REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NORTH LUZON RENEWABLE ENERGY CORP., *Petitioner,*	**CTA *EB* NO. 2574** (CTA Case No. 9886)
	Present:
-versus-	**DEL ROSARIO**, *P.J.*, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, **FERRER-FLORES**, *and* **ANGELES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 08 2024 4:30 pm

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RESOLUTION

CUI-DAVID, J.:

For the resolution of the Court *En Banc* is respondent's ***Motion for Reconsideration (Re: Decision promulgated 1 June 2023)***,[1] filed on June 19, 2023, with petitioner's ***Comment (Re: Motion for Reconsideration dated June 19, 2023)***,[2] filed on July 24, 2023.

Respondent seeks the reconsideration of the Court *En Banc*'s *Decision* promulgated on June 1, 2023,[3] the dispositive portion of which reads:

> **WHEREFORE**, in light of the foregoing, the instant *Petition for Review* is **GRANTED**. The *Decision* dated 19 February 2021 and the *Resolution* dated 6 September 2021 of

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[1] *En Banc* (*EB*) Docket, pp. 196-203.
[2] *Id.*, pp. 207-215.
[3] *Id.*, pp. 164-188.

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the Court's Third Division in CTA Case No. 9886 are **REVERSED** and **SET ASIDE**.

Accordingly, let this case be **REMANDED** to the Court's Third Division for further determination of petitioner's compliance with other requisites to obtain a refund or tax credit of input VAT for the four (4) quarters of the taxable year 2016, and if it is entitled to such refund or tax credit.

SO ORDERED.

Respondent received the assailed Decision on June 5, 2023. Thus, respondent had until June 20, 2023, to file his motion for reconsideration. Accordingly, on June 19, 2023, respondent timely filed his *Motion for Reconsideration (Re: Decision promulgated 1 June 2023)*.

We now proceed to respondent's arguments.

Respondent quotes the Decision of the Court in Division and states that the Department of Energy (DOE) Certificate of Registration, the Board of Investments (BOI) registration, and the Certificate of Endorsement (COE) by the DOE must all be shown for a renewable energy (RE) developer, such as petitioner, to be able to avail of zero-rating for value-added tax (VAT) purposes. Respondent contends that since petitioner could not present its Certificate of Endorsement from the DOE, it is not entitled to VAT zero-rating.

Further, respondent argues that the Court must not consider petitioner's belated submission of its Certificate of Compliance (COC), as the Court cannot consider evidence that is not in the record, and that petitioner should not be allowed to belatedly submit documents that could have been timely offered and admitted had it exercised ordinary prudence and diligence.

Finally, respondent closes his *Opposition* by stating that refunds, being in the nature of tax exemptions, are strictly construed against the taxpayer.

In its *Comment*, petitioner maintains that it is not required to submit the COC issued by the ERC as the legal basis for its VAT zero-rating is Republic Act (RA) No. 9513, otherwise known as the Renewable Energy Law (RE Law), and not RA No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA Law).

Petitioner likewise states that it is not required to submit a COE as it is only needed when an RE developer intends to avail of the incentive of duty-free importation of RE machinery, equipment, and materials.

We find instant *Motion* without merit.

An examination of respondent's *Motion* shows that the arguments raised are mere reiterations of the arguments that have been thoroughly considered, resolved, and passed upon by this Court in the assailed *Decision.*

It is well-settled that a motion for reconsideration containing a mere reiteration or rehash of grounds and arguments that have already been considered, weighed, passed upon, and resolved by the court before the *Decision* sought to be reconsidered is rendered does not need a new judicial determination.[4] Therefore, there is no necessity to discuss and rule again on these grounds since this would be a useless formality of ritual invariably involving merely a reiteration of the reasons for rejecting the arguments advanced by the movant already set forth in the judgment.[5]

In *Shangri-la International Hotel Management v. Developers Group of Companies, Inc.,*[6] the Supreme Court pronounced that it is incumbent upon the movant to convince the Court that certain findings or conclusions are contrary to law, to wit:

> "The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.
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> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are

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[4] *People v. Agacer*, G.R. No. 177751, January 7, 2013 citing *People v. Larrañaga*, G.R. Nos. 138874-75, July 21, 2005; *Madeleine Mendoza-Ong v. Hon. Sandiganbayan, et al.*, G.R. Nos. 146368-69, 18 October 2004.
[5] *People v. Agacer*, G.R. No. 177751, January 7, 2013 citing *People v. Larrañaga*, G.R. Nos. 138874-75, July 21, 2005 and *Ortigas Land Co. Ltd. Partnership v. Judge Velasco*, G.R. No. 109645, March 4, 1996.
[6] *Shangri-la International Hotel Management, Ltd. v. Developers Group of Companies, Inc.*, G.R. No. 159938 (Resolution), January 22, 2007, 541 SCRA 138-143.

contrary to law. As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought."

