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THIRD DIVISION

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

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

D E C I S I O N

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
1st Quarter (January 1, 2002 to March 31, 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 (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)

2nd 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)

3rd 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)

4th 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)	18,166,330.54
		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)
1st	P 26,247.27	P95,003,348.91	P20,758,668.00	P115,735,769.84
2nd	-	65,206,499.83	18,485,758.00	83,692,257.83
3rd	-	28,924,020.79	1,465,875.00	30,389,895.79
4th	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
1st Quarter (January 1, 2002 to March 31, 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 (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)

2nd 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)

3rd 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)

4th 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 for the Qtr	
		(22F)	1,573,004.00
		Total Available Input tax (23)	133,573,214.12
		VAT Refund/TCC Claimed (24A)	83,692,257.83
		Net Creditable Input Tax (25)	49,880,956.29
		VAT payable (Excess Input Tax) (26)	(49,845,959.93)
		Tax Payable (overpayment) (28)	(49,845,959.93)

On 30 May 2003 and 31 July 2003, petitioner filed two letters with the BIR to amend its claims for tax refund or credit for the first and fourth quarter of 2002, respectively. Petitioner sought to recover a total amount of P249,397,620.18 representing its unutilized excess VAT on its importation and domestic purchases of goods and services for the year 2002, broken down as follows[13]:

Qtr Involved	Date Filed	Output Tax	Input Tax		
			Domestic Purchases	Importations	Excess Input Tax
		(A)	(B)	(C)	(D) = (B) + (C) - (A)
1st	30-May-03	P 26,247.27	P95,126,981.69	P20,758,668.00	P115,859,402.42
2nd	25-Oct-02	-	65,206,499.83	18,185,758.00	83,692,257.83
3rd	27-Feb-03	-	28,924,920.79	1,465,875,00	30,389,895.79
4th	31-Jul-03	34,996.36	17,918,056.50	1,573,004.00	19,456,064.14
		P61,243.63	P207,175,558.81	P42,283,305.00	P249,397,620.18

Respondent failed to act on the request for tax refund or credit of petitioner, which prompted the latter to file on 5 April 2004, with the CTA in Division, a Petition for Review, docketed as CTA Case No. 6916 before it could be barred by the two-year prescriptive period within which to file its claim. Petitioner sought the refund of the amount of

P249,397,620.18 representing its unutilized excess VAT on its importation and local purchases of various goods and services for the year 2002.[14]

During the proceedings before the CTA Second Division, petitioner presented the following documents, among other pieces of evidence: (1) Petitioner's Amended Quarterly VAT return for the 4th Quarter of 2002 marked as Exhibit "A," showing the amount of P42,500,000.00 paid by NTC to petitioner for all the electricity produced during test runs; (2) the special audit report, prepared by the CPA firm of Punongbayan and Araullo through a partner, Angel A. Aguilar (Aguilar), and the attached schedules, marked as Exhibits "J-2" to "J-21"; (3) Sales Invoices and Official Receipts and related documents issued to petitioner for the year 2002, marked as Exhibits "J-4-A1" to "J-4-L265"; (4) Audited Financial Statements of Petitioner for the year 2002, with comparative figures for 2001, marked as Exhibit "K"; and (5) the Affidavit of Echevarria dated 9 February 2005, marked as Exhibit "L".[15]

During the hearings, the parties jointly stipulated on the issues involved:

1. Whether or not petitioner's sales are subject to value-added taxes at effectively zero percent (0%) rate;

2. Whether or not petitioner incurred input taxes which are attributable to its effectively zero-rated transactions;

3. Whether or not petitioner's importation and purchases of capital goods and related services are within the scope and meaning of "capital goods" under Revenue Regulations No. 7-95;

4. Whether or not petitioner's input taxes are sufficiently substantiated with VAT invoices or official receipts;

5. Whether or not the VAT input taxes being claimed for refund/tax credit by petitioner (had) been credited or utilized against any output taxes or (had) been carried forward to the succeeding quarter or quarters; and

6. Whether or not petitioner is entitled to a refund of VAT input taxes it paid from January 1, 2002 to December 31, 2002 in the total amount of Two Hundred Forty Nine Million Three Hundred Ninety Seven Thousand Six Hundred Twenty and 18/100 Pesos (P249,397,620.18).

Simply put, the issue is: whether or not petitioner is entitled to refund or tax credit in the amount of P249,397,620.18 representing its unutilized input VAT paid on importation and purchases of capital and other taxable goods and services from January 1 to December 31, 2002.

