

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

TEAM SUAL CORPORATION
(formerly: MIRANT SUAL
CORPORATION),

Petitioner,

- versus -

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

**C.T.A. CASE NOS. 6630
and 6733**

Members:

ACOSTA, Chairperson
BAUTISTA, and
CASANOVA, JJ.

Promulgated:

JUN 07 2010; 3:33 pm

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AMENDED DECISION

BAUTISTA, JJ:

The Court resolves the following:

1. respondent's *Motion for Partial Reconsideration* filed on July 3, 2009, with petitioner's *Comment/Opposition (To Respondent's Motion for Partial Reconsideration)* filed on July 20, 2009; and
2. petitioner's *Motion for Partial Reconsideration* filed on July 7, 2009 and *Supplemental Motion for Partial Reconsideration* filed on July 31, 2009.

In respondent's *Motion for Partial Reconsideration*, he argued that:

"THE HONORABLE COURT ERRED IN GRANTING PETITIONER'S CLAIM FOR REFUND IN THE REDUCED AMOUNT OF P117,330,550.62 ALLEGEDLY REPRESENTING UNUTILIZED INPUT VAT FROM ITS DOMESTIC PURCHASES OF GOODS AND SERVICES AND IMPORTATION OF GOODS ATTRIBUTABLE TO ITS EFFECTIVELY ZERO-RATED SALES TO THE NATIONAL POWER CORPORATION FOR THE FIRST, THIRD AND FOURTH QUARTERS OF TAXABLE YEAR 2001, BECAUSE PETITIONER HAS NOT SUFFICIENTLY PROVEN ITS ENTITLEMENT TO REFUND AND THAT

THE CLAIM WAS NOT FILED IN ACCORDANCE WITH THE PROCEDURE
PRESCRIBED BY LAW."

In the *Comment/Opposition (To Respondent's Motion for Partial Reconsideration)*

filed on July 20, 2009, petitioner opposed respondent's *Motion* in this wise:

1. Petitioner had complied with the requirements of Section 112(D) of the 1997 Tax Code, as amended, in the filing of its administrative and judicial claims for refund within the period provided under the law;¹ and
2. Petitioner was able to prove that it is entitled to the claim for refund or issuance of tax credit certificate.²

On the other hand, petitioner's *Motion for Partial Reconsideration* filed on July 7, 2009, raised the following grounds:

- "I. THE HONORABLE COURT ERRED IN DISALLOWING PETITIONER'S INPUT VAT FOR THE SECOND QUARTER AMOUNTING TO P29,298,556.12 BASED ON PRESCRIPTION BECAUSE:
 - A. PETITIONER FILED ITS JUDICIAL CLAIM FOR REFUND WELL WITHIN THE TWO-YEAR PRESCRIPTIVE PERIOD RECKONED FROM THE DATE OF FILING OF THE QUARTERLY VAT RETURN PURSUANT TO LONG STANDING JURISPRUDENCE, WHICH THE SUPREME COURT EXPRESSLY RECOGNIZED IN ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION V. COMMISSIONER OF INTERNAL REVENUE, G.R. NOS. 141104 & 1148763, JUNE 8, 2007 ('ATLAS SC CASE')
 - B. THE HONORABLE COURT SHOULD NOT HAVE HASTILY RELIED ON THE CONTRARY HOLDING OF THE SUPREME COURT IN COMMISSIONER OF INTERNAL REVENUE V. MIRANT PAGBILAO CORPORATION, G.R. No. 172129, SEPTEMBER 12, 2008 ('MIRANT PAGBILAO SC CASE') AS IT IS OF DOUBTFUL VALIDITY IN THE LIGHT OF ARTICLE VIII, SECTION 4(3) OF THE CONSTITUTION
 - C. ASSUMING BUT WITHOUT CONCEDED THE VALIDITY OF THE RULING IN THE MIRANT PAGBILAO SC CASE, THE SAME SHOULD BE APPLIED PROSPECTIVELY AND NOT RETROACTIVELY TO THE PREJUDICE OF PETITIONER WHO RELIED IN GOOD FAITH ON PREVAILING JURISPRUDENCE AT THE TIME OF FILING OF ITS JUDICIAL CLAIM FOR REFUND

¹ Docket, p. 708

² Docket, p. 718



- II. THE HONORABLE COURT ERRED IN DISALLOWING PETITIONER'S INPUT TAXES OF P6,282,199.10 AND P1,354,580.25 ON LOCAL PURCHASES OF GOODS AND SERVICES, RESPECTIVELY, AND POSSIBLY OF P6,393,027.00 (OR A PORTION THEREOF) ON IMPORTATIONS ON THE GROUND THAT THE SUPPORTING DOCUMENTS ARE ISSUED UNDER PETITIONER'S FORMER NAME BECAUSE THE CHANGE OF NAME OF PETITIONER DOES NOT AFFECT ITS IDENTITY NOR ITS PROPERTY, RIGHTS, OR LIABILITIES"

In petitioner's *Supplemental Motion for Partial Reconsideration* filed on July 31, 2009, petitioner interposed the following ground:

"THE HONORABLE COURT ERRED IN DISALLOWING PETITIONER'S INPUT TAXES OF P12,761,224.50 ON LOCAL PURCHASES OF GOODS AND SERVICES AND ON IMPORTATIONS ON THE GROUND THAT THE SUPPORTING DOCUMENTS ARE ISSUED UNDER PETITIONER'S FORMER NAME BECAUSE THE CHANGE OF NAME OF PETITIONER DOES NOT AFFECT ITS IDENTITY NOR ITS PROPERTY, RIGHTS, OR LIABILITIES."

Respondent's *Motion for Partial Reconsideration* is bereft of merit.

Respondent's arguments merely reiterated his answer to the *Petition for Review* and which had already been passed upon in the assailed *Decision*. At any rate, this Court would oblige to address respondent's contentions.

In support of his allegations, respondent cited Section 112(D) of the National Internal Revenue Code (NIRC) of 1997, to wit:

"SEC. 112. *Refunds or Tax Credits of Input Tax.* —

xxx

xxx

xxx

- (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 a 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 the 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.**" (*Emphasis supplied*)

Respondent asserted that for failure of petitioner to submit the complete documents in support of its administrative claim for refund within 120 days from March 20, 2003, the date when petitioner filed its claim for refund, the *Petitions for Review* were prematurely filed before this Court on March 31, 2003³ and on July 23, 2003⁴. In other words, this Court had no jurisdiction to act on the subject *Petitions for Review*.

The argument is untenable.

In the case of **E.C. De Luna Construction Corporation vs. Hon. Afaile E. Cajigal, In His Capacity As The Presiding Judge Of The Regional Trial Court Of Quezon City, Branch 96, et al.**⁵, the Court of Appeals held that:

"It should be noted that the rule provides that the execution **may** be stayed, it did not use the word **shall**. As in the case of *Republic Planters Bank v Agana, Sr., et al.* (269 SCRA 1 [1997]) the use of the word may denotes discretion, to wit:

'xxx It is a settled doctrine in statutory construction that the word 'may' denotes discretion, and cannot be construed as having a mandatory effect.' (269 SCRA at 12)" (*Emphasis supplied*)

The judicial recourse after the lapse of the 120-day period, as provided in Section 112(D) of the NIRC, is merely directory and permissive and not mandatory nor jurisdictional so long as the administrative and judicial claims are filed within the two-year prescriptive period under Sections 112 and 229 of the NIRC of 1997. This was the

³ C.T.A. Case No. 6630

⁴ C.T.A. Case No. 6733

⁵ CA-G.R. SP No. 91135, August 8, 2006



ruling of this Court in the case of **Commissioner of Internal Revenue vs. San Roque Power Corporation**⁶. Clearly, there is no merit in respondent's contention.

Meanwhile, petitioner's *Motion for Partial Reconsideration* involved the issue which was earlier passed upon by this Court in the *Decision* dated June 9, 2009. To recall, this Court in the said *Decision* partially granted petitioner's claim for refund in the amount of P117,330,550.62, representing unutilized input VAT for the first, third, and fourth quarters of 2001. This Court, applying the case of **Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)**⁷, denied however petitioner's refund claim with respect to its input VAT for the second quarter of 2001, in the amount of P29,298,556.12, due to prescription.

After a careful evaluation of petitioner's arguments, this Court reconsiders the assailed *Decision*.

In several cases, this Court had occasions to rule that the two-year prescriptive period is reckoned from the **filing** of the Quarterly VAT Return, such as in the cases of **Mirant (Navotas II) Corporation (formerly: Southern Energy Navotas II Power, Inc.) vs. Commissioner of Internal Revenue**⁸ and **CE Luzon Geothermal Power Co., Inc. vs. Commissioner of Internal Revenue**⁹.

The two-year prescriptive period for filing a claim for refund/credit of input VAT on zero-rated sales is counted from the **date of filing** of the return and payment of the tax due. In the case of **Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue**¹⁰ (*Atlas case*), the Supreme Court held:

"Lastly, although the taxpayer's refundable or creditable input VAT may not be considered as illegally or erroneously collected, its

⁶ C.T.A. EB No. 408, March 25, 2009

⁷ G.R. No. 172129, September 12, 2008

⁸ C.T.A. Case Nos. 7234 and 7295, October 24, 2008

⁹ CTA Case Nos. 6792 and 6837, November 25, 2008

¹⁰ G.R. Nos. 141104 and 148763, June 8, 2007



refund/credit is a privilege extended to qualified and registered taxpayers by the very VAT system adopted by the Legislature. Such input VAT, the same as any illegally or erroneously collected national internal revenue tax, consists of monetary amounts which are currently in the hands of the government but must rightfully be returned to the taxpayer. Therefore, whether claiming refund/credit of illegally or erroneously collected national internal revenue tax, or input VAT, the taxpayer must be given equal opportunity for filing and pursuing its claim.

For the foregoing reasons, it is more practical and reasonable to count the two-year prescriptive period for filing a claim for refund/credit of input VAT on zero-rated sales from the date of filing of the return and payment of the tax due which, according to the law then existing, should be made within 20 days from the end of each quarter. xxx" (*Emphasis supplied*)

In the instant case, it is undisputed that petitioner **filed** its Quarterly VAT Return for the second quarter of 2001 on **July 24, 2001**¹¹. Petitioner filed on March 20, 2003 its administrative claim for refund¹² of unutilized input VAT for taxable year 2001 before the Bureau of Internal Revenue. Petitioner filed on July 23, 2003 the *Petition for Review* covering the judicial claim for refund of its input VAT for the second, third, and fourth quarters of 2001, docketed as C.T.A. Case No. 6733. Applying the above-quoted rule on the counting of the prescriptive period of two years, the last day to file the administrative and the judicial claims for refund with respect to the second quarter of 2001, should be on **July 24, 2003**. Clearly, the filing of the administrative claim on March 20, 2003 and the judicial claim on July 23, 2003, for the unutilized input VAT for the second quarter of 2001 fell within the two-year prescriptive period, pursuant to the foregoing jurisprudence.

Moreover, as correctly argued by petitioner, the ruling in the *Mirant Pagbilao case*¹³, which states that the reckoning of the prescriptive period of two years shall commence from the **close of the taxable quarter** when the relevant sales pertaining

¹¹ Exhibit "G"

¹² Exhibit "E"; par. 10, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 144

¹³ G.R. No. 172129, September 12, 2008



to the input VAT were made, regardless of whether said tax was paid or not, should be applied prospectively and not retroactively so as not to prejudice the right of petitioner who relied in good faith on the prevailing jurisprudence at the time of its filing of judicial claim for refund.

The Supreme Court in the case of **Co vs. Court of Appeals, et al.**¹⁴ ruled on the prospective application of statutes, as well as administrative rulings, circulars, and judicial decisions, in the following manner:

"The principle of prospectivity has also been applied to judicial decisions which, 'although in themselves not laws, are nevertheless evidence of what the laws mean,...(this being) the reason why under Article 8 of the New Civil Code, 'Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system.'"

