

THIRD DIVISION

[G.R. No. 180345, November 25, 2009]

**SAN ROQUE POWER CORPORATION, PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

DECISION

CHICO-NAZARIO, J.:

In this Petition for Review on *Certiorari*, under Rule 45 of the Revised Rules of Court, petitioner San Roque Power Corporation assails the Decision^[1] of the Court of Tax Appeals (CTA) *En Banc* dated 20 September 2007 in CTA EB No. 248, affirming the Decision^[2] dated 23 March 2006 of the CTA Second Division in CTA Case No. 6916, which dismissed the claim of petitioner for the refund and/or issuance of a tax credit certificate in the amount of Two Hundred Forty-Nine Million Three Hundred Ninety-Seven Thousand Six Hundred Twenty Pesos and 18/100 (P249,397,620.18) allegedly representing unutilized input Value Added Tax (VAT) for the period covering January to December 2002.

Respondent, as the Commissioner of the Bureau of Internal Revenue (BIR), is responsible for the assessment and collection of all national internal revenue taxes, fees, and charges, including the Value Added Tax (VAT), imposed by Section 108^[3] of the National Internal Revenue Code (NIRC) of 1997. Moreover, it is empowered to grant refunds or issue tax credit certificates in accordance with Section 112 of the NIRC of 1997 for unutilized input VAT paid on zero-rated or effectively zero-rated sales and purchases of capital goods, to wit:

SEC. 112. Refunds or Tax Credits of Input Tax. -

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

(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 the 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.

On the other hand, petitioner is a domestic corporation organized under the corporate laws of the Republic of the Philippines. On 14 October 1997, it was incorporated for the sole purpose of building and operating the San Roque Multipurpose Project in San Manuel, Pangasinan, which is an indivisible project consisting of the power station, the dam, spillway, and other related facilities.^[4] It is registered with the Board of Investments (BOI) on a preferred pioneer status to engage in the design, construction, erection, assembly, as well as own, commission, and operate electric power-generating plants and related activities, for which it was issued the Certificate of Registration No. 97-356 dated 11 February 1998.^[5] As a seller of services, petitioner is registered with the BIR as a VAT taxpayer under Certificate of Registration No. OCN-98-006-007394.^[6]

On 11 October 1997, petitioner entered into a Power Purchase Agreement (PPA) with the National Power Corporation (NPC) to develop the hydro potential of the Lower Agno River, and to be able to generate additional power and energy for the Luzon Power Grid, by developing and operating the San Roque Multipurpose Project. The PPA provides that petitioner shall be responsible for the design, construction, installation, completion and testing and commissioning of the Power Station and it shall operate and maintain the same, subject to the instructions of the NPC. During the cooperation period of 25 years commencing from the completion date of the Power Station, the NPC shall purchase all the electricity generated by the Power Plant.^[7]

Because of the exclusive nature of the PPA between petitioner and the NPC, petitioner applied for and was granted five Certificates of Zero Rate by the BIR, through the Chief Regulatory Operations Monitoring Division, now the Audit Information, Tax Exemption & Incentive Division. Based on these certificates, the zero-rated status of petitioner commenced on 27 September 1998 and continued throughout the year 2002.^[8]

For the period January to December 2002, petitioner filed with the respondent its Monthly VAT Declarations and Quarterly VAT Returns. Its Quarterly VAT Returns showed excess input VAT payments on account of its importation and domestic purchases of goods and services, as follows^[9]:

Period Covered	Date Filed	Particulars	Amount
1 st Quarter (January 1, 2002)	April 20, 2002	Tax Due for the Quarter (Box 13C)	P 26,247.27
		Input Tax carried over from previous qtr (22B)	296,124,429.21
		Input VAT on Domestic Purchases for the Qtr	

to March 31, 2002)		(22D)	95,003,348.91
		Input VAT on Importation of Goods for the Qtr	
		(22F)	20,758,668.00
		Total Available Input tax (23)	411,886,446.12
		VAT Refund/TCC Claimed (24A)	173,909,435.66
		Net Creditable Input Tax (25)	237,977,010.46
		VAT payable (Excess Input Tax) (26)	(237,950,763.19)
		Tax Payable (overpayment) (28)	(237,950,763.19)

2 nd Quarter (April 1, 2002 to June 30, 2002)	July 24, 2002	Tax Due for the Quarter (Box 13C)	P blank
		Input Tax carried over from previous qtr (22B)	237,950,763.19
		Input VAT on Domestic Purchases for the Qtr	
		(22D)	65,206,499.83
		Input VAT on Importation of Goods for the Qtr	
		(22F)	18,485,758.00
		Total Available Input tax (23)	321,643,021.02
		VAT Refund/TCC Claimed (24A)	237,950,763.19
		Net Creditable Input Tax (25)	83,692,257.83
		VAT payable (Excess Input Tax) (26)	(83,692,257.83)
		Tax Payable (overpayment) (28)	(83,692,257.83)