Accordingly, We maintain our ruling that: *first,* petitioner's basis for VAT zero-rating is the application of Section 15(g) of the RE Law;[7] *second,* submission of the COE is necessary only when an RE Developer intends to avail of the incentive of duty-free importation of RE machinery, equipment and materials, as provided for by Section 15(b) of the RE Law,[8] Section 2(b) of Department Circular No. DC2020-02-0005,[9] and Section 3(B) of Revenue Regulations (RR) No. 7-2022;[10] and *third,* submission of the COC is likewise not required as petitioner's claim for refund is based on the RE Law and not

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[7] SECTION 15. Incentives for Renewable Energy Projects and Activities.— RE Developers or 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:

... ...

(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.

[8] Section 15. Incentives for Renewable Energy Projects and Activities.—

... ...

(b) Duty-free Importation of RE Machinery, Equipment, and Materials — Within the first ten (10) years upon the issuance of a certification of an RE developer, the importation of machinery, equipment, and materials and parts thereof, including control and communication equipment, shall not be subject to tariff duties: Provided, however, That the said machinery, equipment, materials, and parts are directly and actually needed and used exclusively in the RE facilities for transformation into energy and delivery of energy operator to the point of use and covered by shipping documents in the name of the duly registered authorities: Provided, further, That endorsement of the DOE is obtained before the importation of such machinery, equipment, materials, and parts are made.

Endorsement of the DOE must be secured before any sale, transfer, or disposition of the imported capital equipment, machinery, or spare parts is made: Provided, That if such sale, transfer, or disposition is made within the ten (10)-year period from the date of importation, any of the following conditions must be present:

[9] b. Certificate of Endorsement — means the document issued by the DOE in accordance with Section 15(b) of RA No. 9513 endorsing the application for duty-free importation of RE machinery, equipment, materials, and spare parts to the RE Developer/Operator, to exempt the Applicant from payment of tariff duties on the importation. COE may also be issued pursuant to Section 21(a) of RA No. 9513, if applicable.

[10] SECTION 3. Required Certifications/Accreditations from Appropriate Government Agencies for the Availment of the Tax Incentives. — RE developers and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall secure the certifications/accreditations listed hereunder before any incentive provided for in the Act may be availed of.

... ...

B. Certificate of Endorsement by the DOE — RE Developers shall secure the Certificate of Endorsement from the DOE prior to the first year of availment of the 10% corporate income tax rate incentive.

Manufacturers, fabricators, and suppliers of locally produced RE equipment who import components, parts, and materials necessary for the manufacture and/or fabrication of RE equipment shall secure a Certificate of Endorsement from the DOE, through the REMB, on a per importation basis.

the EPIRA Law consistent with the ruling of the Supreme Court in *Commissioner of Internal Revenue vs. Team Energy Corporation,*[11] and *Team Energy Corporation vs. Commissioner of Internal Revenue.*[12]

In addition, having dispensed with the requirement for the presentation of the COC, We find it futile to discuss respondent's argument anent petitioner's alleged belated presentation of the original copies of its COC.

As such, We see no compelling reason to depart from our ruling in the assailed *Decision.*

WHEREFORE, premises considered, respondent's *Motion for Reconsideration (Re: Decision promulgated 1 June 2023)* is hereby **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I maintain my CDO)
CATHERINE T. MANAHAN
Associate Justice

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[11] G.R. No. 230412, 27 March 2019.
[12] G.R. Nos. 197663 & 197770, 14 March 2018.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

(I join the CDO of Justice Manahan)
HENRY S. ANGELES
Associate Justice

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NORTH LUZON RENEWABLE ENERGY CORP.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2574
(CTA Case No. 9886)

Present:

DEL ROSARIO, *P.J.,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
JAN 0 8 2024 4:30 pm

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CONCURRING AND DISSENTING OPINION

MANAHAN, *J.:*

I concur with my esteemed colleague, Justice Lanee Cui-David, that the requirement for a Certificate of Endorsement (COE) is applicable only for duty-free importations of Renewable Energy (RE) Machinery, Equipment, Materials and Spare Parts and not for the availment of all RE incentives under Republic Act (RA) No. 9513 (RE Law).

However, with due respect, I disagree to the position that a Certificate of Compliance (COC) is not required in a claim for refund filed by an RE entity engaged in the generation of power under Section 108(B)(7) of the 1997 National Internal Revenue Code (NIRC), as amended.

Notably, there are two (2) kinds of RE Developer under Section 15 of RA No. 9513, namely, those involved in power generation (*i.e.*, electricity) and non-power applications (*i.e.*, heat) which are entitled to the named incentives therein.[1]

Sections 4(hh) and 4(nn) of RA No. 9513 define what are those classified as non-power and power applications, respectively, to wit:

> "Section 4. *Definition of Terms.* – As used in this Act, the following terms are herein defined:
>
> xxx xxx xxx
>
> (hh) "Non-power applications" refer to renewable energy systems or facilities that produce mechanical energy, combustible products such as methane gas, or forms of useful thermal energy such as heat or steam, that are not used for electricity generation, but for applications such as, but not limited to, industrial/commercial cooling, and fuel for cooking and transport;
>
> xxx xxx xxx
>
> (nn) "**Power applications**" refer to **renewable energy systems or facilities that produce electricity**;" (*Emphasis supplied*)

Under Section 15 of RA No. 9513, for these RE Developers in non-power applications to be entitled to said incentives, they are required only to be certified by Department of Energy (DOE), in consultation with the Board of Investments (BOI).

