REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

VISAYAS GEOTHERMAL POWER COMPANY, Petitioner, - versus - **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**C.T.A. CASE NO. 7179**

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VISAYAS GEOTHERMAL POWER COMPANY, Petitioner, - versus - **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**C.T.A. CASE NO. 7277** Members: **CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** JJ. **Promulgated:** JUL 1 4 2008 9:00 a.m.

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DECISION

CASTAÑEDA, JR., J.:

This case is a consolidation of two separate Petitions for Review which seek the refund or issuance of tax credit certificate in the amount of **NINETEEN MILLION FOUR HUNDRED FORTY NINE THOUSAND ONE HUNDRED FORTY SEVEN AND 17/100 PESOS** (P19,449,147.17),

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representing petitioner's alleged unutilized excess input value-added tax (VAT) arising from zero-rated sales for the period covering all quarters of taxable year 2003.

Visayas Geothermal Power Company (petitioner) is a special purpose limited partnership organized and existing under Philippine laws, with principal office at Milagro, Ormoc City, Province of Leyte. It is registered with the Securities and Exchange Commission as a partnership the main purpose of which is to invest in, acquire, finance, complete, construct, develop, improve, operate, maintain and hold a geothermal electrical generating facility in Malitbog, Leyte Province, Philippines for the production and sale of electricity from geothermal resources.[1]

On June 15, 1994, petitioner was issued Certificate of Accreditation No. OSAC 94-13 by the Department of Energy (DOE) to own and operate a power plant facility comprising of three (3) steam turbine-generating units and related equipments, with a total capacity of 216 megawatts situated in Malitbog, Leyte Province.[2] Likewise, petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with VAT TIN No. 003-832-538-VAT, as shown by its Certificate of Registration RDO Control No. 96-890-000139.[3]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including,

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[1] Exhibit "A-2", *Rollo,* p. 280.
[2] Exhibit "B", *Rollo,* p. 285; Par. 3, Consolidated Joint Stipulation of Facts and Issues, *Rollo,* p. 109.
[3] Exhibit "C", *Rollo*, p. 286.

among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes.[4]

As a result of its operations, petitioner generated sales by virtue of its Power Purchase Agreement with its sole client Philippine National Oil Company-Energy Development Corporation (PNOC-EDC).[5] Pursuant to Republic Act (R.A.) 9136 or the "Electric Power Industry Reform Act of 2001" (EPIRA), petitioner argued that sales of generated power by generation companies shall be VAT zero-rated counted from the effectivity of the Act on July 26, 2001. Section 6 of R.A. No. 9136 states that:[6]

> **"Republic Act No. 9136**
>
> **Electric Power Industry Reform Act of 2001 (EPIRA)**
>
> xxx xxx xxx
>
> **SECTION. 6.** *Generation Sector* — Generation of electric power, a business affected with public interest shall be competitive and open.
>
> Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.
>
> Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.
>
> Upon implementation of retail competition and open access, the prices charged by a generation company for the supply of electricity shall not be subject to regulation by the ERC except as otherwise provided in this Act.

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[4] Par. 2, Consolidated Joint Stipulation of Facts and Issues, *Rollo*, p. 109.
[5] Exhibit "EE," *Rollo*, pp. 317-318.
[6] Par. 5, Consolidated Joint Stipulation of Facts and Issues, *Rollo*, pp. 109-110.

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> **Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated.**
>
> The ERC shall, in determining the existence of market power abuse or anti-competitive behavior, require from generation companies the submission of their financial statements" (*Emphasis supplied*)

In compliance with VAT laws, petitioner filed its original returns for all quarters of taxable year 2003, indicating the following details:

Exhibit	Quarter	Date of Filing Of Return	Zero-rated Sales	Input VAT
"D"[7]	first	April 15, 2003	₱ 625,296,588.45	P3,014,273.09
"Q"[8]	second	July 25, 2003	889,380,015.38	2,494,739.12
"R"[9]	third	October 27, 2003	911,041,553.41	2,601,774.03
"S"[10]	fourth	January 26, 2004	1,753,522,381.16	12,527,767.29
		Total	**P4,179,240,538.40**	**P20,638,553.53**

Petitioner, however, amended the above returns in order to reflect corrected entries. Such amended returns read as:

Exhibit	Quarter of 2003	Date of Filing Of Return	Zero-rated Sales	Domestic Purchases/Importation	Unutilized VAT
"E"[11]	first	November 26, 2004	P 625,296,588.45	P 25,603,608.60	₱ 2,560,360.86
"F"[12]	second	November 26, 2004	889,380,015.38	26,255,096.70	2,626,509.67
"G"[13]	third	November 26, 2004	911,041,553.41	30,510,234.00	3,051,023.40
"H"[14]	fourth	November 26, 2004	1,753,522,381.16	112,122,532.40	11,212,253.24
		Total	**P 4,179,240,538.40**	**P 194,491,471.70**	**P 19,449,147.17**

The input taxes being claimed by petitioner as refund were all carried-over to the succeeding quarters up to the fourth quarter of taxable year 2004.

