REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

MINDANAO I GEOTHERMAL PARTNERSHIP,
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7228

x--x

MINDANAO I GEOTHERMAL PARTNERSHIP,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7286

x--x

MINDANAO I GEOTHERMAL PARTNERSHIP,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7318

Members:

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

Promulgated:

OCT 2 4 2008
8:04 a.m.

x- -x

DECISION

CASTAÑEDA, JR., *J.*:

This case is a consolidation of three *Petitions for Review* filed by petitioner, seeking approval of its claim for issuance of tax credit certificate allegedly representing unutilized excess input value-added tax (VAT) for the period covering January 1, 2003 to December 31, 2003, arising from its zero-rated sales by virtue of Republic Act No. 9136, in the total amount of P14,185,294.80, broken down as follows:

CTA Case No.	Period Covered (2003)	Amount of Claim
7228	1st Qtr	P 3,893,566.14
7286	2nd Qtr	2,351,000.83
7318	3rd and 4th Qtrs	7,940,727.83
Total		**P 14,185,294.80**

Mindanao I Geothermal Partnership (petitioner) is a partnership duly registered with the Securities and Exchange Commission (SEC), with principal address at 36th Floor, Tower 1, The Enterprise Center, 6766 Ayala Avenue, Makati City. Petitioner is duly registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, with Tax Identification No. (TIN) 004-712-984-000.[1]

Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of his office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law.

In December 1994, petitioner entered into a contract of Build-Operate-Transfer (BOT) with the Philippine National Oil Corporation-Energy Development Corporation (PNOC-EDC) for the finance, design, construction, testing, commissioning, operation, maintenance, and repair of a 47-megawatt geothermal power plant. Under the said BOT contract, PNOC-EDC shall

[1] Pars. 1 and 4, Joint Stipulation of Facts and Issues to be Resolved, *Rollo*, p. 112; Annex "A", Petition for Review, CTA Case No. 7228.

394

supply and deliver steam to petitioner at no cost. In turn, petitioner will convert the steam into electric capacity and energy for PNOC-EDC and shall subsequently supply and deliver the same to the National Power Corporation (NPC), for and in behalf of PNOC-EDC.[2]

Petitioner's 47-megawatt geothermal power plant project has been accredited by the Department of Energy (DOE) as a Private Sector Generation Facility, pursuant to the provision of Executive Order No. 215, wherein Certificate of Accreditation No. 95-0307 was issued.[3]

On June 26, 2001, Republic Act (R.A.) No. 9136 took effect, and the relevant provisions of the National Internal Revenue Code (NIRC) of 1997 were deemed modified. R.A. No. 9136, also known as the "Electric Power Industry Reform Act of 2001" (EPIRA), 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. In relation thereto, Section 6 of Chapter II and Section 6 of Rule 5 of its Implementing Rules and Regulations state that:

"Republic Act No. 9136

Electric Power Industry Reform Act of 2001 (EPIRA)

CHAPTER II

Organization and Operation of the Electric Power Industry Jc

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[2] Annex "C", Petition for Review, CTA Case No. 7228.
[3] Annex "B", Petition for Review, CTA Case No. 7228.

395

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SEC. 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*)

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

RULE 5
Generation Sector

xxx xxx xxx

SECTION 6. *Generation Charges and VAT.* —

xxx xxx xxx gc

396

(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." (*Emphasis supplied*)

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%). Thus, petitioner adopted the VAT zero-rating of the EPIRA in computing for its VAT payable when it filed its VAT Returns, on the belief that its sales qualify for VAT zero-rating.

Petitioner reported its unutilized or excess creditable input taxes in its Quarterly VAT Returns for the first, second, third, and fourth quarters[4] of taxable year 2003, which were subsequently amended and electronically filed with the BIR.[5]

On April 4, 2005, petitioner filed with the BIR separate administrative claims for the issuance of tax credit certificate on its alleged unutilized or excess input taxes for taxable year 2003, in the accumulated amount of P14,185,294.80.[6]

Alleging inaction on the part of respondent, petitioner elevated its claims before this Court on April 22, 2005, July 7, 2005, and September 9, 2005 docketed as CTA Case Nos. 7228, 7286, and 7318, respectively.

[4] Exhibits "A", "C", "E", and "G".
[5] Exhibits "B", "D", "F". and "H".
[6] Par. 7, Joint Stipulation of Facts and Issues to be Resolved, *Rollo*, p. 113.

397

However, on October 10, 2005, petitioner received a copy of the letter dated September 30, 2003[7] of the BIR denying its application for tax credit/refund.[8]

In his *Answer* dated June 9, 2005, filed in CTA Case No. 7228, respondent averred by way of Special and Affirmative Defenses the following:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;
>
> 5. The amount of P3,893,566.14 being claimed by petitioner allegedly representing excess or unutilized input tax for the 1st quarter of the year 203 was not properly documented;
>
> 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 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 with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211*)."

Meanwhile, respondent alleged Special and Affirmative Defenses in his *Answer* filed in CTA Case No. 7286, to wit:

> "4. He reiterates and repleads the preceding paragraphs of this 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:

[7] Should be 2005.
[8] Par. 8, Joint Stipulation of Facts and Issues to be Resolved, *Rollo*, p. 113.

398

a. The registration requirements of a value-added taxpayer in compliance with Section 6 (a) and (b) of the Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of 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 administrative claim for refund which is a condition sine qua non prior to the filing of judicial claim** in accordance with the provision of Section 229 of the Tax Code, as amended. 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 input taxes of P2,351,000.83 allegedly paid by the petitioner on its purchases of goods and services for the second quarter of the taxable year 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 petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the Tax Code, as amended;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or

399

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 form 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);

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

Petitioner pleaded the same Special and Affirmative Defenses in his *Answer* in CTA Case No. 7318, except for the claimed amount of P7,940,727.83[9] covering the third and fourth quarters of taxable year 2003.

In a *Resolution* dated April 4, 2006, this Court consolidated CTA Case Nos. 7286 and 7318 with CTA Case No. 7228, the case bearing the lower docket number.

After trial on the merits, this case was submitted for decision on March 24, 2008, considering respondent's *Memorandum* *sans* petitioner's *Memorandum*. ge

[9] CTA Case No. 7318, *Rollo*, p. 51.

The parties jointly submitted the following issues[10] for this Court's resolution:

> "1. Whether or not petitioner's sale of generated power qualifies as zero-rated sale under the NIRC, as amended, and the EPIRA Law;
>
> 2. Whether or not the amount of P14,185,294.80 represents the accumulated unutilized and/or excess input taxes paid by petitioner within the year 2003 directly attributable to its primary source of revenue which is VAT-zero rated;
>
> 3. Whether or not the accumulated unutilized and/or excess input taxes paid by petitioner within the year 2003 in the total amount of P14,185,294.80 remains unutilized and/or unapplied;
>
> 4. Whether or not petitioner's unutilized and/or unapplied input taxes for the year 2003 is duly supported by pertinent documents, such as VAT invoices and official receipts;
>
> 5. And in sum, whether or not petitioner is entitled to the claim for refund or tax credit in the accumulated amount of P14,185,294.80 representing its unutilized and/or unapplied input taxes for the year 2003 directly attributable to its primary source of revenue which is VAT-zero rated."

Anent the first issue, it is undisputed that Republic Act No. 9136, otherwise known as the "Electric Power Reform Act of 2001", provides that sales of generated power by generation companies shall be VAT zero-rated. Thus, effective June 26, 2001, the pertinent provisions of the National Internal Revenue Code of 1997 were deemed amended by modifying the VAT rate applicable to sales of generated power by generation companies from ten percent (10%) to zero percent (0%).

[10] Joint Stipulation of Facts and Issues to be Resolved, *Rollo*, p. 113.

To qualify for VAT zero-rating under R.A. No. 9136, petitioner must prove that (1) it is a generation company, and (2) it derived sales from power generation.

Records prove that petitioner is a generation company, as evidenced by its Certificate of Accreditation issued by the Department of Energy[11] and by the Letter issued by PNOC-EDC[12]. Likewise, as declared by the Court-commissioned Independent CPA (ICPA) in his Report[13], for taxable year 2003, petitioner generated gross receipts from power generation services rendered to PNOC-EDC in the amount of P824,735,191.48, which was duly supported by VAT invoices and official receipts[14]. However, as correctly pointed out by the ICPA, the amount of P80,263,851.89 of the said gross receipts from PNOC-EDC was not reported in petitioner's Quarterly VAT Returns. Accordingly, only the amount of P744,471,339.59, which was declared in petitioner's Quarterly VAT Returns, qualifies for zero percent VAT. But since petitioner's claim is attributable to the entire sale in the amount of P824,735,191.48, its claim shall be computed proportionately in accordance with Section 112(A) of the NIRC of 1997, which states:

> "**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

[11] Exhibit "M".
[12] Exhibit "N".
[13] Exhibit "Z", page 6.
[14] Exhibits "Y-1 to "Y-36-a".

407

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 sales 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**." (*Emphasis supplied*)

Hence, petitioner's claim can only be 90.27% of the substantiated excess input VAT computed as follows:

Declared Gross Receipts per Returns	P744,471,339.59
Total Gross Receipts per Official Receipt	P824,735,191.48
Ratio (%)	0.9027

The Court will now determine whether petitioner has unutilized input VAT in the aggregate amount of P14,185,294.80 for taxable period 2003.

The ICPA, Mr. Eliseo A. Aurellado, in his Report dated November 9, 2006[15], noted the following exceptions and observations as far as the total claimed amount of unutilized input taxes is concerned:

	FINDINGS	REFERENCE (Exhibit Z)	INPUT VAT
A	Purchases of services not supported by official receipt/s	Annex D.1	P 146,557.87
B	Purchases of goods not supported by original invoice/s	Annex D.2	2,661.41
C	Invoice or official receipt not in the name of the Company	Annex D.3	183,426.59
D	TIN of supplier not indicated in the invoice or official receipt	Annex D.4	336.36
E	Claims erroneously computed	Annex D.5	380.00
F	Claims not within the refund period	Annex D.6	876,135.57
G	Charge invoices not supported by official receipts	Annex D.7	2,004.55
H	BIR authority to print not indicated in the invoice or official receipts	Annex D.8	16,338.12
I	Claims supported by non-VAT official receipts or invoices	Annex D.9	3,045.45
J	Discrepancy between amount per certificate and amount claimed	Annex D.10	1,944.68
	TOTAL		**P1,232,830.60**

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[15] ICPA Report, November 9, 2006, *Rollo*, pp. 168-230.

403

In her Affidavit[16], petitioner's witness, Ms. Daisy Abenes, explained that petitioner was able to locate the supporting documents that were not available at the time of the audit made by the ICPA. Notwithstanding the submission of the said documents, the Court finds that of the total disallowed input VAT arrived at by the ICPA in the amount of P1,232,830.60, the amount of P1,097,860.09 will still be disallowed; but the remaining amount of P134,970.51 will be allowed for its available documents properly support the claimed input VAT, as shown below:

	FINDINGS[17]	Amount per ICPA	Amount per further verification of this Court	Discrepancies
A	Purchases of services not supported by official receipt/s	P 146,557.87	P 30,285.19	P 16,272.68
B	Purchases of goods not supported by original invoice/s	2,661.41	2,661.41	-
C	Invoice or official receipt not in the name of the Company	183,426.59	166,733.31	16,693.28
D	TIN of supplier not indicated in the invoice or official receipt	336.36	336.36	-
E	Claims erroneously computed	380.00	380.00	-
F	Claims not within the refund period	876,135.57	876,135.57	-
G	Charge invoices not supported by official receipts	2,004.55	-	2,004.55
H	BIR authority to print not indicated in the invoice or official receipts	16,338.12	16,338.12	-
I	Claims supported by non-VAT official receipts or invoices	3,045.45	3,045.45	-
J	Discrepancy between amount per certificate amount claimed	1,944.68	1,944.68	-
	TOTAL	**P1,232,830.60**	**P1,097,860.09**	**P 134,970.51**

However, further verification of the records discloses that additional amount of P1,429,987.57 of the input taxes claimed shall be disapproved for failure to properly document the same, to wit:

	FINDINGS[18]	INPUT VAT
A	Claimed input VAT supported by non-VAT official receipts or invoices	P 19,850.00
B	Input VAT on purchase of services supported by VAT ORs issued not in the Company's name	679,198.72

[16] Exhibits "II" and "JJ".
[17] See Annexes "A" to "J".
[18] See Annex "K".

404

C	Input VAT on purchase of goods supported by VAT Invoices issued not in the Company's name	433,655.60
D	Input VAT on purchase of goods which are supported by TIN-VAT Invoice dated not within the year of claim	6,281.82
E	Input VAT on purchase of services supported by TIN-VAT OR which are not dated	1,824.47
F	Input VAT on purchase of services supported by documents other than VAT ORs	51,716.03
G	Input VAT on purchase of goods supported by documents other than VAT Invoices	3,594.07
H	Input VAT on purchases of goods and services without supporting documents	233,866.86
	TOTAL	**P1,429,987.57**

Considering the above findings, the Court finds that petitioner was able to support by proper VAT invoices and/or official receipts the input taxes in the amount of P11,657,447.14, in accordance with the invoicing requirements under Section 110(A) and 113(A) of the NIRC of 1997, as implemented by Sections 4.104-5 and 4.108-1 of Revenue Regulations No. 7-95. Below is the detailed computation of the P11,657,447.14 input taxes:

Excess Input VAT Applied for Refund					P14,185,294.80
Less:	Disallowances per ICPA *(Annexes D.1 to D.10)*		P1,232,830.60		
	Less:	Adjustment on disallowances made by Commissioned Independent CPA as per this Court's further verification	(134,970.51)	P1,097,860.09	
		Additional disallowances per this Court's further verification *(Annex K)*		1,429,987.57	2,527,847.66
Substantiated Excess Input VAT					**P11,657,447.14**

The Court will now resolve the question of whether petitioner's accumulated excess input VAT remains unutilized and/or unapplied.

Records show that although petitioner carried-over the claimed input VAT for each quarter immediately to the following taxable quarter, the claimed input VAT was deducted on that same following month. For instance, the claimed input VAT for the first quarter of 2003 in the amount of P3,893,566.14[19] was carried over to the second quarter of 2003, but subsequently deducted as "Deduction from Input Tax".[20] Therefore, it is clear that the excess input VAT for the second quarter of 2003 in the amount of P2,351,000.83[21] that is to be carried over to the third quarter of 2003 is already net of the claimed input VAT for the first quarter. The same applies with the claims for the second, third, and fourth quarters of 2003.

In addition, records indicate that petitioner's administrative claims[22] for the issuance of tax credit certificate filed on April 4, 2005, as well as the *Petitions for Review* filed on April 22, 2005[23], July 7, 2005[24], and September 9, 2005[25], were filed within the two-year prescriptive period reckoned from the respective dates of filing of the Quarterly VAT Returns[26] covering the first to fourth quarters of taxable year 2003.

In view of the above findings, the Court finds that petitioner has sufficiently proven its entitlement to the issuance of tax credit certificate, representing its unutilized and unapplied input VAT for its zero-rated sales during the four quarters of taxable year 2003, in the reduced amount of P10,523,177.53, computed as follows:

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[19] Exhibit "B-4".
[20] Line 25B of Exhibit "D".
[21] Exhibit "D-3".
[22] Exhibits "W" to "W-3-d".
[23] CTA Case No. 7228.
[24] CTA Case No. 7286.
[25] CTA Case No. 7318.
[26] Exhibits "A," "C," "E", and "G".

406

Substantiated Excess Input VAT		P11,657,447.14
Multiply by the ratio of:		
Declared Gross Receipts per Returns	P744,471,339.59	0.9027
Total Gross Receipts per Official Receipt	P824,735,191.48	
Refundable Excess Input VAT		**P10,523,177.53**

WHEREFORE, premises considered, the consolidated *Petitions for Review* are hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **TEN MILLION FIVE HUNDRED TWENTY THREE THOUSAND ONE HUNDRED SEVENTY SEVEN PESOS AND 53/100 (P10,523,177.53)**, representing petitioner's unutilized input VAT for the four quarters of taxable year 2003.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

407

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.
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

408