

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

SPECIAL FIRST DIVISION

PANAY POWER CORPORATION
(Formerly: Avon River Power
Holdings Corporation),
Petitioner,

C.T.A. CASE NO. 7402

- versus -

Members:

ACOSTA, Chairperson
BAUTISTA, and
CASANOVA, JJ.

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:

FEB 18 2010 ; 11:00 a.m.

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DECISION

CASANOVA, J.:

Petitioner, by way of this Petition for Review, is seeking for the refund or issuance of a tax credit certificate in the amount of Php14,122,347.21 allegedly representing its unutilized input Value-Added Tax (VAT) which petitioner paid on its purchases of capital goods and services for the fourth quarter of the calendar year (CY) 2003.

The facts of the case, as culled from the records, are as follows:

Petitioner is a domestic corporation organized and existing under and by virtue of Philippine laws, with principal office at 7th Floor CTC Building, 2232 Roxas Boulevard, Pasay City, Metro Manila.¹ It is principally engaged in the business of acquiring, holding, owning, and operating power generation assets 

¹ Joint Stipulation of Facts and Issues (JSFI), par. 1, Docket, p. 72

for lighting and power purposes and whole selling the electric power to the National Power Corporation, private electric utilities and electric cooperatives, and for the carrying on of all business incident thereto.²

As such, it is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC) of 1997 with Tax Identification No. 223-606-641-000, as shown on its BIR Certificate of Registration bearing OCN 9RC0000123988.³

Petitioner was originally registered with the Securities and Exchange Commission under the name "Avon River Holdings Corporation" which was subsequently changed to "Avon River Power Holdings Corporation" on February 19, 2004⁴.

Petitioner filed its quarterly VAT return for the fourth quarter of CY 2003 with the BIR on January 26, 2004⁵. On January 28, 2005, petitioner filed its amended quarterly VAT return for the fourth quarter of CY 2003⁶. On January 19, 2006, petitioner filed its amended quarterly VAT return for the fourth quarter of CY 2003 which reflects a total unutilized input VAT amounting to Php14,122,347.21⁷.

According to petitioner, the amount of Php14,122,347.21 pertains to the input VAT that petitioner paid on its purchases of capital goods and services consisting of power generation assets located in Iloilo City which input VAT have 

² JSFI, par. 2, Docket, p. 72

³ JSFI, par. 3, Docket, p. 72; Annex "B", Petition for Review, Docket, p. 20

⁴ JSFI, par. 4, Docket, p. 73; Annex "A", Petition for Review, Docket, p. 9

⁵ Docket, pp. 374-376; Exhibit "A"

⁶ Docket, pp. 377-378; Exhibit "B"

⁷ JSFI, par. 5, Docket, p. 73; Exhibit "C", Docket, p. 379

not been utilized against any output VAT liability in the fourth quarter of CY 2003 or even in subsequent quarters.⁸

On December 29, 2005, petitioner filed with the Revenue District Office No. 51 at Pasay City an administrative claim for refund or issuance of a tax credit certificate of the unutilized input VAT in the total amount of Php14,122,347.21 for the fourth quarter of CY 2003.⁹

Without waiting for an answer from the respondent as to its claim for refund or issuance of a tax credit, petitioner filed the instant Petition for Review on January 20, 2006.¹⁰

In his Answer¹¹, respondent interposed the following defenses:

"4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

5. The amount of P14,122,347.21 being claimed by petitioner as alleged unutilized input VAT on domestic purchases of goods and services for the 4th quarter of calendar year 2003 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. Petitioner must show that it has complied with the provisions of Sections 204(C) and 229 of the 1997 Tax Code on the prescriptive period for claiming tax refund/credit;

8. 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 such, they are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue*, 124 SCRA 1211)"¹² 

⁸ Petition for Review, par. 7, Docket, p. 2

⁹ JSFI, par. 6, Docket, p. 73; Annex "F", Petition for Review, Docket, p. 40-44

¹⁰ Petition for Review, Docket, p. 1

¹¹ Answer, Docket, pp. 52-55

¹² Ibid, Docket, p. 53

Respondent and petitioner filed their pre-trial briefs on March 20, 2006 and April 3, 2006, respectively.¹³

On May 2, 2006, the parties submitted their Joint Stipulation of Facts and Issues¹⁴ which was subsequently approved by this Court in a Resolution¹⁵ dated May 4, 2006. In the same resolution, this Court considered the pre-trial terminated and thereby ordered the parties to proceed with the trial of the case.

On May 30, 2007, petitioner filed a Motion for the Commissioning of an Independent Certified Public Accountant (CPA)¹⁶ due to the voluminous nature of its evidence to be presented in Court. The same was granted by this Court, appointing Mendoza Querido & Co., represented by Mr. Emmanuel Y. Mendoza, as Independent CPA.¹⁷

Petitioner presented testimonial and documentary evidence to support its claims. On October 29, 2008 and November 17, 2008, petitioner filed in this Court its "Formal Offer of Evidence"¹⁸ and "Supplemental Formal Offer of Evidence"¹⁹, respectively, and formally offered Exhibits "A" to "KK". In a Resolution²⁰ dated February 4, 2009, said exhibits were admitted by this Court and thereafter set the initial presentation of the evidence for the respondent.

On March 9, 2009, petitioner filed a Motion to Amend Caption of Petition for Review²¹ praying for the amendment of the caption of the present case from 

¹³ Docket, pp. 58-61 (Respondent's Pre-Trial Brief) and pp. 62-67 (Petitioner's Pre-Trial Brief)

¹⁴ Docket, pp. 72-74

¹⁵ Docket, p. 75

¹⁶ Docket, pp. 161-164

¹⁷ Minutes of the Hearing, Docket, p. 169

¹⁸ Docket, pp. 359-373

¹⁹ Docket, pp. 581-583

²⁰ Docket, pp. 657-658

²¹ Docket, pp. 661-664

"Avon River Power Holdings Corp. vs. Commissioner of Internal Revenue" to "Panay Power Corporation (formerly Avon River Power Holdings Corp.) vs. Commissioner of Internal Revenue". By virtue of a Resolution²² promulgated by this Court on March 30, 2009, said Motion to Amend Caption of Petition for Review²³ was granted.

During the hearing set by this Court for the presentation of respondent's evidence, respondent's counsel manifested that she is submitting the case for decision.²⁴

This case was submitted for decision on June 18, 2009, taking into consideration respondent's "Memorandum"²⁵ filed on May 18, 2009 and petitioner's "Memorandum"²⁶ filed on June 15, 2009.²⁷

The parties jointly stipulated on the following issues for this Court's resolution:

- "1. Whether petitioner has unutilized input VAT for the fourth quarter of CY 2003 in the amount of Php14,122,347.21;
2. Whether said unutilized input VAT were incurred from its purchases of capital goods and services consisting of power generation assets;
3. Whether said unutilized input VAT are properly substantiated by VAT invoices and official receipts;
4. Whether said unutilized input VAT were carried over to and utilized in the succeeding taxable quarter(s) or applied against any of the output VAT liability of the petitioner;
5. Whether the petitioner's administrative and judicial claim for refund or tax credit were seasonably filed; and 

²² Docket, p. 682

²³ Docket pp. 661-664

²⁴ Docket, p. 689

²⁵ Docket, pp. 690-703

²⁶ Docket, pp. 709-749

²⁷ Resolution, Docket, p. 750

6. Whether the petitioner is entitled to a refund or a tax credit of Php14,122,347.21 representing unutilized input VAT paid on its purchases of capital goods and services for the fourth quarter of CY 2003."²⁸

The issues, stipulated by the parties, may be summed up into one lone issue *viz.* Whether or not petitioner is entitled to a refund or tax credit of Php14,122,347.21 allegedly representing its unutilized input VAT paid on its purchases of capital goods and services for the fourth quarter of CY 2003.

In ascertaining petitioner's entitlement to refund of its alleged unutilized input VAT on purchases of capital goods and services, it is imperative to cite Section 112(B) of the NIRC of 1997:

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

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

From the above-quoted provision of law, petitioner must comply with the following requisites for it to be entitled to claim for refund or tax credit of input VAT on its capital goods:

1. that it is a VAT registered entity;
2. that input taxes were paid on capital goods duly supported by VAT invoices and official receipts;
3. that such input taxes were not applied against any output VAT liability; and
4. that the claim for refund was filed within the two-year prescriptive period. 

²⁸ JSFI, Docket, pp. 73-74

As to the first requisite, it has been jointly stipulated that petitioner is registered with the BIR as a VAT taxpayer with Tax Identification No. 223-606-641-000 as shown in its BIR Certificate of Registration bearing OCN 9RC0000123988.²⁹

Likewise, petitioner was able to satisfy the third requirement and was able to establish that its claimed input VAT was not applied against any output VAT liability during the fourth quarter of CY 2003 and in the succeeding quarters as evidenced by its Quarterly VAT Returns from the fourth quarter of CY 2003 to the fourth quarter of CY 2005.

As to the timeliness of the filing of the claim for refund, petitioner filed its Quarterly VAT Return for the fourth quarter of CY 2003 on January 26, 2004.³⁰ Counting from such date, the last day for petitioner to file its administrative and judicial claim for refund is on January 26, 2006. Petitioner filed its administrative claim on December 29, 2005³¹ while its judicial claim was filed on January 20, 2006³². Clearly, both administrative and judicial claims were filed within the two-year prescriptive period provided for by law.

This Court shall now proceed to determine petitioner's compliance with the second requisite. 

²⁹ JSFI, par. 3, Docket, p. 72; Annex "B", Petition for Review, Docket, p. 20

³⁰ JSFI, par. 5, Docket, p. 73; Exhibit "A", Docket, pp. 374-376

³¹ JSFI, par. 6, Docket, p. 73

³² Petition for Review, Docket, p. 1

Petitioner submitted various supplier's invoices and official receipts³³ to substantiate its input VAT claim. In an affidavit, petitioner's Senior Accounting Manager, Ms. Reymonda Aida B. Obrero, stated that petitioner incurred purchases of capital goods and services for the fourth quarter of CY 2003 in the aggregate amount of Php141,223,472.15 on which input VAT amounting to Php14,122,347.21 was paid. She explained that these purchases were made at a time when petitioner was still at a pre-operational stage. All items purchased during this period allegedly relate to the construction of petitioner's power plants which have useful lives of more than one (1) year. Thus, they were allegedly capitalized and reflected in petitioner's books as depreciable assets under the Property, Plant and Equipment (Construction Work In Progress) account. Ms. Obrero further stated that the foregoing purchases of capital goods and services are shown in petitioner's audited financial statements for the CY 2003.³⁴

However, upon verification of the records of this case, this Court finds that petitioner did not submit its books of accounts and audited financial statements for CY 2003 or the subsequent years to corroborate the testimony of its Senior Accounting Manager. Petitioner should have likewise provided a detailed schedule of each account under Property, Plant and Equipment so that the corresponding payments to and/or billings by its contractors and/or suppliers of capital goods and services could be reconciled and accounted for. Without such documents, this Court has no way to ascertain whether the said purchases were indeed capitalized and reflected in petitioner's books as depreciable assets under

³³ Exhibits "Q-1" to "Q-49a"

³⁴ Exhibit "D"

the Property, Plant and Equipment (Construction Work In Progress) account and depreciated after its completion.

Moreover, petitioner also failed to prove that its purchases can be classified as capital goods or properties as contemplated in Section 4.106-1(b) of Revenue Regulations No. 7-95. The said provision defines capital goods in this wise:

"Section 4.106-1. Refunds or tax credits of input tax.

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'Capital goods or properties' refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29(f) [now 34F of the NIRC of 1997], used directly or indirectly in the production or sale of taxable goods or services."

In applying the afore-mentioned provision to the facts of this case, this Court finds that while petitioner's power plants have economic useful life of more than one year and will be used directly or indirectly by petitioner in its power generation and sale of electricity, petitioner failed to prove that the related construction costs were capitalized in its books or accounts/financial statements and subjected to depreciation.

It may not be overemphasized that claims for tax refund are in the nature of tax exemption. As such, the same must be construed in *strictissimi juris* against the taxpayer and in favor of the taxing authority. Petitioner having failed to sufficiently comply with the requirements provided for by law for it to be entitled to a tax refund, this Court is left with no choice but to deny the Petition. 

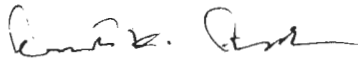
WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.



CAESAR A. CASANOVA
Associate Justice

WE CONCUR:



(with Concurring and Dissenting Opinion)

ERNESTO D. ACOSTA
Presiding Justice



LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

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



ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division