REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

MIRANT SUAL CORPORATION,
[formerly SOUTHERN ENERGY PANGASINAN, INC.],
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6421

Members:

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

Promulgated:

JAN 26 2009 12:40 PM

x - x

DECISION

BAUTISTA, *J.*:

The Petition for Review seeks the refund or issuance of tax credit certificate in the amount of P179,314,926.56, representing unutilized input value-added tax (VAT) on petitioner's domestic purchases and importation of goods and services attributable to its zero-rated sales to National Power Corporation (NPC) for taxable year 2000.

Petitioner Mirant Sual Corporation, formerly called Southern Energy Pangasinan, Inc., is a corporation duly organized and existing by virtue of Philippine laws. Its principal office is located at Barangay Pangascasan, Sual, Pangasinan.[1] Petitioner is principally engaged in the business of power generation and the subsequent sale thereof solely to National Power Corporation under a Build, Operate, Transfer (BOT) Scheme.[2] Pursuant to Section 107 of

[1] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 147
[2] Par. 3, JSFI, Docket, p. 147

the former Tax Code [now Section 236 of the National Internal Revenue Code (NIRC) of 1997, as amended], petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with Tax Identification Number (TIN) 003-841-103.[3]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (CIR) vested with authority to act as such, including the power to decide, approve and grant claims for refunds or tax credits of overpaid internal revenue taxes as provided by law. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

Petitioner was originally registered with the Securities and Exchange Commission (SEC) under the name Pangasinan Electric Corporation. On August 17, 1999, petitioner's name was officially changed to Southern Energy Pangasinan, Incorporated. Then, on June 28, 2001, the SEC approved petitioner's application to further change its corporate name to Mirant Sual Corporation.[5]

In connection with petitioner's sales of power generation services to NPC, respondent approved on November 26, 1999 the Application for Zero-Rate of petitioner for its sale of power generation services to NPC under the BOT scheme for the year 2000.[6]

Petitioner filed its Quarterly VAT Returns for taxable year 2000 on the following dates:[7]

VAT Returns (2000)	Date Filed	Exhibit
1st Quarter	April 24, 2000	"A"
2nd Quarter (Original)	July 25, 2000	"B-8"
(Amended)	August 23, 2000	"B"
3rd Quarter	October 25, 2000	"C"
4th Quarter	January 25, 2001	"D"

[3] Par. 4, JSFI, Docket, pp. 147-148
[4] Par. 2, JSFI, Docket, p. 147
[5] Par. 5, JSFI, Docket, p. 148
[6] Par. 8, JSFI, Docket, p. 148; Exhibit "J"
[7] Par. 6, JSFI, Docket, p. 148

On March 11, 2002, pursuant to the procedure prescribed in Revenue Regulations No. 7-95, as amended, petitioner filed an administrative claim for refund of unutilized input VAT with the BIR.[8]

In order to toll the running of the two-year prescriptive period under the NIRC of 1997, as amended and Revenue Regulations No. 7-95, petitioner filed the present Petition for Review on April 1, 2002.

On May 2, 2002, respondent filed his Answer[9] and averred the following Special and Affirmative Defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative routine investigation/examination by respondent's Bureau.
>
> 5. The petition was filed without compliance with the conditions precedent for claiming input tax refund because there is no showing that petitioner has submitted complete documents in support of its claim, in contravention with the requirements of Section 112 (D) of the Tax Code. Said provision reads: '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'.
>
> 6. Taxes paid and collected by the Bureau of Internal Revenue are presumed to have been made in accordance with law, and the burden of proof to prove otherwise is upon the petitioner.
>
> 7. Assuming but without admitting the fact that petitioner is entitled to tax refund, it is incumbent upon the latter to show that it has complied with the provisions under Sections 204 (C) and 230 of the Tax Code. Otherwise, its failure to prove the same is fatal to the claim for refund.
>
> 8. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and as such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)."*

Petitioner filed its Pre-Trial Brief[10] on June 14, 2002, while respondent filed its Respondent's Pre-Trial Brief[11] on June 18, 2002. On June 21, 2002, the parties stipulated

[8] Par. 7, JSFI, Docket, p. 148
[9] Docket, pp. 123-125

on the facts and issues;[12] then filed their Joint Stipulation of Facts and Issues on July 1, 2002,[13] which was approved in a Resolution[14] dated July 9, 2002.

On July 29, 2002, Mr. Ruben R. Rubio was commissioned as the Independent Certified Public Accountant (CPA) who will examine the voluminous documents of petitioner.[15]

The Court-commissioned Independent CPA submitted his Initial Report[16] on March 24, 2003, the Final Report[17] on May 9, 2003, and the Supplementary Report[18] on May 16, 2003.

Petitioner's Formal Offer of Evidence[19] filed on April 10, 2007, with respondent's Comment (Re: Petitioner's Formal Offer of Evidence)[20] filed on April 18, 2007, was resolved in Resolutions dated May 23, 2007[21] and November 20, 2007[22].

On July 31, 2007, respondent's counsel manifested that no report was submitted by the Revenue Examiners; thus, she is submitting the case for decision.[23] Consequently, in a Resolution[24] dated August 10, 2007, the Court ordered the parties to file their respective Memorandum.

In a Resolution[25] dated February 5, 2008, the case was submitted for decision, taking into consideration the Memorandum[26] filed by petitioner on January 25, 2008 and the Memorandum[27] filed by respondent on January 28, 2008.

Hence, this decision.

---

[10] Docket, pp. 129-133
[11] Docket, pp. 134-137
[12] Docket, p. 143
[13] Docket, pp. 147-149
[14] Docket, p. 150
[15] Docket, p. 156
[16] Docket, pp. 173-174; Exhibit "L"
[17] Docket, pp. 176-222; Exhibits "O-1" to "O-47"
[18] Docket, p. 227
[19] Docket, pp. 466-543
[20] Docket, pp. 544-545
[21] Docket, pp. 548-550
[22] Docket, pp. 581-582
[23] Docket, p. 567
[24] Docket, p. 569
[25] Docket, p. 624
[26] Docket, pp. 593-615
[27] Docket, pp. 616-621

The following are the stipulated issues[28] for this Court's resolution:

"1. Whether Petitioner has unutilized VAT input taxes for CY 2000 arising from its domestic purchases of goods and services which are attributable to its zero-rated sales of power generation services to NPC during CY 2000.

2. Whether Petitioner's unutilized VAT input taxes for CY 2000 are substantiated by documentary evidence in the form of invoices and official receipts.

3. Whether or not the said unutilized creditable input VAT for the four (4) quarters of 2000 were carried over to the succeeding taxable quarter(s) and applied against any of the output VAT liability of the Petitioner for the said period.

4. Whether or not Petitioner has complied with the provisions of Section 204 (C) and 230 of the Tax Code ('RA 8424')."

The issues raised can be reduced to one basic issue:

"Whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P179,314,926.56, representing unutilized input VAT on its domestic purchases and importation of goods and services attributed to zero-rated sales to NPC for taxable year 2000."

Relevant to the resolution of the above-mentioned issue is Section 112(A) of the NIRC of 1997, as amended, which provides:

> "**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: xxx"

Based on the foregoing, in order for petitioner to be entitled to a refund or tax credit certificate, the following requisites must concur:

---

[28] JSFI, Docket, p. 148

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

Regarding the first requisite, this Court has consistently held that NPC is an entity with a special charter[29], which categorically makes it exempt from payment of all taxes, whether direct or indirect, including VAT. Thus, services rendered by a VAT-registered entity, like herein petitioner, to NPC are effectively subject to zero percent (0%) VAT, in accordance with Section 108(B)(3) of the NIRC of 1997, as amended, which states that:

> **"SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties.** –
>
> **(A) Rate and Base of Tax.** - 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
>
> (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;"

Respondent even recognized this when he approved petitioner's Application for Zero-Rate.[30] Moreover, the various VAT invoices and official receipts issued by petitioner to NPC for the year 2000[31], as listed in its Summary of Zero-Rated Sales[32], confirmed that it actually generated gross receipts from sales of electricity to NPC amounting to P10,909,934,960.40; which was reflected in its Quarterly VAT Returns as follows:

---

[29] Section 13, Republic Act No. 6395, otherwise known as the NPC Revised Charter, as amended by Presidential Decree Nos. 380 and 938
[30] Par. 8, JSFI, Docket, p. 148; Exhibit "J"
[31] Exhibits "N-1" to "N-200"
[32] Exhibits "M-1" to "M-4"

Exhibit	Year 2000	Zero-Rated Sales/Receipts
"A"	1st Quarter	P 1,826,467,019.26
"B"	2nd Quarter	2,671,934,264.06
"C"	3rd Quarter	2,970,223,075.04
"D"	4th Quarter	3,441,310,602.04
	Total	**P10,909,934,960.40**

As regards the second requisite, petitioner presented as evidence the invoices and official receipts issued by its suppliers as well as the Bureau of Customs (BOC) import entry declarations and official receipts,[33] to support its reported input taxes for the four quarters of 2000 in the amount of P179,314,926.56, broken down as follows:

Exhibit	Year 2000	INPUT VAT
"A"	1st Quarter	P 18,919,590.47
"B"	2nd Quarter	31,537,162.40
"C"	3rd Quarter	104,746,044.31
"D"	4th Quarter	24,112,129.38
	Total:	**P 179,314,926.56**

Upon examination of the aforesaid documents, the Independent CPA presented the following findings:[34]

Input taxes on Purchases of Services	
1. Supported by Non-VAT ORs	P 92,576.43
2. Supported by ORs with pre-printed "TIN" but stamped "VAT"; printed after July 31, 1991	8,015.58
3. Supported by a VAT OR without BIR Permit Number	86,480.73
4. Erroneously computed	17,277.92
5. Supported by VAT ORs issued not in the name of the company	27,310.96
6. Supported by a check voucher only	545.00
7. Input taxes on purchases of services claimed twice	10,452.00
Input taxes on Purchases of Goods	
1. Supported by Non-VAT Invoices	6,410.43
2. Supported by Invoices with pre-printed "TAN" only	25,246.03
3. Supported by photocopy of VAT invoices	13,180.65
4. Supported by invoices with pre-printed "TIN" but stamped "VAT"; printed after July 31, 1991	78,039.69

[33] Exhibits "R-1" to "R-1,617", "S-1" to "S-1,867", "T-1" to "T-1,928", "U-1" to "U-1,983"
[34] Exhibits "O-3" to "O-5"

5. Claimed Twice	3,072.73
6. Erroneously computed	193.80
7. Supported by VAT ORs only	15,675.91
Input Taxes claimed on Importations and purchases of goods and services without supporting documents	6,041,889.36
Total	**P 6,426,367.22**

The Independent CPA disallowed P6,041,889.36 of input taxes for lack of supporting documents. Petitioner subsequently submitted pertinent documents to prove the same. However, only the amount of P5,389,564.98 of the disallowance were properly documented, which are summarized as follows:

Schedule	**Amount**	**Supporting Documents Exhibit**
Input Taxes on Importations and Purchases of Goods & Services (Exhibits "W" to "W-2")	P 719,519.45	"X-1" to "PPP"
Input Taxes on Importations and Purchases of Goods & Services (Exhibits "D^{8}" to "D^{8}-2")	1,358,898.43	"E^{8}" to "B^{10}"
Input Taxes on Importations and Purchases of Goods & Services (Exhibits "V^{33}" to "V^{33}-2")	593,706.00	"Q^{30}" to "W^{30}"
Input Taxes on Importations and Purchases of Goods & Services (Exhibits "Z^{33}" to "Z^{33}-2")	1,605,721.10	"A^{34}" to "G^{35}"
Input Taxes on Importations and Purchases of Goods & Services (Exhibits "X^{37}" to "X^{37}-2")	1,111,720.00	"Y^{37}" to "C^{38}"
TOTAL	**P5,389,564.98**	

With the submission of these documents, the input taxes claimed on importations and purchases of goods and service originally found by the Independent CPA as without supporting documents is only P652,324.38 (P6,041,889.36 less P5,389,564.98). In effect, the total exceptions per Report of the Independent CPA is reduced to P1,036,802.24.

However, from the claimed P5,389,564.98, only the amount of P2,899,074.32 qualifies as a valid input taxes on importation and purchases of goods and services. The remaining amount of P2,490,490.66 will still be disallowed for the following reasons:

	Input VAT	Exhibit	Reason for the disallowance
		Payee	
Bureau of Customs	P 584,887.00	"EE-1" to EE-2"	Amount reflected did not tally per bank statement
S.K. Hardware	34.10	"KK"	Out of period Claim (OR/Invoice dated 8/14/1999)
S.K. Hardware	90.91	"LL"	OR/Invoice with pre-printed "TIN-V" instead of "TIN-VAT"
S.K. Hardware	136.37	"NN"	OR/Invoice with pre-printed "TIN-V" instead of "TIN-VAT"
S.K. Hardware	837.28	"XX"	OR/Invoice with pre-printed "TIN-V" instead of "TIN-VAT"
Bureau of Customs	193,169.00	"S9"	IEIRD w/out Machine Validation nor Bank Certification
Bureau of Customs	6,513.00	"T9"	IEIRD w/out Machine Validation nor Bank Certification
Bureau of Customs	80,839.00	"Q30"	IEIRD w/out Machine Validation nor Bank Certification
Bureau of Customs	43,614.00	"R30"	IEIRD w/out Machine Validation nor Bank Certification
Bureau of Customs	603.00	"S30"	IEIRD w/out Machine Validation nor Bank Certification
Bureau of Customs	9,497.00	"T30"	IEIRD w/out Machine Validation nor Bank Certification
Bureau of Customs	6,513.00	"U30"	IEIRD w/out Machine Validation nor Bank Certification
Bureau of Customs	57,376.00	"V30"	IEIRD w/out Machine Validation nor Bank Certification
Bureau of Customs	395,264.00	"W30"	IEIRD w/out Machine Validation nor Bank Certification
Bureau of Customs	584,887.00	"Y37"	IEIRD w/out Machine Validation nor Bank Certification
Bureau of Customs	80,839.00	"Z37"	IEIRD w/out Machine Validation nor Bank Certification
Bureau of Customs	43,614.00	"A38"	IEIRD w/out Machine Validation nor Bank Certification
Bureau of Customs	6,513.00	"C38"	IEIRD w/out Machine Validation nor Bank Certification
Bureau of Customs	395,264.00		No IEIRD attached
Total	**P2,490,490.66**		

In addition, the amount of P917,785.79, supported by invoices/official receipts with pre-printed "TIN-V" or "TIN-NV" instead of "TIN-VAT", as required under Section 4.108-1 of Revenue Regulations No. 7-95, shall be disallowed:

