

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

SPECIAL FIRST DIVISION

PENN PHILIPPINES, INC.
(Formerly: **PENN GOLD-ZACK
PHILIPPINES, INC.** and Formerly:
GOLDZACK PHILIPPINES, INC.),
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL
REVENUE,**
Respondent.

C.T.A. CASE NO. 7457

Members:

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

Promulgated:

APR 06 2010 ; 2:30pm

X ----- X

DECISION

BAUTISTA, J.:

This case involves a claim for refund or issuance of tax credit certificate in the amount of P4,758,453.00, representing petitioner's alleged unutilized input value-added tax (VAT) on domestic purchases of taxable goods and services and importation of goods attributable to its zero-rated sales for the four (4) quarters of taxable year 2004.

Penn Philippines, Inc. (Petitioner) is a corporation duly organized and existing under the laws of the Republic of the Philippines, with business address at FTI Avenue, FTI Complex, Taguig, Metro Manila. Formerly, its corporate name was Penn Gold-Zack Philippines, Inc. and prior to that, the original corporate name of petitioner

was Goldzack Philippines, Inc.¹ Petitioner is registered as a VAT taxpayer with the Bureau of Internal Revenue (BIR) Large Taxpayer District Office, under Certificate of Registration No. 0000015817 dated January 1, 1996. It is primarily engaged in the manufacture of textile products (elastic fabric) and other products allied thereto.²

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue, 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 the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner alleged that it had paid input tax in the amount of P4,868,496.87 on its domestic purchases of goods and services and importation of capital goods; thus, on March 27, 2006, petitioner filed with the BIR its application for tax credit/refund of its unapplied/unutilized input VAT for the four (4) quarters of 2004.³

In order to stop the running of the two-year prescriptive period, petitioner filed before this Court the instant Petition for Review on April 19, 2006.

In his Answer filed on May 10, 2006, respondent raised the following Special and Affirmative Defenses:

- "4. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.
5. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.
6. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.

¹ Exhibits "A" and "B"

² Exhibit "C"

³ Exhibit "G"



7. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the 1997 Tax Code including Revenue Regulations No. 5-87 as amended by Revenue Regulations Nos. 3-88 and 7-95, as amended.
8. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma G.R. No. L-13509, January 30, 1970, 31 SCRA 95)** and as such, they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).**⁴

Due to the voluminous nature of the evidence to be presented, the Court appointed the auditing firm of Punongbayan & Araullo, represented by Ms. Ma. Victoria España, as Independent Certified Public Accountant (CPA) pursuant to Rules 12 and 13 of the Revised Rules of the Court of Tax Appeals.⁵

Petitioner presented testimonial and documentary evidence to support its claims. On the other hand, respondent manifested that he will not present any evidence and will submit the case for decision based on the pleadings.⁶

On April 8, 2009, this case was submitted for decision, considering the Memorandum filed by petitioner on April 3, 2009 and respondent's failure to submit his Memorandum.⁷

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

- "1. Whether or not Petitioner has unutilized input VAT in the amount of Php4,758,453.00 for the four (4) quarters of 2004.
2. Whether or not Petitioner's alleged unutilized input VAT on domestic purchases and importation of capital goods for the four (4) quarters of 2004 have been applied against its output taxes or carried over to the next succeeding quarter.

⁴ Docket, pp. 52-53

⁵ Minutes of the hearing dated December 7, 2006, docket p. 119

⁶ Resolution dated February 27, 2009, docket, p. 476

⁷ Resolution dated April 8, 2009, docket, p. 572



3. Whether or not the purchases and importation on which the corresponding input VAT was paid are considered as domestic purchases and importation of capital goods.
4. Whether or not the domestic purchases and importation of capital goods on which the input VAT was paid are used by Petitioner in its VAT taxable business.
5. Whether or not the Petitioner's sales of services to PEZA-registered enterprise for the four (4) quarters of 2004 in the total amount of Php398,992,724.18 qualify as zero-rated sales.
6. Whether or not the Petitioner's claim for refund/tax credit of alleged unutilized input VAT allegedly attributable to its zero-rated sales and domestic purchases and importation of capital goods for the four (4) quarters of 2004 in the total amount of P4,758,453.00 is substantiated by documentary evidence."⁸

The main issue in the instant case is whether petitioner is entitled to a tax refund/tax credit in the total amount of P4,758,453.00, allegedly representing its unutilized input VAT on domestic purchases of goods and services and importation of goods attributable to its zero-rated sales for the four quarters of 2004.

Section 112(A) of the National Internal Revenue Code (NIRC) of 1997 lays down the requisites for refund or tax credit 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: *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

⁸ Docket, pp. 95-96



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."

Based on the foregoing, petitioner must comply with the following requisites to be entitled to a refund or issuance of tax credit certificate:

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

In view of the fact that claims filed beyond the reglementary period will not prosper, it is but proper to first determine the timeliness of the filing of the instant claim.

This Court in a Resolution dated July 20, 1998 in the case of **Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue**⁹, held that the two-year prescriptive period for the filing of a VAT refund claim should not be counted from the close of the quarter but from the date of filing of the VAT Return because it is only during that date that the VAT liability or refundability of VAT can be determined. This ruling can be corroborated by the case of **Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue**¹⁰ (*Atlas Case*), where the Supreme Court held that:

"It is true that unlike corporate income tax, which is reported and paid on installment every quarter but is eventually subjected to a final adjustment at the end of the taxable year, VAT is computed and paid on a purely quarterly basis without need for a final adjustment at the end of the taxable year. However, it is also

⁹ C.T.A. Case No. 5296

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



equally true that until and unless the VAT-registered taxpayer prepares and submits to the BIR its quarterly VAT return, there is no way of knowing with certainty just how much input VAT the taxpayer may apply against its output VAT; how much output VAT it is due to pay for the quarter or how much excess input VAT it may carry-over to the following quarter; or how much of its input VAT it may claim as refund/credit. xxx

xxx

xxx

xxx

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"

The ruling in the *Atlas Case* was the prevailing jurisprudence on the issue of the reckoning of the two-year prescriptive period in filing a claim for refund of input VAT until the case of **Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation**¹¹ (*Mirant Case*) was promulgated on September 12, 2008. Inasmuch as the present case was filed before the promulgation of the *Mirant Case*, this Court deems it appropriate to apply the above-cited ruling in the *Atlas Case*.

On the basis of the afore-mentioned jurisprudence, it was found out that not all the periods covering the refund claim of petitioner fall within the two-year prescriptive period for the filing of the suit in court. A perusal of the records shows the following significant dates:

Period Covered (2004)	Quarterly VAT Return filed on	Last Day to File Claim	Date of Filing	
			Administrative Claim	Judicial Claim
1st qtr	March 31, 2004	March 31, 2006	March 27, 2006 ¹²	April 19, 2006
2nd qtr	July 19, 2004	July 19, 2006		
3rd qtr	October 15, 2004	October 15, 2006		
4th qtr	January 13, 2005	January 13, 2006		

¹¹ G.R. No. 172129, September 12, 2008

¹² Exhibit "G"



The above table readily shows that petitioner's administrative and judicial claims for refund of input VAT on its zero-rated sales for the second, third, and fourth quarters of 2004 were filed within the two-year prescriptive period. However, with regard to the first quarter of 2004, although the administrative claim was filed on March 27, 2006, which is well within the two-year prescriptive period, the Petition for Review was filed only on April 19, 2006, which falls beyond the period prescribed by law. Evidently, the input VAT claim covering the first quarter of 2004 is barred by prescription.

Now as to the first requisite, petitioner maintains that its sales to Penn Philippines Export Inc., a Philippine Economic Zone Authority (PEZA)-registered entity, are subject to zero percent (0%) VAT.

Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended treats export sales governed by Executive Order (E.O.) No. 226 and other special laws as subject to zero percent VAT, to wit:

"SEC. 106. *Value-added Tax on Sale of Goods or Properties.* —

(A) *Rate and Base of Tax.* — xxx

xxx

xxx

xxx

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) ***Export Sales.*** — The term '*export sales*' means:

xxx

xxx

xxx

(5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws." (*Emphasis supplied*)

In connection thereto, Articles 23 and 77(1) and (2) of E.O. No. 226, also known as the "Omnibus Investment Code of 1987", the special law referred to in the



above-stated provision, classify a VAT taxpayer's sales from the Customs Territory to a PEZA-registered entity as export sales. The said provisions read:

"ARTICLE 23. **'Export Sales'** shall mean the Philippine port F.O.B. value, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of exports products exported directly by a registered export producer or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: *Provided*, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents: *Provided, further*, **That without actual exportation the following shall be considered constructively exported for purposes of this provision:** (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) **sales to export processing zones;** xxx" (*Emphasis supplied*)

"ARTICLE 77. *Tax Treatment of Merchandise in the Zone.* – (1) Except as otherwise provided in this Code, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise whether directly or indirectly related in such activity, shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding.

(2) **Merchandise purchased by a registered zone enterprise from the customs territory and subsequently brought into the zone, shall be considered as export sales and the exporter thereof shall be entitled to the benefits allowed by law for such transaction.**" (*Emphasis supplied*)

The application of the same was further clarified by the BIR in Revenue Memorandum Circular No. 74-99, as follows:

"SECTION 3. *Tax Treatment Of Sales Made By A VAT Registered Supplier From The Customs Territory, To A PEZA Registered Enterprise.* –

xxx

xxx

xxx

3. In the final analysis, **any sale of goods**, property or services made **by a VAT registered supplier from the Customs**



Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, **pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to ART. 77(2) of the Omnibus Investments Code**, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the 'Cross Border Doctrine' of the VAT system.

This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No.7-95 effective as of the date of the issuance of this Circular.”
(*Emphasis supplied*)

In the case of **Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.**¹³, the Supreme Court took its time to explain how sales to a PEZA-registered entity become an export sale; thus, considered as zero-rated. The Highest Court discussed it in this wise:

“Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.

Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?

The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be

¹³ G.R. No. 150154, August 9, 2005



free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT."

Clearly, sales made by a VAT-registered entity to PEZA-registered enterprise operating within a special economic zone (ecozone) qualify as VAT zero-rated transactions.

In a similar case, having the same parties and same subject matter but for different taxable years, this Court already ruled that petitioner's sales to Penn Philippines Export Inc., a PEZA-registered entity, are subject to zero percent (0%) VAT.¹⁴ In the said case, this Court cited the ruling of the Supreme Court in the case of **Commissioner of Internal Revenue vs. Sekisui Jushi Philippines, Inc.**¹⁵

The pertinent portion of the said case reads:

"Notably, while an ecozone is geographically within the Philippines, it is deemed a separate customs territory and is regarded in law as foreign soil. Sales by suppliers from outside the borders of the ecozone to this separate customs territory are deemed as exports and treated as export sales. These sales are zero-rated or subject to a tax rate of zero percent."

Undoubtedly, petitioner's sales to Penn Philippines Export, Inc., an entity duly registered with PEZA since January 19, 1998, with Certificate of Registration No. 96-066¹⁶, are subject to zero percent (0%) VAT.

In proving the existence of its sales to Penn Philippines Export, Inc., petitioner presented its various VAT invoices¹⁷ issued to Penn Philippines Export, Inc., as well as the Quarterly VAT Returns for the four quarters of taxable year 2004, reflecting the following zero-rated sales:

¹⁴ Penn Phils. Inc. vs. Commissioner of Internal Revenue, C.T.A. Case No. 7134, May 16, 2008

¹⁵ G.R. No. 149671, July 21, 2006

¹⁶ Exhibit "F"

¹⁷ Exhibits "RR-7-A1" to "RR-7-L58"



Period Covered (2004)	Exhibit No.	Zero-Rated Sales
1st Quarter	V	P 100,063,174.73
2nd Quarter	Y	92,471,795.65
3rd Quarter	BB	97,871,818.67
4th Quarter	EE	108,585,935.13
Total		P 398,992,724.18

Based on the examination, evaluation, and audit procedures performed by the Court-commissioned Independent CPA, out of the total amount of P398,992,724.18, the zero-rated sales duly substantiated by required sales invoices amounted to P382,352,467.27¹⁸, as summarized below:

Period Covered (2004)	Zero-Rated Sales
1st Quarter	P 91,406,995.40
2nd Quarter	92,471,795.65
3rd Quarter	97,871,818.67
4th Quarter	100,601,857.55
Total	P 382,352,467.27

The aforesaid sales of P382,352,467.27 qualify for VAT zero-rating. However, since the claim for the first quarter of taxable year 2004 is disallowed for the reason of prescription, the Court shall be considering only the zero-rated sales covering the second, third, and fourth quarters of 2004 in the amount of P290,945,471.87.

Proceeding on to the remaining requisites, petitioner submitted various suppliers' invoices, official receipts, Bureau of Customs (BOC) Import Entry and Internal Revenue Declarations (IEIRDs), Single Administrative Documents (SADs), and BOC and bank official receipts¹⁹ in support of its claimed unutilized input taxes

¹⁸ Exhibit "RR-7"

¹⁹ Exhibits "RR-9-A" to "RR-13-T", "XX" to "XX-6", "YY" to "YY-6", "ZZ" to "ZZ-6", "AAA" to "AAA-6", "BBB" to "BBB-6", "CCC", "EEE", "FFF", and "GGG"

reflected in its Quarterly VAT Returns for the four quarters of 2004, in the amount of P4,868,496.87, broken down as follows:

Exhibit No.	Period Covered	Input VAT
V	1st qtr 2004	P 2,275,158.70
Y	2nd qtr 2004	871,282.99
BB	3rd qtr 2004	969,435.58
EE	4th qtr 2004	752,619.60
TOTAL		P4,868,496.87

Upon the examination and review made by the Independent CPA, out of the total reported input VAT of P4,868,496.87, only the amount of P2,814,407.94 was ascertained to be duly substantiated by proper documents and certified as valid for tax refund/tax credit, detailed as follows:

Findings	Exhibit	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total
Input VAT with appropriate documents	RR-9 of Exhibit III					
A. Local Purchases of Goods and Services		P 802,671.69	P 359,561.22	P 802,003.82	P 404,375.21	P 2,368,611.94
B. Amounts per BOC Certified SADs tally with the Bank/BOC OR		34,251.00	90,259.00	42,509.00	170,932.00	337,951.00
C. Amounts per BOC Certified SADs and Bank/BOC OR with variances		28,204.00	38,953.00	17,023.00	23,665.00	107,845.00
TOTAL		P865,126.69	P488,773.22	P861,535.82	P598,972.21	P2,814,407.94

The remaining amount of P2,054,088.93 should be disallowed due to the following reasons:

Findings	Exhibit	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total
A. LOCAL PURCHASES OF GOODS AND SERVICES						
1 Input VAT on local purchases of goods and services without supporting documents	RR-12-A	P 41,821.64	P 5,278.72	P 28,578.39	P 31,259.92	P 106,938.67
2 Input VAT supported with VAT invoices/official receipts which are not dated within the quarter of claim and dated in a different calendar year	RR-12-C	16,003.83			44,441.33	60,445.16

3	Input VAT supported with VAT invoices/official receipts marked "zero-rated"	RR-12-D			1,408.45	403.17	1,811.62
4	Input VAT supported with VAT invoices/official receipts issued not in the name of the company.	RR-12-E	3,709.28	749.99	902.91	1,563.64	6,925.82
5	Input VAT supported with VAT invoices/official receipts with alterations in the amount paid	RR-12-F	274.55	2,081.63		2,043.63	4,399.81
6	Input VAT supported with non-VAT invoices/Non-VAT official receipts	RR-12-G		6,296.88	9,176.55		15,473.43
7	Input VAT on purchases of services supported only with bank payment slip/transaction receipt	RR-12-H	9,661.11	21,892.73	12,966.10	14,333.52	58,853.46
8	Input VAT supported with invoices/official receipts without the "VAT" or "V" indicated after the TIN of the supplier	RR-12-I	12,549.60		240.00	480.00	13,269.60
9	Input VAT supported with invoices without the BIR permit number	RR-12-J		306.82	1,471.82	3,368.18	5,146.82
10	Input VAT with supporting invoice showing an amount different from the summary list of purchases	RR-12-K			954.54		954.54
11	Input VAT not included in the summary list but reported per return	RR-12-L			240.00		240.00
Subtotal			P 84,020.01	P 36,606.77	P 55,938.76	P 97,893.39	P 274,458.93
B. IMPORTATION							
1	Input VAT on importations without BOC Certified SADs/Original IEIRDs and without original BOC/Bank OR	RR-12-M	P1,299,858.00	P176,146.00	P 8,325.00	P 1,415.00	P1,485,744.00
2	Input VAT on importations without BOC Certified SADs/Original IEIRDs but with original BOC/Bank official receipts	RR-12-N	26,153.00	10,704.00	39,165.00	49,609.00	125,631.00
3	Input VAT on importations supported with BOC Certified SAD but without BOC/Bank OR	RR-12-O		139,831.00			139,831.00
4	Input VAT on importations pertaining to the variance between amount reported in the original BOC Certified SAD and the Original Bank/BOC OR	RR-12-P	1.00	19,222.00	4,711.00	4,490.00	28,424.00
Subtotal			P1,326,012.00	P345,903.00	P 52,201.00	P 55,514.00	P1,779,630.00
TOTAL			P1,410,032.01	P382,509.77	P108,139.76	P153,407.39	P2,054,088.93

Again, the input VAT ascertained to be valid for tax refund/credit pertaining to the first quarter of 2004 amounting to P865,126.69 shall be disallowed for the reason of prescription.

Furthermore, of the total disallowances of petitioner's input VAT for the second, third, and fourth quarters arrived at by the Independent CPA in the amount of P644,056.92 (P2,054,088.93 less P1,410,032.01), this Court finds that the input VAT on importation amounting to P115,597.00 previously disallowed by the Independent CPA should be allowed since the available documents properly support the claimed input VAT, as shown below:

NAME OF SUPPLIER	Exhibit No.	Amount
Dogi S.A.	RR-12-N-24	P 7,211.00
Protechna	RR-12-N-38	3,493.00
C. Illies & Co.	RR-12-N-40	29,309.00
Dogi S.A.	RR-12-N-46	5,324.00
D & S International Inc.	RR-12-N-50	4,532.00
Liba Machinen Fabrik GMBH	RR-12-N-54	49,609.00
Rubberflex SDN BHD	RR-12-O-1	3,418.00
Dogi International Fabrics	RR-12-O-2	2,961.00
Nishi-Nippon Railroad Co. Ltd	RR-12-O-3	4,664.00
Dogi S.A.	RR-12-O-4	425.00
Dogi S.A.	RR-12-O-5	3,236.00
Dogi S.A.	RR-12-O-6	1,415.00
TOTAL		P 115,597.00

In sum, petitioner's substantiated input VAT for the second, third, and fourth quarters of 2004 amounts to P2,064,878.25, as computed below:

Input VAT per 2004 Quarterly VAT Returns			P 4,868,496.87
Less:	Substantiated Input VAT disallowed due to prescription	P 865,126.69	
	Disallowed Input VAT per ICPA	2,054,088.93	
	Adjustment on disallowances made by Commissioned ICPA as per this Court's further verification	115,597.00	(2,803,618.62)
Substantiated Input VAT – 2nd, 3rd and 4th Qtrs 2004			P 2,064,878.25

However, a portion of the afore-mentioned substantiated input VAT shall be applied against petitioner's reported output VAT liability covering the second, third, and fourth quarters of 2004 in the amount of P87,756.61. Hence, only the

remaining input VAT of P1,977,121.64 can be attributed to the entire zero-rated sales declared by petitioner for the second, third, and fourth quarters of 2004 in the amount of P298,929,549.45 and only the input VAT of P1,924,314.91 is attributable to the substantiated zero-rated sales for the same period in the amount of P290,945,471.87, as shown below:

For the 2nd, 3rd, and 4th Qtrs - 2004	
Substantiated Input VAT	P 2,064,878.25
Less: Output VAT	87,756.61
Excess Input VAT	P 1,977,121.64
Substantiated Zero-Rated sales	P 290,945,471.87
Divided by Total Reported Zero-Rated Sales	÷ P 298,929,549.45
Multiplied by Substantiated Excess Input VAT	× P 1,977,121.64
Input VAT attributable to Substantiated Zero-rated Sales	P 1,924,314.91

As evidenced by petitioner's Quarterly VAT Returns²⁰ from the third quarter of 2004 to the first quarter of 2005, the input VAT of P1,924,314.91 was not applied against any output VAT in the succeeding quarters.

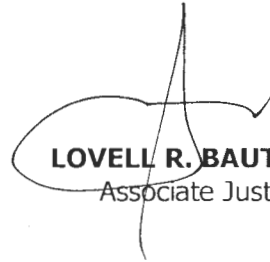
In recapitulation, this Court finds petitioner entitled to a refund or issuance of tax credit certificate in the reduced amount of P1,924,314.91, representing its unutilized or unapplied input VAT for the second, third, and fourth quarters of taxable year 2004.

WHEREFORE, the instant 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 MILLION NINE HUNDRED TWENTY FOUR THOUSAND THREE HUNDRED FOURTEEN PESOS AND 91/100 (P1,924,314.91)** in favor of

²⁰ Exhibits "BB", "EE", and "HH"

petitioner Penn Philippines, Inc., representing its unutilized input VAT for the second, third, and fourth quarters of taxable year 2004.

SO ORDERED.



LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:



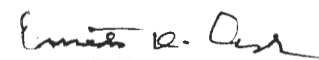
ERNESTO D. ACOSTA
Presiding Justice



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