REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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KEPCO ILIJAN CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7237

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

JAN 15 2009; 3:00 pm

x - x

DECISION

BAUTISTA, *J.*:

The instant Petition for Review seeks the refund or issuance of tax credit certificate in the amount of P119,696,268.89, representing the input value-added tax (VAT) allegedly incurred by petitioner for calendar year 2003 from its importations and domestic purchases of goods/equipment and services for the sale of electricity to the National Power Corporation (NPC).

Kepco Ilijan Corporation (Petitioner) is a domestic corporation duly organized and existing under by virtue of the laws of the Republic of the Philippines, with registered address at 2501 Tektite Tower I Exchange Road, Ortigas Center San Antonio, Pasig City.[1] Petitioner is likewise a VAT-registered taxpayer engaged in the production and sale of

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[1] Annex "A", Petition for Review, Docket, p. 14

electricity (as an independent power producer) solely to the NPC as its only customer by virtue of an Energy Conversion Agreement dated December 14, 2000.[2]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested under the appropriate laws with the authority to carry out all the functions, duties and responsibilities of the said office, including, *inter alia*, the power to decide, approve, and grant refunds and tax credits of erroneously paid or illegally collected internal revenue taxes. He holds office at 5th Floor, BIR National Office Building, Agham Road, Quezon City.

On December 17, 2002, petitioner filed an Application for VAT Zero-rate with respondent for its sales of electricity to NPC from January 2, 2003 to December 31, 2003, which was subsequently approved.[3]

In the course of its operation, petitioner made domestic purchases of goods and services and accumulated therefrom creditable input taxes. Thus, for the four quarters of calendar year 2003, petitioner filed its VAT Returns showing that it incurred input VAT from its expenses on purchases of goods and services in the aggregate amount of P119,696,267.89, detailed as follows:

Exhibit	Year 2003	Input VAT
B	1st quarter	P 41,504,900.22
C	2nd quarter	10,193,824.93
D	3rd quarter	30,109,298.76
E	4th quarter	37,888,243.98
	Total	**P119,696,267.89**

On March 7, 2005, petitioner filed with respondent an administrative claim for refund of the input VAT incurred from its importations and domestic purchases of goods and services from its actual production and sale of electricity to the NPC for calendar year 2003,

[2] Par. 2, Facts Admitted, Joint Stipulation of Facts, Docket, p. 48
[3] Exhibit "F"

which remains unacted up to this date.[4] Hence, this Petition for Review filed on April 25, 2005.

In his Answer filed on June 14, 2005, respondent interposed the following Special and Affirmative Defenses:

> "6. The claim for refund is still under examination by the respondent's Bureau;
>
> 7. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund;
>
> 8. The grant of a claim for refund tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
>
> 9. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same."

After trial on the merits, this case was submitted for decision on January 16, 2008, taking into consideration petitioner's Memorandum filed on December 12, 2007, *sans* respondent's Memorandum.

The parties submitted the following issues[5] for this Court's resolution:

> "1. Whether the sale of electricity by a VAT-registered entity, as in the case of the Petitioner, to the National Power Corporation (NPC), qualifies as a sale of services subject to a VAT rate of zero percent (0%) or otherwise called a zero-rated VAT transaction.
>
> 2. Whether Petitioner, as a VAT-registered entity and during the calendar (taxable) year 2003, actually incurred expenses representing importation and domestic purchases of capital goods and services and which represents cost attributable to Petitioner's production and sale of electricity to the NPC.
>
> 3. Whether Petitioner is entitled to the refund of the amount of P119,696,268.89 representing the input VAT incurred for the four (4) taxable quarters of the calendar (taxable) year 2003 from its sale of electricity solely to the NPC.

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[4] Exhibit "G"
[5] Joint Stipulation of Facts, Docket, pp. 49-50

4. Whether the Petitioner's claim for refund is substantiated by documentary evidence."

These issues boil down into one major issue:

"Whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P119,696,268.89, representing unutilized input VAT incurred from its importations and domestic purchases of goods and services attributable to zero-rated sales for calendar year 2003."

Section 112(A) of the National Internal Revenue Code (NIRC) of 1997 lays down the requisites for refund or issuance of a tax credit certificate of input tax due or paid attributable to zero-rated or effectively zero-rated sales, which reads as follows:

> **"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. xxx"

From the foregoing, in order to be entitled to a refund or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales, petitioner must comply with the following requisites:

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

Petitioner entered into an Agreement[6] with the National Power Corporation (NPC) which provides, among others, that petitioner shall sell electricity only to NPC on a turn-key basis. Section 13 of Republic Act No. 6395 (The Revised NPC Charter), as amended by

[6] Exhibit "H"

Presidential Decree Nos. 380 and 938, exempts NPC from the payment of all forms of taxes, whether direct or indirect (including VAT), duties and fees. Further, petitioner's Application for VAT Zero-rate filed on December 17, 2002 was duly approved by the BIR.[7] Therefore, petitioner's sale of electricity to NPC qualifies as a VAT zero-rated transaction, pursuant to Section 108(B)(3) of the NIRC of 1997.

In its VAT Returns for the four quarters of calendar year 2003, petitioner declared the following zero-rated sales/receipts:

Exhibit	Year 2003	Zero-rated Sales/Receipts
B	1st qtr	P 1,586,732,403.97
C	2nd qtr	1,670,193,585.24
D	3rd qtr	1,648,757,708.93
E	4th qtr	1,798,345,049.53
	TOTAL	**P 6,704,028,747.67**

Verification showed that the afore-stated zero-rated sales/receipts were actually derived from petitioner's sale of electricity to NPC as evidenced by the official receipts issued by petitioner to NPC for calendar year 2003.[8]

It was established that while the total amount of zero-rated sales declared in the Quarterly VAT Returns is higher when compared with the total amount of zero-rated sales reflected in the official receipts[9], such discrepancy was brought about by petitioner's adoption of the "accrual method" instead of the "cash method" of accounting in recognizing its income for VAT purposes.

Since no other sales were reported in its Quarterly VAT Returns, all of petitioner's purchases are attributable to its zero-rated sales and the input VAT arising from said purchases are eligible for refund.

[7] Exhibit "F"
[8] Exhibits "J" to "J-23"
[9] Exhibit "YY"

Petitioner submitted invoices, official receipts, import entry documents and summary lists[10] in support of its input VAT claim for the four quarters of calendar year 2003 in the amount of P119,696,267.89, broken down as follows:

Exhibit	2003	Input VAT
B	1st quarter	P 41,504,900.22
C	2nd quarter	10,193,824.93
D	3rd quarter	30,109,298.76
E	4th quarter	37,888,243.98
	TOTAL	**P 119,696,267.89**

In his Report dated November 8, 2006, the Court-commissioned Independent CPA recommended the reduction of petitioner's claim from P119,696,268.88 to P108,042,023.49 or a total disallowance of P11,654,245.39 detailed as follows: [11]

Findings	Reference	Amount
Erroneous amounts indicated in the schedule of input VAT as compared to sales invoices or official receipts resulting in net overstatement of the input VAT claim	Annex B	P 10,057.08
Input VAT recognized and recorded in the books related to non-VAT suppliers	Annex C	10,317.36
Input VAT recognized but not supported by official receipts and/or sales invoices	Annex D	9,930,166.20
Input VAT recognized and supported by sales invoices/official receipts but not within the period claimed	Annex E	182,558.33
Input VAT recognized and supported by official receipts but TIN was rubber stamped only	Annex F	206,587.41
Input VAT on purchases which are not subjected to VAT	Annex G	30,426.80
Transactions without supporting documents	Annex H	673,675.72
VAT on importations without import-export internal revenue declaration form	Annex I	373,461.00
VAT on importations with erroneous recording of VAT on GL as against the import-export internal revenue declaration form	Annex J	(20,713.00)
VAT on domestic purchases which are supported by photocopied documents	Annex K	11,525.50
VAT on importation with photocopied Import Export Internal Revenue Declaration Form	Annex L	246,183.00
TOTAL		**P 11,654,245.39** [12]

The Court agrees with the findings of the Independent CPA except for the amounts of P10,057.08 and P20,713.00 detailed under Annexes "B" and "J" of Exhibit "M".

[10] Exhibits "N" to "MM", including sub-markings
[11] Exhibit "M", pp. 2 and 3
[12] Should be P11,654,245.40

In arriving at the disallowance of P10,057.08, the Independent CPA deducted the understatement of petitioner's input VAT claim in the amount of P874.73 from the overstatement of petitioner's input VAT claim in the amount of P10,931.81. Inasmuch as the bases of the Petition are the VAT Returns as filed, the understatement of P874.73 should not be offset against the overstatement of P10,931.81. Thus, the amount of disallowance should be P10,931.81 instead of P10,057.08.

The same holds true with the amount of P20,713.00. Since this figure represents the amount of excess input VAT as reflected in the Import-Export Internal Revenue Declaration over the input VAT declared per VAT Returns, the same should not be deducted from the other disallowances found by the Independent CPA.

Therefore, the exceptions found by the Court-commissioned Independent CPA should be adjusted from P11,654,245.40 to P11,675,833.13, as computed below:

Input VAT disallowed by the independent CPA		P 11, 654,245.40
Add: Adjustments		
a.) Overstatement of input VAT claim	P10,931.81	
Less: Disallowance by the ICPA	10,794.54	874.73
b.) Understatement of input VAT claim on importations		20,713.00
Input VAT disallowed by the independent CPA, as adjusted		**P11,675,833.13**

Moreover, evidence on record shows that petitioner's claim should be further reduced by P6,786,500.07, broken down as follows:

Exh.	Invoice/OR Date	Supplier		Input VAT
1. Purchase of goods supported by invoices with TIN-V only				
Q-8	2/28/2003	Quiet Stream Waters & Trade, Inc.	P	2,727.27
Q-71	3/31/2003	Quiet Stream Waters & Trade, Inc.		2,727.27
R-36	4/30/2003	Quiet Stream Waters & Trade, Inc.		2,727.27
S-86	2/14/2003	General Electric Phils., Inc.		39,893.14
T-110	6/30/2003	Quiet Stream Waters & Trade, Inc.		2,727.27
T-114	6/30/2003	Quiet Stream Waters & Trade, Inc.		2,727.27
T-118 to 121	various	Citimart Shop-On		827.05
U-29	7/7/2003	Citimart Shop-On		368.18
U-92	7/31/2003	Quiet Stream Waters & Trade, Inc.		3,668.18
V-105	9/19/2003	Citimart Shop-On		9,632.18
W-25	9/30/2003	Quiet Stream Waters & Trade, Inc.		2,636.36
X-59	10/31/2003	Quiet Stream Waters & Trade, Inc.		3,159.09

X-125 to 128	various	Jacos Industrial Corp.		1,260.46
X-142	11/11/2003	Citimart Shop-On		768.61
Y-39	8/14/2003	Citimart Shop-On		462.73
Y-42	11/30/2003	Quiet Stream Waters & Trade, Inc.		2,500.00
		Subtotal	**P**	**78,812.33**
2. Purchase of goods supported by invoices that are not duly registered with the BIR				
N-194	1/7/2003	Trigon Management & Industrial Corp.	P	25,725.68
V-39	9/3/2003	Up-Town Industrial Sales		120,362.12
X-9	9/29/2003	Oracle Philippines, Inc.		7,090.25
		Subtotal	**P**	**153,178.05**
3. Purchase of services supported by ORs with TIN-V only				
N-29	1/6/2003	Typo Grafika	P	95.45
N-60	1/10/2003	Premier Chemicals Enterprises		86,363.64
N-62	1/10/2003	Premier Chemicals Enterprises		4,344.87
N-64	1/10/2003	Typo Grafika		63.64
N-85	1/20/2003	Balisong Intelligence & Security Services		69,199.57
O-7	2/4/2003	Balisong Intelligence & Security Services		68,265.74
O-69	2/14/2003	I & E Industrial System Services		12,954.55
O-104	2/20/2003	Balisong Intelligence & Security Services		68,265.74
P-46	3/21/2003	Balisong Intelligence & Security Services		68,265.74
P-61	3/24/2003	Typo Grafika		381.82
Q-73	4/29/2003	Balisong Intelligence & Security Services		68,265.74
Q-75	4/29/2003	ACE-COR Medical Services, Inc.		18,454.55
R-21	5/9/2003	Typo Grafika		227.27
R-23	5/13/2003	Typo Grafika		215.91
R-37	5/15/2003	Typo Grafika		2,512.91
R-80	5/29/2003	Typo Grafika		254.55
S-7	6/2/2003	Balisong Intelligence & Security Services		68,265.74
S-12	6/24/2003	I & E Industrial System Services		5,909.09
T-32	7/8/2003	Balisong Intelligence & Security Services		68,265.74
T-89	7/25/2003	I & E Industrial System Services		6,850.00
T-99	7/25/2003	I & E Industrial System Services		4,674.55
T-100	7/25/2003	Lajmar Management & Technology		10,000.00
U-34	8/7/2003	Balisong Intelligence & Security Services		68,265.74
V-73	9/12/2003	Balisong Intelligence & Security Services		68,265.74
V-76	9/12/2003	I & E Industrial System Services		3,531.30
V-87	9/16/2003	Typo Grafika		354.55
V-161	9/26/2003	I & E Industrial System Services		15,909.09
W-32	10/10/2003	GAD Builders & Enterprises		12,350.37
W-43	10/14/2003	Balisong Intelligence & Security Services		68,265.74
W-117	10/24/2003	Typo Grafika		63.64
W-129	10/30/2003	Typo Grafika		263.64
X-46	11/11/2003	Typo Grafika		127.27
X-55	11/14/2003	Balisong Intelligence & Security Services		70,919.69
X-117	11/21/2003	I & E Industrial System Services		63,636.36
Y-4	12/2/2003	Balisong Intelligence & Security Services		74,458.29
Y-24	12/5/2003	Joel Chavez Equipment Rentals		140,812.00
		Subtotal	**P**	**1,219,320.23**

4. Purchase of services supported by undated OR or OR with TAN				
Q-83	4/30/2003	New RTC International Co.	P	72,000.00
W-130		ADP Electrical & Industrial Enterprises		9,077.63
		Subtotal	**P**	**81,077.63**
5. Purchase of goods/services supported by invoices/ORs issued not in the name of Petitioner				
U-68	8/19/2003	Omniworx, Inc.	P	15,625.02
W-131	11/4/2003	ABM Computech Enterprises		10,353.94
X-156	8/5/2003	Temprite Engineering, Inc.		7,867.27
		Subtotal	**P**	**33,846.23**
6. Purchase of goods and services supported by invoices or ORs outside the period of claim				
P-45	9/11/2002	Vette Industrial Sales Co.	P	12,163.64
X-70	2/23/2004	General Electric Phils., Inc.		134,967.36
X-115	2/23/2004	General Electric Phils., Inc.		7,547.39
		Subtotal	**P**	**154,678.39**
7. Purchase of goods or services not supported by invoices or ORs				
		JFA Electrical Construction	P	34,191.91
		ACE-COR Medical Services, Inc.		2,272.73
		ACE-COR Medical Services, Inc.		73,818.18
		Access Frontier Technologies, Inc.		10,857.60
		Jabez Motor Corporation		135,454.55
		SUGECO		10,379.41
		SUGECO		9,994.92
		Up-Town Industrial Sales		120,760.00
		SUGECO		10,071.85
		SUGECO		9,918.00
		Tri-Amp Corporation		33,480.00
		Sarca Estate Development Corp.		63,767.46
		Subtotal	**P**	**514,966.61**
8. Purchase of goods and services included in the summary of purchases but with no supporting documents				
		Eurotec Industrial Technologies	P	6,318.18
		Hyosung Ebara Co. Ltd.		29,303.45
		Questronix		67,770.89
		Air Liquide Phils. Inc.		52,864.21
		Adjustment		32,721.68
		ABM Computech Enterprises		10,242.19
		Subtotal	**P**	**199,220.60**
9. Input VAT on importations supported by IEIRD which are not machine validated or with no bank OR				
Z-10 to 11	1/6/2003	Hytorc Unex Corporation	P	9,515.00
BB-6	3/25/2003	ISS Machinery		39,925.00
CC-6	4/22/2003	Mikuni Engineering Pte. Ltd.		32,426.00
FF-3 to 4	7/21/2003	Mitsubishi Corporation		2,963,324.00

JJ-1 to 2	11/19/2003	Fuji Trading Co., Ltd.		105,735.00
JJ-8 to 9	11/20/2003	ABB Industry Pte. Ltd.		307,641.00
KK-8 to 9	12/17/2003	Eastern Controls, Inc.		245,991.00
KK-10 to 11	12/18/2003	Koehler Instrument Company		43,226.00
		Subtotal	**P**	**3,747,783.00**
10. Input VAT on importations outside the period of claim				
Z-12 to 13	11/14/2002	Tanabe International Ltd.	P	60,209.00
		Subtotal	**P**	**60,209.00**
11. Input VAT on importations included in the schedule of input VAT but with no supporting documents				
	1/15/2003	Hytorc South Pacific	P	540,679.00
	11/21/2003	Fuji Trading Co., Ltd.		2,728.00
		Subtotal	**P**	**543,407.00**
12. Discrepancy between the total amount of input VAT as reflected in the Quarterly VAT Returns and the total input VAT claim per Petition for Review				
	Total Input VAT per Returns	P 119,696,267.89		
	Less: Total Input VAT Claim	119,696,268.88	P	1.00
		Subtotal	**P**	**1.00**
TOTAL DISALLOWED INPUT VAT PER THIS COURT'S VERIFICATION			**P**	**6,786,500.07**

In other words, out of the P119,696,268.89 input VAT claim for the four quarters of calendar year 2003, the amount of P18,462,333.20, as computed below, shall be disallowed for not being supported with the required documentary evidence under Sections 110(A) and 113(A) of the NIRC of 1997 and as implemented by Sections 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations No. 7-95:

Input Taxes not properly substantiated	**Amount**
Per CPA report	P 11,675,833.13
Per this Court's further verification	6,786,500.07
Total Disallowances	**P18,462,333.20**

It was established that petitioner's claimed input taxes were not applied against any output VAT liability during the period of claim and in the succeeding quarters since all of petitioner's sales were zero-rated and there was no output VAT due thereon. Although the claimed input tax was carried over to the succeeding quarters until the second quarter of calendar year 2005, the same was deducted as "Any VAT Refund/TCC Claimed"[13] from the Total Available Input Tax as of the second quarter of calendar year 2005. Hence, the claimed input tax did not form part of the excess input tax of P52,726,601.55 as of the second quarter of calendar year 2005, which was to be carried over to the succeeding third quarter of calendar year 2005.

Lastly, records disclosed that the subject claim was seasonably filed both in the administrative and judicial levels. The reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund commences from the date of filing of the corresponding Quarterly VAT Return.[14] Thus, counting from April 25, 2003[15], July 25, 2003[16], October 27, 2003[17], and January 26, 2004[18], the respective dates when petitioner filed its Quarterly VAT Returns for the first, second, third, and fourth quarters of 2003, both the administrative claim for refund filed on March 10, 2005[19] and the Petition for Review filed on April 25, 2005 were well within the two-year prescriptive period.

In sum, petitioner has sufficiently proven that it is entitled to a refund or issuance of a tax credit certificate corresponding to its unutilized input VAT for the four quarters of calendar year 2003 in the amount of P101,233,935.69 , computed as follows:

Amount of Claim		P 119,696,268.89
Less: Disallowances		
Per CPA Report	P 11,675,833.13	
Per this Court's Further Verification	6,786,500.07	18,462,333.20
Refundable Input VAT		**P101,233,935.69**

WHEREFORE, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **ONE HUNDRED**

[13] Exhibit "L-1"
[14] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 141104 and 148763, June 8, 2007
[15] Exhibit "B"
[16] Exhibit "C"
[17] Exhibit "D"
[18] Exhibit "E"
[19] Exhibit "G"

ONE MILLION TWO HUNDRED THIRTY THREE THOUSAND NINE HUNDRED THIRTY SIX AND 69/100 PESOS (P101,233,935.69) in favor of petitioner Kepco Ilijan Corporation, representing its unutilized input VAT for the four quarters of calendar year 2003.

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