

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

SAN ROQUE POWER
CORPORATION,

C.T.A. CASE NO. 7424

Petitioner,

- versus -

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

X-----X

SAN ROQUE POWER
CORPORATION,

C.T.A. CASE NO. 7492

Petitioner,

Members:

- versus -

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

COMMISSIONER OF INTERNAL
REVENUE,

Promulgated:

Respondent.

JAN 08 2010

X-----X

✓ 4:27 p.m.

DECISION

CASTAÑEDA, JR., J.:

This case is a consolidation of two Petitions for Review separately filed by petitioner, both seeking refund or issuance of tax credit certificate in the amount of P31,976,709.88, representing excess input value-added tax (VAT) *JK*

incurred from domestic purchases and importation of goods and services, which are attributable to zero-rated sales of electricity to the National Power Corporation (NPC) for the four quarters of 2004; broken down as follows:

CTA Case No.	Period Covered	Amount of Claim	
7424	1st quarter	P	17,017,648.31
7492	2nd - 4th quarters		14,959,061.57
	TOTAL	P	31,976,709.88

San Roque Power Corporation (Petitioner) is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office at Barangay San Roque, San Manuel, Pangasinan. It was incorporated on October 14, 1997, to design, construct, erect, assemble, own, commission, operate, and maintain power-generating plants and related facilities, pursuant to and under contract with the Government of the Philippines, or any subdivision, instrumentality or agency thereof, or any government-owned or controlled corporation, or other entity engaged in the development, supply, or distribution of energy.¹ Petitioner is registered with the Board of Investment (BOI) on a preferred pioneer status as new operator of hydroelectric power generating plant for which it was issued a Certificate of Registration No. 97-356 dated February 11, 1998.² Likewise, it is registered as a VAT taxpayer with the BIR and was issued a Certificate of Registration No. OCN 98-006-007394.³

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of his office, *gc*

¹ Annex "A", Petition for Review, CTA Case No. 7424, p. 8.

² Annex "B", Petition for Review, CTA Case No. 7424 pp. 9-12.

³ Annex "C", Petition for Review, CTA Case No. 7424, p. 13.

including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law.

On October 11, 1997, petitioner entered into a Power Purchase Agreement (PPA) with NPC for the development of the San Roque hydroelectric facilities (Power Station) located at the Lower Agno River in San Manuel, Pangasinan on a build-operate-transfer basis.⁴

Under the PPA, petitioner shall be responsible for the design, construction, installation, completion, testing, commissioning, operation, and maintenance of the Power Station, subject to NPC instructions. Article 8 of the PPA specifically provides that during the cooperation period of twenty-five (25) years, commencing from the completion date of the Power Station, NPC will take and pay for all electricity available from the Power Station. In other words, the electricity to be generated by the Power Station will be sold to and purchased entirely by NPC.⁵

Petitioner filed an Application for VAT Zero-Rate for its sale of electricity to NPC, which was granted on January 14, 2004; with the effectivity period from January 14, 2004 up to December 31, 2004.⁶

For the four quarters of 2004, petitioner filed with respondent its Quarterly VAT Returns, with its Amended Quarterly VAT Returns for the first, second, and third quarters of 2004, showing excess input VAT payments in the amount of P31,976,709.88; detailed as follows: 

⁴ Exhibit "A".

⁵ Exhibit "A".

⁶ Exhibit "B".

Year 2004	Exh.	Date Filed Original Quarterly VAT Returns	Exh.	Date filed Amended Quarterly VAT Returns	Excess Input Tax
1st Qtr	C	April 26, 2004	D	October 5, 2004	P 17,017,648.31
2nd Qtr	E	July 14, 2004	F	October 5, 2004	4,910,873.42
3rd Qtr	G	October 5, 2004	H	October 21, 2004	3,514,588.58
4th Qtr	I	January 25, 2005	-	-	6,533,599.57
					P 31,976,709.88

On December 22, 2005 and February 27, 2006, petitioner instituted two separate administrative claims for refund of its alleged unutilized input tax for the period covering January 1, 2004 to March 31, 2004 and April 1, 2004 to December 31, 2004, respectively.⁷

Respondent however failed to act on both administrative claims, which led to the filing of the present Petitions for Review docketed as CTA Case Nos. 7424 and 7492.

The Petition for Review docketed as CTA Case No. 7424 was filed on March 30, 2006, to seek the refund or issuance of tax credit certificate in the amount of P17,017,648.31, allegedly representing unutilized input taxes for the period from January 1, 2004 to March 31, 2004.

On June 2, 2006, respondent filed his Answer in CTA Case No. 7424, interposing the following counter-arguments⁸:

“7. Petitioner’s alleged claim for refund is subject to administrative investigation by the Bureau;

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

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

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

⁷ Exhibits “J” and “L”.

⁸ Docket, pp. 39-40.

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

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

13. 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;

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

Subsequently, another Petition for Review⁹ was filed by petitioner on June 20, 2006 and docketed as CTA Case No. 7492, seeking the issuance of tax credit certificate or refund of the amount of P14,959,061.57, purportedly representing unutilized creditable input taxes for the period from April 1, 2004 to December 31, 2004.

On July 10, 2006, petitioner filed a Motion to Consolidate CTA Case No. 7492 with the Above-captioned Case¹⁰, which was granted by this Court via Resolution¹¹ dated August 2, 2006.

Respondent filed his Answer in CTA Case No. 7492 on September 1, 2006, raising the same special and affirmative defenses.¹²

During trial, petitioner was able to present its documentary and testimonial evidence to support its claims and contentions; while respondent was deemed to have waived his right to present evidence for failure to appear 

⁹ Petition for Review with Motion to Consolidate with CTA Case No. 7424.

¹⁰ Docket, pp. 51-53.

¹¹ Docket, p. 57.

¹² CTA Case No. 7492, pp. 48-49.

at the scheduled dates for initial presentation of his evidence on September 22, 2008¹³ and October 15, 2008¹⁴.

On February 17, 2009, a Resolution¹⁵ was issued by this Court submitting the case for Decision, considering the Memorandum filed by petitioner on January 30, 2009 and the report of this Court's Record Division that respondent did not file his Memorandum.

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

- "1. Whether or not petitioner's administrative claim was timely filed.
2. Whether or not petitioner's judicial claim was timely filed.
3. Whether or not petitioner's sale of electricity to NPC is effectively VAT zero-rated under the NIRC, as amended.
4. Whether or not the amount of P31,976,709.88 represents the accumulated excess creditable input taxes paid by petitioner within the Year 2004.
5. Whether or not petitioner's accumulated excess creditable input taxes for the Year 2004 were directly attributable to its primary source of revenue which is effectively VAT-zero rated.
6. Whether or not petitioner's accumulated excess creditable input taxes for the Year 2004 is duly supported by pertinent documents, such as VAT invoices and official receipts.
7. Whether or not the accumulated excess creditable input taxes paid by petitioner within the Year 2004 in the total amount of P31,976,709.88 remain unutilized.
8. And in sum, whether or not petitioner is entitled to the claim for refund or issuance of tax credit certificate in the accumulated amount of P31,976,709.88 representing its *je*

¹³ Docket, pp. 305.

¹⁴ Docket, p. 307.

¹⁵ Docket, p. 385.

accumulated excess and unutilized creditable input taxes for the Year 2004.”¹⁶

The above-enumerated issues can be summarized into a single issue, to wit:

“Whether or not petitioner is entitled to a refund of or issuance of tax credit certificate in the amount of P31,976,709.88, representing its alleged accumulated excess and unutilized creditable input taxes for the year 2004.”

Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, lays down the requisites for claims for issuance of tax credit certificate or refund of input tax 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 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.”

From the foregoing provision, it is imperative that petitioner must comply with the following requisites to be entitled to a refund: 

¹⁶ Issues, Joint Stipulation of Facts and Issues, docket, pp. 112-113.

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 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.

Anent the first requisite, the Court finds the existence of zero-rated or effectively zero-rated sales in this case.

Section 108(B)(3) of the NIRC of 1997, as amended and Section 13 of Republic Act No. 6395¹⁷, provide as follows:

"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

xxx

(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)

"SECTION 13. Non-profit Character of the Corporation, Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities.
— The Corporation shall be non-profit and shall devote all its returns from its capital investments, as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance of 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, impost**s as well as costs and service fees



¹⁷ The Revised National Power Corporation's Charter.

including filing fees, appeal bonds, supersedeas bonds in any court or administrative proceedings.” (*Emphasis supplied*)

This Court has consistently upheld the tax-exempt status of NPC. Under the PPA entered into by petitioner and NPC, petitioner San Roque Power Corporation generates the power which will be subsequently sold to NPC. Republic Act No. 6395, as amended, categorically exempts NPC from payment of all taxes, whether direct or indirect, including VAT. Such exemption provided for by NPC’s charter, which is a special law, necessarily makes the sale of electricity to NPC a VAT zero-rated transaction in accordance with Section 108(B)(3) of the NIRC of 1997.

NPC’s tax-exempt status was also affirmed by the Supreme Court in the case of *Ernesto M. Maceda vs. Catalino Macaraig, Jr., et al.*¹⁸, in the following manner:

“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 or indirect.

xxx

xxx

xxx

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.”

Moreover, it is noteworthy that respondent approved petitioner’s Application for Zero-rate¹⁹ of its sale of electricity to NPC on January 14, 2004, with effectivity period from January 14, 2004 up to December 31, 2004. 

¹⁸ G.R. No. 88291, June 8, 1993.

¹⁹ Exhibit “B”.

Petitioner was also able to establish, after a close scrutiny of the various sales invoices and official receipts²⁰ issued by petitioner to NPC, that for the four quarters of 2004, petitioner derived revenues from sales of electricity to NPC in the amount of P7,323,071,646.15; which was reflected in its Quarterly VAT Returns for the same period as follows:

Exh.	Period	Zero-rated Sales
D	1st Qtr	P 1,700,495,121.42
F	2nd Qtr	1,626,429,967.96
H	3rd Qtr	2,159,385,881.48
I	4th Qtr	1,836,760,675.29
	TOTAL	P 7,323,071,646.15

After resolving that petitioner's sales of electricity to NPC for the four quarters of 2004 in the amount of P7,323,071,646.15 qualifies for VAT zero-rating under Section 108(B)(3) of the NIRC of 1997, as amended, the Court will now determine the amount of unutilized input VAT attributable thereto.

In support of its claim, petitioner presented its Summary Lists of Purchases²¹ and the related suppliers' invoices and official receipts,²² Bureau of Customs (BOC) Import Entry and Internal Revenue Declarations, official receipts issued by the BOC, Land Bank of the Philippines and others²³, showing that the amount of P31,976,709.88 represents excess input VAT reflected in its Quarterly VAT Returns for the four quarters of 2004, as follows:

Exh.	Period	Input Tax	Output Tax	Excess Input Tax
D	1st Qtr	P 17,017,648.31	P -	P 17,017,648.31
F	2nd Qtr	4,910,873.42	-	4,910,873.42
H	3rd Qtr	3,516,990.86	2,402.28	3,514,588.58

²⁰ Exhibits "W" and "W-1" to "W-71".

²¹ Exhibits "Q-10" to "Q-12", "E-1", "Q-15" to "Q-17", "G-1", "Q-20" to "Q-21", "I-1", and "Q-23" to "Q-25".

²² Exhibits "R", "R-1" to "R-1197", "S", "S-1" to "S-1186", "T", "T-1" to "T-1352", "U", and "U-1" to "U-1196".

²³ Exhibits "V" and "V-1" to "V-67".

I	4th Qtr	6,533,599.57	-	6,533,599.57
	TOTAL	P 31,979,112.16	P 2,402.28	P 31,976,709.88

Upon verification of the aforesaid documents, the Court-commissioned Independent Certified Public Accountant (CPA), Mr. Eliseo A. Aurellado, noted the following exceptions in his Report²⁴ dated February 8, 2007:

Findings	Per Summary attached to Exhibit P as	Input VAT
No supporting documents	Annex E.1	P 654,491.44
Claims erroneously computed	Annex E.2	2,278.84
Purchases of goods not within the refund period	Annex E.3	128,531.93
Purchases of services not within the refund period	Annex E.4	85,029.81
Purchases of goods and services supported by tape receipts only	Annex E.5	227.93
BIR authority to print not indicated in the invoice or official receipts	Annex E.6	261,110.45
Purchases of goods not supported by suppliers' sales invoices	Annex E.7	32,667.85
Purchases of services not supported by suppliers' official receipts	Annex E.8	8,600.93
Supplier's official receipts marked "Non-VAT"	Annex E.9	19,133.05
No "VAT" indicated in the official receipts/sales invoices	Annex E.10	194,739.12
Invoices or official receipts not in the name of the Company	Annex E.11	32.72
Double claim of input VAT	Annex E.12	3,427.27
Importations not supported by IEIRD	Annex E.13	31,955.49
Originals not examined	Annex E.14	8,197.59
Discrepancy of VAT returns versus Annex C (Summary of Input VAT)	Annex A	575,653.69
TOTAL		P 2,006,078.11

On the other hand, petitioner presented accountant, Ms. Pia Rose O. Talosig, to oppose the above disallowance. In her affidavit²⁵, she testified that the foregoing exceptions should be reduced by P868,033.96. She explained why several disallowances should be cancelled, particularly those in Annexes "A", "E.1", "E.2", "E.3", "E.4", "E.7", "E.8", "E.9", and "E.14"; and how petitioner's adjustments, such as the levelization adjustment, the diesel withdrawn from petitioner's inventory, the ten percent (10%) contract price *je*

²⁴ Exhibit "P", Annex "E".

²⁵ Exhibit "EE".

retention, and the recoupment of downpayment, were treated for accounting and tax purposes.

In relation to Ms. Talosig's statement, additional documents were submitted and verified by the Independent CPA as contained in his Supplemental Report²⁶ dated July 26, 2007.

This Court finds that the exceptions reported by the Independent CPA in the amount of P2,006,078.11 on petitioner's input VAT claim under Annexes "E.1" to "E.14" of Exhibit "P" should be reduced by P679,742.26, detailed as follows²⁷:

Findings	Per Summary attached to Exhibit P as	Input VAT
No supporting documents	Annex E.1	P 641,283.36
Claims erroneously computed	Annex E.2	28.18
Purchases of goods not within the refund period	Annex E.3	15,752.37
Purchases of services not within the refund period	Annex E.4	2,305.04
Purchases of goods not supported by suppliers' sales invoices	Annex E.7	1,150.72
Purchases of services not supported by suppliers' official receipts	Annex E.8	3,556.77
Supplier's official receipts marked "Non-VAT"	Annex E.9	8,068.91
Originals not examined	Annex E.14	7,590.91
TOTAL		P 679,742.26

As regards the P575,653.69 discrepancy in input VAT found by the Independent CPA²⁸, Ms. Talosig argued that the Independent CPA based Annex "C" of his original Report²⁹ on the Monthly VAT Schedules for the year 2004, prepared by petitioner and not on the Summary Lists of Purchases attached to the Quarterly VAT Returns for the same year. Consequently, adjustments made by petitioner at the end of the quarters supposedly were *je*

²⁶ Exhibit "CC".

²⁷ See details per Annex "A" of this Decision.

²⁸ Exhibit "P", Annex "A".

²⁹ Schedule of Input VAT on Local Purchases.

not considered or included in Annex "C", resulting in a total discrepancy of P575,653.69.³⁰

Petitioner submitted the following Summary List of Purchases:

Exhibit	Period	Input VAT-Domestic	Input VAT-Importation	Total
Q-10 to Q-12	1st Qtr	P 15,493,480.52	P 451,233.49	P 15,944,714.01
E-1; Q-15 to Q-17	2nd Qtr	4,763,854.42	147,019.00	4,910,873.42
G-1; Q-20 to Q-21	3rd Qtr	3,508,806.31	4,055.00	3,512,861.31
I-1; Q-23 to Q-25	4th Qtr	6,515,503.57	18,096.00	6,533,599.57
TOTAL		P 30,281,644.82	P 620,403.49	P 30,902,048.31

Upon close examination of the foregoing list, this Court finds that the total input VAT per Summary Lists of Purchases of P30,902,048.31 does not tally with the total declared input VAT of P31,979,112.16. This is because the Summary Lists of Purchases submitted for the first and third quarters were for petitioner's *original* Quarterly VAT Returns for the said quarters; while the Summary Lists of Purchases submitted for the second and fourth quarters were for petitioner's *amended* Quarterly VAT Returns for the same period.

Ms. Talosig further explained that petitioner prepared a reconciliation of the input VAT per Summary Lists of Purchases and per Monthly VAT Schedules³¹. The reconciling items consisted of transactions not included in the monthly schedules (*Annex "C"*) but included in the summary lists and adjustments made on the last month of the quarters not included in Annex "C"; but the documents supporting thereto were submitted by petitioner and verified by the Independent CPA.

Evaluation of the foregoing showed that out of the P575,653.51 difference between the input VAT reported per Quarterly VAT Returns and per 

³⁰ Exhibit "EE", page 22, 165Q to 170A.

³¹ Exhibit "DD-72".

Monthly Schedule of Input VAT, only the following were properly supported by documentary evidence:

Exh.	Invoice/OR	Invoice/OR Date	Supplier	Input VAT
DD-30	BIR Form No. 2550M	4/26/2004	KPIC	P 18,498.98
DD-31	BIR Form No. 2550M	9/8/2004	Habico	8,984.80
DD-32	BIR Form No. 1600	12/10/2004	R.W. Beck International	119,498.22
U-123	2047	11/12/2004	Foxboro Express Cargo Systems Corp.	647.50
U-137	142918	11/3/2004	Industrial & Transport Equipment, Inc.	255.00
DD-35	11841	9/17/2004	S.K. Hardware and Gen. Merchandise	771.91
U-666	25634	12/1/2004	PGA Sampo Japan Insurance Inc.	10,575.80
			TOTAL	P 159,232.21

Thus, the input VAT discrepancy of P575,653.51 found by the Independent CPA should be reduced by P159,232.21. In effect, the total amount of input VAT disallowances as per the Independent CPA Report is reduced to P1,167,103.64, computed as follows:

Total Input VAT Disallowances per ICPA report	P 2,006,078.11
Less: Valid input VAT	
Per Annexes E.1 to E. 14	679,742.26
Per Annex A	159,232.21
Adjusted Input VAT Disallowances per ICPA Report	P 1,167,103.64

Aside from the input VAT disallowances of P1,167,103.64, this Court finds, upon its own verification of the records and of the supporting documents submitted, that input taxes in the amount of P878,101.06 should be denied for the following reasons³²:

Particulars	Amount
1. No supporting documents	P 57,641.76
2. Claims erroneously computed	61,466.78
3. Purchases of goods not within the refund period	180,842.53
4. Purchases of services not within the refund period	101,615.14
5. Purchases of goods and services supported by documents other than invoices or ORs	97,648.88
6. Invoice or OR not duly registered with the BIR	54,217.00
7. Purchases of goods not supported by invoices	3,668.64
8. Purchases of services not supported by official receipts	67,927.80

³² See details per Annex "B" of this Decision.

9. Supported by ORs without the imprinted word "VAT" after the suppliers' TIN	13,195.99
10. Invoice or OR not in the name of Petitioner	8,212.50
11. Supported by ORs or invoices with TIN-V only or without supplier's TIN	124,132.62
12. Supported by undated invoice	1,306.36
13. Purchase of services supported by blank OR or not legible OR	93,448.79
14. Double Claim of input VAT	49.00
15. Supplier's OR marked "Non-VAT"	12,727.27
TOTAL	P 878,101.06

In sum, petitioner's valid input VAT for the four quarters of 2004 amounted only to P29,931,505.18, computed as follows:

Total Input VAT Claim	P 31,976,709.88
Less: Disallowances	
Per ICPA Report	1,167,103.64
Per this Court's further verification	878,101.06
Refundable Input VAT	P 29,931,505.18

Moving on to the third and fourth requisites, petitioner's VAT Returns for the year 2004 showed that the P31,976,709.88 input VAT claim is net of its output tax liability of P2,402.28 and is entirely attributable to its zero-rated sales of electricity to NPC. Although petitioner carried over the said claim in its Quarterly VAT Returns for the succeeding quarters until the fourth quarter of 2005 and first quarter of 2006, the same remained unapplied until it was deducted as "VAT Refund/TCC Claimed" from the "Total Available Input Tax" as of the fourth quarter of 2005³³ and first quarter of 2006.³⁴ In other words, no amount of the subject claim was carried over/applied to the succeeding second quarter of 2006.

Anent the fifth requisite, petitioner's claim was timely filed within the two-year prescriptive period. 

³³ Exhibit "K-3".

³⁴ Exhibit "M-3".

Section 112(A) of the NIRC 1997, as amended, 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: xxx” (*Emphasis supplied*)

The afore-quoted provision was later interpreted by the High Tribunal in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*³⁵, the pertinent portions of which state:

“The above proviso clearly provides in no uncertain terms that **unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.** As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112(A), ‘[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued.’ Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. **The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid.**” (*Emphasis supplied*)

Based on the foregoing provision and jurisprudence, the two-year prescriptive period for filing the claim for refund must be reckoned from the 

³⁵ G.R. No. 172129, September 12, 2008.

close of the taxable quarter when the pertinent sales or transaction was made.

In this case, petitioner claims refund of its unutilized input tax for the four quarters of 2004. The close of the taxable quarter for the first, second, third, and fourth quarters of 2004 are on March 31, 2004, June 30, 2004, September 30, 2004, and December 31, 2004, respectively. Counting from said dates, petitioner should have filed its administrative and judicial claims for refund on or before March 31, 2006 for the first quarter, June 30, 2006 for the second quarter, September 30, 2006 for the third quarter, and December 31, 2006 for the fourth quarter. Petitioner filed its claim for refund with the Bureau of Internal Revenue on December 22, 2005 for its unutilized input VAT for the first quarter of 2004 and February 27, 2006 for its unutilized input VAT for the second, third, and fourth quarters of 2004.³⁶ On the other hand, the judicial claims for refund were filed on March 30, 2006 for the first quarter, and June 20, 2006 for the second to the fourth quarters of 2004. The same are detailed as follows:

Year 2004	Exh.	Close of the taxable quarter	Date of filing the Administrative Claim	Date of filing the Judicial Claim	Last Day for filing claim for refund
1st Qtr	C	March 31, 2004	December 22, 2005	March 30, 2006	March 31, 2006
2nd Qtr	E	June 30, 004	February 27, 2006	June 20, 2006	June 30, 2006
3rd Qtr	G	September 30, 2004	February 27, 2006	June 20, 2006	September 30, 2006
4th Qtr	I	December 31, 2004	February 27, 2006	June 20, 2006	December 31, 2006

From the above table, it is clear that the dates of filing of the administrative and the judicial claims are well within the two-year period prescribed by law, reckoned from the end of the quarters covered by petitioner's claims. 

³⁶ Exhibits "J" and "L".

To recapitulate, this Court finds that petitioner has sufficiently proven its entitlement to a refund or issuance of tax credit certificate, representing unutilized input VAT attributable to effectively zero-rated sales.

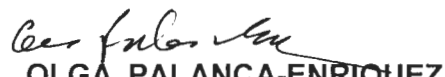
WHEREFORE, premises considered, the instant Petitions for Review are hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **TWENTY-NINE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED FIVE PESOS AND 18/100 (P29,931,505.18)** in favor of petitioner, representing unutilized input VAT attributable to effectively zero-rated sales of electricity to NPC for the four quarters of 2004.

SO ORDERED.


JUANITO C. CASTANEDA, JR.
Associate Justice

WE CONCUR:

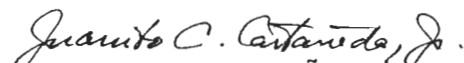

ERLINDA P. UY
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

To recapitulate, this Court finds that petitioner has sufficiently proven its entitlement to a refund or issuance of tax credit certificate, representing unutilized input VAT attributable to effectively zero-rated sales.

WHEREFORE, premises considered, the instant Petitions for Review are hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **TWENTY-NINE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED FIVE PESOS AND 18/100 (P29,931,505.18)** in favor of petitioner, representing unutilized input VAT attributable to effectively zero-rated sales of electricity to NPC for the four quarters of 2004.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice

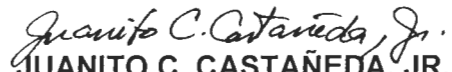
WE CONCUR:


ERLINDA P. UY
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

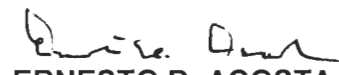
ATTESTATION

I attest 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.


JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.


ERNESTO D. ACOSTA
Presiding Justice

DISALLOWANCES PER ICPA THAT WERE RECONSIDERED

<u>Exh.</u>	<u>Invoice/OR #</u>	<u>Invoice/OR Date</u>	<u>Supplier</u>	<u>Input VAT</u>
Annex E.1				
T-423	108833	6/21/2004	United Bearing Industrial Corp.	1,169.09
AA-43, DD-1 & DD-1a			BIR-Harza	305,808.90
DD-4	18870	6/2/2004	Bitstop, Inc.	2,400.00
DD-5	20065	11/10/2004	Bitstop, Inc.	945.45
U-1045	158791	10/20/2004	Newton Hardware & Lumber	96,320.23
U-1046	158792	10/20/2004	Newton Hardware & Lumber	14,284.35
U-1047	158793	10/20/2004	Newton Hardware & Lumber	70,237.95
U-1049	158788	10/20/2004	Newton Hardware & Lumber	77,769.68
U-1050	158789	10/20/2004	Newton Hardware & Lumber	10,915.98
U-1051	158790	10/20/2004	Newton Hardware & Lumber	60,701.14
DD-3-a	0276	5/6/2004	Orville Network, Inc.	90.00
DD	0831	2/2/2004	Virgo Services and Trading Corp.	640.59
			<i>Subtotal</i>	<u>641,283.36</u>
Annex E.2				
T-247	217	6/17/2004	Marine Depot Manila, Inc.	28.18
			<i>Subtotal</i>	<u>28.18</u>
Annex E.3				
R-81a	17619	12/16/2003	Bitstop, Inc.	1,081.82
DD-9, R-488	17855	12/16/2003	Bitstop, Inc.	650.00
R-490a	17621	12/16/2003	Bitstop, Inc.	1,272.73
R-258, R- 258a	98341	12/26/2003	NCH Philippines Inc.	4,476.00
R-446, DD-6	5472	12/19/2003	Uptown Industrial Sales, Inc.	200.00
R-448, DD-7	5634	12/26/2003	Uptown Industrial Sales, Inc.	181.82
R-449	5543	12/20/2003	Uptown Industrial Sales, Inc.	616.36
R-450, DD-8	5475	12/19/2003	Uptown Industrial Sales, Inc.	2,982.73
R-452, R- 452a	36602	12/3/2003	Ureka Steel Industries Company	4,290.91
			<i>Subtotal</i>	<u>15,752.37</u>
Annex E.4				
R-40	51951	12/23/2003	Longwood Garden/Orlando Internal	76.86
U-845	19832	10/26/2004	Bitstop, Inc.	1,928.18
U-848	19987	12/2/2004	Bitstop, Inc.	154.55
AA-128	25399	12/17/2004	Ricton Trading & Industrial Corp.	145.45
			<i>Subtotal</i>	<u>2,305.04</u>
Annex E.7				
S-534	4824073	5/30/2004	Manila Bulletin (Elaine Estrada)	1,104.00
R-632	13710	2/5/2004	Charles Cellzone	26.36
R-637	13748	2/9/2004	Charles Cellzone	26.36
			<i>Subtotal</i>	<u>1,156.72</u>
Annex E.8				
T-79	25491	7/29/2004	Ciudad Fernandino	3,556.77 <i>je</i>

<u>Exh.</u>	<u>Invoice/OR #</u>	<u>Invoice/OR Date</u>	<u>Supplier</u>	<u>Input VAT</u>
			<i>Subtotal</i>	<u>3,556.77</u>
Annex E.9				
T-884	002520	7/21/2004	Rivera's Hollow Blocks	8,068.91
			<i>Subtotal</i>	<u>8,068.91</u>
Annex E.14				
AA-14	30623	2/10/2004	Sunshine Commodities	3,261.36
R-826	27713	4/14/2004	Ciudad Fernandino	4,329.55
			<i>Subtotal</i>	<u>7,590.91</u>
			TOTAL	<u><u>679,742.26</u></u> <i>gr</i>

ADDITIONAL DISALLOWANCES PER COURT'S VERIFICATION

<u>Exh.</u>	<u>Invoice/OR #</u>	<u>Invoice/OR Date</u>	<u>Supplier</u>	<u>Input VAT</u>
<i>1.) No supporting documents</i>				
			IL Lovenares Merch	15.27
			IL Lovenares Merch	27.27
			Magiclub Inc.	60.69
			E.L. Frani Fastfood	58.18
			Jollibee Urdaneta	395.45
			CSI Warehouse	203.38
			Kapit Bahay Lumber	36.36
			IL Lovenares Merch	58.00
			IL Lovenares Merch	7.27
			Long Last Anne	294.55
			Club Fairway	535.45
			Cyncore Trading	227.27
			Regus Centres, Inc.	11,515.29
			Jocelyn A. Dela Cruz - PCF	83.22
			PLDT	3,106.82
			Leemasters International System, Inc.	11,673.65
			Phil. Fuji Xerox	493.02
			Acra Service Center, Inc.	1,159.09
			The Good Earth Tea Room	10.00
			Milcor Management Corporation	27,272.73
			Pacific Strategies & Assessments Phils.	408.80
			<i>Subtotal</i>	<u>57,641.76</u>
<i>2.) Claims erroneously computed</i>				
S-44	062	4/30/2004	BMP Environment	17,544.82
U-264	2527815	10/6/2004	PLDT	1,042.96
U-264	2527814	10/6/2004	PLDT	2,099.50
U-276	2527948	10/6/2004	PLDT	5,287.59
U-276	2527947	10/6/2004	PLDT	1,815.76
U-308	0066	10/19/2004	San R Construction Corp.	4,616.69
U-312	0067	10/28/2004	San R Construction Corp.	5,707.99
U-600	0044	11/25/2004	Galeo Equipment Corp.	3,491.18
U-724	0069	11/8/2004	San R Construction Corp.	15,093.02
U-731	0071	11/18/2004	San R Construction Corp.	4,767.27
			<i>Subtotal</i>	<u>61,466.78</u>
<i>3.) Purchases of goods not within the refund period</i>				
U-1045	158791	1/20/2005	Newton Hardware & Lumber	96,320.23
U-1046	158792	1/20/2005	Newton Hardware & Lumber	14,284.35
U-1047	158793	1/20/2005	Newton Hardware & Lumber	70,237.95
			<i>Subtotal</i>	<u>180,842.53</u>
<i>4.) Purchases of services not within the refund period</i>				
R-69	22292	1/14/2003	Ayala AON Risk Services, Inc.	1,321.07
S-398-a	19941	6/3/2003	Bitstop Network Services, Inc.	11,172.60
S-398-b	19941	6/3/2003	Bitstop Network Services, Inc.	523.46
U-906	10102	1/7/2005	Crown Worldwide Movers Inc.	1,538.35
U-958	304371	1/7/2005	Eastern Telecom	500.00
U-1012	2124	1/5/2005	International SOS	14,050.00
U-1015	2132	1/10/2005	International SOS	14,107.50
U-1067	78009	1/21/2005	Phil-Data Business Systems, Inc.	802.90
U-1128	300	1/9/2003	RASA Surveying & Realty	7,636.36
U-1132	5980	1/6/2005	Resourceful Pest Control	1,913.34
AA-153	1070	3/21/2005	Tyco Integrated System	48,049.56
			<i>Subtotal</i>	<u>101,615.14</u>

<u>Exh.</u>	<u>Invoice/OR #</u>	<u>Invoice/OR Date</u>	<u>Supplier</u>	<u>Input VAT</u>
<i>5.) Purchases of goods and services supported by documents other than invoices or ORs</i>				
T-978	25087	8/9/2004	Magiclub Inc.	25.65
T-979	25089	8/9/2004	Magiclub Inc.	58.25
T-980	25088	8/9/2004	Magiclub Inc.	100.18
T-985	25086	8/9/2004	Magiclub Inc.	218.03
U-861	128937	12/8/2004	Rustan Coffee Corporation	8.64
U-861	128933	12/8/2004	Rustan Coffee Corporation	62.27
S-653		5/7/2004	Power Service Providers Inc.	64,230.36
U-682	55003965607	10/27/2004	PLDT	2,284.62
U-683	56002764540	9/17/2004	PLDT	4,776.60
U-684	56002764541	9/17/2004	PLDT	3,134.91
U-685	56002764542	9/17/2004	PLDT	2,725.35
U-686	56002764543	9/17/2004	PLDT	2,985.41
U-687	56002764532	9/17/2004	PLDT	2,879.48
U-688	56002764533	9/17/2004	PLDT	1,561.57
U-689	56002764534	9/17/2004	PLDT	3,251.16
U-690	56002764535	9/17/2004	PLDT	1,641.03
U-691	56002764536	9/17/2004	PLDT	1,641.03
U-692	56002764537	9/17/2004	PLDT	1,641.57
U-693	56002764538	9/17/2004	PLDT	1,641.30
U-694	56002764539	9/17/2004	PLDT	1,609.86
U-695	56002767120	9/17/2004	PLDT	1,171.61
			<i>Subtotal</i>	<u>97,648.88</u>
<i>6.) Invoice or OR not duly registered with the BIR</i>				
R-350	N40247	1/9/2004	Rockwell Automation (Phils), Inc.	51,981.30
S-991	30315	6/10/2005	Ford Alabang	2,235.70
			<i>Subtotal</i>	<u>54,217.00</u>
<i>7.) Purchases of goods not supported by invoices</i>				
R-581	1676	1/28/2004	RF Trading & Distribution Corp.	34.09
U-361	32574	9/15/2004	Western New Farmers Company	3,634.55
			<i>Subtotal</i>	<u>3,668.64</u>
<i>8.) Purchases of services not supported by official receipts</i>				
R-631	54960	1/24/2004	Longwood Garden	94.45
R-635	55964	2/1/2004	Longwood Garden	86.32
R-635	55774	2/1/2004	Longwood Garden	85.32
S-365	60349	3/21/2004	Longwood Garden	88.32
S-365	60433	3/22/2004	Longwood Garden	77.82
S-366	59832	3/15/2004	Longwood Garden	81.64
S-366	59907	3/16/2004	Longwood Garden	84.18
S-367	60855	3/27/2004	Longwood Garden	83.82
S-367	60756	3/26/2004	Longwood Garden	78.82
S-368	60974	3/28/2004	Longwood Garden	86.32
S-368	61033	3/29/2004	Longwood Garden	80.32
S-693	82	5/3/2004	San R Construction Corp.	10,952.93
S-1138		3/30/2004	Tokio Marine Malayan Insurance	105.91
S-1157	33345	5/25/2004	Bauzon Battery & Electrical Shop	545.45
T-876		7/27/2004	RASA Surveying & Realty	3,818.18
U-355	65501	10/11/2004	Lisland Rainforest Resort	195.64
U-852	2963	11/3/2004	Bitstop, Inc.	136.36
U-853	2978	11/6/2004	Bitstop, Inc.	136.36
U-854	3053	11/13/2004	Bitstop, Inc.	1,363.64
U-855	19921	11/30/2004	Bitstop, Inc.	2,272.73
U-972	1176	11/18/2004	Fraser Place	37,407.36
U-1117	SO1103-0002	11/25/2004	Power Service Providers Inc.	10,065.91
			<i>Subtotal</i>	<u>67,927.80</u>
<i>9.) Supported by ORs without the imprinted word "VAT" after the suppliers' TIN</i>				
R-922	5106	3/3/2004	FD Esguerra Enterprises	6,167.91
S-361	2579	4/13/2004	Zodiac Pest Control	3,514.04

<u>Exh.</u>	<u>Invoice/OR #</u>	<u>Invoice/OR Date</u>	<u>Supplier</u>	<u>Input VAT</u>
S-363	2580	5/6/2004	Zodiac Pest Control	3,514.04
			<i>Subtotal</i>	<u>13,195.99</u>
<i>10.) Invoice or OR not in the name of Petitioner</i>				
U-418	42139	10/8/2004	Greenlee Electrical & Industrial Supply	1,714.73
U-1192	VYPI14K0058	10/29/2004	Yokogawa Philippines, Inc.	6,497.77
			<i>Subtotal</i>	<u>8,212.50</u>
<i>11.) Supported by ORs or invoices with TIN-V only or without supplier's TIN</i>				
R-257	5676-A	2/23/2004	MOF Company (Subic) Inc.	38,777.60
R-536	303	2/23/2004	Inspection Consultants Int'l Phil., Inc.	28,499.90
U-786	036	11/30/2004	A3 Industrial Sales	2,468.18
U-787	031	11/30/2004	A3 Industrial Sales	2,742.73
U-788	024	11/30/2004	A3 Industrial Sales	9,144.55
U-789	023	11/30/2004	A3 Industrial Sales	5,429.09
U-790	018	11/30/2004	A3 Industrial Sales	3,331.82
U-791	017	11/30/2004	A3 Industrial Sales	2,363.64
U-792	025	11/30/2004	A3 Industrial Sales	7,941.82
U-793	030	11/30/2004	A3 Industrial Sales	927.27
U-794	033	11/30/2004	A3 Industrial Sales	2,554.55
U-795	034	11/30/2004	A3 Industrial Sales	2,554.55
U-796	032	11/30/2004	A3 Industrial Sales	786.36
U-797	029	11/30/2004	A3 Industrial Sales	1,409.09
U-798	028	11/30/2004	A3 Industrial Sales	734.55
U-799	027	11/30/2004	A3 Industrial Sales	772.73
U-800	026	11/30/2004	A3 Industrial Sales	1,303.64
U-801	022	11/30/2004	A3 Industrial Sales	1,303.64
U-802	021	11/30/2004	A3 Industrial Sales	2,131.82
U-803	020	11/30/2004	A3 Industrial Sales	788.18
U-804	016	11/30/2004	A3 Industrial Sales	2,363.64
U-805	019	11/30/2004	A3 Industrial Sales	1,327.27
R-258	24176	12/26/2004	NCH Philippines Inc.	4,476.00
			<i>Subtotal</i>	<u>124,132.62</u>
<i>12.) Supported by undated invoice</i>				
U-1020	702		Jadestar Machinery Corporation	1,306.36
			<i>Subtotal</i>	<u>1,306.36</u>
<i>13.) Purchase of services supported by blank OR or not legible OR</i>				
R-582	156		RF Trading & Distribution Corp.	45.45
T-696	893671	8/17/2004	Globe Telecom	45.46
T-926	12877	8/23/2004	SGV & Co.	10,983.28
T-1296	14752	9/20/2004	SGV & Co.	38,441.48
U-315	15318	10/20/2004	SGV & Co.	43,933.12
			<i>Subtotal</i>	<u>93,448.79</u>
<i>14.) Double Claim of input VAT</i>				
T-499	25410	7/27/2004	Tokio Marine Malayan Insurance Co.	49.00
			<i>Subtotal</i>	<u>49.00</u>
<i>15.) Supplier's OR marked "Non-VAT"</i>				
U-1127	0659	12/17/2004	RASA Surveying	12,727.27
			<i>Subtotal</i>	<u>12,727.27</u>
TOTAL				<u><u>878,101.06</u></u>