After a hearing on the merits, the CTA Second Division rendered a Decision[16] dated 23 March 2006 denying petitioner's claim for tax refund or credit. The CTA noted that petitioner based its claim on creditable input VAT paid, which is attributable to (1) zero-rated or effectively zero-rated sale, as provided under Section 112(A) of the NIRC, and (2) purchases of capital goods, in accordance with Section 112(B) of the NIRC. The court ruled that in order for petitioner to be entitled to the refund or issuance of a tax credit certificate on the basis of Section 112(A) of the NIRC, it must establish that it had incurred zero-rated sales or effectively zero-rated sales for the taxable year 2002. Since records show that petitioner did not make any zero-rated or effectively-zero rated sales for the taxable year 2002, the CTA reasoned that petitioner's claim must be denied. Parenthetically, the court declared that the claim for tax refund or credit based on Section 112(B) of the NIRC requires petitioner to prove that it paid input VAT on capital goods purchased, based on the definition of capital goods provided under Section 4.112-1(b) of Revenue Regulations No. 7-95--*i.e.*, goods or properties which have an estimated useful life of greater than one year, are treated as depreciable assets under Section 34(F) of the NIRC, and are used directly or indirectly in the production or sale of taxable goods and services. The CTA found that the evidence offered by petitioner--the suppliers' invoices and official receipts and Import Entries and Internal Revenue Declarations and the audit report of the Court-commissioned Independent Certified Public Accountant (CPA) are insufficient to prove that the importations and domestic purchases were classified as capital goods and properties entered as part of the "Property, Plant and Equipment" account of the petitioner. The dispositive part of the said Decision reads:

> **WHEREFORE,** the instant Petition for Review is **DENIED** for lack of merit. [17]

Not satisfied with the foregoing Decision dated 23 March 2006, petitioner filed a Motion for Reconsideration which was denied by the CTA Second Division in a Resolution dated 4 January 2007.[18]

Petitioner filed an appeal with the CTA *En Banc*, docketed as CTA EB No. 248. The CTA *En Banc* promulgated its Decision[19] on 20 September 2007 denying petitioner's appeal. The CTA *En Banc* reiterated the ruling of the Division that petitioner's claim based on Section 112(A) of the NIRC should be denied since it did not present any records of any zero-rated or effectively zero-rated transactions. It clarified that since petitioner failed to prove that any sale of its electricity had transpired, petitioner may base its claim only on Section 112(B) of the NIRC, the provision governing the purchase of capital goods. The court noted that the report of the Court-commissioned auditing firm, Punongbayan & Araullo, dealt specifically with the unutilized input taxes paid or incurred by petitioner on its local and foreign purchases of goods and services attributable to its zero-rated sales, and not to purchases of capital goods. It decided that petitioner failed to prove that the purchases evidenced by the invoices and receipts, which petitioner presented, were classified as capital goods which formed part of its "Property, Plant and Equipment," especially since petitioner failed to present its books of account. The dispositive part of the said Decision reads:

> **WHEREFORE,** premises considered, the instant petition is hereby **DISMISSED**. Accordingly, the assailed Decision and Resolution are hereby **AFFIRMED**.[20]

The CTA *En Banc* denied petitioner's Motion for Reconsideration in a Resolution dated 22 October 2007.[21]

Hence, the present Petition for Review where the petitioner raises the following errors allegedly committed by the CTA *En banc*:

> I
>
> THE COURT OF TAX APPEALS *EN BANC* COMMITTED SERIOUS ERROR AND ACTED WITH GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION IN FAILING OR REFUSING TO APPRECIATE THE OVERWHELMING AND UNCONTROVERTED EVIDENCE SUBMITTED BY THE PETITIONER, THUS DEPRIVING PETITIONER OF ITS PROPERTY WITHOUT DUE PROCESS; AND
>
> II
>
> THE COURT OF TAX APPEALS COMMITTED SERIOUS ERROR AND ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT THE ABSENCE OF ZERO-RATED SALES BY PETITIONER DURING THE YEAR COVERED BY THE CLAIM FOR REFUND DOES NOT ENTITLE PETITIONER TO A REFUND OF ITS EXCESS VAT INPUT TAXES ATTRIBUTABLE TO ZERO-RATED SALES, CONTRARY TO PROVISIONS OF LAW.[22]

The present Petition is meritorious.

The main issue in this case is whether or not petitioner may claim a tax refund or credit in the amount of P249,397,620.18 for creditable input tax attributable to zero-rated or effectively zero-rated sales pursuant to Section 112(A) of the NIRC or for input taxes paid on capital goods as provided under Section 112(B) of the NIRC.

To resolve the issue, this Court must re-examine the facts and the evidence offered by the parties. It is an accepted doctrine that this Court is not a trier of facts. It is not its function to review, examine and evaluate or weigh the probative value of the evidence presented. However, this rule does not apply where the judgment is premised on a misapprehension of facts, or when the appellate court failed to notice certain relevant facts which if considered would justify a different conclusion.[23]

After reviewing the records, this Court finds that petitioner's claim for refund or credit is

justified under Section 112(A) of the NIRC which states that:

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.

To claim refund or tax credit under Section 112(A), petitioner must comply with the following criteria: (1) the taxpayer is VAT registered; (2) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (3) the input taxes are due or paid; (4) the input taxes are not transitional input taxes; (5) the input taxes have not been applied against output taxes during and in the succeeding quarters; (6) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (7) for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations; (8) where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and (9) the claim is filed within two years after the close of the taxable quarter when such sales were made.[24]

Based on the evidence presented, petitioner complied with the abovementioned requirements. Firstly, petitioner had adequately proved that it is a VAT registered taxpayer when it presented Certificate of Registration No. OCN-98-006-007394, which it attached to its Petition for Review dated 29 March 2004 filed before the CTA in Division. Secondly, it is unquestioned that petitioner is engaged in providing electricity for NPC, an activity which is subject to zero rate, under Section 108(B)(3) of the NIRC. Thirdly, petitioner offered as evidence suppliers' VAT invoices or official receipts, as well as Import Entries and Internal Revenue Declarations (Exhibits "J-4-A1" to "J-4-L265"), which were examined in the audit conducted by Aguilar, the Court-commissioned Independent CPA. Significantly, Aguilar noted in his audit report (Exhibit "J-2") that of the P249,397,620.18 claimed by petitioner, he identified items with incomplete documentation and errors in

computation with a total amount of P3,266,009.78. Based on these findings, the remaining input VAT of P246,131,610.40 was properly documented and recorded in the books. The said report reads:

> In performing the procedures referred under the Procedures Performed section of this report, no matters came to our attention that cause us to believe that the amount of input VAT applied for as tax credit certificate/refund of P249,397,620.18 for the period January 1, 2002 to December 31, 2002 should be adjusted except for input VAT claimed with incomplete documentation, those with various and other exceptions on the supporting documents and those with errors in computation totaling P3,266,009.78, as discussed in the Findings and Results of the Agreed-Upon Audit Procedures Performed sections of this report. We have also ascertained that the input VAT claimed are properly recorded in the books and, except as specifically identified in the Findings and Results of the Agreed-Upon Audit Procedures Performed sections of this report, are properly supported by original and appropriate suppliers' VAT invoices and/or official receipts.[25]

Fourthly, the input taxes claimed, which consisted of local purchases and importations made in 2002, are not transitional input taxes, which Section 111 of the NIRC defines as input taxes allowed on the beginning inventory of goods, materials and supplies.[26] Fifthly, the audit report of Aguilar affirms that the input VAT being claimed for tax refund or credit is net of the input VAT that was already offset against output VAT amounting to P26,247.27 for the first quarter of 2002 and P34,996.36 for the fourth quarter of 2002,[27] as reflected in the Quarterly VAT Returns.[28]

The main dispute in this case is whether or not petitioner's claim complied with the sixth requirement--the existence of zero-rated or effectively zero-rated sales, to which creditable input taxes may be attributed. The CTA in Division and *en banc* denied petitioner's claim solely on this ground. The tax courts based this conclusion on the audited report, marked as Exhibit "J-2," stating that petitioner made no sale of electricity to NPC in 2002.[29] Moreover, the affidavit of Echevarria (Exhibit "L"), petitioner's Vice President and Director for Finance, contained an admission that no commercial sale of electricity had been made in favor of NPC in 2002 since the project was still under construction at that time.[30]

However, upon closer examination of the records, it appears that on 2002, petitioner carried out a "sale" of electricity to NPC. The fourth quarter return for the year 2002, which petitioner filed, reported a zero-rated sale in the amount of P42,500,000.00.[31] In the Affidavit of Echevarria dated 9 February 2005 (Exhibit "L"), which was uncontroverted by respondent, the affiant stated that although no commercial sale was made in 2002, petitioner produced and transferred electricity to NPC during the testing period in exchange for the amount of P42,500,000.00, to wit:[32]

A: San Roque Power Corporation has had no sale yet during 2002. The P42,500,000.00 which was paid to us by Napocor was something similar to a more cost recovery scheme. The pre-agreed amount would be about equal to our costs for producing the electricity during the testing period and we just reflected this in our 4th quarter return as a zero-rated sale. x x x.

The Court is not unmindful of the fact that the transaction described hereinabove was not a commercial sale. In granting the tax benefit to VAT-registered zero-rated or effectively zero-rated taxpayers, Section 112(A) of the NIRC does not limit the definition of "sale" to commercial transactions in the normal course of business. Conspicuously, Section 106(B) of the NIRC, which deals with the imposition of the VAT, does not limit the term "sale" to commercial sales, rather it extends the term to transactions that are "**deemed**" sale, which are thus enumerated:

SEC 106. **Value-Added Tax on Sale of Goods or Properties**.

x x x x

(B) *Transactions Deemed Sale*.--The following transactions shall be deemed sale:

(1) Transfer, use or consumption not in the course of business of goods or properties originally intended for sale or for use in the course of business;

(2) Distribution or transfer to:

(a) Shareholders or investors as share in the profits of the VAT-registered persons; or

(b) Creditors in payment of debt;

(3) Consignment of goods if actual sale is not made within sixty (60) days following the date such goods were consigned; and

(4) Retirement from or cessation of business, with respect to inventories of taxable goods existing as of such retirement or cessation. (Our emphasis.)

After carefully examining this provision, this Court finds it an equitable construction of the law that when the term "sale" is made to include certain transactions for the purpose of imposing a tax, these same transactions should be included in the term "sale" when considering the availability of an exemption or tax benefit from the same revenue measures. It is undisputed that during the fourth quarter of 2002, petitioner transferred to NPC all the electricity that was produced during the trial period. The fact that it was not transferred through a commercial sale or in the normal course of business does not deflect from the fact that such transaction is deemed as a sale under the law.

The seventh requirement regarding foreign currency exchange proceeds is inapplicable where petitioner's zero-rated sale of electricity to NPC did not involve foreign exchange and consisted only of a single transaction wherein NPC paid petitioner P42,500,000.00 in exchange for the electricity transferred to it by petitioner. Similarly, the eighth requirement is inapplicable to this case, where the only sale transaction consisted of an effectively zero-rated sale and there are no exempt or taxable sales that transpired, which will require the proportionate allocation of the creditable input tax paid.

The last requirement determines that the claim should be filed within two years after the close of the taxable quarter when such sales were made. The sale of electricity to NPC was reported at the fourth quarter of 2002, which closed on 31 December 2002. Petitioner had until 30 December 2004 to file its claim for refund or credit. For the period January to March 2002, petitioner filed an amended request for refund or tax credit on 30 May 2003; for the period July 2002 to September 2002, on 27 February 2003; and for the period October 2002 to December 2002, on 31 July 2003.[33] In these three quarters, petitioners seasonably filed its requests for refund and tax credit. However, for the period April 2002 to May 2002, the claim was filed prematurely on 25 October 2002, before the last quarter had closed on 31 December 2002.[34]

Despite this lapse in procedure, this Court notes that petitioner was able to positively show that it was able to accumulate excess input taxes on various importations and local purchases in the amount of P246,131,610.40, which were attributable to a transfer of electricity in favor of NPC. The fact that it had filed its claim for refund or credit during the quarter when the transfer of electricity had taken place, instead of at the close of the said quarter does not make petitioner any less entitled to its claim. Given the special circumstances of this case, wherein petitioner was incorporated for the sole purpose of constructing or operating a power plant that will transfer all the electricity it generates to NPC, there is no danger that petitioner would try to fraudulently claim input tax paid on purchases that will be attributed to sale transactions that are not zero-rated. Substantial justice, equity and fair play are on the side of the petitioner. Technicalities and legalisms, however, exalted, should not be misused by the government to keep money not belonging to it, thereby enriching itself at the expense of its law abiding citizens.

> Substantial justice, equity and fair play are on the side of petitioner. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it, thereby enriching itself at the expense of its law-abiding citizens. Under the principle of *solutio indebiti* provided in Art. 2154, Civil Code, the BIR received something "when there [was] no right to demand it," and thus, it has the obligation to return it. Heavily militating against respondent Commissioner is the ancient principle that no one, not even the State, shall enrich oneself at the expense of another. Indeed, simple justice requires the speedy refund of the wrongly held taxes.[35]

It bears emphasis that effective zero-rating is not intended as a benefit to the person legally

liable to pay the tax, such as petitioner, but to relieve certain exempt entities, such as the NPC, from the burden of indirect tax so as to encourage the development of particular industries. Before, as well as after, the adoption of the VAT, certain special laws were enacted for the benefit of various entities and international agreements were entered into by the Philippines with foreign governments and institutions exempting sale of goods or supply of services from indirect taxes at the level of their suppliers. Effective zero-rating was intended to relieve the exempt entity from being burdened with the indirect tax which is or which will be shifted to it had there been no exemption. In this case, petitioner is being exempted from paying VAT on its purchases to relieve NPC of the burden of additional costs that petitioner may shift to NPC by adding to the cost of the electricity sold to the latter.[36]

Section 13 of Republic Act No. 6395, otherwise known as the NPC Charter, further clarifies that it is the lawmakers' intention that NPC be made completely exempt from all taxes, both direct and indirect:

> Sec. 13. *Non-profit Character of the Corporation; Exemption from all Taxes, Duties, Fees, Imposts and Other Charges by Government and Governmental Instrumentalities*. - The corporation shall be non-profit and shall devote all its returns from its capital investment, as well as excess revenues from its operation, for expansion. To enable the corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section 1 of this Act, the corporation is hereby declared exempt:
>
> (a) From the payment of all taxes, duties, fees, imposts, charges, costs and service fees in any court or administrative proceedings in which it may be a party, restrictions and duties to the Republic of the Philippines, its provinces, cities, municipalities, and other government agencies and instrumentalities;
>
> (b) From all income taxes, franchise taxes, and realty taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities;
>
> (c) From all import duties, compensating taxes and advanced sales tax and wharfage fees on import of foreign goods, required for its operations and projects; and
>
> (d) From all taxes, duties, fees, imposts, and all other charges imposed by the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities, on all petroleum products used by the corporation in the generation, transmission, utilization, and sale of electric power.

To limit the exemption granted to the NPC to direct taxes, notwithstanding the general and broad language of the statute will be to thwart the legislative intention in giving exemption

from all forms of taxes and impositions, without distinguishing between those that are direct and those that are not.[37]

Congress granted NPC a comprehensive tax exemption because of the significant public interest involved. This is enunciated in Section 1 of Republic Act No. 6395:

> Section 1. *Declaration of Policy*. Congress hereby declares that (1) the comprehensive development, utilization and conservation of Philippine water resources for all beneficial uses, including power generation, and (2) the total electrification of the Philippines through the development of power from all sources to meet the needs of industrial development and dispersal and the needs of rural electrification are primary objectives of the nation which shall be pursued coordinately and supported by all instrumentalities and agencies of government, including its financial institutions.

The ability of the NPC to provide sufficient and affordable electricity throughout the country greatly affects our industrial and rural development. Erroneously and unjustly depriving industries that generate electrical power of tax benefits that the law clearly grants will have an immediate effect on consumers of electricity and long term effects on our economy.

In the same breath, we cannot lose sight of the fact that it is the declared policy of the State, expressed in Section 2 of Republic Act No. 9136, otherwise known as the EPIRA Law, "*to ensure and accelerate the total electrification of the country*;" "*to enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors*;" and "*to promote the utilization of indigenous and new and renewable energy resources in power generation in order to reduce dependence on imported energy*." Further, Section 6 provides that "*pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value-added tax zero-rated*.

Section 75 of said law succinctly declares that "*this Act shall, unless the context indicates otherwise, be construed in favor of the establishment, promotion, preservation of competition and power empowerment so that the widest participation of the people, whether directly or indirectly is ensured*."

The objectives as set forth in the EPIRA Law can only be achieved if government were to allow petitioner and others similarly situated to obtain the input tax credits available under the law. Denying petitioner such credits would go against the declared policies of the EPIRA Law.

The legislative grant of tax relief (whether in the EPIRA Law or the Tax Code) constitutes a sovereign commitment of Government to taxpayers that the latter can avail themselves of certain tax reliefs and incentives in the course of their business activities here. Such a commitment is particularly vital to foreign investors who have been enticed to invest

heavily in our country's infrastructure, and who have done so on the firm assurance that certain tax reliefs and incentives can be availed of in order to enable them to achieve their projected returns on these very long-term and heavily funded investments. While the government's ability to keep its commitment is put in doubt, credit rating turns to worse; the costs of borrowing becomes higher and the harder it will be to attract foreign investors. The country's earnest efforts to move forward will all be put to naught.

Having decided that petitioner is entitled to claim refund or tax credit under Section 112(A) of the NIRC or on the basis of effectively zero-rated sales in the amount of P246,131,610.40, there is no more need to establish its right to make the same claim under Section 112(B) of the NIRC or on the basis of purchase of capital goods.

Finally, respondent contends that according to well-established doctrine, a tax refund, which is in the nature of a tax exemption, should be construed *strictissimi juris* against the taxpayer.[38] However, when the claim for refund has clear legal basis and is sufficiently supported by evidence, as in the present case, then the Court shall not hesitate to grant the same.[39]

WHEREFORE, the instant Petition for Review is **GRANTED.** The Decision of the Court of Tax Appeals *En Banc* dated 20 September 2007 in CTA EB Case No. 248, affirming the Decision dated 23 March 2006 of the CTA Second Division in CTA Case No. 6916, is **REVERSED.** Respondent Commissioner of Internal Revenue is ordered to refund, or in the alternative, to issue a tax credit certificate to petitioner San Roque Power Corporation in the amount of Two Hundred Forty-Six Million One Hundred Thirty-One Thousand Six Hundred Ten Pesos and 40/100 (P246,131,610.40), representing unutilized input VAT for the period 1 January 2002 to 31 December 2002**.** No costs.

SO ORDERED.

Corona, Velasco, Jr., Nachura, and *Peralta, JJ.* , concur.

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[1] Penned by Associate Justice Lovell R. Baustista with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez, concurring; *rollo*, pp. 39-60.

[2] Penned by Associate Justice Juanito Castañeda, Jr. with Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez; id. at 85-100.

[3] Section 108. **Value-Added Tax on Sale of Services and Use or Lease of Properties**.

(A) *Rate and Base of Tax*.--There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of

services, including the use or lease of properties.

[4] *Rollo*, p. 40.

[5] Records, p. 22.

[6] Annex "B" of Petition for Review dated 29 March 2004; id. at 21.

[7] *Rollo*, p. 41.

[8] Id. at 41 and 320.

[9] Id. at 41-42.

[10] Section 108 (B) of the NIRC reads:

Section 108. **Value-added Tax on Sale of Services and Use or Lease of Properties.-**

x x x x

(B) *Transactions Subject to Zero Percent (0%) Rate*.--The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

x x x x

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate.

[11] Id. at 42.

[15] Records, pp. 274-285.

[16] *Rollo*, pp. 85-101.

[17] Id. at 100.

[18] Id. at 115-122.

[19] Id. at 39-60.

[20] Id. at 60.

[21] Id. 63-65.

[22] Id. at 17-18.

[23] *State Land Investment Corporation v. Commissioner of Internal Revenue*, G.R. No. 171956, 18 January 2008, 542 SCRA 114, 120-121; *Tio v. Abayata*, G.R. No. 160898, 27 June 2008, 556 SCRA 175, 184-185; *Tin v. People*, 415 Phil. 1, 7 (2001).

[24] *Intel Technology of the Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, 27 April 2007, 522 SCRA 657, 685.

[25] *Rollo*, p. 214.

[26] Section 111. **Transitional/Presumptive Input Tax Credits**.--

(A) A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory according to rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to eight percent (8%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax.

[27] *Rollo*, p. 212.

[28] Id. at 43.

[29] Id. at 212.

[30] Id. at 326.

[31] Records, p. 30.

[32] *Rollo*, p. 326.

[33] Records, pp. 277-278.

[34] Id. at 278.

[35] *State Land Investment Corporation v. Commissioner of Internal Revenue*, supra note 23 at 123-124.

[36] Deoferio, Victor and Victorino Mamalateo, THE VALUE ADDED TAX IN THE PHILIPPINES, (First Edition). Diliman: Info Solutions Research Center, 2000.

[37] *Philippine Geothermal, Inc. v. Commissioner of Internal Revenue*, G.R. No. 154028, 29 July 2005, 456 SCRA 308, 314.

[38] *Far East Bank & Trust Company v. Commissioner of Internal Revenue*, G.R. No. 149589, 15 September 2006, 502 SCRA 87, 91; *Insular Lumber Co. v. Court of Tax Appeals*, 192 Phil. 221, 232-233 (1981).

[39] *Philippine Airlines v. Commissioner of Internal Revenue*, G.R. No. 180043, 14 August 2009.