3 rd Quarter (July 1, 2002 to September 30, 2002)	October 25, 2002	Tax Due for the Quarter (Box 13C)	P blank
		Input Tax carried over from previous qtr (22B)	199,428,027.47
		Input VAT on Domestic Purchases for the Qtr	
		(22D)	28,924,020.79
		Input VAT on Importation of Goods for the Qtr	
		(22F)	1,465,875.00
		Total Available Input tax (23)	229,817,923.26
		VAT Refund/TCC Claimed (24A)	Blank
		Net Creditable Input Tax (25)	229,817,923.26
		VAT payable (Excess Input Tax) (26)	(229,817,923.26)
		Tax Payable (overpayment) (28)	(229,817,923.26)

4 th Quarter (October 1, 2002 to	January 23, 2003	Tax Due for the Quarter (Box 13C)	P 34,996.36
		Input Tax carried over from previous qtr (22B)	114,082,153.62
		Input VAT on Domestic Purchases for the Qtr	
		(22D)	18,166,330.54

December 31, 2002)	Input VAT on Importation of Goods for the Qtr (22F)	2,308,837.00
	Total Available Input tax (23)	134,557,321.16
	VAT Refund/TCC Claimed (24A)	83,692,257.83
	Net Creditable Input Tax (25)	50,865,063.33
	VAT payable (Excess Input Tax) (26)	(50,830,066.97)
	Tax Payable (overpayment) (28)	(50,830,066.97)

On 19 June 2002, 25 October 2002, 27 February 2003, and 29 May 2003, petitioner filed with the BIR four separate administrative claims for refund of Unutilized Input VAT paid for the period January to March 2002, April to June 2002, July to September 2002, and October to December 2002, respectively. In these letters addressed to the BIR, Carlos Echevarria (Echevarria), the Vice President and Director of Finance of petitioner, explained that petitioner's sale of power to NPC are subject to VAT at zero percent rate, in accordance with Section 108(B)(3) of the NIRC.^[10] Petitioner sought to recover the total amount of P250,258,094.25, representing its unutilized excess VAT on its importation of capital and other taxable goods and services for the year 2002, broken down as follows^[11]:

Qtr Involved	Output Tax	Input Tax		
		Domestic Purchases	Importations	Excess Input Tax
	(A)	(B)	(C)	(D) = (B) + (C) - (A)
1 st	P 26,247.27	P95,003,348.91	P20,758,668.00	P115,735,769.84
2 nd	-	65,206,499.83	18,485,758.00	83,692,257.83
3 rd	-	28,924,020.79	1,465,875.00	30,389,895.79
4 th	34,996.36	18,166,330.54	2,308,837.00	20,440,171.18
	P61,243.63	P207,300,200.07	P43,019,138.00	P250,258,094.44

Petitioner amended its Quarterly VAT Returns, particularly the items on (1) Input VAT on Domestic Purchases during the first quarter of 2002; (2) Input VAT on Domestic Purchases for the fourth quarter of 2002; and (3) Input VAT on Importation of Goods for the fourth quarter of 2002. The amendments read as follows^[12]:

Period Covered	Date Filed	Particulars	Amount
1 st Quarter (January 1, 2002	April 24, 2003	Tax Due for the Quarter (Box 13C)	P 26,247.27
		Input Tax carried over from previous qtr (22B)	297,719,296.25
		Input VAT on Domestic Purchases for the Qtr	

to March 31, 2002)	(22D)	95,126,981.69
	(22F)	20,758,668.00
	Total Available Input tax (23)	413,604,945.94
	VAT Refund/TCC Claimed (24A)	175,544,002.27
	Net Creditable Input Tax (25)	175,544,002.27
	VAT payable (Excess Input Tax) (26)	(238,060,943.67)
	Tax Payable (overpayment) (28)	(238,034,696.40)

2 nd Quarter (April 1, 2002 to June 30, 2002)	April 24, 2003	Tax Due for the Quarter (Box 13C)	P blank
		Input Tax carried over from previous qtr (22B)	238,034,696.40
		Input VAT on Domestic Purchases for the Qtr	
		(22D)	65,206,499.83
		Input VAT on Importation of Goods for the Qtr	
		(22F)	18,485,758.00
		Total Available Input tax (23)	321,643,021.02
		VAT Refund/TCC Claimed (24A)	237,950,763.19
		Net Creditable Input Tax (25)	83,692,257.83
		VAT payable (Excess Input Tax) (26)	(83,692,257.83)
		Tax Payable (overpayment) (28)	(83,692,257.83)

3 rd Quarter (July 1, 2002 to September 30, 2002)	October 25, 2002	Tax Due for the Quarter (Box 13C)	P blank
		Input Tax carried over from previous qtr (22B)	83,692,257.83
		Input VAT on Domestic Purchases for the Qtr	
		(22D)	28,924,020.79
		Input VAT on Importation of Goods for the Qtr	
		(22F)	1,465,875.00
		Total Available Input tax (23)	114,082,153.62
		VAT Refund/TCC Claimed (24A)	Blank
		Net Creditable Input Tax (25)	114,082,153.62
		VAT payable (Excess Input Tax) (26)	(114,082,153.62)
		Tax Payable (overpayment) (28)	(114,082,153.62)

4 th Quarter (October 1, 2002 to December 31, 2002)	January 23, 2003	Tax Due for the Quarter (Box 13C)	P 34,996.36
		Input Tax carried over from previous qtr (22B)	114,082,153.62
		Input VAT on Domestic Purchases for the Qtr	
		(22D)	17,918,056.50
		Input VAT on Importation of Goods	