In the case of **Spouses Gauvain and Bernardita Benzonan vs. Court of Appeals, Benito Salvani Pe and Development Bank of the Philippines**¹⁵, the High Court declared the following:

"At that time, the prevailing jurisprudence interpreting section 119 of R.A. 141 as amended was that enunciated in *Monge* and *Tupas* cited above. The petitioners Benzonan and respondent Pe and the DBP are bound by these decisions for pursuant to Article 8 of the Civil Code 'judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.' But while our decisions form part of the law of the land, they are also subject to Article 4 of the Civil Code which provides that 'laws shall have no retroactive effect unless the contrary is provided.' This is expressed in the familiar legal maxim *lex prospicit, non respicit*, the law looks forward not backward. The rationale against retroactivity is easy to perceive. The retroactive application of a law usually divests rights that have already become vested or impairs the obligations of contract and hence, is unconstitutional. (*Francisco v. Certeza*, 3 SCRA 565 [1961]).

The same consideration underlies our rulings giving only prospective effect to decisions enunciating new doctrines. Thus, we emphasized in *People v. Jabinal*, 55 SCRA 607 [1974] ' . . . **when a**

¹⁴ G.R. No. 100776, October 28, 1993

¹⁵ *Spouses Gauvain and Bernardita Benzonan vs. Court of Appeals, Benito Salvani Pe and Development Bank of the Philippines*, G.R. No. 97973, January 27, 1992 and *Development Bank of the Philippines vs. Court of Appeals and Benito Salvani Pe*, G.R. No. 97998, January 27, 1992



doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.'

(T)he right of petitioners over the subject lot had already become vested as of that time and cannot be impaired by the retroactive application of the *Belisario* ruling." (*Emphasis supplied*)

Since the instant *Petition for Review* was filed on July 23, 2003, the applicable rule is the one enunciated in the *Atlas case*, which means that the refund claim pertaining to the second quarter of taxable year 2001 was timely filed.

The Court-commissioned Independent Certified Public Accountant (CPA)¹⁶ examined and verified petitioner's supporting documents and reported his findings as follows:¹⁷

Findings	Reference	Input Taxes (2nd Quarter)
I. Input taxes on purchases of goods:		
1. Erroneously computed	Annex 4-1	P 113.64
2. Supported by VAT invoices without BIR Permit number	Annex 4-2	16,009.35
3. Supported by photocopied VAT invoices	Annex 4-3	572.83
4. Supported by documents other than VAT invoice	Annex 4-4	11,797.30
Subtotal		P 28,493.12
II. Input taxes on purchases of services:		
1. Erroneously computed	Annex 5-1	44,801.67
2. Supported by VAT ORs without BIR Permit number	Annex 5-2	4,460.32
3. Supported by photocopied VAT ORs	Annex 5-3	24,172.18
4. Supported by an OR with pre-printed VAT number only	Annex 5-4	1,353.50
5. Supported by ORs issued not in the name of the Company	Annex 5-7	4,780.80
Subtotal		P 79,568.47
III. Input taxes claimed on purchases of goods and services without supporting documents	Annex 6	1,526,214.93
IV. Input taxes claimed on importations:		
1. Erroneously computed	Annex 7-1	345.00
2. Supported only by Certified True Copies of Informal IEDs (by customs brokers)	Annex 7-2	8,722.00

¹⁶ Mr. Ruben R. Rubio of SGV & Co.

¹⁷ Exhibit "Z", pages 4 to 9

3. Supported by Certified True Copies of IEDs (by customs broker) without the input tax amount	Annex 7-3	1,716.00
4. Supported only by BOC and/or bank ORs	Annex 7-4	85,572.00
5. Without supporting documents	Annex 7-7	55,191.00
Subtotal		P 151,546.00
V. Additional findings:		
1. Input taxes on local purchases of goods supported by VAT invoices issued in the name of Southern Energy Pangasinan, Inc.	Annex 8	2,301,551.03
2. Input taxes on local purchases of services supported by VAT ORs issued in the name of Southern Energy Pangasinan, Inc.	Annex 9	2,100,680.00
3. Input taxes on local purchases of goods supported by undated invoices	Annex 10	3,502.14
4. Input taxes on local purchases of services supported by undated ORs	Annex 11	1,035.46
5. Input taxes on local purchases of goods supported by VAT invoices with different TIN compared with that in the Schedule of VAT Input Tax	Annex 12	214,059.48
6. Input taxes on local purchases of services supported by VAT ORs with different TIN compared with that in the Schedule of VAT Input Tax	Annex 13	3,320.00
7. Input taxes on local purchases of goods supported by certified true copies of VAT invoices	Annex 14	9.10
8. Input taxes on local purchases of services supported by ORs with different supplier's name compared with that in the Schedule of VAT Input Tax	Annex 15	246.08
9. Input taxes on local purchases of goods supported by invoices dated outside the period of claim	Annex 16	186,185.43
10. Input taxes on local purchases of services supported by ORs dated outside the period of claim	Annex 17	8,545.46
11. Input taxes on importation of goods supported by certified true copies of IEDs (by BOC and/or Customs Broker) and/or bank debit advice and/or bank ORs issued in the name of Southern Energy Pangasinan, Inc.	Annex 19	3,055,440.00
12. Input taxes on importation of goods supported by certified true copies of IEDs (by the BOC and/or customs broker and/or COA auditor)	Annex 21	687,807.00
13. Input taxes on importation of goods supported by certified true copies of IEDs (by the BOC and/or customs broker and/or COA auditor) and BOC and/or bank ORs	Annex 22	11,746.00
Subtotal		P 8,574,127.18
TOTAL		P 10,359,949.70

Input taxes classified under items I and II in the amounts of P28,493.12 and P79,568.47, respectively, should be disallowed for failure to meet the substantiation requirements under Sections 110(A) and 113(A) of the NIRC of 1997, as implemented by Sections 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations No. 7-95.

As regards the input taxes under item III, petitioner presented the following to rebut the Independent CPA's findings:

Exhibit	Supplier	OR No.	OR Date	Input VAT
TT, VV	Le Price International Corp.	800	4/6/2001	P 144,811.93
TT, XX	Servicio Filipino, Inc.	61968	4/6/2001	50,978.34
EEE, GGG	Meralco Industrial Eng. Services	31981	6/1/2001	331,597.29
CCC	Tadchem Marketing	1464	5/23/2001	6,321.00
TOTAL				P 533,708.56

This Court finds the foregoing documents valid. Consequently, the P1,526,214.93 input taxes found to be without supporting documents should be reduced by P533,708.56.

Anent the input taxes on importation under item IV in the amount of P151,546.00, the same should be disallowed for failure to meet the substantiation requirements except for number 4 amounting to P85,572.00, which represents petitioner's valid claim. Certified true copies or certified photocopied documents cannot be given credence and probative value as the Court cannot ascertain whether the certifier named therein is actually the custodian of the said documents. Also, some of the Import Entry and Internal Revenue Declarations (IEIRDs) do not show any machine validation as to the payment of the customs duties and taxes indicated therein.

It is noteworthy that petitioner's name was changed from "Southern Energy Pangasinan, Inc." to "Mirant Sual Corporation" on June 28, 2001;¹⁸ hence, all documents in support of its claimed input VAT for the second quarter of 2001 may still be issued

¹⁸ Par. 4, Stipulation of Facts, JSFI, docket, p. 143

under its former name, but supporting documents for its input VAT for the third and fourth quarters of taxable year 2001 should be under its new name. Accordingly, input taxes under numbers 1 and 2 of item V in the amounts of P2,301,551.03 and P2,100,680.00, respectively, are allowable. Input taxes in the amounts of P214,059.48, P3,320.00, and P246.08 under numbers 5, 6, and 8, respectively, are likewise allowable notwithstanding the discrepancies in the Taxpayer Identification Number (TIN) and supplier's name, because the serial numbers of the invoices or official receipts and the amounts indicated therein are the same as those appearing in the Schedule of VAT Input Tax.

Input taxes under numbers 7 and 12 in item V in the aggregate amount of P687,816.10, should be disallowed for being supported merely by certified true copies or certified photocopied documents. Those under numbers 3, 4, 9, and 10, in the total amount of P199,268.49, should be likewise disallowed for being supported by undated documents or dated outside the period of claim.

Finally, as to the claimed input taxes on importations under numbers 11 and 13 in item V, totaling P3,067,186.00, the Court finds that input taxes in the amount of P3,055,818.00 represent petitioner's valid claim as these are duly supported by Bureau of Customs (BOC)/bank official receipts and/or bank debit advices issued in the name of petitioner within the period of claim. The remaining amount of P11,368.00¹⁹ shall be denied for being merely stamped with "certified true copy".

In sum, petitioner's valid input VAT amounts to P27,233,561.57, computed as follows:



¹⁹ Exhibits "GG-2361" and "GG-2362"

Input tax claim for the 2 nd quarter of 2001			P 29,298,556.12
Less: Disallowances			
a. Input taxes on local purchases of goods under item I		P 28,493.12	
b. Input taxes on local purchase of service under item II		79,568.47	
c. Input taxes without supporting documents under item III	P 1,526,214.93		
Less: Valid claim per Court's verification	533,708.56	992,506.37	
d. Input taxes on importation under item IV	P 151,546.00		
Less: Valid claim per Court's verification	85,572.00	65,974.000	
e. Input taxes supported by certified true copies or certified photocopied documents under item V numbers 7 and 12		687,816.10	
f. Input taxes supported by undated documents or dated outside the period of claim under item V numbers 3, 4, 9, and 10		199,268.49	
g. Input taxes under item V numbers 11 and 13	P 3,067,186.00		
Less: Valid claim per Court's verification	3,055,818.00	11,368.00	2,064,994.55
Valid Input Taxes – 2nd Quarter 2001			P 27,233,561.57

Considering that the valid/substantiated input VAT of P27,233,561.57 is net of petitioner's output tax liability for the second quarter of 2001, the same is entirely attributable to petitioner's effectively zero-rated sales for the same period. Further, while petitioner carried over the valid input VAT of P27,233,561.57 to the succeeding quarters until the second quarter of 2003,²⁰ the same was not applied against any output tax liability and it was fully deducted as "Any VAT Refund/TCC Claimed" in the second quarter of 2003.²¹

As to the issues raised by petitioner in the *Supplemental Motion for Partial Reconsideration* with respect to the disallowance of petitioner's input taxes of P12,761,224.50, covering the first, third, and fourth quarters of 2001, the same were already substantially passed upon and resolved by this Court in the *Decision* dated June 9, 2009. Therefore, there is no cogent reason to disturb the same.

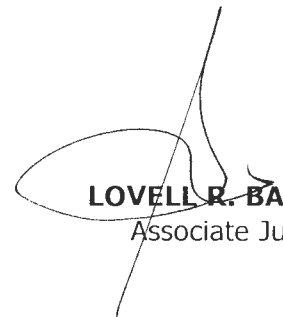
²⁰ Exhibits "N", "O", "P", "Q", "T", and "U"

²¹ Exhibit "U-11"



WHEREFORE, respondent's *Motion for Partial Reconsideration* filed on July 3, 2009 and petitioner's *Supplemental Motion for Partial Reconsideration* filed on July 31, 2009 are hereby **DENIED** for lack of merit. Petitioner's *Motion for Partial Reconsideration* filed on July 7, 2009 is hereby **PARTIALLY GRANTED** and this Court's *Decision* dated June 9, 2009 denying petitioner's claim for refund of unutilized input VAT for the second quarter of 2001 is hereby **MODIFIED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the amount of **ONE HUNDRED FORTY FOUR MILLION FIVE HUNDRED SIXTY FOUR THOUSAND ONE HUNDRED TWELVE PESOS AND 19/100 (P144,564,112.19)** to petitioner Team Sual Corporation (formerly: Mirant Sual Corporation), representing unutilized input VAT from its domestic purchases of goods and services and importation of goods attributable to its effectively zero-rated sales to the National Power Corporation for the first, second, third, and fourth quarters of taxable year 2001.

SO ORDERED.



LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:



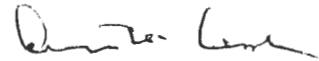
(With Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice



CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division