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[7] *Rollo*, p. 287.
[8] *Rollo*, p. 303.
[9] *Rollo*, p. 304.
[10] *Rollo*, p. 305.
[11] *Rollo*, p. 288.
[12] *Rollo*, p. 289.
[13] *Rollo*, p. 290.
[14] *Rollo*, p. 281.

However, in the first[15] and second[16] quarters of taxable year 2005, petitioner deducted from its available input tax its refund claims.[17]

To assert its belief that its sales are zero-rated, petitioner, through its auditor *Sycip Gorres Velayo & Co.*, filed administrative claims for refund with the BIR Revenue District Office No. 89 on the following dates:

Exhibit	Year	Quarter	Date of Filing of Claim for Refund	Input VAT
"N"[18]	2003	first	February 9, 2005	P 2,560,360.86
"O"[19]	2003	second	April 25, 2005	2,626,509.67
"P"[20]	2003	third	June 14, 2005	3,051,023.40
"P"	2003	fourth	June 14, 2005	11,212,253.24
			Total	**P 19,449,147.17**

Receiving no favorable response from the BIR, in order to comply with the prescriptive periods provided by law and to preserve its rights, petitioner filed before this Court its Petitions for Review docketed as CTA Case No. 7179, filed on March 30, 2005 and CTA Case No. 7277, filed on June 30, 2005, claiming P2,560,630.86 and P16,888,786.31, respectively. Upon motion, these cases were consolidated on September 15, 2005.[21]

In CTA Case No. 7179, respondent presented the following Special and Affirmative Defenses:[22]

> "5. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;

[15] Exhibit "DD", *Rollo*, p. 316.
[16] Exhibit "BB", *Rollo*, p. 314.
[17] Exhibit "EE", *Rollo*, pp. 321-323.
[18] *Rollo*, pp. 297-298.
[19] *Rollo*, pp. 299-300.
[20] *Rollo*, pp. 301-302.
[21] Motion to Consolidate, *Rollo*, pp. 65-69; Confirming Resolution, *Rollo*, p. 76.
[22] Answer, Pars. 6-8, *Rollo*, pp. 24-26.

6. Petitioner's alleged claim for refund is subject to administrative investigation / examination by the Bureau of Internal Revenue;

7. To support its claim, it is imperative for petitioner to prove the following, to wit:

   (a.) The registration requirements of a Value Added Taxpayer pursuant to Section 6(a) & (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95.

   (b.) That the accumulated input VAT taxes of Php 2,560,360.86 allegedly paid by petitioner from its importation and purchases of capital goods and other taxable goods and services were attributable to its zero-rated sales and such taxes has not been applied against any output tax.

   (c.) That petitioner's claim for tax credit or refund of the excess input Value Added Tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 4.106-1 (Re: Refunds or Tax Credits of Input Tax) and Section 4.106-2 (Re: Procedures for Claiming Refunds or Tax Credits of Input Tax) of Revenue Regulations No. 7-95.

   (d.) That petitioner's domestic purchases of services were made in the course of its trade or business, properly supported by invoices or receipts and import entry or other equivalent documents showing that it actually paid VAT in pursuance to Section 4.104-5 (a) & (b) of Revenue Reg. No. 7-95. (Re: Substantiation of Claims for Input Tax Credit).

