REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

TOLEDO POWER CO.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NOS. 6805 & 6851

Members:

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

Promulgated:

MAY 17 2007; 10:40 am

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DECISION

ACOSTA, P.J.:

This consolidated case seeks the refund of petitioner's alleged excess and unutilized input Value Added Tax (VAT) in the total amount of P9,129,370.27, representing unutilized input VAT paid on its domestic purchases of taxable goods and services, as well as importation of goods for the third and fourth quarters of 2001, attributable to petitioner's zero-rated sales of electricity pursuant to the Electric Power Industry Reform Act of 2001 (EPIRA).

The following are the facts of the case as culled from the records:

Petitioner is a general partnership duly organized and existing under Philippine laws, with principal office at Sangi, Toledo City, Cebu. It is principally

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engaged in the business of power generation and subsequent sale thereof to the National Power Corporation (NPC), Cebu Electric Cooperative III (CEBECO), Atlas Consolidated Mining and Development Corporation, Atlas Fertilizer Corporation and Cebu Industrial Park Development, Inc., and is registered with the Bureau of Internal Revenue (BIR) as a Value Added Tax taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC) with Tax Identification No. 003-883-626-VAT and BIR Certificate of Registration bearing RDO Control No.94-083-000300.

On June 20, 2002, petitioner filed an application with the Energy Regulatory Commission (ERC) for the issuance of a Certificate of Compliance pursuant to the Implementing Rules and Regulations of R.A. 9136, otherwise known as the "Electric Power Industry Reform Act of 2007" (EPIRA).

On October 25, 2001, petitioner filed with the BIR Revenue District Office (RDO) No. 83 at Toledo City, Province of Cebu, its Quarterly VAT Return for the third quarter of 2001 declaring, among others, the following:

Zero Rated Sales/Receipts	P143,000,032.37
Taxable Sales-Sale of Scrap/Others	378,651.74
Output Tax	34,422.89
Less: Input Tax	
On Domestic Purchases	4,765,458.58
On Importation of Goods	1,242,792.00
Total Available Input Tax	6,008,250.58
Excess Input Tax & Overpayment	(P5,973,827.69)

However, an amended Quarterly VAT Return for the same quarter of 2001 was filed on November 22, 2001. The amended return shows unutilized input VAT credits of P5,909,588.96 arising from petitioner's taxable purchases for the third quarter of 2001 and the following other information:

Zero Rated Sales/Receipts	P143,000,032.37
Taxable Sales-Sale of Scrap/Others	378,651.74

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Output Tax	34,422.89
Less: Input Tax	
On Domestic Purchases	4,718,099.85
On Importation of Goods	1,225,912.00
Total Available Input Tax	5,944,011.85
Excess Input Tax & Overpayment	**(P5,909,588.96)**

Thus, for the third quarter of 2001, petitioner allegedly has unutilized input VAT in the total amount of P5,909,588.96 on its domestic purchase of taxable goods and services and importation of goods, which purchases and importations are all attributable to its zero-rated sale of power generation services to NPC, CEBECO, Atlas Consolidated Mining and Development Corporation, Atlas Fertilizer Corporation and Cebu Industrial Park Development, Inc. Said input VAT of P5,909,588.96 paid by petitioner on its domestic purchase of goods and services for the third quarter of 2001 allegedly remained unutilized against output VAT liability in said period or even in subsequent quarters.

On January 25, 2002, petitioner filed with the BIR RDO No. 83 at Toledo City, Province of Cebu, its Quarterly VAT Return for the fourth quarter of 2001 declaring, among others, the following:

Zero Rated Sales/Receipts	P127,259,720.44
Taxable Sales-Sale of Scrap/Others	309,697.50
Output Tax	28,154.33
Less: Input Tax	
On Domestic Purchases	1,374,608.64
On Importation of Goods	1,873,327.00
Total Available Input Tax	3,247,935.64
Excess Input Tax & Overpayment	**(P3,219,781.31)**

Thus, petitioner allegedly had an excess input VAT credits of P3,219,781.31 for the fourth quarter of 2001 which remained unutilized against output VAT liability in said period or even in the subsequent quarters.

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For the third and fourth quarters of 2001, petitioner incurred and accumulated input VAT from its domestic purchase of goods and services, which are all attributable to its zero-rated sales of power generation services to NPC, CEBECO, Atlas Consolidated Mining and Development Corporation, Atlas Fertilizer Corporation and Cebu Industrial Park Development, Inc. in the total amount of P9,129,370.27. Said excess and unutilized input VAT was allegedly not utilized against any output VAT liability in the subsequent quarters nor carried over to the succeeding taxable quarters.

On September 30, 2003, pursuant to the procedure prescribed in Revenue Regulations No. 7-95, as amended, petitioner filed with the BIR RDO No. 83, an administrative claim for refund of unutilized input VAT for the third and fourth quarters of 2001 in the amounts of P5,909,588.96 and P3,219,781.31, respectively, or the aggregate amount of P9,129,370.27.

Respondent has not ruled upon petitioner's administrative claim and in order to preserve its right to file a judicial claim for the refund or issuance of a tax credit certificate of its unutilized input VAT, petitioner filed a Petition for Review to suspend the running of the two-year prescriptive period under Section 112(D) of the 1997 NIRC and Section 4.106-2(c) of Revenue Regulations No. 7-95, as amended. On October 24, 2003 petitioner filed a Petition for Review for the refund or issuance of a tax credit certificate in the amount of P5,909,588.96 for the third quarter of 2001, docketed as CTA Case No. 6805 and on January 22, 2004, filed another Petition for Review for the refund or issuance of tax credit certificate in the amount of P3,219,781.31 for the fourth quarter of 2001, docketed as CTA case No. 6851, both

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for its unutilized input VAT paid by petitioner on its domestic purchases of goods and services and importation of goods attributable to zero-rated sales.

On January 30, 2004, petitioner filed a Motion for Consolidation CTA Case Nos. 6805 and 6851, since these cases involve the same parties, same facts, and issues.[1] The said Motion was granted in open court on February 27, 2004 and confirmed in a Resolution dated March 8, 2004.[2]

In his Answers to the two Petitions for Review for the two cases of Toledo Power Co., vs. CIR, docketed as CTA Case Nos. 6805 and 6851, respondent asserted the following Special and Affirmative Defenses, to wit:

> "3. He reiterates and pleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses;
>
> 4. Petitioner's claims for refund is subject to administrative investigation/examination by the respondent;
>
> 5. To support its claim, it is imperative for petitioner to prove the following, viz:
>
> a. The registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of the Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;
>
> b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the Tax Code as amended;
>
> c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, **otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition sine qua non prior to the filing of judicial claim** in accordance with the provision of Section 229 of the Tax Code, as amended.

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[1] *Pages 172, Records*
[2] *Page 176-177, Records.*

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It is worthy of emphasis that Section 112 (D) of the Tax Code, as amended, requires the **submission of complete documents in support of the application** filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and **before the taxpayer could avail of judicial remedies as provided for in the law**. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.

d. That the input taxes of [P5,909,588.96 & P3,219,781.31] allegedly paid by the petitioner on its (domestic) purchases of goods and services for the [third and fourth] quarter of 2001 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters:

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the Tax Code, as amended;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal, showing that it actually paid VAT in accordance with Sections 110 (A)(2) and 113 of the Tax Code as amended, and in pursuance to Section 4.104-5 (a) & (b) of Revenue Regulations NO. 7-95 (Re: Substantiation of Claims for Input Tax Credit);

g. The requirements as enumerated under Section 4.104-2 of the Revenue Regulations 7-95 (Re: Persons who can avail of the Input Tax Credits);

6. Furthermore, in action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because 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 vague implications (Asiatic Petroleum Co. {P.I.} v. Llanes, 49 Phil. 446 cited in

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Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil. 670);

7. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation."

After presenting its testimonial and documentary evidence, petitioner formally offered its evidence on February 16, 2006. On March 24, 2006, this Court promulgated a Resolution admitting all the exhibits offered by petitioner. Respondent, on the other hand, failed to adduce any evidence.

In a Resolution dated July 6, 2006, this consolidated case was ordered submitted for decision with only petitioner's Memorandum, as respondent failed to file one within the period given by the Court.

Based on the Joint Stipulation of Facts and Issues dated June 2, 2004, the following are the issues to be resolved by the Court:

1. Whether or not the power generation services rendered by Petitioner to NPC, CEBECO, Atlas Consolidated Mining and Development Corporation, Atlas Fertilizer Corporation and Cebu Industrial Park Development, Inc. are subject to zero-percent (0%) VAT pursuant to the EPIRA and its implementing rules and regulations;

2. Whether or not Petitioner has unutilized input VAT for the third and fourth quarters of CY 2001 in the amount of ₱9,129,370.27 arising from its domestic purchases of taxable goods and services and importation of goods;

3. Whether or not the unutilized input VAT are attributable to its zero-rated sales of electricity to NPC, CEBECO, Atlas Consolidated Mining and Development Corporation, Atlas Fertilizer Corporation and Cebu Industrial Park Development, Inc.;

4. Whether or not the administrative claim for refund was seasonably filed;

5. Whether or not the unutilized creditable input taxes for the third and fourth quarter of CY 2001 are properly substantiated by invoices and official receipts;

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6. Whether or not the unutilized input VAT payments for the third and fourth quarter(s) *[sic]* of CY 2001 were carried over to and utilized in the succeeding taxable quarter(s) or applied against any of the output VAT liability of the Petitioner; and,

7. Whether or not Petitioner is entitled to a refund and/or issuance of tax credit certificate for the unutilized input VAT in the amount of P9,129,370.27.

This Court will first resolve the question on the timeliness of the filing of the instant claim, both in the administrative and judicial levels.

Section 112 (A) of the 1997 Tax Code, which is the controlling provision as regards the prescribed period for filing claims for refund of input VAT, is hereunder quoted, thus:

> "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." (E*mphasis supplied*)

Based on the above-quoted provision, it is clear that applications for issuance of a tax credit certificate or refund of creditable input tax must be made within two (2) years from the close of the taxable quarter when the sales were made.

In this case, petitioner filed its third and fourth quarterly VAT returns for 2001 on October 25, 2001 and January 25, 2002, respectively. Petitioner then filed an administrative claim for refund for unutilized input VAT for the third and fourth quarters of 2001 on September 30, 2003, while the judicial claims for refund for unutilized input VAT covering the same period was filed on October 24, 2003 and

January 22, 2004. Accordingly, petitioner's administrative and judicial claims for refund were timely filed within the two-year prescriptive period provided by law.

We now resolve the first issue which relates to the legal basis of petitioner's claim for refund or issuance of tax credit certificate.

Petitioner contends that the power generation services it rendered to NPC, CEBECO, Atlas Consolidated Mining and Development Corporation, Atlas Fertilizer Corporation and Cebu Industrial Park Development, Inc. are subject to zero-percent (0%) VAT pursuant to the EPIRA and its implementing rules and regulations.

