REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MAGELLAN COGENERATION INCORPORATED,
Petitioner,

- versus - **C.T.A. CASE NO. 6033**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 1 9 2003

x -x

DECISION

This case involves a claim for refund in the amount of P12,507,164.77 allegedly representing unutilized input value-added tax (VAT) on importation of capital goods and domestic purchases of goods and services attributable to petitioner's sales of electricity to National Power Corporation (NPC) for the year 1998.

The facts are briefly stated as follows:

Petitioner is a corporation duly organized and existing under the laws of the Philippines. It is engaged in the construction, operation, and maintenance of a power plant, with office address located at the 4th Floor, Ortigas Building, Ortigas Avenue, Pasig City.[1] It is registered with the Board of Investments (BOI) under Certificate of Registration No. 92-455 issued on March 12, 1993.[2] On June 30, 1994, it was registered

---

[1] Paragraph 1, Facts Admitted, page 48, CTA records.
[2] Paragraph 4, Facts Admitted, page 48, CTA records; Annex "B", page 8, CTA records.

with the Bureau of Internal Revenue as a VAT taxpayer with Certificate of Registration bearing RDO Control No. 94-430-001860.[3] Subsequently, it was registered with the Philippine Economic Zone Authority (PEZA) pursuant to the provisions of Republic Act No. 7916 as an Ecozone Utilities Enterprise as evidenced by PEZA Certificate of Registration No. 97-01-U issued on August 11, 1997.[4]

For the year 1998, petitioner filed its Quarterly Value-Added Tax Returns reflecting, among others, the following information:

Period	Exh	Date Filed	Zero-Rated Sales	VAT Input Domestic	Importation
1st Qtr 1998	H-1	04-27-98	P 64,548,689.84	P1,780,877.83	
2nd Qtr. 1998	I-1		131,966,577.00	2,139,173.13	
3rd Qtr. 1998	C-1	10-26-98	233,134,275.00	1,586,725.70	
4th Qtr. 1998	D-1	01-21-99	305,801,519.00	1,866,961.11	P28,652,440.78
Total			P 735,451,060.84	P7,373,737.77	28,652,440.78

The aforesaid returns were simultaneously amended on March 23, 1999, to correct its input VAT on importation for the year, to wit:

Period	Exhibit	Date Filed	VAT Input Domestic	Importation
1st Qtr 1998	H	03-23-99	P 1,780,877.83	P 2,176,181.00
2nd Qtr. 1998	I	03-23-99	2,139,173.13	961,905.00
3rd Qtr. 1998	C	03-23-99	1,586,725.70	1,803,554.00
4th Qtr. 1998	D	03-23-99	1,866,961.11	191,787.00
Totals			P 7,373,737.77	P 5,133,427.00

Petitioner alleged that the electricity it had generated for the year 1998 were sold to NPC pursuant to their Power Fuel Supply Agreement and that the input taxes in the total amount of P12,507,164.77 were all attributable to its sale of electricity to NPC.

---

[3] Paragraph 2, Facts Admitted, page 48, CTA records; Annex "A", page 7, CTA records.
[4] Paragraph 4, Facts Admitted, pages 48 & 49, CTA records; Annex "C", page 9, CTA records.

Thus, believing that it is entitled to the refund of input taxes attributable to its sales of electricity to NPC pursuant to Section 108(B)(3) of the Tax Code,[5] petitioner filed an application for tax credit with the Bureau of Internal Revenue on March 26, 1999.

As there was no action on the part of herein respondent's Bureau, petitioner filed the instant petition for review on March 30, 2000 in order to toll the running of the two-year prescriptive period under Section 229 of the Tax Code. To prove that its sales of electricity to NPC are subject to VAT at zero rate, petitioner cited the provisions of Presidential Decree No. 938 which categorically exempt NPC from all forms of taxes as well as the pronouncement of the Supreme Court in the case of **Maceda vs. Macaraig, Jr. G.R. No. 88291, May 31, 1991**, declaring the NPC as exempt from the payment of direct and indirect taxes. Moreover, petitioner relied on the memorandum of the then Secretary of Finance, Mr. Roberto F. De Ocampo, dated January 26, 1998, which classified the sales of electricity of independent power producers to NPC as subject to VAT at 0%.[6]

In his Answer, respondent advanced the following Special and Affirmative Defenses:

> 4.) In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action; and
>
> 5.) Claims for tax refund are strictly construed against the taxpayer. Petitioner has no cause of action.

This case was submitted for decision on January 16, 2003, sans the evidence and memorandum of the respondent.

---

[5] Paragraph 5, Facts Admitted, page 49, CTA records; Page 18, CTA records.
[6] Paragraph 6, Facts Admitted, page 49, CTA records.

The jointly stipulated issues to be resolved by the court are as follows:

1. Whether or not the sale by petitioner of electricity to NPC for calendar year 1998 is subject to VAT at zero rate;

2. Whether or not the accumulated input VAT of Twelve Million Five Hundred Seven Thousand One Hundred Sixty Four Pesos and Seventy Seven Centavos (P12,507,164.77) arising from petitioner's purchases of goods and services for calendar year 1998, which purchases are attributable to the sale by petitioner of electricity to NPC for said period, is duly supported by VAT invoices and/or receipts.

3. Whether or not out of the total input VAT of Twelve Million Five Hundred Seven Thousand One Hundred Sixty Four Pesos and Seventy Seven Centavos (P12,507,164.77) paid for calendar year 1998, the amount of Five Million One Hundred Thirty Three Thousand Four Hundred Twenty Seven Pesos (P5,133,427.00), representing input VAT on importation and/or domestic purchases of capital goods and equipment, is duly supported by VAT invoices and/or official receipts;

4. Whether or not petitioner's accumulated input VAT of Twelve Million Five Hundred Seven Thousand One Hundred Sixty Four Pesos and Seventy Seven Centavos (P12,507,164.77) for calendar year 1998 was applied or utilized against its output VAT in the succeeding taxable quarters of taxable year 1999.

Anent the first issue, we agree with the petitioner that its sale of services to the National Power Corporation is subject to VAT at 0% pursuant to the provisions of Section 108(B)(3) of the 1997 Tax Code, quoted, thus:

"Section 108. ***Value-added Tax on Sale of Services and Use or Lease of Properties.*** - x x x

(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;

(1) xxx
(2) 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."

In the case of **Ernesto M. Maceda vs. Hon. Catalina Macaraig, *supra*,** the total exemption of National Power Corporation (NPC) from all kinds of taxes, whether direct or indirect, was already settled by the Supreme Court. The NPC's exemption from all kinds of taxes was further explicated by the High Court in its Resolution dated June 8, 1993, resolving the same issue in the motion for reconsideration, and we quote, thus:

> "A chronological review of the NPC laws will show that it has been the lawmaker's intention that the NPC was to be completely tax-exempt from all forms of taxes – direct or indirect.
>
> One common theme in all these laws is that the NPC must be enable to pay its indebtedness which, as P.D. No. 938 was P12 Billion in total domestic indebtedness, at any one time, and US$4 Billion in total foreign loans at any one time. The NPC must be and has to be exempt from all forms of taxes if this goal is to be achieved."

In the light of the aforementioned decision, the Secretary of the Department of Finance issued a Memorandum dated January 28, 1998, addressed to the Commissioner of Internal Revenue, upholding the ruling of the Supreme Court with respect to the total exemption of NPC from all kinds of taxes and further ruled that purchases by NPC of electricity from independent power producers are subject to VAT at 0%. Pertinent portions of said memorandum read as follows:

> "As explained by the Supreme Court, the rationale for the NPC's tax exemption is to ensure cheaper power. If the BIR's recent view is to be implemented, the VAT, being an indirect tax, may be passed on by the seller of electricity to NPC. Effectively, this means that electricity will be sold at a higher rate to the consumers. Estimates show that a 10% VAT on electricity which is purchased by NPC from its independent power producers will increase power cost by about P109.4 million a month or about P1.30 billion a year. The effect on the consumer is an additional charge of P0.059 per kilowatt-hour. The recognition of NPC's broad privilege will inure to the ultimate benefit of the Filipino consumer.
>
> 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.

Consequently, respondent acknowledged that purchases by NPC of electricity from independent power producers are subject to VAT at 0% in a number of VAT and BIR Rulings.[7]

Moreover, in several analogous cases elevated before this court, the legal issue had been resolved in favor of petitioner, namely:

> 1. Mirant (Phils.) Mobile Corp. (formerly Southern Energy Mobile, Inc.) vs. Commissioner of Internal Revenue, CTA Case Nos. 5935 & 5969, January 15, 2002;[8]
>
> 2. Southern Energy Quezon, Inc. (formerly Hopewell Power (Phils) Corp.) vs. Commissioner of Internal Revenue, CTA Case Nos. 5933 & 5984, January 15, 2002;
>
> 3. Mirant Navotas Corp. (formerly Southern Energy Navotas, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 5936 and 5968, January 16, 2002;[9]
>
> 4. Mirant (Navotas II) Corp. (formerly Southern Energy Navotas II Power, Inc.) vs. Commissioner of Internal Revenue, CTA Case Nos. 5944 and 5963, January 21, 2002;[10]
>
> 5. Magellan Cogeneration, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5765, February 26, 2002;[11]
>
> 6. Mirant Pagbilao Corp. (formerly Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 6041, March 5, 2002);

---

[7] VAT Ruling Nos. 015-99, 022-99, 052-99, 067-99, 018-00; BIR Ruling Nos. DA-247-04-19-99, DA-632-11-10-99 and DA-209-04-04-99.
[8] With CTA Entry of Judgment dated April 25, 2002.
[9] With Court of Appeals' Entry of Judgment dated August 16, 2002.
[10] With CTA Entry of Judgment dated March 15, 2002.
[11] With CTA Entry of Judgment dated April 25, 2002.

7. Magellan Cogeneration Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5938, May 28, 2002;[12]

We shall now proceed to the factual aspects of the case which are the remaining issues at bar.

Petitioner anchored its claim on Section 112(A) and (B) of the Tax Code which provide:

> **Section 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.
>
> *(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.

Under Section 112(A), petitioner should prove that (1) it is a VAT registered person; (2) its sales are zero rated; (3) its administrative claim for refund was seasonably filed; (4) the input taxes claimed were attributable to zero-rated sales and were not applied against the output tax liability; and (5) foreign currency exchange proceeds had

---

[12] With CTA Entry of Judgment dated August 9, 2002.

been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.[13] With respect to Section 112(B), the following requisites must be proven: (1) that petitioner is a VAT registered person; (2) the input taxes claimed were paid on capital goods; (3) the input taxes have not been applied against its output tax liability; and (4) the administrative claim for refund was seasonably filed.[14]

We shall tackle the foregoing requisites simultaneously.

During the pre-trial conference, the parties had already stipulated that petitioner is a VAT registered person. It was also established that the claims for refund, both in the administrative and judicial levels, were filed within the two year period reckoned from the respective dates of filing of the original quarterly VAT returns.[15] Petitioner filed its claim for refund with the Bureau of Internal Revenue on March 26, 1999 and this petition for review on March 30, 2000, both well within the two-year period reckoned, at the earliest, from April 27, 1998, the date when petitioner filed its original 1998 first quarterly VAT return.[16] Furthermore, to prove its accumulated input taxes for the year, petitioner presented various sales invoices, official receipts and the import entry declarations filed with the Bureau of Customs.[17] These aforementioned documents were

---

[13] Read-Rite Philippines, Inc. (formerly Sunward Technologies Phils., Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 5659, September 29, 2000.
[14] Air Liquide Philippines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case No. 5652, July 6, 2000.
[15] Resolution, Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5296, July 20, 1998.
[16] Exhibit H-1.
[17] Exhibits A-1 to A-2705 and B-1 to B-176.

examined by the commissioned independent CPA pursuant to CTA Circular 1-95, as amended. In his report[18] dated February 6, 2001, the following findings were arrived at:

> "e) the VAT-input claimed to be used as tax credit for the year 1998 are qualified per our audit and summarized as follows:

	Claimed	Audit	Difference
From local purchases 1			
(Schedule "A" pages 1 to 46)	P 7,373,737.77	P 6,231,290.78	P1,142,446.99
From importation			
VAT inputs claimed wherein the required details were verified from original and/or photocopy of supporting documents and payments are supported by certification from the bank			
(Schedule "B" Pages 1 - 4)	5,133,427.00	5,133,427.00	-
	P12,507,164.77	P11,364,717.78	P1,142,446.99

> Concerning the differences in amount between VAT input claimed and Audited amounts, they are likewise explained in the attached Schedules "A" and "B"."

After an evaluation of the above report together with the evidence presented, the court found the same to be in order. Thus, petitioner should be disqualified from claiming input VAT which were not properly documented for VAT purposes in the amount of P1,142,446.99. Consequently, there is a need for a recomputation of the allowable input VAT that can be granted to petitioner.

Under Section 112(B) of the Tax Code, the input taxes sought to be refunded on capital goods need not be attributable to petitioner's zero-rated sales unlike refund of input VAT on goods and services covered under Section 112(A) of the same code. Inasmuch as the input taxes on capital goods in the sum of P5,133,427.00 were validly supported for VAT refund purposes, petitioner is entitled thereto. On the other hand, it is different with regard to the input tax attributable to its alleged zero-rated sales. Petitioner

[18] Exhibits F to F-3

must prove its total zero-rated sales declared in its 1998 original quarterly VAT returns in the amount of P735,451,060.84 in order to claim the remaining valid input tax credits. However, records show that petitioner was able to support only the sum of P239,062,809.29 as zero-rated sales based on the official receipts it submitted, to wit:

O.R. Number	Exh.	Date	Amount
450	G	03-09-98	P 21,939,603.46
501	G-1	03-10-98	2,098,936.89
502	G-2	04-14-98	18,253,558.47
503	G-3	04-16-98	180,616.86
504	G-4	05-04-98	8,739,179.50
505	G-5	05-06-98	1,699,364.53
506	G-6	05-29-98	14,571,161.77
507	G-7	06-01-98	1,623,200.23
509	G-8	07-01-98	20,409,474.82
508	G-9	06-26-98	1,971,345.52
802	G-10	08-21-98	25,027,390.94
795	G-11	08-21-98	2,243,216.75
807	G-12	09-17-98	2,383,221.90
808	G-13	09-18-98	26,965,620.60
827	G-14	10-14-98	2,968,040.73
830	G-15	10-21-98	33,697,894.34
834	G-16	11-16-98	2,319,641.03
844	G-17	11-20-98	23,405,848.18
853	G-18	12-21-98	2,622,027.64
855	G-19	12-23-98	25,943,465.13
	Total		P 239,062,809.29

Exhibits G-20 to G-23 were disregarded because they represent sales of electricity for the year 1999. Thus, in addition to the disallowed input tax of P1,142,446.99, the proportionate input tax in the amount of P4,174,964.82 should likewise be disallowed for petitioner's failure to support the corresponding zero-rated sales with official receipts, computed as follows:

Total input VAT claimed	P12,507,164.77
Less: Unsupported input VAT	1,142,446.99
Validly supported input VAT	P11,364,717.78
Less: Input VAT on capital goods	5,133,427.00
Supported input VAT not attributable to capital goods	P 6,231,290.78
Multiply by the rate of unsupported zero-rated sales [(P735,451,060.84 – P239,062,809.29)÷P735,451,060.84]	67%
Input VAT proportionate to the unsupported zero-rated sales	P 4,174,964.82

Finally, it was ascertained that the input taxes claimed for the year 1998 in the gross amount of P12,507,164.77[19] were already deducted by petitioner from the accumulated input taxes as of March 31, 1999 as evidenced by the 1999 third Quarterly VAT Return.[20]

In sum, petitioner is entitled to the refund of input VAT attributable to its zero-rated sales and to input VAT paid on capital goods, computed as follows:

Input VAT on capital goods	P 5,133,427.00
Add: Input VAT attributable to zero-rated sales (P6,231,290.78 – P4,174,964.82)	2,056,325.96
Total amount refundable	P 7,189,752.96

WHEREFORE, the petition for review is hereby **PARTIALLY GRANTED**. Respondent is **ORDERED to REFUND or, in the alternative, ISSUE A TAX**

---

[19] Included in the amount of P22,010,166.52 reflected in the 1999 first quarterly VAT return as "Any VAT Refund/TCC Claimed"; TSN, Nilo Herrera, December 7, 2000, pages 21 to 24; and Exhibit E-1.
[20] Exhibit E.

CREDIT CERTIFICATE to petitioner in the reduced amount of P7,189,752.96 representing unutilized input VAT for the year 1998.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

LOVELL R. BAUTISTA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge