

FIRST DIVISION

[G.R. No. 179356, December 14, 2009]

KEPCO PHILIPPINES CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

Korea Electric Power Corporation (KEPCO) Philippines Corporation (petitioner) is an independent power producer engaged in selling electricity to the National Power Corporation (NPC).

After its incorporation and registration with the Securities and Exchange Commission on June 15, 1995, petitioner forged a Rehabilitation Operation Maintenance and Management Agreement with NPC for the rehabilitation and operation of Malaya Power Plant Complex in Pililia, Rizal.^[1]

On September 30, 1998, petitioner filed with the Commissioner of Internal Revenue (respondent) administrative claims for tax refund in the amounts of P4,895,858.01 representing unutilized input Value Added Tax (VAT) payments on domestic purchases of goods and services for the 3rd quarter of 1996 and P4,084,867.25 representing creditable VAT withheld from payments received from NPC for the months of April and June 1996.

Petitioner also filed a judicial claim before the Court of Tax Appeals (CTA), docketed as CTA Case No. 5765, also based on the above-stated amounts.

Petitioner filed before respondent on December 28, 1998 still another claim for refund representing unutilized input VAT payments attributable to its zero-rated sale transactions with NPC, including input VAT payments on domestic goods and services in the amount of P13,191,278.00 for the 4th quarter of 1996. Petitioner also filed the same claim before the CTA on December 29, 1998, docketed as CTA Case No. 5704.

The two petitions before the CTA for a refund in the total amount of P22,172,003.26 were consolidated.

In his report, the court-commissioned auditor, Ruben R. Rubio, concluded that the claimed amount of P20,550,953.93 was properly substantiated for VAT purposes and subject of a valid refund.

By Decision of March 18, 2003, the CTA granted petitioner partial refund with respect to **unutilized input VAT payment on domestic goods and services qualifying as capital goods** purchased for the 3rd and 4th quarters of 1996 in the amount of P8,325,350.35. All other claims were disallowed.

Petitioner filed an urgent motion for reconsideration, claiming an additional amount of P5,012,875.67.

By Resolution of July 8, 2003,^[2] the CTA denied petitioner's motion, it holding that part of the additional amount prayed for â" P1,557,676.13 â" involved purchases for the year 1997, and with respect to the remaining amount of P3,455,199.54, it was not recorded under depreciable asset accounts, hence, it cannot be considered as capital goods.

Petitioner appealed under Rule 43 of the Rules of Court before the Court of Appeals,^[3] praying only for the refund of P3,455,199.54, claiming that the purchases represented thereby were used in the rehabilitation of the Malaya Power Plant Complex which should be considered as capital expense to fall within the purview of capital goods.

The appellate court, by Decision of December 11, 2006, **affirmed** that of the CTA. In arriving at its decision, the appellate court considered, among other things, the account vouchers submitted by petitioner which listed the purchases under inventory accounts as follows:

- 1) Inventory supplies/materials
- 2) Inventory supplies/lubricants
- 3) Inventory supplies/spare parts
- 4) Inventory supplies/supplies
- 5) Cost/O&M Supplies
- 6) Cost/O&M Uniforms and Working Clothes
- 7) Cost/O&M/Supplies
- 8) Cost/O&M/Repairs and Maintenance
- 9) Office Supplies
- 10) Repair and Maintenance/Mechanics
- 11) Repair and Maintenance/Common/General
- 12) Repair and Maintenance/Chemicals

Reconsideration of the appellate court's decision having been denied by Resolution of August 17, 2007, the present petition for review on certiorari was filed.

In the main, petitioner faults the appellate court for not considering the purchases amounting to P3,455,199.54 as falling under the definition of "capital goods."

The petition is bereft of merit.

Section 4.106-1 (b) of Revenue Regulations No. 7-95 defines capital goods and its scope in this wise:

x x x x

(b) Capital Goods. - Only a VAT-registered person may apply for issuance of a tax credit certificate or refund of input taxes paid on capital goods