REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

VESTAS SERVICES PHILIPPINES, INC., Petitioner,	**CTA EB NO. 2479** (CTA Case No. 9544)
- versus -	Present: **DEL ROSARIO,** *P.J.*, **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and,* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** OCT 14 2022 1:45 PM

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DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is a Petition for Review[1] pursuant to Section 3(b)[2], Rule 8 of the Revised Rules of the Court of Tax Appeals

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1 Filed on 15 June 2021, *Rollo*, pp. 1-74, with annexes.

2 **SEC. 3**. *Who may appeal; period to file petition.* — …

…

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an

(**RRCTA**), filed by petitioner Vestas Services Philippines, Inc. (**petitioner/VSPI**). It seeks the reversal of the Decision dated 11 November 2020[3] (**assailed Decision**) and the Resolution dated 19 May 2021[4] (**assailed Resolution**) of the Court's Third Division[5] in CTA Case No. 9544, entitled *Vestas Services Philippines, Inc. v. Commissioner of Internal Revenue.*

PARTIES OF THE CASE

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines with office address at 12th floor, Five ECom, Harbor Drive, Mall of Asia Complex, Pasay City. It is registered with the Bureau of Internal Revenue (**BIR**) for value-added tax (**VAT**) purposes, pursuant to Certificate of Registration (**COR**) No. OCN 9RC0000382508 with Revenue District Office (**RDO**) No. 50 and currently under COR No. OCN 9RC0000777961E with RDO No. 51.[6]

Based on its Amended Articles of Incorporation[7], petitioner is engaged in the business of installation and construction services (except contracts for the construction of locally funded public works and contracts for the construction of defense related structures), including entering into subcontracting arrangements, and service of wind power systems, *i.e.,* wind turbine generators, spare parts and activities related thereto.

On the other hand, respondent Commissioner of Internal revenue (**respondent/CIR**), is vested with authority to carry out the functions and duties of his office, including, among others, the duty to act on and approve claims for refund or issuance of a tax credit certificate (**TCC**) pursuant to the pertinent provisions of the National Internal Revenue Code (**NIRC**) of 1997, as amended, and other tax

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additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

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3 Division Docket, Volume III, pp. 1315-1334.

4 Id., pp. 1370-1374.

5 Penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro.

6 Paragraph 1.3, Stipulation of Facts, Joint Stipulation of Facts and Issues (JFSI), Division Docket, Volume II, p. 860.

7 Exhibit "P-2", id., Volume I, pp. 234-244.

laws, rules and regulations, with office address at the BIR National Office Building, Diliman, Quezon City.

FACTS OF THE CASE

On 23 October 2014, petitioner filed its Original Quarterly VAT Return (BIR Form No. 2550-Q)[8] for the 3rd quarter of the taxable year (**TY**) 2014.

On 30 September 2016, petitioner filed with the BIR RDO No. 50 an Application for Tax Credits/Refunds (BIR Form No. 1914)[9] for the refund of its alleged excess and unutilized input VAT attributable to its zero-rated sales for the period 01 July 2014 to 30 September 2014 in the aggregate amount of ₱186,802,326.96. To support its application for VAT refund/tax credit, petitioner submitted the documents enumerated in its accomplished "Checklist of Mandatory Requirements for Claims for VAT Credit/Refund".[10]

On 03 February 2017, beyond the 120-day expiration period of 28 January 2017, petitioner received the Letter dated 27 January 2017[11] (**Denial Letter**) signed by the BIR's Deputy Commissioner for Operations Group, Nestor S. Valeroso (**Deputy Commissioner Valeroso**), denying its administrative claim for refund for lack of factual and legal bases.

PROCEEDINGS BEFORE THE COURT

On 27 February 2017 and within thirty (30) days from the expiration of the 120-day period within which respondent must decide the claim under Section 112(d)[12] of the NIRC of 1997, as amended, petitioner filed its prior Petition for Review[13] before this Court and

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8 Exhibit "P-9", id., pp. 255-256.
9 Exhibit "P-5", id., p. 248.
10 See Exhibit "P-6", id., p. 249.
11 Exhibit "P-21", id., Volume II, pp. 747-748.
12 **SEC. 112.** *Refunds or Tax Credits of Input Tax.* –
...
(D) *Period Within Which Refund or Tax Credit of Input Taxes Shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of compete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.
...
13 Division Docket, Volume I, pp. 10-86, with annexes.

appealed the denial of its administrative claim. The case was raffled to the Third Division and docketed as CTA Case No. 9544.[14]

Within the 30-day extension period granted by the Third Division[15], respondent filed its Answer[16] through registered mail on 20 April 2017. Petitioner rebutted the allegations in the Answer, through a Reply[17], filed on 12 May 2017.

On 01 August 2017, the case was set for Pre-Trial Conference.[18] Although it was cancelled and reset[19], it proceeded nevertheless on a later date. Prior thereto, respondent filed its Pre-Trial Brief[20] on 06 July 2017 while petitioner filed its Pre-Trial Brief[21] on 08 March 2018.

During the Pre-Trial Conference proper, the Third Division granted both parties fifteen (15) days, or until 28 March 2018, within which to submit their Joint Stipulation of Facts and Issues (**JSFI**). The parties filed their JSFI on the said date.[22]

On 12 April 2018, the Third Division issued a Pre-Trial Order[23] approving the parties' JSFI, terminating the pre-trial, and setting the dates for the commissioning of the Independent Certified Public Accountant (**ICPA**) and the initial presentation of petitioner's evidence.

In compliance with the Third Division's directive, petitioner filed a motion for the commissioning of Glenn Ian D. Villanueva (**Villanueva**) of Reyes Tacandong & Co., as the ICPA.[24] In the Order dated 19 June 2018[25], the Third Division commissioned Villanueva as

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14 The Third Division was then composed of Hon. Associate Justice Lovell R. Bautista (Ret.), as Chairperson, Hon. Associate Justice Esperanza R. Fabon-Victorino (Ret.), and Hon. Associate Justice Ma. Belen M. Ringpis-Liban, as Members.

15 See Resolution dated 21 April 2017, Division Docket, Volume I, p. 93.

16 Id., pp. 94-97.

17 Id., pp. 101-115.

18 See Notice of Pre-Trial Conference dated 11 May 2017, id., pp. 99-100.

19 See Resolution dated 31 July 2017, id., p 143, and Resolution dated 09 November 2017, id., p. 147.

20 Id., pp. 131-133.

21 Id., pp. 150-171

22 Id., Volume II, pp. 860-876.

23 Id., pp. 897-904.

24 See Motion for Commissioning of Independent Certified Public Accountant dated 27 March 2018, id., pp. 877-894.

25 Id., pp. 931-932.

the ICPA and directed him to submit his report within 30 days therefrom. Villanueva filed his Report[26] on 17 July 2018.

In the trial that ensued, petitioner presented its witnesses, namely: (1) Ian Jasper E. Monteras (**Monteras**), petitioner's Accounting Assistant; and, (2) Villanueva, the Court-commissioned ICPA.

On the witness stand, Monteras identified his Judicial Affidavit[27], which was later on replaced with an Amended Judicial Affidavit[28], wherein he declared that: (1) petitioner's sales for the third quarter of TY 2014 were reported as zero-rated because they were made solely to EDC Burgos Wind Power Corporation (**EDC**), a Renewable Energy (**RE**) Developer; (2) petitioner incurred expenses for goods and services used in the EDC contract which resulted in the excess and/or unutilized input VAT of ₱186,802,326.96; (3) petitioner duly filed its quarterly VAT return reflecting the zero-rated sale and the excess input VAT; (4) the excess input VAT was not carried over to the succeeding period; (5) petitioner filed an application for VAT refund or tax credit before BIR RDO No. 50 for the excess input VAT; (6) the BIR, through a letter, denied the VAT refund claim; and, (7) petitioner submitted the documents, invoices and receipts to the BIR to substantiate its claim for VAT refund, contrary to the reasons cited by the BIR in the Denial Letter.

