REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

TECHNIRAIL S.A. - PHILIPPINE BRANCH,
Petitioner,

C.T.A. CASE NO. 6265

-versus-

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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TECHNIRAIL S.A. - PHILIPPINE BRANCH,
Petitioner,

-versus-

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6313

Members:

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

Promulgated:

JAN 18 2007

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DECISION

PALANCA-ENRIQUEZ, J.:

It cannot be stressed enough that invoicing requirements set forth in our Tax Code are mandatory, and non-compliance thereof has adverse effects. Invoices, receipts and similar documents remain the foremost, if not the only tool used by our tax agents in their tax audit. Akin to the rules on evidence, some statutory and procedural requirements have to be complied with; otherwise, the same cannot be admitted.

THE CASES

Before the Court are consolidated Petitions for Review separately filed by Technirail S.A. - Philippine Branch (hereafter "petitioner"), docketed as C.T.A. Case No. 6265 filed on March 30, 2001, praying for a tax refund or issuance of a tax credit certificate in the amount of P687,894.44, representing unutilized creditable value-added taxes withheld by Light Railway Transit Authority (hereafter "LRTA") from its payments to petitioner for the 1st quarter of taxable year 1999, and C.T.A. Case No. 6313 filed on July 2, 2001 praying for a tax refund or issuance of a tax credit certificate in the amount of P8,243,863.09, representing unutilized creditable value-added taxes withheld by LRTA from its payments to petitioner for the second, third and fourth quarters of taxable year 1999.

THE FACTS

C.T.A. Case No. 6265

In their "Joint Stipulation of Facts and Issues", the parties agreed on the following facts:

"1. Petitioner is a branch of TECHNIRAIL S.A (Belgium), duly authorized and licensed to do business in the Philippines, with its principal place of business located at the 3rd floor Raha Sulayman Bldg., 108 Benavidez Street, Legaspi Village, Makati City, where it may be served with summons and court processes and pleadings. Petitioner may likewise be served with summons, court processes and pleadings through the undersigned counsel, at her given address.

2. Respondent is the duly appointed Commissioner of Internal Revenue, vested under the appropriate laws with the authority to carry out all the functions, duties and responsibilities of said Office, including, *inter alia*, the power to decide, approve, and grant refunds and or tax credits of erroneously paid or illegally collected internal revenue taxes, and holds office at the 5th floor, BIR National Building Office, BIR Road, Diliman, Quezon City, where he may be served with summons and other necessary court processes.

3. On March 30, 2001, Petitioner, through its external auditors, filed with Respondent Commissioner of Internal Revenue, through RDO No. 47 (East Makati), the appropriate claim for refund of the Creditable VAT Withheld for the 1st Quarter of 1999.

4. Respondent Commissioner of Internal Revenue is the appropriate party to whom the instant claim for refund or issuance of TCC is directed to, citing Section 204 of the NIRC, as amended.

5. The Honorable Court has the exclusive appellate jurisdiction to review the instant Petition for Review, citing Section 7 of Republic Act (RA) No.

1125, otherwise known as "An Act Creating the Court of Tax Appeals".

6. Petitioner is a Value-Added Tax (VAT) registered taxpayer engaged in the business of supplying mass transport equipment and the repair and rehabilitation of rail transit systems.

7. Petitioner provides various construction works to a government agency, the Light Rail Transit Authority (LRTA).

8. Authenticity, due execution and date of filing of Petitioner's Amended Quarterly VAT Return for the 1st Quarter of the calendar year 1999.

9. The Petitioner has timely filed the Petition for Review with the Honorable Court of Tax Appeals.

10. The Petition for Review is filed in accordance with Section 229 of the NIRC to protect the rights of Petitioner."

In his answer, the Commissioner of Internal Revenue (hereafter "respondent") alleged by way of special and affirmative defenses:

"6. Public works contractors, such as the petitioner, shall be allowed a presumptive input tax equivalent to one and one-half percent (1 ½) of the contract price with respect to government contracts only in lieu of actual input taxes therefrom;

7. The quarterly Value-Added Tax Return for the first quarter of 1999 of the petitioner was filed only on August 11, 2000, hence very late, but the penalty and interest imposed for late filing was not paid;

> 8. Petitioner has not shown that the alleged creditable VAT withheld has not been applied to the output tax in the next succeeding quarters, hence, not refundable;
>
> 9. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund;
>
> 10. Well-settled is the rule that claims for refund are strictly construed against the claimants since it partakes of the nature of an exemption from taxation."

C.T.A. Case No. 6313

In their "Joint Stipulation of Facts and Issues", the parties stipulated as follows:

> "1. Petitioner is a branch of TECHNIRAIL S.A (Belgium) duly authorized and licensed to do business in the Philippines, with its principal place of business located at the 3/F Raha Sulayman Bldg., 108 Benavidez Street, Legazpi Village, Makati City, where they can be served with summons and other Court processes and pleadings. Petitioner may likewise be served with summons, Court processes and pleadings through the undersigned counsel at her given address.
>
> 2. Respondent is the duly appointed Commissioner of Internal Revenue vested under the appropriate laws with the authority to carry out all the functions, duties and responsibilities of said Office, including, *inter alia*, the power to decide, approve, and grant refunds and or tax credits of erroneously paid or illegally collected internal

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revenue taxes and holds office at the 5th floor, BIR National Building Office, BIR Road, Diliman, Quezon City, where he may be served with summons and other necessary court processes.

3. On June 29, 2001, Petitioner, through its external auditors, timely filed with Respondent Commissioner of Internal Revenue, through RDO No. 47 (East Makati), the appropriate claim for refund of the Creditable Value-Added Tax (VAT) Withheld for the 2nd, 3rd and 4th Quarters of the calendar year 1999.

4. Respondent Commissioner of Internal Revenue is the appropriate party to whom the instant claim for refund or issuance of TCC is directed to, citing Section 204 of the NIRC, as amended.

5. The Honorable Court has the exclusive appellate jurisdiction to review the instant Petition for Review, citing Section 7 of Republic Act (RA) No. 1125, otherwise known as 'An Act Creating the Court of Tax Appeals'.

6. Petitioner is a VAT-registered taxpayer engaged in the business of supplying mass transport equipment and the repair and rehabilitation of rail transit system.

7. Petitioner provides various construction works to only one (1) government agency, the Light Rail Transit Authority ('LRTA').

8. The authenticity, due execution and the due and timely date of filing of Petitioner's Amended Quarterly VAT Return for the 2nd, 3rd and 4th Quarters of the calendar year 1999.

9. The petitioner has timely filed the Petition for Review with the Honorable Court of Tax Appeals.

10. The Petition for Review is filed in accordance with Section 229 of the NIRC, as amended, to protect the rights of Petitioner."

In his answer, respondent Commissioner of Internal Revenue alleged by way of special and affirmative defenses:

"4. Under Section 111 (B)(2) of the National Internal Revenue Code of 1997, public works contractors shall be allowed a presumptive input tax equivalent to one and one-half percent (1 1/2%) of the contract price with respect to government contracts only in lieu of actual input taxes therefrom, hence petitioner is no longer entitled to the other input taxes which it used to offset its VAT due for the three quarters involved in this case;

5. Thus, petitioner's creditable value-added tax withheld for the 2^{nd} to 4^{th} quarters of 1999 were not even sufficient to cover its value-added tax due for the same quarters therefore, not refundable and petitioner failed to avail of the presumptive input tax;

6. The two-year prescriptive period is counted from the filing of the original returns not from the filing of the amended returns and it is incumbent upon petitioner to show compliance with Section 229 of the 1997 Tax Code;

7. Petitioner failed to show compliance with the substantiation requirements under the provision of

Section 16(c)(3) of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88;

6. Petitioner failed to show that the alleged creditable VAT was not carried over and utilized against the value-added tax liability of the petitioner in the succeeding quarters or year;

7. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35);

8. In action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;

9. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable".

Since C.T.A. Case Nos. 6265 and 6313 involved the same parties, facts and issues, petitioner prayed for the consolidation of said cases. In a Resolution dated February 18, 2002, this Court granted the Motion For Consolidation.

Petitioner presented Dan Stephen C. Palami, Mia Zaraspe and May Ann Capuchino, the duly Commissioned Independent CPA, as witnesses, and submitted documentary evidence, which evidence was then admitted by the Court.

For the repeated failure of the respondent to present his evidence, this Court, in a Resolution dated December 7, 2005, declared respondent to have waived his right to present evidence. Both parties were then directed to file their simultaneous memoranda within twenty (20 days from notice. Thereafter, the petitions shall be deemed submitted for decision.

On January 23, 2006, petitioner filed its memorandum. Respondent failed to file his memorandum within the given period hence, this Court, in a Resolution dated February 3, 2006, considered the petitions submitted for decision.

ISSUES

C.T.A. Case No. 6265

The parties stipulated on the following issues for this Court's consideration:

I

> WHETHER OR NOT PETITIONER IS ENTITILED TO THE INPUT VAT FOR THE 1ST QUARTER OF THE TAXABLE YEAR 1999.

II

> WHETHER OR NOT PETITIONER AVAILED OF THE PRESUMPTIVE INPUT TAX MENTIONED IN SECTION 111 (B)(2) OF THE TAX CODE,

EQUIVALENT TO ONE AND ONE-HALF PERCENT OF THE CONTRACT PRICE WITH RESPECT TO GOVERNMENT CONTRACTS, ONLY IN LIEU OF ACTUAL INPUT TAXES THEREFROM.

III

WHETHER OR NOT PETITIONER IS ENTITLED TO A TOTAL REFUND OF P687,894.44 REPRESENTING THE CREDITABLE VAT WITHHELD FROM PAYMENTS TO PETITIONER FROM ITS SALE OF VARIOUS CONSTRUCTION SERVICES ATTRIBUTABLE TO LRTA, A GOVERNMENT AGENCY.

C.T.A. Case No. 6313

As stipulated upon by the parties, the following are the issues for the consideration of this Court:

I

WHETHER OR NOT PETITIONER IS ENTITLED TO A TOTAL REFUND OF P8,243,863.09 REPRESENTING THE CREDITABLE VAT WITHHELD FROM PAYMENTS TO PETITIONER FROM ITS SALE OF VARIOUS CONSTRUCTION SERVICES ATTRIBUTABLE TO LRTA, A GOVERNMENT AGENCY.

II

WHETHER PETITIONER HAS UNUTILIZED OR EXCESS CREDITABLE VAT WITHHELD FOR THE 2^{ND}, 3^{RD}, AND 4^{TH} QUARTERS OF THE CALENDAR YEAR 1999 IN THE AMOUNT OF P8,243,863.09.

III

WHETHER PETITIONER HAS NO VAT LIABILITY WHICH CAN BE CREDITED AGAINST THE VAT WITHHELD FOR THE 2^{ND}, 3^{RD} AND 4^{TH} QUARTERS OF TAXABLE YEAR 1999.

IV

WHETHER OR NOT PETITIONER IS ENTITLED TO THE INPUT VAT FOR THE 2^{ND}, 3^{RD} AND 4^{TH} QUARTERS OF TAXABLE YEAR 1999 CONSIDERING THAT UNDER SECTION 111 (B)(2) OF NIRC, AS AMENDED, IT MAY BE ALLOWED PRESUMPTIVE INPUT TAX EQUIVALENT TO ONE AND ONE-HALF PERCENT OF THE CONTRACT PRICE WITH RESPECT TO GOVERNMENT CONTRACTS ONLY IN LIEU OF ACTUAL INPUT TAXES THEREFROM.

Principal Issues To Resolve

The foregoing issues boil down to the following issues:

(1) whether or not petitioner has unutilized or excess creditable VAT withheld for 1^{st} to 4^{th} quarters of the taxable year 1999;

(2) whether or not petitioner has no VAT liability which can be credited against the VAT withheld for 1^{st} to 4^{th} quarters of taxable year 1999;

(3) whether or not petitioner availed of the presumptive input tax mentioned in *Section 111(B)(2) of the National Internal Revenue Code of 1997* (hereafter "NIRC of 1997"), *as amended*, equivalent to one and one-half percent of the contract price with respect to government contracts, only in lieu of actual input taxes therefrom; and

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(4) whether or not petitioner is entitled to the refund of the gross amount of P8,931,757.53 representing creditable VAT withheld from payments to petitioner from its sale of various construction services attributable to LRTA, a government agency.

<u>THE COURT'S RULING</u>

The petitions are partly meritorious.

Being interrelated, the foregoing issues will be discussed jointly.

It is undisputed that petitioner rendered various construction works to LRTA, a government agency. Such service income of petitioner was subjected by LRTA to creditable withholding VAT, pursuant to *Section 114 of the NIRC of 1997, as amended*, which provides:

> "SEC. 114. *Return and Payment of Value-Added Tax.*-
>
> xxx xxx
>
> xxx xxx
>
> (C) *Withholding of Creditable Value-Added Tax.* – The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods from sellers and services rendered by contractors which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold <u>the value-added tax due</u> at the rate of three percent (3%) of the gross payment for the purchase of goods and six percent (6%) on gross receipts for services rendered by contractors on every sale or installment payment which shall be **<u>creditable</u>** <u>against the value-added tax liability of the seller or contractor</u>: *Provided, however,*

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> "That in the case of government public works contractors, the withholding rate shall be eight and one-half percent (8.5%) xxx."

Petitioner claims that it overpaid its output VAT liability for the year 1999, by way of the withholding of creditable output VAT, because its 1999 creditable input taxes are more than sufficient to pay its 1999 output tax due. Hence, petitioner contends that it is entitled to the claim for refund thereof, pursuant to *Section 229, NIRC of 1997, as amended.*

Hence, petitioner filed the present petitions for review to judicially claim the refund thereof.

The applicable law and as stipulated upon by the parties in their Joint Stipulation of Facts and Issues, is *Section229 of the NIRC of 1997, as amended*, which provides:

> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of

payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written application therefore, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Before the Court rules on whether petitioner is entitled to the refund of alleged excess creditable withholding VAT, We need to first determine whether petitioner has sufficient 1999 input taxes against which its 1999 output VAT due are paid off.

For the year 1999, petitioner declared in its quarterly VAT returns the following data:

Total Output VAT Due for 1999		P10,597,623.29
Input VAT for the Year 1999:		
1. Input Taxes Carried Over From Previous Quarter	P 4,065,773.27	
2. From Domestic Purchases of Goods and Services	5,690,455.88	
3. From Importations of Goods	7,728,018.31	17,484,247.46
Excess Input VAT		(P6,886,624.17)
Less: Tax Credits/Payments		
1. 1999 Creditable VAT Withheld		8,931,757.53
Total Overpayment		(P15,818,381.70)

[*Exhibits "V-1-1" to "V-4-1" (amended)*]

To determine the accuracy of petitioner's declaration, the Court commissioned an independent CPA to examine the voluminous documents of petitioner in support of its claim for refund. Two reports, dated April 12, 2004 and July 12, 2004, were submitted detailing the audit procedures performed and the results of the examination thereof.

After a careful scrutiny and examination of the reports of the commissioned independent CPA, as well as the various supporting documents, and the audit procedures applied, the Court agrees with the findings of the commissioned independent CPA.

Out of the total declared 1999 input taxes of P13,418,474.19, only the sum of P4,280,981.72 are validly substantiated for VAT purposes, detailed as follows:

Nature	Exhibit	Amount
- Input VAT on domestic purchases of services supported by suppliers' official receipts (ORs) with preprinted TIN VAT	U-B-2, Item 1 CC-1, Item 1	P 252,147.75 295,281.19
- Input VAT on domestic purchases of services not dated within the quarter but dated within 1999	U-B-2, Item 4	5,200.00
- Input VAT on domestic purchases of goods supported by suppliers' sales invoices with preprinted TIN VAT	U-B-2, Item 6 CC-1, Item 3	788,204.17 768,191.55
- Input VAT on domestic purchases of goods supported by original "duplicate" copies of VAT invoices	U-B-2, Item 12 CC-1, Item 7	42,895.55 655.27
- Input VAT on domestic purchases of goods supported by suppliers' invoices with preprinted TIN VAT but discount presented in the invoice was deducted from VAT base	U-B-2, Item 13	4,924.02
- Input VAT on domestic purchases of goods supported by sales invoices with preprinted TIN VAT but VAT is separately billed	U-B-2, Item 14	13,094.55
- Input VAT on domestic purchases of goods with invoice amount corrected	U-B-2, Item 16 CC-1, Item 9	27,745.71 119.55
- Input VAT on domestic purchases of services with OR amount corrected	CC-1, Item 2	2,082,522.41
T O T A L		P4,280,981.72

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The above input taxes of P4,280,981.72 are duly supported by valid VAT invoices and/or official receipts, in compliance with the VAT invoicing requirements prescribed under the existing laws, rules and regulations.

On the other hand, input taxes in the amount of P9,137,492.47 failed to comply with the VAT invoicing requirements, hence they do not yield input VAT credits. These are itemized as follows:

Nature	Exhibit	Amount
- Input VAT on domestic purchases of services supported by documents other than VAT ORs (i.e., debit notes, franchise invoices, debit slips, statements of accounts, etc.)	U-B-2, Item 2	P 16,447.86
- Input VAT on domestic purchases of services supported by ORs printed after January 1, 1996 marked with suppliers' TIN "V" and not with TIN "VAT"	U-B-2, Item 3	50.00
- Input VAT on domestic purchases of services not dated within the quarter and not dated within 1999	U-B-2, Item 5	610.90
- Input VAT on domestic purchases of goods supported by documents other than VAT ORs (i.e., delivery receipt, order acknowledgement, retail charges, etc.)	U-B-2, Item 7 CC-1, Item 4	82,704.54 3,636.36
- Input VAT on domestic purchases of goods supported by invoices printed before January 1, 1996 marked with suppliers' TIN "V" and not with TIN "VAT"	U-B-2, Item 8 CC-1, Item 5	4,902.73 772.73
- Input VAT on domestic purchases of goods supported by invoices printed after January 1, 1996 marked with suppliers' TIN "V" and not within TIN "VAT"	U-B-2, Item 9 CC-1, Item 6	4,794.32 1,381.82
- Input VAT on domestic purchases of goods supported by invoices without date of printing marked with the suppliers' TIN "V" and not with TIN "VAT"	U-B-2, Item 10	2,789.10
- Input VAT on domestic purchases of goods supported by invoices stamped with suppliers' TIN "V"/TIN No. and not with TIN "VAT"	U-B-2, Item 11	2,725.44
- Input VAT on domestic purchases of goods supported by suppliers' invoices with preprinted TIN VAT but discount presented in the invoice was not deducted from VAT base	U-B-2, Item 13	259.16
- Input VAT on domestic purchases of goods supported by TIN invoices and not TIN VAT invoices	U-B-2, Item 15	1,280.00
- Input VAT on domestic purchases of goods with invoice amount different from Summary Lists/Schedule of Input VAT	U-B-2, Item 16 CC-1, Item 9	39,873.01 1,980.36

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-	Input VAT on domestic purchases of services with OR amount different from Summary List/Schedule of Input VAT	CC-1, Item 2	19,218.21
-	Input VAT on domestic purchases of goods supported by Undated VAT invoices	CC-1, Item 8	1,421.82
-	Input VAT on domestic purchases supported by photocopied sales invoices/ORs with preprinted TIN VAT	CC-1, Item 10	292,792.73
-	Input VAT on importations supported by photocopied IEIRDs	CC-1, Item 12	6,913,726.79
-	Input VAT on domestic purchases w/ no supporting documents	CC-1, Item 11	931,833.07
-	Input VAT on importations with no supporting documents	CC-1, Item 13	814,291.52
	T O T A L		P9,137,492.47

Applying the validly supported input taxes as payment against the 1999 output tax due in the sum of P10,597,623.29, petitioner will have a remaining output VAT payable in the amount of P6,316,641.57 (P10,597,623.29 less P4,280,981.72) for the year 1999. This latter amount should be offset against petitioner's 1999 creditable withholding VAT.

Records show that petitioner is claiming a total 1999 creditable withholding VAT of P8,931,757.53, as declared in its 1999 quarterly VAT returns. However, based on the documents presented by petitioner, only the sum of P7,770,238.53 are duly supported by Certificates of Creditable Tax Withheld at Source issued by the LRTA for the months of March, April, May, June, July, August, September, November and December 1999, broken down as follows:

For the Period	Exhibit	Amount
04-01-99 to 04-30-99	E, E-1	P1,242,984.39
05-01-99 to 05-31-99	F, F-1	343,002.66
06-01-99 to 03-30-99	G, G-1	179,239.83

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07-01-99 to 07-31-99	H, H-1	608,290.90
08-01-99 to 08-31-99	I, I-1	1,857,901.54
08-01-99 to 08-31-99	J, J-1	988,838.43
09-01-99 to 09-30-99	K, K-5	329,612.81
11-01-99 to 11-30-99	L, L-5	1,074,718.04
12-01-99 to 12-31-99	M, M-4	537,359.02
03-01-99 to 03-31-99	O, O-4	504,593.74
04-01-99 to 04-01-99	P, P-4	103,697.17
T O T A L		P7,770,238.53

The above amount of P7,770,238.53 should be utilized by petitioner, as payment for the remaining 1999 output VAT payable.

Offsetting now the remaining 1999 output VAT liability of petitioner in the amount of P6,316,641.57 against the above substantiated payment of advance output tax of P7,770,238.53, petitioner will still have an overpaid creditable VAT withheld of P1,453,596.96 (P7,770,238.53 less P6,316,641.57). Therefore, only the amount of P1,453,596.96 appears to have been excessively paid which can be validly refunded, pursuant to *Section 229 of the NIRC of 1997, as amended.*

It bears stressing that the overpaid 1999 creditable VAT withheld claimed by petitioner was not carried over to the succeeding taxable year, as clearly reflected in the 1999 quarterly VAT returns and the first quarterly VAT return for 2000.

As a final point, We do not agree with respondent's argument that petitioner should be entitled only to 1 ½% presumptive input tax. In his answers, respondent averred that under *Section 111(B)(2) of the NIRC of 1997*, public works contractors (such as petitioner) shall be allowed a presumptive input tax equivalent to one and one-half percent (1 ½%) of the contract price with respect to government contracts only, in lieu of actual input taxes therefrom; thus, petitioner's creditable value-added tax withheld for the year 1999 was not even sufficient to cover its value-added tax due for the same quarters, and therefore, is not refundable.

In this regard, *Section 111(B)(2) of the NIRC of 1997, as amended,* provides:

> "SEC. 111. *Transitional/Presumptive Input Tax Credits.-*
>
> xxx xxx
>
> xxx xxx
>
> (B) *Presumptive Input Tax Credits. -*
>
> (2)Public works contractors shall be allowed a presumptive input tax equivalent to one and one-half percent (1 ½%) of the contract price with respect to government contracts <u>only in lieu of actual input taxes therefrom</u>." *(Underscoring supplied).*

It is evident from the records, specifically from petitioner's 1999 quarterly VAT returns, that petitioner did not avail of the 1 ½% presumptive input tax. What petitioner availed of were the actual input

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taxes from its purchases of goods and services and importation of goods. This exercise of right finds support from the above-quoted provision.

It is also worth noting that the 1½% presumptive input tax is only allowed if public works contractors do not avail of the actual input taxes with respect to their government contracts. Failure to avail of the 1½% presumptive input tax does not mean a denial of the actual input taxes a public works contractor may earned from its purchases.

In sum, petitioner therefore is entitled to a refund of excessively paid output VAT in the reduced amount of P1,453,596.96, computed as follows:

1999 Output VAT Due	P10,597,623.29
Less: 1999 Validly supported input VAT	4,280,981.72
VAT Payable	P 6,316,641.57
Less: 1999 Substantiated Creditable Withholding VAT	7,770,238.53
Amount Refundable	P 1,453,596.96

WHEREFORE, premises considered, the instant Petitions for Review are hereby **PARTIALLY GRANTED**. Respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or **ISSUE a TAX CREDIT CERTIFICATE** in the amount of

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P1,453,596.96 in favor of petitioner, representing overpaid creditable output VAT for taxable year 1999.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice