REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

KEPCO PHILIPPINES CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5761

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 14 2003

x - x

DECISION

This is a Petition for Review claiming for the refund or issuance of a tax credit certificate in the amount of P31,590,928.85 allegedly representing unutilized input value-added tax for the taxable year 1997 arising from domestic purchases of goods or services attributable to the sale of electricity to the National Power Corporation (*NPC, for brevity*) and capital goods.

The antecedents, as adduced from the records of the case, are summarized as follows:

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with its principal place of business located at Suite 2501-A, 25th Floor, Tektite Tower I, Exchange Road, Ortigas Center, City of Pasig *(Joint Stipulation of Facts, Paragraph 1, CTA records, p.51).* It is a Value-Added Tax (VAT) registered taxpayer engaged in the production and sale of electricity (as an independent power producer), and sells electricity to the National Power Corporation (NPC) *(Joint Stipulation of Facts, Paragraph 2, CTA records, p.51).* For the four taxable quarters of calendar year 1997, petitioner duly filed its quarterly VAT returns with respondent BIR through the BIR's authorized agent bank *(Joint Stipulation of Facts, Paragraph 3, CTA records, p.51).*

According to petitioner, during the four taxable quarters of 1997, it has incurred expenses representing domestic purchases of goods and services, for which it paid input VAT representing 10% of the total amount of the said purchases allegedly attributable to the production and sale of electricity to the NPC. The input VAT paid in the total amount of P31,590,928.85 were accordingly reported by petitioner in its quarterly VAT returns for the 1st, 2nd, 3rd and 4th quarters of 1997, detailed as follows:

Quarter	Input VAT	Exhibit
1st	P 5,763,858.42	LL
2nd	6,634,853.17	MM
3rd	5,533,783.25	NN
4th	13,658,434.01	OO
TOTAL	**P31,590,928.85**	

Petitioner alleged that the said input VAT it paid on its domestic purchases of goods and services had remained unutilized considering that petitioner does not have any output VAT against which the same could be applied. According to petitioner, the absence of any output VAT is explained by the fact that NPC is its sole customer such that all its sales are zero-rated and, therefore, do not result to any output VAT.

Petitioner filed the appropriate Application for Effective Zero Rating of its sales of electricity to NPC with respondent Commissioner of Internal Revenue *(Joint Stipulation of Facts, Paragraph 4, CTA records, p. 52).*

On March 30, 1999, petitioner, through its external auditors, filed with RDO No. 42 of the Bureau of Internal Revenue, a claim for refund of the unutilized input VAT incurred for the four taxable quarters of calendar year 1997 *(Joint Stipulation of Facts, Paragraph 5, CTA records, p.52).*

To date, respondent has not acted on the subject claim for refund or tax credit. Thus, on March 31, 1999, petitioner filed with this court a Petition for Review claiming for the refund of the amount of P31,590,928.85 as its unutilized input VAT for taxable year 1997.

On June 4, 1999, respondent filed an answer to the instant petition for review, and raised therein the following Special and Affirmative Defenses, to wit:

1. "That the herein petitioner is not entitled to the refund of the amounts prayed for in the instant petition for review;

2. That the instant petition for review was prematurely filed as petitioner has not exhausted the administrative remedies required by law and jurisprudence on the action of this nature as no decision has as yet been rendered by the respondent;

3. Such being the case the Honorable court has no jurisdiction over the petition for review".

Subsequently, in a Resolution promulgated on March 19, 2002, this court granted petitioner's "Motion for Leave of Court to Admit Attached Amended Petition for Review" filed by petitioner on December 21, 2001 in order to include an additional cause of action in pursuing its claim for refund, particularly Section 106(b) of the 1995 Tax

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Code. Said law allows the refund of unutilized input VAT directly attributable to capital goods.

Thereafter, petitioner presented additional oral and documentary evidence, among others, is the "Classified Summary of Domestic Purchases" to prove that its unutilized input VAT being claimed for refund or tax credit includes input VAT from domestic purchases of capital goods during the taxable year 1997. The claim for refund was recomputed as follows *(Exhibits V, Z, DD and HH):*

	Capital Goods			Non-Capital Goods			Total		VAT Claim
	Allowed	Disallowed	Total	Allowed	Disallowed	Total	Allowed	Disallowed	
Jan	P 586,201.16	P 23,263.53	P 609,464.69	P 4,668.63	P 38,122.09	P 42,790.72	P 590,869.79	P 61,385.62	P 652,255.41
Feb	1,573,647.42	74,691.08	1,648,338.50	59,747.55	2,510.34	62,257.89	1,633,394.97	77,201.42	1,710,596.39
Mar	2,789,087.12	528,610.64	3,317,697.76	66,516.82	16,792.04	83,308.86	2,855,603.94	545,402.68	3,401,006.62
Apr	2,309,607.82	554,581.54	2,864,189.36	129,164.45	90.91	129,255.36	2,438,772.27	554,672.45	2,993,444.72
May	1,640,274.51	909,560.05	2,549,834.56	73,116.37	2,176.19	75,292.56	1,713,390.88	911,736.24	2,625,127.12
June	739,064.62	182,398.75	921,463.37	83,458.04	11,359.92	94,817.96	822,522.66	193,758.67	1,016,281.33
July	1,838,573.88	360,623.93	2,199,197.81	117,626.41	79,059.99	196,686.40	1,956,200.29	439,683.92	2,395,884.21
Aug	1,788,933.72	195,416.74	1,984,350.46	70,462.19	72,049.55	142,511.74	1,859,395.91	267,466.29	2,126,862.20
Sep	570,929.77	255,030.01	825,959.78	152,222.89	32,854.17	185,077.06	723,152.66	287,884.18	1,011,036.84
Oct	1,521,286.90	69,886.55	1,591,173.45	112,577.79	56,291.47	168,869.26	1,633,864.69	126,178.02	1,760,042.71
Nov	1,483,042.37	1,210,173.32	2,693,215.69	115,140.13	10,216.68	125,356.81	1,598,182.50	1,220,390.00	2,818,572.50
Dec	7,502,089.67	1,274,350.40	8,776,440.07	176,988.98	126,389.75	303,378.73	7,679,078.65	1,400,740.15	9,079,818.80
Total	P24,342,738.96	P5,638,586.54	P29,981,325.50	P1,161,690.25	P447,913.10	P1,609,603.35	P25,504,429.21	P6,086,499.64	P31,590,928.85

The issues to be resolved in the case at bar are streamlined as follows:

1. Whether or not the sale of electricity by a VAT-registered entity to the National Power Corporation (NPC) qualifies as a sale of services subject to a VAT rate of zero percent (0%) or otherwise called as zero-rated VAT transaction *(Joint Stipulation of Issues, Paragraph 1, CTA records, p.52);*

2. Whether herein Petitioner, as a VAT-registered entity, did, for the calendar year 1997, actually incur expenses representing domestic purchases of goods and services, for which it incurred an input VAT in the amount of P31,590,928.85, which expenses represent the costs attributable to Petitioner's production and sale of

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electricity to the NPC *(Joint Stipulation of Issues, Paragraph 2, CTA records, pp.52 & 53).*

3. Whether or not petitioner is entitled to the claimed input VAT payments on capital goods purchased for taxable year 1997.

The issue of whether or not the sale of electricity by a VAT-registered entity to NPC is effectively zero-rated for VAT purposes is not one of first impression as the same had already been resolved by this court in the affirmative in a number of similar cases. Thus, the law applicable thereto is Section 102(b)(3) [now Section 108(B)(3)] of the Tax Code in relation to Section 13 of Republic Act No. 6395 (NPC Charter), as amended, to wit:

> **"Sec. 102. Value-added tax on sale of services and use or lease of properties. –**
>
> (a) Rate and base of tax. – xxx
>
> (b) Transactions subject to zero-rate. – The following services performed in the Philippines by VAT-registered persons shall be subject to 0%:
>
> (1) xxx
>
> (2) xxx
>
> (3) <u>Services rendered to persons or entities whose exemption under special laws</u> or international agreements to which the Philippines is a signatory <u>effectively subjects the supply of such services to zero rate</u>." (Underlining supplied).

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> **"Section 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

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> devote all its returns from its capital investment 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." (Underscoring supplied).

Clearly from the foregoing, 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 to NPC are effectively subject to zero percent (0%) VAT ***(Mirant Navotas Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6044, October 16, 2002)***.