At this juncture, the Court deems it proper to consult the provisions of the EPIRA and its implementing rules. Section 4(x), in relation to Section 6 of the EPIRA are hereunder quoted inasmuch as the legal basis of the grant of zero-rating lie in their provisions:

> "SECTION 4. Definition of Terms. – (x) "Generation Company" refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity:"
>
> "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.
>
> xxx
>
> 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**. (*Emphasis supplied*)

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In connection with the above provisions, **Rules 5 of Section 6 of the Rules and Regulations to Implement EPIRA**, promulgated by the Department of Energy, states:

> "RULE 5. GENERATION SECTOR
>
> Section 6. Generation Charges and VAT.
>
> (a) xxx
>
> (b) **Pursuant to the policy of reducing electricity rates to End-users, sales of generated power by Generation Company shall, from the effectivity of the Act, be zero-rated for the purpose of imposition of value-added tax.** Towards this end, **the imposition of zero percent (0%) VAT shall apply to the sale of generated power by a Generation Company through all stages of sale until it reaches the End-user.** The DOF, through the BIR, shall issue the necessary revenue regulation within sixty (60) calendar days from the effectivity of these Rules." (*Emphasis supplied*)

From the foregoing quotations, the benefits of zero-rating are clearly granted. And as correctly pointed out by petitioner, this opinion is corroborated by several rulings of the Revenue Bureau.

In a ruling dated May 13, 2002, addressed to the Power Sector Assets and Liabilities Management Corporation (PSALM), respondent confirmed that the sale of electricity by the PSALM, an ERC-registered generation company, is subject to zero-percent (0%) VAT by virtue of the EPIRA:

> Section 6(b), Rule 5 of the IRR in relation to Section 4(x) of the EPIRA, however, expressly provides that the sale of generated power by generation companies shall upon effectivity of the Act, be subject to zero percent (0%) VAT. **Since PSALM, once registered with the ERC will fall within the definition of a Generation Company under Rule 5 of the aforesaid IRR with respect to its sales of generated power, we confirm your opinion that its sale of generate power will be subject to VAT at the rate of zero percent (0%).** (*Emphasis supplied*)

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Likewise, then Deputy Commissioner Jose Mario Buñag in VAT Ruling No. 050-03 dated December 1, 2003[3] clarified the matter:

xxx xxx xxx

"ISSUE C: How shall we treat the sales of power generating companies? Automatically or effectively zero-rated? (Note: the Power Industry Reform Act of 2001 states that sales shall be VAT zero-rated).

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Please be informed that the Secretary of Finance himself, in the exercise of his review power under Section 4, NIRC of 1997, has ruled in his memorandum to the Commissioner of Internal Revenue, dated January 26, 1998, in the case of SAN PASCUAL CO-GENERATION CO., that sale of electricity to the National Power Corporation (NPC) is entitled to the benefit of effectively zero-rated VAT. This ruling was issued based on the provisions of the VAT law, in relation to the Charter of the NPC, hence, limited in application.

However, Section 6, R.A. No. 9136, known as the 'Electric Power Industry Reform Act of 2001.' (EPIRA) and its Implementing Rules and Regulations (IRR) provides that '*...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...*' Thus, it was held in BIR RULING No. 20-02, dated May 13, 2002, as follows:

'Section 6(b), Rule 5 of the IRR in relation to Section 4(x) of the EPIRA, however, expressly provides that the sale of generated power by generation companies shall, upon the effectivity of the Act, be subject to zero percent (0%) VAT. Since PSALM, once registered with the ERC will fall within the definition of a Generation Company under Rule 5 of the aforesaid IRR with respect to its sale of generated power, we confirm your opinion that its sale of generated power will be subject to VAT at the rate of zero percent (0%).'

The above quoted statute does not qualify; hence, there is no basis for this Office to make any qualification. It follows, that sale of generated power by generation companies is entitled to the benefit of the zero percent (0%) VAT, pursuant to Section 6, R.A. No. 9136, without any qualification that it is merely entitled to effectively zero-rated VAT. (*Emphasis supplied*)

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[3] *In his Memorandum for Assistant Commissioner Nora E. Tamayo on the latter's Memorandum for the Chairman of the VAT Review Committee, dated September 18, 2002*

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The provision for the entitlement of sale of generated power by generation companies to the benefit of zero percent (0%) VAT as provided in the afore-quoted provisions and opinions is similarly echoed by this Court in the case of **Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue**, *CTA Case No. 6788 dated October 13, 2005.* The Court of Tax Appeals ruled that:

> Anent the first issue, **it is undisputed that Republic Act No. 6136 otherwise known as the 'Electric Power Industry Reform Act of 2001' provided for VAT zero-rating of sales of generated power by generation companies beginning June 26, 2001.** Thus, the pertinent provisions of the National Internal Revenue Code of 1997 are deemed amended by the provisions of RA No. 6136 by modifying the VAT rate applicable to sales of generated power by generation companies from ten (10%) percent to zero (0%) percent.
>
> **To qualify for VAT zero-rating under R.A. No. 6136, petitioner must prove that: 1) it is a generation company and 2) it derived sales from power generation**. (*Emphasis supplied*)

In the present case, petitioner is principally engaged in the business of generating power for lighting and power purposes and whole-selling the electric power to the NPC, CEBECO, Atlas Consolidated Mining and Development Corporation, Atlas Fertilizer Corporation and Cebu Industrial Park Development, Inc.

Evidence on record, such as petitioner's application with the Energy Regulatory Commission (ERC) for the issuance of a Certificate of Compliance pursuant to the Implementing Rules and Regulations of Republic Act No. 9136 proves that it qualifies under Section 4(x) of EPIRA as a generation company.

Verily, its sales of electricity to NPC, CEBECO, Atlas Consolidated Mining and Development Corporation, Atlas Fertilizer Corporation and Cebu Industrial Park Development, Inc. in the third and fourth quarters of 2001, as evidenced by VAT

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official receipts/invoices, are subject to 0% VAT by virtue of the EPIRA, its implementing regulations and the consistent interpretative rulings of the BIR.

It is worth stressing that the provisions of EPIRA, the regulations implementing the same, the interpretative rulings issued by the BIR and the CTA Decision on the case of Mindanao I Geothermal Partnership are unanimous in declaring that the sales of generated power by generation companies are VAT zero-rated. There appears no compelling reason to deviate from these findings.

This Court will now resolve the remaining unresolved issues together inasmuch as they all relate to the matter of substantiation and factual basis of the claim.

As found by the Commissioned Independent CPA[4] (ICPA) out of the total input VAT of P9,191,947.49,[5] the amount of P8,912,887.00 was properly substantiated by the required documents for VAT purposes. The ICPA added that out of the total input VAT ascertained to be properly substantiated, P20,696.34 represents input VAT that are out-of-period claims while P52,363.64 represents input VAT on domestic purchases of services supported by ORs with printed "TAN VAT" but stamped "TIN VAT" which were printed before July 31, 1991. The ICPA's observation on the remaining input VAT amounting to P279,060.49 is reproduced hereunder:

A.	Input VAT on domestic purchases of services supported by documents other than VAT ORs	2,030.18
B.	Input VAT on domestic purchases of goods supported by invoices with printed "TAN VAT".	2,110.43

[4] *Exhibit R*
[5] Should be properly called "Total Available Input VAT"; it represents the amount before deducting Output VAT of P62,577.22. Note that the claimed unutilized input VAT of P9,129,370.27 is the difference between the total available input VAT of P9,191,947.49 and the output VAT of P62,577.22; Exhibits B, I, C & J.

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C.	Input VAT on domestic purchases of goods supported by invoices with no TIN indicated	909.09
D.	Input VAT on domestic purchases of goods supported by invoices with "NV"	3,246.99
E.	Input VAT on domestic purchases of services supported by ORs with printed "TIN" only	1,441.15
F.	Input VAT on domestic purchases of goods supported by invoices with printed "TIN" only	1,645.45
G.	Input VAT on domestic purchases of goods supported by photocopied VAT invoices	240.00
H.	No available supporting documents presented	267,437.20
TOTAL		**279,060.49**

Except for the finding that the input VAT on domestic purchases of services supported by invoices in the amount of P1,852.99 [(P2,030.18 (supported by documents other than VAT ORs) – P177.19 (supported by Billing Statements)] should be denied, Court finds the above-mentioned report to be in order.

The input VAT of P20,696.34 which were ascertained to be properly substantiated but are out-of-period claims should be disallowed. In the case of **Matsushita Business Machine Corporation of the Philippines vs. Commissioner of Internal Revenue**[6], the Court ruled that the input VAT supported by VAT invoices and official receipts dated earlier than the period of claims can no longer be claimed for refund. In the said case, the Court added that pursuant to settled jurisprudence, portion of the claim cannot be granted since those input taxes should have been declared in the corresponding taxable quarters when purchases of goods were consummated, as evidenced by VAT invoices or upon payment of the services, as evidenced by VAT official receipts.

[6] *CTA Case No. 6580, September 14, 2006*

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On the other hand, the P52,363.64 input tax on purchases of services supported by official receipts with printed "TAN VAT" but stamped "TIN VAT" which were printed before July 31, 1991 should be disallowed for failing to meet the substantiation requirements under Section 4.104-5 of Revenue Regulations No. 7-95 in relation to Sections 110 and 113 of the NIRC of 1997[7] and for non-compliance with Section 4.108-1 of Revenue Regulations No. 7-95[8].

The amounts P177.19, P7,242.68, P240.00, P267,437.20 or a total of P277,207.50 cannot be granted based on the following: (a) P177.19 input VAT on purchases of services supported by mere Billing Statements;[9] the P7,242.68 input VAT[10] should be disallowed for violation of the Invoicing Requirements under Section 4.108-1 of Revenue Regulations No. 7-95; the P240.00 input VAT on purchases of goods supported by photocopied VAT invoices[11] should be disallowed for petitioner's failure to present their original copies for comparison in violation of the best evidence rule; the P267,437.20 input VAT with no supporting documents presented.

Lastly, petitioner was able establish that its unutilized input VAT were neither applied against its output VAT liability during the subject quarters[12] nor carried over the claimed unutilized input VAT to the succeeding taxable quarter as shown in the Quarterly VAT return for the first quarter of 2002[13].

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[7] *Rio Tuba Nickel Mining Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6227, March 4, 2004; Mirant Pagbilao Corporation [formerly Southern Energy Quezon, Inc., vs. Commissioner of Internal Revenue, CTA Case Nos. 6628 & 6732, July 31, 2006*
[8] *Matsushita Business Machine Corporation of the Philippine, supra*
[9] *Annex A-6, CPA Report filed June 1, 2006*
[10] *The sum of items B to F, Observations of the independent CPA, as reproduced above*
[11] *Item G, supra*
[12] *Exhibits B, I, C & J*
[13] *Exhibit D*

In sum, petitioner was able to show its entitlement to the refund or issuance of tax credit certificate in the amount of P8,553,050.44 computed as follows:

Total Available Input VAT	P 9,191,947.49
Less: Disallowed Input VAT (P20,696.34+P52,363.64+P277,207.50)	350,267.48
Substantiated available input VAT	P 8,841,680.01
Less: Output VAT	62,577.22
Substantiated Unutilized Input VAT	P 8,779,102.79
Multiply by the ratio of substantiated zero-rated sales to the total zero-rated sales	
Substantiated zero-rated sales	263,300,858.02
Total zero-rated sales	270,259,752.81
Refundable Input VAT	P 8,553,050.44

IN VIEW OF THE FOREGOING, the Petition for Review is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED** to refund or to issue tax credit certificate in favor of petitioner in the reduced amount of P8,553,050.44 representing the substantiated unutilized input VAT for the third and fourth quarters of 2001.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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CERTIFICATION

Pursuant to Section 13, Article VIII 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

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