Payee	Input VAT	Exhibit	Reason for the disallowance
Angelcon Properties	P 13,809.55	"R-8"	Pre-printed "TIN-V"
Angelcon Properties	154.55	"R-9"	Pre-printed "TIN-V"
Angelcon Properties	14,842.05	"R-10"	Pre-printed "TIN-V"
Five Star Bus Co., Inc.	28,363.64	"R-113"	Pre-printed "TIN-NV"
R.LL. Arcinue Construction	12,136.36	"R-247" to "251"	Pre-printed "TIN-V"
R.LL. Arcinue Construction	14,079.55	"R-247" to "251"	Pre-printed "TIN-V"
R.LL. Arcinue Construction	11,454.55	"R-247" to "251"	Pre-printed "TIN-V"
R.LL. Arcinue Construction	14,410.00	"R-247" to "251"	Pre-printed "TIN-V"
St. Marie Club Resort	1,727.28	"R-382" to "394"	Pre-printed "TIN-V"
St. Marie Club Resort	604.55	"R-382" to "394"	Pre-printed "TIN-V"
St. Marie Club Resort	518.19	"R-382" to "394"	Pre-printed "TIN-V"
St. Marie Club Resort	2,590.90	"R-382" to "394"	Pre-printed "TIN-V"
St. Marie Club Resort	807.91	"R-382" to "394"	Pre-printed "TIN-V"
St. Marie Club Resort	645.91	"R-382" to "394"	Pre-printed "TIN-V"
St. Marie Club Resort	786.91	"R-382" to "394"	Pre-printed "TIN-V"
St. Marie Club Resort	276.82	"R-382" to "394"	Pre-printed "TIN-V"
St. Marie Club Resort	563.00	"R-382" to "394"	Pre-printed "TIN-V"
St. Marie Club Resort	236.37	"R-382" to "394"	Pre-printed "TIN-V"
St. Marie Club Resort	1,288.28	"R-382" to "394"	Pre-printed "TIN-V"
St. Marie Club Resort	335.73	"R-382" to "394"	Pre-printed "TIN-V"
Ernalyn Engineering & Const.	10,000.00	"R-576"	Pre-printed "TIN-V"
Amzen Industries, Inc.	32,386.19	"R-991" to "994"	Pre-printed "TIN-V"
Amzen Industries, Inc.	13,751.28	"R-991" to "994"	Pre-printed "TIN-V"
Dagupan Tony's Lumber , Inc.	1,211.81	"R-1166" to "1169"	Pre-printed "TIN-V"
Dagupan Tony's Lumber , Inc.	860.36	"R-1166" to "1169"	Pre-printed "TIN-V"
Ernalyn Engineering & Const.	18,498.55	"R-11895"	Pre-printed "TIN-V"
R.LL. Arcinue Construction	40,909.09	"S-1013" to "1028"	Pre-printed "TIN-V"
R.LL. Arcinue Construction	7,840.91	"S-1013" to "1028"	Pre-printed "TIN-V"
R.LL. Arcinue Construction	8,471.13	"S-1013" to "1028"	Pre-printed "TIN-V"
R.LL. Arcinue Construction	19,468.19	"S-1013" to "1028"	Pre-printed "TIN-V"
R.LL. Arcinue Construction	342.64	"S-1013" to "1028"	Pre-printed "TIN-V"
R.LL. Arcinue Construction	43,345.91	"S-1013" to "1028"	Pre-printed "TIN-V"
R.LL. Arcinue Construction	57,661.36	"S-1013" to "1028"	Pre-printed "TIN-V"
R.LL. Arcinue Construction	7,840.91	"S-1013" to "1028"	Pre-printed "TIN-V"
R.LL. Arcinue Construction	4,942.91	"S-1013" to "1028"	Pre-printed "TIN-V"
R.LL. Arcinue Construction	61,862.27	"S-1013" to "1028"	Pre-printed "TIN-V"
Rotrade Phils. Inc.	3,363.63	"S-1032" to "1034"	Pre-printed "TIN-V"
Rotrade Phils. Inc.	4,945.45	"S-1032" to "1034"	Pre-printed "TIN-V"
Angelcon Properties	7,565.91	"S-1223" to "1225"	Pre-printed "TIN-V"
Angelcon Properties	176.82	"S-1223" to "1225"	Pre-printed "TIN-V"
Angelcon Properties	19,608.41	"S-1223" to "1225"	Pre-printed "TIN-V"
Angelcon Properties	21,605.00	"S-1223" to "1225"	Pre-printed "TIN-V"
Angelcon Properties	423.28	"S-1223" to "1225"	Pre-printed "TIN-V"
Ernalyn Engineering & Const.	17,272.73	"S-1405" to "1410"	Pre-printed "TIN-V"
Ernalyn Engineering & Const.	1,909.09	"S-1405" to "1410"	Pre-printed "TIN-V"
Ernalyn Engineering & Const.	979.72	"S-1405" to "1410"	Pre-printed "TIN-V"
Ernalyn Engineering & Const.	2,500.00	"S-1405" to "1410"	Pre-printed "TIN-V"
R.LL. Arcinue Construction	14,359.10	"S-1671"	Pre-printed "TIN-V"
R.LL. Arcinue Construction	8,518.18	"S-1672"	Pre-printed "TIN-V"
Angelcon Properties	20,134.10	"T-12"	Pre-printed "TIN-V"
DCN International Trading, Inc.	11,435.13	"T-143" to "T-146"	Pre-printed "TIN-V"
DCN International Trading, Inc.	69,829.20	"T-143" to "T-146"	Pre-printed "TIN-V"
DCN International Trading, Inc.	8,919.90	"T-143" to "T-146"	Pre-printed "TIN-V"
DCN International Trading, Inc.	65,721.00	"T-143" to "T-146"	Pre-printed "TIN-V"
Transman Brokerage & Transport Corp.	767.91	"T-398" to "T-403"	Pre-printed "TIN-NV"
Transman Brokerage & Transport Corp.	172.40	"T-398" to "T-403"	Pre-printed "TIN-NV"
Transman Brokerage & Transport Corp.	738.00	"T-398" to "T-403"	Pre-printed "TIN-NV"

Transman Brokerage & Transport Corp.	287.90	"T-398" to "T-403"	Pre-printed "TIN-NV"
Transman Brokerage & Transport Corp.	122.27	"T-398" to "T-403"	Pre-printed "TIN-NV"
Dagupan Tony's Lumber , Inc.	776.37	"T-711"	Pre-printed "TIN-V"
R.LL. Arcinue Construction	30,568.19	"T-1017"	Pre-printed "TIN-V"
R.LL. Arcinue Construction	14,659.10	"R-1662"	Pre-printed "TIN-V"
R.LL. Arcinue Construction	5,414.64	"R-1666"	Pre-printed "TIN-V"
R.LL. Arcinue Construction	8,477.28	"R-1668"	Pre-printed "TIN-V"
Valley Technologies , Inc.	6,561.42	"T-1905"	Pre-printed "TIN-V"
R.LL. Arcinue Construction	5,930.32	"U-471"	Pre-printed "TIN-V"
R.LL. Arcinue Construction	81,835.91	"U-471"	Pre-printed "TIN-V"
Republic Commodities Corporation	33,181.82	"U-478"	Pre-printed "TIN-V"
TOTAL	**P917,785.79**		

Further, the Court notes the following items[35] in the Independent CPA Report:

1. Input taxes amounting to P949,316.00 were claimed on importations supported by photocopied IEDs and certified true copies of bank statements. The IED showed the computation of the 10% VAT on each importation. The bank statement evidenced the actual payment of the VAT (See Annex 1).

2. Input taxes amounting to P23,712,158.00 were claimed on importations supported by photocopied IEDs with original bank statements and bank ORs or with original bank statement only. The IED showed the computation of the 10% on each importation. The bank statement or the bank OR evidenced the actual payment of the VAT. The duty, VAT and other charges are presented separately in the bank ORs. (See Annex 2)

3. Input taxes amounting to P90,695.00 were claimed on importations supported by photocopied IEDs and Original Bureau of Customs (BOC) ORs. The IED showed the computation of the 10% VAT on each importation. The BOC OR evidenced the actual payment of the VAT. The duty, VAT and other charges are presented separately in the BOC Ors. (See Annex 3)

4. Input taxes amounting to P528,306.00 were claimed on importations supported by original BOC ORs only. The BOC OR evidenced the actual payment of the VAT. The duty, VAT and other charges are presented in the BOC ORs. (See Annex

5. Input taxes amounting to P1,603,547.02 were claimed on purchases of goods for which the date of the related VAT invoices fall within the calendar quarters of 1999 (Outside the period of claim) (See Annex 5)

   We were able to ascertain, that there were no double claiming relative to these input taxes. These input taxes were claimed only in the 1st, 2nd, and 3rd quarters of 2000, and were not claimed in any quarters of 1999.

[35] Exhibit "O-6"

6. Input taxes amounting to P11,351.00 were claimed on importations supported by original bank ORs only. The bank OR evidenced the actual payment of the VAT. The duty, VAT and other charges are presented separately in the bank ORs. (See Annex 6)

7. The OR No. for input taxes amounting to P18,684,818.22 on purchases of services from Sual Construction Corporation for the month of September 2000 were presented in the "Schedule of VAT Input Tax" as 272 instead of 0051.

With respect to the input taxes in the amounts of P949,316.00, P23,712,158.00, P90,695.00, P528,306.00, and P11,351.00 under Nos. 1, 2, 3, 4, and 6, respectively, the Court finds these input taxes valid since the supporting original BOC or bank official receipts/bank statements clearly indicated the VAT paid by petitioner. Likewise, petitioner was able to present certified true copies of the Import Entry Declarations (IEDs) supporting the input taxes of P949,316.00 and P23,712,158.00.

As to the input taxes under No. 7 in the amount of P18,684,818.22, pertaining to petitioner's purchases of services from Sual Construction Corporation for the month of September 2000, the Court finds the same valid since it is properly supported by a VAT official receipt.[36]

As regards the input taxes of P1,603,547.02 (under No. 5) referring to petitioner's purchases of goods for which the date of the related VAT invoices fall within the calendar quarters of 1999 (outside the period of claim), the same shall be denied because petitioner should have declared these input taxes in the corresponding taxable quarters when the purchases of goods were consummated as evidenced by VAT invoices, in keeping with this Court's decision in the case of **Lepanto Consolidated Mining Co. vs. Commissioner of Internal Revenue**[37], thus:

"We agree with the respondent.

---

[36] Exhibit "T-1832"
[37] CTA Case Nos. 6368 and 6480, December 15, 2004

The alleged unutilized input VAT of P5,820,863.87 should be denied since the supporting invoices and official receipts thereof bore dates which were earlier than the period of petitioner's claim. Section 110(A)(2) of the 1997 Tax Code provides:

> '**SECTION 110.** *Tax Credits.* —
>
> A. *Creditable Input Tax.* —
>
> 2. The input tax on domestic **purchases of goods** or properties shall be creditable:
>
> (a) To the purchaser **upon consummation** of sale and on importation of goods or properties; and
>
> However, in the case of **purchases 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.'

It is clear from the above-quoted provisions of law that for purchases of goods, the corresponding input value added taxes of which is creditable to the purchaser upon consummation of sale, that is, upon the issuance of the corresponding invoice. On the other hand, for purchases of services, the corresponding input value added taxes of which is creditable to the purchaser upon payment of compensation, rental, royalty, or fee, that is, upon the date of official receipt. Section 110(A) is explicit. It states 'upon consummation', in the case of domestic purchases of goods, and 'upon payment', in the case of purchases of services. It does not provide any qualification, such as 'upon delivery of invoice or official receipt' which is the main thesis of petitioner's contention.

In a resolution of the case entitled **Telecommunications Technologies Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6168, promulgated on July 28, 2004**, this Court elucidated that 'the input VAT on domestic purchases of goods or properties shall be allowed as tax credit to the purchaser upon consummation of sale, which means upon issuance by the seller of the VAT sales invoices evidencing the sale of goods/properties. On the other hand, the input VAT on purchases of services shall be available as tax credit to the purchaser only upon payment of the compensation or fee, *i.e.*, upon issuance by the seller of the VAT official receipt evidencing receipt of the payment for services performed or yet to be performed.'

Thus, it is indubitable on the part of the petitioner to declare the input value added taxes on domestic purchases of goods and services at the end of the corresponding taxable quarter where purchases of goods were consummated, as evidenced by VAT invoice and for payment of services, as evidenced by VAT official receipt.

Therefore, the amount of input VAT of P5,820,863.87 which is supported by VAT invoices and official receipts dated earlier than the period of petitioner's claims can no longer be claimed for refund pursuant to Section 110(A) in relation with Section 112(A) of the 1997 National Internal Revenue Code."

From the total claimed input taxes of P179,314,926.56, petitioner was able to substantiate only the amount of P173,266,300.85, computed as follows:

Input VAT Claim		P 179,314,926.56
Less: Disallowances		
a. Per independent CPA	P 6,426,367.22	
Less: input taxes for which documents were subsequently submitted by petitioner	5,389,564.98	1,036,802.24
b. Invalid documents supporting part of the claimed input tax of P5,389,564.98		2,490,490.66
c. Input taxes supported by invoices or official receipts with pre-printed "TIN-V" or "TIN-NV" instead of "TIN-VAT"		917,785.79
d. Input taxes on purchases of goods for which the related VAT invoices fall outside the period of claim		1,603,547.02
Total Disallowances		P 6,048,625.71
Substantiated Input VAT		**P173,266,300.85**

The Court now proceeds to the issue of whether or not the claimed input taxes are attributable to zero-rated sales and not applied against any output VAT liability.

Petitioner's VAT Return for the third quarter of 2000[38] reflected an output tax due of P1,039.55 which should be deducted from the substantiated input tax of P173,266,300.85. Thus, only the resulting excess input tax of P173,265,261.30 is entirely attributable to petitioner's zero-rated sales:

Substantiated Input VAT	P 173,266,300.85
Less: Output VAT	1,039.55
Substantiated Excess Input VAT	**P173,265,261.30**

Although the claimed input tax was carried-over to the succeeding quarters until the first quarter of 2002, the same was deducted as "Any VAT Refund/TCC Claimed"[39] from the "Total Available Input Tax" of P382,414,953.99 as of the first quarter of 2002. Thus, the

[38] Exhibit "C"
[39] Exhibit "I-5"

subject claim no longer formed part of the excess input VAT of P200,018,925.75 as of the first quarter of 2002 which was to be carried over/applied to the succeeding second quarter of 2002.

Anent the last requisite, it had been declared by the High Tribunal in the case of **Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue**[40] that the reckoning of the two-year prescriptive period given to taxpayers to file a claim for VAT refund shall commence from the date of filing of the corresponding Quarterly VAT Returns. Here, the earliest quarter covered by the present claim is the first quarter of 2000, for which petitioner filed its Quarterly VAT Return on April 24, 2000[41]. Counting from said date, both the administrative claim filed on March 11, 2002[42] and the Petition for Review filed on April 1, 2002 fell within the two-year prescriptive period.

In sum, petitioner is entitled to a refund or issuance of tax credit certificate for its unutilized input VAT on domestic purchases and importation of goods and services attributable to its zero-rated sales to NPC for taxable year 2000, in the reduced amount of P173,265,261.30.

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or to **ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of P173,265,261.30.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

[40] G.R. Nos. 141104 and 148763, June 8, 2007
[41] Exhibit "A"
[42] Par. 7, JSFI, Docket, p. 148

WE CONCUR:

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

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division