

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CARGILL PHILIPPINES, INC.,
Petitioner,

CTA CASE NOS. 6714 & 7262

- versus -

Members:

ACOSTA, Chairperson
BAUTISTA, and
CASANOVA, JJ.

**COMMISSIONER OF INTERNAL
REVENUE,**

Promulgated:

Respondent.

AUG 24 2004; 11:31am

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DECISION

CASANOVA, J.:

This case is a consolidation of two Petitions for Review separately filed by petitioner seeking the issuance of a tax credit certificate for its alleged unutilized and/or unapplied input valued-added tax (VAT) for the period covering April 1, 2001 to August 31, 2004 in the aggregate amount of P50,042,344.39, broken down as follows:

CTA Case No.	Period Covered	Amount of Claim
6714	April 1, 2001 to February 28, 2003	P 27,847,897.72 ¹
7262	March 1, 2003 to August 31, 2004	22,194,446.67
	Total	P 50,042,344.39

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 14th Floor, Citibank Tower, 8741 Paseo de Roxas, Makati City.²

¹ Amended Petition for Review, CTA Case No. 6714, Docket, pp. 57-63

² Stipulation of Facts, Par. 1, Joint Stipulation of Facts and Issues (JSFI), CTA Case No. 7262, Docket, p. 62; Facts Admitted Par. 1, JSFI, CTA Case No. 6714, Docket, p. 223

Petitioner's primary purpose is "to own, operate, run and manage plants and facilities for the production, crushing, extracting or otherwise manufacture and refining of coconut oil, coconut meal, vegetable oil, lard, margarine, edible oil, and other articles of similar nature and their by-products; to engage in research, breeding, developments, production, culture, processing, importation and exportation, and sale by wholesale of agricultural seeds/products of all kinds whatsoever and the rendition of technical assistance and services related thereto; to engage in the import and export business and to deal in all the goods produced and manufactured by it and the by-products thereof at wholesale; to engage in the buy and/or sell, export and/ or import, acquisition, exchange, or otherwise dealing in sugar and other related products by way of wholesale in the domestic as well as export markets and to engage in all activities, including the purchase or lease of machineries and equipment, necessary for the operation thereof."³

Respondent, on the other hand, 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, with office address at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.⁴

Petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT enterprise with Tax Identification No. (TIN)/VAT Registration No. 000-

³ Stipulation of Facts, Par. 6, JSFI, CTA Case No. 7262, Docket, pp. 63-64

⁴ Facts Admitted, Par. 2, JSFI, CTA Case No. 6714, Docket, pp. 223-224; Stipulation of Facts, Par. 2, JSFI, CTA Case No. 7262, Docket, p. 62

110-659-000.⁵ As such, it filed its Quarterly VAT Returns for the period April 1, 2001 to August 31, 2004, including the amendments thereto, on the following dates:

Period Covered	Original Return Filed on	Exhibit	Amended Return Filed on	Exhibit
2nd Qtr CY 2001	7/25/2001	E, V		
3rd Qtr CY 2001	10/25/2001	H (CTA Case No. 6714)	6/11/2002	H-1, X
4th Qtr CY 2001	1/25/2002	K	6/11/2002	K-1, Z
1st Qtr CY 2002	4/25/2002	N	6/11/2002	N-1, BB
2nd Qtr CY 2002	7/25/2002	O		
1st Qtr FY ending May 31, 2003 ⁶	9/25/2002	P, EE		
2nd Qtr FY ending May 31, 2003	12/23/2002	Q, FF		
3rd Qtr FY ending May 31, 2003	3/24/2003	R, GG		
4th Qtr FY ending May 31, 2003	6/25/2003	B		
1st Qtr FY ending May 31, 2004	9/25/2003	C		
2nd Qtr FY ending May 31, 2004	12/22/2003	D		
3rd Qtr FY ending May 31, 2004	3/24/2004	E		
4th Qtr FY ending May 31, 2004	6/25/2004	F		
1st Qtr FY ending May 31, 2005	9/23/2004	G		

In the said Quarterly VAT Returns, petitioner reflected an overpayment of P44,920,350.92 for the second quarter of CY 2001 to the third quarter of FY 2003 (April 1, 2001 to February 28, 2003) and P31,915,642.26 for the fourth quarter of FY 2003 to the first quarter of FY 2005 (March 1, 2003 to August 31, 2004), computed as follows:

	2nd Qtr CY 2001	3rd Qtr CY 2001	4 th Qtr CY 2001
Taxable Sales	198,427,281.66	381,557,730.23	135,930,143.05
Zero-Rated Sales	473,354,243.00	580,569,507.00	430,276,914.00
Exempt Sales	347,042,710.03	728,331,292.00	611,710,221.00
Total Sales	1,018,824,234.69	1,690,458,529.23	1,177,917,278.05
Output VAT	19,842,728.17	38,155,773.02	13,593,014.31
Less: Input Tax			
Carried-over from prev qtr	38,199,071.54	36,933,754.79	27,325,991.94

⁵ Stipulation of Facts, Par. 3, JSFI, CTA Case No. 7262, Docket, p. 63

⁶ Petitioner changed from the calendar year [CY] basis of accounting to the fiscal year [FY] (TSN, December 9, 2004, CTA 6714, docket, page 250)

Presumptive Input Tax	-	4,496,217.15	492,914.62
Domestic purchases	18,577,411.42	10,621,081.02	16,134,087.46
Total available Input Tax	56,776,482.96	52,051,052.96	43,952,994.02
Less Any VATRefund/TCC Claimed			
Net Creditable Input Tax			
VAT Payable/(Excess Input Tax)	(36,933,754.79)	(13,895,279.94)	(30,359,979.72)
Less: Advance Payment	-	13,430,712.00	1,840,000.00
Tax Payable/(Overpayment)	(36,933,754.79)	(27,325,991.94)	(32,199,979.72)

	1st Qtr CY 2002	2nd Qtr CY 2002	1st Qtr FY 2003
Taxable Sales	422,325,623.80	169,245,889.30	63,206,898.90
Zero-Rated Sales	562,453,504.00	652,076,777.48	476,081,386.20
Exempt Sales	702,752,521.00	1,498,589,400.75	817,614,934.90
Total Sales	1,687,531,648.80	2,319,912,067.53	1,356,903,220.00
Output VAT	42,232,562.38	16,924,588.93	6,320,689.89
Less: Input Tax			
Carried-over from prev qtr	32,199,979.72	34,777,354.76	35,063,698.15
Presumptive Input Tax	-	-	-
Domestic purchases	44,809,937.42	17,210,932.32	9,553,468.44
Total available Input Tax	77,009,917.14	51,988,287.08	44,617,166.59
Less Any VATRefund/TCC Claimed			
Net Creditable Input Tax			
VAT Payable/(Excess Input Tax)	(34,777,354.76)	(35,063,698.15)	(38,296,476.70)
Less: Advance Payment	-	-	-
Tax Payable/(Overpayment)	(34,777,354.76)	(35,063,698.15)	(38,296,476.70)

	2nd Qtr FY 2003	3rd Qtr FY 2003	4th Qtr FY 2003
Taxable Sales	320,894,788.30	250,257,189.10	52,860,375.10
Zero-Rated Sales	559,506,262.00	883,282,689.80	841,599,114.80
Exempt Sales	1,244,467,417.39	1,074,034,268.57	956,876,268.40
Total Sales	2,124,868,467.69	2,207,574,147.47	1,851,335,758.30
Output VAT	32,089,478.83	25,025,718.91	5,286,037.51
Less: Input Tax			
Carried-over from prev qtr	38,296,476.70	43,947,479.27	44,920,350.92
Presumptive Input Tax	366,627.73	1,346,124.84	1,919,473.95
Domestic purchases	36,190,306.68	16,233,369.67	10,613,969.33
Total available Input Tax	74,853,411.11	61,526,973.78	57,453,794.20
Less Any VATRefund/TCC Claimed			
Net Creditable Input Tax			
VAT Payable/(Excess Input Tax)	(42,763,932.28)	(36,501,254.87)	(52,167,756.69)
Less: Advance Payment	1,183,546.99	8,419,096.05	10,346,816.52
Tax Payable/(Overpayment)	(43,947,479.27)	(44,920,350.92)	(62,514,573.21)

	1st Qtr FY 2004	2nd Qtr FY 2004	3rd Qtr FY 2004
Taxable Sales	87,444,776.10	63,268,426.40	31,675,341.20
Zero-Rated Sales	686,995,052.00	807,345,023.00	1,239,127,372.00
Exempt Sales	1,006,442,323.06	981,046,593.00	978,272,042.77
Total Sales	1,780,882,151.16	1,851,660,042.40	2,249,074,755.97

Output VAT	8,744,477.61	6,326,842.64	3,167,534.12
Less: Input Tax			
Carried-over from prev qtr	62,514,573.21	32,928,208.72	26,034,524.98
Presumptive Input Tax	-	-	63,543.83
Domestic purchases	5,281,078.93	3,607,119.81	3,702,213.10
Total available Input Tax	67,795,652.14	36,535,328.53	29,800,281.91
Less Any VATRefund/TCC Claimed	26,122,965.81	4,173,960.91	
Net Creditable Input Tax	41,672,686.33	32,361,367.62	
VAT Payable/(Excess Input Tax)	(32,928,208.72)	(26,034,524.98)	(26,632,747.79)
Less: Advance Payment		-	419,748.00
Tax Payable/(Overpayment)	(32,928,208.72)	(26,034,524.98)	(27,052,495.79)

	4th Qtr FY 2004	1st Qtr FY 2005
Taxable Sales	22,632,468.20	5,341,002.60
Zero-Rated Sales	1,586,425,474.00	1,202,714,182.53
Exempt Sales	1,562,169,435.00	1,209,725,224.60
Total Sales	3,171,227,377.20	2,417,780,409.73
Output VAT	2,263,246.82	534,100.26
Less: Input Tax		
Carried-over from prev qtr	27,052,495.79	28,768,355.45
Presumptive Input Tax	45,758.00	-
Domestic purchases	3,603,407.48	4,194,111.97
Total available Input Tax	30,701,661.27	32,962,467.42
Less Any VATRefund/TCC Claimed	-	512,724.90
Net Creditable Input Tax	30,701,661.27	32,449,742.52
VAT Payable/(Excess Input Tax)	(28,438,414.45)	(31,915,642.26)
Less: Advance Payment	329,941.00	-
Tax Payable/(Overpayment)	(28,768,355.45)	(31,915,642.26)

On June 27, 2003, petitioner filed with the BIR a written application for the refund of the amount of P26,122,965.81 representing unutilized input VAT for the period April 1, 2001 to February 28, 2003.⁷

Due to respondent's inaction on its claim and in order to toll the running of the two-year prescriptive period within which to file a judicial claim for refund, petitioner filed before this Court a Petition for Review docketed as CTA Case No. 6714 on June 30, 2003.

On July 29, 2003, respondent filed his Answer⁸ praying that the Petition for Review be dismissed for lack of merit. *a*

⁷ Facts Admitted, Par. 4, JSFI, CTA Case No. 6714, Docket, p. 224

On September 29, 2003, petitioner filed with the BIR a supplemental application increasing the amount of unutilized input VAT to be claimed as refund for the period April 1, 2001 to February 28, 2003 from the original amount of P26,122,965.81 to P27,847,897.72.⁹

On October 1, 2003, petitioner filed a Motion for Leave of Court to Amend Petition for Review¹⁰ dated September 29, 2003. As stated in paragraph 4 of petitioner's motion:

Upon further verification of its supporting documents for the instant claim for refund or issuance of TCC, petitioner determined that its unutilized or unapplied input taxes attributable to its export sales is P27,847,897.72 and not P26,122,965.81 as indicated in the Petition for Review filed with the Honorable Court.

This court issued a Resolution¹¹ dated October 22, 2003 granting petitioner's Motion for Leave of Court to Amend Petition for Review and also admitting the Amended Petition for Review filed on October 1, 2003.

On December 4, 2003, respondent filed his Motion for Leave to Amend Answer¹² which the Court granted in open court on February 6, 2004.

In his Amended Answer¹³, respondent raised the following Special and Affirmative Defenses:

"4. He reiterates and pleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;

5. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the respondent; 

⁸ Docket, pp. 44-50

⁹ Facts Admitted, Par. 5, JSFI, CTA Case No. 6714, Docket, p. 224

¹⁰ Docket, pp. 53-56

¹¹ CTA Case No. 6714, Docket, p. 100

¹² Docket, pp. 102-103

¹³ CTA Case No. 6714, Docket, p. 105

6. To support its claim, it is imperative for petitioner to prove the following, viz:

- a. The registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of 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, the administrative claim thereof being mere pro-forma, 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 the input taxes of P27,847,897.72 allegedly paid by the petitioner on its purchases of goods and services for the period April 1, 2001 to February 28, 2002 were attributable to its export 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 generated export sales in the aggregate amount of P4,141,519,935.94 for the same period and those were paid for in acceptable foreign currencies and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP), which were made the basis for the application for refund;
- f. 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;
- g. 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 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);
- h. 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 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 Revenue v. Manila Jockey Club Inc.*, 98 Phil. 670); *a*

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

On May 31, 2005, petitioner filed with the Large Taxpayers Service of the BIR an administrative claim for refund of unutilized input taxes for the period covering March 1, 2003 to August 31, 2004 in the total amount of P22,194,446.67.¹⁴

On even date, petitioner filed before this Court a Petition for Review¹⁵ docketed as CTA Case No. 7262 praying for the issuance of a tax credit certificate corresponding to its alleged unutilized input taxes for the period March 1, 2003 to August 31, 2004 in the amount of P22,194,446.67.

On July 21, 2005, respondent filed his Answer¹⁶ in CTA Case No. 7262 alleging by way of Special and Affirmative Defenses that:

"4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

5. The amount of P22,194,446.67 being claimed by petitioner as alleged unutilized and/or unapplied input VAT for the period covering 1 March 2003 to 31 August 2004 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 refund/credit;

¹⁴ Stipulation of Facts, Par. 4, JSFI, CTA Case No. 7262, Docket, p. 63

¹⁵ Docket, pp. 1-7 (Case No. 7262)

¹⁶ Docket, pp. 30-34 (Case No. 7262)

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)."

On July 2, 2007, petitioner filed a Motion for Consolidation¹⁷ of CTA Case No. 6714 with CTA Case No. 7262 considering that these cases involve common questions of law and of facts, albeit for different periods and in view of the necessity of proving that petitioner had sufficient input VAT from previous quarters to apply against its output VAT liability. The Court granted the said Motion in a Resolution¹⁸ dated July 10, 2007.

During the proceedings, petitioner proffered testimonial and documentary evidence. Respondent, on the other hand, waived his right to present evidence.¹⁹

Both parties having filed their respective memorandum, the case was submitted for decision on August 24, 2009.²⁰

The parties presented the following issues for this Court's resolution:

CTA Case No. 6714

"1. Whether or not Petitioner has filed its administrative (original and supplemental) and judicial claims for refund or issuance of TCC in the aggregate amount of P27,847,897.72 within the prescriptive period of two (2) years."

¹⁷ CTA Case No. 7262, Docket, pp. 357-361

¹⁸ CTA Case No. 7262, Docket, pp. 470-471

¹⁹ CTA Case No. 6714, Docket, p. 676

²⁰ CTA Case No. 6714, Docket, p. 863

2. Whether or not for the period April 1, 2001 to February 28, 2003, petitioner generated zero-rated export sales.

3. Whether or not the foreign exchange proceeds of petitioner's zero-rated export sales were duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

4. Whether or not for the period April 1, 2001 to February 28, 2003 Petitioner paid input VAT in the total amount of P27,847,897.72 on its purchases of goods and services attributable to export sales.

5. Whether or not the invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT for the period covered has been complied with by the Petitioner.

6. Whether or not the checklist of requirements prescribed in Revenue Memorandum Order No. 53-98 in connection with the administrative claim for refund has been complied with by the Petitioner.

7. Whether or not the aforementioned input VAT in the total amount of P27,847,897.72 were applied against petitioner's output VAT liability in the succeeding quarters.

8. Whether or not Petitioner is entitled to the claim for refund and/or issuance of a Tax Credit Certificate (TCC) in the amount of P27,847,897.72 representing unutilized and/or unapplied input VAT attributable to export sales for the period April 1, 2001 to February 28, 2003."

CTA Case No. 7262

"1. Whether or not Petitioner has unapplied or unutilized input VAT for the 4th quarter of fiscal year ending 31 May 2003, the 1st, 2nd, 3rd and 4th quarters of fiscal year ending 31 May 2004, and the 1st quarter of fiscal year ending 31 May 2005, arising from its purchases of goods and services attributable to its zero-rated export sales during the period covering 1 March

2003 to 31 August 2004 in the total amount of P22,194,446.67 that can be the proper subject of a claim for refund pursuant to Section 110(B) and Section 112(A) of the Tax Code, as amended.

2. Whether or not the unutilized input taxes for the 4th quarter of fiscal year ending 31 May 2003, the 1st, 2nd, 3rd, and 4th quarters of fiscal year ending 31 May 2004 and the 1st quarter of fiscal year ending 31 May 2005 are substantiated by proper invoices and official receipts; and

3. Whether or not the said unutilized input VAT for the 4th quarter of fiscal year ending 31 May 2003, the 1st, 2nd, 3rd and 4th quarters of fiscal year ending 31 May 2004 and the 1st quarter of fiscal year ending 31 May 2005 were carried over to the succeeding taxable quarter(s) and applied against any of the output VAT liability of the petitioner for the said period."

The issues raised by both parties boil down to the principal issue of whether or not petitioner is entitled to the issuance of Tax Credit Certificate (TCC) for its alleged unutilized input VAT covering the periods of April 1, 2001 to February 28, 2003 and March 1, 2003 to August 31, 2004 in the respective amounts of P27,847,897.72 and P22,194,446.67, or in the sum of P50,042,344.39.

Petitioner anchors its claim on Sections 110(B) and 112(A) of the NIRC of 1997, as amended, which allow the refund/tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales, to wit:

"SEC. 110. *Tax Credits.* —

(A) *Creditable Input Tax.* —

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

xxx

xxx

xxx

a

(B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. 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."

"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 volume of sales."

From the foregoing provisions, in order to be entitled to a refund/tax credit of unutilized input VAT, the following conditions must be present:

1. 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 sales 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. *ea*

This Court shall first resolve petitioner's compliance with the fifth requisite which is the timeliness of the filing of the instant claims both in the administrative and judicial levels. The Supreme Court, in the case of **Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue**²¹, held that the two-year prescriptive period for the filing of VAT refund claims is reckoned from the date of filing of the corresponding Quarterly VAT Returns.

Although in the case of **Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly SOUTHERN ENERGY QUEZON, INC.)**²², the Supreme Court held that the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund starts from the close of the taxable quarter when the relevant sales were made, this Court finds it proper to apply said ruling to cases filed after the promulgation date of the **Mirant** case in view of the numerous rulings of the Supreme Court upholding the prospective application of decisions.²³

Records indicate that petitioner originally filed its administrative claim for refund of input VAT covering the period April 1, 2001 to February 28, 2003 on June 27, 2003²⁴ and its judicial appeal with this Court, by way of Petition for Review, docketed as CTA Case No. 6714, on June 30, 2003. On the other hand, petitioner filed its administrative claim for refund of input VAT 

²¹ G.R. Nos. 141104 & 148763, June 7, 2007

²² G.R. No. 172129, September 12, 2008

²³ Sps. Benzonan vs. Court of Appeals, G.R. No. 97998, January 27, 1992; Columbia Pictures, Inc. vs. Court of Appeals, G.R. No. 110318, August 28, 1996; Co vs. Court of Appeals, G.R. No. 100776, October 28, 1993; Columbia Pictures, Inc. vs. Court of Appeals, G.R. No. 110318, August 28, 1996; *Ejercito vs. Sandiganbayan* (Special Division) G.R. NO. 157294-95, November 30, 2006

²⁴ Facts Admitted, Par, 4, JSFI, CTA Case No. 6714, Docket, p. 224

covering the period March 1, 2003 to August 31, 2004 and the Petition for Review, docketed as CTA Case No. 7262, on the same day of May 31, 2005. All of the preceeding dates of filing fall within the two-year prescriptive period reckoned from the respective dates of filing of the Quarterly VAT Returns for the periods April 1, 2001 to February 28, 2003 and March 1, 2003 to August 31, 2004.

Proceeding to the first requisite, petitioner, in its Quarterly VAT Returns for the subject periods of claim, reflected zero-rated sales in the amounts of P4,617,601,283.48 and P6,364,206,218.33, respectively, detailed as follows:

Exhibit	Period Covered	Zero-Rated Sales	
CTA Case No. 6714			
E, V	2nd Qtr – CY 2001	P	473,354,243.00
H-1, X	3rd Qtr – CY 2001		580,569,507.00
K-1, Z	4th Qtr – CY 2001		430,276,914.00
N-1, BB	1st Qtr – CY 2002		562,453,504.00
O	2nd Qtr – CY 2002		652,076,777.48
P, EE	1st Qtr - FY ending May 31, 2003		476,081,386.20
Q, FF	2nd Qtr - FY ending May 31, 2003		559,506,262.00
R, GG	3rd Qtr - FY ending May 31, 2003		883,282,689.80
	Total		P4,617,601,283.48
CTA Case No. 7262			
B	4th Qtr - FY ending May 31, 2003	P	841,599,114.80
C	1st Qtr - FY ending May 31, 2004		686,995,052.00
D	2nd Qtr - FY ending May 31, 2004		807,345,023.00
E	3rd Qtr - FY ending May 31, 2004		1,239,127,372.00
F	4th Qtr - FY ending May 31, 2004		1,586,425,474.00
G	1st Qtr - FY ending May 31, 2005		1,202,714,182.53
	Total		P6,364,206,218.33

Petitioner maintains that its export sales of coconut oil, the proceeds of which were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP are subject to zero percent (0%) VAT pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which states: 

"SEC.106. Value-Added Tax on Sale of Goods or Properties.—

(A) Rate and Base of Tax.— xxx

xxx

xxx

xxx

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) Export Sales. — The term 'export sales' means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)."

Prescinding from the above law, in order for an export sale to qualify as VAT zero-rated, the following conditions must be present:

- 1.) there was sale and actual shipment of goods from the Philippines to a foreign country;
- 2.) the sale was made by a VAT registered person;
- 3.) the sale was paid for in acceptable foreign currency or its equivalent in goods or services; and
- 4.) the payment was accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

Petitioner satisfied all of the above requisites. The fact that petitioner is a VAT registered entity is not disputed²⁵. For the periods covering April 1, 2001 to February 28, 2003 and March 1, 2003 to August 31, 2004, petitioner shipped and sold its products of crude coconut oil and copra expeller cake/meal/pellets to various foreign buyers abroad and generated export sales in the respective amounts of P4,617,601,334.09²⁶ and P6,374,292,417.79²⁷ as evidenced by export sales invoices, export

²⁵ Stipulation of Facts, Par. 3, JSFI, CTA Case No. 7262, Docket, p. 62; Exhibit D, CTA Case No. 6714

²⁶ Exhibit "CC-6", Annex A, page 3, CTA Case No. 6714

²⁷ Sum of P6,364,206,217.79 and P10,086,200.00 as appearing in Exhibit "M" attached to Exhibit "P-2" and Exhibit "M.1" attached to Exhibit "P", CTA Case No. 7262

declarations and bills of lading.²⁸ Likewise, the foreign currency proceeds thereof (in US dollars) were inwardly remitted in accordance with the rules and regulations of the BSP as shown by the bank notices from JP Morgan Chase Bank (Singapore), credit advices from Standard Chartered Bank – Makati and exports bill payment advices from Hongkong and Shanghai Banking Corporation – Manila Main office.²⁹

A comparison of the total amounts of zero-rated sales for the periods April 1, 2001 to February 28, 2003 and March 1, 2003 to August 31, 2004, as reflected in the Quarterly VAT Returns, with the amounts shown in the summaries of zero-rated sales and related export documents disclosed the following discrepancies:

	April 1, 2001 to February 28, 2003 (CTA Case No. 6714)	March 1, 2003 to August 31, 2004 (CTA Case No. 7262)
Zero-Rated Sales Per VAT Returns	P 4,617,601,283.48	P 6,364,206,218.33
Zero-Rated Sales Per Summary/Export Documents	4,617,601,334.09	6,374,292,417.79
Difference	P (50.61)	P (10,086,199.46)

Petitioner was unable to account for the minor discrepancy of P50.61. However, the sales discrepancy of P10,086,199.46 pertains to petitioner's zero-rated sales in March 2003 which were erroneously classified as exempt sales in its VAT Return³⁰.

²⁸ Exhibits "OOOOOO-1" to "OOOOOO-892", CTA Case No. 6714; Exhibits "MM-1" to "MM-74" and "MMMM-1" to "MMMM-74", CTA Case No. 7262

²⁹ Exhibits "PPPPPP-1" to "PPPPPP-197", CTA Case No. 6714 and Exhibits "MMM-1" to "MMM-74", CTA Case No. 7262

³⁰ Exhibit "M.1" attached to Exhibit "P", CTA Case No. 7262

After having resolved that petitioner had VAT zero-rated export sales for the subject period of claim, we shall now determine the amount of unutilized excess input VAT attributable thereto.

In its Quarterly VAT Returns for the periods April 1, 2001 to February 28, 2003 and March 1, 2003 to August 31, 2004, petitioner's declared input VAT arising from its domestic purchases of goods and services amounted to P169,330,594.43 and P31,001,900.62, respectively, totaling to P200,332,495.05, broken down as follows:

Exhibit	Period Covered	Input VAT
CTA Case No. 6714		
E, V	2nd Qtr CY 2001	P 18,577,411.42
H-1, X	3rd Qtr CY 2001	10,621,081.02
K-1, Z	4th Qtr CY 2001	16,134,087.46
N-1, BB	1st Qtr CY 2002	44,809,937.42
O	2nd Qtr CY 2002	17,210,932.32
P, EE	1st Qtr FY ending May 31, 2003	9,553,468.44
Q, FF	2nd Qtr FY ending May 31, 2003	36,190,306.68
R, GG	3rd Qtr FY ending May 31, 2003	16,233,369.67
	Subtotal	P 169,330,594.43
CTA Case No. 7262		
B	4th Qtr FY ending May 31, 2003	P 10,613,969.33
C	1st Qtr FY ending May 31, 2004	5,281,078.93
D	2nd Qtr FY ending May 31, 2004	3,607,119.81
E	3rd Qtr FY ending May 31, 2004	3,702,213.10
F	4th Qtr FY ending May 31, 2004	3,603,407.48
G	1st Qtr FY ending May 31, 2005	4,194,111.97
	Subtotal	P 31,001,900.62
	Total	P 200,332,495.05

Out of the aforestated input taxes of P200,332,495.05, only the following input taxes, in the aggregate amount of P50,042,344.49, are covered by the instant claims: 

Period Covered	INPUT VAT		
	Per VAT Returns	Per Claim	Balance Not Claimed
April 1, 2001 to February 28, 2003	P 169,330,594.43	P 27,847,897.72	P 141,482,696.71
March 1, 2003 to Aug. 31, 2004	31,001,900.62	22,194,446.67	8,807,453.95
Total	P200,332,495.05	P50,042,344.39	P150,290,150.66

To verify petitioner's input VAT claim for the period April 1, 2001 to February 28, 2003 (for CTA Case No. 6714), the Court commissioned the independent CPA (ICPA) firm, Sycip Gorres Velayo & Co. (SGV & Co.), through its Partner, Mr. Henry M. Tan. Based on SGV & Co.'s review and validation of petitioner's input VAT claim, it was observed that petitioner's operations are divided into the following business units³¹:

BUSINESS UNIT		DESIGNATION
1	Oilseeds	Oils
	a. Makati operations	Makati
	b. General Santos City operations	GSC
	c. Margosatubig operations	Margosatubig
	d. Branch operations	Branches
2	Meals and Grains	WMT
3	Animal Feeds (Cargill Animal Nutrition)	CAN
	a. Baliuag operations	Baliuag
	b. Pulilan operations	Pulilan
	c. Villasis operations	Villasis
	d. General Santos City operations	GSC
4	Sugar	Sugar
5	Administration	Admin

Petitioner records its transactions based on these business units. Each business unit is assigned a code to identify which unit the sales and purchases pertain to. The following are the activities and tax treatment of petitioner's business units³²:

BUSINESS UNIT	ACTIVITY	VAT TREATMENT
1. Oils	Sale of crude coconut oil and	All export sales are

³¹ Exhibit "CC-4", p. 6

³² Ibid

	copra expeller pellet meal	treated as zero-rated. Domestic sales of crude coconut oil are subjected to 10% Vat while sales of copra expeller pellet meal to local manufacturers of animal feeds are treated as VAT-exempt.
2. WMT	Sale of soybean meals and other feed ingredients in the domestic market	This activity is treated as VAT exempt
3. CAN	Domestic sale of feed ingredients, animal feeds, and specialty feeds	The Company treats its sales of animal feeds as VAT-exempt. On the other hand, sales of specialty animal feeds are subjected to 10% VAT.
4. Sugar	Domestic sale of raw and refined sugar	Sale of raw sugar is treated as VAT-exempt while the sale of refined sugar is subjected to 10% VAT

Petitioner's claims for refund include input taxes from Oils and Admin. All input taxes arising from common expenses were claimed under Admin but the subject claim for refund includes only the input taxes arising from Admin expenses that are either directly attributable or allocable to zero-rated sales. No input taxes from Sugar, WMT and CAN (collectively referred to as the "Other Business Units") are subject of the instant claim for refund.³³

Upon examination of petitioner's summary lists of purchases³⁴ and the related suppliers' invoices and official receipts³⁵ for the period April 1, 2001 to 2

³³ Exhibit "CC-4", p. 7, CTA Case No. 6714

³⁴ Exhibits "EE-1" to "EE-158", "FF-1" to "FF-46", "GG-1" to "GG-23", "HH-1" to "HH-42", "II-1" to "II-41", CTA Case No. 6714

³⁵ Exhibits "JJ-1" to "JJ-1068", "KK-1" to "KK-1116", "LL-1" to "LL-975", "MM-1" to "MM-860", "NN-1" to "NN-1161", "OO-1" to "OO-818", "PP-1" to "PP-1138", "QQ-1" to "QQ-1097", "RR-1" to "RR-104", "SS-1" to "SS-111", "TT-1" to "TT-132", "UU-1" to "UU-115", "VV-1" to "VV-111", "WW-1" to "WW-63", "XX-1" to "XX-106", "YY-1" to "YY-127", "ZZ-1" to "ZZ-58", "AAA-1" to "AAA-76", "BBB-1" to "BBB-55", "CCC-1" to "CCC-25", "DDD-1" to "DDD-18", "EEE-1" to "EEE-25", "FFF-1" to "FFF-39", "GGG-1"

February 28, 2003 as well as the final and consolidated report of Mr. Henry M. Tan of SGV & Co.³⁶, this Court found that out of the reported input VAT of P169,330,594.43, only the amount of P165,655,103.00 is duly substantiated in accordance with Sections 110(A) and 113(A) of the NIRC of 1997, as amended, in relation to Sections 4.104-1, 4.104-5 and 4.108-1 of Revenue Regulations (RR) No.7-95, the pertinent provisions of which are hereinbelow quoted, to wit:

NIRC of 1997

"SEC. 110. *Tax Credits.* —

(A) *Creditable Input Tax.* —

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

- (a) Purchase or importation of goods:
 - (i) For sale; or
 - (ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
 - (iii) For use as supplies in the course of business; or
 - (iv) For use as materials supplied in the sale of service; or
 - (v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code, except automobiles, aircraft and yachts.

(b) Purchase of services on which a value-added tax has been actually paid.

(2) The input tax on domestic purchase of goods or properties shall be creditable.

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and 

to "GGG-17", "HHH-1" to "HHH-449", "III-1" to "III-459", "JJJ-1" to "JJJ-459", "KKK-1" to "KKK-537", "LLL-1" to "LLL-527", "MMM-1" to "MMM-424", "NNN-1" to "NNN-576", "OOO-1" to "OOO-697", "PPP-1" to "PPP-329", "QQQ-1" to "QQQ-501", "RRR-1" to "RRR-229", "SSS-1" to "SSS-348", "TTT-1" to "TTT-289", "UUU-1" to "UUU-168", "VVV-1" to "VVV-455: and "WWW-1" to "WWW-536, CTA Case No. 6714

³⁶ Exhibit "CC-4", CTA Case No. 6714

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

(3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:

(a) Total input tax which can be directly attributed to transactions subject to value-added tax; and

(b) A ratable portion of any input tax which cannot be directly attributed to either activity.

The term '*input tax*' means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.

The term '*output tax*' means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code."

"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

(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."

REVENUE REGULATIONS (RR) No. 7-95

"SEC. 4.104-1. **Credits for input tax.** —

'Input tax' means the value-added tax due from or paid by a VAT-registered person on importation of goods or local

purchases of goods or services, including lease or use of property, from another VAT-registered person in the course of his trade or business. It shall also include the transitional or presumptive input tax determined in accordance with Section 105 of the Code.

It includes input taxes which can be directly attributed to transactions subject to the value-added tax plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.

Any input tax evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Section 108 of the Code, on the following transactions, shall be creditable against the output tax:

- (a) Purchase or importation of goods
 - 1. For sale; or
 - 2. For conversion into or intended to form part of a finished product for sale, including packaging materials; or
 - 3. For as supplies in the course of business; or
 - 4. For use as raw materials supplied in the sale of services; or
 - 5. For use in trade or business for which deduction for depreciation or amortization is allowed under the Code, except automobiles, aircraft and yachts.

'Automobile' as contemplated in this section, shall mean a 4-wheeled luxury motor vehicle, which is used in the trade or business of the VAT taxpayer, propelled by any motive fuel with engine displacement of 2,000 cc or more, and specially designed for the transport of persons and not use primarily for the carrying of freight or merchandise; Provided, however, that the definition shall not apply to those required in the trade or business of the VAT taxpayer, such as hotel limousines, funeral hearse, ambulances and similar vehicles. 

- (b) Purchase of real properties for which a VAT has actually been paid;
- (c) Purchase of services in which a VAT has actually been paid;
- (d) Transactions "deemed sale" under Section 100 (b) of the Code;
- (e) Presumptive input tax allowed to be carried over as provided for in Section 4.105-1 of these Regulations;
- (f) A VAT-registered person who is also engaged in transactions not subject to VAT shall be allowed input tax credit as follows:
 - 1. Total input which can be directly attributed to transactions subject to VAT; and
 - 2. A ratable portion of any input tax which cannot be directly attributed to either activity."

"SEC. 4.104-5. Substantiation of claims for input tax credit. — (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Section 108 (a) and 238 of the Code. Input tax on purchases of real property should be supported by a copy of the public instrument i.e. deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with the VAT receipt issued by the seller.

A cash-register machine tape issued to a VAT registered buyer by a VAT-registered seller from a machine duly registered with the BIR in lieu of the regular sales invoice, shall constitute valid proof of substantiation of tax credit only if the name and TIN of the purchaser is indicated in the receipt and authenticated by a duly authorized representative of the seller.

(b) Input tax on importations shall be supported with the import entry or other equivalent document showing actual payment of VAT on the imported goods. 

(c) Presumptive input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.

(d) Input tax on "deemed sale" transactions shall be substantiated with the required invoices.

(e) Input tax from payments made to non-residents shall be supported by a copy of the VAT declaration/return filed by the resident licensee/lessee in behalf of the non-resident licensor/lessor evidencing remittance of the VAT due."

"SEC. 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.

In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.

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. 

The invoice or receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records."

The substantiated input VAT of P165,655,103.00 is composed of P27,051,054.57 input VAT attributable to petitioner's zero-rated sales and P138,604,048.43 input VAT attributable to petitioner's VATable sales, as computed below:

	Input Taxes Covered by Claim	Input Taxes Not Covered by Claim	Total Input Taxes
Input tax on purchases of goods and services:			
a. OILS	23,240,505.46	-	23,240,505.46
b. WMT	-	-	-
c. CAN		191,162.28	191,162.28
d. SUGAR		137,646,314.58	137,646,314.58
e. ADMIN			
1. Directly attributable to Oils	3,667,765.08		3,667,765.08
2. Allocable to Oils	939,627.18		939,627.18
3. Directly attributable to other business units		1,980,324.33	1,980,324.33
4. Allocable to other business units		1,664,896.57	1,664,896.57
Unaccounted difference		(1.05)	(1.05)
Total	27,847,897.72	141,482,696.71	169,330,594.43
Less:			
a. Input taxes claimed on purchases of goods without supporting documents			
Exhibit "CC-4", Annex J	35,829.56		35,829.56
Exhibit "CC-4", Annex UU		1,271,017.30	1,271,017.30
b. Input taxes claimed on purchases of services without supporting documents			
Exhibit "CC-4", Annexes K, AA, HH	314,401.01		314,401.01
Exhibit "CC-4", page 18 and Annex LL	22,105.19	40,660.29	62,765.48
Exhibit "CC-4", Annex VV		13,906.92	13,906.92
c. Input taxes claimed on purchases of goods supported by documents other than VAT invoices			
Exhibit "CC-4", page 18 and Annex MM	2,022.81	3,220.36	5,243.17
d. Input taxes claimed on purchases of services supported by documents other than VAT ORs			
Exhibit "CC-4", Annexes M, CC	167,499.69		167,499.69
Exhibit "CC-4", page 18 and Annex NN	10,039.40	19,272.00	29,311.40
Exhibit "CC-4", Annex WW		57,778.96	57,778.96
e. Input taxes claimed on purchases of goods supported by VAT invoices not issued in petitioner's name			

Exhibit "CC-4", Annex N	1,233.64		1,233.64
f. Input taxes claimed on purchases of services supported by VAT ORs not issued in petitioner's name			
Exhibit "CC-4", Annexes O, II	24,797.89		24,797.89
g. Input taxes claimed on purchases of goods supported by non-VAT invoices			
Exhibit "CC-4", Annex P	13,519.80		13,519.80
h. Input taxes claimed on purchases of goods supported by invoices with pre-printed "TIN" only			
Exhibit "CC-4", Annex Q	4,332.26		4,332.26
i. Input taxes claimed on purchase of services supported by non-VAT ORs			
Exhibit "CC-4", Annexes R, EE	92,905.29		92,905.29
Exhibit "CC-4", page 18 and Annex OO	3,635.03	5,826.93	9,461.96
Exhibit "CC-4", Annex XX		5,000.00	5,000.00
j. Input taxes claimed on purchases of services supported by an OR with pre-printed "TAN-VAT"			
Exhibit "CC-4", Annex S	150.00		150.00
k. Input taxes claimed on purchases of services supported by ORs with pre-printed "TIN" only			
Exhibit "CC-4", Annex DD	6,036.47		6,036.47
l. Erroneous computation of input taxes claimed on purchases of services supported by VAT ORs			
Exhibit "CC-4", Annexes V, FF	7,799.32		7,799.32
Exhibit "CC-4", page 18 and Annex PP	7,238.50	3,949.35	11,187.85
Exhibit "CC-4", Annex YY		5,372.45	5,372.45
m. Input tax which the petitioner failed to provide the supporting documents			
Exhibit "CC-4", under II.D.2, pages 13-14		191,162.28	191,162.28
Exhibit "CC-4", under II.D.3 -			
Input VAT per claim vs. per schedule - Oils	1.44		1.44
Input VAT per claim vs. per schedule - Admin allocable to Oils	23,943.56		23,943.56
n. Ratable portion of input taxes claimed on common expenses-Admin attributable to VAT-exempt sales (P2,484,398.36 ³⁷ x 52.09% based on adjusted gross sales)		1,294,123.11	1,294,123.11
o. Input taxes on local purchases of goods supported by photocopied VAT invoices (Exh. "CC-4", Annex T)	16,053.80		16,053.80
p. Input taxes on local purchases of services supported by photocopied VAT ORs (Exh. "CC-4", Annexes U, JJ)	8,914.37		8,914.37
q. Input taxes on local purchases of services supported by photocopied VAT		1,742.45	1,742.45

³⁷ P2,602,368.22 input VAT claim from common expenses (Exh. "CC-4", p. 17) less P117,969.86 (Exh. "CC-4", page 18, nos. 2 to 6 of the Findings)

ORs (Exh. "CC-4", Annex CCC)			
Sub-total	762,459.03	2,913,032.40	3,675,491.43
Total Input Taxes Supported by VAT Invoices/ORs and Relevant Documents	27,085,438.69	138,569,664.31	165,655,103.00
Less: Ratable portion of input VAT allocable to VATable sales (Oils) (P2,517,248.56/P4,620,118,582.65 ³⁸ x P27,085,438.69)	14,757.37	(14,757.37)	0.00
Ratable portion of excess input taxes claimed on common expenses – Admin with supporting documents (P2,484,398.36 x .79% ³⁹ based on adjusted gross sales)	19,626.75	(19,626.75)	0.00
VALID INPUT TAXES COVERED BY CLAIM ATTRIBUTABLE TO ZERO-RATED SALES	27,051,054.57		
VALID INPUT TAXES NOT COVERED BY CLAIM ATTRIBUTABLE TO VATABLE SALES		138,604,048.43	
TOTAL VALID INPUT TAXES			165,655,103.00

In arriving at the foregoing amounts of valid input VAT attributable to zero-rated and VATable sales, the Admin input taxes were allocated based on the ratio of the related sales to total sales as computed by SGV & Co., to wit:

	Zero-Rated (0%)	VATable (10%)	Exempt	Total
Gross Sales	4,617,601,283.48	1,941,845,541.92	7,131,699,706.95	13,691,146,532.35
Less:				
a. Sales with no supporting documents (Exh. "CC-4", Annex C)			125,380.00	125,380.00
b. Sales adjustments with no supporting documents (Exh. "CC-4", Annex D)			8,688.00	8,688.00
c. Sales adjustments not yet verified (Exh. "CC-4", Annexes E, F)			(307,748.62)	(307,748.62)
Subtotal			(173,680.62)	(173,680.62)
Adjusted gross sales	4,617,601,283.48	1,941,845,541.92	7,131,873,387.57	13,691,320,212.97

³⁸ Exhibit "CC-4", p. 24

³⁹ Petitioner used a sales ratio of 34.52% (average rate for the period covered by the claim) for Oils or an excess over the adjusted sales ratio for zero-rated sales of 0.79%

(with support)				
Adjusted sales ratio	33.73%	14.18%	52.09%	100%

With reference to the declared input taxes for the period March 1, 2003 to August 31, 2004 (in CTA Case No. 7262) in the amount of P31,001,900.62, a scrutiny of the report⁴⁰ of the Court-commissioned independent CPA firm, Punongbayan & Araullo, through its Partner, Mr. Juan Carlos B. Robles and the supporting documents⁴¹ showed that petitioner was able to substantiate, by proper VAT invoices or official receipts, only the amount of P28,101,616.12, representing the sum of the input VAT attributable to zero-rated sales in the amount of P21,473,078.82 and input VAT attributable to VATable sales in the amount of P6,628,537.30, computed as follows:

	Input Taxes Covered by Claim	Input Taxes Not Covered by Claim	Total Input Taxes
Directly Attributable to Zero-Rated Sales (Oils)	19,848,714.73		19,848,714.73
Admin Input VAT allocated to Zero-Rated Sales	2,345,731.94		2,345,731.94
Sugar and Admin		8,807,453.95	8,807,453.95
Total	22,194,446.67	8,807,453.95	31,001,900.62
Less:			
a. Dates indicated on the suppliers' VAT official receipts are not within the period covered by the application for tax credit certificate/refund (<i>Exh. K.1, pages 4 & 5</i>)			
Exhibit K-1 334 P 163.64			
Exhibit K-1 335 415.15			
Exhibit K-1 336 5,593.50			
Exhibit K-1 337 5,008.40			
Exhibit K-1 338 100,000.00			
Exhibit K-1 343 789.74			
Exhibit K-1 357 723.36			
<u>P 112,693.79</u>	112,693.79		112,693.79

⁴⁰ Exhibit "P" in CTA Case No. 7262

⁴¹ Exhibits "JJ1-1" to "JJ1-1590", "JJ2-1" to "JJ2-612", "JJ3" to "JJ5", "JJ3-1" to "JJ3-5934", "JJ4-1" to "JJ4-1050" and "JJ5-1" to "JJ5-1511", CTA Case No. 7262

b. Certain information indicated in the suppliers' VAT invoices and/or official receipts were altered (<i>Exh. K.2</i>)	10,532.37		10,532.37
c. Suppliers' VAT invoices and/or official receipts are not under the name of the petitioner (<i>Exh. K.3</i>)	7,782.42		7,782.42
d. Original suppliers' invoices and/or official receipts on file were not examined (<i>Exh. K.6</i>)	644.51		644.51
e. Supplier's VAT invoices and/or official receipts do not have BIR permit to print			
<i>Exh. K.7</i>	450.24		450.24
<i>Exh. K.7-Others</i>		4,239.00	4,239.00
f. Transactions supported by tape receipts			
<i>Exh. K.8</i>	23,523.72		23,523.72
<i>Exh. K.8-Others</i>		17,942.81	17,942.81
g. Supplier's invoices and/or official receipts are registered as Non-VAT			
<i>Exh. K.9</i>	9,318.05		9,318.05
<i>Exh. K.9-Others</i>		434.22	434.22
h. Differences in input tax computation			
<i>Exh. K.11</i> Excess of Input VAT Claim over Input VAT per Audit P 33,425.00 Less: Excess of Input VAT per Audit over Input VAT per Claim <u>5,734.54</u> Net Amount <u>P27,690.46</u>	33,425.00		33,425.00
<i>Exh. K.11-Others</i> Excess of Input VAT Claim over Input VAT per Audit P 32,896.55 Less: Excess of Input VAT per Audit over Input VAT per Claim <u>20,513.04</u> Net Amount <u>P 12,383.51</u>		32,896.55	32,896.55
i. Difference between the input VAT per summary listing of local purchases attributable to zero-rated sales and the input VAT claimed by petitioner (<i>Exh. "P", page 5</i>)	352,942.34		352,942.34
j. Difference between the input VAT that was properly allocated to zero-rated sales and the allocated input VAT claimed by petitioner Per Claim P2,345,731.94 Per Allocation <u>2,175,676.53</u> Difference <u>P 170,055.41</u>	170,055.41		170,055.41
k. Admin Input VAT attributable to VAT-exempt sales (P4,392,643.91 x 48.34%))		2,123,404.07	2,123,404.07
Subtotal	721,367.85	2,178,916.65	2,900,284.50

VALID INPUT TAXES COVERED BY CLAIM ATTRIBUTABLE TO ZERO-RATED SALES	21,473,078.82		
VALID INPUT TAXES NOT COVERED BY CLAIM ATTRIBUTABLE TO VATABLE SALES		6,628,537.30	
TOTAL VALID INPUT TAXES			28,101,616.12

In arriving at the foregoing valid input taxes attributable to zero-rated and VATable sales, the Admin Input VAT of P4,392,643.91 was allocated based on the ratio of the related sales to total sales as shown below:

	Zero-Rated (0%)	VATABLE (10%)	Exempt	Total
Gross Sales	6,374,292,417.79	274,183,243.13	6,241,450,253.70	12,889,925,914.62
Add(Less):				
Zero-Rated sales erroneously classified as exempt sales	10,086,200.00		(10,086,200.00)	-
Adjusted gross sales (with support)	6,384,378,617.79	274,183,243.13	6,231,364,053.70	12,889,925,914.62
Adjusted sales ratio	49.53%	2.13%	48.34%	100.00%
Allocated Admin Input VAT	2,175,676.53	93,563.32	2,123,404.07	4,392,643.91

Admin Input VAT per claim	Exh. P, Annex IV	4,436,799.24
Less:		
Supplier's VAT invoices and/or official receipts do not have BIR permit to print	Exh. K.7-Others	4,239.00
Transactions supported by tape receipts	Exh. K.8-Others	11,060.04
Supplier's invoices and/or official receipts are registered as Non-VAT	Exh. K.9-Others	434.22
Excess of Input VAT per claim over input VAT per audit	Exh. K.11-Others	28,422.07
Subtotal		44,155.33
Valid Admin Input VAT		4,392,643.91

We proceed to the issue of whether or not the claimed input taxes were applied against any output VAT liability during and in the succeeding period of claim.

Based on the related Quarterly VAT Returns, petitioner's VAT transactions for the periods April 1, 2001 to February 28, 2003 and March 1, 2003 to August 31, 2004 may be summarized as follows: *a*

	April 1, 2001 to Feb. 28, 2003	March 1, 2003 to Aug. 31, 2004	Total
Output VAT	P 194,184,554.44	P 26,322,238.96	P 220,506,793.40
Less: Input Tax			
Carried-over from prev qtr	P 38,199,071.54	P 44,920,350.91	P 38,199,071.54
Presumptive Input Tax	6,701,884.34	2,028,775.78	8,730,660.12
Domestic purchases	169,330,594.43	31,001,900.62	P 200,332,495.05
Total available Input Tax	P 214,231,550.31	P 77,951,027.31	247,262,226.71
VAT Payable/(Excess Input Tax)	(20,046,995.87)	(51,628,788.35)	P (26,755,433.31)
Less: Advance Payment	24,873,355.04	11,096,505.52	35,969,860.56
Tax Payable/(Overpayment)	P(44,920,350.91)	P(62,725,293.87)	P(62,725,293.87)

The above summary indicates that aside from the input tax credits arising from its domestic purchases for the subject period of claim, petitioner had an input VAT carry-over from previous quarter in the amount of P38,199,071.54, presumptive input tax in the amount of P8,730,660.12 and advance VAT payment of P35,969,860.56 which were applied against the output tax of P220,506,793.40.

In its Quarterly VAT Return for the first quarter of CY 2001, petitioner computed the input VAT carry-over of P38,199,071.54 as follows:

Total Output Taxes	P 38,700,447.19
Less: Accumulated Input Taxes Carried Over from Previous Quarter	21,633,716.56
Sub-total	P 17,066,730.63
Less: Total Input Taxes from Current Purchases	55,265,802.17
Excess Input Tax Credits to be Carried Over	P (38,199,071.54)

Using the First-In, First-Out (FIFO) method, i.e., older credits are applied first, the other Court-commissioned ICPA in CTA Case No. 6714, Constantino Guadalquiver & Co. through its Partner, Ms. Katherine O. Constantino, noted that the input VAT carry-over of P38,199,071.54

originated from petitioner's current purchases for the first quarter of CY 2001 in the amount of P55,265,802.17.

Although in the normal course of events, the input tax credits from previous quarter will have to be applied first to pay for any current quarter's output tax liability before the current quarter's input tax can be credited, the Court cannot allow petitioner to deduct the output tax for the first quarter of CY 2001 in the amount of P38,700,447.19 against the unsubstantiated input tax carry over from the previous quarter (fourth quarter of CY 2000) in the amount of P21,633,716.56. To be creditable against the output tax, the input tax carry-over of P21,633,716.56 must be substantiated by proper VAT invoices or receipts as provided for under Section 110(A) in relation to Section 110(B) of the NIRC of 1997, which states:

"SEC. 110. *Tax Credits.* —

A. *Creditable Input Tax.* —

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

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(B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the Vat-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters."

As regards the input VAT on petitioner's current purchases for the first quarter of CY 2001 in the amount of P55,265,802.17, the Court finds that only the amount of P54,114,735.26 was properly substantiated for VAT purposes, detailed as follows: *a*

	Exhibit ZZZZZZZZ	Oils	Sugar	Admin	Total
Reported Input Taxes		2,284,966.41	52,141,863.65	838,972.11	55,265,802.17
Less:					
Input taxes claimed on purchases of goods and services without any supporting documents	Annexes B, O and U	236,288.56	217.11	829.44	237,335.11
Input taxes claimed on purchase of goods supported by a non-VAT invoice	Annexes C and P	818.18		2,946.82	3,765.00
Input taxes claimed on purchases of services supported by documents other than VAT ORs	Annexes D and R	68,767.32		15,103.83	83,871.15
Input taxes claimed on purchases of services supported by photocopied ORs with TIN only	Annex E	8,293.85			8,293.85
Input taxes claimed on purchases of services supported by documents other than VAT ORs	Annexes F and V	2,102.22	224,951.89		227,054.11
Input taxes claimed on purchase of services supported by VAT ORs not issued in the petitioner's name	Annex G	813.64			813.64
Input taxes claimed on purchase of services supported by photocopied VAT ORs not issued in the petitioner's name	Annex H	1,200.96			1,200.96
Erroneous computation of input taxes claimed on purchase of services supported by VAT ORs	Annex I	2,594.01			2,594.01
Input taxes claimed on purchases of goods supported by photocopied VAT invoices	Annex J	49,040.15			49,040.15
Input taxes claimed on purchases of services supported by photocopied VAT ORs	Annex L	231,215.41			231,215.41
Input taxes claimed on purchases of goods supported by documents other than VAT invoices	Annex Q			3,830.03	3,830.03
Input taxes claimed on purchases of services supported by ORs with pre-printed "TIN-VAT" and "N-VAT"	Annex W		24,279.53		24,279.53
Subtotal		601,134.30	249,448.53	22,710.12	873,292.95
Total Input Taxes Supported by VAT Invoices/ORs and Relevant Documents		1,683,832.11	51,892,415.12	816,261.99	54,392,509.22

Less: Ratable portion of Admin input VAT allocable to exempt sales (P816,261.99 x 34.03% ⁴²)				277,773.96	277,773.96
Total Valid Input Taxes		1,683,832.11	51,892,415.12	538,488.03	54,114,735.26

After having removed petitioner's output tax liability for the first quarter of CY 2001 in the amount of P38,700,447.19 from its P54,114,735.26 verified input tax credits on current purchases, there still remains an input tax credit of P15,414,288.07, as shown below, which can be carried-over and offset against the output tax due in the succeeding second quarter of CY 2001:

Total Output Taxes	P 38,700,447.19
Less: Valid Input Tax on Current Purchases	54,114,735.26
Excess Input Tax Credits to be Carried Over to 2nd Qtr CY 2001	P (15,414,288.07)

With reference to petitioner's declared presumptive input VAT in the amount of P6,701,884.34 covering the period of April 1, 2001 to February 28, 2003, the Court-commissioned ICPA, Mr. Henry M. Tan, in his final and consolidated report dated June 23, 2005, noted as follows⁴³:

"E. Presumptive input tax and advance VAT payments

1. Presumptive input tax

Our verification of the supporting documents on the Company's presumptive input taxes amounting to P6,701,884.34 showed that this amount is supported by original copies of invoices of the Company's suppliers of raw sugar. All the suppliers' invoices were dated within the period of claim. The Company computed the presumptive input tax as 1.5% of gross purchases of raw sugar. Total raw sugar purchases for the period covered by the claim amounted to P446,792,289.33. *a*

⁴² Percentage of exempt sales to total sales for the 1st Quarter of CY 2001

⁴³ Exhibit "CC-4", under II.E.1, p. 20

Furthermore, we noted that the photocopies of the documents submitted to this Honorable Court as evidences (e.g., VAT invoices) were faithful reproductions of the original documents we have examined."

The Court agrees with the ICPA's observation that the presumptive input VAT of P6,701,884.34 is duly supported by VAT invoices⁴⁴. Hence, petitioner may validly claim the amount of P6,701,884.34 as deduction from its output tax for the subject period of claim pursuant to Section 111(B)(1) of the NIRC of 1997, as amended, in relation to Section 9 of Revenue Regulations No. 29-02, which are all quoted herein below for easy reference:

"SEC. 111. *Transitional/Presumptive Input Tax Credits.* —

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(B) *Presumptive Input Tax Credits.* —

(1) Persons or firms engaged in the processing of sardines, mackerel and milk, and in manufacturing refined sugar and cooking oil, shall be allowed a presumptive input tax, creditable against the output tax, equivalent to one and one-half percent (1 1/2%) of the gross value in money of their purchases of primary agricultural products which are used as inputs to their production.

As used in this Subsection, the term "*processing*" shall mean pasteurization, canning and activities which through physical or chemical process alter the exterior texture or form or inner substance of a product in such manner as to prepare it for special use to which it could not have been put in its original form or condition.

SECTION 9. *Presumptive input tax.* — Persons or firms engaged in the production and manufacturing of refined sugar for their own account shall be allowed a presumptive input tax, which is creditable against the output tax, equivalent to one and one-half percent of the gross value in money of their purchases of primary agricultural products which are used as inputs to

⁴⁴ Exhibits "YYY-1" to "YYY-378" as summarized in Exhibits "XXX-1" to "XXX-5"

their production. Primary agricultural products shall be limited to sugar cane and other agricultural products which are main raw materials for the production of sugar."

However, as to the presumptive input VAT for the period March 1, 2003 to August 31, 2004 in the amount of P2,028,775.78, petitioner failed to provide supporting VAT invoices, hence, it cannot be credited against petitioner's output tax.

Regarding petitioner's claimed P24,873,355.04 advance VAT payments on sale of refined sugar for the period April 1, 2001 to February 28, 2003, petitioner presented Payment Forms (BIR Forms No. 0605) and Certificates of Advance Payment of VAT totaling P21,883,355.04, detailed as follows:

1) Supported by Payment Forms and Certificates of Advance Payment of VAT			
Exhibit No.			
Payment Form	Certificate of Advance Payment of VAT	Date Paid	Advance VAT Payment
ZZZ-19	ZZZ-20	1/14/2003	P 145,312.00
ZZZ-22	ZZZ-23	1/20/2003	697,470.01
ZZZ-25	ZZZ-28	1/27/2003	676,783.66
ZZZ-26	ZZZ-27	1/14/2003	1,304,008.00
ZZZ-29	ZZZ-30	1/24/2003	633,916.00
ZZZ-31	ZZZ-32	1/24/2003	398,240.00
ZZZ-34	ZZZ-33	1/29/2003	319,276.00
ZZZ-35	ZZZ-36	2/03/2003	633,916.00
ZZZ-37	ZZZ-36	2/3/2003	8,512.00
ZZZ-38	ZZZ-39	2/3/2003	691,209.07
ZZZ-40	ZZZ-41	2/3/2003	37,418.05
ZZZ-42	ZZZ-43	2/10/2003	708,543.88
ZZZ-44	ZZZ-45	2/18/2003	704,401.55
ZZZ-46	ZZZ-47	2/21/2003	728,365.63
		Subtotal	P 7,687,371.85
2) Supported by Payment Forms only			
ZZZ-1		8/8/2001	P 3,450,000.00
ZZZ-2		8/8/2001	460,000.00
ZZZ-3		8/15/2001	460,000.00

ZZZ-4		8/22/2001	320,712.00
ZZZ-5		8/28/2001	460,000.00
ZZZ-6		8/31/2001	460,000.00
ZZZ-7		8/31/2001	3,450,000.00
ZZZ-8		9/10/2001	460,000.00
ZZZ-9		9/17/2001	460,000.00
ZZZ-10		9/28/2001	460,000.00
ZZZ-11		10/5/2001	920,000.00
ZZZ-12		10/5/2001	460,000.00
ZZZ-13		10/5/2001	460,000.00
ZZZ-14		10/29/2002	313,536.00
ZZZ-15		10/30/2002	153,594.00
ZZZ-16		11/4/2002	356,638.00
ZZZ-17		11/12/2002	172,696.99
ZZZ-18		11/19/2002	187,082.00
ZZZ-21		1/10/2003	223,056.20
ZZZ-24		1/21/2003	508,668.00
		Subtotal	P 14,195,983.19
		Total	P 21,883,355.04

Sections 5 and 7 of RR 7-89 enumerate the required proofs in order that the advance VAT payment on sale of refined sugar may be credited against the output tax, thus:

"SECTION 5. *Proof of advance payment.* — The sugar refinery shall issue a **certificate of advance payment** in a form prescribed therefore to each owner/seller upon payment in advance of the VAT as required in Section 3 of these Regulations. This **certificate and the official receipt issued by the BIR for the advance payment shall serve as proof of the credit for such advance payment against output tax** as provided in Section 7 of these Regulations.

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SECTION 7. *Credit for advance payments.* — In addition to the input tax credits allowed under Section 104 of the Tax Code as implemented by Section 10 of Revenue Regulations No. 5-87, the amount of advance payments made by sellers of refined sugar under these Regulations shall be allowed as a credit against their output tax on the actual gross selling price of refined sugar. The **advance payment certificate** issued under Section 5 hereof shall be adjusted to the quarterly VAT returns to support the claim for credit of advance tax payment." *(Emphasis supplied).* 

The foregoing provisions of RR No. 7-89 were amended by Sections 5 and 8 of RR No. 29-02 which, respectively, read as follows:

"SECTION 5. *Proof of advance payment.* — The Revenue District Office (RDO) concerned or the duly constituted unit in its place such as the Regional Task Force on Sugar, as the Regional Director may decide, shall issue a **Certificate of Advance Payment of the VAT** (Annex A) as required in Section 3 of these Regulations. This **certificate** shall serve as the authority of the sugar mill/refinery to release the refined sugar described therein, **and together with the payment form (BIR Form No. 0605 or its equivalent) and the BIR-prescribed deposit slip duly validated by the AAB, or the Revenue Official Receipt (ROR) issued by the Revenue Collection Officer (RCO) or the duly authorized City or Municipal Treasurer,** as the case may be, **shall serve as proof of the payment for the advance VAT which can be credited against output tax in the filed VAT Return** as provided in Section 8 of these Regulations.

SECTION 8. *Credit for advance payments.* — In addition to the input tax credits allowed under Section 110 of the Code, the amount of advance payments made by sellers of refined sugar under these Regulations shall be allowed as credit against their output tax on the actual gross selling price of refined sugar. The **advance payment certificate** issued under Section 5 hereof shall be attached to the quarterly VAT returns to support the claim for credit of advance VAT payment." (*Emphasis supplied*).

Based on the aforequoted revenue regulations, the advance VAT payment of P7,687,371.85, duly supported by Payment Forms and Certificates of Advance Payment of VAT, may be applied against petitioner's output tax. However, as regards petitioner's claimed advance VAT payments in the amount of P14,195,983.19, supported merely by Payment Forms, the same cannot be allowed to be credited against its output tax. The Payment Forms should have been machine validated or supported by official receipt issued by 

the BIR's Authorized Agent Bank (AAB) or the Revenue Official Receipt (ROR) issued by the Revenue Collection Officer (RCO) or the duly authorized City or Municipal Treasurer. In addition, petitioner should have presented the corresponding Certificate of Advance Payment of the VAT as required under Sections 5 and 7 of RR 7-89, as amended by Sections 5 and 8 of RR 29-02.

Also, petitioner's claimed P11,096,505.52 advance VAT payments for the period March 1, 2003 to August 31, 2004 shall be disallowed for petitioner's failure to substantiate the same.

Considering all of the above findings, petitioner's verified excess input VAT as of August 31, 2004 amounts to only P3,053,469.99 computed as follows:

	April 1, 2001 to Feb. 28, 2003	March 1, 2003 to Aug. 31, 2004	Total
Output VAT	P 194,184,554.44	P 26,322,238.96	P 220,506,793.40
Less: Input Tax			
Carried-over from prev qtr	P 15,414,288.07	P 1,274,092.82	P 15,414,288.07
Presumptive Input Tax	6,701,884.34	-	6,701,884.34
Domestic purchases	165,655,103.00	28,101,616.12	193,756,719.12
Total available Input Tax	P 187,771,275.41	P 29,375,708.95	P 215,872,891.54
VAT Payable/(Excess Input Tax)	P 6,413,279.03	P (3,053,469.99)	P 4,633,901.86
Less: Advance Payment	7,687,371.85	-	7,687,371.85
Tax Payable/(Overpayment)	P (1,274,092.82)	P (3,053,469.99)	P (3,053,469.99)

As evidenced by petitioner's Quarterly VAT Returns for the first⁴⁵ and second⁴⁶ quarters of FY ending May 31, 2004 as well as the first⁴⁷, third⁴⁸ and fourth⁴⁹ quarters of FY ending May 31, 2005, the subject input VAT claims of P27,847,897.72 and P22,194,446.67 covering the periods April 1, 2001 to February 28, 2003 and March 1, 2003 to August 31, 2004, respectively, were deducted as "Any VAT Refund/TCC Claimed" from the total available input

⁴⁵ Exhibit "C" (Case No. 7262)

⁴⁶ Exhibit "D", Ibid

⁴⁷ Exhibit "G", Ibid

⁴⁸ Exhibit "E", Ibid

⁴⁹ Exhibit "F", Ibid

tax. This means that no amount of the subject claims for refund was carried-over/applied in the succeeding first quarter of FY ending May 31, 2006.

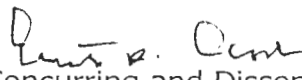
In fine, this Court finds petitioner to have sufficiently proven its entitlement to the issuance of Tax Credit Certificate representing unutilized input VAT attributable or allocable to its zero-rated export sales for the period April 1, 2001 to August 31, 2004 in the reduced amount of P3,053,469.99, as computed above.

WHEREFORE, the instant **PETITION FOR REVIEW** is **PARTIALLY GRANTED**. Respondent Commissioner of Internal Revenue is hereby **ORDERED to ISSUE a TAX CREDIT CERTIFICATE** in the amount of **THREE MILLION FIFTY THREE THOUSAND FOUR HUNDRED SIXTY NINE AND 99/100 PESOS (P3,053,469.99)** in favor of petitioner, representing its unutilized input VAT attributable or allocable to its zero-rated export sales for the period April 1, 2001 to August 31, 2004.

SO ORDERED.


CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

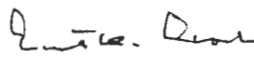

(With Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice



LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

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



ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Special First Division

CARGILL PHILIPPINES, INC.,
Petitioner,

CTA Case Nos. 6714 & 7262

-versus-

COMMISSIONER OF INTERNAL
REVENUE

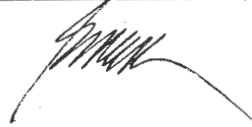
Respondent.

Members:

ACOSTA, P.J.,
BAUTISTA, and
CASANOVA, JJ.

Promulgated:

AUG 24 2010; 11:31 am



X ----- X

CONCURRING AND DISSENTING OPINION

While I concur in the denial of the claim for issuance of tax credit certificate for the alleged unutilized input VAT in the Petitions for Review filed by Cargill Philippines, Inc., I respectfully dissent with the decision of the majority, specifically in partially allowing therein petitioner's claim for issuance of tax credit certificate as discussed below.



On the issue of timeliness of the filing of the claims, the majority ruled that, "records indicate that petitioner originally filed its administrative claim for refund of input VAT covering April 1, 2001 to February 28, 2003 on June 27, 2003 and its judicial appeal by way of Petition for Review docketed as CTA Case No. 6714 on June 30, 2003. On the other hand, petitioner filed its administrative claim for refund of input VAT covering the period March 1, 2003 to August 31, 2004, and the Petition for Review docketed as CTA Case No. 7262 on the same day of May 31, 2005. All of the preceding dates of filing fall within the two-year prescriptive period reckoned from the respective dates of filing the Quarterly VAT Returns for the period April 1, 2001 to February 28, 2003 and March 1, 2003 to August 31, 2004."

Stated otherwise, the majority believes that a taxpayer has to file an administrative and judicial claim within the two-year period; otherwise, the taxpayer will lose the option to seek the refund or issuance of tax credit and to appeal the decision of the Commissioner.

At this point, it should be emphasized that the applicable law in the cases at bar is Section 112 of the NIRC which unequivocally provides for the basis and procedure for tax refunds or credits of input tax attributable to zero-rated sales, *viz*:

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 of properties or services, and the amount of creditable input tax due or paid cannot**

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be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

XXX XXX XXX

- (D) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis Supplied.)

The foregoing provisions clearly state that a VAT-registered taxpayer who desires to refund its unutilized or excess input VAT attributable to zero-rated sales may apply for refund or issuance of a tax credit certificate within two (2) years from the close of the taxable quarter. The Commissioner of Internal Revenue (Commissioner) shall, in this case, grant the refund or issue a tax credit certificate within one hundred twenty (120) days from the submission of complete documents. In case of a denial or inaction by the Commissioner within the 120-day period, the VAT-registered taxpayer may appeal to the Court within thirty (30) days from receipt of the decision or the lapse of the 120-day period.

Flowing from the above, it is manifest that the aforequoted provisions lay down the indispensable requirement for the taxpayer to await the decision, or the lapse of the 120-day period due to inaction of the Commissioner before it can file its claim with this Court.



To reiterate, the following dates are material in the present petitions:

CTA Case No.	Period Covered	Administrative Claim	Judicial Claim	120-day period after filing of Administrative Claim	30 days after the 120-day period
6714	April 1, 2001- February 28, 2003	June 27, 2003	June 30, 2003	October 25, 2003	November 24, 2003
7262	March 1, 2003- August 31, 2004	May 31, 2005	May 31, 2005	September 28, 2005	October 28, 2005

Applying, therefore, Section 112(D) in relation to Sections 112(A) and (B) of the NIRC in the cases at bar, petitioner's filing of administrative claims for refund or issuance of tax credit certificate on June 27, 2003 and May 31, 2005 are well within the 2-year period provided under Section 112(A) and (B). However, the judicial claims as shown in the table above did not afford the Respondent-Commissioner the 120-day period required in Section 112(D). In the Petition for Review docketed as CTA Case No. 6714, only 3 days have lapsed after the filing of its administrative claim when petitioner filed its judicial appeal; worse, in Petition for Review docketed as CTA Case No. 7262, petitioner filed both its administrative and judicial claim on the same day of May 31, 2005. Clearly, petitioner should have filed its judicial claim within thirty days after the lapse of the 120-day period for the Commissioner to render a decision on its administrative claims. Failing which, the petition filed without observing the 120-day period in Section 112(D) is premature. Such filing is a violation of the doctrine of exhaustion of administrative remedies.

Expounding on the prematurity of the petitions, it is a sound rule that, before one resorts to the courts, the administrative remedy provided by law must first be exhausted.¹ A party seeking an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative

¹ Rufino Lopez & Sons, Inc. vs. Court of Tax Appeals, 100 Phil 580.

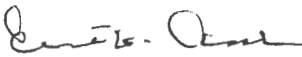
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agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to court action.²

This non-exhaustion of administrative remedies renders the action premature, *i.e.*, the claimed cause of action is not ripe for judicial determination and for that reason a party has no cause of action to ventilate in court.³ The premature invocation of court's intervention is fatal to one's cause of action. Accordingly, absent any finding of waiver or *estoppel*, the case is susceptible of dismissal for failure to state a cause of action.⁴

Thus, I am in the opinion that it was an error on the part of the majority to have entertained the case and eventually partially grant the claim for issuance of tax credit certificate. In the first place, the majority should have dismissed the petitions for its failure to state a cause of action.

Accordingly, for reasons stated above, I vote for the **DENIAL** of the instant petition.


ERNESTO D. ACOSTA
Presiding Justice

² Commissioner of Internal Revenue vs. Rosemarie Acosta, G.R. No. 154068, August 3, 2007.

³ Carale vs. Abarintos, G.R. No. 120704, March 3, 1997.

⁴ Paat vs. Court of Appeals, G.R. No. 111107, January 10, 1997; 266 SCRA 167, pp. 175-177.