

**REPUBLIC OF THE PHILIPPINES**  
**Court of Tax Appeals**  
**QUEZON CITY**

**FORMER SECOND DIVISION**

VISAYAS GEOTHERMAL POWER  
COMPANY,

Petitioner,

- versus -

C.T.A. CASE NO. 7737

Members:

CASTAÑEDA, JR., *Chairperson*  
UY, *and*  
PALANCA-ENRIQUEZ, JJ.

COMMISSIONER OF INTERNAL  
REVENUE,

Respondent.

Promulgated:

JUN 23 2010

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1:26 p.m.

**DECISION**

**CASTAÑEDA, JR., J.:**

Before this Court is a Petition for Review seeking the refund or issuance of tax credit certificate in the amount of P19,569,683.63, representing unutilized input value-added tax (VAT) from petitioner's domestic purchases of non-capital and capital goods and services, services rendered by non-residents, and importation of capital and non-capital goods for the first to fourth quarters of taxable year 2006.

Visayas Geothermal Power Company (Petitioner) is a special purpose limited partnership duly organized and existing under Philippine laws, with principal office at Ormoc City, Leyte. Petitioner was established on *Je*

November 4, 1994. The business purpose of petitioner is to “invest in, acquire, finance, complete, construct, develop, improve, operate, maintain and hold that certain partially constructed power production geothermal electrical generating facility in Malitbog, Leyte Province, Philippines (the ‘Project’), and other property incidental thereto, for the production and sale of electricity from geothermal resources, to sell or otherwise dispose of the Project and such other property,” and to engage in any other related or incidental activities.<sup>1</sup>

Petitioner has been accredited and certified as such by the Department of Energy (DOE), as evidenced by its DOE Certificate of Accreditation (OSAC94-13) issued on June 15, 1994.<sup>2</sup> Petitioner is also registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, with Taxpayer Identification No. 003-832-538-VAT.<sup>3</sup>

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner filed with the BIR its Quarterly VAT Returns for the first to fourth quarters of taxable year 2006 on the following dates:<sup>4</sup>

| Taxable Quarter | Original Return  | Amended Return |
|-----------------|------------------|----------------|
| First           | April 20, 2006   |                |
| Second          | July 25, 2006    |                |
| Third           | October 25, 2006 | June 21, 2007  |
| Fourth          | January 25, 2007 | June 21, 2007  |

*jc*

<sup>1</sup> Exhibit “A”

<sup>2</sup> Exhibit “B”

<sup>3</sup> Exhibit “C”

<sup>4</sup> Pars. 5 and 6, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 180

Petitioner's Original Quarterly VAT Returns for the first and second quarters of taxable year 2006 and Amended Quarterly VAT Returns for the third and fourth quarters of taxable year 2006 reflected the zero-rated sales, domestic purchases of non-capital goods and services, services rendered by non-resident, importation of non-capital goods, and the related excess or unutilized input VAT arising from the same transactions; which are detailed as follows:<sup>5</sup>

| 2006<br>Taxable<br>Quarter | Current Transactions       |                                                                       |                                                                |                                           |                                                     |
|----------------------------|----------------------------|-----------------------------------------------------------------------|----------------------------------------------------------------|-------------------------------------------|-----------------------------------------------------|
|                            | Zero-rated<br>Sales<br>(P) | Domestic<br>Purchases-<br>Goods Other<br>Than Capital<br>Goods<br>(P) | Importation-<br>Goods<br>Other Than<br>Capital<br>Goods<br>(P) | Domestic<br>Purchases-<br>Services<br>(P) | Services<br>Rendered by<br>Non-<br>Residents<br>(P) |
| 1 <sup>st</sup>            | 764,291,788.03             | 3,742,603.17                                                          | 2,614,946.67                                                   | 39,791,995.85                             | 0.00                                                |
| 2 <sup>nd</sup>            | 801,953,056.76             | 5,881,345.67                                                          | 588,975.00                                                     | 14,894,431.83                             | 154,758.75                                          |
| 3 <sup>rd</sup>            | 802,549,369.65             | 13,868,445.00                                                         | 2,605,446.67                                                   | 15,860,128.75                             | 291,001.08                                          |
| 4 <sup>th</sup>            | 975,063,197.67             | 11,959,288.23                                                         | 2,775,316.67                                                   | 39,716,871.92                             | 12,229,753.00                                       |
| <b>Total</b>               | <b>3,343,857,412.11</b>    | <b>35,451,682.07</b>                                                  | <b>8,584,685.01</b>                                            | <b>110,263,428.35</b>                     | <b>12,675,512.83</b>                                |

| 2006<br>Taxable<br>Quarter | Excess/Unutilized VAT Credits                                            |                                           |                                                     |                                                             |                      |
|----------------------------|--------------------------------------------------------------------------|-------------------------------------------|-----------------------------------------------------|-------------------------------------------------------------|----------------------|
|                            | Domestic<br>Purchases-<br>Goods<br>Other<br>Than Capital<br>Goods<br>(P) | Domestic<br>Purchases-<br>Services<br>(P) | Services<br>Rendered by<br>Non-<br>Residents<br>(P) | Importation-<br>Goods Other<br>Than Capital<br>Goods<br>(P) | Total<br>(P)         |
| 1 <sup>st</sup>            | 389,618.41                                                               | 4,438,595.97                              | 0.00                                                | 264,950.00                                                  | 5,093,164.38         |
| 2 <sup>nd</sup>            | 696,598.04                                                               | 1,779,261.71                              | 18,571.05                                           | 70,677.00                                                   | 2,565,107.80         |
| 3 <sup>rd</sup>            | 1,663,801.11                                                             | 1,903,215.45                              | 34,920.13                                           | 309,325.00                                                  | 3,911,261.69         |
| 4 <sup>th</sup>            | 1,433,532.77                                                             | 4,766,008.63                              | 1,467,570.36                                        | 333,038.00                                                  | 8,000,149.76         |
| <b>Total</b>               | <b>4,183,550.33</b>                                                      | <b>12,887,081.76</b>                      | <b>1,521,061.54</b>                                 | <b>977,990.00</b>                                           | <b>19,569,683.63</b> |

On July 4, 2007, petitioner filed an administrative claim for refund of the above-mentioned unutilized input VAT with the BIR Revenue District Office No. 89.<sup>6</sup>

Since petitioner has yet to receive a favorable response from respondent and before it could be barred by prescription, petitioner filed this 

<sup>5</sup> Par. 7, Admitted Facts, JSFI, docket, p. 181

<sup>6</sup> Exhibit "I"

instant Petition for Review on March 14, 2008, pursuant to Sections 112 and 229 of the National Internal Revenue Code (NIRC) of 1997.

In the Answer<sup>7</sup> filed on May 30, 2008, respondent alleged the following Special and Affirmative Defense:

“PETITIONER’S JUDICIAL CLAIM WAS FILED BEYOND THE PERIOD PRESCRIBED BY LAW, HENCE, THE HONORABLE COURT HAS NO JURISDICTION TO TAKE COGNIZANCE OF THE INSTANT CASE.”

On July 25, 2008, the parties filed their Joint Stipulation of Facts and Issues<sup>8</sup>, which was approved by this Court in a Resolution<sup>9</sup> dated July 30, 2008; thus, the Pre-Trial was terminated and the parties were ordered to proceed with the trial on the merits.

Petitioner filed its Formal Offer of Evidence<sup>10</sup> on February 13, 2009, offering Exhibits “A” to “R”, inclusive of sub-markings.

During the hearing held on June 24, 2009, respondent, through counsel, manifested in open court that he is waiving his right to present evidence and moved for thirty (30) days to file his memorandum. The parties were likewise given a period of thirty (30) days or until July 24, 2009, within which to file their respective memorandum.<sup>11</sup>

On August 28, 2009, the case was ordered submitted for decision after petitioner and respondent filed their memoranda on August 24, 2009 and July 30, 2009, respectively. *je*

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<sup>7</sup> Docket, pp. 116-122

<sup>8</sup> Docket, pp. 179-184

<sup>9</sup> Docket, p. 186

<sup>10</sup> Docket, pp. 248-268

<sup>11</sup> Docket, p. 679

The issues, as jointly stipulated by the parties<sup>12</sup>, are the following:

- “1. Whether or not the Honorable Court has jurisdiction over the instant petition.
2. Whether or not the alleged unutilized input VAT of the Petitioner for the 1<sup>st</sup> to 4<sup>th</sup> quarters of CY 2006 amounting to ₱19,569,683.63 is substantiated by documentary evidence in the form of invoices and official receipts.
3. Whether or not the alleged unutilized input VAT credits of the Petitioner for the 1<sup>st</sup> to 4<sup>th</sup> quarters of CY 2006 in the total amount of ₱19,569,683.63 was applied against any output VAT of the Petitioner in the subsequent quarters.
4. Whether or not such alleged input VAT were erroneously or illegally collected by Respondent.
5. Whether or not the Petitioner is entitled to a refund and/or issuance of tax credit certificate in the total amount of ₱19,569,683.63, representing its alleged unutilized input VAT from domestic purchases and importation of goods and services for the 1<sup>st</sup> to 4<sup>th</sup> quarters of CY 2006.
6. Whether or not Petitioner incurred the input VAT on its alleged domestic purchases and importation of goods and services for the 1<sup>st</sup> to 4<sup>th</sup> quarters of CY 2006.
7. Whether or not Petitioner’s claim for refund of unutilized input VAT was filed within the period prescribed by law.”

The foregoing issues can be summarized as follows:

“Whether or not petitioner is entitled to the refund or issuance of tax credit certificate in the amount of P19,569,683.63, representing unutilized input VAT from its domestic purchases of non-capital and capital goods and services, services rendered by non-residents, and importation of capital and non-capital goods for the four quarters of taxable year 2006.”

Petitioner anchors its claim on Section 112(A) of the NIRC of 1997, as amended, which reads as follows: *gc*

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<sup>12</sup> Submitted Issues for Trial, JSFI, docket, pp. 182-183

*"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: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."*

Based on the foregoing, in order to be entitled to a refund or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied:

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

Anent the first requisite, Section 108(B)(7) of the National Internal Revenue Code of 1997, as amended by Republic Act (R.A.) No. 9337, provides that sale of power generated through renewable sources of energy is among the transactions subject to zero percent (0%) VAT rate, to wit: 

“(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels.”

Further, Section 4.108-5(b)(7) of Revenue Regulations No. 16-2005, which implements the foregoing provision, qualified the applicability of such zero-rating as follows:

“(b) *Transactions Subject to Zero Percent (0%) VAT Rate.* — The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate:

xxx

xxx

xxx

(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels; *Provided, however,* that zero-rating shall apply strictly to the sale of power or fuel generated through renewable sources of energy, and shall not extend to the sale of services related to the maintenance or operation of plants generating said power.”

Petitioner's 216-megawatt geothermal power plant located in Malitbog, Leyte Province has been accredited by the Department of Energy (DOE) as a Block Power Production Facility (BPPF) under the Implementing Rules and Regulations of Executive Order No. 215, as amended.<sup>13</sup> Further, by virtue of the Energy Conversion Agreement<sup>14</sup> entered into between Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) and petitioner's 

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<sup>13</sup> Exhibit “B”

<sup>14</sup> Exhibit “D”

predecessor-in-interest, Magma Power Company, petitioner generates power and subsequently sells it only to PNOC-EDC.

For the period covering January 1, 2006 to December 31, 2006, petitioner's gross receipts from sales of power generation services to PNOC-EDC amounted to P3,343,857,412.11, as evidenced by invoices<sup>15</sup> and official receipts<sup>16</sup> issued by petitioner to PNOC-EDC for the same period. Such sales of electricity generated through a renewable source of energy, particularly, *geothermal energy*, qualify for VAT zero-rating pursuant to Section 108(B)(7) of the NIRC of 1997, as amended by R.A. No. 9337, and as implemented by Section 4.108-5(b)(7) of Revenue Regulations No. 16-2005.

As to the second requisite, a verification of the Summary List of Purchases<sup>17</sup> and the supporting documents<sup>18</sup>, evidencing petitioner's purchases of goods and services and importation, shows input taxes amounting to P19,569,683.63. However, the said amount must be reduced by P886,711.42 for failure to comply with the invoicing requirements under Section 110(A), in relation to Section 113(A) of the NIRC of 1997, as implemented by Sections 4.110-1, 4.110-8, and 4.113-1 of Revenue Regulations No. 16-05.

The amount of P886,711.42, as summarized by the Court-commissioned Independent Certified Public Accountant (CPA)<sup>19</sup>, is detailed as follows:<sup>20</sup> 

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<sup>15</sup> Exhibits "Q-2.1" to "Q-2.14", as summarized in Exhibit "Q-1"

<sup>16</sup> Exhibits "Q-4.1" to "Q-4.38", as summarized in Exhibit "Q-3"

<sup>17</sup> Exhibits "Q-5-1Q.1" to "Q-5-4Q.14"

<sup>18</sup> Exhibits "Q-6-1Q.1" to "Q-6-4Q.1366"

<sup>19</sup> Jerome Antonio B. Constantino, partner of Constantino Guadalquiver and Co.

<sup>20</sup> Exhibit "Q", pages 6 to 8

| II. Other Findings |                                                                                                                                   |                                                 | Exhibit "Q" | Amount of Input Tax |
|--------------------|-----------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|-------------|---------------------|
| 1.                 | Domestic purchase of goods supported by documents other than a VAT invoice                                                        | Annexes 1-1Q-A1, 1-2Q-A1, 1-3Q-A1 & 1-4Q-A1     | P 6,322.18  |                     |
| 2.                 | Domestic purchase of goods supported by a VAT invoice but not an original copy                                                    | Annexes 1-1Q-A3, 1-2Q-A3, 1-3Q-A3 & 1-4Q-A3     | 64,583.15   |                     |
| 3.                 | Domestic purchase of goods supported by a VAT invoice not issued in the name of the company (i.e., issued in employee's name)     | Annexes 1-1Q-A4, 1-2Q-A4, 1-3Q-A4 & 1-4Q-A4     | 1,481.92    |                     |
| 4.                 | Domestic purchase of goods supported by a VAT invoice issued in the name of Calenergy/CE Cebu /CE Luzon (whichever is applicable) | Annexes 1-1Q-A5, 1-2Q-A5, 1-3Q-A5 & 1-4Q-A5     | 82,301.46   |                     |
| 5.                 | Domestic purchase of goods supported by TIN # only; TIN-NV/NON VAT invoice; stamped/ handwritten TIN-V/VAT                        | Annexes 1-1Q-A7, 1-2Q-A7, 1-3Q-A7 & 1-4Q-A7     | 22,654.02   |                     |
| 6.                 | Domestic purchase of goods supported by a VAT invoice but without invoice date                                                    | Annexes 1-1Q-A10, 1-2Q-A10, 1-3Q-A10 & 1-4Q-10  | 843.00      |                     |
| 7.                 | Domestic purchases of goods supported by a VAT invoice not dated within the VAT taxable year                                      | Annexes 1-1Q-A14, 1-2Q-A14, 1-3Q-A14 & 1-4Q-14  | 102,821.76  |                     |
| 8.                 | Domestic purchase of goods supported by a VAT invoice with changes in the name of the company                                     | Annexes 1-1Q-A15, 1-2Q-A15, 1-3Q-A15 & 1-4Q-A15 | 78,957.35   |                     |
| 9.                 | Domestic purchase of goods supported by a TIN # only; TAN-V; TAN VAT; TIN-NV/Non VAT stamped/ handwritten TIN-V/VAT tape receipt  | Annexes 1-1Q-A16, 1-2Q-A16, 1-3Q-A16 & 1-4Q-A16 | 15,877.00   |                     |
| 10.                | Domestic purchase of goods supported by VAT invoices but is not BIR registered                                                    | Annexes 1-1Q-A17, 1-2Q-A17, 1-3Q-A17 & 1-4Q-A17 | 401.79      |                     |
| 11.                | Domestic purchase of services supported by documents other than a VAT Official Receipt (OR)                                       | Annexes 1-1Q-B1, 1-2Q-B1, 1-3Q-B1 & 1-4Q-B1     | 52,853.96   |                     |
| 12.                | Domestic purchase of services supported by a VAT OR but not an                                                                    | Annexes 1-1Q-B3, 1-2Q-B3, 1-3Q-B3 & 1-4Q-B3     | 112.94      |                     |

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|     |  |                                                                                                                                |                                                 |           |
|-----|--|--------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|-----------|
|     |  | original copy                                                                                                                  |                                                 |           |
| 13. |  | Domestic purchase of services supported by a VAT OR not issued in the name of the company (i.e. issued in employee's name)     | Annexes 1-1Q-B4, 1-2Q-B4, 1-3Q-B4 & 1-4Q-B4     | 1,428.62  |
| 14. |  | Domestic purchase of services supported by a VAT OR issued in the name of Calenergy/CE Cebu/CE Luzon (whichever is applicable) | Annexes 1-1Q-B5, 1-2Q-B5, 1-3Q-B5 & 1-4Q-B5     | 65,226.86 |
| 15. |  | Domestic purchase of services supported by TIN # only; TIN-NV/NON VAT OR; stamped/ handwritten TIN-V/VAT                       | Annexes 1-1Q-B7, 1-2Q-B7, 1-3Q-B7 & 1-4Q-B7     | 55,409.52 |
| 16. |  | Domestic purchase of services supported by a tape receipt without the company's name and/or TIN                                | Annexes 1-1Q-B8, 1-2Q-B8, 1-3Q-B8 & 1-4Q-B8     | 219.64    |
| 17. |  | Domestic purchase of services supported by a VAT OR but without OR date                                                        | Annexes 1-1Q-B10, 1-2Q-B10, 1-3Q-B10 & 1-4Q-B10 | 10,683.24 |
| 18. |  | Domestic purchase of services supported by a zero-rated VAT OR                                                                 | Annexes 1-1Q-B11, 1-2Q-B11, 1-3Q-B11 & 1-4Q-B11 | 101.31    |
| 19. |  | Domestic purchase of services supported by a VAT OR not dated within the VAT taxable year                                      | Annexes 1-1Q-B14, 1-2Q-B14, 1-3Q-B14 & 1-4Q-B14 | 1,786.19  |
| 20. |  | Domestic purchase of services supported by a VAT OR with changes in the name of the company                                    | Annexes 1-1Q-B15, 1-2Q-B15, 1-3Q-B15 & 1-4Q-B15 | 35,150.09 |
| 21. |  | Importation of goods supported by documents other than an original copy of IEIRD                                               | Annexes 1-1Q-C1, 1-2Q-C1, 1-3Q-C1 & 1-4Q-C1     | 42,716.00 |
| 22. |  | Importation of goods supported by an original IEIRD and BOC OR not dated within the year                                       | Annexes 1-1Q-C4, 1-2Q-C4, 1-3Q-C4 & 1-4Q-C4     | 20,093.00 |
| 23. |  | Over claimed input tax on domestic purchase of goods/services due to erroneous computation (i.e. arithmetical error)           | Annexes 1-1Q-E1, 1-2Q-E1, 1-3Q-E1 & 1-4Q-E1     | 16,452.59 |
| 24. |  | Effect of forex on foreign currency denominated purchases of goods and services - overstatement                                | Annexes 1-1Q-J1, 1-2Q-J1, 1-3Q-J1 & 1-4Q-J1     | 56,599.30 |

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|     |                                    |                                         |                     |
|-----|------------------------------------|-----------------------------------------|---------------------|
| 25. | Supporting documents not available | Annexes 1-1Q-F, 1-2Q-F, 1-3Q-F & 1-4Q-F | 151,634.53          |
|     | <b>TOTAL</b>                       |                                         | <b>P 886,711.42</b> |

Similarly, the Independent CPA showed the following details of the input VAT that were properly supported by valid documents such as invoices, official receipts, Import Entry and Internal Revenue Declarations (IEIRDs), and Bureau of Customs (BOC) official receipts, amounting to P18,682,972.21:

| Findings |                                                                                                                                                    | Exhibit "QQ"                                     | Amount of Input Tax |
|----------|----------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|---------------------|
| I.       | Properly supported by VAT Invoices/Receipts/IEIRDs/BIR Form 1600                                                                                   |                                                  |                     |
| 1.       | Domestic purchase of goods and services supported by VAT invoices and ORs, and importation of goods and services supported by IEIRDs/BIR Form 1600 | Annexes 1-1Q-19, 1-2Q-19, 1-3Q-19, & 1-4Q-19     | P 13,587,854.34     |
| 2.       | Domestic purchases of goods and services supported by TIN No. VAT No., VAT No. TIN No., VAT Reg. TIN, TIN VAT No. Invoices or OR                   | Annexes 1-1Q-20, 1-2Q-20, 1-3Q-20, & 1-4Q-20     | 3,633,273.36        |
| 3.       | Domestic purchase of goods supported by a VAT invoice not dated within the VAT-taxable quarter but within the VAT-taxable year                     | Annexes 1-1Q-A2, 1-2Q-A2, 1-3Q-A2, & 1-4Q-A2     | 887,060.34          |
| 4.       | Domestic purchase of goods supported by TIN-V invoice                                                                                              | Annexes 1-1Q-A12, 1-2Q-A12, 1-3Q-A12, & 1-4Q-A12 | 16,666.53           |
| 5.       | Domestic purchase of services supported by a VAT OR not dated within the VAT- taxable quarter but within the VAT taxable year                      | Annexes 1-1Q-B2, 1-2Q-B2, 1-3Q-B2, & 1-4Q-B2     | 76,073.04           |
| 6.       | Domestic purchase of services supported by TIN-V OR                                                                                                | Annexes 1-1Q-B12, 1-2Q-B12, 1-3Q-B12, & 1-4Q-B12 | 2,195.61            |
| 7.       | Domestic purchase of services supported by a certified true copy of the VAT OR                                                                     | Annexes 1-1Q-B18, 1-2Q-B18, 1-3Q-B18, & 1-4Q-B18 | 9,500.00            |

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|    |                                                                                                                                             |                                              |                        |
|----|---------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|------------------------|
| 8. | Importation of goods supported by an original IEIRD and BOC/LBP Or not dated within the VAT taxable quarter but within the VAT taxable year | Annexes 1-1Q-C2, 1-2Q-C2, 1-3Q-C2, & 1-4Q-C2 | 453,857.99             |
| 9. | Importation of goods supported by original BOC OR and /or LBP OR only                                                                       | Annexes 1-1Q-C7, 1-2Q-C7, 1-3Q-C7, & 1-4Q-C7 | 16,491.00              |
|    | <b>TOTAL</b>                                                                                                                                |                                              | <b>P 18,682,972.21</b> |

This Court agrees with the Independent CPA's findings except for the input taxes in the amounts of P16,666.53 and P2,195.61 (*under nos. 4 and 6, respectively*), or a total of P18,862.14, pertaining to domestic purchases of goods and services supported by invoices and official receipts, respectively, and pre-printed with "TIN-V" instead of "TIN-VAT", in violation of Section 4.113-1(A) of Revenue Regulations No. 16-05.

Therefore, petitioner's valid creditable input tax amounts only to P18,664,110.07, computed as follows:

|                                                                                           |              |                        |
|-------------------------------------------------------------------------------------------|--------------|------------------------|
| Input VAT Claim                                                                           |              | P 19,569,683.63        |
| Less : Not properly supported input VAT                                                   |              |                        |
| a. Classified under "II. Other Findings" of the ICPA Report                               | P 886,711.42 |                        |
| b. Input VAT supported by invoices or official receipts with "TIN-V" instead of "TIN-VAT" | 18,862.14    | 905,573.56             |
| <b>Valid Input VAT</b>                                                                    |              | <b>P 18,664,110.07</b> |

Regarding the third and fourth requisites, petitioner's Quarterly VAT Returns<sup>21</sup> for the subject period showed that petitioner's sales were all zero-rated and it had no output VAT against which the subject claim may be credited or applied. Although petitioner carried over the said input VAT to the succeeding first and second quarters of 2007,<sup>22</sup> the same remained unutilized 

<sup>21</sup> Exhibits "E", "F", "G-I", and "H-I"

<sup>22</sup> Exhibits "M-I" and "N"

until it was fully deducted as "VAT Refund/TCC claimed" in the second quarter of 2007.<sup>23</sup> In other words, the input tax of P9,043,641.51<sup>24</sup> as of the end of the second quarter of 2007, carried over to the succeeding third quarter of 2007<sup>25</sup>, no longer included the claimed input VAT.

Finally, as to the timeliness of the filing of the instant claim, the Supreme Court in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*<sup>26</sup>, held that the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund under Section 112(A) of the NIRC of 1997 starts from the close of the taxable quarter when the relevant sales were made pertaining to input VAT, regardless of whether said tax was paid or not.

The present claim pertains to input VAT incurred for the first to fourth quarters of 2006. Reckoned from March 31, 2006, June 30, 2006, September 30, 2006, and December 31, 2006, the close of each taxable quarter of 2006, petitioner had until March 31, 2008, June 30, 2008, September 30, 2008, and December 31, 2008 within which to file its claim both in the administrative and judicial levels. Thus, petitioner's administrative claim for refund or issuance of tax credit certificate filed with the Bureau of Internal Revenue on July 4, 2007<sup>27</sup> and the Petition for Review filed before this Court on March 14, 2008 fell within the two-year prescriptive period.

In recapitulation, the Court finds petitioner to have sufficiently proven its entitlement to the issuance of tax credit certificate or refund of unutilized 

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<sup>23</sup> Exhibit "N", line 23D

<sup>24</sup> Exhibit "N", line 29

<sup>25</sup> Exhibit "O", line 20E

<sup>26</sup> G.R. No. 172129, September 12, 2008, 565 SCRA 154

<sup>27</sup> Exhibit "I"

input VAT attributable to its zero-rated sales for the four quarters of 2006, but only to the extent of P18,664,110.07, out of the total claim of P19,569,683.63.

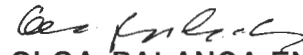
**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **EIGHTEEN MILLION SIX HUNDRED SIXTY FOUR THOUSAND ONE HUNDRED TEN AND 07/100 PESOS (P18,664,110.07)**, representing unutilized input VAT attributable to petitioner's zero-rated sales for the four quarters of taxable year 2006.

**SO ORDERED.**

  
**JUANITO C. CASTAÑEDA, JR.**  
Associate Justice

WE CONCUR:

  
**ERLINDA P. UY**  
Associate Justice

  
**OLGA PALANCA-ENRIQUEZ**  
Associate Justice

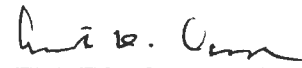
### **ATTESTATION**

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**JUANITO C. CASTAÑEDA, JR.**  
Associate Justice  
Chairperson

## CERTIFICATION

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

  
**ERNESTO D. ACOSTA**  
Presiding Justice