Thus, the COC, as required by ERC, is not applicable to the RE Developers generating renewable energy in non-power application.

On the other hand, for the RE Developer in power applications to be entitled to said incentives, the 2nd Paragraph of Section 26 of RA No. 9513 provides that the "**certification issued by the DOE (referring to COE) shall be without prejudice to any further requirements that may be imposed by the concerned agencies of the government charged with the administration of the fiscal incentives" under the said law**.

[1] *Restored Energy Development Corporation v. Commissioner of Internal Revenue*, CTA Case Nos. 9958 & 9975, November 18, 2022.

Sections 4.108-3(f) and 4.108-5(b)(7) of RR No. 16-2005[2] provide as follows:

> "SEC. 4.108-3. *Definitions and Specific Rules on Selected Services.* –
>
> xxx xxx xxx
>
> (f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10%[3] VAT on their gross receipts; *Provided,* **That sale of power or fuel generated through 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 0% VAT**.
>
> **'*Generation companies*' refers to persons or entities <u>authorized by the Energy Regulatory Commission (ERC)</u> to operate facilities used in the generation of electricity. For this purpose, <u>generation of electricity refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of the RA No. 9136 (EPIRA)</u>.** They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities.
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> xxx xxx xxx."
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> SEC. 4.108-5. <u>*Zero-Rated Sale of Services*</u>. -
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> xxx xxx xxx
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> (b) *Transactions Subject to Zero Percent (0%) VAT Rate.* - The following services performed in the Philippines by a VAT - registered person shall be subject to zero percent (0%) VAT rate:
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> xxx xxx xxx
>
> (7) **Sale of power or fuel generated through renewable sources of energy such as**, but not limited to, biomass, solar, wind, hydropower, geothermal and **steam**, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels; ***Provided,* however, that zero-rating shall apply strictly to the sale of power or fuel generated through renewable sources of energy**, and shall not extend to the sale of services related to the maintenance or operation of plants generating said power. *(Emphases and underscoring added)*

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[2] SUBJECT: Consolidated Value-Added Tax Regulations of 2005.

[3] The VAT rate has been increased to 12%. Refer to Memorandum dated January 31, 2006 from the Executive Secretary, as circulated in Revenue Memorandum Circular No. 7-2006.

The foregoing provision is consistent with Section 4 of RA No. 9513, to wit:

> "SEC. 4. *Definition of Terms* – As used in this Act, the following terms are herein defined:
>
> xxx xxx xxx
>
> (o) **'Generation Company' refers to <u>any person or entity authorized by the ERC</u> to operate facilities used in the generation of electricity**;" *(Emphasis and underscoring added)*

Relative thereto, Section 6 of RA No. 9136[4], provides, in part, as follows:

> "SEC. 6. *Generation Sector.* - Generation of electric power, a business affected with public interest, shall be competitive and open.
>
> Upon the effectivity of this Act, **any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a <u>certificate of compliance</u> pursuant to the standards set forth in this Act**, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.
>
> xxx xxx xxx." *(Emphases added)*

The authorization by the ERC to operate facilities used in the generation of electricity comes in the form of a COC.

Considering an RE Developer engaged in power generation comes under the regulatory power and supervision of the ERC, then compliance with Section 26 of the RE Law is in order.[5] The electric power industry is imbued with public interest, therefore, a COC is vital to be required from an RE developer engaged in power generation.

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[4]AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES.

[5] SEC. 26. *Certificate from the Department of Energy.* – All certifications required to qualify RE developers to avail of the incentives provided for under this Act shall be issued by the DOE through Renewable Energy Management Bureau.
The Department of Energy, through the Renewable Energy Management Bureau, shall issue said certification fifteen (15) days upon request of the renewable energy developer or manufacturer, fabricator or supplier: *Provided*, That the certification issued by the Department of Energy shall be without prejudice to any further requirements that may be imposed by the concerned agencies of the government charged with the administration of the fiscal incentives abovementioned." (Emphases and underscoring added)

Thus, in the instant case, to substantiate petitioner's claim for refund as an RE entity engaged in power generation, it should include the COC to qualify its sales as VAT zero-rated sales under Section 108(B)(7) of the 1997 NIRC, as amended, and in compliance with Section 26 of the RE Law.

In the instant case, the COC was submitted by petitioner upon filing of its motion for reconsideration in the Court in Division.

WHEREFORE, I vote to **GRANT** petitioner's *Petition for Review* and to **REVERSE** and **SET ASIDE** the Court in Division's Assailed Decision and Resolution.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice