

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

SPECIAL FIRST DIVISION

CBK POWER COMPANY LIMITED,
Petitioner,

C.T.A. CASE NO. 7721

Members:

- versus -

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

**COMMISSIONER OF INTERNAL
REVENUE,**
Respondent.

Promulgated:
MAR 16 2010 ; 7:10 am

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DECISION

CASANOVA, J.:

The instant Petition for Review is seeking that a judgment be rendered ordering respondent to issue to petitioner a Tax Credit Certificate (TCC) in the amount of **EIGHT MILLION ONE HUNDRED FORTY FOUR THOUSAND TWO HUNDRED EIGHT AND 43/100 PESOS (P8,144,208.43)** representing unutilized input taxes for the period October 1 to December 31, 2005.

Petitioner is a partnership duly organized and existing under and by virtue of laws of the Philippines with principal office at the NPC Compound, Kalayaan, Laguna.¹

¹ Joint Stipulation of Facts and Issues (JSFI), par. 1, Docket, p. 255

Respondent is the duly appointed Commissioner of Internal Revenue vested with authority to act as such, including *inter alia*, the power to decide, approve and grant refunds or tax credit of erroneously or illegally collected internal revenue taxes as provided by law, with office at the BIR National Office Building, Diliman, Quezon City.²

Petitioner is a special purpose entity, the sole purpose of which is to engage in all aspects of (a) the design, financing, construction, testing, commissioning, operation, maintenance, management and ownership of Kalayaan II pumped-storage hydroelectric power plant, the new Caliraya Spillway, and other assets located in the Province of Laguna, and (b) the rehabilitation, upgrade, expansion, testing, commissioning, operation, maintenance and management of Caliraya, Botocan and Kalayaan I hydroelectric power plants and their related facilities located in the Province of Laguna.³

Petitioner is registered as a value-added tax (VAT) entity with TIN/VAT No. 205-760-474-000 in accordance with the Tax Code, as amended. It was issued Bureau of Internal Revenue (BIR) Certificate of Registration OCN 1RC0000050243 dated April 10, 2000 by the BIR Revenue District Office No. 55 (San Pablo City, Laguna), which was updated on May 11, 2005, and as a consequence, Petitioner was issued BIR Certificate of Registration OCN IRC0000195405.⁴

Pursuant to its primary business purpose, Petitioner entered into an Accession Undertaking on September 20, 2000 with the National Power 

² JSFI, par. 2, Docket, p. 255

³ Ibid, par. 3, Docket, p. 255

⁴ Id, par. 4, Docket, pp. 255-256

Corporation (NPC), the Industrias Metalurgicas Pescarmona, S.A., a non-resident foreign corporation based in Argentina and the CBK Power Corporation wherein Petitioner acceded to a Build-Rehabilitate-Operate-and-Transfer Agreement and agreed to rehabilitate, construct and operate on a build-operate-and-transfer basis, the four hydroelectric power plants known as the Caliraya, Botocan, Kalayaan I and Kalayaan II in the Province of Laguna.⁵

For the period October 1, 2005 to December 31, 2005, Petitioner filed with the BIR its Monthly VAT Declarations and Quarterly VAT Returns in accordance with law. Petitioner filed its Original Quarterly VAT Return for the Fourth Quarter of CY 2005 on January 25, 2006.⁶

Subsequently, Petitioner amended its Monthly VAT Declarations and Quarterly VAT Return for the period October 1, 2005 to December 31, 2005, wherein the Amended Quarterly VAT Returns reflected unutilized/excess input taxes amounting to P12,435,298.01, of which P9,890,800.29 consists of input taxes paid or incurred for the period October 1, 2005 to December 31, 2005.⁷

Section 13 of Republic Act 6395, otherwise known as the NPC Charter, provides that:

“The Corporation shall be non-profit and shall devote all its returns from its capital investment as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations in furtherance and effective implementation of the policy enunciated in Section 1 of this Act, the Corporation, including its subsidiaries, is hereby declared exempt from all

⁵ Petition for Review, par. 5, Docket, p. 3

⁶ Ibid, par. 8, Docket, p. 4

⁷ Id, par. 9, Docket, pp. 4-5

taxes, duties, fees, imposts, as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings.”⁸

Petitioner avers that since the NPC is fully tax-exempt under its Charter, which is a special law, Petitioner’s sale of electricity to the NPC is subject to VAT at zero percent rate, pursuant to Section 108 (B)(3) of the Tax Code, as amended.⁹

On December 29, 2004, Petitioner filed an Application for VAT zero-rate with the BIR in accordance with Section 108 (B)(3) of the Tax Code, as amended.¹⁰

The said Application for VAT zero-rate was duly approved by the BIR pursuant to VAT Review Committee Ruling No. 018-03, wherein the BIR declared that Petitioner’s sale of electricity to NPC is entitled to the benefit of effectively zero-rated VAT.¹¹

Petitioner filed an application with Energy Regulatory Commission (ERC) for the issuance of a Certificate of Compliance as a generation company pursuant to the Implementing Rules and Regulations of R.A. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” (EPIRA). Accordingly, the ERC issued the following Certificates of Compliance to Petitioner, to wit: a) Energy Regulatory Commission (ERC) Certificate of Compliance COC No. 04-02-GXT49A-0050 dated April 11, 2007; b) Energy Regulatory Commission (ERC) Certificate of Compliance COC No. 04-02-GXT49B-0051 dated February 4, 2004; c) Energy Regulatory 

⁸ JSFI, par. 5, Docket, p. 256

⁹ Petition for Review, par. 12, Docket, p. 6

¹⁰ Ibid, par. 13, Docket, p. 6

¹¹ Id, par. 14, Docket, p. 6

Commission (ERC) Certificate of Compliance COC No. 04-02-GXT49C-0052 dated February 4, 2004; and d) Energy Regulatory Commission (ERC) Certificate of Compliance COC No. 05-10-GN12-13354-13373 dated April 11, 2007.¹²

For the period October 1, 2005 to December 31, 2005, Petitioner generated zero-rated sales amounting to P1,585,200,665.74 arising from its sale of electricity to NPC.¹³

Petitioner thru its tax counsel, filed on December 28, 2007 with the BIR Revenue District Office (RDO) No. 55 of Laguna its administrative claim for the issuance of a tax credit certificate for a total amount of P8,144,208.43 for its unutilized input taxes for the period October 1, 2005 to December 31, 2005, pursuant to Sections 112 (A) and 112 (B) of the Tax Code of 1997, as amended.¹⁴

Due to BIR's inaction on petitioner's administrative claim, the instant Petition for Review was filed on January 24, 2008.

In its Answer¹⁵ filed on April 3, 2008, respondent averred the following Special and Affirmative defenses:

- "12. The Court of Tax Appeals has no jurisdiction to entertain the instant petition for review for failure on the part of the petitioner to comply with the provisions of Section 112 (c) of the Tax Code of 1997, as amended, which provides:

**"Section 112. Refunds or Tax Credits of
Input Tax –**

xxx xxx xxx xxx

¹² JSFI, par. 6, Docket, p. 256

¹³ Petition for Review, par. 18, Docket, p. 7

¹⁴ JSFI, par. 7, Docket, pp. 256-257

¹⁵ Docket, pp. 155-161

(c). Period within which refund or Tax Credit of Input Taxes shall be Made – In proper cases, the Commissioner shall grant a refund or issue the 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 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).

13. As stated in the petition, petitioner, thru its tax counsel, filed the administrative claim for refund with the BIR Revenue District Office (RDO) No. 55 of Laguna on December 28, 2007. Subsequently on January 24, 2007 (sic), the instant petition was filed. Obviously the 120 days given to the Commissioner to decide on the claim has not yet lapsed when the petition was filed. The petition was prematurely filed, hence it must be dismissed for lack of jurisdiction."

During trial, petitioner presented its documentary and testimonial evidence, while respondent manifested in open court on February 17, 2009 that he is waiving his right to present evidence. The Court directed both parties' counsels to file their respective memorandum.¹⁶

On September 11, 2009, the Court considered the case submitted for decision, with parties submitting their respective memorandum.

The parties submitted the following issues¹⁷ for this Court's resolution: 

¹⁶ Minutes of hearing held on February 17, 2009, Docket, p.353

¹⁷ JSFI, Docket, pp. 257-260

- "1. Whether or not Petitioner is entitled to a tax credit for its unutilized input taxes on the purchases of capital goods of P1,015,221.93 for the month of October 2005 and its amortized unutilized input taxes on the purchases of capital goods of P42,662.12 for the period November 1, 2005 to December 31, 2005;
2. Whether or not Petitioner's unutilized input taxes on its purchases of capital goods of P1,015,221.93 for the month of October 2005, and its unutilized input taxes on the purchases of capital goods of P42,662.12 for the period of November 1, 2005 to December 31, 2005 were related to payments to its contractors for the construction of the hydroelectric power plants in Laguna, as well as all related expenditures in pursuance of the rehabilitation, construction and operation of the power plant complex;
3. Whether or not Petitioner has duly substantiated its claim for the issuance of a tax credit certificate for unutilized input taxes on its purchases of capital goods of P1,015,221.93 for the month of October 2005, and its amortized unutilized input taxes on the purchases of capital goods of P42,662.12 for the period of November 1, 2005 to December 31, 2005;
4. Whether or not Petitioner's input taxes on its purchases of capital goods of P1,015,221.93 for the month of October 2005, and its amortized unutilized input taxes on the purchases of capital goods of P42,662.12 for the period of November 1, 2005 to December 31, 2005 have not been utilized against any output tax;
5. Whether or not Petitioner is entitled to a tax credit certificate in the amount of P7,086,324.38 representing unutilized input taxes paid or incurred on local purchases of goods and services, other than capital goods, attributable to Petitioner's zero-rated sales to National Power Corporation (NPC) for the period October 1, 2005 to December 31, 2005;
6. Whether or not Petitioner's sale of services to the National Power Corporation (NPC) for the period October 1, 2005 to December 31, 2005 qualify as zero-rated sales; 

7. Whether or not Petitioner's unutilized input taxes amounting to P7,086,324.38 representing unutilized input taxes paid or incurred on local purchases of goods and services, other than capital goods, for the period October 1, 2005 to December 31, 2005 were attributable to Petitioner's zero-rated sales for the same period;
8. Whether or not Petitioner has duly substantiated its claim for the issuance of a tax credit certificate for its unutilized input taxes amounting to P7,086,324.38 representing unutilized input taxes paid or incurred on local purchases of goods and services, other than capital goods, attributable to its zero-rated sales for the period October 1, 2005 to December 31, 2005;
9. Whether or not Petitioner's unutilized input taxes amounting to P7,086,324.38 representing unutilized input taxes paid or incurred on local purchases of goods and services, other than capital goods, for the period October 1, 2005 to December 31, 2005 have not been utilized against any output tax;
10. If any portion of Petitioner's unutilized input taxes paid on its purchases of capital goods of P1,015,221.93 for the month of October 2005 and its amortized unutilized input taxes on the purchases of capital goods of P42,662.12 for the period November 1, 2005 to December 31, 2005, is disallowed for not falling under the category of "capital goods" under then Section 112 (B) of the Tax Code, whether or not Petitioner is entitled to claim the same as a tax credit under then Section 112 (A) of the Tax Code, as unutilized/excess input taxes paid or incurred on its local purchases of goods and services for the period October 1, 2005 to December 31, 2005 attributable to its zero-rated sales for the same period;
11. Whether or not Petitioner had timely and duly filed its administrative and judicial claims for the issuance of tax credit certificates for unutilized input taxes on its purchases of capital goods of P1,015,221.93 for the month of October 2005 and its amortized unutilized input taxes on the purchases of capital goods of P42,662.12 for the period November 1, 2005 to December 31, 2005; and for P7,086,324.38 representing unutilized input taxes paid or incurred on local purchases of goods and services, other than 

capital goods, attributable to Petitioner's zero-rated sales to the National Power Corporation (NPC) for the period October 1, 2005 to December 31, 2005, respectively; and,

12. Whether or not Petitioner is entitled to a tax credit certificate in the total amount of Eight Million One Hundred Forty Four Thousand Two Hundred Eight and 43/100 Pesos (P8,144,208.43) representing unutilized input taxes for the period October 1, 2005 to December 31, 2005, pursuant to Sections 112 (A) and 112 (B) of the Tax Code of 1997, as amended.

The foregoing issues can be summarized as follows:

"Whether or not Petitioner is entitled to a tax credit certificate in the total amount of P8,144,208.43 representing unutilized input taxes for the period October 1, 2005 to December 31, 2005."

Petitioner's claim is anchored on Section 110 (A) and (B) and Section 112 (A) of the Tax Code of 1997, as amended, which allows the tax refund/credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales .

Section 110, is herein quoted as follows:

"SEC. 110. Tax Credits. –

(A) Creditable Input Tax. –

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

xxx xxx xxx

(2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable: 

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000): *Provided, however*, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, finally*, that in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

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(B) **Excess Output or Input Tax.** - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided*, That the input tax inclusive of input VAT carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output VAT: *Provided, however*, That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."

Section 112 (A) reads:

"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 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: *Provided, finally,* That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales. “

However, Section 112 (A) should also be construed with the first paragraph of Section 114 (A), in relation to Section 229 of the same Code, thus:

“Section 114. Return and Payment of Value-Added Tax –

(A) In General. - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis.”

“Section 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 claim 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." (Emphasis supplied)

Based on the afore-quoted provisions, the following requisites must be complied with in order that petitioner will be entitled to a refund:

- (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 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

Timeliness of the claim filed

This Court finds it appropriate to determine first the timeliness of the filing of the instant claim.

The reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund starts from the date of filing of the corresponding quarterly return. As enunciated by the Supreme Court in the cases of **Commissioner of Internal Revenue vs. TMX Sales, Inc and the Court of Appeals¹⁸** and **ACCRA Investments Corporation vs. Commissioner of** 

¹⁸ G.R. No. 83736, January 15, 1992

Internal Revenue¹⁹, the two (2)-year period should be counted from the filing of the final income tax return, because it is only during that date that the exact tax liability or refundability of the tax can be determined.

Further, in the computation of the two-year period, a year is equivalent to 365 days regardless of whether it is a regular year or a leap year.²⁰ A calendar month is "a month designated in the calendar without regard to the number of days it may contain."²¹

The present claim pertains to input VAT incurred for the period of October 1 to December 31, 2005 or the fourth quarter of CY 2005. Reckoned from January 25, 2006, petitioner had until January 25, 2008 within which to file its claim both in the administrative and judicial levels. Hence, the administrative claim filed on December 28, 2007 and the Petition for Review filed before this Court on January 24, 2008 are well within the two (2)-year prescriptive period.

Although there is a recent case entitled **Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly SOUTHERN ENERGY QUEZON, INC.)**²², wherein the Honorable Supreme Court held that the reckoning period of the two (2)-year prescriptive period for the filing of a claim for input VAT refund starts from the close of the taxable quarter when the relevant sales were made, this Court finds it proper to apply said ruling to cases filed after the promulgation date of the *Mirant Case*. To apply said 

¹⁹ 204 SCRA 957

²⁰ National Marketing Corporation vs. Tecson, 139 Phil. 584 (1960), citing People vs Del Rosario, 97 Phil 70, 71 (1955)

²¹ Gutierrez vs. Carpio, 53 Phil 334 (1929)

²² G.R. No. 172129, September 12, 2008

ruling in the present case will in effect be giving the new doctrine retroactive application thereby impairing vested rights.

Sale of electricity to NPC is effectively zero-rated

Petitioner maintains that its sales of electricity to the NPC qualify for VAT zero-rating pursuant to *Section 13 of Republic Act No. 6395, The Revised NPC Charter*, as amended by *Presidential Decree Nos. 380 and 938*, to wit:

Sec. 13. Non-profit Character of the Corporation, Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities. — The Corporation shall be non-profit and shall devote all its returns from its capital investments, as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance of effective implementation of the policy enunciated in Section One of this Act, **the Corporation, including its subsidiaries, is hereby declared exempt from the payment of all forms of taxes**, duties, fees, impostes as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings." (Emphasis supplied)"

This Court agrees with petitioner.

This Court has consistently held that NPC is an entity with a special charter, which categorically makes it exempt from payment of all taxes, whether direct or indirect, including VAT. Hence, by virtue of the said charter, services rendered by a VAT registered entity, like herein petitioner, to NPC are effectively subject to zero percent (0%) VAT. *e*

Furthermore, the Supreme Court affirmed NPC's tax exemption in the case of ***Maceda vs. Macaraig, Jr.***²³, thus:

"The NPC is a non-profit public corporation created for the general good and welfare, wholly owned by the government of the Republic of the Philippines. From the very beginning of its corporate existence, the NPC enjoyed preferential tax treatment, to enable the Corporation to pay the indebtedness and obligation and in the furtherance and effective implementation in Section one of "Republic Act No. 6395", which provides:

Section 1. Declaration of Policy. – Congress hereby declares that (1) the comprehensive development, utilization and conservation of Philippine water resources for all beneficial uses, including power generation, and (2) the total electrification of the Philippines through the development of power from all sources to meet the need of rural electrification are primary objectives of the nation which shall be pursued coordinately and supported by all instrumentalities and agencies of the government including its financial institutions.

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It is noted that in the earlier law, R.A. No. 358 the exemption was worded in general terms, as to cover "all taxes, duties, fees, imposts, charges, etc. xxx" However, the amendment under Republic Act No. 6395 enumerated the details covered by the exemptions. Subsequently, P.D. No. 380, made even more specific the details of the exemption of NPC to cover, among others, both direct and indirect taxes on all petroleum products used in its operation. Presidential Decree No. 638 amended the tax exemption by simplifying the same law in general terms. It succinctly exempts NPC from "*all forms of taxes*, duties, fees, imposts, as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings.

The use of the phrase "all forms" of taxes demonstrate the intention of the law to give NPC all the tax

²³ G.R. No. 88291, May 31, 1991

exemptions it has been enjoying before. The rationale for this exemption is that being non-profit the NPC "shall devote all its returns from its capital investment as well as excess revenues of its operation, for expansion. xxx

It is evident from the provisions of P.D. No. 938 that its purpose is to maintain the tax exemption of NPC from all form of taxes including indirect taxes as provided for under R.A. No. 6395 and P.D. No. 380 if it is to attain its goals."

Nevertheless, petitioner must prove that it actually sells electricity to NPC in order for such sales to be qualified as effectively zero-rated under *Section 108 (B)(3) of the Tax Code of 1997*, as amended, which states:

"SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties.

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(B) Transactions Subject to Zero Percent (0%) Rate. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

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(3) Services rendered to persons or entities **whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate;** (emphasis supplied).

Section 108 (B)(3) should be read in conjunction with *Section 113* of the same Code, thus:

Section 113. Invoicing and Accounting Requirements for VAT-Registered Persons. —

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(B) Information Contained in the VAT Invoice or VAT Official Receipt. — The following information shall be indicated in the VAT invoice or VAT official receipt: 

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN);

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount included the value-added tax: xxx"

With the amendments introduced by *R.A. No. 9337* on E-VAT provisions, upon its effectivity on July 1, 2005, the exemption from VAT of the NPC under *Section 13 of R.A. No. 6935* was repealed. Notwithstanding the said repeal, petitioner's sale of generated power continued to be VAT zero-rated under *Section 108(B)(7) of the Tax Code of 1997*, as amended, to wit:

"SEC.108. Value-Added Tax on Sale of Services and Use or Lease of Properties.—

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(B) Transaction Subject to Zero Percent (0%) Rate.—The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, **hydropower**, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels." (Emphasis supplied)

Aside from the aforementioned provisions of the law, a perusal of the records of the case would also show that in the Certificates of Compliance²⁴ issued by the ERC in favor of petitioner, it can be seen that the latter generates electricity through hydropower, a renewable source of energy. Furthermore, as mentioned earlier, petitioner filed an Application for VAT 

²⁴ Exhibits "G", "H", "I" and "J"

Zero-Rate on December 29, 2004, in accordance with Section 108 (B)(3) of the Tax Code, as amended.²⁵ The said Application for VAT zero-rate was duly approved by the BIR pursuant to VAT Review Committee Ruling No. 018-03, wherein the BIR declared the petitioner's sale of electricity to NPC is entitled to the benefit of effectively zero-rated VAT.²⁶

Thus, based on the foregoing provisions of law and regulations, as well as the ERC Certificate of Compliance and the approved Application for VAT Zero-Rate, petitioner's sales of electricity to NPC qualify for VAT zero-rating under Section 108(B)(7) of the NIRC of 1997, as amended by RA 9337.

Input VAT must be properly supported

In its amended Quarterly VAT Return for Fourth Quarter of 2005²⁷ as supported by the various sales invoices²⁸ and official receipts²⁹ issued by petitioner to NPC, petitioner actually derived revenues from sales of electricity to NPC in the amount of P1,585,200,665.74.

Petitioner submitted various suppliers' invoices and official receipts to support its purchases of goods other than capital goods and services for the Fourth Quarter of 2005 with corresponding input VAT in the aggregate amount of P8,144,208.43. Upon verification of the said documents, the Court-Commissioned Independent CPA³⁰ (ICPA) noted the following exceptions:³¹

²⁵ Petition for Review, par. 13, Docket, p. 6

²⁶ Ibid, par. 14, Docket, p. 6

²⁷ Exhibit "KK-8"

²⁸ Exhibits "SS-1A" to "SS-5A", "SS-9A" to "SS-11A", "SS-15A" to "SS-21A", "SS-23A" to "SS-37A", "SS-39A" to SS-41A", "SS-43-A" to "SS-58A" and "SS-60A" to "SS-61A"

²⁹ Exhibits "SS-1" to "SS-61"

³⁰ Mr. Fredieric B. Landicho, Tax Partner of Manabat Delgado Amper & Co.

³¹ Exhibit "FFF", pp. 17-18

Particulars	Exhibit	Input Tax
Purchase of services:		
Missing ORs	EE, EE-1 to EE-12	P 195,862.18
Without ORs	EE-13 to EE-22 and EE-13A to EE-22A	8,640.01
ORs not in the name of the Company	EE-40 to EE-41 and EE-40A to EE-41A	414.82
Non-VAT ORs/VAT zero-rated ORs	EE-23 to EE-28, EE-23A to EE-24A and EE-26A to EE-28A	31,069.64
Original ORs not available	EE-29 to EE-31 and EE-29A to EE-31A	162,959.23
Out of period ORs	EE-31 to EE-39 and EE-32A to EE-39A	174,470.46
ORs with no date	EE-42 to EE-43 and EE-42A to EE-43A	162,311.36
Discrepancies due to rounding-off differences in foreign currency rate used by Company against per examination	HH-7 to HH-12 and HH-7A to HH-12A	23,365.36
Incorrectly computed input VAT	HH-1 to HH-6 and HH-1A to HH-6A	237.81
Subtotal		P 759,330.87
Purchases of goods other than capital goods:		
Missing sales invoices (SIs)	FF	P 975.27
Without SIs	FF-1 to FF-4 and FF-1A to FF-4A	5,944.17
SIs not in the name of the Company	FF-5 and FF-5A	203.46
SIs without BIR authority to print	FF-6 to FF-14 and FF-6A to FF-13A	15,493.90
Original SIs not available	FF-15 to FF-26, FF-15A to FF-23A and FF-25A to FF-26A	35,336.43
Out of period SIs	FF-27	259.09
Incorrectly computed input VAT	II-1 and II-1A	508.09
Subtotal		P 58,720.41
Purchases of capital goods:		
Missing Ors	GG-1 to GG-4	P 2,961.03
Original ORs not available	GG-5 to GG-6	14,656.94
Out of period	GG-7 and GG-7A	917.16

Discrepancies due to rounding-off differences in foreign currency rate used by Company against per examination	JJ-1 to JJ-6 and JJ-1A to JJ-6A	12,355.89
Discrepancies due to amortization used by Company against per examination	JJ-7 to JJ-12 and JJ-7A to JJ-12A	1,705.05
Subtotal		P 32,596.07
TOTAL		P 850,647.35

This Court agrees with the ICPA's findings. Thus, out of petitioner's input VAT claim of P8,144,208.43, only the amount of P7,293,561.08 is duly substantiated with VAT invoices or official receipts.

Amount of Input VAT Claim	P	8,144,208.43
Less: Disallowances		850,647.35
Valid Input VAT	P	7,293,561.08

Entitlement for a refund

Nonetheless, before petitioner can validly claim for a refund or tax credit, it is imperative to prove that the claimed input taxes were not carried over or applied against any output liability in the succeeding quarters.

This Court finds that all of petitioner's input taxes are directly attributable to its zero-rated sales. All of petitioner's sales for the Fourth Quarter of 2005 were all zero-rated and there was no output VAT thereon. Hence, the input taxes were not applied against any output VAT liability.³² Further, the said unutilized input VAT was not carried over to the succeeding

³² Exhibit "KK-8"

taxable quarters, as evidenced by petitioner's quarterly VAT returns for the years 2006, 2007 and 2008.³³

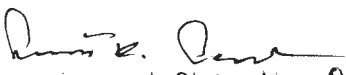
WHEREFORE, premises considered, the Petition is hereby **PARTIALLY GRANTED**. Respondent is **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **SEVEN MILLION TWO HUNDRED NINETY THREE THOUSAND FIVE HUNDRED SIXTY ONE PESOS and 08/100 (P7,293,561.08)** representing unutilized input VAT attributable to zero-rated sales for the Fourth Quarter of 2005.

SO ORDERED.



CAESAR A. CASANOVA
Associate Justice

WE CONCUR:


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


LOVELL R. BAUTISTA
Associate Justice

³³ Exhibits "LL-1" to "LL-16" and "MM-1" to "MM-3"

CERTIFICATION

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


ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division