REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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MINDANAO II GEOTHERMAL PARTNERSHIP,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NOS. 7227, 7287 & 7317

Members:

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

Promulgated:

SEP 22 2008 3:05pm

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DECISION

CASANOVA, *J.*:

STATEMENT OF THE CASE

These consolidated cases seek refund or the issuance of a tax credit certificate of petitioner's alleged excess and/or unutilized input taxes for the year 2003 directly attributable to its only source of revenue which is VAT zero-rated in the aggregate amount of Php8,244,199.52, broken down as follows:

CTA Case No.	Period Covered	Amount (Php)
7227	1st Quarter, 2003	3,160,984.69
7287	2nd Quarter 2003	1,562,085.33
7317	3rd & 4th Quarters 2003	3,521,129.50

261

FACTS

Petitioner is a partnership duly registered with the Securities and Exchange Commission with principal address at Barangay Ilomavis, Kidapawan City, North Cotabato. It is registered as a Value-Added Tax (VAT) taxpayer with the Bureau of Internal Revenue. It has been accredited as a Block Power Production Facility by the Department of Energy.[1]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of her office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law. She holds office at the BIR National Office Building, Agham Road, Quezon City.

On March 11, 1997, petitioner allegedly entered into a Built-Operate-Transfer (BOT) Contract with the Philippine National Oil Corporation- Energy Development Company (PNOC-EDC) for finance, engineering, supply, installation, testing, commissioning, operation, and maintenance of a 48.25 megawatt geothermal power plant, provided that PNOC-EDC shall supply and deliver steam to petitioner at no cost. In turn, petitioner shall convert the steam into electric capacity and energy for PNOC-EDC and shall deliver the same to the National Power Corporation (NPC) for and in behalf of PNOC-EDC.[2]

Petitioner alleges that its sale of generated power and delivery of electric capacity and energy of petitioner to NPC for and in behalf of PNOC-EDC is its only revenue-generating activity[3] which is in the ambit of VAT zero-rated sales under the EPIRA Law[4], which states:

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[1] Admitted Facts, Joint Stipulation of Facts and Issues, Rollo, p. 132
[2] Petition for Review, Rollo, pp. 1-2
[3] Petition for Review, Rollo, p. 2
[4] On June 26, 2001, Republic Act (R.A.) No. 9136 took effect, and R.A. No. 9136, also known as the "Electric Power Industry Reform Act of 2001" (EPIRA), took effect on June 26, 2001. It was enacted by Congress to ordain reforms in the electric power industry, highlighting, among others, the importance of ensuring the reliability, security and affordability of the supply of electric power to end-users. Under the provisions of this Republic Act and its implementing rules and regulations, the delivery and supply of electric energy by generation companies became VAT zero-rated, which previously were subject to ten percent (10%) VAT.

262

"Republic Act No. 9136

Electric Power Industry Reform Act of 2001 (EPIRA)

CHAPTER II
Organization and Operation of the Electric Power Industry

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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 the 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.

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 relation thereto, Section 6 of Chapter II and Section 6 of Rule 5 of its Implementing Rules and Regulations[5] state that:

[5] Rules and Regulations to Implement Republic Act No. 9136, entitled "Electric Power Industry Reform Act of 2001".

263

RULE 5

Generation Sector

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SECTION 6. *Generation Charges and VAT.* —

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> (b) Pursuant to the policy of reducing electricity rates to End-users, sales of generated power by a 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 DOE, through the BIR, shall issue the necessary revenue regulation within sixty (60) calendar days from effectivity of these rules."

Hence, the amendment of the NIRC of 1997 modified the VAT rate applicable to sales of generated power by generation companies from ten (10%) percent to zero percent (0%).

In the course of its operation, petitioner makes domestic purchases of goods and services and accumulates therefrom creditable input taxes. Pursuant to the provisions of the National Internal Revenue Code (NIRC), petitioner alleges that it can use its accumulated input tax credits to offset its output tax liability. Considering, however that its only revenue-generating activity is VAT zero-rated under RA No. 9136, petitioner's input tax credits remained unutilized.

Thus, on the belief that its sales qualify for VAT zero-rating, petitioner adopted the VAT zero-rating of the EPIRA in computing for its VAT payable when it filed its Quarterly VAT Returns on the following dates:[6]

[6] Admitted Facts, Joint Stipulation of Facts and Issues, Rollo, p.133

264

CTA Case No.	Period Covered (2003)	Date of Filing	
		Original Return	Amended Return
7227	1st Quarter	April 23, 2003	July 3, 2002, April 1, 2004 & October 22, 2004
7287	2nd Quarter	July 22, 2003	April 1, 2004
7317	3rd Quarter	Oct. 27, 2003	April 1, 2004
7317	4th quarter	Jan. 26, 2004	April 1, 2004

Considering that it has accumulated unutilized creditable input taxes from its only revenue-generating activity, petitioner filed an application for refund and/or issuance of tax credit certificate with the BIR's Revenue District Office at Kidapawan City on April 13, 2005 for the four quarters of 2003.

To date, the application for refund by herein petitioner remains unacted by the respondent.[7] Hence, these three petitions filed on April 22, 2005 covering the 1st quarter of 2003; July 7, 2005 for the 2nd quarter of 2003; and September 9, 2005 for the 3rd and 4th quarters of 2003. At the instance of the petitioner, these petitions were consolidated on March 15, 2006[8] as they involve the same parties and the same subject matter. The only difference lies with the taxable periods involved in each petition.

Respondent, in her Answers, interposed the following special and affirmative defenses:

For CTA Case No. 7227:[9]

"4. On the face of the petition, petitioner's administrative and judicial claim has prescribed;

5. As petitioner states in its petition before this Honorable Court, the subject of its claim for refund, are accumulated excess input tax for the first quarter of 2003, in the amount of P3,160,984.69;

6. The specific, applicable provision of law governing the period for filing applications for refund of input taxes attributable to VAT

[7] Ibid.
[8] Rollo, pp. 93-94.
[9] Rollo, pp. 35-38.

265

zero-rated sales is Section 112 (A) of the Tax Code of 1997. The said section 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 x x x." *(emphasis supplied)*

By this specific provision of law, the two-year limitation on claims for refund of input tax attributable to zero-rated sales commences **from the close of the taxable quarter** when the sales were made;

8. On the other hand, Sections 204 (C) and 229 of the Tax Code of 1997 provide for a period of limitation of two years from the date of payment of tax for filing a claim for refund of taxes erroneously or illegally collected. It should be noted that both these provisions are general provisions governing such claims regardless of type of tax;

9. The seeming inconsistency is eliminated by utilizing legal rules of interpretation and construction. The applicable rule is *Generalia specialibus non derogant*. Where there is in the same statute a particular or special provision, and also a general one which in its most comprehensive sense would include what is embraced in the special or particular provision, the latter must be operative, and the general provision can only affect such cases as are not within the particular provision.[10] In other words, Section 112 (A) of the Tax Code, a specific provision on claims for refund of input tax attributable to zero-rated sales, must be operative and Sections 204 and 229 of the same, both more general provisions, can only govern those cases outside the ambit of Section 112 (A);

10. Petitioner, who claims to be VAT registered, whose sales are alleged to be zero-rated, and who is claiming for refund of input taxes attributable to the said zero-rated sales, is a proper subject of Section 112 (A) of the Tax Code. Therefore, its claim for refund should be filed within two years after the close of the first taxable quarter of 2003, or commencing from 1 April 2003 up to 1 April 2005. To interpret otherwise would make portions of Section 112 (A) inoperative, in violation of an accepted legal maxim;

[10] Neri vs. Akutin, 74 Phil 185; Lichauco vs Apostol, 44 Phil 138. (adopted from respondent's answer, Rollo, p. 36).

11. Petitioner avers that it filed its administrative claim with the Bureau on 13 April 2005, or fourteen (14) days from the lapse of the two year period. Petitioner filed its judicial claim on 22 April 2005, or twenty-one (21) days after the expiration of the period for filing a claim for refund. Thus, petitioner's claim, filed beyond the period mandated by law, cannot prosper;

12. Petitioner's claim for refund is subject to administrative investigation by the Bureau;

13. Petitioner must prove that it paid the alleged VAT input taxes for the period in question;

14. Petitioner must prove that the same alleged input VAT was not utilized against any output VAT liability;

15. Petitioner must prove that its sales are VAT zero-rated as contemplated under Section 112 (A) of the Tax Code of 1997;

16. Petitioner must prove that the alleged VAT input taxes for the period in question are attributable to its alleged VAT zero-rated sales;

17. Granting without conceding, that the two-year period of limitation does not commence from 1 April 2003, petitioner must prove that the claim was filed within the two (2) year period prescribed in Section 229 of the tax Code;

18. In an 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;

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

For CTA Case No. 7287:[11]

"4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

5. The amount of P1,562,085.33 being claimed by the petitioner as alleged excess and/or unutilized input tax for the 2nd quarter of the year 2003 was not properly documented;

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[11] Rollo, pp. 22-23.

267

6. In an 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;

7. Petitioner must show that it has complied with the provisions of Sections 204 (C) and Section 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and such, they are looked upon bwith [with] disfavor [.] (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)."

CTA Case No. 7317:[12]

"4. He reiterates and repleads the preceding paragraphs of this [his] answer as part of his Special and Affirmative Defenses;

5. Petitioner's claim for refund is subject to administrative investigation/examination by the respondent;

6. 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 of VAT registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 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 the 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

[12] Rollo, pp. 32-35.

268

amended. 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 P3,521,129.50 allegedly paid by the petitioner on its purchases of goods and services for the period July 1 to December 31, 2003 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 the 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 and 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);

7. Furthermore, in an 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. 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc. 98 Phil. 670);

265

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

After trial on the merits, this case was submitted for decision on March 5, 2008 without the parties' respective Memorandum.

ISSUES

Both parties submitted the following issues[13] for this Court's resolution:

"1. Whether or not petitioner's administrative claim has prescribed;

2. Whether or not petitioner's judicial claim has prescribed;

3. Whether or not petitioner paid the alleged creditable input taxes for the period in question.

4. Whether or not the alleged creditable input taxes were not utilized against any output taxes liability of petitioner.

5. Whether or not petitioner's sales are VAT zero-rated as contemplated under Section 112 (A) of the Tax Code of 1997.

6. Whether or not petitioner's alleged creditable input taxes for the period in question are attributable to its alleged VAT zero-rated sales.

7. Whether or not petitioner's claim for refund or issuance of tax credit certificate is properly documented.

8. And in sum, whether or not petitioner is entitled to the claim of refund or issuance of tax credit certificate in the amount of P8,244,199.52 representing its unutilized and/or applied input taxes for the year 2003 directly attributable to its only source of revenue which is VAT zero-rated."

The issues raised by both parties may be summed up into one: "Whether or not, based from the evidence presented, petitioner is entitled to a refund or issuance of a tax credit certificate worth P8,244,199.52 representing its alleged excess and/or unutilized input taxes for the year 2003 directly attributable to its only source of revenue which is VAT zero-rated."

[13] Joint Stipulation of Facts & Issues, Rollo, p. 133

THE COURT'S RULING

The petition is meritorious.

Petitioner delivers and supplies energy to NPC for and in behalf of PNOC-EDC. Such transaction prior to the enactment and effectivity of the EPIRA Law is subject to 10% VAT as provided in the Tax Code, which reads as follows:

> "**SEC. 108.** ***Value-added Tax on Sale of Services and Use or Lease of Properties. –***
>
> **(A)** ***Rate and Base of Tax.*** - There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.
>
> The phrase *'sale or exchange of services'* means the performance of all kinds or services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire another domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties."
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However, the passage of EPIRA Law amended the aforementioned provision 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 RA No. 9136, petitioner must prove that: (1) it is a generation company; and (2) it derived sales from power generation.[14]

Petitioner satisfied these two requirements.

A perusal of the records of the case reveal that the primary operation of the petitioner is to convert the steam delivered or supplied to it by PNOC-EDC into electric energy to be delivered to the NPC for and in behalf of the former. This is pursuant to the BOT contract with PNOC-EDC involving petitioner's 47-megawatt geothermal power plant which was accredited by the Department of Energy as a private generation facility on June 15, 1995 and thereafter.

The sale of generated power and delivery of electric capacity and energy of petitioner to NPC for and in behalf of PNOC-EDC is petitioner's only revenue-generating activity. Petitioner undoubtedly had sales of generated power as shown in their Quarterly VAT Returns for the first, second, third and fourth quarters of taxable year 2003 that reflected only zero-rated sales/receipts.[15]

Having satisfied the twin requirements for the VAT zero-rating under R.A. No. 9136, let us now determine whether or not petitioner is entitled to a refund or issuance of a tax credit certificate amounting to P8,244,199.52 representing its alleged unapplied and unutilized creditable input taxes for taxable year 2003 in accordance with Section 112 (A) of the National Internal Revenue Code (NIRC) of 1997, which reads as follows:

[14] Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue, CTA Case No. 6788, October 13, 2005.
[15] Exhibits "F", "J", "L", and "Y-7".

272

"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. "

From the foregoing, petitioner must comply with the following requisites to be entitled to a refund:

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

To begin with, Section 229 of the NIRC of 1997 provides for the period within which to file the claim for refund or tax credits, which reads:

"**Section 229.** *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

The two-year prescriptive period for the filing of a VAT refund claim should not be counted from the close of the quarter but from the date of filing of the VAT Return. VAT liability or entitlement of a refund can only be determined upon the filing of the Quarterly VAT Return, as stated by the Supreme Court in *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue:* [16]

> "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. xxx.
>
> xxx, 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."

In the instant case, the table below shows the dates of filing of petitioner's return as well as its administrative and judicial claim.

CTA Case No	Period Covered (2003)	Date of Filing			
		Original Return	**Amended Return**	**Administrative Claim**	**Judicial Claim**
7227	1st Quarter[17]	April 23, 2003	April 1, 2004	April 13, 2005[18]	April 22, 2005

[16] G.R. Nos. 141104 and 148763, June 8, 2007, 524 SCRA 73.

7287	2nd Quarter[19]	July 22, 2003	April 1, 2004	April 13, 2005[20]	July 7, 2005
7317	3rd Quarter[21]	Oct. 25, 2003	April 1, 2004	April 13, 2005[22]	Sept. 9 2005
7317	4th Quarter[23]	Jan. 26, 2004	April 1, 2004	April 13, 2005[24]	Sept. 9, 2005

Counting from April 23, 2003; July 22, 2003; October 25, 2003 and January 26, 2004 when petitioner filed its VAT Quarterly Returns, it can be deduced that its administrative claims, filed on April 13, 2005, and judicial claims filed on April 22, 2005, July 7, 2005, September 4, 2005, September 9, 2005, were timely filed in compliance with the Supreme Court ruling in Atlas.

From the foregoing, petitioner complied with the fifth requisite.

Anent the first requisite, this Court commissioned an Independent CPA who noted the following findings:[25]

> **"3. Tests of M2GP's Sales Invoices and Official Receipts**
>
> The total operating revenues of M2GP was generated from the sale of energy to Philippine National Oil Company-Energy Development Corporation ('PNOC-EDC'). Under RA 9136 otherwise known as the Electric Power Industry Reform Act ('EPIRA') of 2001, the sales of generated power by generation companies shall be VAT zero-rated. Hence, the sale of energy to PNOC-EDC are VAT zero-rated under the aforesaid EPIRA Law.
>
> Based on the Schedules of VAT Zero-rated Sales/Receipts, the amount billed to PNOC-EDC is composed of Capacity Payments and Energy Efficiency Payments. Capacity Payments is the sum of Capital Cost Recovery Fee (to be paid in US dollars), Fixed Operating Cost Recovery Fee (to be paid in Philippine pesos) and Service Fee for Return on Investment (stated in dollars but

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[17] Exhibit "F".
[18] Exhibit "Q".
[19] Exhibit "J".
[20] Exhibit "R".
[21] Exhibit "L".
[22] Exhibit "S".
[23] Exhibit "Y-7".
[24] Exhibit "T".
[25] Exhibit "X", p.6.

275

payable in equivalent Philippine Pesos using the prevailing exchange rate at the time of payment).

My examination of the sales invoices and official receipts issued by M2GP shows that all receipts reported in the Schedules of Zero-rated Sales/Receipts (Annex B) are properly reported in the Quarterly VAT Returns and recorded in the books. xxx"

This Court concurs with the above report. Petitioner is a power generation company duly accredited by the Department of Energy.[26] Based from the invoices and official receipts [27] issued by petitioner to PNOC-EDC, its only customer, petitioner's gross receipts from sale of electric power and energy for the four (4) quarters of 2003 amounted to P712,361,192.54.[28] Such gross receipts qualify for VAT zero-rating under RA 9136. Below is the breakdown of the amount of P712,361,192.54 as reflected in petitioner's amended Quarterly VAT Returns for the four quarters of 2003:

Exhibit	Period Covered for Year 2003	Zero-rated Receipts
I	1st Quarter	P 173,727,180.55
K	2nd Quarter	171,693,040.97
M	3rd Quarter	183,300,715.96
O	4th Quarter	183,640,255.06
		P 712,361,192.54

Concerning the second requisite, petitioner presented as evidence the Summaries of Input Taxes,[29] suppliers' invoices, official receipts and other relevant documents,[30] to support its reported unutilized input tax for the four quarters of 2003 in the amount of P8,244,199.52, broken down as follows:

[26] Admitted Facts, Joint Stipulation of Facts and Issues, Rollo, p132.
[27] Exhibits "Z-1" to "Z-33".
[28] Exhibit "X", Annexes B to B-4.
[29] Exhibits "AA", "BB", "CC" & "DD"
[30] Exhibits "AA-2" to "AA-16", "BB-2" to "BB-19", "CC-2 to CC-18" & "DD-2" to "DD-19" (with sub-markings).

Exhibit	Period Covered for Year 2003	Input VAT
I	1st Quarter	P 3,160,984.69
K	2nd Quarter	1,562,085.33
M	3rd Quarter	1,841,878.14
O	4th Quarter	1,679,251.36
		P 8,244,199.52

Upon examination of the aforesaid documents, the commissioned independent CPA presented the following findings: [31]

"Test of Supplier's Invoices, Official Receipts and Other Relevant Documents

Upon examination of the available supporting documents of **M2GP** and the schedules of purchases, the following were noted:

- **P2,090.16 / Annex D.1** – This amount pertains to the discrepancy between the amount of input VAT paid **(P 1,160,352.30)** certified (Certificate of Creditable Tax – BIR Form 2307/Exhibit "AA-5") and acknowledged (Acknowledgement Receipt – Exhibit "AA-5-a") by the Government Service Insurance System ('GSIS') and the amount of **P 1,162,442.46** claimed by **M2GP**. The input VAT claimed from GSIS is also supported by a BIR Tax Payment Slip (Exhibit "AA-5-b") for the remittance of the said creditable VAT together with the details (Exhibit "AA-5-c") showing the amount withheld from **M2GP**.

  Based on the supporting documents for this transaction with GSIS, input VAT being claimed by M2GP is based on the premium due for the period (Exhibit "AA-5-e"). Only ten percent (10%) of the premium was paid to GSIS and ninety percent (90%) was paid to Marnix Insurance Brokers and Risk Consultants ('Marnix') as the re-insurer (Exhibit "AA-5-g"). No input VAT is claimed by **M2GP** on its payment to Marnix. .

- **P29,861.82 / Annex D.2** – These input VAT claims, mainly from Tokio Marine Malayan Insurance and Citibank NA Manila, were however supported by billing statements; but for purposes of refund, said amount claimed were considered not valid because these are not supported by proofs of payment or official receipts.

[31] Exhibit "X", page 5.

- **P2,752.00 / Annex D.3** – During the course of my examination, I noted that the out-of-pocket expenses reimbursed to SGV & Company was included in the computation of input VAT. These reimbursements are not supported by valid invoices or official receipts.
- **P487,355.93 / Annex D.4** – This represents input VAT claims from purchases of services which are supported by valid 2003 invoices but are paid in 2004 as shown in the dates indicated in the official receipts. As a rule, VAT on purchases/sales of services are recognized when paid/collected and not when these were accrued in the books.

The rest of the input taxes paid are supported by original supplier's invoices and /or official receipts with all the particulars indicated therein, such as but not limited to suppliers' name, invoice numbers, tax identification number, official receipts number, BIR's permit to print, name of the customer and amounts, are within the period covered, are correctly computed and indicated buyer is the **M2GP**."

This Court adopts the independent CPA report. He is correct in stating that the above input taxes amounting to P522,059.91 shall be disallowed from petitioner's claim for failure to meet the invoicing requirements under Sections 110(A) and 113(A) of the NIRC of 1997 as implemented by Sections 4.104-1, 4.104-5 and 4.108-1 of Revenue Regulations No. 7-95.

Anent the third requisite, records show that petitioner is solely engaged in the sale of generated power and delivery of electric capacity and energy to NPC for and in behalf of PNOC-EDC[32]. Thus, the claimed input VAT is all attributable to petitioner's zero-rated receipts from sales of power generation services for all quarters of taxable year 2003.

Regarding the fourth requisite, petitioner's VAT returns for the four quarters of 2003 reflected no amount of output VAT liability against which the claimed input VAT maybe applied or credited[33]. Moreover, in its VAT return for the subsequent first quarter of 2004[34],

[32] Exhibits "E-1" "I", "K", "M" & "O".
[33] Exhibits "I", "K", "M" & "O".
[34] Exhibit "P".

petitioner reflected no amount of input VAT carried-over from the previous quarter. Thus, the input VAT claim was not utilized in the succeeding quarters.

However, the commissioned independent CPA noted in his report the following[35]:

> "The sale of fully depreciated Nissan Patrol in the amount of P200,000 (reported as Gain on sale of property, plant and equipment in the 2003 Audited Financial Statement) as evidenced by a non-VAT OR number 061 (Exhibit "Z-1") issued to Mr. Merlito Ancheta are supposed to be subject to the 10% VAT. The output VAT that should have been reported in this sale was not included in the VAT declarations. As such, the amount of input VAT claimed for refund should be reduced by the amount of VAT, i.e., P18,181.82 (Exception E/Annex D.5) pertaining to the aforesaid sale."

The independent CPA is correct in stating that the output VAT due amounting to P18,181.82 on petitioner's sale of fully depreciated P200,000.00 Nissan Patrol should be deducted from petitioner's claim.

Considering all the foregoing, this Court finds petitioner entitled to a refund or issuance of a tax certificate representing unutilized input VAT for the four quarters of 2003 in a modified amount of P7,703,957.79, computed as follows:

Claimed Input VAT				
	CTA Case No.	Period Covered-2003	Amount	
	7227	1st Quarter	P 3,160,984.69	
	7287	2nd Quarter	1,562,085.33	
	7317	3rd & 4th Quarters	3,521,129.50	P 8,244,199.52
Less: Disallowed Input VAT per Exhibit X				
	Annex D.1		P 2,090.16	
	Annex D.2		29,861.82	
	Annex D.3		2,752.00	
	Annex D.4		487,355.93	522,059.91
Creditable Input VAT				P 7,722,139.61
Less:	Output VAT due on the sale of fully depreciated Nissan Patrol			18,181.82
Refundable Input VAT				**P 7,703,957.79**

[35] Exhibit "X", p. 6.

WHEREFORE, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the modified amount of **SEVEN MILLION SEVEN HUNDRED THREE THOUSAND NINE HUNDRED FIFTY SEVEN AND 79/100 PESOS (P7,703,957.79)** representing its unutilized input VAT for the four (4) quarters of the taxable year 2003.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
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
Chairman, First Division

2-80