

REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

SPECIALTY PULP
MANUFACTURING, INC.,
Petitioner,

C.T.A. CASE NO. 7425

Members:

-versus-

CASTAÑEDA, JR., Chairperson,
UY, and
PALANCA-ENRIQUEZ, JJ.

COMMISSIONER OF INTERNAL
REVENUE,

Promulgated:

JUN 0 1 2010

Respondent.

9:00 a.m.

X ----- X

D E C I S I O N

PALANCA-ENRIQUEZ, J.:

Section 112(A) and (B) of RA 8424 allows the refund or issuance of a TCC of excess input VAT in two instances, namely: (1) when the excess input VAT is attributable to zero-rated or effectively zero-rated sales; and (2) when the excess input VAT is attributable to capital goods purchased by a VAT-registered person, provided the taxpayer complied with the requisites prescribed by the aforesaid law.



THE CASE

This is a Petition for Review filed by Specialty Pulp Manufacturing, Inc. (hereafter “petitioner”) praying for refund or issuance of a tax credit certificate (“TCC”) in the amount of P10,203,699.07, representing excess input VAT paid on zero-rated sales, and purchases of capital goods for the four quarters of 2004.

THE PARTIES

Petitioner is a corporation duly registered in accordance with Philippine laws, with principal office located at Room 403, CSP Building, 815 Quezon Avenue, Quezon City. It is registered with the Securities and Exchange Commission (“SEC”), as a manufacturer and exporter of pulp, paper and paperboard, wholesaler of agricultural raw materials and live animals. Petitioner is registered with the Bureau of Internal Revenue (BIR), with Tax Identification Number (TIN) 214-820-909-000, dated December 7, 2001.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (“CIR”), empowered to perform the duties of said office including, among others, the power to decide, approve, and grant refunds or tax credit of erroneously or excessively paid taxes.



THE FACTS

For the four quarters of 2004, petitioner filed the following VAT

Returns:

Quarter	Date Filed	Exhibits
First Quarter of 2004	April 27, 2004	"A"
Second Quarter of 2004	July 26, 2004	"B"
Third Quarter of 2004	October 25, 2004	"C"
Fourth Quarter of 2004	January 25, 2005	"D"
Amended First Quarter of 2004	June 28, 2005	"A-1"
Amended Second Quarter of 2004	June 28, 2005	"B-1"
Amended Third Quarter of 2004	June 28, 2005	"C-2"
Amended Fourth Quarter of 2004	June 28, 2005	"D-1"

On October 27, 2005, petitioner filed an administrative claim for refund/issuance of a TCC for its alleged excess input VAT in the amount of P10,203,699.07, for the period January 2004 to December 2004, with the BIR Revenue District Office No. 38, West Avenue, Quezon City.

Considering that the claim for refund or tax credit is still under examination by respondent, on March 31, 2006 petitioner elevated its claim before this Court by way of a Petition for Review.

In her *Answer*, respondent alleged by way of special and affirmative defenses that the claim for refund is still under examination by the respondent Bureau; the burden of proof is upon the petitioner to prove that it is entitled to the claim for refund or issuance of a TCC; the

W 506

grant of claim for refund is tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority; and the taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same.

Petitioner presented Gilbert Lim, its Comptroller, and Jerome Antonio Constantino, the Court-Commissioned Independent CPA, as witnesses, and documentary evidence, marked as *Exhibits "A" to "H"*, inclusive of their submarkings, which were all admitted by the Court in a Resolution dated November 6, 2007.

On April 2, 2008, upon motion of petitioner's counsel and for the repeated failure of respondent's counsel to appear despite notice, respondent was declared to have waived the right to present her evidence. Consequently, petitioner was granted thirty (30) days therefrom to file its memorandum; while respondent was granted twenty (20) days from notice to file her memorandum, afterwhich the case shall be deemed submitted for decision.

Petitioner filed its Memorandum on May 23, 2008.



On September 17, 2008, petitioner filed a "Motion To Re-Open Case for Reception Of Additional Evidence of Petitioner" on the ground that the CPA Report dated June 18, 2007 does not contain proper cross-referencing of the Summary of Findings to the general ledger and further cross-reference to the balances of property, plant and equipment in the general ledger to the Audited Financial Statements, which the Court granted on December 24, 2008.

Petitioner offered additional documentary evidence, marked as *Exhibits "G-41" to "G-44", "I" to "M"*, inclusive of their sub-markings, which were admitted, except for *Exhibits "I" to "I-2" and "K-4"*, which were denied admission for failure to present the original copies for comparison, in a Resolution dated August 12, 2009.

Thereafter, the case was deemed submitted for decision.

Hence, this decision.

ISSUE

The sole issue stipulated upon by the parties is:

WHETHER OR NOT PETITIONER IS ENTITLED TO BE GRANTED ITS REFUND OR BE ISSUED CERTIFICATE OF TAX CREDIT OF ALLEGED UNUTILIZED AND UNAPPLIED INPUT VAT IN THE AMOUNT OF PHP10,203,699.07 FOR THE TAXABLE YEAR 2004.



THE COURT'S RULING

The petition is partly meritorious.

Petitioner anchors its claim on *Section 112(A) and (B) of the National Internal Revenue Code (NIRC) of 1997, as amended*, which provides:

“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.

(B) Capital Goods. – A VAT registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made



only within two (2) years after the close of the taxable quarter when the importation or purchase was made.”

The aforequoted provision allows the refund or issuance of a TCC of excess input VAT in two instances, namely: (1) when the excess input VAT is attributable to zero-rated or effectively zero-rated sales; and (2) when the excess input VAT is attributable to capital goods purchased by a VAT-registered person.

Records show that petitioner’s Amended Quarterly VAT Returns for the four quarters of taxable year 2004 reflect the following:

<u>Exhibit</u>	<u>Taxable Quarter</u>	<u>Zero-Rated Sales</u>	<u>Input Tax on Domestic Purchases of Capital Goods</u>	<u>Input Tax on Importation of Capital Goods</u>	<u>Total Input Tax</u>
A-1/G-3	1st Qtr'04		P 1,565,704.76	P 186,321.00	P 1,752,025.76
B-1/G-4	2nd Qtr		1,731,624.15	817,593.99	2,549,218.14
C-2/G-5	3rd Qtr	P 11,548,558.12	1,151,893.26	252,157.00	1,404,050.26
D-1/G-6	4th Qtr	152,727,414.30	3,823,916.65	674,788.26	4,498,704.91
Total		P164,275,972.42	P 8,273,138.82	P 1,930,860.25	P 10,203,999.07

It must be noted that petitioner’s claim for refund or issuance of a TCC pertains to taxable year 2004, before the effectivity of RA 9337. Hence, the Tax Code applicable in the instant case is RA 8424, as amended, or the NIRC of 1997, as amended.

Petitioner’s claim for refund or issuance of a TCC under Section 112(B) of the NIRC of 1997, as amended, pertains to input taxes related to



its purchases of capital goods for the period January to August 2004, amounting to P5,475,800.42, since the Company has not yet started its commercial operation. On the other hand, petitioner's claim for refund or issuance of a TCC under *Section 112(A) of the NIRC of 1997, as amended*, pertains to input taxes attributable to zero-rated sales for the period September 2004 to December 2004, as shown hereunder:

	INPUT VAT		
	<u>Domestic</u> <u>(Exhibit G-7)</u>	<u>Importation</u> <u>(Exhibit G-8)</u>	<u>Total</u>
January	P 383,267.92	P 133,637.19	P 516,905.11
February	706,357.59	27,416.00	733,773.59
March	476,079.30	25,268.00	501,347.30
April	512,692.78	280,533.00	793,225.78
May	521,114.84	249,097.99	770,212.83
June	697,816.69	287,963.00	985,779.69
July	646,791.11	10,977.00	657,768.11
August	287,430.01	229,358.00	516,788.01
Sub-total	P 4,231,550.24	P 1,244,250.18	P 5,475,800.42
September	217,372.19	11,822.00	229,194.19
October	2,241,896.77	592,279.29	2,834,176.06
November	814,028.18		814,028.18
December	767,992.71	82,509.34	850,502.05
Sub-total	P 4,041,289.85	P 686,610.63	P 4,727,900.48
Grand Total	P 8,272,840.09	P 1,930,860.81	P 10,203,700.90

While petitioner claims for refund or issuance of a TCC in the amount of P10,203,699.07, said amount is lower by P300.00 than the input tax reported in its Quarterly VAT Returns of P10,203,999.07, as shown above. Thus, we will consider only the amount of P10,203,699.07, as prayed for by petitioner in its Petition for Review.

We will first discuss petitioner's claim for refund or issuance of a TCC of input taxes on purchases of capital goods.

Claim for Refund of Input Taxes
Attributable to Purchases of Capital
Goods in the Amount of P5,475,800.42

Corollary to *Section 112(B) of the NIRC of 1997, as amended, Sections 4.106-1(b) and 4.104-5 of Revenue Regulations No.7-95* provide:

“SEC. 4.106-1. Refunds or tax credits of input tax.—
(a) xxx

(b) Capital Goods – Only a VAT registered person may apply for issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased. The refund shall be allowed to the extent that such input taxes have not been applied against output taxes. The application should be made within two (2) years after the close of the taxable quarter when the importation or purchase was made.

Refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT taxable business. If it is also used in exempt operations, the input tax refundable shall only be the ratable portion corresponding to the taxable operations.

‘Capital goods or properties’ refer to goods or properties with an estimated useful life of greater than one year and which are treated as depreciable assets under Section 29(f), used directly or indirectly in the production or sale of taxable goods or services.’ ”



“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 required under Section 108(a) and 238 of the Code...

xxx

xxx

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

Pursuant to the above provision, in order to be entitled to a refund or issuance of a TCC of input VAT paid on capital goods purchased, petitioner must prove the following requisites:

- 1) that it is a VAT-registered entity;
- 2) that it paid input taxes on capital goods imported or locally purchased;
- 3) that its input VAT payments on capital goods are duly supported by VAT invoices or official receipts;
- 4) that such 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.



First Requisite:

Petitioner is a VAT Registered Entity

As regards the first requisite, there is no dispute that petitioner is duly registered with the BIR, with Tax Identification No. 214-820-909-000 dated December 07, 2001. (*Par. 3, Joint Stipulation of Facts and Issues*).

Second and Third Requisites:

**Input Taxes were Paid on Capital Goods
Purchased and Payments on Capital
Goods are Duly Supported by VAT
Invoices or Official Receipts**

Section 4.106-1(b) of Revenue Regulations No.7-95 defines capital goods as “goods or properties with an estimated useful life of greater than one year and which are treated as depreciable assets under Section 29(f), used directly or indirectly in the production or sale of taxable goods or services.”

It is clear from the aforesaid definition that in order that purchases can be classified as “capital goods”, the following conditions must be present:

- a) that the goods or properties must have estimated useful life of more than one year;
- b) they are treated as depreciable assets under Section 29(f);
and
- c) they are used directly or indirectly in the production or sale of taxable goods or services.



To prove its purchases of capital goods, petitioner presented and offered in evidence various suppliers' invoices, official receipts, petty cash vouchers, cash vouchers and cash advance liquidation forms (*Exhibits "1q-1" to "1q-1190," "2q-1" to "2q-1203," "3q-1," "3q-994" and "4q-1" to "799"*), Schedule of Importations (*Exhibit "G-8"*) and Schedule of Purchases and Input VAT for the months of January to December 2004 (*Exhibits "G-9" to "G-20"*), and the report of the Court-Commissioned Independent CPA (*Exhibits "G-1" and "G-41"*). In addition, petitioner offered its general ledger (*Exhibit "G-43"*), Annual Audited Financial Statements for the Year Ended December 31, 2004 (*Exhibit "G-44"*) and Schedule of Property, Plant and Equipment and Other Related Accounts (*Exhibit "G-42"*).

A careful perusal of the above documentary evidence shows that petitioner's claimed input tax pertains to purchases and importation of capital goods like buildings, machinery and equipment, land improvements, office furniture and equipment, and the like. As ascertained and testified to by the Court Commissioned ICPA, Jerome Antonio Constantino of CG & Co., the related purchases were booked either under the accounts Machineries and Equipment, Office Furniture and Equipment, Construction in Progress or Building (*Exhibit "H", pp. 2 to*



3). Since these purchases (a) are in the nature of depreciable assets, which have economic useful life of more than one year, (b) formed part of petitioner's Property, Plant and Equipment, and (c) used directly and indirectly in petitioner's business, the same fall within the definition of capital goods under *Section 4.106-1 of RR 7-95*.

However, records show that not all of the claimed input taxes on capital goods were duly substantiated by VAT invoices or official receipts. Of the total claimed input taxes on capital goods in the amount P5,475,800.42, only the amount of P3,432,775.35 has been duly substantiated by supporting documents, as presented below:

	FINDINGS	REFERENCE (Annexed to Exhibit G-41)	1st Qtr	2nd Qtr	3rd Qtr (July to Aug 2004)	Total
	Input VAT on domestic purchases of capital goods duly supported by original pre-printed TIN VAT invoices with BIR registration, issued in the name of the Company, and claimed within the period January 2004 to August 2004.	1Q-PSG/2Q-PSG/3Q-PSG	P1,099,139.68	P 814,884.58	P 392,574.43	P2,306,598.69
2	Input VAT on domestic purchases of capital services duly supported by original pre-printed TIN VAT ORs with BIR registration, issued in the name of the Company, and claimed within the period January 2004 to August 2004.	1Q-PSS/2Q-PSS/3Q-PSS	23,772.49	416,036.00	191,658.37	631,466.86
3	Input VAT on importation of capitalized goods duly supported by original BOC Import Entry Internal Revenue Declaration and official receipt or Land Bank of the Philippines official receipt, and claimed within the period January 2004 to August 2004.	1Q-PSI/2Q-PSI/3Q-PSI	90,540.20	256,199.86	147,969.74	494,709.80
	TOTAL		P1,213,452.37	P1,487,120.44	P 732,202.54	P3,432,775.35

The remaining input taxes in the amount of P2,043,025.07 are hereby disallowed for non-compliance with *Section 110(A) of the NIRC of 1997, as amended*, in relation to *Section 113(A) of the same Code*, as implemented by *Sections 4.104-1, 4.104-5 and 4.108-1 of Revenue Regulations No.7-95*, as detailed below:

FINDINGS		REFERENCE (Annexed to Exhibit G-41)	1st Qtr	2nd Qtr	3rd Qtr (July to Aug 2004)	Total
1	Input VAT on capitalizable domestic purchases of services which were supported by TIN V ORs for the period January 2004 to August 2004	1Q-5a/2Q-5a	P 35,327.91	P 1,278.41		P 36,606.32
2	Input VAT on capitalizable domestic purchases of services which were supported by TIN V invoices for the period January 2004 to August 2004	1Q-6a/2Q-6a/3Q-6a	7,980.00	8,364.95	5,845.45	22,190.40
3	Input VAT on domestic purchases of capital services debited to Machinery and Equipment - Consigned with VAT ORs dated January 2004 to August 2004	1Q-3/3Q-3	7,859.49		756.55	8,616.04
4	Input VAT on domestic purchases of capital services debited to Consignment related expenses with VAT ORs dated January 2004 to August 2004.	1Q-3a/2Q-3a/3Q-3a	896.31	1,208.51	1,886.52	3,991.34
5	Input VAT on domestic purchases of services were not capitalized (supporting documents were dated January 2004 to August 2004).	1Q-1/2Q-1/3Q-1	71,592.60	43,787.90	36,696.58	152,077.08
6	Input VAT on domestic purchases of services which were debited to "Inventory and Chemicals" (supporting documents were dated January 2004 to August 2004)	1Q-1b/2Q-1b/3Q-1b	9,638.03	38,817.21	47,934.55	96,389.79
7	Input VAT on domestic purchases of goods which were not capitalized, (supporting documents were dated January 2004 to August 2004).	1Q-2/2Q-2/3Q-2	33,047.51	36,967.15	44,783.29	114,797.95

8	Input VAT on importation of capitalized goods duly supported by original Import Entry Internal Revenue Declaration and BOC official receipt, or Land Bank of the Philippines official receipt, and claimed under the period of refund, but charged to inventory (supporting documents were dated January 2004 to August 2004).	1Q-2a/2Q-2-a/3Q-2a	95,780.80	554,736.99	103,432.00	753,949.79
9	Input VAT on domestic purchases of goods debited to Inventory, Chemicals and Laboratory Supplies account, not capitalized by Company (supporting documents were dated January 2004 to August 2004)	2Q-2b/3Q-2b		139,952.65	31,422.66	171,375.31
10	Input VAT on domestic purchases of services not duly supported by original pre-printed TIN VAT ORs dated January 2004 to August 2004	1Q-5/2Q-5/3Q-5	23,867.45	6,177.35	53.46	30,098.26
11	Input VAT on domestic purchases of goods not duly supported by original pre-printed TIN VAT invoices dated January 2004 to August 2004	1Q-6/2Q-6/3Q-6	84,969.20	124,955.07	53,563.27	263,487.54
12	Input VAT on purchases whose supporting documents dated January 2004 to August 2004 are not in the name of the Company	2Q-7/3Q-7		36,783.09	272.18	37,055.27
13	Input VAT on purchases supported by documents dated January 2004 to August 2004 with no visible supplier name or the date of BIR printing is not visible.	2Q-8/3Q-8		872.73	95.00	967.73
14	Purchase recorded during the period January 2004 to August 2004 cannot be determined if capitalized	2Q-9		11,056.91		11,056.91
15	Input VAT claimed cannot be determined to what specific account debited	2Q-9a/3Q-9a		8,886.18	4,466.38	13,352.56
16	Input VAT on capitalizable domestic purchases of services claimed during the period January 2004 to August 2004 but VAT ORs were dated out of the period of refund.	1Q-10	2,146.95			2,146.95
17	Input VAT on domestic purchases of goods claimed during the period January 2004 to August 2004 but VAT ORs were dated out of the period under refund.	1Q-11	25,802.34			25,802.34
18	Input VAT on domestic purchases of services capitalized by the Company and properly supported by original pre-printed VAT ORs dated January 2004 to August 2004, but the nature of the charges were determined not capitalizable.	1Q-12/2Q-12/3Q-12	40,277.64	33,334.24	25,557.91	99,169.79

Amel

19	Input VAT on domestic purchases of goods capitalized by the Company and properly supported by original pre-printed VAT Invoices dated January 2004 to August 2004, but the nature of the charges were determined not capitalizable.	1Q-13/2Q-13/3Q-13	2,034.55	4,025.73	3,349.80	9,410.08
20	Input VAT on domestic purchases of services duly supported by original pre-printed TIN VAT ORs dated January 2004 to August 2004 but input VAT erroneously computed (overclaimed).	1Q-14/3Q-14	12.00		881.70	893.70
21	Overclaimed input tax on importation of goods/services due to erroneous computation (i.e., arithmetical error)	2Q-14/3Q-14		1.14	97.26	98.40
22	Input VAT on domestic purchases of services duly supported by original pre-printed TIN VAT ORs dated September 2004 to December 2004 but input VAT erroneously computed (overclaimed).	3Q-14b/4Q-14b			4,212.65	4,212.65
23	Input VAT on domestic purchases of goods duly supported by original pre-printed TIN VAT invoices dated January 2004 to August 2004 but input VAT erroneously computed (overclaimed).	1Q-15/2Q-15/3Q-15	8,350.67	467.18	10,690.94	19,508.79
24	Input taxes on purchase transactions recorded during the period January 2004 to August 2004 not supported by any documents	1Q-18/2Q-18	4,195.38	5,907.94		10,103.32
25	Input taxes on purchase transactions recorded during the period January 2004 to August 2004 not supported by any documents.	2Q-18b		155.81		155.81
26	Unaccounted difference		84,794.80	4,360.72	66,355.43	155,510.95
	Total		P 538,573.63	P1,062,097.86	P 442,353.58	P2,043,025.07

Based on the above findings, petitioner's duly substantiated input VAT attributable to its purchases of capital goods for taxable year 2004 amounts to P3,432,775.35 (P5,475,800.42 – P2,043,025.07) only.

Fourth Requisite:

**Input Taxes were Not Applied
Against Any Output VAT Liability**

As regards the fourth requisite, records show that the input taxes sought to be refunded/credited were not utilized by petitioner during the subject period since it has no output tax liability against which said input taxes could be applied. In fact, the claimed input taxes in the amount of P10,203,699.07 were already deducted from the accumulated input taxes as of December 31, 2005, as shown in its 2005 4th quarterly VAT returns (*Exhibit "G-21"*). This means that petitioner can no longer utilize the claimed input VAT in its future output tax liabilities.

Fifth Requisite:

**The Claim for Refund was Filed Within
the Two-year Prescriptive Period**

As regards the fifth requisite, *Section 112(B) of the NIRC of 1997, as amended*, provides that the claim for refund or issuance of a TCC must be filed, within two years after the close of the taxable quarter when the importation or purchase was made.

The earliest period involved in petitioner's claim for refund or issuance of a TCC is the first quarter of 2004. Considering that the last day for the first quarter of 2004 is March 31, 2004, it is from this date that the two-year prescriptive period will commence to run with respect to

File
1020

petitioner's administrative and judicial claims for refund. Petitioner, therefore, had until March 31, 2006 within which to file the administrative and judicial claims for refund or tax credit. Hence, the administrative claim for refund filed with the BIR on October 27, 2005 (*Exhibit "E"*), as well as the Petition for Review filed with this Court on March 31, 2006 are well within the two-year prescriptive period.

Therefore, for its unutilized input VAT attributable to its purchases of capital goods for taxable year 2004, petitioner is entitled to a refund or issuance of a TCC in the amount P3,432,775.35.

Claim for Refund of Input Taxes
Attributable to Zero-Rated Sales in the
Amount of P4,727,900.48

We now proceed to determine petitioner's entitlement to a refund or issuance of a TCC in the amount of P4,727,900.48, representing input taxes attributable to zero-rated sales.

Pursuant to the aforequoted *Section 112(A) of the NIRC of 1997, as amended*, in order to be entitled to a refund or issuance of a TCC of input VAT due or paid attributable to zero-rated or effectively zero-rated sales, petitioner must comply with the following requisites:

- 1) there must be zero-rated or effectively zero-rated sales;



- 2) input taxes were incurred or paid;
- 3) such input taxes are directly attributable to zero-rated or effectively zero-rated sales;
- 4) the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and
- 5) the claim for refund was filed within the two-year prescriptive period.

First Requisite:
There Must be Zero-Rated
or Effectively Zero-Rated Sales

Petitioner is engaged in the manufacture and export of pulp, paper and paperboard, and as wholesaler of agricultural raw materials and live animals (*Par. 3, Statement of Facts, Memorandum for Petitioner, Orig. Docket, p. 168*).

For the third and fourth quarters of taxable year 2004, petitioner actually generated export sales in the amount of P158,727,414.38 and the foreign exchange proceeds thereof were duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), as evidenced by various export documents, such as sales invoices, bills of lading, export declarations, official receipts and passbook entry for export sales (*Exhibits "G-35.1" to "G-35.65"*) and presented by the ICPA in his Summary of Export Sales and Collection (*Exhibit "G-40.S"*). This export

sales fall within the transactions referred to as subject to zero percent (0%) VAT under *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.* — x x x

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).”

Although, the Quarterly VAT Returns for the third and fourth quarters of 2004 reflect a higher amount of zero-rated sales of P164,275,972.42 compared to zero-rated sales of P158,727,414.38, per Summary of Export Sales and Collection, the Court-Commissioned ICPA explained that the discrepancy of P5,548,558.04 was attributable to



errors made when the VAT Return and Summary List of Sales for the fourth quarter of 2004 were prepared (*Exhibit G-1, p. 22*).

Second and Third Requisites:

Input Taxes were Incurred or Paid and Such Input Taxes are Attributable to Zero-Rated Sales

Upon a careful examination of the documentary evidence presented by petitioner, we find that out of the total input taxes of P4,727,900.48 claimed for refund or issuance of a TCC, attributable to zero-rated sales, the input VAT of P226,695.21 should be disallowed for the following reasons:

<u>FINDINGS</u>		<u>REFERENCE</u> <u>(Annexed to</u> <u>Exhibit G-40)</u>	<u>3rd Qtr</u> <u>(Sept 2004)</u>	<u>4th Qtr</u>	<u>TOTAL</u>
1	Input VAT on domestic purchases of services which were supported by TIN V ORs dated September 2004 to December 2004	4Q-5c		P 113.65	P 113.65
2	Input VAT on capitalizable domestic purchases of services which were supported by TIN V invoices for the period September 2004 to December 2004	3Q-6c	818.18	135.45	953.63
3	Input VAT on domestic purchases of services were not capitalized (supporting documents were dated January 2004 to August 2004).	1Q-1/2Q-1/3Q-1/4Q-1		9.09	9.09
4	Input VAT on domestic purchases of goods which were not capitalized, (supporting documents were dated January 2004 to August 2004).	1Q-2/2Q-2/3Q-2/4Q-2		118.18	118.18
5	Input VAT on domestic purchases of services not duly supported by original pre-printed TIN VAT ORs dated September 2004 to December 2004	3Q-5b/4Q-5b	68,012.23	13,059.12	81,071.35

GW

6	Input VAT on domestic purchases of goods not duly supported by original pre-printed TIN VAT invoices dated January 2004 to August 2004	1Q-6/2Q-6/3Q-6/4Q-6		14,127.27	14,127.27
7	Input VAT on domestic purchases of goods not duly supported by original pre-printed TIN VAT invoices dated September 2004 to December 2004	3Q-6b/4Q-6b	19,502.76	43,357.19	62,859.95
8	Input VAT on purchases whose supporting documents dated September 2004 to December 2004 are not in the name of the Company	3Q-7b/4Q-7b	9.55	129.57	139.12
9	Input VAT on purchases of goods supported by documents dated September 2004 to December 2004 with no visible supplier name or the date of BIR printing is not visible.	4Q-8b		244.55	244.55
10	Input VAT on domestic purchases of service with VAT OR not dated September 2004 to December 2004 but input tax claimed in 2004.	4Q-10b		10,591.11	10,591.11
11	Input VAT on domestic purchases of goods claimed in September 2004 to December 2004 but invoices are not dated within 2004.	4Q-11b		40,982.98	40,982.98
12	Input VAT on domestic purchases of services duly supported by original pre-printed TIN VAT ORs dated September 2004 to December 2004 but input VAT erroneously computed (overclaimed).	3Q-14b/4Q-14b		4,962.31	4,962.31
13	Input VAT on domestic purchases of goods duly supported by original pre-printed TIN VAT invoices dated September 2004 to December 2004 but input VAT erroneously computed (overclaimed).	4Q-15b		12,468.19	12,468.19
14	Supporting documents not available	3Q-18/4Q-18	658.00	17,289.00	17,947.00
15	Input taxes on purchase transactions recorded during the period September to December 2004 not supported by any documents.	3Q-18b/4Q-18b	23.82	250.82	274.64
16	Unaccounted difference		(71,693.16)	51,525.35	(20,167.81)
	Total		P 17,331.38	P 209,363.83	P 226,695.21

On the other hand, we find that the allowable input taxes consist of the following:

	<u>FINDINGS</u>	<u>REFERENCE</u> <u>(Annexed to</u> <u>Exhibit G-40)</u>	<u>3rd Qtr</u> <u>(Sept</u> <u>2004)</u>	<u>4th Qtr</u>	<u>TOTAL</u>
1	Input VAT on domestic purchases of capital goods duly supported by original pre-printed TIN VAT invoices with BIR registration, issued in the name of the Company, and claimed within the period January 2004 to August 2004.	1Q-PSG/2Q-PSG/3Q-PSG/4Q-PSG		P 7,595.11	P 7,595.11
2	Input VAT on domestic purchases of capital goods duly supported by original pre-printed TIN VAT invoices with BIR registration, issued in the name of the Company, and claimed within the period September to December 2004.	3Q-PSGb/4Q-PSGb	108,010.38	344,769.60	452,779.98
3	Input VAT on domestic purchases of capital services duly supported by original pre-printed TIN VAT ORs with BIR registration, issued in the name of the Company, and claimed within the period January 2004 to August 2004.	1Q-PSS/2Q-PSS/3Q-PSS/4Q-PSS		2,341,750.04	2,341,750.04
4	Input VAT on domestic purchases of capital services duly supported by original pre-printed TIN VAT ORs with BIR registration, issued in the name of the Company, and claimed within the period September to December 2004.	3Q-PSSb/4Q-PSSb	103,852.43	937,728.45	1,041,580.88
5	Input VAT on importation of capitalized goods duly supported by original BOC Import Entry Internal Revenue Declaration and official receipt or Land Bank of the Philippines official receipt, and claimed within the period January 2004 to August 2004.	1Q-PSI/2Q-PSI/3Q-PSI/4Q-PSI		657,499.26	657,499.26
	Total Substantiated Input VAT attributable to Zero-rated Sales		P 211,862.81	P4,289,342.46	P4,501,205.27

Based on the foregoing, petitioner's duly substantiated input VAT attributable to zero-rated sales for taxable year 2004 amounts to P4,501,205.27 (P4,727,900.48 – P226,695.21) only.

Fourth and Fifth Requisites:
Input Taxes were Not Applied Against
Any Output VAT Liability, and the Claim
For Refund was Filed Within the Two-
year Prescriptive Period

As heretofore discussed, petitioner was able to prove that its claim for refund or issuance of a TCC was not applied against any VAT liability during and in the succeeding quarters, and that the claim for refund/TCC was filed within the two-year prescriptive period.

In sum, petitioner has sufficiently proven its entitlement to a refund or issuance of a TCC, representing unutilized input VAT on capital goods purchased and on its domestic purchases and importations of goods and services attributable to zero-rated sales for taxable year 2004, in the reduced aggregate amount of P7,933,980.62, computed, as follows:

Substantiated Input VAT paid on capital goods	P 3,432,775.35
Substantiated Input VAT attributable to zero-rated sales	4,501,205.27
Total Refundable Input VAT	<u>P7,933,980.62</u>

WHEREFORE, premises considered, the present Petition for Review is hereby **PARTLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Specialty Pulp Manufacturing, Inc. in the reduced amount of **SEVEN MILLION, NINE HUNDRED THIRTY THREE THOUSAND,**

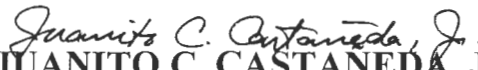
526

NINE HUNDRED EIGHTY and 62/100 PESOS (P7,933,980.62),
representing input VAT paid on capital goods purchased, and on its
domestic purchasers, and importations of goods and services attributable
to zero-rated sales for taxable year 2004.

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:


JUANITO C. CASTANEDA, JR.
Associate Justice


ERLINDA P. UY
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.


JUANITO C. CASTANEDA, JR.
Acting Presiding Justice
Chairperson, Former Second Division