REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

HEDCOR, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8931

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

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RESOLUTION

CASANOVA, J.:

For this Court's resolution is petitioner's **Omnibus Motion**, filed through registered mail on October 19, 2017, and received by this Court on October 30, 2017, without respondent's comment as per Records Verification dated December 18, 2017.

Petitioner assails the Decision promulgated on October 3, 2017, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the Petition for Review is **DENIED** for lack of merit.
>
> **SO ORDERED.**"[1]

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[1] Docket (Vol. II), p. 541.

In its Omnibus Motion, petitioner prays that: (1) the assailed Decision be set aside and another one be rendered ordering the respondent to refund or issue a tax credit certificate (TCC) in its favor in the amount of ₱6,747,755.38, representing its excess and unutilized input value added tax (VAT) on domestic purchases of goods and services for the 2nd quarter of calendar year 2012 attributable to its zero-rated sales of generated hydro power or in the alternative (2) a new trial be granted to allow the presentation of newly discovered evidence, with reservation to present its evidence and submit the supporting affidavits of its witnesses if such new trial is granted.

The core of the Court's rationale in denying petitioner's claim hinges on the provision of Section 15(g) of the Republic Act 9513 or the Renewable Energy Act of 2008 (RE Act), which grants renewal energy (RE) developers tax incentives, i.e. the entitlement to zero-rated VAT on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities, and to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by its subcontractors and/ or contractors, to wit:

> **"CHAPTER VII**
>
> **GENERAL INCENTIVES**
>
> **Section 15.** ***Incentives for Renewable Energy Projects and Activities.*** - RE developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:
>
> xxx xxx xxx
>
> (g) Zero Percent Value-Added Tax Rate. -The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National

Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.

All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.

This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors." (*Emphasis supplied*)

The same was implemented by Part III, Rule 5, Section 13(G)(b) and (c) of DOE Circular No. DC2009-05-0008 issued by the Department of Energy (DOE) on May 25, 2009, which provide as follows:

"PART III.
INCENTIVES FOR RENEWABLE ENERGY PROJECTS AND ACTIVITIES

RULE 5.
GENERAL INCENTIVES AND PRIVILEGES FOR RENEWABLE ENERGY DEVELOPMENT

SEC. 13. Fiscal Incentives for Renewable Energy Projects and Activities

DOE-certified existing and new RE Developers of RE facilities, including Hybrid Systems, in proportion to and to the extent of the RE component, for both Power and Non-Power Applications, shall be entitled to the following incentives:

xxx xxx xxx

G. Zero Percent Value-Added Tax Rate

The following transactions/activities shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337:

xxx xxx xxx

> (b) Purchase of local goods, properties and services **needed for the development, construction, and installation of the plant facilities** of RE Developers; and
>
> (c) **Whole process of exploration and development of RE sources up to its conversion into power**, including, but not limited to, the services performed by subcontractors and/or contractors." (*Emphasis supplied*)

Thus, from the foregoing, being an RE developer, this Court held that no output VAT shall be shifted to or passed on to petitioner, in connection with its purchases of goods and services needed for the development, construction, and installation of its plant facilities as well as to the whole process of exploration and development of resources up to its conversion into power. Conversely, no input VAT shall be paid by petitioner on these transactions. There being no input VAT to be paid by petitioner, it necessarily follows that it is not entitled to refund, or issuance of TCC from the said purchases.

In its motion, petitioner argues that the Court interprets Section 15(g) of the RE Act in such a way as to render it meaningless and ineffectual. Petitioner further asserts that, based on Section 15(g) of the RE Act, it is entitled to zero-rated VAT on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities. Thus, applying verbal legis or strictly literal interpretation of the law in question may render its provisions meaningless and lead to inconvenience, an absurd situation, or an injustice. In addition, it cited the discussions of the lawmakers in the Bicameral Conference Committee session on October 7, 2008, which allegedly show that the incentives given to the renewable energy industry were even intended to be greater than those provided by the Board of Investments of the Philippine Economic Zone Authority (PEZA) since the renewable energy industry is a new industry that will create future jobs and investments in our country.

In addition, petitioner claims that notwithstanding the RE Act, RE developers would still be entitled to refund under Section 112(A)[2]

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[2] SEC. 112. Refunds or Tax Credits of Input Tax. –

of the National Internal Revenue Code (NIRC) of 1997, as amended. Petitioner contends that Section 15(g) of the RE Act must be construed in harmony with the provisions of the NIRC of 1997, as amended, considering that the latter provides for a clearer mechanism for availment of zero-rating incentive.

Furthermore, petitioner maintains that its case is not analogous to the Coral Bay case[3] considering that the latter involves a domestic corporation registered with the PEZA, while this case involves an RE developer which was granted tax incentives under the RE Act.

Petitioner likewise avers that the VAT zero-rating on local purchases is an incentive provided under the RE Act and, thus, the enjoyment thereof is merely optional.

Lastly, petitioner asserts that it is entitled to refund of VAT erroneously passed on to it by its suppliers pursuant to the principle of *solutio indebiti*.

After reconsidering the arguments set forth in petitioner's omnibus motion, the Court finds no cogent reason to reverse or modify its Decision dated October 3, 2017.

Basic is the rule in statutory construction that where the language of the statute is clear, it is the duty of the court to enforce it according to the plain meaning of the word. There is no occasion to resort to other means of interpretation.[4] Courts are not at all times duty-bound to construe and interpret the laws. Considering that the language of RE Act is clear and unequivocal, its meaning was determined from the language employed.

Section 15(g) of the RE Act is categorical in stating that RE developers are entitled to zero-rated VAT on their purchases of local supply of goods and properties and services needed for the development, construction and installation of its plant facilities.

(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: xxx xxx xxx

[3] *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*, G.R. No. 190506, June 13, 2016.

[4] *South Pacific Sugar Corporation, vs. Court of Appeals,* G.R. No. 180462, February 9, 2011.

Thus, it was erroneous for petitioner's suppliers to subject their sales to petitioner to 12% VAT.

On the allegation that the Court has rendered the incentives granted under the RE Act meaningless and ineffectual has no basis. The Court did not rule that petitioner is not entitled to zero-rated VAT on its local purchases. In fact, this Court has strengthened the fact that petitioner's purchases should have been zero-rated VAT in the first place by ruling that no VAT should have been passed on to it by its suppliers.

On the ground that notwithstanding the provisions of the RE Act, Section 112(A) of the NIRC of 1997, as amended, allows the petitioner to refund excess and unutilized input VAT, it must be noted that Section 112(A) pertains to the application for the issuance of TCC or refund of a taxpayer's creditable input tax due or paid that is attributable to its zero-rated sales. Although the law provides for the zero-rating of petitioner's sales, it is likewise entitled to the zero-rating of its purchases. Thus, there can be no refund of unutilized input taxes when there is no input tax to speak of.

The Court has already discussed the applicability of the principle laid down in Coral Bay case to the present case. To reiterate, the principle in Coral Bay case may, by analogy, be applied insofar as petitioner cannot seek a refund from the BIR of its unutilized input taxes because under RE Act, its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities as well as the whole process of exploring and developing RE resources up to its conversion into power are zero-rated. For this reason, Part III, Rule 5, Section 13(G)(b) of the DOE Circular on May 25, 2009 implementing the RE Act necessarily finds application to the present case. Similary, the Court applied Revenue Memorandum Circular (RMC) No. 42-2003 dated July 15, 2003 but only with regard to the recourse of petitioner's claim for input tax credit concerning its zero-rated sale and purchases, that is to seek reimbursement of the VAT paid, from its supplier.

Lastly, petitioner's assertion that respondent must refund the VAT erroneously passed on to it by its suppliers pursuant to the principle of *solutio indebiti* is likewise devoid of merit. Petitioner cites the case of *Bank of the Philippine Island vs. Sarmiento*[5] where the

[5] G.R. No. 146021, March 10, 2006.

Supreme Court enumerated the instances when there is *solutio indebiti*, i.e. (1) payment is made when there exists no binding relation between the **payor**, who has no duty to pay, and the person who received the payment; and (2) payment is made through mistake, and not through liberality or some other cause.

The principle of *solutio indebiti* does not apply in the present case.

This Court reiterates Section 105 of the NIRC of 1997, as amended, that VAT is imposed on "any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services and any persons who imports goods". The VAT is a tax on the seller of goods and services and importer of goods. As such, the duty to pay VAT in this case is not on the petitioner but on its suppliers. Being an indirect tax, VAT may be shifted or passed on to the buyer of goods or services forming part of the purchase price. Petitioner paid its suppliers the price of the goods or services, however, the supplier is the one liable to pay VAT. In other words, **petitioner cannot claim that it is the payor of VAT** to the government as it is not the person liable to pay the same, but its suppliers.

Finally, well settled is the rule that tax refunds, or credits, just like tax exemptions, are strictly construed against the taxpayer.[6] Thus, the Court sustains its decision to deny the refund of input VAT on the purchase of local supply of goods by the RE developers.

To repeat, it was clearly set forth in the law and its IRR that only local purchases made by RE developers are subject to zero-rated VAT with the consequence that any input VAT passed on to and paid by these RE developers cannot be claimed as VAT credits nor eligible for refund or issuance of tax credit certificate.

Accordingly, the same incentive of VAT zero-rating does not apply to RE developers' importations of goods. Under Section 15(b) of the RE Act, RE developers are entitled to duty-free, (but not VAT free) importation of RE machinery, equipment and materials. Thus, insofar as those importations and services by non-residents are concerned, RE developers remain subject to 12% VAT and the Court shall further review the arguments of the petitioner in its Omnibus

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[6] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 178490, July 7, 2009.

Motion as regards its entitlement to refund/issuance of TCC on VAT payments arising from its importations.

As already mentioned in the assailed Decision, the following are the requisites to be complied by petitioner in order to be entitled to a refund or issuance of tax credit certificate of excess input VAT attributable to zero-rated or effectively zero-rated sales[7]:

1. That the taxpayer is VAT-registered;

2. That the claim for refund was filed within the prescriptive period;

3. That there must be zero-rated or effectively zero-rated sales;

4. That input taxes were incurred or paid;

5. That such input taxes are attributable to zero-rated or effectively zero-rated sales; and

6. That the input taxes were not applied against any output VAT liability.

The first and second requisites have already been complied with as discussed in the Decision.

As to the third requisite, it can be noted from the Decision that petitioner's sales of power generated through hydropower qualify for VAT zero-rating under Section 108(B)(7) of the NIRC of 1997, as amended.

Thus, we shall now determine how much was petitioner's sales of power generated through hydropower.

Based on the amended VAT return for the 2nd quarter of 2012,[8] petitioner declared total sales of ₱242,252,314.46, consisting of the following:

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[7] Assailed Decision, Docket (Vol. II), p 529.
[8] Exhibits "P-16" and "P-1488".

Sales Type	Amount
VATable	₱ 140,355.36
Sales to government	1,434,570.68
Zero-rated	240,677,388.42
Total	**₱ 242,252,314.46**

To prove that it generated gross receipts from its hydropower generation, petitioner submitted various official receipts and invoices[9] issued to its customers which were examined by the Court-Commissioned ICPA, Mr. Emmanuel Y. Mendoza of Mendoza Querido & Co. In his Report,[10] the ICPA ascertained that out of the declared zero-rated sales of ₱240,677,388.42, only the amount of ₱223,145,080.97 is supported by official receipts and invoices, while the remaining amount of ₱17,532,307.45 has no available supporting documents.

Upon further examination of the submitted sales documents, the Court finds additional exceptions amounting to ₱144,242,831.09, detailed as follows:

Customer	OR No.	Exhibit No.	Disallowed Declared Zero-Rated Sales
1. Amount of declared zero-rated sales is greater than the amount per supporting ORs			
National Power Corporation (₱435,522.89 - ₱98,035.66)	2444	P-1399	₱ 337,487.23
National Power Corporation (₱439,113.97 - ₱141,161.57)	2445	P-1401	297,952.40
Benguet Electric Cooperative Inc. [(₱199,292.67 + ₱117,888.26 + ₱2,544.17 = ₱319,725.10) - ₱306,101.36]	2758	P-1417/ P-1419/ P-1421	13,623.74
Subtotal			***₱ 649,063.37***
2. Supporting ORs were not imprinted/stamped with the word "zero-rated sales"			
Benguet Electric Cooperative Inc.	2535	P-1413	₱ 1,750,931.25
Davao Light and Power Co.	2534	P-1415	7,024,685.80
			₱ 8,775,617.05
3. Unreadable date in the OR			
Benguet Electric Cooperative Inc.	2744	P-1403	₱ 92,494.96
Benguet Electric Cooperative Inc.	2744	P-1405	183,511.85
Subtotal			***₱ 276,006.81***
4. OR dated outside the period of claim			
National Power Corporation	2091	P-1433	₱ 1,213,353.67
Benguet Electric Cooperative Inc.	2765	P-1435	206,928.73

[9] Exhibits "P-1394" to "P-1457".
[10] Exhibit "P-24", Par. 4, p. 14.

Benguet Electric Cooperative Inc.	2765	P-1437	110,130.65
National Power Corporation	2090	P-1439	2,949,294.02
National Power Corporation	2097	P-1441	59,383,257.41
National Power Corporation	2096	P-1443	41,063,090.98
National Power Corporation	2093	P-1445	508,937.93
National Power Corporation	2095	P-1447	162,559.57
AP Renewables Inc.	2151	P-1449	11,951,648.50
Davao Light and Power Co.	2538	P-1451	1,502,698.59
Davao Light and Power Co.	2539	P-1453	5,817,781.35
National Power Corporation	2155	P-1455	5,718,299.74
National Power Corporation	2156	P-1457	3,954,162.72
Subtotal			***₱ 134,542,143.86***
TOTAL			**₱ 144,242,831.09**

As such, only the amount of ₱78,902,249.88, as computed below, qualifies as sales subject to zero percent VAT under Section 108(B)(7) of the NIRC of 1997, as amended:

Declared zero-rated sales		₱ 240,677,388.42
Less: Disallowed zero-rated sales		
Without supporting documents	₱ 17,532,307.45	
Exceptions per this Court's verification	144,242,831.09	161,775,138.54
Valid zero-rated sales		**₱ 78,902,249.88**

We shall now proceed with petitioner's compliance with the fourth, fifth and sixth requirements which shall be discussed *in seriatim*.

In its amended Quarterly VAT Return for the second quarter of 2012,[11] petitioner declared net input VAT overpayment of ₱6,747,755.38, to wit:

Particulars	Amount
Output VAT due	**₱ 188,991.12**
Less: Input VAT on:	
Purchase of capital goods exceeding ₱1Million	₱ 673,483.66
Domestic purchases of goods other than capital goods	2,764,985.72
Importation of goods other than capital goods	203,771.00
Domestic purchases of services	3,066,152.77
Service rendered by non-residents	93,002.73
Total input VAT	**₱ 6,801,395.88**
Add: Other VAT credits/payments	
Input tax on sales to government closed to expense	₱ 60,143.42
Monthly VAT payments - previous two months	3,478.67

[11] Exhibits "P-16" and "P-1488".

VAT withheld on sales to government	71,728.53
Total other VAT credits/payments	**₱ 135,350.62**
Total VAT credits available for the quarter	**6,936,746.50**
Net VAT overpayment	**₱ 6,747,755.38**

The above net VAT overpayment amounting to ₱6,747,755.38 was claimed by petitioner for refund/issuance of TCC in the present case. This amount was no longer carried over by petitioner in its subsequent VAT returns,[12] hence eliminating the possibility of applying the same to future VAT liabilities.

Further, as already discussed in the Decision and earlier in this Report, petitioner's local purchases are subject to zero-rated VAT, thus, cannot be a proper subject of a claim for refund or issuance of tax credit certificate. Consequently, only the input VAT on importations amounting to ₱203,771.00 and on services rendered by non-residents amounting to ₱93,002.73 are eligible for refund/tcc claims.

However, as found by the ICPA, out of the input VAT on importations of ₱203,771.00, only the amount of ₱68,283.00 was properly supported by IEIRD and proof of VAT payment[13], while the amount of ₱135,488.00 had no proof of VAT payment. Likewise, the input VAT on services rendered by non-residents amounting to ₱93,002.73 has no supporting documents.

The valid input VAT of ₱68,283.00 shall then be applied to the remaining output VAT due for the 2nd quarter of 2012 amounting to ₱113,783.92, as computed below:

Output VAT due		₱ 188,991.12
Less: Other VAT credits		
Monthly VAT payments - previous two months[14]	₱ 3,478.67	
VAT withheld on sales to government[15]	71,728.53	75,207.20
Output VAT still due		**₱113,783.92**

Apparently, the valid input VAT of petitioner amounting to ₱68,283.00 is not sufficient to cover the remaining output VAT due of

[12] Exhibits "P-17" and "P-18".
[13] Exhibits "P-1386" to "P-1387".
[14] Exhibit "P-1504".
[15] Exhibits P-1505 to 1510.

₱113,783.92 for the 2nd quarter of 2012. As such, petitioner has nothing left to claim for refund or issuance of TCC.

As regards petitioner's second request, petitioner merely stated in the omnibus motion that it intends to present newly discovered evidence, with reservation to present its evidence and submit the supporting affidavits if such new trial is granted. However, to warrant new trial based on newly discovered evidence, petitioner should have supported its motion with affidavits of the witnesses to whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence, pursuant to Section 2, Rule 37 of the Revised Rules of Court.

In this case, the Court cannot determine whether the alleged newly discovered evidence that petitioner intends to present if new trial is granted is actually (a) discovered after trial; or (b) could not have been discovered and produced at trial even with the exercise of reasonable diligence; and (c) that it must be material and not merely collateral, or cumulative or corroborative, or purely for impeaching a witness; and (d) that, if presented, would probably alter the result.[16]

Accordingly, petitioner's request for a new trial should likewise be denied for lack of merit.

WHEREFORE, finding no compelling reason to reverse the ruling of this Court in the assailed Decision, petitioner's Omnibus Motion is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

J. C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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16 *Pantig vs. Baltazar*, G.R. No. 80904, December 3, 1990.