   (e.) The requirements as enumerated under Section 4.104-2 of the Rev. Reg. 7-95 (Re: Persons who can avail of the Input Tax Credits)

   (f.) That Petitioner has complied with the governing rules and regulations with reference to recovery of tax erroneously or illegally collected as explicitly found in Sections 112 (A) and 229 of the Tax Code as amended. gr

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> (8.) Furthermore and consistent with the well settled principle in taxation, claims for refund are construed strictly against the claimant as they partake the nature of an exemption from tax and it is incumbent upon petitioner to prove that it is entitled thereto under the law. Failure to prove the same is fatal to its claim for tax refund. Exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon the vague implications. (*Asia Petroleum Co. vs. Llamas 49 Phil. 466).*"

Petitioner pleaded the same Special and Affirmative Defenses in CTA Case No. 7277, except for the claimed amount of tax refund which is P16,888,786.31 instead.[23]

During the hearing of this case, petitioner presented the testimony of the commissioned Independent Certified Public Accountant (ICPA) and that of its senior accountant. Aside from the original and amended VAT Returns, petitioner also presented various pieces of documentary evidence such as sales invoices[24], official receipts[25], ledgers[26], and summary of purchases[27] in support of its claim of zero-rated sales.

On September 5, 2007, respondent, through counsel, manifested that she is waiving her right to present evidence. Upon the submission of petitioner and respondent of their Memoranda, on November 12, 2007 and November 5, 2007, respectively; the case was submitted for decision on December 13, 2007.

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[23] CTA Case No. 7277, *Rollo*, pp. 45-47.
[24] Exhibits "JJ" and "KK".
[25] Exhibits "LL" and "MM".
[26] Exhibit "QQ".
[27] Exhibit "NN".

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The issues[28] as stipulated by the parties are as follows:

"1. Whether or not Petitioner is entitled to the refund in the amount of Nineteen Million Four Hundred Forty Nine Thousand One Hundred Forty Seven and 17/100 Pesos (P19,449,147.27) representing its alleged unutilized input Value-Added tax ('VAT') for the 1st to 4th quarters of 2003;

2. Whether or not the input VAT in the amount of Nineteen Million Four Hundred Forty Nine Thousand One Hundred Forty Seven and 17/100 Pesos (P19,449,147.27) allegedly paid by Petitioner from its importation and purchases of capital goods and other taxable goods and services was attributable to its zero-rated sales, and such input VAT has not been applied against any output tax of the Petitioner in the subsequent quarter;

3. Whether or not Petitioner's administrative claims for refund were filed within the period allowed under the law; and

4. Whether or not Petitioner's domestic purchases of goods and services during the 1st to 4th quarters of 2003 were made in the course of its trade or business."

The issues can be summarized to whether or not petitioner's sales are zero-rated, entitling it to a refund of its alleged qualified excess input taxes in the amount of P19,449,147.17.

From the effectivity of R.A. No. 9136 on June 26, 2001, the pertinent provisions of the National Internal Revenue Code (NIRC) of 1997 were deemed amended by modifying the VAT rate applicable to sales of generation companies from ten percent (10%) to zero percent (0%). Section 6 of R.A. No. 9136 provides that "sales of generated power by generation companies shall be value-added tax zero-rated." Hence, in order to qualify for zero-rating, petitioner must prove that: (1) it is a generation company; and (2) it derived sales from power generation.

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[28] Consolidated Joint Stipulation of Facts and Issues, *Rollo*, pp. 112-113.

Records show that pursuant to its Amended Articles of Partnership[29], the business of petitioner is to *invest in, acquire, finance, complete, construct, develop, improve, operate, maintain and hold that certain partially constructed power production geothermal electrical generating facility in Malitbog, Leyte Province and other property incidental thereto, for the production and sale of electricity from geothermal resources, to sell or otherwise dispose of the Project and such other property, and to engage in any other activities related or incidental thereto*. Consistent with its Amended Articles of Partnership, petitioner's 216-megawatt geothermal power plant has been accredited by the Department of Energy as a Block Power Production Facility since June 15, 1994.[30] From these two documents, it is clear that petitioner is a power generation company.

Petitioner has likewise established that it generated sales from power generation. As part of its documentary evidence, petitioner submitted to this Court its VAT invoices and receipts, together with its original and amended VAT Returns for the taxable year 2003 showing sales amounting to P4,179,240,538.40, with details as follows:

Exhibit	Quarter	Zero-rated Sales	
E-3[31]	1st	P	625,296,588.45
F-3[32]	2nd		889,380,015.38
G-3[33]	3rd		911,041,553.41
H-3[34]	4th		1,753,522,381.16
TOTAL		**P**	**4,179,240,538.40**

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[29] Exhibit "A", *Rollo*, pp. 279-284.
[30] Exhibit "B", *Rollo*, p. 285.
[31] *Rollo*, p. 288.
[32] *Rollo*, p. 289.
[33] *Rollo*, p. 290.
[34] *Rollo*, p. 291.

Having complied with the aforesaid requisites, petitioner's gross receipts for all quarters of taxable year 2003 qualify for zero percent (0%) VAT and petitioner may claim the refund/tax credit of the unutilized excess input VAT attributable thereto, in accordance with Section 112(A) of the NIRC of 1997, which states:

> "**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."

Based on the above-quoted provision, petitioner must likewise comply with the following requisites to be entitled to 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 directly 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.

As to the first requisite, it is already settled that under Section 6 of R.A. No. 9136, sales of generated power by generation companies, such as petitioner's sales, qualify for VAT zero-rating.

Anent the second requirement, a verification of the Summary List of Purchases and the supporting documents evidencing petitioner's purchases of goods and services and importation shows input taxes amounting to P19,449,147.17. However, the said amount must be reduced by P2,301,220.31 for failure to comply with the invoicing requirements under Section 110(A), in relation to Section 113(A) of the NIRC of 1997 and as implemented by Sections 4.104-1 and 4.104-5 of Revenue Regulations No. 7-95. Said amount is likewise disallowed because of the following justifications:[35]

Findings	Reference	Amount
Domestic purchases of goods supported by preprinted TIN-V invoice	*Annex V-1Q-A12, V-2Q-A12, V-3Q-A12, and V-4Q-A12*	P 43,228.23
Domestic purchases of services supported by preprinted TIN-V OR	*Annex V-1Q-B12, V-2Q-B12, V-3Q-B12, and V-4Q-B12*	682,658.76
Domestic purchases of services supported by a certified true copy of the VAT OR	*Annex V-1Q-B18, V-2Q-B18, V-3Q-B18 and V-4Q-B18*	142,307.58
Input tax on OCT (Overseas Communication Tax) included in payments to telecommunication service providers	*Annex V-2Q-G3, V-3Q-G3 and V-4Q-G3*	293.40
Domestic purchases of goods supported by documents other than a VAT invoice	*Annex V-1Q-A1, V-2Q-A1, V-3Q-A1, and V-4Q-A1*	62,138.78
Domestic purchases of goods supported by a VAT invoice but not an original copy	*Annex V-1Q-A3, V-2Q-A3, V-3Q-A3, and V-4Q-A3*	136,011.52
Domestic purchases of goods supported by a VAT invoice not issued in the name of the Company	*Annex V-2Q-A4 and V-3Q-A4*	3,644.17
Domestic purchases of goods supported by a VAT invoice issued in the name of Calenergy/CE Cebu/CE Luzon (whichever is applicable)	*Annex V-2Q-A5, V-3Q-A5, and V-4Q-A5*	2,596.01
Domestic purchases of goods supported by TIN # only; TIN-NV/NON-VAT invoice; stamped/handwritten TIN-V/VAT	*Annex V-1Q-A7, V-2Q-A7, V-3Q-A7 and V-4Q-A7*	59,975.03
Domestic purchases of goods supported by tape receipt but without Company's name and/or TIN	*Annex V-1Q-A8, V-2Q-A8 and V-3Q-A8*	546.33
Domestic purchases of goods supported by a VAT invoice but without invoice date	*Annex V-1Q-A10, V-2Q-A10, V-3Q-A10 and V-4Q-A10*	12,946.31

[35] Exhibit "II", pp. 5-8.

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Domestic purchases of goods not dated within the VAT-taxable year	*Annex V-1Q-A14 and V-2Q-A14*	64,003.92
Domestic purchases of goods supported by a VAT invoice with alterations in the name of the Company	*Annex V-1Q-A15, V-2Q-A15 and V-3Q-A15*	24,576.08
Domestic purchases of goods supported by invoices which are not BIR-registered	*Annex V-3Q-A17 and V-4Q-A17*	4,087.64
Domestic purchases of goods supported by TIN # only; TIN-NV/NON-VAT invoice; stamped/handwritten TIN-V/VAT tape receipt	*Annex V-2Q-A16 and V-4Q-A16*	176.78
Domestic purchases of services supported by documents other than a VAT OR	*Annex V-1Q-B1, V-2Q-B1, V-3Q-B1 and V-4Q-B1*	89,438.63
Domestic purchases of services supported by a VAT OR but not an original copy	*Annex V-1Q-B3, V-2Q-B3, V-3Q-B3 and V-4Q-B3*	91,550.97
Domestic purchases of services supported by a VAT OR issued in the name of Calenergy/CE Cebu/CE Luzon (whichever is applicable)	*Annex V-1Q-B5 and V-3Q-B5*	3,397.40
Domestic purchases of services supported by a TIN-NV/NON-VAT OR; but stamped with "VAT"/"TIN VAT" or word "NON" was erased	*Annex V-1Q-B6, V-2Q-B6, V-3Q-B6 and V-4Q-B6*	62,775.83
Domestic purchases of services supported by TIN # only; TIN-NV/NON-VAT OR; stamped/handwritten TIN-V/VAT	*Annex V-1Q-B7, V-2Q-B7, V-3Q-B7 and V-4Q-B7*	37,730.13
Domestic purchases of services supported by a tape receipt but without the Company's name and/or TIN	*Annex V-1Q-B8, V-2Q-B8 and V-3Q-B8*	886.73
Domestic purchases of services supported by a VAT OR but without OR date	*Annex V-1Q-B10 and V-2Q-B10*	225.61
Domestic purchases of services not dated within the VAT-taxable year	*Annex V-1Q-B14 and V-4Q-B14*	10,665.60
Domestic purchases of services with changes in the name of the Company	*Annex V-3Q-B15*	41.87
Domestic purchases of services supported by receipts which are not BIR-registered	*Annex V-3Q-B17*	139.80
Domestic purchases of services from previous NON VAT suppliers but which were subjected to VAT under RR 1-2003 supported by TIN NON VAT ORs but not stamped "VAT registered as of January 2003"	*Annex V-4Q-B19*	32,429.95
Overclaimed input tax on domestic purchases of goods/services due to erroneous computation	*Annex V-1Q-E1, V-2Q-E1, V-3Q-E1 and V-4Q-E1*	130.73
Input tax on purchase of vehicles with engine displacement of more than 2000cc	*Annex V-1Q-G1 and V-3Q-G1*	403,363.66
Input tax on payments for printing services supported with documents other than a VAT OR	*Annex V-1Q-G6, V-2Q-G6 and V-4Q-G6*	1,206.64
Input tax on payments to NAPOCOR for lease services supported by government OR	*Annex V-1Q-G10*	11,048.65

Overclaimed portion of input tax arising from forex rate used on foreign currency denominated purchases of goods and services	*Annex V-1Q-J1, V-2Q-J1 and V-4Q-J1*	3,084.73
Supporting documents not available	*Annex V-1Q-F, V-2Q-F, V 3Q-F and V-4Q-F*	313,912.84
TOTAL		**P 2,301,220.31**

Similarly, petitioner's claim should be further decreased by P10,215.55, broken down as follows:

Supplier	**Exh.**	**Invoice/OR Date**	**Input VAT Claimed**
1.) Domestic purchases of services supported by NON-VAT OR but stamped "VAT registered as of January 1, 1997"			
Quisumbing Torres Law Office	V-1Q-738	4-Apr-03	P 3,015.67
Quisumbing Torres Law Office	V-1Q-740	10-Apr-03	3,506.88
Sub-total			P *6,522.55*
2.) Supporting documents not available			
Kokusai Commerce			P 3,693.00
Sub-total			P *3,693.00*
TOTAL			P **10,215.55**

Based on the foregoing, petitioner's valid creditable input tax is P17,137,711.31, computed below:

Claimed input VAT		P 19,449,147.17
Less: Disallowances	P 2,301,220.31	
	10,215.55	(2,311,435.86)
Valid input VAT		**P 17,137,711.31**

Petitioner also satisfies the third requirement. As petitioner had no taxable sales reported for the taxable year 2003, all its input VAT on domestic purchases of goods and services, capital goods and importation are attributable to its zero-rated sales.

As regards the fourth requisite, petitioner carried over all excess unutilized input VAT from the previous quarters, but it was not applied to any output tax liability since all sales in the taxable year 2004 were zero-rated as shown in its final amended Quarterly VAT Returns for the taxable year 2004. The details of the amended returns read as follows:

Exhibit	Quarter of 2004	Input Tax From Previous Quarter	Input Tax From Current Quarter	Excess/ Unutilized Input VAT for the Quarter
"I"[36]	First	P 20,476,401.46	P 7,662,196.67	P 28,138,598.13
"Y"[37]	Second	28,138,598.13	3,381,036.32	31,519,634.45
"Z"[38]	Third	31,519,634.45	3,139,344.35	34,658,978.80
"AA"[39]	Fourth	34,658,978.80	4,297,133.80	38,956,12.60

During the first quarter of taxable year 2005, petitioner still carried over the total excess unutilized input VAT but deducted the amount P2,560,360.86 as "Any VAT Refund/TCC Claimed."[40] This represented its claim for the first quarter of taxable year 2003. In the second quarter of taxable year 2005, petitioner deducted the amount P24,550,982.98 as "Any VAT Refund/TCC Claimed"[41], which represented its claim for the second to fourth quarters of taxable year 2003 and the first quarter of taxable year 2004 in the amounts of P16,888,786.31 and P7,662,196.67, respectively. Thus, petitioner could not have possibly utilized the claimed excess input VAT of P19,449,147.17 in the succeeding quarters.

We shall now proceed to the fifth requisite.

The Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[42] explained the procedure for counting the two-year prescriptive period for refund claim of input VAT in this wise:

[36] *Rollo,* p. 292.
[37] *Rollo,* p. 311.
[38] *Rollo,* p. 312.
[39] *Rollo,* p. 313.
[40] Exhibit "DD."
[41] Exhibit "BB-1."
[42] G.R. Nos. 141104 and 148763, June 8, 2007

"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 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. It should be recalled that not only may a VAT-registered taxpayer directly apply against his output VAT due the input VAT it had paid on its importation or local purchases of goods and services during the quarter; the taxpayer is also given the option to either (1) carry over any excess input VAT to the succeeding quarters for application against its future output VAT liabilities, or (2) file an application for refund or issuance of a tax credit certificate covering the amount of such input VAT. Hence, even in the absence of a final adjustment return, the determination of any output VAT payable necessarily requires that the VAT-registered taxpayer make adjustments in its VAT return every quarter, taking into consideration the input VAT which are creditable for the present quarter or had been carried over from the previous quarters.

Moreover, when claiming refund/credit, the VAT-registered taxpayer must be able to establish that it does have refundable or creditable input VAT, and the same has not been applied against its output VAT liabilities — information which are supposed to be reflected in the taxpayer's VAT returns. Thus, an application for refund/credit must be accompanied by copies of the taxpayer's VAT return/s for the taxable quarter/s concerned.

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" (*Emphasis supplied*)

Here, petitioner filed claims for refund on the following dates:

Qtr.	Exh.	Original VAT Return Filed	Exh.	Administrative Claim Filed	Petition for Review
First	"D"	April 15, 2003	"N"	February 9, 2005	March 30, 2005
Second	"Q"	July 25, 2003	"O"	April 25, 2005	June 30, 2005
Third	"R"	October 27, 2003	"P"	June 14, 2005	June 30, 2005
Fourth	"S"	January 26, 2004	"P"	June 14, 2005	June 30, 2005

Applying the above-cited case, petitioner's claims in the administrative and judicial levels were filed well within the two-year prescriptive period reckoned from the respective dates when petitioner filed its original Quarterly VAT Returns for the four quarters of taxable year 2003.

Finally, petitioner's domestic purchases of goods and services during the first to fourth quarters of taxable year 2003 were made in the course of its trade or business as testified to by its Senior Accountant, Ms. Leilah Yasmin E. Alpad, who stated:

> "Q: Ms. Witness, how did Petitioner incur its input VAT credits which it is claiming refund for?
>
> A: In the course of its business of power generation pursuant to its primary purpose stated in its Articles of Partnership, accreditation by the Department of Energy and Energy Conversion Agreement ('ECA') with Philippine National Oil Company-Energy Development Corporation ('PNOC-EDC'), Petitioner had to purchase goods and services, import goods and obtain the services of non-residents.[43]"

In summary, petitioner has satisfactorily argued its right to its refund claim. Hence, petitioner's claim for refund or issuance of tax credit certificate for its unutilized excess input VAT for taxable year 2003 arising from its zero-rated sales under Republic Act No. 9136 should be granted, in the reduced amount of P17,137,711.31.

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[43] Exhibit "YY", p. 3.

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WHEREFORE, the consolidated Petitions for Review are hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **SEVENTEEN MILLION ONE HUNDRED THIRTY SEVEN THOUSAND SEVEN HUNDRED ELEVEN PESOS AND 31/100**, representing petitioner's unutilized excess input VAT for the period covering all quarters of taxable year 2003, computed as follows:

Claimed input VAT		P 19,449,147.17
Less: Disallowances	P 2,301,220.31	
	10,215.55	(2,311,435.86)
Valid input VAT		**P 17,137,711.31**

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
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

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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

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