

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

KEPCO ILIJAN CORPORATION,
Petitioner,

C.T.A. CASE NO. 7627

Members:

-versus-

BAUTISTA, Chairperson
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ.

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:

FEB 2 2010 *3:50 p.m.*
A.B. Fernandez

X-----X

DECISION

BAUTISTA, J.:

This case involves a claim for refund of the amount of P73,711,581.30, allegedly representing input value-added tax (VAT) incurred on importations and domestic purchases of goods and services attributable to the sale of electricity to the National Power Corporation (NPC) for the period covering January 1, 2005 to October 31, 2005.

Kepco Ilijan Corporation (Petitioner) is a domestic corporation duly registered with the Securities and Exchange Commission (SEC), with principal office at 18th Floor Citibank Tower, 8741 Paseo de Roxas, Salcedo Village, Makati City. Petitioner is likewise registered as a VAT taxpayer with the Bureau of Internal



Revenue (BIR), as evidenced by its Certificate of Registration OCN No. 9RC0000163675.¹ It is engaged in the production and sale of electricity as an Independent Power Producer (IPP), whose produced electricity is sold solely to NPC.² It has a duly approved Application for VAT Zero-Rate, covering sales of electricity from January 1, 2005 to December 31, 2005.³

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, with authority, among others, to decide, approve and grant claims for refund or tax credit of internal revenue taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

For the first three quarters of taxable year 2005 and for October 2005, petitioner filed its Quarterly and Monthly VAT Returns showing that it incurred expenses representing importation and domestic purchases of goods and services, for which petitioner also incurred input VAT.⁴

On October 28, 2005, petitioner filed an administrative claim for refund of the amount of P63,950,558.01 with the BIR Revenue District Office No. 50, representing input VAT allegedly incurred by petitioner for the first three quarters of taxable year 2005 from importations and domestic purchases of capital goods/equipment and services preparatory to its production and eventual sale of electricity to NPC.⁵ On December 7, 2005, petitioner likewise filed an administrative claim for refund of the amount of P9,761,023.29, allegedly representing input VAT it incurred for the month of October 2005 from

¹ Exhibit "A"

² Exhibit "C"

³ Exhibit "B"

⁴ Exhibits "D", "E", "F", "G", "H", "I", "J", "K", "L", and "M"

⁵ Exhibit "O"



importations and domestic purchases of capital goods and services attributable to its sale of electricity to NPC.⁶

Due to respondent's inaction and in order to suspend the running of the two-year prescriptive period under the National Internal Revenue Code (NIRC), petitioner filed the present Petition for Review on April 24, 2007.

In his Answer filed on June 26, 2007, respondent raised the following Special and Affirmative Defenses:⁷

"5. Assuming but without admitting that Petitioner filed a claim for a tax credit certificate, the same is still subject to investigation by the Bureau of Internal Revenue;

6. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;

7. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable;

8. It is incumbent upon the Petitioner to show that its has complied with the provisions of Sections 112, 204(C) and 229 of the Tax Code, as amended;

9. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge said burden is fatal to the claim (*Emmanuel & Zenaida Aguilar v. Commissioner*, CA-GR No. Sp. 16432, March 30, 1990 cited in *Aban, Law of Basic Taxation in the Philippines*, 1st Edition, p. 206);

10. Claims for refund are construed strictly against the claimant 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 121)."

⁶ Exhibit "P"
⁷ Docket, pp. 59-60



During trial, petitioner presented testimonial and documentary evidence; while counsel for respondent submitted the case for decision based on the pleadings for lack of report of investigation on petitioner's refund claim. The Court then required the parties to file their respective memorandum.⁸

After petitioner filed its Memorandum on January 26, 2009, and considering that respondent did not file his Memorandum, the case was deemed submitted for decision on February 5, 2009.⁹

The parties submitted the following issues¹⁰ for this Court's resolution:

"1. Whether for the period of 01 January 2005 to 31 October 2005, Petitioner incurred expenses representing domestic purchases and importation of goods and services for which it incurred an input VAT amounting to Php73,711,581.30.

2. Whether the aforesaid expenses represent costs sustained by Petitioner for the production and sale of electricity to NPC from 01 January 2005 to 31 October 2005.

3. Whether Petitioner's sale of electricity to NPC for the covered period is subject to VAT at zero percent.

4. Whether Petitioner's claim for tax credit certificate of the alleged input VAT for the covered period is duly substantiated by documentary evidence.

5. Whether Petitioner is entitled to the refund or issuance of Tax Credit Certificates in the amount of Php73,711,581.30 representing the input VAT incurred for the first three quarters of 2005 and October 2005 from its sale of electricity solely to the NPC."

Petitioner anchors its claim on Section 112(A) of the NIRC of 1997, which provides as follows:

⁸ Docket, p. 237

⁹ Docket, p. 279

¹⁰ Docket, pp. 79-80



"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 cases 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: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."

From the foregoing, in order to be entitled to a refund or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales, petitioner must comply with the following requisites:¹¹

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

Anent the first requisite, this Court has consistently held in a long line of cases, that NPC is an entity with a special charter,¹² which categorically exempts

¹¹ AT&T Communications Services Phils. Inc. vs. Commissioner of Internal Revenue, CTA Case No. 7221, December 12, 2007



it from payment of all taxes, whether direct or indirect, including VAT.¹³ Consequently, services rendered by a VAT-registered entity, like herein petitioner, to NPC are effectively subject to zero percent (0%) VAT, in accordance with Section 108(B)(3) of the NIRC of 1997, as amended.

Petitioner is an Independent Power Producer engaged in the business of generating electricity for sale solely to the NPC.¹⁴ Accordingly, the power generation services rendered by petitioner to NPC are subject to zero percent VAT. Respondent recognized this when he approved petitioner's Application for VAT Zero-Rate, covering the latter's sale of electricity to NPC from January 1, 2005 to December 31, 2005.¹⁵

Petitioner also was able to establish through the official receipts¹⁶ it issued to NPC that it actually generated gross receipts from sale of power generation services to NPC for the period covering January 1, 2005 to October 31, 2005, in the aggregate amount of P5,711,834,411.80; which was reflected in its Quarterly VAT Returns for the first three quarters of 2005 and in its Monthly VAT Declaration for October 2005, as follows:

Exhibit	Year 2005	Zero-Rated Sales/ Receipts
"F"	1st Quarter	P 1,689,941,795.30
"I"	2nd Quarter	1,694,729,455.08
"L"	3rd Quarter	1,752,763,067.62
"M"	October	574,400,102.80
TOTAL		P 5,711,834,420.80

¹² Section 13, R.A. No. 6395, otherwise known as the NPC Revised Charter, as amended by P.D. Nos. 380 and 938

¹³ Ernesto M. Maceda vs. Hon. Catalino Macaraig, G.R. No. 88291, May 31, 1991

¹⁴ Exhibits "C" and "Q", page 3

¹⁵ Exhibit "B"

¹⁶ Exhibits "R" to "R-23"



While the total amount of zero-rated sales as reflected in the official receipts is lower by P44,848,727.00 when compared with the total amount of zero-rated sales declared in the Quarterly VAT Returns, such discrepancy pertains to the net foreign exchange loss on petitioner's dollar revenues¹⁷ and shall not affect petitioner's claim.

As regards the second requisite, petitioner presented its schedules of input VAT on domestic purchases and importation, Bureau of Customs (BOC) Import Entry and Internal Revenue Declarations, and suppliers' invoices and official receipts¹⁸ in support of the P73,711,581.30 unutilized input taxes reported in its Quarterly VAT Returns for the first three quarters of 2005 and its Monthly VAT Declaration for October 2005, as follows:

Exhibit	Year 2005	Input VAT
"F"	1st Quarter	P 7,368,603.12
"I"	2nd Quarter	44,303,387.39
"L"	3rd Quarter	12,278,567.50
"M"	October	9,761,023.29
TOTAL		P 73,711,581.30

Upon examination of the aforesaid documents, the Court-commissioned Independent Certified Public Accountant (CPA)¹⁹, in his Report dated June 2, 2008, recommended the disallowance of petitioner's input VAT claim in the amount of P1,531,891.56²⁰, to wit:

"1. The Company provided us with the summary of its unutilized input taxes which showed the details of the import-entry declarations, official receipts and sales invoices issued by various suppliers for the period January to October 2005. We were able to account for the existence and compliance of the original copies

¹⁷ Exhibit "Z"

¹⁸ Exhibits "QQ" to "JJJ," including sub-markings

¹⁹ Mr. Richard Lapres, Tax Partner of Manabat Delgado Amper & Co

²⁰ Exhibit "BB", pages 7 and 8



of the import-entry declarations, sales invoices and official receipts issued by these suppliers with existing regulations except for the items which we propose to be disallowed due to certain exceptions as detailed below:

