

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

**TAGANITO MINING
CORPORATION,**

Petitioner,

- versus -

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

C.T.A. CASE NO. 7574

Members:

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

Promulgated:

JAN 08 2010

4:20 p.m.

X-----X

DECISION

UY, J.:

Before the Court is a Petition for Review filed by Taganito Mining Corporation, praying for the refund of the amount of **EIGHT MILLION THREE HUNDRED SIXTY FIVE THOUSAND SIX HUNDRED SIXTY FOUR PESOS AND THIRTY EIGHT CENTAVOS (₱ 8,365,664.38)**, allegedly representing its input value-added tax (VAT) for the period covering January 1, 2005 to December 31, 2005.

THE FACTS

Petitioner, Taganito Mining Corporation, is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at 4th Floor, Solid Mills Building, De La Rosa St., Legazpi Village, Makati City.¹ It is duly registered with the Securities and Exchange Commission with Certificate of

¹ Par. 1, Stipulated Facts, Joint Stipulation of Facts and Simplification of Issues (JSFSI), Docket, p. 68.

Registration No. 138682 issued on March 4, 1987 with the following primary purpose:

"To carry on the business, for itself and for others, of mining lode and/or placer mining, developing, exploiting, extracting, milling, concentrating, converting, smelting, treating, refining, preparing for market, manufacturing, buying, selling, exchanging, shipping, transporting, and otherwise producing and dealing in nickel, chromite, cobalt, gold, silver, copper, lead, zinc, brass, iron, steel, limestone, and all kinds of ores, metals and their by-products and which by-products thereof of every kind and description and by whatsoever process the same can be or may hereafter be produced, and generally and without limit as to amount, to buy, sell, locate, exchange, lease, acquire and deal in lands, mines, and mineral rights and claims and to conduct all business appertaining thereto, to purchase, locate, lease or otherwise acquire, mining claims and rights, timber rights, water rights, concessions and mines, buildings, dwellings, plants machinery, spare parts, tools and other properties whatsoever which this corporation may from time to time find to be to its advantage, to mine lands, and to explore, work, exercise, develop or turn to account the same, and to acquire, develop and utilize water rights in such manner as may be authorized or permitted by law; to purchase, hire, make, construct or otherwise, acquire, provide, maintain, equip, alter, erect, improve, repair, manage, work and operate private roads, barges, vessels, aircraft and vehicles, private telegraph and telephone lines, and other communication media, as may be needed by the corporation for its own purpose, and to purchase, import, construct, machine, fabricate, or otherwise acquire, and maintain and operate bridges, piers, wharves, wells, reservoirs, plumes, watercourses, waterworks, aqueducts, shafts, tunnels, furnaces, cook ovens, crushing works, gasworks, electric lights and power plants and compressed air plants, chemical works of all kinds, concentrators, smelters, smelting plants, and refineries, matting plants, warehouses, workshops, factories, dwelling houses, stores, hotels or other buildings, engines, machinery, spare parts, tools, implements and other works, conveniences and properties of any description in connection with or which may be directly or indirectly conducive to any of the objects of the corporation, and to contribute to, subsidize or other wise aid or take part in any operations";²

and is a VAT-registered entity, with Certificate of Registration (BIR Form No. 2303) No. OCN 8RC0000017494.³ Likewise, petitioner is registered with the Board of Investments (BOI) as an exporter of beneficiated nickel silicate and chromite ores, with BOI Certificate of Registration No. EP-88-306.⁴



² Par. 2, Stipulated Facts, JSFSI, Docket, pp. 68 to 69.

³ Par. 3, Stipulated Facts, JSFSI, Docket, p. 69.

⁴ Exhibit "II" to "II-3", Docket, pp. 354 to 357.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue vested with authority to exercise the functions of the said office, including *inter alia*, the power to decide refunds of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other laws administered by the Bureau of Internal Revenue (BIR) under Section 4 of the NIRC. He holds office at the BIR National Office Building, Diliman, Quezon City.⁵

Petitioner filed all its Monthly VAT Declarations and Quarterly VAT Returns for the period January 1, 2005 to December 31, 2005.⁶ For easy reference, a summary of the filing dates of the original and amended Quarterly VAT Returns for taxable year 2005 of petitioner is as follows:

Exhibit(s)	Quarter	Nature of the Return	Mode of filing	FILING DATE
L to L-4	1 st	Original	Electronic	April 15, 2005
M to M-3		Amended	Electronic	July 20, 2005
N to N-4		Amended	Electronic	October 18, 2006
Q to Q-3	2 nd	Original	Electronic	July 20, 2005
R to R-4		Amended	Electronic	October 18, 2006
U to U-4	3 rd	Original	Electronic	October 19, 2005
V to V-4		Amended	Electronic	October 18, 2006
Y to Y-4	4 th	Original	Electronic	January 20, 2006
Z to Z-4		Amended	Electronic	October 18, 2006

As can be gleaned from its amended Quarterly VAT Returns,⁷ petitioner reported zero-rated sales amounting to ₱ 1,446,854,034.68; input VAT on its domestic purchases and importations of goods (other than capital goods) and services amounting to ₱ 2,314,730.43; and input VAT on its domestic purchases and

⁵ Par. 2, Petition for Review, Docket, p. 2; Par. 1, Answer, Docket, p. 45.

⁶ Exhibits "J" to "Z-4", Docket, pp. 227 to 285.

⁷ Exhibits "N to N-4", "R to R-4", "V to V-4", and "Z to Z-4", Docket, pp. 240 to 244, 253 to 257, 267 to 271, and 281 to 285.

importations of capital goods amounting to ₱ 6,050,933.95, the details of which are summarized as follows:

Period Covered	Zero-Rated Sales	Input VAT on Domestic Purchases and Importations of Goods and Services	Input VAT on Domestic Purchases and Importations of Capital Goods	Total Input VAT
01/01/05 - 03/31/05	₱ 551,179,871.58	₱ 1,491,880.56	₱ 239,803.22	₱ 1,731,683.78
04/01/05 - 06/30/05	64,677,530.78	204,364.17	5,811,130.73	6,015,494.90
07/01/05 - 09/30/05	480,784,287.30	144,887.67	-	144,887.67
10/01/05 - 12/31/05	350,212,345.02	473,598.03	-	473,598.03
TOTAL	₱ 1,446,854,034.68	₱ 2,314,730.43	₱ 6,050,933.95	₱ 8,365,664.38

On November 14, 2006, petitioner filed with respondent, through BIR's Large Taxpayers Audit and Investigation Division II (LTAID II), a letter dated November 13, 2006 claiming a tax credit/refund of its supposed input VAT amounting to ₱ 8,365,664.38 for the period covering January 1, 2004 to December 31, 2004.⁸ On the same date, petitioner likewise filed an Application for Tax Credits /Refunds for the period covering January 1, 2005 to December 31, 2005 for the same amount.⁹

On November 29, 2006, petitioner sent again another letter dated November 29, 2004 to respondent, to correct the period of the above claim for tax credit/refund in the said amount of ₱ 8,365,664.38 as actually referring to the period covering January 1, 2005 to December 31, 2005.¹⁰

As the statutory period within which to file a claim for refund for said input VAT is about to lapse without action on the part of the respondent,¹¹ petitioner filed the instant Petition for Review on February 14, 2007.¹²

⁸ Exhibits "AA" to "AA-2", Docket, pp. 286 to 288.

⁹ Exhibit "BB", Docket, p. 289.

¹⁰ Exhibits "CC" to "CC-1", Docket, pp. 290 to 291.

¹¹ Par. 4, Petition for Review, Docket, p. 2.

¹² Docket, p. 1.

In his Answer¹³ filed on March 28, 2007, respondent interposes the following defenses:

"4. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the Bureau of Internal Revenue (BIR);

5. The amount of P8,365,664.38 being claimed by petitioner as alleged unutilized input VAT on domestic purchases of goods and services and on importation of capital goods for the period January 1, 2005 to December 31, 2005 is not properly documented;

6. Petitioner must prove that it has complied with the provisions of Sections 112 (A) and (D) and 229 of the National Internal Revenue Code of 1997 (1997 Tax Code) on the prescriptive period for claiming tax refund/credit;

7. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98, **otherwise there would be no sufficient compliance with the filing of administrative claim for refund, the administrative claim thereof being mere pro-forma, which is a condition sine qua non prior to the filing of judicial claim** in accordance with the provision of Section 229 of the 1997 Tax Code. Further, Section 112 (D) of the Tax Code, as amended, requires the **submission of complete documents in support of the application filed** with the BIR 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.

8. Petitioner must prove that it has complied with the invoicing requirements mentioned in Sections 110 and 113 of the 1997 Tax Code, as amended, in relation to the provisions of Revenue Regulations No. 7-95.

9. In an action for refund/credit, 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 (**Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil. 670**);

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (**Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95**) and as such, they are looked upon with disfavor (**Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211**).

¹³ Docket, pp. 45 to 52.



SPECIAL AND AFFIRMATIVE DEFENSES

11. 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 Tax Code which provides, thus:

'Section 112. *Refunds or Tax credits of Input Tax* —

xxx xxx xxx

(D). *Period within which refund or 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 case of full or partial denial for 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.** (Emphasis supplied.)

12. As stated in the petition, petitioner filed the administrative claim for refund with the Bureau of Internal Revenue on November 14, 2006. Subsequently on February 14, 2007, the instant petition was filed. Obviously the 120 days given to the Commissioner to decide on the claim has not yet lapsed when the petition was filed. The petition was prematurely filed, hence it must be dismissed for lack of jurisdiction."

During trial, petitioner presented testimonial and documentary evidence primarily aimed at proving its supposed entitlement to the refund in the amount of ₱ 8,365,664.38, representing input taxes for the period covering January 1, 2005 to December 31, 2005. Respondent, on the other hand, opted not to present evidence.¹⁴ Thus, in the Resolution promulgated on January 22, 2009¹⁵, this case was submitted for decision as of such date, considering petitioner's "Memorandum"

¹⁴ Minutes of Hearing, November 19, 2008. Docket, p. 413; Transcript of Stenographic Notes, November 19, 2008, p. 3.

¹⁵ Docket, p. 450

filed on January 19, 2009 and respondent's "Memorandum" filed on December 19, 2008.

Hence, this Decision.

THE ISSUES

The stipulated issue to be tried in this case is as follows ¹⁶:

"Whether or not Petitioner is entitled to the refund of alleged excess VAT input taxes paid from January 1, 2005 to December 31, 2005 in the amount of Eight Million Three Hundred Sixty Five Thousand Six Hundred Sixty Four and 38/100 Philippine Pesos (PhP8,365,664.38)."

Petitioner's arguments

Petitioner asserts that it is primarily engaged in the business of exploring, producing and export beneficiated nickel silicate ores and chromite ores, and that these ores are 100% exported and/or shipped to foreign countries, specifically to Japan and Australia as certified by the BOI in accordance with Revenue Memorandum Order No. 9-2000.

It further submits that all of its generated and recorded zero-rated sales from January 1, 2005 to December 31, 2005 were paid for in acceptable foreign currency, specifically, in US Dollars, which were inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*, pursuant to Section 106(A)(2)(a)(1) of the NIRC, as amended.

Furthermore, petitioner also points out that evidence show that its input VAT were paid for by it in the course of its trade and business and are directly attributable to its zero-rated sales.

¹⁶ Issue, JSFSI, Docket, p. 69.



According to petitioner, evidence likewise show that the excess input VAT being claimed for refund or tax credit has not been applied against or are undiminished by any of its output VAT for the same or subsequent periods since it has no output VAT on its 100% export sales. Neither has the said input VAT been carried forward to the succeeding quarter or quarters as the same were deducted by petitioner upon filing of their application for refund with respondent.

In addition, petitioner stresses that, with the exception of the amount in the Detailed Summary of Exceptions noted by the independent Certified Public Accountant (ICPA) commissioned by this Court, it properly supported the excess input VAT being claimed by VAT-registered invoices and/or official receipts issued by its suppliers, and official receipts issued by the Bureau of Customs, in accordance with Section 113(A) of the NIRC, as amended, as shown in the report of the independent auditor commissioned by this Court, and in the evidence supporting the same, photocopies of which were duly presented and identified in open court by the commissioner auditor, and from other related evidence. Petitioner likewise emphasizes that it complied with all the requirements of the respondent on claims for refund/tax credit by submitting to respondent all documents which the latter may have requested.

Respondent's counter-arguments

Respondent contends that the instant claim for tax refund is tainted with procedural infirmity because of petitioner's failure to submit relevant documents in support of its administrative claim for refund.

He also asserts that petitioner is not entitled to a refund in the amount of ₱ 8,365,664.38 because the alleged excess input VAT covering the period January



1, 2005 to December 31, 2005 are not substantiated by proper invoices and official receipts.

Finally, respondent likewise posits that petitioner is not entitled to a claim for refund of its excess input VAT since a claim for refund is not *ipso facto* granted upon filing of the claim, because respondent still has to investigate and ascertain the veracity of the claim.

THIS COURT'S RULING

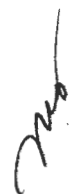
Section 112(A) of the NIRC of 1997 reads:

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

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

This provision lays down the requisites to be entitled to the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to zero-rated or effectively zero-rated sales. Such requisites are as follows:

1. the claimant must be a VAT-registered person;
2. there must be zero-rated or effectively zero-rated sales;
3. that input taxes being claimed were due or paid;
4. that such input taxes were attributable to zero-rated or effectively zero-rated sales;
5. that the input taxes were not applied against any output VAT liability; and



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

We find that petitioner has satisfied all the above requisites.

Settled is the fact that petitioner is a VAT-registered person.¹⁷

Pertinent to the second requisite, Section 106(A)(2)(a)(1) of the NIRC of 1997 states:

“SEC. 106. *Value-added Tax on Sale of Goods or Properties.* —

(A) *Rate and Base of Tax.* —

xxx

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);”

Thus, in order for petitioner’s export sale to qualify for zero-rating, the following requisites must be present:

1. there was a sale and actual shipment of goods from the Philippines to a foreign country;
2. the sale was made by a VAT-registered person;
3. the sale was paid for in acceptable foreign currency or its equivalent in goods or services; and
4. the payment was accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP).

Any VAT registered person claiming VAT zero-rated direct export sales must present at least two (2) types of documents or its equivalents, to wit: (i) photocopies of export documents showing the amount of export, and the date and destination of

¹⁷ Par. 3, Stipulated Facts, JSFSI, Docket, p. 69.



the goods exported, and (ii) statement from the BSP or any of its accredited agent banks that the proceeds of the sale in acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations.¹⁸ In other words, only export sales supported by these documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

Evidence on record reveals that petitioner submitted the said documents.

For the period January 1, 2005 to December 31, 2005, petitioner actually shipped its products abroad to foreign buyers and generated export sales in the amount of US\$26,223,141.71, with the peso equivalent of ₱ 1,446,854,034.71, as shown in petitioner's Schedule of Export Sales¹⁹ and export documents, such as VAT compliant sales invoices²⁰, export declarations²¹ and bills of lading.²²

Likewise, the foreign currency proceeds of US\$26,223,141.71 derived from said export sales were inwardly remitted and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas, as shown by the Security Bank Client Advices²³ and a certification dated March 23, 2006²⁴ of petitioner's export remittance for the year 2005. In this connection, it must be pointed out that a certification of inward remittances attests to the fact of payment "in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the BSP."²⁵

¹⁸ Section 16, Revenue Regulations No. (RR) 5-87, as amended by RR 3-88.

¹⁹ Exhibit "A-II".

²⁰ Exhibits "A-II-1", "A-II-2", "A-II-3", "A-II-4", "A-II-5", "A-II-6", "A-II-7", "A-II-8", "A-II-9", "A-II-10", "A-II-11", "A-II-12", "A-II-13", "A-II-14", "A-II-15" and "A-II-16".

²¹ Exhibits "A-II-1.1", "A-II-2.1", "A-II-3.1", "A-II-4.1", "A-II-5.1", "A-II-6.1", "A-II-7.1", "A-II-8.1", "A-II-9.1", "A-II-10.1", "A-II-11.1", "A-II-12.1", "A-II-13.1", "A-II-14.1", "A-II-15.1" and "A-II-16.1".

²² Exhibits "A-II-1.2", "A-II-2.2", "A-II-3.2", "A-II-4.2", "A-II-5.2", "A-II-6.2", "A-II-7.2", "A-II-8.2", "A-II-9.2", "A-II-10.2", "A-II-11.2", "A-II-12.2", "A-II-13.2", "A-II-14.2", "A-II-15.2" and "A-II-16.2".

²³ Exhibits "A-II-1.3", "A-II-2.3", "A-II-3.3", "A-II-4.3", "A-II-5.3", "A-II-6.3", "A-II-7.3", "A-II-8.3", "A-II-9.3", "A-II-10.3", "A-II-11.3", "A-II-12.3", "A-II-13.3", "A-II-14.3", "A-II-15.3" and "A-II-16.3".

²⁴ Exhibit "G", Docket, p. 222.

²⁵ *Intel Technology Phil., Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

Thus, petitioner's export sales for the period January 1, 2005 to December 31, 2005 in the amount of US\$26,223,141.71 with peso equivalent of ₱ 1,446,854,034.71 qualifies for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

We shall then proceed to determine the amount of unutilized input VAT attributable to petitioner's zero-rated export sales, as required by Section 112(A) of the NIRC of 1997.

Petitioner's total input VAT based on its Quarterly VAT Returns filed for the taxable year 2005 amounted to ₱ 8,365,664.38, broken down as follows:

<u>Exhibit</u>	<u>Period</u>	<u>Input VAT</u>
N	1st Qtr	₱ 1,731,683.78
R	2nd Qtr	6,015,494.90
U	3rd Qtr	144,887.67
Z	4th Qtr	473,598.03
	TOTAL	₱ 8,365,664.38

Upon verification of petitioner's 2005 monthly schedules of purchases and corresponding input VAT,²⁶ and the related suppliers' invoices/official receipts and Bureau of Customs Import Entries and Internal Revenue Declarations (IEIRDs),²⁷ the Court-commissioned independent CPA (ICPA)²⁸ found that there is a discrepancy of ₱ 11,825.62 between the input VAT claim as reflected in the Quarterly VAT Returns/Petition for Review and what was shown in petitioner's schedules:

Amount of Input VAT Claim per Petition/Quarterly VAT Returns	₱ 8,365,664.38
Amount of Input VAT Claim per Schedules (Exh. A-1)	8,353,838.76
Discrepancy	₱ 11,825.62

²⁶ Exhibits "A-I" and "A-I-A", Docket, pp. 184 to 197.

²⁷ Exhibits "A-I-AI" to "A-I-A378".

²⁸ Mr. Joseph Cedric V. Calica of AMC & Associates.

Since the discrepancy of ₱ 11,825.62 does not have supporting VAT invoices or receipts, the same shall be deducted from petitioner's claim.

Moreover, the ICPA noted the following findings²⁹ as regards the input VAT claim of ₱ 812,037.01 reflected in the schedules:

<u>Exception</u>	<u>Reference</u>	<u>Input Tax</u>
a. Purchases with no valid supporting document(s)	Exh. A-III-A, page 1	₱ 727,470.87
b. VAT exempt purchases as per invoice	Exh. A-III-A, page 2	40,568.64
c. Suppliers are non-VAT registered	Exh. A-III-A, page 3	26,489.09
d. Document(s) are not on file	Exh. A-III-A, page 4	11,802.84
e. Purchases not within the period covered	Exh. A-III-A, page 5	3,575.97
f. Official receipts do not indicate the word VAT	Exh. A-III-A, page 6	3,564.00
g. Purchase not traced in the disbursement book	Exh. A-III-A, page 7	693.75
h. VAT journalized under Repairs and Maintenance	Exh. A-III-A, page 8	597.73
i. VAT already deducted in invoice	Exh. A-III-A, page 9	507.76
j. Reflected twice in the input VAT summary	Exh. A-III-A, page 10	130.00
<i>Subtotal</i>		₱ 815,400.65
k. Amount reflected in the summary is understated compared to invoice	Exh. A-III-A, page 11	3,363.64
TOTAL AMOUNT OF EXCEPTIONS		₱ 812,037.01

The input taxes classified under items "b" to "h", and "j" in the total amount of ₱ 87,422.02 should be denied for failure to meet the substantiation requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997 as implemented by Sections 4.104-1, 4.104-5 and 4.108-1 of Revenue Regulations No. 7-95.

As for the input taxes classified under item "a" in the amount of ₱ 727,470.87, We find that only the amount of ₱ 15,974.87 should be disallowed for not having

²⁹ Exhibit "A-III", Docket, p. 199.

valid supporting documents. The remaining amount of ₱ 711,496.00 should be allowed as it represents petitioner's valid input tax on importations as this was paid by petitioner through Tax Credit Certificate bearing serial no. 00184107 issued by the BOC to petitioner on August 13, 2003.³⁰

With regard to the input VAT of ₱ 507.76 classified under item "i" and referred to by the ICPA as "*VAT already deducted in invoice*", We find that the same should be disallowed but in the amount of ₱ 558.54 which was reflected in petitioner's Schedule of Purchases and Corresponding Input VAT for the month of January 2005.³¹ The supporting invoice shows that the total purchase amount of ₱ 5,585.40 billed to petitioner is net of 10% VAT.³² Thus, petitioner cannot claim input VAT on the said purchase as no VAT was shifted or passed on to it by the supplier.

With reference to the input VAT of ₱ 3,363.64 classified under item "k", the same pertains to the difference between the input VAT of ₱ 3,393.64 reflected in the supporting invoice³³ and the input VAT of ₱ 430.00 shown in petitioner's Schedule of Purchases and Corresponding Input VAT for the month of January 2005.³⁴ Considering that the bases of the instant Petition are the VAT returns/schedules as filed by petitioner with the BIR for the taxable quarters of 2005, any amount in the supporting invoices/official receipts that exceeds the amount declared in the returns/schedules cannot be considered or granted.

In sum, out of the ₱ 8,365,664.38 input VAT claim for the year 2005, only the amount of ₱ 8,249,883.33 is duly substantiated for purposes of the instant claim, as computed below:

³⁰ Exhibits "A-III-A2", "A-III-A2.1" and "A-III-A2.3".

³¹ Exhibit "A-I-A", page 1 (Inv. No. 17849), Docket, p. 185..

³² Exhibit "A-A-2".

³³ Exhibit "A-III-A33" (Inv. No. 68034).

³⁴ Exhibit "A-I-A", page 1, Docket, p. 185.



Amount of Input VAT Claim		₱ 8,365,664.38
Less: Disallowances		
1.) Discrepancy between the input VAT claim per Petition for Review/VAT Returns and input VAT per petitioner's Schedules of Purchases	₱ 11,825.62	
2.) Not properly substantiated input VAT Purchases with no valid supporting document(s)	15,974.87	
VAT exempt purchases as per invoice	40,568.64	
Suppliers are non-VAT registered	26,489.09	
Document(s) are not on file	11,802.84	
Purchases not within the period covered	3,575.97	
Official receipts do not indicate the word VAT	3,564.00	
Purchase not traced in the disbursement book	693.75	
VAT journalized under Repairs and Maintenance	597.73	
VAT already deducted in invoice	558.54	
Reflected twice in the input VAT summary	130.00	115,781.05
Substantiated Input VAT Claim		₱ 8,249,883.33

As to whether or not the said input VAT was applied against any output VAT and/or carried over to the succeeding taxable quarter(s), petitioner's Quarterly VAT Returns for the subject period of claim³⁵ showed that petitioner had no output tax liability against which the claimed input VAT may be applied or credited. Although the claimed amount of ₱ 8,365,664.38 was carried-over to the succeeding year,³⁶ the same remained unutilized as petitioner still had no output tax liability for the said period. Moreover, the total claim of ₱ 8,365,664.38 was deducted as "VAT Refund/TCC claimed"³⁷ in petitioner's Quarterly VAT Return for the fourth quarter of 2006. Thus, petitioner could not have utilized the subject claim in the succeeding quarters.

³⁵ Exhibits "L" to "N-4", "Q" to "R-4", "U" to "V-4", and "Y" to "Z-4", Docket, pp. 231 to 244, 249 to 257, 262 to 271, and 276 to 285.

³⁶ Exhibits "KK", "LL", "MM" and "NN", Docket, pp. 360 to 380.

³⁷ Exhibit "NN-1", line 23D, Docket, p. 379.

Finally, records show that petitioner's administrative claim filed on November 14, 2006,³⁸ which was amended on November 29, 2006,³⁹ and the Petition for Review filed with this Court on February 14, 2007 are well within the two-year prescriptive period, reckoned from March 31, 2005, June 30, 2005, September 30, 2005, and December 31, 2005, respectively, the close of each taxable quarter covering the period January 1, 2005 to December 31, 2005.⁴⁰

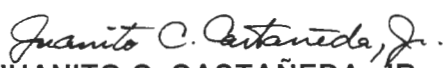
In fine, petitioner sufficiently proved that it is entitled to a tax credit certificate in the amount of ₱ 8,249,883.33 representing unutilized input VAT for the four taxable quarters of 2005.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** to petitioner the amount of **EIGHT MILLION TWO HUNDRED FORTY NINE THOUSAND EIGHT HUNDRED EIGHTY THREE PESOS AND THIRTY THREE CENTAVOS (₱ 8,249,883.33)**, representing its unutilized input taxes attributable to zero-rated sales from January 1, 2005 to December 31, 2005.

SO ORDERED.


ERLINDA P. UY
Associate Justice

WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

³⁸ Exhibits "AA", "AA-1", "AA-2" and "BB", Docket, pp. 286 to 288.

³⁹ Exhibits "CC" and "CC-1", Docket, pp. 290 to 291.

⁴⁰ *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*, G.R. No. 172129, September 12, 2008.

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