

wt 090-83

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

FIRST DIVISION

**CE CEBU GEOTHERMAL POWER
COMPANY, INC.,**

Petitioner,

- versus -

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

C.T.A. CASE NO. 7395

Members:

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

Promulgated:

JAN 05 2010; 2:45 pm

X -----

DECISION

BAUTISTA, J.:

This is a Petition for Review filed on December 29, 2005 by petitioner, pursuant to Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals, to review by appeal the inaction of respondent Commissioner of Internal Revenue over petitioner's administrative claim for tax refund or tax credit in the amount of P18,623,007.12, representing alleged unutilized and unapplied input value-added taxes (VAT) paid on its domestic purchases of goods and services and importation of goods attributable to its effectively zero-rated sales to the Philippine National Oil Company – Energy Development Corporation (PNOC-EDC) for taxable year 2004.

Petitioner CE Cebu Geothermal Power Company, Inc. is a corporation duly organized and existing under Philippine laws, with principal office at 24/F 6750 Bldg.,



Ayala Avenue, Makati City¹. It is registered with the Bureau of Internal Revenue (BIR), as a VAT taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC) of 1997, with Taxpayer Identification No. (TIN) 003-459-879-000.²

It is engaged in the business of power generation and subsequent sale thereof to the PNOC-EDC, pursuant to a Power Purchase Agreement (PPA). It has been accredited and certified as such by the Department of Energy (DOE), as evidenced by its DOE Certificate of Accreditation (OSAC 94-06)³ issued on April 6, 1994.

Respondent is the duly appointed Commissioner 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 Original Quarterly VAT Returns⁴ for the first to fourth quarters of 2004 on the following dates:

Taxable Quarter	Date of Filing
First	April 26, 2004
Second	July 26, 2004
Third	October 25, 2004
Fourth	January 25, 2005

Subsequently, petitioner filed its Amended Quarterly VAT Returns for the first to fourth quarters of 2004 on November 27, 2005⁵, which reflected the following:

Taxable Quarter (2004)	Excess/Unutilized VAT Credits			Total
	Domestic Purchases	Services Rendered by Non-residents	Importation of Goods	
1st	P 7,214,684.23	P 50,784.61	P 734,727.00	P 8,000,195.84
2nd	3,277,320.79	56,291.00	301,376.00	3,634,987.79
3rd	2,212,725.58	83,854.99	397,799.00	2,694,379.57
4th	P 3,289,212.74	P 138,210.18	P 866,021.00	P 4,293,443.92
Total Excess/Unutilized VAT Credits for 2004				P18,623,007.12

¹ Exhibit "A"

² Exhibit "C"

³ Exhibit "B"

⁴ Exhibits "D", "F", "H", and "J"

⁵ Exhibits "E", "G", "I", and "K"

Petitioner filed an administrative claim for refund or issuance of tax credit certificate of the excess/unutilized input VAT with the Bureau of Internal Revenue on December 14, 2005 in the total amount of P18,623,007.12, for the four quarters of taxable year 2004.⁶

Due to respondent's inaction and in order to suspend the running of the two-year prescriptive period within which to file a judicial claim for refund/issuance of tax credit certificate, petitioner filed with this Court a Petition for Review, docketed as CTA Case No. 7395 on December 29, 2005; praying for the refund or issuance of tax credit certificate for its alleged unutilized input VAT for taxable year 2004 in the amount of P18,623,007.12.

Respondent interposed the following Special and Affirmative Defenses in his Answer⁷ to the Petition for Review:

- "5. He reiterates and pleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
6. Petitioner's alleged claim for refund is subject to administrative investigation/examination by respondent;
7. Taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with the provision of law.
8. To support its claim for refund, it is imperative for petitioner to prove the following, viz:
 - a. The registration requirements of a value-added taxpayer in compliance with the pertinent provision of the Tax Code of 1997, as amended, and its implementing revenue regulations;
 - 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 of 1997, as amended;
 - c. Proof of compliance with the submission of complete documents in support of the administrative claim for refund pursuant to Section 112 (D) of the Tax Code of 1997, as amended, 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

⁶ Exhibit "Z"

⁷ *Rollo*, pp. 84-90

- accordance with the provision of Section 229 of the Tax Code, as amended.
- d. That the input taxes of P18,623,007.12 allegedly representing unutilized input VAT from its domestic purchases of goods and services, services rendered by non-residents and importation of goods for the calendar year 2004 were:
- d.i paid by the petitioner;
 - d.ii attributable to its zero-rated or effectively zero-rated sales; and,
 - d.iii such have not been applied against any output tax;
- e. That petitioner's claim 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 Section 112 (A) of the Tax Code of 1997, as amended;
- f. That petitioner's domestic purchases of goods and services, services rendered by non-residents and importation of goods were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary Purchase Journal, showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code of 1997, as amended;
- g. That petitioner has complied with the governing rules and regulations with reference to recovery of tax erroneously or illegally collected as explicitly found in Sections 112 (A) and 229 of the Tax Code, as amended.
9. Excess input tax over output tax should be carried over to the succeeding quarter/s. However, input tax attributed to capital goods purchases or to zero-rated sales may be *opted* to be refunded or credited against other internal revenue taxes. This is provided under Section 110 (B) of the Tax Code of 1997, as amended, which states in part:

*'xxx If the input tax exceeds the output tax, the excess **shall be** carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person **may at his option** be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112. xxx* (underscoring supplied)

Likewise, Section 110 (C) of the Tax Code of 1997, as amended, provides:

*'Determination of Creditable Input Tax – The sum of the excess input tax carried over from the preceding month or quarter and the input tax creditable to a VAT-registered person during the taxable month or quarter **shall be reduced** by the amount of claim for refund or tax credit for value-added tax and other adjustments, xxx'* (underscoring supplied)

10. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications. (*Asiatic Petroleum Co. [P.I.] v. Llanes*, 49 Phil. 466 cited in *Collector of Internal (sic) Revenue v. Manila Jockey Club, Inc.*, 98 Phil. 670);

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

On November 17, 2006, this Court commissioned Mr. Jerome Antonio B. Constantino, as Independent Certified Public Accountant (CPA)⁸ upon motion of petitioner, pursuant to Rules 12 and 13 of the Revised CTA Rules.⁹

Apart from the Independent CPA, petitioner presented as witness Ms. Leilah Yasmin E. Alpad, petitioner's Senior Accountant who executed and identified her Judicial Affidavit dated August 10, 2006¹⁰ and Supplemental Sworn Statement dated October 11, 2006¹¹. On the other hand, respondent presented his witness Ms. Edna dela Cruz Cau on June 19, 2008¹².

Petitioner formally offered its documentary evidence on October 1, 2007; while respondent failed to file a Formal Offer of Evidence¹³.

The case was submitted for decision on January 7, 2009¹⁴, taking into consideration respondent's Memorandum filed on November 12, 2008¹⁵ and petitioner's Memorandum filed on December 15, 2008¹⁶.

⁸ Minutes of Hearing, November 17, 2006, *rollo*, pp. 183

⁹ *Rollo*, pp. 172-175

¹⁰ Exhibits "DD", Affidavit; Minutes of Hearing, Aug. 15, 2006, *rollo*, pp. 153

¹¹ Exhibit "EE", Supplemental Sworn Statement; Minutes of Hearing, Oct. 12, 2006, *rollo*, pp. 170

¹² *Rollo*, p. 399

¹³ *Rollo*, pp. 414-415

¹⁴ *Rollo*, p. 465

¹⁵ *Rollo*, pp. 417-429

¹⁶ *Rollo*, pp. 435-464

The following are the parties' jointly stipulated issues¹⁷, submitted for this Court's resolution:

- "1. Whether or not Petitioner is registered as a VAT taxpayer pursuant to the provisions of the Tax Code, as amended.
2. Whether or not Petitioner has complied with the invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the Tax Code, as amended.
3. Whether or not Petitioner has complied with the submission of complete documents in support of its administrative claim for refund pursuant to Section 112 (D) of the Tax Code, as amended.
4. Whether or not the input taxes of P18,623,007.12 allegedly representing unutilized input VAT from its domestic purchases of goods and services, services rendered by non-residents and importation of goods for the calendar year 2004 were:
 - a. paid by the Petitioner;
 - b. attributable to its zero-rated or effectively zero-rated sales; and
 - c. such have not been applied against any output tax.
5. Whether or not Petitioner's claim for tax credit or refund of the unutilized input VAT was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112 (A) of the Tax Code, as amended.
6. Whether or not Petitioner's alleged domestic purchases of goods and services, services rendered by non-residents and importation of goods were made in the course of its trade or business and whether or not the same are properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary Purchase Journal, showing that it actually paid VAT in accordance with Sections 110(A)(2) and 113 of the Tax Code, as amended.
7. Whether or not Petitioner has complied with the governing rules and regulations with reference to recovery of tax erroneously or illegally collected as explicitly found in Sections 112(A) and 229 of the Tax Code, as amended.
8. Whether or not the claimed input tax were carried over to the succeeding quarter/s of the Petitioner's VAT returns.
9. Whether or not Petitioner is entitled to a refund or issuance of a tax credit certificate for the total amount of P18,623,007.12 allegedly representing unutilized input VAT from its domestic purchases of goods and services, services rendered by non-residents and importation of goods for the first to fourth quarters of taxable year 2004."

¹⁷ Submitted Issues for Trial, Joint Stipulation of Facts and Issues, *rollo*, pp. 116-118

Simply put, the issue is whether or not petitioner's sale of generated power to PNOC-EDC qualifies as a zero-rated VAT transaction; and if so, whether or not petitioner is entitled to a refund or issuance of tax credit certificate for its unutilized input VAT payments amounting to P18,623,007.12, arising from its domestic purchases of goods and services and importations of goods attributable to its effectively zero-rated sales for the four taxable quarters of 2004.

The petition is partly impressed with merit.

As correctly pointed out by petitioner, the law explicitly states that sales of generated power by generation companies are VAT zero-rated beginning June 26, 2001, the date of effectivity of Republic Act (R.A.) No. 9136 otherwise known as the "Electric Power Industry Reform Act of 2001". Section 6 of R.A. No. 9136 provides that:

"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*)

Section 6 of Rule 5 of the Implementing Rules and Regulations of R.A. No. 9136 provides a similar pronouncement, to wit:



**"RULE 5
Generation Sector**

XXX

XXX

XXX

SECTION 6. *Generation Charges and VAT.* —

XXX

XXX

XXX

(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*)

Petitioner has sufficiently established that it is in the business of power generation and as such sold corresponding generated power to PNOC-EDC. Accordingly, petitioner can treat its sale of generated power to PNOC-EDC as VAT zero-rated sales.

The Court will now address the issue of whether or not petitioner is entitled to a refund or issuance of tax credit certificate amounting to P18,623,007.12 for its claimed unutilized input VAT payments arising from domestic purchases of goods and services and importations of goods attributable to its effectively zero-rated sales for the four taxable quarters of 2004.

This Court had the occasion to grant tax refund or tax credit in connection with claims for unutilized input VAT payments arising from domestic purchases of goods and services and importations of goods attributable to effectively zero-rated sales, such as in the consolidated cases of **CE Cebu Geothermal Power Company, Inc. vs. Commission of Internal Revenue**¹⁸. This Court held that sale of generated power to PNOC-EDC by petitioner, as in the instant case, are zero-rated transactions under the same premises.



¹⁸ CTA Case Nos. 7181 and 7278, May 9, 2008

Section 112(A) of the NIRC of 1997 lays down the requisites for refund or issuance of tax credit certificate of input tax due or paid attributable to zero-rated or effectively zero-rated sales, as follows:

"SEC. 112. Refunds or Tax Credits of Input Tax. –

(A) Zero-rated or Effectively Zero-rated Sales. – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

From the foregoing, 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, petitioner must comply with the following requisites:

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 counted from the close of the taxable quarter when the sales were made.

As to the first requisite, this Court examined the pieces of evidence presented particularly, zero-rated sales invoices¹⁹, official receipts²⁰, and the findings and observations of the Court-commissioned Independent CPA in his Report²¹ dated December 18, 2006, stating as follows:

¹⁹ Exhibits "II-1" to "II-12"

²⁰ Exhibits "KK-1" to "KK-38"

²¹ Exhibits "GG" to "GG-1"

"I. VERIFICATION OF DOCUMENTS SUPPORTING THE SALES OF GENERATED POWER AND CORRESPONDING DOCUMENTS EVIDENCING THE PROCEEDS OF THE SALES OF GENERATED POWER

1. Verification of documents supporting the sales of generated power for the period from January 1, 2004 to December 31, 2004.

We checked and noted that the sales of generated power for the period covered January 1, 2004 to December 31, 2004 as indicated in the Summary of Sales Invoices (**Exhibit HH**) were supported by original copies of sales invoices issued by the company to PNOC-EDC.

We also checked that the sales invoices issued by the Company to PNOC-EDC supporting the sales of generated power for the period from January 1, 2004 to December 31, 2004 which were treated as zero-rated sales are original copies pre-printed with the word '**zero-rated**'. We present below our observations:

Observations	Amount	
	In Pesos	In Dollars
Sales invoices preprinted with the word 'zero-rated'	P127,966,045.19	\$40,371,366.32

We also checked that the photocopies of the sales invoices and the Summary of Sales Invoices prepared by the Company to be presented as **Exhibit II-1 to 12** and **Exhibit HH** during the hearing of the Company's case are faithful reproduction of the original copies we have examined.

2. Verification of documents supporting the proceeds of the sales of generated power

We checked that the proceeds of the sales of generated power of the Company for the period from January 1, 2004 to December 31, 2004, were supported by original copies of ORs issued by the Company to PNOC-EDC.

We also checked and noted that ORs issued by the Company to PNOC-EDC evidencing its receipts/collection of the proceeds of the sales of generated power which were treated as zero-rated sales from January 1, 2004 to December 31, 2004 were preprinted with the word '**zero-rated**'. We present below our observations.

Observations	OR Amount	Withholding Tax	Forex	Total Sales
ORs preprinted with the word 'zero-rated'	P2,447,352,514.28	P39,671,416.40	(P53,569.97)	P2,486,970,360.71

We also checked that the photocopies of the official receipts (ORs) and the Summary of Official Receipts to be presented as **Exhibits KK-1 to 38 and Exhibit JJ** during the hearing of the Company's case are faithful reproduction of the original copies we have examined."

Based on the Independent CPA Report, which is herein adopted, petitioner actually generated gross receipts in the amount of P2,486,970,360.71 from sales of generated

power to PNOC-EDC for taxable year 2004. Such gross receipts qualify for VAT zero-rating, pursuant to Section 6 of R.A. No. 9136.

The Court will now determine the amount of unutilized input VAT attributable to petitioner's VAT zero-rated receipts for taxable year 2004 in the amount of P2,486,970,360.71.

The Independent CPA made the following findings and observations in his Report:²²

FINDINGS	Amount of Input Tax
A. Supported by VAT Invoices/Receipts/IEIRDs/BIR Form 1600	
1. Properly Supported purchases and importation of goods and services.	P 13,011,766.73
2. Domestic Purchases of goods and services supported by TIN No. VAT No., VAT No. TIN No., VAT Reg. TIN, TIN VAT No. invoice or OR.	396,505.00
3. Domestic purchase of goods supported by a VAT invoice not dated within the VAT-taxable quarter but within the VAT-taxable year	474,676.99
4. Domestic purchase of goods supported by invoice pre-printed with TIN-V after July 31, 1991 but before January 1, 1996	37,213.05
5. Domestic purchases of service supported by a VAT OR not dated within the VAT taxable quarter but within the VAT taxable year	600,051.17
6. Domestic purchase of services supported by OR pre-printed with TIN-V after July 31, 1991 but before January 1, 1996	38,445.61
7. 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.	1,122,414.85
8. Importation of goods supported by a certified true copy of IEIRD	87,459.00
9. Input tax on OCT (Overseas Communication Tax) included in payments to telecommunications service providers	227.05
10. Input tax on purchases of petroleum products (diesel,gasoline)	13,564.42
11. Input tax on DST and local taxes included in payments to purchase of services	1.82
T O T A L	P 15,782,325.69

²² Exhibit "GG" to "GG-1"

B. Other Findings

1. Domestic purchase of goods supported by documents other than a VAT invoice	18,659.01
2. Domestic purchase of goods supported by a VAT invoice but not an original copy	113,432.51
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)	876.00
4. Domestic purchase of goods supported by a VAT invoice issued in the name of Calenergy/ CE Luzon/VGPC (whichever is applicable)	9,898.94
5. Domestic purchase of goods supported by TIN # only; TIN-NV/ NON VAT Invoice; stamped/handwritten TIN-V/VAT	45,034.94
6. Domestic purchase of goods supported by a VAT Invoice without invoice date	433.46
7. Domestic purchase of goods supported by zero-rated VAT invoice	1,824.72
8. Domestic purchase of goods supported by a VAT invoice not dated within the VAT taxable year	437,600.13
9. Domestic purchase of goods supported by a VAT invoice with changes in the name of the company	8,096.86
10. Domestic purchase of goods supported by VAT invoice but is not BIR-registered	5,725.43
11. Domestic purchase of services supported by documents other than a VAT official receipts (OR)	1,642.35
12. Domestic purchases of services supported by a VAT OR but not an original copy	2,072.45
13. Domestic purchases of services supported by a VAT OR issued in the name of CalEnergy/CE Luzon/VGPC (whichever is applicable)	630.00
14. Domestic purchases of services supported by TIN# only; TIN-NV/ NON VAT OR; stamped/handwritten TIN-V/VAT	6,311.60
15. Domestic purchases of services supported by a VAT OR not dated within the VAT taxable year	1,375.71
16. Domestic purchases of services supported by a VAT OR but is not BIR registered	95,380.64
17. Importation of goods supported by documents other than an original copy of IEIRD	54,641.15
18. Importation of goods supported by an original IEIRD and BOC OR not dated within the year	785,299.00
19. Importation of goods supported by a photocopy (any other than original) of IEIRD and original BOC/LBP OR	6,240.00

20. Importation of goods supported by original BOC and/or LBP OR only	26.00
21. Importation of goods supported by an original IEIRD with changes in the name of the company	20,935.00
22. Overclaimed input tax on domestic purchases of goods/ services due to erroneous computation (i.e. arithmetical error)	332.09
23. Effect of forex on foreign currency denominated purchases of goods and services - overstatement	5,363.03
24. Supporting documents not available	609,280.29
TOTAL	2,231,111.31
C. Additional Information	
1. Domestic purchase of goods supported by invoice pre-printed with TIN-V after January 1, 1996	25,228.46
2. Domestic purchase of services supported by OR pre-printed with TIN-V after January 1, 1996	584,341.66
TOTAL	609,570.12
GRAND TOTAL	P 18,623,007.12

After evaluation and verification of the pieces of evidence presented, specifically, the documents evidencing petitioner's purchases of goods and services, and importation, and the official receipts²³, this Court agrees with the Independent CPA that the input VAT claim in the amount of P2,231,111.31 and P609,570.12, classified under Captions "B. Other Findings" and "C. Additional Information" respectively, must be denied for failure to comply with the invoicing requirements under Section 113(A) of the NIRC of 1997, as amended, and Section 4.108-1 of Revenue Regulations No. 7-95, which provide as follows:

"SEC. 113. Invoicing and Accounting Requirements for VAT Registered Persons. —

(A) *Invoicing Requirements.* — A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

²³ Exhibits "MM C-1Q-1 to 601", "MM C-2Q-1 to 810", "MM C-3Q-1 to 941", and "MM C4Q-1 to 1155"



(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax."

"SECTION 4.108-1. Invoicing Requirements – All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN and address of seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word 'zero-rated' imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration.'

xxx

xxx

xxx

Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or receipts and this shall be considered as a 'VAT Invoice'. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax.

If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A 'VAT Invoice' shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the Code.

xxx

xxx

xxx"

After further examination of Caption "A" of the Independent CPA's Report, the Court will further reduce the refundable amount as a result of the disallowance of the amounts covered by item nos. 4, 6, 8, and 9. The input taxes in the amounts of P37,213.05 and P38,445.61 under item nos. 4 and 6 respectively, pertain to domestic purchases of goods and services that are supported by invoices with pre-printed "TIN-V" instead of "TIN-VAT", in violation of Section 4.108-1 of Revenue Regulations No. 7-95, to wit:

"Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoices or receipts and this shall be considered as a 'VAT Invoice'. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax."



On the other hand, the claimed input taxes stated in item no. 8 in the amount of P87,459.00 shall be denied because the Import Entry and Internal Revenue Declaration (IEIRD) supporting the said input taxes cannot be given evidentiary value for it was only stamped as "certified true copy". This Court cannot ascertain whether the certifier named therein is actually the custodian of said documents.

Moreover, the input taxes of P227.05 under item no. 9 described as: "Input tax on OCT (Overseas Communications Tax) included in the payments to telecommunication service provider" shall be disallowed because overseas communications are VAT-exempt, pursuant to Section 109(j) of the NIRC of 1997, as amended, in relation to Title V, Section 120(A) of the same Code, to wit:

"SEC. 109. Exempt Transactions. – The following shall be exempt from value-added tax:

XXX

xxx

XXX

(j) Services subject to percentage tax under Title V;”

"TITLE V – OTHER PERCENTAGES TAXES

XXX

xxx

xxx

SEC. 120. Tax on Overseas Dispatch, Message or Conversation Originating from the Philippines. –

(A) Persons liable. – There shall be collected upon every overseas dispatch, message or conversation transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless and other communication equipment services, a tax of ten percent (10%) on the amount paid for such services. The tax imposed in this Section shall be payable by the person paying for the services rendered and shall be paid to the person rendering the services who is required to collect and pay the tax within twenty (20) days after the end of each quarter.”

Accordingly, out of the total input VAT claim of P15,782,325.69 classified under Caption "A" in the Independent CPA's Report, the amount of P163,344.71 shall be denied, detailed as follows:

FINDINGS	Amount of Input Tax
4. Domestic purchase of goods supported by invoice pre-printed with TIN-V after July 31, 1991 but before January 1, 1996	P 37,213.05
6. Domestic purchase of services supported by OR pre-printed with TIN-V after July 31, 1991 but before January 1, 1996	38,445.61
8. Importation of goods supported by a certified true copy of IEIRD	87,459.00
9. Input tax on OCT (Overseas Communication Tax) included in payments to telecommunications service providers	227.05
TOTAL	P 163,344.71

To recapitulate, from the P18,623,007.12 input VAT claim only the amount of P15,618,980.98 was properly substantiated by VAT invoices or official receipts, computed as follows:

Amount of Claim	P 18,623,007.12
Disallowances:	
Input VAT under caption A	
Findings No. 4,6,8 and 9	P 163,344.71
Input VAT under caption B	2,231,111.31
Input VAT under caption C	P 609,570.12
	<u>3,004,026.14</u>
Total Substantiated Input VAT	<u>P5,618,980.98</u>

As to the third requisite, petitioner's VAT Returns for taxable year 2004 showed that petitioner had no taxable sales/receipts, but only zero-rated sales in the amount of P2,486,970,360.71 from the sale of its generated power to PNOC-EDC. Accordingly, the substantiated input VAT of P15,618,980.98 is entirely attributable to the reported zero-rated receipts of P2,486,970,360.71.

Finally, this Court finds that petitioner's claim for refund or issuance of tax credit certificate was filed within the two-year prescriptive period provided under Section 112(A) of the NIRC of 1997, as amended, as follows:

Taxable Quarter	Date of Filing of Original Return	Exhibit	Date Filed-Claim for Refund with BIR	Exhibit	Date of Filing Petition for Review
First	April 26, 2004	"D"	December 14, 2005	"Z"	December 29, 2005
Second	July 26, 2004	"F"	December 14, 2005	"Z"	December 29, 2005
Third	October 25, 2004	"H"	December 14, 2005	"Z"	December 29, 2005
Fourth	January 25, 2005	"J"	December 14, 2005	"Z"	December 29, 2005

Thus, both the administrative and judicial claims of petitioner were filed well within the two-year prescriptive period.

In sum, since petitioner has complied with the requirements for tax refund provided in the NIRC of 1997 and applicable jurisprudence, the Court finds petitioner entitled to the refund of its unutilized input VAT, but in the reduced amount of P15,618,980.98.

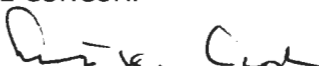
WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. **ACCORDINGLY**, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the amount of **FIFTEEN MILLION SIX HUNDRED EIGHTEEN THOUSAND NINE HUNDRED EIGHTY PESOS AND 98/100 (P15,618,980.98)** to petitioner, representing unutilized input VAT from its domestic purchases of goods and services and importation of goods attributable to its effectively zero-rated sales to PNOC-EDC for the first, second, third, and fourth quarters of taxable year 2004.

SO ORDERED.



LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:



(With Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice



CAESAR A. CASANOVA
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