Moreover, no less than the Supreme Court affirmed NPC's tax exemption in the case of ***Maceda vs. Macaraig, Jr., G.R. No. 88291, May 31, 1991, 197 SCRA 771***, where the High Tribunal held that:

> "x x x Presidential Decree No. 938 amended the tax exemption by simplifying the same law in general terms. It succinctly exempts NPC from *'all forms of taxes x x '*. 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. To enable the corporation to pay the indebtedness and obligations in furtherance and effective implementation of the policy enunciated in Section one of this Act,xxx".

xxx xxx xxx

> "It is evident from the provisions of P.D. No. 938 that its purpose is to maintain the tax exemption of NPC from all forms of taxes **including indirect taxes** x x x if it is to attain its goals *(emphasis ours).*"

Thus, in order to qualify for effective zero-rating under Section 102(b)(3), petitioner must be able to prove the following: (a) that it is a VAT-registered entity and (b) that it actually derived sales from services rendered to NPC, an entity exempt from VAT by virtue of Republic Act No. 6395, as amended.

The fact that petitioner is a VAT-registered entity is undisputed *(par. 2, Joint Stipulation of Facts)*. It should be noted, however, that petitioner's quarterly VAT returns for taxable year 1997 *(Exhibits LL, MM, NN and OO)* did not reflect any amount of the alleged zero-rated sales and failed to substantiate the same. Also, petitioner did not submit the corresponding invoices and/or official receipts showing its sales of electricity to NPC for the subject period. Since petitioner failed to submit documents evidencing that it has reported effectively zero-rated sales for 1997, it follows that the input VAT payments allegedly attributable thereto cannot be refunded. It is clear from the provisions of Section 106(a) [now Section 112(A)] of the Tax Code that there must be zero-rated or effectively zero-rated sales in order that a refund of input VAT could prosper, to wit:

> **"Sec. 106. Refunds or tax credits of creditable input tax**. –
>
> (a) <u>Any VAT-registered person, whose sales are zero-rated or effectively zero-rated</u>, 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 100(a)(2)(A)(i), (ii) and (b) and Section 102(b)(1) and (2), the acceptable foreign currency exchange

> proceeds thereof had been duly accounted for in accordance with the 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. (Underlining supplied).

The only issue left for determination is whether or not petitioner is entitled to the claimed input VAT payments on capital goods purchased for taxable year 1997.

Section 106(b) [now Section 112(B)] of the Tax Code, provides:

> **"Sec. 106. Refunds or tax credits of creditable input tax**. –
>
> (a) xxx
>
> (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.

Relative thereto, Sections 4.104-5 and 4.106-1 of Revenue Regulations No. 7-95 state, thus:

> **"SEC. 4.106-1. Refunds or tax credits of input tax**. –
>
> (a) xxx
>
> (b) xxx
>
> "Capital goods or properties" refer to goods or properties with estimated useful life greater that one year and which are treated as depreciable assets under Section 29(f), used directly or indirectly in the production or sale of taxable goods or services."

Plainly, from the above provisions, in order to be entitled to a refund/tax credit of input VAT paid on capital goods purchased, petitioner must prove that:

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1) it is a VAT registered entity;
2) it paid input VAT on capital goods purchased;
3) its input VAT payments on capital goods are duly supported by VAT invoices or official receipts;
4) it did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and
5) the administrative and judicial claims for refund were filed within the two-year prescriptive period ***(KEPCO Philippines Corporation vs. The Commissioner of Internal Revenue, CTA Case Nos. 5675 and 5704, March 18, 2003).***

Records reveal that petitioner substantially complied with all the aforementioned requirements. It is undisputed that petitioner is a VAT-registered entity. Records likewise show that petitioner paid input VAT on capital goods purchased. But out of the total input taxes of P29,981,325.50 reflected in the classified summary of petitioner's input taxes on its purchases of capital goods, this court found that only P15,109,293.32 can be properly classified as capital goods, thus:

EXHIBIT	SUPPLIER'S NAME	AMOUNT	INPUT VAT
E-7 to E-9	Triumpt Marketing	P 31,850.00	P 2,895.45
E-23 to E-24	Lee Dynasty Furniture	22,000.00	2,000.00
E-31 to E-33	RIMMS Machinery, Inc.	320,324.00	29,120.36
E-53 to E-60	IESA	2,260,605 05	186,791.47
E-61 to E-78	IESA	3,560,717.82	323,701.62
E-187 to E-189	Triton Communications	78,000.00	7,090.91
E-196 to E-198	Network Metal Inc.	8,233,814.16	748,528.56
E-246 to E-248	Network Metal Inc.	110,200.00	10,018.18
E-249 to E-251	Network Metal Inc.	649,398.76	59,036.25
E-258 to E-261	IESA	2,104,995.77	191,363.25
E-268 to E-273	Vimaal Construction Co.	66,397.24	6,036.11
E-294 to E-296	BNJ Sash Corporation	605,363.73	55,033.06
E-300 to E-302	Network Metal Inc.	8,962,359.12	814,759.92
E-303 to E-305	Executive Computer Tech	45,000.00	4,090.91
E-335 to E-349	IESA	2,640,957.12	240,087.02
E-357 to E-361	IESA	1,529,065.30	139,005.94

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E-505 to E-510	FED Construction	248,400.00	22,581.82
E-511 to E-513	TCU Air Sales	95,000.00	8,636.36
E-525 to E-528	Tuadles Construction	1,144,591.80	104,053.80
E-639 to E-641	Network Metal Inc.	348,800.00	31,709.09
E-642 to E-644	BNJ Sash Corporation	715,138.00	65,012.55
F-54 to F-57	Jakofs Corporation	3,172,646.95	288,422.45
F-176 to F-178	Network Metal Industries	9,744,288.84	885,844.44
F-236 to F-238	FED Construction	624,433.81	56,766.71
F-317 to F-319	Krismajay Construction	3,467,097.91	315,190.72
F-320 to F-322	Precesion Development	215,607.06	19,600.64
F-333 to F-335	Scan Aire	2,780,024.50	252,729.50
F-364 to F-366	Explorer Drilling Service	185,466.50	16,860.59
F-371 to F-373	ELISEC	26,100.00	2,372.73
F-431 to F-433	FED Construction	888,551.52	80,777.41
F-437 to F-439	BNJ Sash Corporation	810,000.00	73,636.36
F-538 to F-540	Explorer Drilling Service	435,000.00	39,545.45
F-541 to F-543	Firticor Inc.	21,500.00	1,954.55
F-636 to F-638	First Associated Tech	118,575.00	10,779.55
F-642 to F-644	BNJ Sash Corporation	1,589,800.57	144,527.32
F-698 to F-700	Explorer Drilling Service	185,466.50	16,860.59
F-796 to F-798	Tuadles Construction	933,350.00	84,850.00
F-799 to F-801	Network Metal Industries	3,049,211.88	277,201.08
F-802 to F-805	Fyrelyn Industries	87,500.00	7,954.55
F-806 to F-808	Network Metal Industries	293,700.00	26,700.00
F-863 to F-865	Liana Trading Corporation	12,850.00	1,168.18
F-925 to F-927	Network Metal Industries	2,400,000.00	218,181.82
F-935 to F-936	MG Abulencia Enterprises	67,374.34	6,124.94
F-943 to F-945	Asia Corrosion Svcs	18,651.00	1,695.55
F-957 to F-959	Advance Surface Protector	1,711,022.40	155,547.49
F-974 to F-976	FED Construction	180,000.00	16,363.64
F-1140 to F-1142	Tuadles Construction	277,050.30	25,186.39
G-1 to G-9	FED Construction	1,268,257.00	115,296.08
G-78 to G-80	BNJ Sash Corporation	1,890,000.00	171,818.18
G-97 to G-99	Tri-Ohms Engineering	1,250,000.00	113,636.36
G-140 to G-142	Scan Aire	262,500.00	23,863.64
G-152 to G-154	BNJ Sash Corporation	3,179,551.61	289,050.15
G-169 to G-173	DNL Construction	88,500.00	8,045.45
G-174 to G-175	CD Sales Center	5,699.98	518.18
G-176 to G-178	Allen International	16,888.00	1,535.27

G-196 to G-198	Explorer Drilling Service	426,800.00	38,800.00
G-235 to G-237	OSA Industries	305,434.80	27,766.80
G-255 to G-256	Scan Aire	753,386.64	68,489.69
G-297 to G-299	Tuadles Construction	1,129,593.30	102,690.30
G-306 to G-308	FED Construction	1,349,687.63	122,698.88
G-335 to G-337	Explorer Drilling Service	367,500.00	33,409.09
G-338 to G-340	Miescor Builders	200,000.00	18,181.82
G-424 to G-425	Jakofs Corporation	2,072,000.00	188,363.64
G-429 to G-431	Array Enterprises	23,000.00	2,090.91
G-463 to G-465	BNJ Sash Corporation	2,381,000.00	216,454.55
G-480 to G-485	BNJ Sash Corporation	360,483.29	32,771.21
G-486 to G-488	Network Metal Industries	142,500.00	12,954.54
G-501 to G-506	Scan Aire	1,407,738.49	127,976.22
G-614 to G-616	Euromerica Trade Phils	110,775.00	10,070.45
G-620 to G-625	BNJ Sash Corporation	746,482.93	67,862.08
G-689 to G-691	Domestic Trading Corporation	418,608.00	38,055.27
G-736 to G-739	Dwight Trade and Development	240,097.00	21,827.00
G-743 to G-745	AA Alarilla Construction	242,000.00	22,000.00
G-759 to G-762	Jakofs Corporation	4,986,890.07	453,353.64
G-1041 to G-1043	Richmond Machine Works	200,000.00	18,181.82
G-1058 to G-1059	Philcopy	68,000.02	6,181.82
H-183 to 185	Uptown Industrial Sales	28,155.00	2,559.55
H-84 to H-86	Tuadles Construction	1,309,000.00	119,000.00
H-156 to H-158	First Associated Tech	153,896.00	13,990.55
H-214 to H-216	Network Metal Industries	6,280,560.00	570,960.00
H-217 to H-218	Jakofs Corporation	584,397.90	53,127.08
H-249 to H-250	Scan Aire	609,829.30	55,414.75
H-254 to H-256	Maddem Industrial	2,482,200.00	225,654.55
H-342 to H-344	MV Jr Industrial Sales	75,175.00	6,834.09
H-411 to H-412	Jakofs Corporation	1,207,459.45	109,769.04
H-448 to H-450	Advance Surface Protector	2,001,896.21	181,990.56
H-466 to H-468	BNJ Sash Corporation	871,984.00	79,271.27
H-472 to H-474	Network Metal Industries	1,191,988.82	108,362.62
H-519 to H-521	Information Products	249,800.00	22,709.09
H-522 to H-531	Lighting Sales Mktg.	83,627.50	7,602.50
H-534 to H-536	Solem Company	74,593.00	6,781.18
H-552 to H-554	Technical Experts	20,000.00	1,818.18
H-572 to H-574	LY Enterprises	325,070.00	29,551.82
H-580 to H-582	Sogo Home and Office Center	6,540.00	586.36

H-600 to H-602	Freta General Trading	450,000.00	40,909.09
H-612 to H-614	MV Jr Industrial Sales	989,400.00	89,945.45
H-640 to H-642	Modern Business Methods	28,750.04	2,613.64
H-720 to H-724	Urica Industrial Wire	1,383,120.00	125,738.18
H-753 to H-754	MV Jr Industrial Sales	146,367.18	13,306.11
H-864 to H-865	Pumpcraft Industrial Sales	320,430.55	29,130.05
H-903 to H-904	Multi Electro Cirkel Phils.	26,000.00	2,363.64
H-909 to H-911	Uptown Industrial Sales	93,986.00	8,544.18
H-928 to H-930	Emcar Industrial Sales	50,892.46	4,626.59
H-931 to H-933	Golden Harvest	2,771,028.00	251,911.64
H-948 to H-953	Uptown Industrial Sales	305,573.00	27,779.37
H-980 to H-982	Ikeco Builders	280,588.02	25,508.00
H-1002 to H-1004	Leeleng Commercial Inc.	37,831.40	3,439.22
H-1008 to H-1010	Maximum Electronic	87,000.00	7,909.09
H-1011 to H-1013	Fervid Int'l Product	104,039.25	9,458.11
H-1017 to H-1019	Maddem Industrial	2,127,600.00	193,418.18
H-1036 to H-1038	First Associated Tech	76,000.00	6,909.09
H-1055 to H-1056	Alto Steel Industries	4,000.00	363.64
H-1057 to H-1059	MV Jr Industrial Sales	175,182.00	15,925.64
H-1067 to H-1069	NAR Power System	1,218,181.05	110,743.73
H-1089 to H-1091	Sunkyong Engineering	36,384,071.13	3,307,642.83
H-1092 to H-1094	FED Construction	2,139,451.99	194,495.64
H-1109 to H-1111	Lighting Sales Mktg.	25,235.00	2,294.09
H-1112 to H-1114	Wyler Enterprises Inc.	14,940.00	1,358.18
H-1126 to H-1128	Forza Kemika	211,519.00	19,229.00
H-1146 to H-1148	Uptown Industrial Sales	18,603.00	1,691.18
H-1155 to H-1157	Sealand Ind'l Supply	470,295.01	42,754.09
H-1164 to H-1166	LY Enterprises	19,800.00	1,800.00
H-1312 to H-1314	Lighting Sales Mktg.	54,450.00	4,950.00
H-1321 to H-1326	Uptown Industrial Sales	55,687.85	5,062.54
H-1400 to H-1411	Pumpcraft Industrial Sales	1,250.00	113.64
H-1409 to H-1411	LY Enterprises	4,750.00	431.82
H-1423 to H-1425	Benavidez Construction	10,300.00	936.36
H-1428 to H-1430	Priam Inc.	1,730,350.00	157,304.55
H-1431 to H-1433	BNJ Sash Corporation	1,578,251.68	143,477.43
H-1434 to H-1436	Krismajay Construction	2,421,968.56	220,178.96
H-1442 to H-1444	Lepol Trading	73,797.60	6,708.87
Total		**P 166,408,482.66**	**P 15,109,293.32**

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The above amounts of input taxes were duly supported by valid VAT invoices and/or official receipts. However, as to the remaining amount of P14,872,032.18, this court is constrained to deny the same because, based on the evidence presented and the testimony of Ms. Karen Bulos (*TSN dated June 27, 2002, page 11*), they cannot be considered as pertaining to capital goods. The general vouchers supporting such amount used the following account titles: inventory/supplies/chemicals/materials for rehab, service charge, books and printing, repairs and maintenance, computer maintenance, vehicle maintenance, professional, security services, communications, dues and subscription, advertising, and miscellaneous, which are not within the definition of capital goods.

Under Section 4.106-1(b) of Revenue Regulations No. 7-95, "capital goods" is defined as goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29(f) used directly or indirectly in the production or sale of taxable goods or services. Thus, goods or properties are considered capital goods if: (1) they have an estimated useful life greater that one year; (2) treated as depreciable assets; and (3) used directly or indirectly in the production or sale of taxable goods or services. ***(Italian-Thai Dev't. Public Co. Limited – Phil. Branch Office vs. Commissioner of Internal Revenue, CTA Case No. 6172, November 12, 2002).***

Petitioner was able to establish that the total input taxes claimed in the amount of P31,590,928.85 were not applied against any output VAT liability during and in the subsequent periods inasmuch as it did not have any output tax against which the said input taxes can be applied *(Exhibits LL, MM, NN, OO, I, J, K, L, M, N, O, P, Q, R, S, T* *and U)*. Although petitioner carried over its 1997 unutilized input VAT up to the fourth quarter of 2000, petitioner deducted the same as part of the amount of P107,468,940.30 reflected as "VAT Refund/TCC Claimed" in the first quarter of 2001 *(Exhibit U-2; TSN dated October 23, 2001, pages 12 to 17).*

Lastly, the administrative and judicial claims which were filed on March 30, 1999 and March 31, 1999, respectively, *(Annex H, original and amended Petitions for Review)*, are well within the two-year prescriptive period reckoned from the respective dates of filing of petitioner's 1997 quarterly VAT returns.

WHEREFORE, in view of the foregoing, the instant petition for review is partially granted. Respondent is hereby **ORDERED to REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the reduced amount of P15,109,293.32 representing unutilized input value-added tax for taxable year 1997.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge