REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special First Division

MINDANAO I GEOTHERMAL PARTNERSHIP,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7596

x--x

MINDANAO I GEOTHERMAL PARTNERSHIP,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7648

x--x

MINDANAO I GEOTHERMAL PARTNERSHIP,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7666

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

Promulgated:
FEB 15 2012 ; 2:00 p.m.

x--x

AMENDED DECISION

BAUTISTA, J.:

For resolution is petitioner's "Motion for New Trial" filed by registered mail on October 21, 2010, with respondent's "Opposition (Re: Motion for New Trial)" filed by registered mail on November 15, 2010.

On October 4, 2010, the Court promulgated a Decision[1] with the following dispositive portion:

> **WHEREFORE,** the instant Petitions for Review are hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[2]

On January 6, 2011, the Court promulgated a Resolution[3] which ruled as follows:

> **WHEREFORE,** premises considered, petitioner's **"Motion for New Trial"** is hereby **GRANTED.** The Decision promulgated on October 4, 2010 is hereby set aside, and the case shall stand for trial de novo.
>
> Accordingly, let the case be set for hearing for the presentation of petitioner's additional evidence on February 1, 2011, at 9:00 A.M.
>
> **SO ORDERED.**[4]

The presentation of petitioner's additional evidence ensued, and on May 13, 2011, the cases were submitted anew for Decision.[5]

Hence, this Amended Decision.

In the assailed Decision dated October 4, 2010, the Court stated as follows:

---

[1] *Records*, pp. 442-466.
[2] *Id.*, at p. 465.
[3] *Id.*, at pp. 536-539.
[4] *Id.*, at p. 539.
[5] *Id.*, at p. 577-578.

Based on the afore-quoted provision, petitioner's entitlement to refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales is subject to its compliance with the foregoing requisites:

1. that 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.[6]

The Court then noted as follows:

However, perusal of the evidence presented by petitioner reveals that it failed to submit its ERC registration and Certificate of Compliance. Nowhere in the records of the case is it shown that petitioner is duly authorized by the ERC to operate facilities used in the generation of electricity. Thus, in the absence of evidence that petitioner is a generation company, all of the reported zero-rated sales of ₱847,450,520.63 cannot qualify for VAT zero-rating under the EPIRA Law and under R.A. No. 9337. Consequently, this Court is left with no recourse but to deny petitioner's claim for refund in the amount of ₱8,584,567.89 alleged to be representing its input VAT attributable to zero-rated receipts from power generation services rendered by petitioner for taxable year 2005.[7]

Considering that petitioner submitted and offered its Certificate of Compliance issued by the Energy Regulatory Commission,[8] and that based on the records, petitioner presented its Certificate of Accreditation issued by Department of Energy,[9] Certificate of Registration issued by the Bureau of Internal Revenue,[10] Letter issued by Philippine National Oil Company - Energy Development

---

[6] *Id.*, at p. 456.
[7] *Id.*, at pp. 464-465.
[8] *Exhibit "MM."*
[9] *Exhibit "B."*
[10] *Exhibit "A."*

Corporation ("PNOC-EDC") to petitioner,[11] and the Letter of Department of Energy ("DOE") to PNOC-EDC,[12] it was able to prove that it is a generation company and that it is engaged in the sale of power generation services. Such sale of generated power through a renewable source of energy, particularly geothermal energy, qualifies for VAT zero-rating under the EPIRA Law,[13] and Section 108(B)(7)[14] of Republic Act No. 9337,[15] in relation to Section 4.108-3(f) of Revenue Regulations ("RR") No. 16-2005.[16]

To continue with the determination of petitioner's compliance with the other requisites, in its amended Quarterly VAT Returns for the four quarters of 2005, petitioner reflected the following: VAT zero-rated receipts in the amount of ₱847,450,520.63; taxable sales in the amount of ₱18,234,176.00, with the

---

[11] *Exhibit "C."*
[12] *Exhibit "C-1."*
[13] Republic Act No. 9136, entitled *"An Act Ordaining Reforms in the Electric Power Industry, Amending for the Purpose Certain Laws and for Other Purposes."*
[14] SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* -

xxx xxx xxx

(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:

xxx xxx xxx

(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.

[15] Republic Act No. 9337, entitled *"An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue code of 1997, as amended, and for other Purposes."*
[16] SEC. 4.108-3. *Definitions and Specific Rules on Selected Services.* —

xxx xxx xxx

(f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10% VAT on their gross receipts; Provided, That 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 shall be subject to 0% VAT.

"Generation companies" refers to persons or entities authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity. For this purpose, generation of electricity refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of the RA No. 9136 (EPIRA). They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities.

corresponding output VAT of ₱1,823,417.60; and the subject of the case, the excess input VAT of ₱8,584,567.89, broken down as follows:

Exhibit	Year 2005	Zero-rated Sales/Receipts	Taxable Sales/Receipts	Output VAT	Input VAT	Excess Input VAT
"F"	1st Quarter	₱209,762,945.52	₱ 4,690,271.80	₱ 469,027.18	₱3,277,150.31	₱ 2,808,123.13
"I"	2nd Quarter	230,864,069.22	5,427,072.80	542,707.28	3,047,543.47	2,504,836.19
"K"	3rd Quarter	205,909,066.36	5,125,166.60	512,516.66	1,625,020.59	1,112,503.93
"M"	4th Quarter	200,914,439.53	2,991,664.80	299,166.48	2,458,271.12	2,159,104.64
		₱847,450,520.63	**₱18,234,176.00**	**₱ 1,823,417.60**	**₱10,407,985.49**	**₱ 8,584,567.89**

However, a scrutiny of the invoices[17] and official receipts[18] issued by petitioner to PNOC-EDC for the year 2005 revealed that out of the reported zero-rated receipts for the same period in the amount of ₱847,450,520.63, only the following zero-rated receipts in the amount of ₱829,548,455.63 is duly supported by valid VAT zero-rated official receipts:

Official Receipt Exhibit No.	Zero-Rated Receipts for the year 2005				
	Service Fee	Operating and Capital Cost Recovery Fee			Total
	Php	US$	Exchange Rate	Peso Equivalent	(In Php)
"AA-1.2"	11,864,280.92	1,075,139.57	55.188	59,334,802.59	₱ 71,199,083.51
"AA-2.2"	11,824,166.55	1,082,647.13	54.62	59,134,186.24	70,958,352.79
"AA-6.2"	11,775,025.47	1,082,647.13	[19]* 54.4402	58,939,526.29	70,714,551.76
"BB-4.2"	11,712,895.56	1,029,727.13	* 54.4918	56,111,684.82	67,824,580.38
"BB-5.2"	12,520,955.73	1,028,483.18	* 54.3411	55,888,907.33	68,409,863.06
"BB-6.2"	12,294,123.93	1,017,552.48	* 55.179	56,147,528.29	68,441,652.22
"CC-4.2"	12,275,783.07	1,017,552.48	* 56.0062	56,989,247.71	69,265,030.78
"CC-5.2"	12,380,524.87	1,017,552.48	* 55.9523	56,934,401.63	69,314,926.50
"CC-6.2"	12,764,948.81	1,024,681.19	* 56.1562	57,542,201.84	70,307,150.65
"DD-3.2"	12,489,343.50	1,024,681.19	55.059	56,417,921.64	68,907,265.14
"DD-4.2"	12,303,338.28	1,024,681.19	54.239	55,577,683.06	67,881,021.34
"DD-5.2"	12,021,307.84	1,023,303.93	53.067	54,303,669.65	66,324,977.49
	Total Substantiated Zero-Rated Receipts for the year 2005				**₱ 829,548,455.62**

[17] *Exhibits "AA-1.1," "AA-2.1," "AA-6.1," "BB-4.1," "BB-5.1," "BB-6.1," "CC-4.1," "CC-5.1," "CC-6.1," "DD-3.1," "DD-4.1,"* and *"DD-5.1."*
[18] *Exhibits "AA-1.2," "AA-2.2," "AA-6.2," "BB-4.2," "BB-5.2," "BB-6.2," "CC-4.2," "CC-5.2," "CC-6.2," "DD-3.2," "DD-4.2,"* and *"DD-5.2."*
[19] *Based on BSP weighted average rate (http://www.bsp.gov.ph/statistics/spei_new/tab35.htm).

Consequently, only the portion of the input VAT claim attributable to the substantiated zero-rated receipts of ₱829,548,455.62 will be considered by this Court for refund. The rate to be applied is based on the total declared amount of zero-rated receipts and is computed as follows:

Substantiated zero-rated receipts	₱ 829,548,455.62
Divided by total declared zero-rated receipts	÷ 847,450,520.63
Rate of substantiated zero-rated receipts	**97.8875386%**

As to whether or not the claimed input VAT attributable to its zero-rated receipts for the year 2005 are duly supported by pertinent documents, petitioner submitted the Report[20] dated September 18, 2008 of the Court-commissioned Independent Certified Public Accountant ("CPA"),[21] with the Summary of Output Tax and Input Tax,[22] the Summary of Purchases and Input VAT,[23] the Schedule of Importation and Input Taxes,[24] the Schedule of Exceptions on Purchases,[25] and the related suppliers' invoices/official receipts.[26]

And based on the Independent CPA's Report, a total of ₱1,924,071.68 should be further deducted from the input VAT claim representing the exceptions found on petitioner's supporting documents for the year 2005, detailed as follows:

Annex	Particulars	Amount
"G.1"	Purchases of Goods Without Original Invoices and Official Receipts	₱ 1,254,585.86
"G.2"	Purchases of Services Outside the Cut-off Period	669,448.30
"G.3"	Overstatement in computation of Input VAT (net effect)	37.52

---

20 *Exhibit "GG."*
21 Mr. Michael L. Aguirre, Managing Partner of M.L Aguirre & Co., CPAs.
22 *Exhibit "GG"; Annex "A."*
23 *Exhibit "GG"; Annexes "E.1"* to *"E.13."*
24 *Exhibit "GG"; Annex "F."*
25 *Exhibit "GG"; Annexes "G.1"* to *"G.4."*
26 *Exhibits "V.1"* to *"V-201.2," "W-1.1"* to *"W-202.2," "X-1.1"* to *"X-256.2,"* and *"Y-1.1"* to *"Y-176.2."*

Total exceptions as found by the Independent CPA	**₱ 1,924,071.68**

For the disallowed amount of ₱1,254,585.86, the Independent CPA stated that these input taxes, mainly from Glimex, Inc., were supported by photocopied sale invoices but the original of the invoices and original receipts were not found/presented during the audit.[27] To rebut the said exception on the claim of input tax covering its transactions with Glimex, Inc. in the amount of ₱1,253,750.18, particularly Sales Invoice Nos. 0074,[28] and 0075,[29] Ms. Daisy Abenes, in her Supplemental Affidavit,[30] testified that the originals of said invoices can no longer be located in petitioner's records. Thus, it requested Glimex, Inc. to issue a certification[31] attesting and certifying that said invoices presented are faithful reproductions of the duplicate originals. Nonetheless, considering that the year was not clearly indicated in the said invoices and it cannot be ascertained whether the transactions pertain to the same year of subject claim, the same shall be disallowed.

In addition to the exceptions made by the commissioned Independent CPA, the input taxes in the amount of ₱586,874.93 should also be disallowed for the following reasons:

1. Input VAT on purchases of goods or services dated outside the period of claim		
"V-18.2"	Control Risks Phils., Inc.	₱ 5,611.30
"V-19.2"	Davao Diamond Industrial Supply	6,363.64
"V-20"	Davao Diamond Industrial Supply	1,545.45
"V-43.1"	Mabuhay Vinyl Corporation	6,821.77
"V-50.2"	Motormall Davao Corporation	1,063.00
"V-51.1"	Motormall Davao Corporation	324.73

[27] *Exhibit "GG,"* p. 5, No.2, letter a.
[28] *Exhibit "II."*
[29] *Exhibit "JJ."*
[30] *Exhibit "KK,"* dated February 4, 2009.
[31] *Exhibit "HH."*

"V-55.1"	NCH Philippines, Inc.	3,900.00
"V-76.1"	Zorins Systems	3,242.98
"V-77.2"	Yokogawa Philippines, Inc.	9,986.45
"V-141.1"	Worth Enterprises, Inc.	63,634.55
"V-127.2"	Tomas Electrical Supply Corp.	4,041.82
	Subtotal	***₱ 106,535.69***
2. Input VAT on purchases of goods or services supported by invoices or ORs with TIN-V, TIN only or TIN-NON-VAT		
"V-8.2"	Central Warehouse Club, Inc.	₱ 1,816.15
"V-9"	Central Warehouse Club, Inc.	2,399.09
"V-10.1"	Central Warehouse Club, Inc.	750.55
"V-82.2"	Central Warehouse Club, Inc.	1,229.31
"V-83"	Central Warehouse Club, Inc.	511.29
"V-147.2"	Central Warehouse Club, Inc.	554.27
"V-148"	Central Warehouse Club, Inc.	1,289.15
"V-179.1"	Mof Company (Subic), Inc.	500.00
"W-6.2"	Central Warehouse Club, Inc.	554.15
"W-7"	Central Warehouse Club, Inc.	1,600.81
"W-43"	RGC System and Services	4,445.09
"W-71.2"	Central Warehouse Club, Inc.	588.58
"W-72"	Central Warehouse Club, Inc.	1,268.64
"W-139.2"	Central Warehouse Club, Inc.	1,716.99
"W-140"	Central Warehouse Club, Inc.	603.21
"X-5.2"	Central Warehouse Club, Inc.	1,642.04
"X-6.1"	Central Warehouse Club, Inc.	696.48
"X-98.2"	Central Warehouse Club, Inc.	1,539.58
"X-99"	Central Warehouse Club, Inc.	633.44
"X-180.2"	Central Warehouse Club, Inc.	532.85
"X-181.2"	Central Warehouse Club, Inc.	1,548.56
"Y-5"	Central Warehouse Club, Inc.	401.06
"Y-6"	Central Warehouse Club, Inc.	1,710.31
"Y-49"	Red Ball Express Ansuico, Inc.	2,750.00
"Y-70.2"	Central Warehouse Club, Inc.	1,535.86
"Y-71"	Central Warehouse Club, Inc.	529.95
"Y-119"	Red Ball Express Ansuico, Inc.	369,880.16
	Subtotal	***₱ 403,227.57***
3. Input VAT on purchases of services supported by documents other than a VAT Official Receipt		
"W-70"	Cebu Power Exponents Services, Inc.	12,260.18
"X-212"	Islandsmart Corporation	713.96
"Y-40"	Veterans Philippine Scout Security Agency	8,540.69
"Y-41"	Veterans Philippine Scout Security Agency	978.69
"Y-42"	Veterans Philippine Scout Security Agency	51.88
"Y-46"	Veterans Philippine Scout Security Agency	49.59
"Y-50"	Ascend Consolidated Transport System, Inc.	3,996.42
"Y-51"	Bayan Telecommunications, Inc.	6,103.64
"Y-52"	Bayan Telecommunications, Inc.	2,685.60

"Y-61"	Bayan Telecommunications, Inc.	2,042.18
"Y-62"	Bayan Telecommunications, Inc.	6,805.57
"Y-161"	Veterans Philippine Scout Security Agency	2,692.38
	Subtotal	***₱ 46,920.78***
4. Discrepancy between Input VAT per claim and Input VAT per supporting VAT Invoices or ORs		
"V-80.1"	Airfreight 2100, Inc.	
	per claim ₱ 7,263.00	
	per supporting (2,256.73)	₱ 5,006.27
"V-183.2"	Regus Centres, Inc.	
	per claim 975.00	
	per supporting (67.20)	907.80
"Y-166"	Tan Delta Electric Corporation	
	per claim 48,553.64	
	per supporting (24,276.82)	24,276.82
	Subtotal	***₱ 30,190.89***
	Total	**₱ 586,874.93**

Thus, out of the ₱8,584,567.89 input VAT being claimed for refund by petitioner for the year 2005, only the amount of ₱6,073,621.28, as computed below, is duly substantiated in accordance with Sections 110(A) and 113(A) of the 1997 National Internal Revenue Code, as amended, in relation to Sections 4.104-1, 4.104-5 and 4.108-1 of RR No. 7-95,[32] and Section 4.110-8 of RR No. 16-05:[33]

Total Input VAT claimed for refund - CY 2005		₱ 8,584,567.89
Less: Not properly substantiated input VAT		
(a) Per Independent CPA	₱ 1,924,071.68	
(b) Per Court's further verification	586,874.93	2,510,946.61
Validly supported excess input VAT		**₱ 6,073,621.28**

Further, as evidenced by its Quarterly VAT Returns[34] for the year 2005, the present claims are already net of petitioner's output VAT liability for the same year.

---

[32] Consolidated Value-Added Tax Regulations, dated December 9, 1995.
[33] Consolidated Value-Added Tax Regulations of 2005, dated September 1, 2005.
[34] *Exhibits "F," "I," "K,"* and *"M."*

Moreover, in its Quarterly VAT Return for the fourth quarter of 2005,[35] petitioner deducted the subject claim[36] as *"Any VAT Refund/TCC Claimed."* Thus, petitioner could not have possibly utilized the input VAT of ₱6,073,621.28 in the succeeding quarters. In fact, the VAT Return for the first quarter of 2006[37] shows that the unutilized input VAT was not carried over by indicating the amount *"0.00"* in the space for *"Input Tax Carried Over from Previous Quarter"* in the said return.

Nevertheless, out of the substantiated input VAT of ₱6,073,621.28, only the amount of ₱5,945,318.38 attributable to the substantiated zero-rated receipts for the year 2005 can be subject for refund/tax credit, computed as follows:

Validly supported input VAT	₱6,073,621.28
Multiply by rate of substantiated zero-rated receipts	97.8875386%
Refundable Input VAT attributable to the Substantiated Zero-Rated Receipts	**₱5,945,318.38**

WHEREFORE, the Petition for Review is hereby **PARTIALLY GRANTED.** Respondent is hereby **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the reduced amount of ₱5,945,318.38 representing unutilized excess input VAT attributable to zero-rated receipts from power generation services rendered for the year 2005.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

[35] *Exhibit "M."*
[36] *Exhibit "M,"* line 25A.
[37] *Exhibit "O."*

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended 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