

REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

MINDANAO II GEOTHERMAL C.T.A. CASE NO. 7595
PARTNERSHIP,

Petitioner,

-versus-

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

X ----- X
MINDANAO II GEOTHERMAL
PARTNERSHIP,

C.T.A. CASE NO. 7638

Petitioner,

-versus-

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

X ----- X
MINDANAO II GEOTHERMAL
PARTNERSHIP,

C.T.A. CASE NO. 7692

Petitioner,

Members:

-versus-

COMMISSIONER OF INTERNAL
REVENUE,

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

Respondent.

Promulgated:

APR 23 2010

X ----- X

DECISION

PALANCA-ENRIQUEZ, J.:

The sale of power or fuel generated through renewable sources of
energy such as, but not limited to, biomass, solar, wind, hydropower,
geothermal, ocean energy, and other emerging energy sources using

[Signature] 57

technologies, such as fuel cells and hydrogen fuels by a VAT registered person, is subject to a zero percent rate (*Section 6 of RA 9337*).

THE CASE

Before the Court are three consolidated Petitions for Review filed by Mindanao II Geothermal Partnership (hereafter “petitioner Mindanao II”), to wit:

1) C.T.A. Case No. 7595 filed on March 30, 2007, which seeks the refund or issuance of a tax credit certificate (“TCC”) of its unutilized input VAT from its domestic purchases of taxable goods and services attributable to its zero-rated sales of electricity to National Power Corporation (“NPC”), for and in behalf of Philippine National Oil Company-Energy Development Corporation (“PNOC-EDC”), for the period January 1 to March 31 of calendar year 2005, in the amount of P4,275,112.73;

2) C.T.A. Case No. 7638 filed on June 14, 2007, which seeks the refund or issuance of a TCC of its unutilized input VAT from its domestic purchases of taxable goods and services attributable to its zero-rated sales of electricity to NPC for and in behalf of PNOC-EDC for the period April 1 to September 30 of calendar year 2005, in the amount of P3,523,547.10; and



3) C.T.A. Case No. 7692 filed on October 24, 2007, which seeks the refund or issuance of a TCC of its unutilized input VAT from its domestic purchases of taxable goods and services attributable to its zero-rated sales of electricity to NPC for and in behalf of PNOC-EDC for the period October 1 to December 31 of calendar year 2005, in the amount of P813,653.09.

THE PARTIES

Petitioner Mindanao II is a partnership duly registered with the Securities and Exchange Commission, with principal office at Barangay Ilomavis, Kidapawan City, Cotabato. Petitioner entered into a Build-Operate-Transfer (“BOT”) contract with PNOC-EDC for the finance, engineering, supply, installation, testing, commissioning, operation, and maintenance of a 48.25 megawatt geothermal power plant, provided that PNOC-EDC shall supply and deliver steam to petitioner at no cost. In turn, petitioner shall convert the steam into electric capacity and energy for PNOC-EDC and shall deliver the same to the NPC for and in behalf of PNOC-EDC. Petitioner’s 48.25 megawatt geothermal power plant has been accredited by the Department of Energy (“DOE”), as a Block Power Production Facility, pursuant to the provisions of EO 215 (*Exhibit “B”*).



Petitioner is a registered value added tax (VAT) taxpayer with the Bureau of Internal Revenue, as evidenced by its Certificate of Registration with Tax Identification Number 004-766-953 (*Exhibits "K" and "L"*). On January 7, 2008, respondent's Revenue District Officer issued an updated Certificate of Registration to petitioner, where petitioner is considered a VAT zero-rated taxpayer (*Exhibit "M"*).

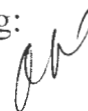
Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credit of erroneously or excessively paid taxes. He holds office at the BIR National Office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

THE FACTS

Petitioner filed its Quarterly VAT Returns for calendar year 2005 on the following dates:

Periods	Date of Filing	Exhibit
1 st Quarter – Original	April 20, 2005	"C"
2 nd Quarter – Original	July 25, 2005	"D"
3 rd Quarter – Original	October 25, 2005	"E-2"
Amended	January 25, 2006	"E"
4 th Quarter - Original	January 25, 2006	"F"

The aforesaid quarterly returns show the following:



Quarter	Zero-rated Sales	Input Tax
1 st	P179,138,640.15	P4,275,112.73
2 nd	190,016,316.29	2,548,753.01
3 rd amended	164,833,783.11	974,794.09
4 th	152,701,089.63	813,653.09
Total	P686,689,829.18	P8,612,312.92

On January 4, 2007, petitioner filed an administrative claim for refund of unutilized excess input VAT for taxable year 2005 in the amount of P8,612,312.92, with BIR Revenue District Office No. 108, Kidapawan City, North Cotabato (*Exhibit "H"*).

On March 1, 2007, petitioner filed a supplemental administrative claim for refund of unutilized input VAT for taxable year 2005 in the same amount of P8,612,312.92, to highlight the effect of *Section 108(B)(7) of the NIRC of 1997, as amended by R.A. 9337 (Exhibit "I")*.

Since respondent has not acted on petitioner's administrative claim for refund, petitioner elevated its claim before this Court by way of three separate *Petitions for Review*, docketed as C.T.A. Cases Nos. 7595, 7638, and 7692.

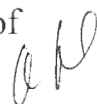
C.T.A. Case No. 7595

In his Answer, respondent by way of special and affirmative defenses, averred:

- "8. To support its claim for refund, it is imperative for petitioner to prove the following, viz:

64

- 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 the 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 P8,612,312.92 allegedly representing unutilized input VAT from its domestic purchases of goods and services were:
 - d.i paid by the petitioner;
 - d.ii attributable to its zero-rated sales; and
 - d.iii 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) in the amount of P4,275,112.73 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



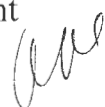
tax erroneously or illegally collected as explicitly found in Sections 112 (A) and 229 of the Tax Code, as amended;

- g. Petitioner failed to prove compliance with the aforesaid requirements.”

CTA Case No. 7638

In his Answer, respondent alleged the following:

- “5. The amount of P3,523,547.10 being claimed by petitioner as alleged unapplied and unutilized creditable input taxes for the 2nd to 3rd quarters of 2005 was not properly documented.
- 6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.
- 7. To support its claim, it is imperative for petitioner to prove the following, viz:
 - a. The registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-a (a) of Revenue Regulations No. 7-95, and Section 236 of the National Internal Revenue Code of 1997 (NIRC of 1997).
 - 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 NIRC of 1997.
 - c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient

 363

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 NIRC of 1997. It is worthy of emphasis that Section 112 (D) of the NIRC of 1997 requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.

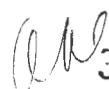
- d. That the input taxes of P20,546,004.87 allegedly paid by petitioner on its domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods for the first to fourth quarters of taxable year 2005 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters.
- e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the NIRC of 1997.
- f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchases journal, showing that it actually paid VAT in accordance with Sections 110(A)(2) and 113 of the NIRC of 1997, and in pursuance to Section 4.104-5 (a) and (b) of Revenue Regulations No 7-95 (RE: Submission of Claims for Input Tax Credit).

- g. The requirements as enumerated under Section 4.104-2 of Revenue Regulations 7-95 (Re: Persons who can avail of the Input Tax Credits).
- h. The petition for review is premature. Since petitioner did not submit complete documents in support of its administrative claim for refund as indicated under Section 112 (D) of the NIRC of 1997, the 120-day period starts to run on 4 January 2007, the date when it filed its administrative claim for refund. The said period is yet to expire on 4 May 2007. Hence, the 30-day period within which to file the petition for review before this Honorable Court is yet to expire on 3 June 2007. This being so, this Honorable Court has no jurisdiction to act on the instant petition for review.

The instant case involves a claim for refund or tax credit of alleged unapplied and unutilized creditable input taxes hence, Section 112(D) of the NIRC of 1997 should apply as regards the prescriptive period for filing a claim for refund.

First, distinctions should be made in the application of Sections 112(D) and 229 of the NIRC of 1997. Section 112(D) specifically refers to refunds or tax credits of 'creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that said input has not been applied against output tax', while Section 229 of the same Code refers to 'any national internal revenue taxes alleged to have been erroneously or allegedly assessed or collected.'

Second, Section 112 (D) provides for a specific period within which the claim for refund or tax credit of input VAT shall be made. It is clearly provided in said Section that in case of failure on the part of the Commissioner to act on the application, the claimant only has thirty (30) days from the expiry of the 120-day period within which to file the petition for review

 365

before the Honorable Court. There is no such specific period provided under Section 229 which merely provides for two (2) years from the date of payment of any national internal revenue tax.

Clearly, from the foregoing, Section 112(D) is specific as to the prescriptive period for claiming refunds of excess or unutilized VAT attributable to zero-rated or effectively zero-rated sales.

In the case at bar, petitioner seeks for a refund of its unapplied and unutilized creditable input tax. Hence, the 120-day period starts to run on 4 January 2007, the date when it filed its administrative claim for refund. The said period is yet to expire on 4 May 2007. Thus, the 30-day period within which to file the petition for review before this Honorable Court is yet to expire on 3 June 2007. This being so, this Honorable Court has no jurisdiction to act on the instant petition for review.”

CTA Case No. 7692

In his Amended Answer, respondent, by way of special and affirmative defenses, averred:

“9. The Court of Tax Appeals has no jurisdiction to entertain the instant petition for review for failure on the part of the petitioner to comply with the provision of Section 112(D) of the 1997 National Internal Revenue Code which provides, thus:

‘Section 112. Refunds or Tax Credits of Input Tax –

xxx

xxx

(D). Period within which Refund of Tax Credit of Input Taxes shall be Made – In proper cases, the Commissioner shall grant a refund or issue the tax credit



certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

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

10. As stated in the petition, petitioner filed the administrative claim for refund with the Bureau of Internal Revenue on January 4, 2007. Under the afforested provision, respondent had 120 days or until May 4, 2007 within which to act on the application. Corollarily, petitioner had 30 days from May 4, 2007 within which to appeal before this Honorable Court. The instant petition was filed on October 24, 2007. Obviously the thirty (30) days given to the petitioner to appeal to this Honorable Court in case of full or partial denial of the tax refund or failure on the part of the Commissioner to act on the application has already prescribed."

On June 14, 2007, in C.T.A. Case No. 7368, petitioner filed the "Amended Petition for Review with Motion to Consolidate with CTA Case No. 7595".

On October 24, 2007, in C.T.A. Case No. 7692, petitioner filed the "Petition for Review with Motion to Consolidate with CTA Case Nos. 7595 and 7638", which the Court granted in a Resolution dated January 29, 2008. 

In view of the consolidation, on March 25, 2008, the parties filed their “Joint Stipulation of Facts and Issues” and stipulated the following facts:

“1. Republic Act No. 9337 took effect on November 1, 2005.

2. On January 4, 2007, petitioner filed its administrative claim with the Bureau of Internal Revenue, Revenue District Office No. 6, Kidapawan City (‘BIR’) arising from its unapplied and unutilized creditable input taxes for the year 2005 in the total amount of P8,612,312.92.

3. On March 1, 2007, petitioner submitted with the BIR a letter dated February 10, 2007”.

Petitioner presented Daisy Abenes, its General Office and Accounting Manager, Michael Aguirre, the Court-Commissioned Independent CPA, Eric Castro, the Accountant of PNOC-EDC, and Rommel Dela Vega, Payable Assistant of PNOC-EDC, as witnesses, and documentary evidence, marked as *Exhibits “A” to “EEE”*, inclusive of their submarkings, which were all admitted in a Resolution dated June 23, 2009.

On the other hand, upon manifestation of respondent’s counsel, respondent waived his right to present evidence and submitted the case for decision.



Thereafter, the parties were granted thirty (30) days from August 26, 2009, within which to file their simultaneous memoranda; after which the case shall be deemed submitted for decision.

Both petitioner and respondent having filed their respective "Memorandum", the case was deemed submitted for decision on October 22, 2009.

Hence, this decision.

ISSUES

As stipulated upon by the parties, the following are the issues for the Court's consideration:

I

WHETHER OR NOT PETITIONER IS REGISTERED AS A VALUE-ADDED TAXPAYER PURSUANT TO THE PROVISION OF THE TAX CODE OF 1997, AS AMENDED.

II

WHETHER OR NOT PETITIONER'S CLAIM FOR TAX CREDIT OR REFUND OF THE UNUTILIZED CREDITABLE INPUT TAXES 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.



III

WHETHER OR NOT PETITIONER HAS COMPLIED WITH THE INVOICING AND ACCOUNTING REQUIREMENTS FOR VALUE-ADDED TAX ("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.

IV

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.

V

WHETHER OR NOT THE CREDITABLE INPUT TAXES IN THE TOTAL AMOUNT OF P8,612,312.92 ALLEGEDLY REPRESENTING UNUTILIZED INPUT TAXES 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 TAXABLE YEAR 2005 WERE:

- V.1. PAID AND/OR INCURRED BY PETITIONER;
- V.2. ATTRIBUTABLE TO ITS ZERO-RATED SALES;
- V.3. USED IN THE COURSE OF ITS TRADE OR BUSINESS;
- V.4. PROPERLY SUPPORTED BY VAT INVOICES AND/OR OFFICIAL RECEIPTS

fl

AND OTHER DOCUMENTS SUCH AS
SUBSIDIARY PURCHASE JOURNAL,
SHOWING THAT IT ACTUALLY
PAID/INCURRED VAT IN ACCORDANCE
WITH SECTIONS 110(A)(2) AND 113 OF
THE TAX CODE OF 1997, AS AMENDED,
AND

V.5. SUCH HAVE NOT BEEN APPLIED
AGAINST ANY OUTPUT TAX.

VI

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, AS AMENDED.

VII

WHETHER OR NOT THE CLAIMED INPUT TAXES
WERE CARRIED OVER TO THE SUCCEEDING
QUARTER/S OF THE PETITIONER'S VAT RETURNS.

VIII

WHETHER OR NOT PETITIONER IS ENTITLED TO A
REFUND OR ISSUANCE OF A TAX CREDIT
CERTIFICATE IN THE TOTAL AMOUNT OF
P8,612,312.92 ALLEGEDLY REPRESENTING
UNUTILIZED CREDITABLE INPUT TAXES FOR THE
TAXABLE YEAR 2005.

Principal Issue

The foregoing issues raised by both parties boil down to the
principal issue of whether or not petitioner is entitled to refund or


371

issuance of a TCC in the amount P8,612,312.92, representing unutilized input VAT incurred from its purchases of taxable goods and services attributable to its zero-rated sales of electricity to PNOC-EDC for the first to fourth quarters of calendar year 2005.

THE COURT'S RULING

We find the petition meritorious.

Petitioner anchors its claim on *Sections 110(B) and 112(A)* of the *National Internal Revenue Code of 1997 (NIRC of 1997)*, as amended, which provide, as follows:

“SEC. 110. *Tax Credits.* —

(A) *Creditable Input Tax.* —

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

xxx

xxx

(B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.”

“SEC. 112. *Refunds or Tax Credits of Input Tax.* —

(A) *Zero-rated or Effectively Zero-rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales,

except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1),(2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP); *Provided further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of volume of sales.”

Pursuant to the above provisions, in order to be entitled to a refund or issuance of a TCC of input VAT paid attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

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

First Requisite:

There must be zero-rated or
effectively zero rated sales



As regards the first requisite, petitioner contends that its sales of electricity as a power generation company qualify for VAT zero-rating, under *paragraph 5, Section 6 of RA 9136*, also known as the *Electric Power Industry Reform Act of 2001* (“EPIRA”), which states:

“SEC. 6. *Generation Sector.* xxx

xxx xxx

Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated.

xxx xxx.”

Under the EPIRA law, to qualify for VAT zero-rating, petitioner must be able to establish that: (1) it is a generation company; and (2) it derives sales from power generation.

On July 1, 2005, however, *RA 9337* was enacted, amending certain provisions of *RA 8424* and *RA 9136*. *Section 6 of RA 9337* provides as follows:

“SEC. 6. ‘Section 108 of the same Code, as amended, is hereby further amended to read as follows”

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

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:

pl 371

xxx

xxx

(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels.”

Under *RA 9337*, to qualify for VAT zero-rating, petitioner must be able to prove that it is engaged in sale of power or fuel generated through renewable energy.

Accordingly, for the first and second quarters of 2005, petitioner is, therefore, governed by the EPIRA law. However, starting July 1, 2005, or for the third and fourth quarters of 2005, petitioner is governed by *RA 9337* on its claim for refund or issuance of a TCC.

Petitioner witness, Daisy Abenes, on direct examination testified that petitioner is a power generation company pursuant to the Build-Operate Transfer (“BOT”) contract with the Philippine National Oil Company-Energy Development Corporation (“PNOC-EDC”) for the finance, engineering, supply, installation, testing, commissioning, operation, and maintenance of a 48.25-megawatt geothermal power plant which has been duly accredited by Department of Energy (“DOE”) as a Block Power Production Facility. Under the BOT contract, the PNOC-EDC supplies or delivers steam to petitioner at no cost. In turn, petitioner

 375

converts the steam into electric capacity or energy for the PNOC-EDC and delivers it to the National Power Corporation (“NPC”) for and in behalf of the PNOC-EDC (*Exhibit “J”*).

Records show that petitioner indeed owns and operates a dual flash direct geothermal steam power plant with a capacity of 48.25 MW, located at the Mindanao Geothermal Reservation, Mount Apo, North Cotabato, and accredited by the Department of Energy as a Block Power Production Facility (*Exhibit “B”*).

On the basis of the foregoing testimony and documentary evidence, we find that petitioner is a generation company, using geothermal energy as its power source. Hence, petitioner has complied with the requisite under the EPIRA Law that the taxpayer must be a generation company and under *RA 9337* that to be zero rated, its source of energy must be renewable source, such as geothermal power.

As regards the requisite under both EPIRA Law and *RA 9337* that petitioner must derive sale from power generation, records show that for the four quarters of taxable year 2005, petitioner generated sales of power generation services to PNOC-EDC in the amount of P686,689,829.18, which was declared in its Quarterly VAT Returns for the same period, as follows:


376

Quarter	Zero-rated Sales	Exhibit
1 st	P179,138,640.15	"C"
2 nd	190,016,316.29	"D"
3 rd amended	164,833,783.11	"E"
4 th	152,701,089.63	"F"
Total	P686,689,829.18	

The Court-Commissioned Independent CPA, likewise, found that petitioner had zero-rated sales for the year ended December 31, 2005 in the total amount of P686,689,829.18. Records show that the amount of P686,689,829.18 zero-rated sales is supported by zero-rated invoices and official receipts (*Exhibits "EE-1" to "YY-2"*). Thus, petitioner's sales of electricity, as a power generation company, amounting to P686,689,829.18 qualify for VAT zero-rating.

Second and Third Requisites:

Input taxes were incurred or
paid and that such input taxes
are attributable to zero-rated
sales or effectively zero-rated sales

Having resolved that petitioner's gross receipts from power generation services rendered to PNOC-EDC for the four quarters of 2005 in the amount of P686,689,829.18 qualify for VAT zero-rating, We now proceed to the determination of the amount of input VAT attributable thereto.

Petitioner submitted various suppliers' invoices and official receipts (*Exhibits "AA" to "DD", as summarized in Annexes "A" and "C-1" to*

"C-4" of Exhibit "Q"), in support of its claimed unutilized input taxes reflected in its Quarterly VAT Returns for the four quarters of 2005, in the amount of P8,612,312.92, broken down as follows:

Quarter	Input Tax	Exhibit
1 st	P4,275,112.73	"C"
2 nd	2,548,753.01	"D"
3 rd amended	974,794.09	"E"
4 th	813,653.09	"F"
Total	P8,612,312.92	

Upon examination of the said documents, the Court-Commissioned Independent CPA, Michael Aguirre, found the following exceptions on Input VAT (*Exhibits "D.1" to "D.3"*):

1) Outside the Period Covered									
Invoice Date	Invoice Number	OR Number	OR Date	Supplier's Name			Purchases		Input Tax
12/23/05	12329	01/13/06	56237	Far Travel Inc.			4,740.00		474.00
12/17/05	12330	01/13/06	56237	Far Travel Inc.			7,930.00		793.00
Total									P1,267.00
2) Discrepancy in Foreign Exchange Rate Used									
Invoice Date	Invoice Number	OR Number	OR Date	Foreign Exchange Rate		USD	Input Tax		Difference
				Per Schedule	Per Audit		Per Schedule	Per Audit	
01/06/05	7786	01/17/05	6989	56.22	55.65	6,966.19	391,639.20	387,647.95	3,991.25
01/31/05	7861	03/11/05	6998	55.11	55.09	24,381.66	1,343,722.29	1,343,185.90	536.39
Total									P4,527.64
3) Unsupported by Valid Invoices and Receipts									
Invoice Date	Invoice Number	OR Number	Name	Fees	Out-of-Pocket Expenses	Total	Input Tax		Difference
							Per Schedule	Per Audit	
11/09/05	26347	027065	SGV & Co.	55,000.00	5,500	60,500.00	5,500.00	5,000.00	500
08/23/05	24674	025379	SGV & Co.	55,000.00	5,408.04	60,408.04	5,491.64	5,000.00	491.64
Total									P991.64
Grand Total									P6,786.28

Accordingly, out of the total input taxes of P8,612,312.92 claimed by petitioner for refund or issuance of a TCC for the four quarters of

all

2005, only the amount of P8,605,526.64 (P8,612,312.92 – P6,786.28) represents petitioner's valid claim.

Fourth Requisite:

Input taxes were not applied
against any output VAT liability

As regards the fourth requisite, whether petitioner offset or applied the claimed input VAT payments on capital goods against any output VAT liability, a perusal of petitioner's Quarterly VAT Returns for the first, second, third, and fourth quarters of 2005 (*Exhibits "C" to "F"*) shows that the amounts claimed for refund or tax credit were not offset by petitioner against any output VAT liability for the quarter. Moreover, petitioner's Quarterly VAT Return for the 1st quarter of 2006 (*Exhibits "G" to "G-13"*) shows that the amount claimed for refund or tax credit by petitioner in the instant case was not carried over to the first quarter of 2006. Hence, petitioner has complied with the fourth requisite.

Fifth Requisite:

Prescription

As regards the fifth requisite, whether petitioner timely filed the instant claim.

Under *Section 112(A) of the NIRC of 1997, as amended*, a VAT registered taxpayer whose sale is 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 refund or issuance of a TCC of its creditable input tax due or paid attributable to such sales.

In the recent case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*, 565 SCRA 171 (hereafter referred to as the “Mirant Case”), the Supreme Court definitely settled the issue that the prescriptive period on claims for refund of input VAT attributable to zero-rated or effectively zero-rated sales is 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.

Applying the ruling in the Mirant Case and *Section 112(A) of the NIRC of 1997, as amended*, the following are the pertinent dates to petitioner’s claim for refund:

Period (2005)	Close of Taxable Quarter	Last Day for Filing the Claim
1st Quarter	March 31, 2005	April 2, 2007 (March 31, 2007 being a Saturday)
2 nd Quarter	June 30, 2005	July 2, 2007 (June 30, 2007 being a Saturday)
3 rd Quarter	September 30, 2005	October 1, 2007 (September 30, 2007 being a Sunday)
4 th Quarter	December 31, 2005	December 31, 2007

Records show that petitioner filed its administrative claim for refund or issuance of a TCC for the four (4) quarters of 2005 on January 4, 2007 (*Exhibit “H”*), which is well within the prescriptive period.

As to its judicial claim, records show that for the first quarter of 2005, petitioner filed the Petition for Review on March 30, 2007 (C.T.A.


380

Case No. 7595), and for the second and third quarters of 2005, petitioner filed the Amended Petition for Review on June 14, 2007 (*C.T.A. Case No. 7638*), and for the fourth quarter of 2005, petitioner filed the Petition for Review on October 24, 2007 (*C.T.A. Case No. 7692*). Evidently, petitioner's judicial claims for refund/issuance of a TCC for its unutilized input VAT for the four quarters of 2005 were all filed within the prescriptive period. Petitioner, therefore, has complied with the fifth requisite.

For all the foregoing, the Court finds that petitioner is entitled to a refund or issuance of a TCC of input taxes on its domestic purchases of taxable goods and services attributable to its zero-rated sales for the four quarters of 2005 in the reduced amount of P8,605,526.64.

WHEREFORE, premises considered, the above-captioned Petitions for Review are 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 Mindanao II Geothermal Partnership in the reduced amount of P8,605,526.64, representing input VAT paid on domestic purchases of goods and services for the four quarters of 2005.

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

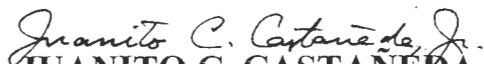
WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

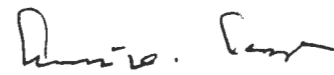
A T T E S T A T I O N

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

C E R T I F I C A T I O N

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