Details of the above disallowed input taxes are as follows:

<u>Description</u>	<u>Amount</u>
Domestic Purchases (please see Annex 3)	
Invoices and ORs do not bear vendors' TIN	P 563,801.44
Invoices and ORs are not issued in the name of KEILCO	44,510.87
Invoices and ORs do not bear BIR authority to print	15,806.22
Invoices and ORs that do not fall within the period covered	369,411.07
Missing official receipts for services rendered or invoices for goods sold	69,831.14
Adjusting entry included in the Input VAT schedule	(1,602.95)
Invoices/ORs do not contain vendor signature	352,491.65
Original Invoices and ORs were not examined by ICPA	11,363.48
Penalty charges for late deliveries which should be deducted from the total Input Taxes claimed (Annex 1)	78,891.70
Discrepancy with the amounts per Original Invoice and Summary List (Annex 2)	1,141.87
Sub-total	P 1,505,646.49
Importations (please see Annexes 5 and 6)	
Invoices and OR that do not fall within the period covered	P 1,056.00
Missing official receipts for services rendered or invoices for goods sold	25,191.00
Discrepancy between amount claimed and import VAT schedule	(1.93)
Sub-total	P 26,245.07
Grand Total	P 1,531,891.56

The above unutilized input VAT payments were disallowed for failure to comply with the substantiation requirements as provided under Sec. 113 of the NIRC and, as implemented by Sec. 4.108-1 of Revenue Regulations No. 7-95, to wit:"



Petitioner, in its Memorandum, objects to the Independent CPA's proposed disallowance of the following input taxes:²¹

1.	Invoices and ORs do not bear vendors' TIN	P 563,801.44
2.	Invoices and ORs do not bear BIR authority to print	15,806.22
3.	Invoices and OR that do not fall within the period covered	369,411.07
4.	Invoices/ORs do not contain vendor signature	352,491.65

As to the proposed disallowance of P563,801.44, petitioner asserts that there was a vendor's TIN indicated in the supporting receipts.

This Court partly finds for petitioner. Out of the P563,801.44 input VAT claim, the amount of P562,983.03 relates to petitioner's purchases of goods; while the remaining amount of P818.41 pertains to petitioner's purchases of services. A scrutiny of the sales invoice²² supporting the amount of P562,983.03 shows that there was no seller's TIN preprinted thereon; while the official receipt²³ supporting the amount of P818.41 reflected the seller's TIN. Thus, out of the P563,801.44 input VAT claim, only the amount of P818.41 is valid; while the remaining input tax of P562,983.03 shall be disallowed.

With reference to the proposed disallowance of P15,806.22, for failure to indicate in the invoice and official receipt the BIR authority to print, petitioner argues that this issue had already been ruled upon by the Supreme Court in the case of **Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue**²⁴ (*Intel case*), where the Highest Tribunal held that the BIR Authority to Print is not required to be reflected or indicated in duly registered receipts and invoices.

²¹ Docket, p. 266

²² Exhibit "OO-1"

²³ Exhibit "OO-2"

²⁴ G.R. No. 166732, April 27, 2007



This Court finds the disallowance of the input VAT claim of P15,806.22 in order.

While it was held in the above-mentioned *Intel* case that the BIR authority to print need not be reflected or indicated in the invoices/receipts, however, the Supreme Court stressed that entities engaged in business are required to secure from the BIR an authority to print receipts or invoices and to issue duly registered receipts or invoices, to wit:

"It is clear from the foregoing that while entities engaged in business are required to secure from the BIR an authority to print receipts or invoices and to issue duly registered receipts or invoices, it is not required that the BIR authority to print be reflected or indicated therein. xxx

xxx

xxx

xxx

It bears reiterating that while the pertinent provisions of the Tax Code and the rules and regulations implementing them require entities engaged in business to secure a BIR authority to print invoices or receipts and to issue duly registered invoices or receipts, it is not specifically required that the BIR authority to print be reflected or indicated therein. Indeed, **what is important with respect to the BIR authority to print is that it has been secured or obtained by the taxpayer, and that invoices or receipts are duly registered.**" (*Emphasis supplied*)

In the present case, petitioner failed to show that the BIR authority to print has been secured by petitioner's suppliers as to the invoices and official receipts covering the input taxes of P15,806.22 or that the said invoices and official receipts were duly registered with the BIR. Thus, the input VAT claim of P15,806.22 shall be denied.

Regarding the proposed disallowance of P369,411.07 for invoices and official receipts that do not fall within the period covered by the claim, petitioner



alleges that except for two receipts in the aggregate amount of P11,477.07²⁵, all the receipts are within the period of the claim covering January to October 2005 and that the Independent CPA verified and categorically stated in his Report that the unutilized input VAT payments pertinent to all of the receipts were not included in the VAT refund filed by petitioner for taxable year 2004 and in the 2006 input VAT general ledger.

It is imperative that petitioner declare the input VAT in the corresponding taxable quarters when the purchases of goods were consummated, as evidenced by VAT invoices and when the payments for services were made, as evidenced by VAT official receipts, as held by this Court in **Lepanto Consolidated Mining Co. vs. Commissioner of Internal Revenue**²⁶. The pertinent portions of the said Decision are quoted hereunder, to wit:

"We agree with the respondent.

The alleged unutilized input VAT of P5,820,863.87 should be denied since the supporting invoices and official receipts thereof bore dates which were earlier than the period of petitioner's claim. Section 110(A)(2) of the 1997 Tax Code provides:

'Sec. 110. *Tax Credits.* —

A. *Creditable Input Tax.* —

2. The input tax on domestic *purchases of goods* or properties shall be creditable:

(a) To the purchaser *upon consummation of sale* and on importation of goods or properties; and

However, in the case of *purchases of services*, lease or use of properties, the input tax shall be

²⁵ Exhibits "OO-016" and "OO-048"

²⁶ CTA Case Nos. 6368 and 6480, December 15, 2004



creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.'

It is clear from the above-quoted provisions of law that for purchases of goods, the corresponding input value added taxes of which is creditable to the purchaser upon consummation of sale, that is, upon the issuance of the corresponding invoice. On the other hand, for purchases of services, the corresponding input value added taxes of which is creditable to the purchaser upon payment of compensation, rental, royalty, or fee, that is, upon the date of official receipt. Section 110(A) is explicit. It states 'upon consummation', in the case of domestic purchases of goods, and 'upon payment', in the case of purchases of services. It does not provide any qualification, such as 'upon delivery of invoice or official receipt' which is the main thesis of petitioner's contention.

In a resolution of the case entitled *Telecommunications Technologies Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 6168, promulgated on July 28, 2004, this Court elucidated that 'the input VAT on domestic purchases of goods or properties shall be allowed as tax credit to the purchaser upon consummation of sale, which means upon issuance by the seller of the VAT sales invoices evidencing the sale of goods/properties. On the other hand, the input VAT on purchases of services shall be available as tax credit to the purchaser only upon payment of the compensation or fee, i.e., upon issuance by the seller of the VAT official receipt evidencing receipt of the payment for services performed or yet to be performed.'

Thus, it is indubitable on the part of the petitioner to declare the input value added taxes on domestic purchases of goods and services at the end of the corresponding taxable quarter where purchases of goods were consummated, as evidenced by VAT invoice and for payment of services, as evidenced by VAT official receipt.

Therefore, the amount of input VAT of P5,820,863.87 which is supported by VAT invoices and official receipts dated earlier than the period of petitioner's claims can no longer be claimed for refund pursuant to Section 110(A) in relation with Section 112(A) of the 1997 National Internal Revenue Code."

Verification showed that out of the P369,411.07 input VAT claim, the amount of P365,395.91 must be denied because the invoices and official



receipts supporting the purchases of goods and services, respectively, were dated outside the period of claim; while the remaining amount of P4,015.16, broken down below, represents petitioner's valid claim:

Supplier's Name	Exhibit	Invoice/OR		Invoice Amount	Input VAT
		Number	Date		
Onnuri International Inc.	"OO-039"	7776	1/6/2005	P18,000.00	P1,636.36
Mla Fluid Sys Components Inc.	"OO-060"	4270	1/26/2005	20,766.75	1,887.89
Caloocan Gas Corp.	"OO-063"	245491	1/4/2005	4,000.00	363.64
P.T. Cerna Corporation	"OO-065"	17132/17830	04/05/05;04/29/05	1,400.00	127.27
				Total	P4,015.16

With reference to the proposed disallowance of P352,491.65 for invoices/ official receipts which do not contain vendor's signature, petitioner contends that Revenue Regulations No. 7-95 and Sections 113 and 237 of the NIRC of 1997 do not require the signature of the vendor in the invoices and receipts. This Court agrees with petitioner on this point. However, out of the P352,491.65 input VAT claim, the amount of P12,394.05 pertaining to petitioner's purchases of goods shall be disallowed because the supporting invoices were dated outside the period of claim, to wit:

Supplier's Name	Exhibit	Invoice/OR		Invoice Amount	Input VAT
		Number	Date		
Systems Control Instrumentation, Inc.	"OO-074"	0289	11/4/2004	44,000.00	4,000.00
Alpine Industrial Supply	"OO-076"	455	10/5/2004	33,500.00	3,045.45
Infocorp Trading Inc.	"OO-077"	11285	12/22/2004	29,775.00	2,706.82
RS Components Limited	"OO-079"	17819	9/23/2004	3,300.00	300.00
C. Suiza Enterprises	"OO-080"	41322, 42185,41485	10/11/2004, 11/29/04, 10/18/04	12,747.50	1,158.86
RS Components Limited	"OO-084"	20770	9/12/2004	13,012.07	1,182.92
			Total	136,334.57	12,394.05

Therefore, the input VAT disallowances recommended by the Independent CPA in the amount of P1,531,891.56 shall be reduced to P1,186,960.39, computed as follows:

Total Input VAT disallowances per ICPA report	P1,531,891.56
Less: Valid Input VAT	
Input VAT supported by OR with the seller's TIN preprinted thereon	818.41
Input VAT supported by Invoices dated within the period of claim	4,015.16
Input VAT supported by Invoices/ORs which do not have vendor's signature	340,097.60
Adjusted Input VAT disallowances per ICPA Report	P1,186,960.39

In addition to the exceptions amounting to P1,186,960.39 noted by the Independent CPA, this Court finds that the input taxes in the amount of P928,856.41 shall be disallowed for the following reasons:

	Supplier's Name	Exhibit	Input VAT
1.)	<i>Input VAT supported by documents other than Invoice/OR</i>		
	Asia Pacific Express	"QQ-018"	P 13,630.57
	Shin Yang Brokerage	"QQ-064"	13,523.56
	Mitsubishi Corporation	"VV-061"	58,864.58
2.)	<i>Input VAT supported by an invoice which was not formally offered and with TIN-V instead of TIN-VAT</i>		
	Jera General Construction	"WW-921"	103,749.12
3.)	<i>Input VAT on purchase of vehicles with engine displacement of more than 2000 cc</i>		
	Wheel, Inc.	"RR-058"	140,909.09
4.)	<i>Input VAT on purchase of services without supporting OR</i>		
	Mitsubishi Corporation	"SS-097"	50,523.88
5.)	<i>Input VAT supported by Invoices/ORs with preprinted "TIN-V" instead of "TIN-VAT"</i>		
	Joel Chavez Equipment	"QQ-022"	65,312.95

	Typo Grafika	"QQ-028"	136.36
	Typo Grafika	"QQ-030"	95.45
	Jacos Industrial Corporation	"RR-036"	2,570.70
	Jacos Industrial Corporation	"RR-043"	1,315.24
	Ditan Precission	"SS-024"	15,363.64
	Jacos Industrial Corporation	"TT-017"	1,321.92
	Jacos Industrial Corporation	"TT-024"	612.57
	GAD Builders	"TT-051"	10,039.50
	GAD Builders	"UU-014"	34,868.23
	Society Glass and Aluminum	"UU-020"	3,055.36
	Jacos Industrial Corporation	"UU-079"	2,641.82
	MOF Company	"VV-022"	22,650.00
	MOF Company	"VV-027"	14,550.00
	Fleet Maintenance	"VV-038"	14,272.73
	Remigayle Emission	"VV-052"	54.55
	State Construction & Mill	"WW-047"	2,149.09
	DMB Fire & Safety	"WW-053"	1,745.45
	Jera General Construction	"WW-055"	9,361.97
	Standphil Corporation	"WW-071"	87,930.50
	Joel Chavez	"WW-079"	75,610.00
	MOF Company	"WW-080"	14,550.00
	MOF Company	"WW-081"	22,050.00
	MOF Company	"WW-082"	6,150.00
	MOF Company	"XX-011"	198.00
	MOF Company	"XX-014"	6,150.00
	L. Armani Trading	"XX-030"	2,392.73
	State Construction & Mill	"XX-034"	3,217.27
	Pumpcraft Industrial Sales	"XX-038"	2,127.27
	MOF Company	"XX-085"	3,000.00
	ARB Commercial	"YY-011"	2,672.73
	MAC Tycoon Marketing	"YY-041"	2,882.32
	MOF Company	"YY-076"	3,825.00
	Jacos Industrial Corporation	"YY-092"	2,827.30
	Virgin of Carmel Enterprises	"ZZ-008"	960.45
	State Construction & Mill	"ZZ-079"	586.36
	State Construction & Mill	"ZZ-080"	1,335.45
	State Construction & Mill	"ZZ-081"	435.64
	Typo Grafika	"ZZ-111"	50.91
6.)	Input VAT on purchase of services supported by an OR without the word "VAT" after the seller's TIN		
	D & F Marble	"QQ-032"	11,454.55
7.)	Input VAT on importations supported only by BOC IEIRDs which do not have machine validation		
	Fuji Trading	"CCC-011"	26.00