Respondent did not conduct any cross-examination.

ICPA Villanueva assumed the witness stand next where he identified his (1) Judicial Affidavit dated 19 July 2018[29]; (2) the ICPA Report dated 16 July 2018[30]; and, (3) one (1) CD[31] containing scanned copies of the ICPA Report and its annexes.

On cross-examination, Villanueva stated the he recommended the disallowance of a portion of petitioner's total claim in view of the

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26 Exhibit "P-36", id., pp. 934-1003.
27 Dated 13 February 2018, Exhibit "P-33", id., Volume I, pp. 179-220.
28 Dated 18 July 2018, Exhibit "P-35", id., Volume III, pp. 1099-1040.
29 Exhibit "P-288", id., pp. 1009-1020.
30 Supra at note 26.
31 Exhibit "P-289".

absence of any supporting documents showing petitioner's sales to EDC.[32]

On 03 October 2018, after completing the presentation of its testimonial evidence and after being granted an extension of time by the Third Division[33], petitioner filed its Formal Offer of Evidence[34] (**FOE**) consisting of Exhibits "P-1" to "P-289", inclusive of sub-markings.

After respondent's Comment/Opposition[35] was filed, the Court issued a Resolution[36] denying the admission of Exhibits "**P-26**", "**P-27**", "**P-28**", "**P-131**" to "**P-138**", "**P-256-B**" to "**P-277-B**" and "**P-278-A**" to "**P-285-A**"[37], for petitioner's failure to present the originals for comparison.

On 13 August 2019, respondent offered the testimony of his lone witness, Revenue Officer (**RO**) Moises B. Besol (**Besol**), to rebut petitioner's claims.

In his Judicial Affidavit dated 08 August 2019[38], RO Besol declared that: (1) he holds the position of RO III; (2) he was tasked to review and evaluate petitioner's claim for refund or issuance of a TCC for the alleged excess and/or unutilized input VAT for the 3rd quarter of TY 2014 pursuant to the Letter of Authority (**LOA**) No. eLA201200035902; (3) petitioner did not submit the additional documents requested for the input VAT claim such as secondary

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32 See TSN dated 24 July 2018.

33 See Resolution dated 06 September 2018, Division Docket, Volume III, pp. 1146-1149.

34 Id., pp. 1163-1185.

35 Dated 10 October 2018, id., pp. 1207-1208.

36 Dated 15 March 2019, id., pp. 1212-1214.

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Exhibit	Description
"P-26"	Sublease Agreement executed by VSPI and Bayview in May 2013.
"P-27"	Memorandum of Understanding executed by VSPI and Bayview in April 2014.
"P-28"	Bayview's Certificate of Registration with CSEZFP Enterprise No. CF-006 issued by the CEZA to Bayview on 01 December 2011.
"P-131" to "P-138"	Official receipts, sales invoices and other purchase documents for domestic purchases of goods and services.
"P-256-B" to "P-277-B" and "P-278-A" to "P-285-A"	Signed copy of final assessment notice from the Electronic-to-Mobile or E2M Customs System.

38 Exhibit "R-9", Division Docket, Volume III, pp. 1218-1226.

evidence to substantiate purchases from its big-ticket supplier Scan Global (Philippines), Inc. (**Scan Global**);[39] (4) due to non-compliance and lack of documents, his group recommended the denial of petitioner's claim for refund; and, (5) as a result, petitioner cannot claim any unutilized input VAT attributable to zero-rated sales.

