w/ CDO-BEDA

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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TOLEDO POWER COMPANY,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7471

Members:

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

Promulgated:

OCT 23 2009; 1:00pm

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DECISION

CASANOVA, *J.*:

STATEMENT OF THE CASE

This is a Petition for Review that seeks for the issuance of tax credit certificate or refund of unutilized excess input value-added tax for the four quarters of taxable year 2004 arising from its domestic purchases of taxable goods and services and importation of goods attributable to zero-rated sales in the total amount of P17,443,855.22.

STATEMENT OF FACTS

The following are the facts of the case as culled from the records[1]:

[1] Joint Stipulation of Facts and Issues, Rollo, pp. 184-187.

Petitioner Toledo Power Company is a general partnership duly organized and existing under Philippine laws, with principal office at Sangui, Toledo City, Cebu.

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, with office address at BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner is principally engaged in the business of power generation. It is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC) of 1997 with Tax Identification No. 003-883-626 and BIR Certificate of Registration bearing RDO Control No. 94-083-000300.

Effective June 26, 2001, pursuant to Republic Act (RA) No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), sales of generated power by generation companies became Value Added Tax (VAT) zero-rated. This is bolstered in Rule 5, Section 6 of the Implementing Rules and Regulations to Implement EPIRA (IRR) by the Department of Energy.

Petitioner is registered with and authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity.[2]

Pursuant to EPIRA, an ERC-registered generation company's sale of generated power became VAT zero-rated beginning on June 26, 2001.

[2] ERC Certificate of Compliance COC No. 04-06-GXT61-0066

On 26 April 2004, petitioner filed its quarterly VAT return for the first quarter of taxable year 2004 which reflected an alleged excess or unutilized input VAT credits of P1,906,965.78.

On 26 July 2004, petitioner filed its quarterly VAT return for the second quarter of taxable year 2004, which reflected an alleged excess or unutilized input VAT credits of P2,602,997.00.

On 25 October 2004, petitioner filed its quarterly VAT return for the third quarter of taxable year 2004, which reflected an alleged excess or unutilized input VAT credits of P4,446,652.54.

On 25 January 2005, petitioner filed its quarterly VAT return for the fourth quarter of taxable year 2004, which reflected an excess or unutilized input VAT credits of P8,487,239.90.

For the four quarters of 2004, petitioner's VAT returns reflect an alleged incurred and accumulated input VAT in the total amount of PhP17,443,855.22 on its domestic purchases of taxable goods and services and importation of goods, which purchases and importations are all allegedly attributed to its zero-rated sale of power generation services.

Believing that its input taxes are refundable, and pursuant to the procedure prescribed in Revenue Regulations No. 7-95, as amended, petitioner filed on December 23, 2004 with the BIR RDO No. 83 its administrative claim[3] for refund on unutilized input VAT for the four (4) quarters of 2004 in the total amount of P17,443,855.22.

[3] Petition for Review, Annex J

As its basis for the instant claim for refund or issuance of tax credit certificate, petitioner invoked Section 112(A) of the 1997 NIRC, as amended.

To date, the application for refund by herein petitioner remains unacted by the respondent.

Hence, this Petition for Review[4] filed on April 24, 2006.

Respondent, in his Answer[5] interposed the following defenses, to wit:

"5. Petitioner's alleged claim for refund is subject to administrative investigation by the Bureau;

6. Petitioner must prove that it paid the alleged VAT input taxes for the periods stated;

7. Petitioner must prove that its sales of electricity is subject to VAT at zero percent (0%) rate;

8. Petitioner must prove that the alleged input VAT is directly attributable to such zero-rated sales;

9. Petitioner must prove that its alleged unutilized input VAT has not been applied against any output tax liabilities;

10. Petitioner must prove that the alleged claim was filed within the two (2) year period prescribed in Section 112 of the NIRC of 1997;

11. 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;

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

After trial on the merits, this case was submitted for decision on April 15, 2009[6] considering petitioner's Memorandum filed on April 7, 2009; without respondent's Memorandum.

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[4] Rollo, p. 1.
[5] Rollo, p. 135.
[6] Rollo, p. 330.

STATEMENT OF ISSUES

The parties submitted the following issues[7] for this Court's resolution:

"1. Whether or not the power generation services rendered by petitioner are subject to zero percent (0%) VAT.

2. Whether or not petitioner has excess input VAT for the four quarters of 2004 in the amount of Php17,443,885.22 arising from its domestic purchases of taxable goods and services and importation of goods.

3. Whether or not petitioner's alleged excess input VAT for the four quarters of 2004 are directly attributed to its alleged zero-rated sales of power generation services.

4. Whether or not Petitioner's alleged excess input VAT for the four quarters of 2004 have not been applied against any output tax liabilities or utilized/applied in the subsequent taxable year.

5. Whether or not petitioner's alleged unutilized/unapplied excess input tax are properly sustained by documentary evidence required by law.

6. Whether or not the claim for refund was filed within the two year period prescribed by law.

7. Whether or not petitioner is entitled to refund of its alleged unutilized unapplied excess input VAT for the four quarters of 2004 in the amount of Php17, 443,885.22."

THE COURT'S RULING

To begin with, let us first determine if petitioner's sales are zero-rated.

Section 6 of R.A. 9136 provides that *"sales of generated power by generation companies shall be value-added tax zero-rated."*

Thus, beginning the effectivity of R.A. No. 9136 (EPIRA) on June 26, 2001, the pertinent provisions of the NIRC of 1997 were deemed amended by modifying

[7] Rollo, 187-188.

the VAT rate applicable to sales of generation companies from ten percent (10%) to zero percent (0%).

However, in order to qualify for zero-rating, petitioner must prove that: 1) it is a generation company, and 2) it derived sales from power generation.

In the instant case, petitioner is principally engaged in the business of power generation and the subsequent sale thereof to the National Power Corporation (NPC), Cebu Electric Cooperative III (CEBECO), and Visayan Electric Company, Inc. (VECO).

Perusal of the records reveals that petitioner's Certificate of Compliance with the Energy Regulatory Commission (ERC)[8] pursuant to the Implementing Rules and Regulations of Republic Act No. 9136, proves that it qualifies under Section 4(x) of EPIRA as a generation company, in relation to Section 6 of the EPIRA, which reads:

> "Section 4. Definition of Terms. – (x) "Generation Company" refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity;"
>
> "Section 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.
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> 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**." *(Emphasis supplied).*

[8] Petition for Review, Annex B.

Clearly, petitioner's sales of electricity to NPC, CEBECO, and VECO for the four quarters of 2004 are subject to 0% VAT. As part of its documentary evidence, petitioner submitted to this Court its VAT invoices and official receipts[9], together with its Quarterly VAT Returns for the four quarters of taxable year 2004 showing zero-rated sales amounting to P1,261,215,673.39, detailed as follows:

Exhibit No.	Period Covered	Zero-Rated Sales
C	1st qtr 2004	P 312,773,223.94
J	2nd qtr 2004	274,547,070.37
Q	3rd qtr 2004	362,858,153.18
Z	4th qtr 2004	311,037,225.90
Total		**P 1,261,215,673.39**

After careful perusal of the documents presented, this Court finds that only the zero-rated sales of P1,228,469,091.79 were duly substantiated by petitioner's VAT official receipts. The details of which are:

Customer	Exhibit	Zero-Rated Sales
Visayan Electric Company Inc.	ZZ-2	P 77,240,857.87
CEBECO III	ZZ-3	16,075,301.19
Visayan Electric Company Inc.	ZZ-4	75,638,894.40
CEBECO III	ZZ-5	17,655,388.95
Visayan Electric Company Inc.	ZZ-6	79,667,051.51
NPC	ZZ-7	30,986,941.00
Visayan Electric Company Inc.	ZZ-8	72,066,013.52
CEBECO III	ZZ-9	17,346,180.00
Visayan Electric Company Inc.	ZZ-10	76,845,753.40
CEBECO III	ZZ-11	17,757,050.76
Visayan Electric Company Inc.	ZZ-12	73,555,509.43
CEBECO III	ZZ-13	18,769,776.96
Visayan Electric Company Inc.	ZZ-14	72,597,171.99
CEBECO III	ZZ-15	631,123.42
CEBECO III	ZZ-16	17,317,468.08
Visayan Electric Company Inc.	ZZ-17	68,783,953.72
NTC	ZZ-18	40,430,916.33
NTC	ZZ-19	9,985,958.38
NTC	ZZ-20	27,089,231.54
NTC	ZZ-21	13,791,786.73

[9] Exhibits ZZ-1 to ZZ-34a.

CEBECO III	ZZ-22	17,465,215.74
Visayan Electric Company Inc.	ZZ-23	74,057,195.31
CEBECO III	ZZ-24	44,272.00
CEBECO III	ZZ-25	1,095,697.42
CEBECO III	ZZ-26	578,155.17
CEBECO III	ZZ-27	17,300,639.07
Visayan Electric Company Inc.	ZZ-28	77,860,207.55
CEBECO III	ZZ-29	21,507,150.25
Visayan Electric Company Inc.	ZZ-30	92,293,280.29
Visayan Electric Company Inc.	ZZ-31	263,733.71
CEBECO III	ZZ-32	410,364.03
CEBECO III	ZZ-33	18,562,137.14
Visayan Electric Company Inc.	ZZ-34	82,798,714.93
Total		**P 1,228,469,091.79**

Considering that petitioner's services for as much as P1,228,469,091.79 are subject to 0% VAT pursuant to EPIRA, it can, therefore, claim for a refund of input taxes attributable thereto in accordance with Sections 110(B) and 112(A) of the National Internal Revenue Code (NIRC) of 1997, which read:

> "**Sec.110.** ***Tax Credits.—***
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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. Any input tax attributable to the purchase of capital goods or 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 sales and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

Let us now resolve the remaining issues which are interrelated and boils down to the issue of whether or not the claim for refund in the amount of P17,443,855.22 is properly substantiated.

Petitioner submitted various suppliers' invoices, official receipts, Bureau of Customs (BOC) Import Entries and Internal Revenue Declarations (IEIRDs), BOC and bank official receipts[10] in support of its claimed unutilized input taxes reflected in its Quarterly VAT Returns for the four quarters of 2004, in the amount of P17,648,060.46, broken down as follows:

Exhibit No.	Period Covered	Input Tax
C	1st qtr 2004	P 1,969,387.33
J	2nd qtr 2004	2,647,319.23
Q	3rd qtr 2004	4,499,167.36
Z	4th qtr 2004	8,532,186.54
Total		**P 17,648,060.46**

As per report of the Court-Commissioned ICPA, Mr. Emmanuel Mendoza of M&Q CPA, summarized his findings as follows[11]:

	Findings	Reference (Exhibit "BBB")	Input Tax	Total
1	**Input VAT on domestic purchases of services supported by VAT ORs.**			
	1st qtr	Annex A-1	P 877,333.44	
	2nd qtr	Annex A-15	855,790.63	
	3rd qtr	Annex A-29	1,810,117.86	
	4th qtr	Annex A-41	144,161.57	**P 3,687,403.50**

[10] Exhibits "UU-1" to "UU-345a", "VV-1" to "VV-448a", "WW-1" to "WW-530" and "XX-1" to "XX-173a", as summarized in Exhibit "BBB", Annexes A-1 to A-58.

[11] Excerpt from Annexes A-1 to A-58 and pages 4 to 9 of Exhibit "BBB" ;

2	**Input VAT on domestic purchases of goods supported by VAT invoices.**			
	1st qtr	Annex A-2	563,142.17	
	2nd qtr	Annex A-16	838,629.08	
	3rd qtr	Annex A-30	870,865.15	
	4th qtr	Annex A-42	1,027,394.68	**3,300,031.08**
3	**Input VAT on domestic purchases of services supported by documents other than ORs.**			
	1st qtr	Annex A-3	1,553.99	
	2nd qtr	Annex A-17	35.75	
	3rd qtr	Annex A-31	1,425.96	
	4th qtr	Annex A-43	119.63	**3,135.33**
4	**Input VAT on domestic purchases of goods supported by documents other than invoices.**			
	1st qtr	Annex A-4	1,442.09	
	2nd qtr	Annex A-18	2,845.21	
	3rd qtr	Annex A-32	157.88	
	4th qtr	Annex A-44	8,745.09	**13,190.27**
5	**Input VAT on domestic purchases of services supported by ORs with no BIR authority to print.**			
	1st qtr	Annex A-5	1,310.49	
	4th qtr	Annex A-45	1,201.92	**2,512.41**
6	**Input VAT on domestic purchases of goods supported by invoices with no BIR authority to print.**			
	1st qtr	Annex A-6	252,689.43	
	2nd qtr	Annex A-19	237,306.81	
	3rd qtr	Annex A-33	412,192.69	
	4th qtr	Annex A-46	1,490.90	**903,679.83**
7	**Input VAT on domestic services supported by ORs with pre-printed "TIN" and "Non VAT/NV".**			
	1st qtr	Annex A-7	90.00	
	2nd qtr	Annex-20	2,780.90	**2,870.90**
8	**Input VAT on domestic purchases of services supported by ORs dated before the taxable year of claim.**			
	1st qtr	Annex A-8	4,075.91	**4,075.91**
9	**Input VAT on domestic purchases of goods supported by invoices dated before the taxable year of claim.**			
	1st qtr	Annex A-9	46,933.87	
	2nd qtr	Annex A-23	2,295.45	
	4th qtr	Annex A-48	62.67	**49,291.99**
10	**Input VAT on domestic purchases of services supported by ORs of which the amount does not tally with the amount indicated in the Schedule.**			
	1st qtr	Annex A-10	8,449.84	
	2nd qtr	Annex A-24	1,759.23	
	3rd qtr	Annex A-36	23,846.09	
	4th qtr	Annex A-50	8,250.08	**42,305.24**
11	**Input VAT on domestic purchases of goods supported by invoices with pre-printed "TAN".**			
	1st qtr	Annex A-11	681.50	**681.50**
12	**Input VAT on importation of goods supported by ORs issued by BOC.**			
	1st qtr	Annex A-12	242.00	**242.00**
13	**Input VAT on importation of goods supported by BOC IEIRD and ORs issued by BOC.**			
	1st qtr	Annex A-13	41,721.00	
	2nd qtr	Annex A-25	156,878.00	
	3rd qtr	Annex A-37	226,939.00	**425,538.00**
14	**Input VAT on domestic purchases and goods with no available supporting documents presented to us.**			
	1st qtr	Annex A-14	169,721.60	
	2nd qtr	Annex A-28	47,021.42	
	3rd qtr	Annex A-40	20,710.24	

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	4th qtr	Annex A-57	4,076,797.57	**4,314,250.83**
15	**Input VAT on domestic purchases of services supported by ORs with pre-printed "TIN" only.**			
	2nd qtr	Annex A-21	327.75	**327.75**
16	**Input VAT on domestic purchases of goods supported by invoices with pre-printed "TIN" only.**			
	2nd qtr	Annex A-22	90.00	**90.00**
17	**Input VAT on importation of goods supported by BOC IEIRD only.**			
	2nd qtr	Annex A-26	454,902.00	**454,902.00**
18	**Input VAT on importation of goods supported by BOC IEIRD and ORs issued by Bank.**			
	2nd qtr	Annex A-27	46,657.00	
	3rd qtr	Annex A-38	691,258.00	
	4th qtr	Annex A-54	512,912.00	**1,250,827.00**
19	**Input VAT on domestic purchases of services supported by photocopied ORs.**			
	3rd qtr	Annex A-34	18,183.30	
	4th qtr	Annex A-52	16,883.62	**35,066.92**
20	**Input VAT on domestic purchases of goods supported by photocopied invoices**			
	1st qtr	Annex -		
	2nd qtr	Annex -		
	3rd qtr	Annex A-35	26,299.95	
	4th qtr	Annex A-53	44,165.97	**70,465.92**
21	**Input VAT on importation of goods supported by photocopied BOC IEIRD.**			
	3rd qtr	Annex A-39	397,173.00	**397,173.00**
22	**Input VAT on domestic purchases of services supported by ORs dated after the taxable year of claim.**			
	4th qtr	Annex A-49	106,705.21	**106,705.21**
23	**Input VAT on domestic purchases of goods supported by invoices of which the amount does not tally with the amount indicated in the Schedule.**			
	4th qtr	Annex A-51	45,039.09	**45,039.09**
24	**Input VAT on importation of goods supported by photocopied IEIRD and ORs issued by BOC.**			
	4th qtr	Annex A-55	194,952.00	**194,952.00**
25	**Input VAT on importation of goods supported by photocopied IEIRD and ORs issued by Bank.**			
	4th qtr	Annex A-56	1,387,804.00	**1,387,804.00**
26	**Input VAT on importation of goods with no available documents presented to us.**			
	4th qtr	Annex A-58	955,498.78	**955,498.78**
	TOTAL			**P 17,648,060.46**

This Court finds the ICPA report to be in order. Hence, the amount of P9,118,943.58 (*item nos.1, 2, 12, 13, 17, and 18*) is ascertained to be properly substantiated while the amount of P8,529,116.88 should be denied for the grounds above-stated. To recapitulate, the said disallowances are as follows:

Findings	**Disallowances**
Input VAT on domestic purchases of services supported by documents other than ORs.	P 3,135.33
Input VAT on domestic purchases of goods supported by documents other than invoices.	13,190.27
Input VAT on domestic purchases of services supported by ORs with no BIR authority to print.	2,512.41
Input VAT on domestic purchases of goods supported by invoices with no BIR authority to print.	903,679.83

Input VAT on domestic services supported by ORs with pre-printed "TIN" and "Non VAT/NV".	2,870.90
Input VAT on domestic purchases of services supported by ORs dated before the taxable year of claim.	4,075.91
Input VAT on domestic purchases of goods supported by invoices dated before the taxable year of claim.	49,291.99
Input VAT on domestic purchases of services supported by ORs of which the amount does not tally with the amount indicated in the Schedule.	42,305.24
Input VAT on domestic purchases of goods supported by invoices with pre-printed "TAN".	681.50
Input VAT on domestic purchases and goods with no available supporting documents presented to us.	4,314,250.83
Input VAT on domestic purchases of services supported by ORs with pre-printed "TIN" only.	327.75
Input VAT on domestic purchases of goods supported by invoices with pre-printed "TIN" only.	90.00
Input VAT on domestic purchases of services supported by photocopied ORs.	35,066.92
Input VAT on domestic purchases of goods supported by photocopied invoices	70,465.92
Input VAT on importation of goods supported by photocopied BOC IEIRD.	397,173.00
Input VAT on domestic purchases of services supported by ORs dated after the taxable year of claim.	106,705.21
Input VAT on domestic purchases of goods supported by invoices of which the amount does not tally with the amount indicated in the Schedule.	45,039.09
Input VAT on importation of goods supported by photocopied IEIRD and ORs issued by BOC.	194,952.00
Input VAT on importation of goods supported by photocopied IEIRD and ORs issued by Bank.	1,387,804.00
Input VAT on importation of goods with no available documents presented to us.	955,498.78
TOTAL	**P 8,529,116.88**

Moreover, this Court finds that the input VAT claim should be further decreased by P67,603.26 for the following reasons:

	FINDINGS	Exhibit No.	Input VAT	Total
1	**Input VAT on domestic purchases of goods/services supported by "TIN V" Invoice/ORs.**			
	Alas Customs Brokerage	UU-1	P 199.34	
	Alas Customs Brokerage	UU-2	90.91	
	Alas Customs Brokerage	UU-3	342.20	
	Stitches Wear Industries	UU-62	2,345.45	
	Alas Customs Brokerage	VV-1	318.94	
	Alas Customs Brokerage	VV-2	458.28	
	Alas Customs Brokerage	VV-3	801.76	
	Alas Customs Brokerage	VV-4	150.00	
	Stitches Wear Industries	VV-72	1,604.55	
	HL Tractors Parts	VV-287	772.73	
	HL Tractors Parts	VV-288	1,454.55	
	NTPI International, Inc.	WW-380	6,050.00	
	Alas Customs Brokerage	WW-2	347.68	

	Alas Customs Brokerage	WW-3	498.53	
	Alas Customs Brokerage	WW-4	318.94	
	Alas Customs Brokerage	WW-5	1,586.10	
	Alas Customs Brokerage	WW-6	864.24	
	Alas Customs Brokerage	WW-7	318.94	
	HL Tractor Parts	XX-77	425.25	
	HL Tractor Parts	XX-78	116.36	
	Philippine Packings & Seals Corp.	XX-99	842.97	
	Valley Technologies Inc.	XX-128	5,300.00	**P 25,207.72**
2	**Input VAT on domestic purchases of services supported by OR issued not in the name of the petitioner.**			
	UCPB General Insurance Co., Inc.	UU-78	905.47	
	Innove Communications	VV-39	4,600.00	
	Innove Communications	VV-40	4,600.00	
	Innove Communications	VV-41	4,214.20	
	Innove Communications	VV-42	4,600.00	
	Fortune Guarantee	WW-43	3,214.91	**22,134.58**
3	**Input VAT on domestic purchases of goods/services supported by undated invoice/OR.**			
	Gilbros Enterprises	UU-148	47.27	
	Yumphil Industries Inc.	UU-241	700.00	
	Ostrea Mineral Laboratories	VV-53	1,874.55	
	V & U Enterprises	VV-392	160.73	
	Macro Tires Inc.	WW-330	941.82	
	Specialized Bolt Center	WW-427	254.55	
	Specialized Bolt Center	WW-428	1,486.36	**5,465.28**
4	**Input VAT on domestic purchases of goods supported by invoice dated not within the period of claim.**			
	Zenith Hardware Corp.	UU-242	174.55	**174.55**
5	**Input VAT on domestic purchases of goods supported by invoice without BIR authority to print.**			
	Monark Equipment Corp.	VV-314	248.18	**248.18**
6	**Input VAT on domestic purchases of services supported by Non-Vatable OR.**			
	Birkart Globistics Philippines, Inc.	VV-314	4,725.39	**4,725.39**
7	**Input VAT on domestic purchases of goods supported by "TIN" invoice.**			
	Caltex	WW-124	1,601.49	
	Caltex	WW-125	2,427.89	**4,029.38**
8	**Input VAT on domestic purchases of services supported by OR without "TIN VAT".**			
	Drugcheck Philippines Inc.	XX-6	318.18	**318.18**
9	**Input VAT on domestic purchases of services supported by "TAN" OR.**			
	Cebu Legacy Enterprises	XX-4	1,454.55	**1,454.55**
10	**Input VAT on domestic purchases of services supported by documents other than VAT OR.**			
	Pertian Industries Corp.	XX-97	436.36	
	Pertian Industries Corp.	XX-98	3,409.09	**3,845.45**
	TOTAL			**P 67,603.26**

Thus, petitioner was able to support by proper VAT invoices and/or official receipts input taxes in the amount of P9,051,340.32, computed as follows:

Reported Input VAT		P 17,648,060.46
Less: Disallowances		
Per CPA Findings	P 8,529,116.88	
Per this Court's Findings	67,603.26	8,596,720.14
Substantiated Input VAT		**P 9,051,340.32**

However, a portion of the substantiated input VAT of P9,051,340.32 shall be applied against petitioner's reported output VAT liability of P204,205.24, broken down as follows:

Exhibit No.	Period Covered	Output Tax
C	1st qtr 2004	P 62,421.55
J	2nd qtr 2004	44,322.23
Q	3rd qtr 2004	52,514.82
Z	4th qtr 2004	44,946.64
Total		**P 204,205.24**

Hence, only the remaining input VAT of P8,847,135.08 can be attributed to the entire zero-rated sales as declared by petitioner in the amount of P1,261,215,673.39 and only the input VAT of P8,617,425.41 is attributable to the substantiated zero-rated sales of P1,228,469,091.79, computed as follows:

Substantiated Input VAT	P 9,051,340.32
Less: Output VAT	204,205.24
Excess Input VAT	**P 8,847,135.08**

Substantiated Zero-Rated Sales	P1,228,469,091.79
Divided by Total Reported Zero-Rated Sales	÷1,261,215,673.39
Multiplied by Substantiated Excess Input VAT	x 8,847,135.08
Input VAT attributable to Substantiated Zero-rated Sales	**P 8,617,425.41**

As to the issue of whether or not the excess input VAT for the four quarters of 2004 have not been applied or utilized against its output tax liabilities or utilized/applied in the subsequent taxable years, petitioner presented its Amended

Quarterly VAT Return for the 4th quarter of taxable year 2005[12], that was electronically filed through the Electronic Filing & Payment System or EFPS of the BIR, showing that its unutilized input VAT for the taxable year 2004 amounting to P17,443,855.22, together with the unutilized input taxes for the taxable year 2003 in the amount of P15,838,539.48[13], or in the aggregate amount of P33,282,394.69[14], was deducted from the Total Available Input Tax of P48,140,845.78 as of the fourth quarter of year 2005. Hence, the subject claim no longer formed part of the excess input VAT of P8,366,829.33 as of the 4th quarter of 2005 which was to be carried over/applied to the succeeding 1st quarter of 2006.

Regarding the issue of whether or not the claim for refund/ tax credit certificate was filed within the two-year prescriptive period, this Court rules in the affirmative.

The reckoning of the two-year prescriptive period for the filing of claim for VAT refund starts from the date of filing of the corresponding quarterly VAT return. The earliest quarter covered by the subject claim is the first quarter of 2004 for which petitioner filed its VAT return on April 26, 2004[15] (April 25, 2004 being on a Sunday). Counting from this date, petitioner had until April 26, 2006 within which to file its claim administratively and judicially.

[12] Exhibit "OO".
[13] As cited in "Exhibit "JJ".
[14] Item 25A of Exhibit "OO".
[15] Exhibit "B-3".

Hence, petitioner's administrative claim filed on December 23, 2005[16] and the Petition for Review filed on April 24, 2006 fall within the two-year prescriptive period.

In view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED to REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in the amount of **EIGHT MILLION SIX HUNDRED SEVENTEEN THOUSAND FOUR HUNDRED TWENTY FIVE PESOS AND 41/100 (P8,617,425.41)** representing unutilized input VAT arising from petitioner's domestic purchases of goods and services and importations of goods which are attributable to zero-rated sales for the taxable year 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

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[16] Exhibit "II".

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