448	7,303,164.69
0000-66	1449			637,494.27
0000-67	1460	118,700.00	54.448	6,462,977.60
0000-68	1448			564,154.22
0000-69	1461	118,700.00	54.448	6,462,977.60
0000-70	1447			564,154.22
0000-71	1462	1,774.80	54.448	96,634.31
0000-72	1446			8,435.33
0000-73	1472	1,994,160.00	55.75	111,174,420.00
0000-74	1471			9,647,475.84
0000-75	1473	1,994,160.00	55.75	111,174,420.00
0000-76	1470			9,647,475.84
0000-77	1479	2,068,941.00	55.555	114,940,017.26
0000-78	1469			10,009,256.18
0000-79	1480	2,068,941.00	55.555	114,940,017.26
0000-80	1468			10,009,256.18
0000-81	1474	134,131.00	55.75	7,477,803.25
0000-82	1463			648,907.60
0000-83	1475	134,131.00	55.75	7,477,803.25
0000-84	1467			648,907.60
0000-85	1476	118,700.00	55.75	6,617,525.00
0000-86	1464			574,254.51
0000-87	1477	118,700.00	55.75	6,617,525.00
0000-88	1465			574,254.51
0000-89	1478	1,774.80	55.75	98,945.10
0000-90	1466			8,586.25
0000-91	1490	1,994,160.00	56.147	111,966,101.52