

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

SPECIAL FIRST DIVISION

**TeaM ENERGY CORPORATION
(FORMERLY: MIRANT PAGBILAO
CORPORATION),**

Petitioner,

- versus -

CTA CASE NO. 7617

Members:

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

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

JUL 13 2010 ; 3:10 pm

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DECISION

BAUTISTA, J.:

This case involves a claim for refund or issuance of tax credit certificate in the amount of P80,136,251.60, allegedly representing unutilized input value-added tax (VAT) arising from petitioner's domestic purchases and importation of taxable goods and services, attributable to its effectively zero-rated sales of power generation services to the National Power Corporation for the period covering January 1, 2005 to October 31, 2005.

TeaM Energy Corporation (Petitioner) is a domestic corporation organized and existing under and by virtue of Philippine laws, with principal office at Pagbilao Grande Island, Pagbilao Quezon. It was originally registered with the

Securities and Exchange Commission (SEC) under the name "Hopewell Power (Philippines), Corporation", which was subsequently changed to "Southern Energy Quezon, Inc." on September 22, 1999. On June 28, 2001, petitioner's name was officially changed from "Southern Energy Quezon, Inc." to "Mirant Pagbilao Corporation" as evidenced by the SEC Certificate of Filing of Amended Articles of Incorporation.¹ Finally, on July 23, 2007, petitioner's name was changed from "Mirant Pagbilao Corporation" to "TeaM Energy Corporation".²

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of said office, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner is principally engaged in the business of power generation and subsequent sale thereof to the National Power Corporation (NPC) under a Build, Operate, Transfer (BOT) scheme.³ As such, it is registered with the BIR as a VAT taxpayer in accordance with Section 107 of the National Internal Revenue Code (NIRC) of 1977 (now Section 236 of the NIRC of 1997), with Tax Identification No. 001-726-870-000, as shown on its BIR Certificate of Registration No. OCN8RC0000017854.⁴

On December 17, 2004, petitioner filed with the BIR Audit Information, Tax Exemption and Incentives Division an Application for VAT Zero-Rate for the

¹ Pars. 1, 4, and 5, Jointly Stipulated Facts, Joint Stipulations of Facts and Issues (JSFI), docket, p. 270

² Docket, p. 504

³ Par. 2, Jointly Stipulated Facts, JSFI, docket, p. 270

⁴ Annex "A", Petition for Review, docket, p. 15; par. 3, Jointly Stipulated Facts, JSFI, docket, p. 270

supply of electricity to the NPC from January 1, 2005 to December 31, 2005, which was subsequently approved.⁵

Petitioner filed with the BIR its Quarterly VAT Returns for the first three quarters of 2005 on April 25, 2005⁶, July 26, 2005⁷, and October 25, 2005⁸, respectively. Likewise, petitioner filed its Monthly VAT Declaration for the month of October 2005 on November 21, 2005⁹, which was subsequently amended on May 24, 2006¹⁰. These VAT Returns reflected, among others, the following entries:

Exhibit	Period Covered	Zero-Rated Sales/Receipts	Taxable Sales	Output VAT	Input VAT
"C"	1st Qtr-2005	P 3,044,160,148.16	P 1,397,107.80	P 139,710.78	P 16,803,760.82
"D"	2nd Qtr-2005	3,038,281,557.57	1,241,576.30	124,157.63	32,097,482.29
"E"	3rd Qtr-2005	3,125,371,667.08	452,411.64	45,241.16	16,937,644.73
"G" (amended)	October 2005		910,949.50	91,094.95	14,297,363.76
	Total	P9,207,813,372.81	P4,002,045.24	P400,204.52	P80,136,251.60

On December 20, 2006, petitioner filed an administrative claim¹¹ for cash refund or issuance of tax credit certificate corresponding to the input VAT reported in its Quarterly VAT Returns for the first three quarters of 2005 and Monthly VAT Declaration for October 2005 in the amount of P80,136,251.60, citing as legal bases Section 112(A), in relation to Section 108(B)(3) of the NIRC of 1997, Section 4.106-2(c) of Revenue Regulations No. 7-95, Revenue Memorandum Circular No. 61-2005, and the case of **Maceda vs. Macaraig**¹².

Due to respondent's inaction on its claim, petitioner filed the instant Petition for Review before this Court on April 18, 2007.

⁵ Exhibits "A" and "A-1"

⁶ Exhibit "C-1"

⁷ Exhibit "D-1"

⁸ Exhibit "E-1"

⁹ Exhibit "F-1"

¹⁰ Exhibit "G-1"

¹¹ Exhibits "B" and "B-1"

¹² G.R. No. 88291, May 31, 1991

In his Answer¹³ filed on May 25, 2007, respondent interposed the following Special and Affirmative Defenses:

- "5. He reiterates and pleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses.
6. Petitioner's alleged claim for refund is subject to administrative investigation/examination by respondent.
7. Taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with the provision of law.
8. To support its claim for refund, it is imperative for petitioner to prove the following, viz:
 - a. The registration requirements of a value-added taxpayer in compliance with the pertinent provision of the Tax Code of 1997, as amended, and its implementing revenue regulations;
 - b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code of 1997, as amended;
 - c. Proof of compliance with the submission of complete documents in support of the administrative claim for refund pursuant to Section 112 (D) of the Tax Code of 1997, as amended, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition *sine qua non* prior to the filing of judicial claim in accordance with the provision of Section 229 of the Tax Code, as amended
 - d. That the input taxes of P80,136,251.60 allegedly representing unutilized input VAT from its domestic purchases of capital goods, domestic purchases of goods other than capital goods, domestic purchases of services, services rendered by nonresidents, importation of capital goods and importation of goods other than capital goods were:
 - d.i paid by the petitioner;
 - d.ii attributable to its zero-rated sales;
 - d.iii used in the course of its trade or business; and

¹³ Docket, pp. 239-244

- d.iv such have not been applied against any output tax;
- e. That petitioner's claim for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112 (A) of the Tax Code of 1997, as amended;
- f. That petitioner has complied with the governing rules and regulations with reference to recovery of tax erroneously or illegally collected as explicitly found in Sections 112 (A) and 229 of the Tax Code, as amended.
- g. Petitioner failed to prove compliance with the aforementioned requirements.
9. 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);
10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation."

During trial, petitioner presented documentary and testimonial evidence.

Respondent, on the other hand, waived his right to present evidence.¹⁴

This case was submitted for decision on July 13, 2009, after the parties filed their respective Memorandum.

The parties presented the following issues¹⁵ for this Court's resolution:

"1. Whether or not the power generation services allegedly rendered by Petitioner for the period 1 January 2005 to 31 October 2005 to NPC are subject to zero percent (0%) VAT pursuant to RA No. 6395, as amended, and the EPIRA and its implementing rules and regulations.

¹⁴ Docket, p. 573

¹⁵ Jointly Stipulated Issues, JSFI, docket, pp. 270-272



2. Whether or not Petitioner has complied with the invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 110 (A) (2), 113 and 114 of the Tax Code of 1997, as amended.

3. Whether or not Petitioner has complied with the submission of complete documents in support of its administrative claim for refund pursuant to Section 112 (D) of the Tax Code of 1997, as amended.

4. Whether or not the input taxes of P80,136,251.60 allegedly representing unutilized creditable input VAT from its domestic purchases of capital goods, domestic purchases of goods other than capital goods, domestic purchases of services, services rendered by non-residents, importation of capital goods, and importation of goods other than capital goods for the period January 1, 2005 to October 31, 2005 were:

- 4.1 paid by the Petitioner;
- 4.2 attributable to its zero-rated sales of power generation services to the NPC;
- 4.3 used in the course of its trade or business; and,
- 4.4 such have not been applied against any output tax.

5. Whether or not Petitioner's claim for refund of the unutilized creditable input VAT amounting to P80,136,251.60 (sic) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112 (A) of the Tax Code of 1997, as amended.

6. Whether or not the unutilized input VAT payments for the period 1 January 2005 to 31 October 2005 in the total amount of P80,136,251.60 (sic) were carried over to and utilized in the succeeding taxable quarter(s) or applied against any of the output VAT liability of the Petitioner; and,

7. Whether or not Petitioner has complied with the governing rules and regulations with reference to recovery of tax erroneously or illegally collected as explicitly found in Sections 112 (A) and 229 of the Tax Code of 1997, as amended.

8. Whether or not Petitioner is entitled to a refund or issuance of a tax credit certificate for the total amount of P80,136,251.60 allegedly representing unutilized input VAT for the period January 1, 2005 to October 31, 2005."

The foregoing issues boil down to the principal issue of whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P80,136,251.60, representing unutilized input VAT on domestic purchases and importation of taxable goods and services, attributable to its zero-rated sales of power generation services to the NPC for the period covering January 1, 2005 to October 31, 2005.

Section 112(A) of the NIRC of 1997 allows the refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales, to wit:

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

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

Based on the afore-quoted provision, the following requisites must be satisfied in order for petitioner to be entitled to a refund:

1. that there must be zero-rated or effectively zero-rated sales;
 2. that input taxes were incurred or paid;
 3. that such input taxes are attributable to zero-rated or effectively zero-rated sales;
 4. that the input taxes were not applied against any output VAT liability;
- and

5. that the claim for refund was filed within the two-year prescriptive period.

It is undisputed that petitioner is principally engaged in the business of power generation and subsequent sale thereof to the NPC under a BOT scheme.¹⁶ Such power generation services rendered by petitioner to the NPC are subject to zero percent (0%) VAT, pursuant to Section 108(B)(3) of the NIRC of 1997 (prior to its amendment under Republic Act No. 9337, which became effective on November 1, 2005) in relation to Section 13 of Republic Act (R.A.) No. 6395, otherwise known as the NPC Charter, which are all quoted hereunder for easy reference:

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

xxx

xxx

xxx

(B) *Transactions Subject to Zero Percent (0%) Rate.* — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

xxx

xxx

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(3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate;**" *(Emphasis supplied)*

"Sec. 13. *Non-profit Character of the Corporation; Exemption from All Taxes, Duties, Fees, Imposts and other Charges by the Government and Governmental Instrumentalities.* — The Corporation shall be non-profit and shall devote all its returns from its capital investment, as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section One of this Act, the Corporation, including its subsidiaries, is hereby declared exempt from the payment of all forms of taxes, duties, fees, impostos as well as costs and service fees including filing fees,

¹⁶ Par. 2, Jointly Stipulated Facts, JSFI, docket, p. 270



appeal bonds, supersedeas bonds, in any court or administrative proceedings." (*Emphasis supplied*)

Clearly, NPC is an entity with a special charter, which categorically exempts it from payment of all taxes, whether direct or indirect, including VAT. Hence, by virtue of the said charter, services rendered by a VAT-registered entity, like herein petitioner, to NPC are effectively subject to zero percent (0%) VAT, in accordance with Section 108(B)(3) of the NIRC of 1997.

Moreover, the Supreme Court in its Resolution dated June 8, 1993, affirmed NPC's tax exemption in the case of **Maceda vs. Macaraig, Jr.**¹⁷, in this wise:

"A chronological review of the NPC laws will show that it has been the lawmaker's intention that the NPC was to be completely tax-exempt from all forms of taxes — direct and indirect.

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One common theme in all these laws is that the NPC must be enabled to pay its indebtedness which, as of P.D. No. 938 was P12 Billion in total domestic indebtedness, at any one time, and US\$4 Billion in total foreign loans at any one time. The NPC must be and has to be exempt from all forms of taxes if this goal is to be achieved."

For the period covering January 1, 2005 to October 31, 2005, petitioner actually generated zero-rated receipts from power generation services rendered to NPC in the amount of P10,240,507,991.07, as evidenced by the various sales invoices and official receipts¹⁸ issued by petitioner to NPC, broken down as follows:¹⁹

¹⁷ G.R. No. 88291, June 8, 1993

¹⁸ Exhibits "KK-1", "KK-1a" to "KK-9d", "LL-1", "LL-1a" to "LL-12b", "MM-1", "MM-1a" to "MM-11b", "NN-1", and "NN-1a" to "NN-1c"

¹⁹ Exhibit "L", page 12

Period Covered	Zero-Rated Gross Receipts	
1st Quarter 2005	P	3,044,160,148.16
2nd Quarter 2005		3,038,281,557.57
3rd Quarter 2005		3,125,371,667.08
October 2005		1,032,694,618.26
Total		P 10,240,507,991.07

After finding that petitioner's gross receipts from power generation services rendered to NPC for the period from January 1, 2005 to October 31, 2005, in the amount of P10,240,507,991.07, qualify for zero percent (0%) VAT, the Court will now determine the amount of unutilized input VAT attributable thereto.

As earlier stated, petitioner reported in its Quarterly VAT Returns for the first three quarters of 2005 and Monthly VAT Declaration for October 2005 a total amount of P80,136,251.60 input VAT, broken down as follows:

Exhibit	Period Covered	Input VAT	
"C"	1st Qtr-2005	P	16,803,760.82
"D"	2nd Qtr-2005		32,097,482.29
"E"	3rd Qtr-2005		16,937,644.73
"G" (amended)	October 2005		14,297,363.76
	Total	P	80,136,251.60

In support of the afore-mentioned input taxes, petitioner presented its Summary Lists of Domestic Purchases and Importation of Goods and Services²⁰ for the period covering January 1, 2005 to October 31, 2005 and the related suppliers' invoices and official receipts, Bureau of Customs (BOC) Import Entries and Internal Revenue Declarations (IEIRDs), BOC official receipts, and bank official receipts²¹. Upon examination of these documents, the Court-commissioned Independent Certified Public Accountant (CPA)²², in his Amended

²⁰ Exhibits "C-4" to "C-6", "D-4" to "D-6", "E-4" to "E-6", "G-3", and "G-4"

²¹ Exhibits "U-1" to "U-1112", "V-1" to "V-1725", "W-1" to "W-1633", and "X-1" to "X-1317"

²² Mr. Emmanuel Y. Mendoza, Partner of Mendoza Querido & Co., CPAs



Report dated March 12, 2008, noted the following exceptions to petitioner's input

VAT claim:

FINDINGS	TAXABLE YEAR 2005				
	1ST QTR	2ND QTR	3RD QTR	OCTOBER	TOTAL
Input VAT on domestic purchases of services supported by documents other than VAT ORs	870.43	5,772.91	431.39	6,549.41	13,624.14
Input VAT on domestic purchases of goods supported by documents other than VAT invoices		4,617.32	21,736.38	(24,437.01)	1,916.69
Input VAT on domestic purchases of services supported by ORs with printed Non VAT/NV	307.68		4,050.45		4,358.13
Input VAT on domestic purchases of services supported by ORs with printed "TIN" only	3,281.82		1,363.64	690.90	5,336.36
Input VAT on domestic purchases of services of which the amount does not tally with the schedule				5,427.28	5,427.28
Input VAT on domestic purchases of goods of which the amount does not tally with the schedule				490.90	490.90
Input VAT on domestic purchases of services supported by VAT ORs before the period of claim	1,637.45				1,637.45
Input VAT on domestic purchases of goods supported by VAT invoices before the period of claim	5,099.71	900.00			5,999.71
Input VAT on domestic purchases of goods supported by VAT invoices with no permit number	40,710.56		58,200.85		98,911.41
Input VAT on domestic purchases of services supported by VAT ORs with pre-printed zero-rated sales	49,578.80				49,578.80
Input VAT on domestic purchases of services/goods with no supporting documents	13,184.46	(2,192.64)	58,424.54	18,594.52	88,010.88
Importation of goods with no supporting documents			143,437.00	131,701.00	275,138.00
TOTAL	114,670.91	9,097.59	287,644.25	139,017.00	550,429.75

This Court finds the Independent CPA's Report in order.

Out of the total input VAT claim of P80,136,251.60, the amount of P550,429.75 shall be denied for failure to meet the substantiation requirements under 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 No. 7-95.

Thus, petitioner's properly substantiated input VAT only amounts to P79,585,821.85 (*P80,136,251.60 less P550,429.75*), which shall be further reduced by the following output taxes reported by petitioner for the subject period of claim in the total amount of P400,204.52:

Exhibit	Period Covered	Taxable Sales	Output VAT
"C"	1st Qtr-2005	P 1,397,107.80	P 139,710.78
"D"	2nd Qtr-2005	1,241,576.30	124,157.63
"E"	3rd Qtr-2005	452,411.64	45,241.16
"G" (amended)	October 2005	910,949.50	91,094.95
	Total	P 4,002,045.24	P 400,204.52

Consequently, only the remaining input VAT of P79,185,617.33 (*P79,585,821.85 less P400,204.52*) can be attributed to petitioner's declared zero-rated receipts for the period January 1, 2005 to October 31, 2005 in the amount of P10,240,507,991.07.

Even though petitioner carried over the input VAT claim of P80,136,251.60 to the succeeding fourth quarter of 2005²³, the same was included as part of the deduction presented under line item 23D as "Any VAT Refund/TCC Claimed" in the amount of P194,516,042.40, which is composed of unutilized input VAT being claimed in taxable years 2004 and 2005 in the amounts of P114,379,790.83 and P80,136,251.60, respectively, from the total available input VAT of P209,644,368.49²⁴. Evidently, petitioner could not have utilized the substantiated excess input VAT of P79,185,617.33 in the succeeding quarters.

Finally, as to the timeliness of the filing of the instant claim, the Supreme Court, in the case of **Atlas Consolidated Mining and Development**

²³ Exhibit "I"

²⁴ Exhibit "L", page 9, item C. 2

Corporation vs. Commissioner of Internal Revenue²⁵, 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. The earliest quarter covered by the instant Petition is the first quarter of 2005 for which petitioner filed its Quarterly VAT Return on April 25, 2005²⁶. Counting from this date, both the administrative claim filed on December 20, 2006²⁷ and the Petition for Review filed on April 18, 2007 fell within the two-year prescriptive period.

In spite of the case entitled **Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)**²⁸, wherein 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 only to cases filed after the promulgation date of the *Mirant case*. To apply said ruling in the present case will in effect be giving the new doctrine retroactive application, thereby impairing vested rights.²⁹

In fine, this Court finds petitioner to have sufficiently proven its entitlement to a refund or issuance of tax credit certificate, representing unutilized input VAT incurred on its domestic purchases and importation of taxable goods and services, attributable to its effectively zero-rated sales of power generation services to NPC for the period covering January 1, 2005 to October 31, 2005 in the amount of P79,185,617.33, computed as follows:

²⁵ G.R. Nos. 141104 and 148763, June 8, 2007

²⁶ Exhibit "C-1"

²⁷ Exhibit "B-1"

²⁸ G.R. No. 172129, September 12, 2008

²⁹ TeaM Energy Corporation (Formerly Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue, CTA Case Nos. 7229 and 7298, October 5, 2009



Amount of Claim	P 80,136,251.60
Less: Not Properly Substantiated Input Vat	550,429.75
Net Creditable Input VAT	P 79,585,821.85
Less: Output VAT	400,204.52
Refundable Input VAT	P 79,185,617.33

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in the amount of **SEVENTY-NINE MILLION ONE HUNDRED EIGHTY-FIVE THOUSAND SIX HUNDRED SEVENTEEN AND 33/100 PESOS (P79,185,617.33)** in favor of petitioner, representing petitioner's unutilized input VAT, attributable to its effectively zero-rated sales of power generation services to NPC for the period covering January 1, 2005 to October 31, 2005.

SO ORDERED.


LOVELL R. BAUTISTA
Associate Justice

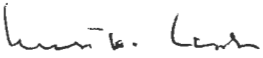
WE CONCUR:


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


CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

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


ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division