	Ametek	"CCC-012"	1,422.00
	Emerson Process	"DDD-006"	89.00
	Sullair Corporation	"DDD-007"	71.00
	AVM Compnay	"DDD-011"	88.00
8.)	<i>Input VAT supported by Invoices/ORs not within the period of claim</i>		
	Commonwealth Insurance	"QQ-026"	4,589.00
	London Industrial	"QQ-035"	88,846.60
		Total	P928,856.41

Therefore, out of the total claimed input taxes of P73,711,581.30, only the amount of P71,595,764.50 is duly substantiated by the required documentary evidence under Sections 110(A) and 113(A) 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, which is computed as follows:

Amount of Claim		P73,711,581.30
Less:	Disallowances	
	Per ICPA Report	1,186,960.39
	Per this Court's verification	928,856.41
Substantiated Input VAT		P71,595,764.50

As to the third and fourth requisites, petitioner's Quarterly VAT Returns for the first three quarters of 2005²⁷ and Monthly VAT Declaration for October 2005²⁸ showed that it only had zero-rated sales/receipts. This means that the substantiated input VAT of P71,595,764.50 was not applied against any output VAT and can be entirely attributed to the reported zero-rated sales/receipts of P5,711,834,420.80. Although the claimed input tax was carried over in petitioner's Monthly VAT Declaration for November 2005²⁹, the same was

²⁷ Exhibits "F", "I", and "L"

²⁸ Exhibit "M"

²⁹ Exhibit "N"



deducted as "VAT Refund/TCC Claimed"³⁰ from the Total Available Input Tax as of November 30, 2005. Hence, petitioner could not have possibly utilized the claimed input tax in the succeeding quarters.

Finally, with reference to the requisite that the claim for refund must be filed within the two-year period provided by law, this Court finds that petitioner's claim was seasonably filed. The reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund commences from the date of filing of the corresponding Quarterly VAT Return.³¹ The earliest period covered by the instant claim is the first quarter of 2005, for which petitioner filed its Quarterly VAT Return on April 25, 2005.³² Petitioner had until April 25, 2007, at the earliest, within which to file the instant claim both, in the administrative and judicial levels. Clearly, the administrative claims filed on October 28, 2005³³ and December 7, 2005³⁴, as well as the Petition for Review filed on April 24, 2007, fall within the two-year prescriptive period.

In sum, this Court finds petitioner to have sufficiently proven that it is entitled to a refund representing unutilized input VAT attributable to zero-rated sales for the period covering January 1, 2005 to October 31, 2005, but in the reduced amount of P71,595,764.50.

WHEREFORE, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** in

³⁰ Exhibit "N-4"

³¹ Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 141104 and 148763, June 8, 2007

³² Exhibit "F-1"

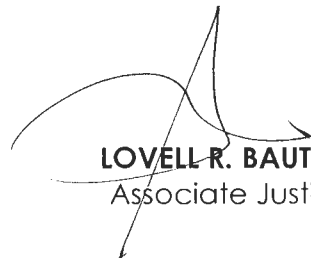
³³ Exhibit "O-1"

³⁴ Exhibit "P-1"



favor of petitioner the reduced amount of P71,595,764.50, representing petitioner's unutilized excess input VAT attributable to its zero-rated sales of electricity to NPC for the period covering January 1, 2005 to October 31, 2005.

SO ORDERED.



LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:
*See attached Concurring
Decision; Enuncin
by Palanca, Enr. 33*
OLGA PALANCA-ENRIQUEZ
Associate Justice



AMELIA COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

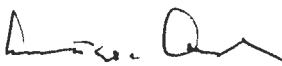
I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



LOVELL R. BAUTISTA
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