Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION
****

KEPCO ILIJAN CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6682

Members:

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

Promulgated:
SEP 01 2009 ; 4:14 pm

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DECISION

CASANOVA, *J.*

Before Us is a Petition for Review filed by Kepco Ilijan Corporation seeking that judgment be rendered ordering respondent Commissioner of Internal Revenue to refund or issue a tax credit certificate in favor of petitioner in the amount of P338,279,058.65 representing the input Value Added Tax (VAT) incurred for the calendar year 2001 arising from its importations and domestic purchases of capital goods and equipment preparatory to its production and sales of electricity to the National Power Corporation.

Petitioner, Kepco Ilijan Corporation, is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal place of business at Suite 2501-A, 25th Floor, Tektite Tower I, Exchange Road, Ortigas Centre, City of Pasig. It is registered as a VAT taxpayer engaged in the production and sale of electricity to the National Power Corporation (NPC)[1]. Likewise, petitioner is duly registered with the Bureau of Internal Revenue (BIR) beginning January 1, 1997 as per Certificate of Registration No. OCN 3RC0000162963.[2]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, vested under the appropriate laws with the authority to carry out all the functions, duties and responsibilities of the said office, including the power to decide, approve, and grant refunds and or tax credits of erroneously paid or illegally collected internal revenue taxes. Respondent holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

For the year 2001, petitioner filed its quarterly VAT returns with the following details:

Exhibit	Date Filed[4]	Period	Output VAT	Input VAT				Overpayment
				Carry-Over	Domestic Purchases	Importations	Subtotal	
"B"	**26-Apr-01**	**1st Qtr. 01**	0	1,679,528,614.60	34,800,355.23	44,699,729.25	1,759,028,699.08	(1,759,028,699.08)
"C"	**25-Jul-01**	**2nd Qtr. 01**	0	1,759,028,699.08	4,261,870.04	126,778,264.97	1,890,068,834.09	(1,890,068,834.09)
"D"	**25-Oct-01**	**3rd Qtr. 01**	0	1,890,068,834.09	711,266.80	59,570,880.00	1,950,350,980.89	(1,950,350,980.89)
"E"	**25-Jan-02**	**4th Qtr. 01**	0	1,950,350,980.89	62,132,872.36	5,323,820.00	2,017,807,673.25	(2,017,807,673.25)

[1] Pre-Trial Brief for the Petitioner, Rollo, pp. 31-33; Transcript of Stenographic Notes (TSN), August 26, 2003, p. 5.
[2] Ibid; ibid; Exhibit "A".
[3] Petition for Review, Par. 2, Rollo, pp. 1-2.
[4] Supra note 1, par. 3; TSN, August 26, 2003, p. 5.

Based from the above returns,[5] petitioner allegedly incurred the amount of P338,279,058.65 as input VAT for its importations and domestic purchases for the year 2001, computed as follows:

Total input VAT at the end of The 4th quarter of 2001	P 2,017,807,673.25
Less: Input VAT at the start of the year	1,679,528,614.60
Input VAT incurred for 2001	**P 338,279,058.65**

Relying on the provision of Section 112 (B) of the 1997 National 1997 NIRC, petitioner filed a claim for refund on April 15, 2003 with the office of the respondent of its input VAT incurred from the first to the fourth quarters of 2001 in the amount of P338,279,058.65 through its prospective sale of electricity to the NPC[6].

Respondent, not having acted upon petitioner's claim, the instant *Petition for Review* was filed on April 23, 2003. In response thereto, respondent alleged the following Special and Affirmative Defenses in his Answer[7]:

"6. The claim for refund is still under examination by the respondent's Bureau;

7. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund;

8. The grant of a claim for refund [is tantamount] to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;

9. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same."

[5] Ibid.
[6] Exhibit "F".
[7] Rollo, pp. 24-25.

Petitioner made an initial presentation of its evidence and thereafter formally offered its evidence on May 30, 2006. However, on August 29, 2006, petitioner filed a *Motion to Reopen the Case to Allow Petitioner to Present Additional Evidence* to further substantiate its claim. The motion was granted *via* a *Resolution* on October 3, 2006. After the presentation of additional evidence, the petitioner filed its *Supplemental Formal Offer of Evidence* on December 21, 2007.

Respondent was deemed to have waived his right to present evidence due to his consistent absences despite warning.[8] After petitioner submitted its *Memorandum* on August 21, 2008, the instant *Petition* was submitted for decision.[9]

During the pre-trial conference, the parties agreed on the following issues[10]:

> "1. Whether or not respondent is liable to the [p]etitioner for the refund of Php 338,279,058.65 representing the [VAT] input incurred for four quarters of the calendar (taxable) year 2001[;]
>
> 2. Whether or not the [p]etitioner incurred accumulated input VAT from the purchase of goods and services for the four quarters of calendar year 2001, which purchases are attributable to the sale by [p]etitioner of electricity to NPC[;]
>
> 3. Whether or not the sale by petitioner of electricity to NPC for the four quarters of the calendar year 2001 is subject to VAT at Zero rated[;]
>
> 4. Whether or not the alleged accumulated input VAT are duly supported by VAT invoices and/or official receipts[;]

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[8] Resolution dated July 17, 2008, Rollo, p 523.
[9] Resolution dated September 3, 2008, Rollo, p. 573.
[10] Supra note 1; supra note 1, p. 32.

5. Whether or not the accumulated input VAT for the four quarters of the calendar year 2001 were utilized or applied by [t]he [p]etitioner to the succeeding taxable year."

The above issues can be summarized as follows:

(1) Whether or not the sale of electricity by a VAT registered entity to the National Power Corporation is subject to value-added tax at zero (0%) percent; and

(2) Whether or not petitioner is entitled to a refund of input value-added tax on its purchases of capital goods and goods and services in the total amount of P34,279,166.70, covering the four quarters of the taxable year 1999, allegedly attributable to its preparation for the production and eventual sale of electricity to the National Power Corporation.

As regards the first issue, We rule in the affirmative.

Section 102 (a)(3) of the 1997 NIRC, and Section 13 of Republic Act No. 6395 (the Revised NPC Charter), as amended by Presidential Decree Nos. 380 and 938, state that:

"**SEC. 108.** ***Value-Added Tax on Sale of Services and Use or Lease of Properties. —***

xxx xxx xxx

(B) Transactions Subject to Zero Percent (0%) Rate — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

xxx xxx xxx

(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.

xxx xxx xxx"

"**Sec. 13.** ***Non-profit Character of the Corporation, Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities.*** — The corporation shall be non-profit and shall devote all its returns from its capital investments, as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance of effective implementation of the policy enunciated in Section One of this Act, the Corporation, including its subsidiaries, is hereby declared exempt from the payment of all forms of taxes, duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings."

Thus, it is clear that NPC, as a non-profit corporation, is exempt from the payment of all forms of taxes including the value-added tax; and the services rendered by a VAT registered corporation to the NPC are effectively subject to zero percent VAT.

This is further bolstered by the case of *Maceda vs. Macaraig*, G.R. No. 88291, May 31, 1991, wherein the Supreme Court held that:

"[P]residential Decree No. 938 amended the tax exemption by simplifying the same law in general terms. It succinctly exempts NPC from 'all forms of taxes, duties, fees, imposts, as well as costs and services, including filing fees, appeal bonds, supersedeas bonds,' in any court or administrative proceedings.

The use of the phrase 'all forms' of taxes demonstrate the intention of the law to give NPC all the tax exemptions it has been enjoying before. The rationale for this exemption is that being non-profit the NPC shall devote all its returns from its capital investment as well as excess revenues from its operations, for expansion. x x x

It is evident from the provisions of P.D. No. 938 that its purpose is to maintain the tax exemption of NPC from all forms of taxes including indirect taxes as provided for under R.A. No. 6395 and P.D. No. 380 if it is to attain its goal."

In a Memorandum dated January 28, 1998 issued by the Secretary of Finance and addressed to the respondent, it was categorically stated that:

> "In view of the foregoing and using the power of review granted to the Secretary of Finance under Section 4 of Republic Act No. 8424, the DOF upholds the ruling of the Supreme Court that the NPC is exempt under its charter and subsequent laws from all direct and indirect taxes on its purchases of petroleum products and electricity. Thus, the purchases by NPC of electricity from independent power producers are subject to VAT at zero-rate."

As regards the second issue, petitioner avers that during the four (4) quarters of the taxable year 2001, it incurred expenses allegedly representing importations and domestic purchases of capital goods and goods and services pursuant to its preparation for the production and sale of electricity to the NPC by January 2002. A corresponding input value-added tax in the amount of P338,279,058.65 is thus sought to be refunded by petitioner.

It is thus imperative to determine first whether the input value-added taxes incurred by petitioner for the subject period are attributable to its alleged zero-rated sales pursuant to Section 112 (A) of the 1997 NIRC, to quote:

> "**SEC. 112.** ***Refunds or Tax Credits of Input Tax —***
>
> **(A) Zero-rated or Effectively Zero-rated Sales.** — Any VAT registered persons, 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."

For the taxable year 2001, petitioner admits that it was still on the pre-operating stage of its venture. For this reason, it had no record of any sale of electricity to the NPC. Based on the above law, refund of input value-added taxes attributable to zero-rated sales presupposes that sales were indeed made.

It has been held that the provisions of Section 112 (A) of the 1997 NIRC mandate that in order to claim for a refund/tax credit of input value-added tax, there must be a zero-rated sales or effectively zero-rated sales to which the input VAT sought to be refunded are attributable.[11] Therefore, in order to claim for a refund of input VAT attributable to zero-rated sales, a corresponding sale must have been incurred for how can an input VAT be made attributable to a zero-rated sale if there was no sale in the first place. It follows then that petitioner's claim for refund of input VAT allegedly attributable to its zero-rated sales cannot prosper.

However, petitioner may still claim for the refund of input VAT on its capital goods pursuant to Section 112 (B) of the 1997 NIRC, hereunder quoted for easy reference:

> "**Section 112.** ***Refunds or Tax Credits of Input Tax.*** —

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[11] *Kepco Philippines Corporation vs. The Commissioner of Internal Revenue*, CTA Case No. 6413, March 10, 2005; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 6213, December 23, 2004; *Epson Precision (Philippines), Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 6184, November 17, 2003; *Placer Dome Technical Services (Philippines) Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 6106, May 14, 2002.

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(B) Capital Goods. — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years, after the close of the taxable quarter when the importation or purchase was made."

Supplementary thereto are Sections 4.104-5 and 4.106-1 (b) of Revenue Regulations No. 7-95, which provide that:

"**Section 4.104-5. *Substantiation of claims for input tax credit.*** — (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Sections 108 (a) and 238 of the Code x x x"

"**Section 4.106-1. *Refunds or tax credits of input tax.*** —

xxx xxx xxx

(b) **Capital Goods** — Only a VAT registered person may apply for issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased. The refund shall be allowed to the extent that such input taxes have not been applied against output taxes. The application should be made within two (2) years after the close of the taxable quarter when the importation or purchase was made.

Refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT taxable business. If it is also used in exempt operations, the input tax refundable shall only be the ratable portion corresponding to the taxable operations.

'Capital goods or properties' refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29 (f), used directly or indirectly in the production or sale of taxable goods or services."

From the above cited laws, petitioner must comply with the following requirements to qualify for a claim for refund of input VAT on its capital goods:

1. That petitioner is a VAT registered entity;
2. That input taxes claimed were paid on capital goods duly supported by VAT invoices and official receipts;
3. That petitioner did not offset or apply the claimed input VAT payment on capital goods against any output VAT liability; and
4. That the claim for refund was filed within the two-year prescriptive period both in the administrative and judicial levels (*Telecommunications Technologies Philippines, Inc. vs. CIR*, CTA Case No. 6018, November 24, 2003).

The first requirement has been duly admitted by the parties and is supported by petitioner's Certificate of Registration No. OCN 3RC0000162963[12].

As to the third requirement, it was established that the input VAT claim of P338,279,058.65 was never utilized as petitioner had not yet started commercial operations in the year 2001. Although the subject claim was carried-over in the succeeding quarters, the same remained unapplied against any output tax until it was fully deducted as "Any VAT Refund/TCC Claimed" in the second quarter of 2003[13]. Thus, petitioner could not have possibly utilized the subject claim in the succeeding quarters.

As to whether or not the claim for refund was filed within the two-year prescriptive period, Section 112(B) of the 1997 NIRC states that the reckoning of the two-year prescriptive period for the filing of a claim for refund of input VAT on capital goods purchases starts from the close of the taxable quarter when the purchase was made. Records show that the claimed amount of P338,279,058.65

[12] Supra notes 1 & 2.
[13] Exhibit "H", line 25A.

pertains to the input VAT declared by petitioner in its Quarterly VAT Returns for the four quarters of 2001 as follows:

		INPUT VAT		
		Domestic	**Importation of**	
Exhibit	**2001**	**Purchases**	**Goods**	**Total**
B	1st Qtr	P 34,800,355.23	P 44,699,729.25	P 79,500,084.48
C	2nd Qtr	4,261,870.04	126,778,264.97	131,040,135.01
D	3rd Qtr	711,266.80	59,570,880.00	60,282,146.80
E	4th Qtr	62,132,872.36	5,323,820.00	67,456,692.36
	Total	**P101,906,364.43**	**P236,372,694.22**	**P338,279,058.65**

Counting from March 31, 2001, June 30, 2001, September 30, 2001 and December 31, 2001, the close of the first, second, third and fourth quarters of 2001, petitioner had until March 31, 2003, June 30, 2003, September 30, 2003 and December 31, 2003, respectively, within which to file its claim both in the administrative and judicial levels. Petitioner filed its administrative claim on April 15, 2003[14] and the *Petition for Review* on April 23, 2003. Clearly, both the administrative claim and the instant Petition for Review were filed out of time insofar as the claim for the first quarter of 2001 is concerned. Thus, petitioner is barred from claiming refund of the input taxes for the first quarter of 2001 in the amount of P79,500,084.48 due to prescription.

We shall proceed to the determination of petitioner's compliance with the second requisite with respect to the remaining input VAT claim covering the second, third and fourth quarters of 2001 in the remaining amount of P258,778,974.17 computed as follows:

[14] Exhibit "F".

		INPUT VAT		
		Domestic	Importation of	
Exhibit	2001	Purchases	Goods	Total
C	2nd Qtr	4,261,870.04	126,778,264.97	131,040,135.01
D	3rd Qtr	711,266.80	59,570,880.00	60,282,146.80
E	4th Qtr	62,132,872.36	5,323,820.00	67,456,692.36
	Total	**P67,106,009.20**	**P191,672,964.97**	**P258,778,974.17**

In order to prove that it incurred input VAT on capital goods purchased, petitioner presented among others, the following documents as evidence:

1. suppliers' invoices/official receipts[15];
2. Bureau of Customs (BOC) Import Entry and Internal Revenue Declarations (IEDs) with attached commercial invoices;
3. airway bills/bills of lading;
4. packing lists;
5. import duties/VAT calculation;
6. petitioner's letters to the UCPB-Batangas City for the issuance of Manager's Checks;
7. petitioner's letters to the Citibank authorizing the latter to debit its account as partial payment of customs duties and taxes;
8. bank statements of account and bank ORs[16];
9. Schedule of Input VAT Segregation of Capital Goods and Non-Capital Goods from January 2001 – December 2001[17];
10. Amended and Restated Contract between petitioner and Raytheon Ebasco Overseas Ltd[18];
11. Amended and Restated Contract among petitioner, United Engineers Int'l, Inc. and Mitsubishi Corporation[19];
12. Annual Income Tax Returns for the years 2002, 2003, 2004 and 2005[20]; and
13. Audited Financial Statements for the years 2000, 2001, 2002, 2003, 2004 and 2005.[21]

Upon examination of the aforesaid documents, the Court-commissioned independent CPA (ICPA) reported that out of the P258,858,733.35 input VAT

[15] Exhibits "L-1" to "L-1262".
[16] Exhibits "GG-1" to "GG-2295".
[17] Exhibits "R" to "CC", "DD" and "DD-1" to "DD-14".
[18] Exhibit "HH".
[19] Exhibit "RR".
[20] Exhibits "AAA" ,"AAA-1" to "AAA-3".
[21] Exhibits "ZZZ", "ZZZ-1" to "ZZZ-4".

claim for the second, third and fourth quarters of 2001, only the amount of P257,713,421.13 relates to petitioner's capital goods purchases while the remaining amount of P1,145,312.22 pertains to petitioner's non-capital goods purchases, broken down as follows[22]:

	2nd Quarter	3rd Quarter	4th Quarter	Total
Capital Goods	P130,769,928.37	P59,875,850.77	P67,067,641.99	P257,713,421.13
Non-Capital Goods	453,793.01	406,291.78	285,227.43	1,145,312.22
Total	**P131,223,721.38**	**P60,282,142.55**	**P67,352,869.42**	**P258,858,733.35**

This Court observed that there was a discrepancy of P79,759.18 between the above input VAT of P258,858,733.35 reflected per petitioner's Schedule of Input VAT and the amount of P258,778,974.17 in petitioner's Quarterly VAT Returns/Petition for Review, as shown below:

	2nd Quarter	3rd Quarter	4th Quarter	Total
Per Schedule	P131,223,721.38	P60,282,142.55	P67,352,869.42	P258,858,733.35
Per VAT Return/Petition for Review	131,040,135.01	60,282,146.80	67,456,692.36	258,778,974.17
Amount per Schedule is Over/(Under)	**P 183,586.37**	**P (4.25)**	**P (103,822.94)**	**P 79,759.18**

However, upon a closer inspection of the records, this Court finds that there were really no discrepancies in the input VAT amounts reflected per schedule and per return for the third and fourth quarters of 2001[23]. The amounts of P4.25 and P103,822.94 totaling P103,828.00 represent the difference between the understatement of input VAT in the amount of P79,759.03 and overstatement of input VAT in the amount of P183,587.03 for the first and second quarters of 2001, respectively. The amount of P103,828.00 was erroneously deducted by the ICPA from the input VAT on Non-Capital Goods for

[22] Exhibit "III", p. 17.
[23] Exhibit "III", Attachment 1, Annex EE.

the fourth quarter of 2001[24]. Thus, input VAT on non-capital goods for the fourth quarter of 2001 should have been P389,055.43 instead of P285,227.43 bringing the total input VAT on capital goods and non-capital goods from P67,352,869.42 to P67,456,697.42.

Since the understatement of input VAT per schedule for the first quarter of 2001 in the amount of P79,759.03 already formed part of the P79,500,084.48 input VAT disallowed earlier due to prescription, no further adjustment shall be made on petitioner's claim.

While the input taxes per schedule for the second quarter of 2001 exceeded the amount shown per VAT return by P183,586.37, such excess amount shall not be considered in computing petitioner's refundable amount since it is a rule that the taxpayer cannot claim beyond what is prayed for in the *Petition for Review*.

As to whether or not the input VAT claim for the second, third and fourth quarters of 2001 in the amount of P258,858,733.35 qualifies as capital goods purchases, this Court agrees with the ICPA's finding that the amount of P1,249,140.22[25] pertains to non-capital goods purchases which should be denied because, as stated earlier, petitioner had no zero-rated or effectively zero-rated sales to which the said input VAT could be attributed.

Only the input VAT claim of P257,713,421.13 which arose from petitioner's purchases of office furniture, machinery and equipments,

[24] Supra, note 22.
[25] Input VAT on Non-Capital Goods per the ICPA's Report (Exhibit "III", page 17) P1,145,312.22 and input VAT of P103,828.00 erroneously deducted by the ICPA for the fourth quarter of 2001

construction materials and all costs directly related to the building and construction of its power plant complex such as engineering and design services fall within the definition of "capital goods" under Section 4.106-1 of Revenue Regulations No. 7-95.

Nevertheless, not all of the input VAT claim on capital goods purchases is properly substantiated for VAT purposes. In his report dated June 13, 2007, the commissioned ICPA recommended for the disallowance of the amounts of P235,703.72 and P3,348,860.12 representing input VAT claims on locally purchased and imported capital goods, respectively, for the following reasons[26]:

Description	Exh. III	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total
On Domestic Purchases						
Input Taxes Claimed on Purchases of Services Supported by Non-VAT ORs	Annex 9			3,240.52		3,240.52
Input Taxes Claimed on Purchases of Goods Supported by Documents	Annex 15	144,545.45	15,214.36	64,409.09	3,655.30	227,824.20
Input Taxes Claimed on Purchases of Goods Without Supporting Documents	Annex 17	3,181.82				3,181.82
Input Taxes Claimed on Purchases of Goods Supported by Photocopied VAT Invoices	Annex 18				1,457.18	1,457.18
Subtotal		**147,727.27**	**15,214.36**	**67,649.61**	**5,112.48**	**235,703.72**
On Importations						
Input taxes claimed on importations supported only by photocopied bank statements of account	Annex 34	986,836.00	640,036.56	106,737.00	244,839.00	1,978,448.56

[26] Exhibit "III", page 11

	Input taxes claimed on importations supported by certified true copy IEDs and original bank ORs/bank debit advices with a discrepancy in the amount of input taxes claimed	Annex 35	319,819.00	217,650.61	-	-	537,469.61
	Input taxes claimed on importations without supporting documents	Annex 36	264,241.23	610,246.98	4,862.74	(46,409.00)	832,941.95
	Subtotal		**1,570,896.23**	**1,467,934.15**	**111,599.74**	**198,430.00**	**3,348,860.12**
	Total		**1,718,623.50**	**1,483,148.51**	**179,249.35**	**203,542.48**	**3,584,563.84**

This Court confirms the disallowance of the above input taxes except for the input taxes of P537,469.61 (Exhibit III, Annex 35). The ICPA erroneously disallowed the entire input VAT paid by petitioner as reflected in the supporting original bank ORs/bank debit advices instead of disallowing only the discrepancy between the said amounts *vis-à-vis* the input taxes reflected per petitioner's schedule of input VAT. Thus, disallowances under this item should have been only P8,310.57 for the first quarter and P209,830.61 for the second quarter of 2001 totalling to P218,141.18 (see detailed computation per Exhibit III, Annex 35). In other words, the ICPA's recommended disallowances shall be reduced from P1,718,623.50 to P1,407,115.07 for the first quarter of 2001 and from P1,483,148.51 to P1,475,328.51 for the second quarter of 2001. This will bring the total disallowances for the four quarters of 2001 as recommended by the ICPA from P3,584,563.84 to P3,265,235.41.

However, since the input taxes of P1,407,115.07 pertaining to the first quarter of 2001 were already disallowed earlier on the ground of prescription, only the remaining input taxes of P1,858,120.34 (P3,265,235.41 less

P1,407,115.07) shall be disallowed for failure to meet substantiation requirements.

Aside from the disallowances recommended by the ICPA, the Court finds that the input taxes in the amount of P94,209,221.58 should also be disallowed, detailed as follows:

	Reasons for Denial	Exhibit	2nd Qtr	3rd Qtr	4th Qtr	Total
On Domestic Purchases						
1.	Input tax claimed on payment for construction services rendered by Raytheon Ebasco Overseas Ltd, supported by an OR dated outside the period of claim	L-1262			38,244,779.71	38,244,779.71
On Importations						
2.	Input taxes claimed on importations supported by certified true copy of IEDs and photocopied bank statements of account	Exh. III, Annex 29	41,356,690.00	10,410,000.75	3,300,364.00	55,067,054.75
3.	Input taxes claimed on importations supported only by certified true copy IEDs	Exh. III, Annex 30	349,877.12	24,070.00	-	373,947.12
4.	Input taxes claimed on importations without any BOC IED/OR or bank debit advice/OR but supported only by photocopied bank statement					
	Supplier					
	Aquatech International	GG-1078 to GG-1083, GG-1673	167,800.00			167,800.00
	Aquatech International	GG-1329 to GG-1332, GG-1681	355,640.00			355,640.00
Total			**42,230,007.12**	**10,434,070.75**	**41,545,143.71**	**94,209,221.58**

The claimed input taxes of P38,244,779.71 on petitioner's payment for construction services rendered by Raytheon Ebasco Overseas Ltd. shall be disallowed because the official receipt supporting the same is dated January 28, 2002.

Section 110(A) of the NIRC of 1997, is clear that the input tax shall be allowed as tax credit to the purchaser only upon consummation of sale or upon payment of the compensation, as the case may be. Accordingly, it is imperative for 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 invoices, and where purchases of services were paid, as evidenced by VAT official receipts. Thus, the claimed input taxes of P38,244,779.71 covered by VAT official receipt dated January 28, 2002 should have been declared by petitioner in its Quarterly VAT Return for the first quarter of 2002.

The claimed input taxes on petitioner's importations in the amounts of P55,067,054.75, P373,947.12, P167,800.00 and P355,640.00 shall likewise be denied because the bank statements of account supporting the said input taxes cannot be given evidentiary value for being mere photocopies in violation of the Best Evidence Rule. The same holds true with the IEDs stamped as "certified true copy". It cannot be ascertained whether the certifiers named therein are actually the custodians of the said documents.

It bears stressing that tax refunds are in the nature of tax exemptions. As such they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption.

The burden of proof is upon the petitioner who claims the exemption in his favor and he must be able to justify his claim by the clearest grant of organic or statute law. Petitioner having failed to fully prove its claim, this Court can only partially grant its prayer.

WHEREFORE, in view of the foregoing, the instant *Petition for Review* is hereby **PARTIALLY GRANTED**. Respondent is **ORDERED** to **ISSUE** a tax credit certificate or **REFUND** to petitioner the amount of **P161,462,492.03** representing unutilized input VAT paid on its domestic purchases and importation of capital goods for the second, third and fourth quarters of 2001, as computed below:

Amount of Input VAT Claim			P338,279,058.65
Less:	Prescribed Claim - 1st Quarter 2001		79,500,084.48
Unprescribed Input VAT Claim			P258,778,974.17
Less:	Input VAT Claim Pertaining to Non-Capital Goods per the ICPA's Report	P1,145,312.22	
	Add: Net Overstatement of Input VAT per schedule vs. Input VAT per return for the first and second quarters of 2001	103,828.00	1,249,140.22
Unprescribed Input VAT Claim Pertaining to Capital Goods			P257,529,833.95
Less:	Not properly Substantiated Input VAT		
	a. Per the ICPA's Report	P 1,858,120.34	
	b. Per this Court's further verification	94,209,221.58	96,067,341.92
Refundable Input VAT on Capital Goods Purchases			**P161,462,492.03**

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
Chairperson, First Division

Annex EE

KEPCO Ilijan Corporation
CTA Case No. 6682
Discrepancy in the Amount of Input Taxes claimed
on Importations per Schedule of Importations versus Petition for Review
For the Four Quarters of Calendar Year 2001

Quarter	Input Taxes Claimed on Importation of Goods per Schedule of Importations	Input Taxes Claimed on Importations of Goods per Petition for Review	Difference – per Schedule of Importations is overstated / (understated)
First Quarter	₱ 44,619,970.22	₱ 44,699,729.25	₱ (79,759.03)
Second Quarter	126,961,852.00	126,778,264.97	183,587.03
Third Quarter	59,570,880.00	59,570,880.00	0.00
Fourth Quarter	5,323,820	5,323,820	0.00
	₱ 236,476,522.22	₱ 236,372,694.22	₱ 103,828.00

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DESCRIPTION	ANNEX	CAPITAL GOODS 1st QUARTER	2nd QUARTER	3rd QUARTER	4th QUARTER	TOTAL (A)	NON-CAPITAL GOODS 1st QUARTER	2nd QUARTER	3rd QUARTER	4th QUARTER	TOTAL (B)	GRAND TOTAL (A+B)
Input Taxes Claimed on Importations Without Supporting Documents	36	264,241.23	610,246.98	4,862.74	(46,409.00)	832,941.95	-	-	-	-	-	832,941.95
Discrepancy in the Amount of Input Taxes claimed on Importations per Schedule of Importations versus Petition for Review (see Annex EE of Attachment 1)										(103,828.00)	(103,828.00)	(103,828.00)
TOTAL IMPORTATIONS		₱ 44,619,970.22	₱126,961,852.00	₱ 59,570,880.00	₱ 5,323,820.00	₱ 236,476,522.22	₱ -	₱ -	₱ -	₱ (103,828.00)	₱ (103,828)	₱ 236,372,694.22
GRAND TOTAL		₱ 78,959,630.41	₱ 130,769,928.37	₱ 59,875,850.77	₱ 67,067,641.99	₱ 336,673,051.54	₱ 460,694.89	₱ 453,793.01	₱ 406,291.78	₱ 285,227.43	₱ 1,606,007.11	₱ 338,279,058.65

Annex 35

KEPCO Ilijan Corporation
CTA Case No. 6682
Input Taxes claimed on Importations Supported by Certified True Copy IEDs and Original Bank ORs/Bank Debit Advices with a Discrepancy in the Amount of Input Taxes Claimed
For the Four Quarters of Calendar Year 2001

Supplier	Description	IED (SN#)	Input Tax Claimed	VAT per Bank Debit Advices/ Bank ORs	Overstatement of Input Taxes
1st Quarter					
January					
Daelim Industrial Co., Ltd.	White Aluminum Sheet	29299557	₱ 294,026.00	₱ 287,875.43	₱ 6,150.57
Subtotal			**₱ 294,026.00**	**₱ 287,875.43**	**₱ 6,150.57**
February					
Aquatech International Corp.	Water Treatment Plant Materials	29304414	₱ 4,336.00	₱ 4,105.00	₱ 231.00
Daelim Industrial Co., Ltd.	Master Keyed Cylinder	30094154	11,144.00	10,123.00	1,021.00
Subtotal			**₱ 15,480.00**	**₱ 14,228.00**	**₱ 1,252.00**
March					
Daelim Industrial Co., Ltd.	Control Power Transformer	30094285	₱ 10,313.00	₱ 9,405.00	₱ 908.00
Subtotal			**10,313.00**	**9,405.00**	**908.00**
Total			**₱ 319,819.00**	**₱ 311,508.43**	**₱ 8,310.57**
2nd Quarter					
April					
United Engineers International Inc.	Gas Turbine Generator Parts & Accessories	30358492	₱ 217,650.61	₱ 7,820.00	₱ 209,830.61
Total			**₱ 217,650.61**	**₱ 7,820.00**	**₱ 209,830.61**
GRAND TOTAL			**₱ 537,469.61**	**₱ 319,328.43**	**₱ 218,141.18**

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