During the cross-examination, RO Besol confirmed that the BIR records contained the photocopies of the official receipts (**ORs**) and billing statement of Scan Global.[40]

On re-direct examination, RO Besol stated that the documents from Scan Global were not supported by any delivery receipts, check vouchers and cancelled checks that the BIR had previously requested. According to him, petitioner never submitted the required documents.[41]

On re-cross examination, when asked if the documents requested from petitioner were necessary for VAT refund or issuance of TCC, RO Besol replied that the additional documents sought from the latter were not included in the checklist for the mandatory requirements for VAT refund.[42]

On 06 September 2019, respondent filed his FOE[43] consisting of Exhibits "**R-1**" to "**R-9**", inclusive of sub-markings.[44] After petitioner

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39 See Memorandum dated 09 January 2017, Exhibit "R-3", id., pp. 1228-1230.

40 TSN dated 13 August 2019.

41 Id.

42 Id.; See Exhibit "P-6" (Checklist of Mandatory Requirements for Claims for VAT Credit/Refund), supra at note 10.

43 Division Docket, Volume III, pp. 1251-1256.

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Exhibit	Description
"R-1"	BIR Records bearing the report of investigation on the claim for tax refund/credit of petitioner for the period July 1, 2014 to Sept. 30, 2014.
"R-2"	BIR Electronic Letter of Authority No. eLA201200035902 dated November 9, 2016.
"R-3"	Memorandum dated January 9, 2017.
"R-3-a"	Name and specimen signature of NESTOR S. VALEROSO, BIR Deputy Commissioner for Operations Group.
"R-4"	BIR Memorandum of Assignment No. RR8-050-RET-011817-008 (AS) dated January 18, 2017.
"R-4-a"	Name and specimen signature of ROSITA U. MENIANO, then Revenue District Officer of BIR RDO 50-South Makati.
"R-5"	BIR Letter dated January 20, 2017 addressed to petitioner.
"R-5-a"	Name and specimen signature of ROSITA U. MENIANO, then Revenue District Officer of BIR RDO 50-South Makati.

filed its Comment[45], the Third Division admitted all of respondent's exhibits and gave the parties a period of 30 days within which to submit their respective memoranda.[46]

On 13 November 2019, petitioner filed its Memorandum.[47] On the other hand, for respondent's failure to file his memorandum[48], the Third Division submitted the case for decision.[49]

On 11 November 2020, the Third Division rendered the assailed Decision denying the petitioner's Petition for Review.[50] The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for insufficiency of evidence.
>
> **SO ORDERED.**
>
> ...

In the Third Division's assailed Decision, it found that petitioner failed to establish that its sales transaction with EDC are subject to zero-rated VAT because it failed to present the alleged requisite Certificate of Endorsement (**COE**) issued to EDC by the Department of Energy (**DOE**), on a *per* transaction basis, pursuant allegedly to the conditions set forth under Section 18(C)[51] of the of DOE Circular No.

"R-5-b"	Date of Receipt of petitioner of the said BIR Letter dated January 20, 2017.
"R-6"	Undated Memorandum Report of Revenue Officer MOISES B. BESOL.
"R-6-a"	Name and specimen signature of Revenue Officer MOISES B. BESOL.
"R-7"	BIR Letter dated January 27, 2017 addressed to petitioner.
"R-7-a"	Name and specimen signature of NESTOR S. VALEROSO, BIR Deputy Commissioner for Operations Group.
"R-8"	Undated Memorandum Report of Revenue Officer MOISES B. BESOL.
"R-8-a"	Name and specimen signature of Revenue Officer MOISES B. BESOL.
"R-9"	Sworn Judicial Affidavit dated August 8, 2019 of Revenue Officer MOISES B. BESOL.
"R-9-a"	Name and specimen signature of Revenue Officer MOISES B. BESOL.

45 Dated 23 September 2019, Division Docket, Volume III, pp. 1259-1268.
46 See Resolution dated 09 October 2019, id., 1274-1275.
47 Id., pp. 1276-1304.
48 See Records Verification Report dated 28 November 2019, id., p. 1307.
49 See Resolution dated 27 December 2019, id., p. 1309.
50 Supra at note 3.
51 **SEC. 18. Conditions for Availment of Incentives and Other Privileges.**
...

DC2009-05-0008, also known as the Implementing Rules and Regulation (**IRR**) of RA 9513.

Petitioner sought reconsideration of the assailed Decision but to no avail.[52] On 19 May 2021, the Third Division rendered the similarly assailed Resolution[53] denying petitioner's Motion for Reconsideration (**MR**). In denying petitioner's MR, the Third Division held that the requirement of COE under Section 18(C) of the IRR of RA 9513 makes no distinction as to what type of incentive is covered.

Unsatisfied with the Third Division's rulings, petitioner filed the instant Petition for Review before the Court *En Banc*.[54]

In the Resolution dated 30 June 2021[55], the Court *En Banc* ordered respondent to file his comment to the said petition. On 27 July 2021, respondent filed his Comment/Opposition[56] thereto. On 14 October 2021, the Court *En Banc* submitted the case for decision.[57]

ISSUE

Based on the arguments presented, the central issue for the Court *En Banc*'s resolution is —

> WHETHER THE THIRD DIVISION ERRED IN DENYING PETITIONER VESTAS SERVICES PHILIPPINES, INC.'S ENTITLEMENT TO A TAX REFUND, REPRESENTING ITS EXCESS AND/OR UNUNTILIZED INPUT VALUE-ADDED TAX (VAT) CREDITS ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE THIRD QUARTER OF CALENDAR YEAR 2014 IN THE AMOUNT OF ₱186,802,326.96.

C. Certificate of Endorsement by the DOE
RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be qualified to avail of the incentives provided for in the Act only after securing a Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis.

...

52 See Motion for Reconsideration (Re: Decision dated 11 November 2020) filed by petitioner, Division Docket, Volume III, pp. 1335-1348; Respondent filed its Comment/Opposition (on Petitioner's Motion for Reconsideration) on 27 January 2021, id., pp. 1356-1364.

53 Supra at note 4.

54 Supra at note 1.

55 *Rollo*, pp. 76-77.

56 Id., pp. 78-82.

57 See Resolution dated 14 October 2021, id., pp. 85-86.

ARGUMENTS

In support of its present petition, petitioner insists that it is engaged in zero-rated or effectively zero-rated sales to EDC and that the Third Division erred in its findings that it is not entitled to a tax refund or tax credit since it failed to show that EDC (as an RE Developer) was issued a COE by the DOE on a *per* transaction basis.

In insisting that it is entitled to a VAT refund or tax credit, petitioner echoes its arguments in its prior petition for review before the Third Division, as follows:

I. Section 108(B)(3)[58] of the NIRC of 1997, as amended, states that services performed by VAT-registered person shall be subject to zero percent (0%) if it is rendered to entities whose exemption under special laws effectively subjects the supply of services to 0% rate.

   In relation thereto, **Section 15(g)[59] of Republic Act (RA) No. 9513 or the *Renewable Energy Act of 2008* provides that , RE developers are entitled to 0% VAT for the purchases**

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[58] **SEC. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Prope*rties. —
...
(B) *Transactions Subject to Zero Percent (0%) Rate.* — ...
...
(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[.]

[59] ...
Sec. 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:
...
(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.
...

of local supply of goods and services needed for the development, construction and installation of its plant facilities.

In addition, **Section 13(G)(b)[60] of the IRR of RA 9513 provides that purchases of local goods, properties and services needed for the development, construction, and installation of the plant facilities of RE developers are subject to 0% VAT;**

Thus, as petitioner rendered its services to EDC, a registered RE Developer, its third quarter sales to EDC were subjected to 0% VAT;

II. **Section 18(C)[61] of the IRR of RA 9513, requiring the COE, only relates to local purchases of RE equipment, and applies only to manufacturers, fabricators and suppliers of locally-produced RE equipment. It does *not* pertain to other fiscal incentives granted under RA 9513 and accordingly does *not* extend to the purchase of services relating to the development, construction, and installation of the plant facilities of RE Developers.**

Since petitioner does not claim to be an RE Developer, manufacturer, fabricator or supplier of locally-produced RE equipment, it is not required to submit the necessary certifications under Section 18 of the IRR; and,

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60 **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:

...

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:

...

(b) Purchase of local goods, properties and services needed for the development, construction, and installation of the plant facilities of RE Developers[.]...

...

61 Supra at note 51.

III. Section 15[62] of RA 9513 requires DOE endorsement only for the importation of RE machinery, equipment and

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62 **Sec. 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:

(a) Income Tax Holiday (ITH) — For the first seven (7) years of its commercial operations, the duly registered RE developer shall be exempt from income taxes levied by the National Government.

Additional investments in the project shall be entitled to additional income tax exemption on the income attributable to the investment: *Provided*, That the discovery and development of new RE resource shall be treated as a new investment and shall therefore be entitled to a fresh package of incentives: *Provided, further*, That the entitlement period for additional investments shall not be more than three (3) times the period of the initial availment of the ITH.

(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 and 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 to the point of use and covered by shipping documents in the name of the duly registered operator to whom the shipment will be directly delivered by customs authorities: *Provided, further,* That endorsement of the DOE is obtained before the importation of such machinery, equipment, materials and parts is 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:

(i) If made to another RE developer enjoying tax and duty exemption on imported capital equipment;

(ii) If made to a non-RE developer, upon payment of any taxes and duties due on the net book value of the capital equipment to be sold;

(iii) Exportation of the used capital equipment, machinery, spare parts or source documents or those required for RE development; and

(iv) For reasons of proven technical obsolescence.

When the aforementioned sale, transfer or disposition is made under any of the conditions provided for in the foregoing paragraphs after ten (10) years from the date of importation, the sale, transfer or disposition shall no longer be subject to the payment of taxes and duties[.]

(c) Special Realty Tax Rates on Equipment and Machinery — Any law to the contrary notwithstanding, realty and other taxes on civil works, equipment, machinery, and other improvements of a registered RE Developer actually and exclusively used for RE facilities shall not exceed one and a half percent (1.5%) of their original cost less accumulated normal depreciation or net book value: *Provided,* That in case of an integrated resource development and generation facility as provided under Republic Act No. 9136, the real property tax shall only be imposed on the power plant[.]

(d) Net Operating Loss Carry-Over (NOLCO) — The NOLCO of the RE Developer during the first three (3) years from the start of commercial operation which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next seven (7) consecutive taxable years immediately following the year of such loss: *Provided,*

materials. All other incentives including VAT zero-rated status of local purchases of goods and services make no reference to a DOE endorsement for availment of such incentives.

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however, That operating loss resulting from the availment of incentives provided for in this Act shall not be entitled to NOLCO[.]

(e) Corporate Tax Rate — After seven (7) years of income tax holiday, all RE Developers shall pay a corporate tax of ten percent (10%) on its net taxable income as defined in the National Internal Revenue [Code (NIRC)] of 1997, as amended by Republic Act No. 9337: *Provided,* That the RE Developer shall pass on the savings to the end-users in the form of lower power rates.

(f) Accelerated Depreciation — If, and only if, an RE project fails to receive an ITH before full operation, it may apply for Accelerated Depreciation in its tax books and be taxed based on such: *Provided,* That if it applies for Accelerated Depreciation, the project or its expansions shall no longer be eligible for an ITH. Accelerated depreciation of plant, machinery, and equipment that are reasonably needed and actually used for the exploration, development and utilization of RE resources may be depreciated using a rate not exceeding twice the rate which would have been used had the annual allowance been computed in accordance with the rules and regulations prescribed by the Secretary of the Department of Finance and the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended. Any of the following methods of accelerated depreciation may be adopted:

(i) Declining balance method; and

(ii) Sum-of-the years digit method.

(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.

(h) Cash Incentive of Renewable Energy Developers for Missionary Electrification — A renewable energy developer, established after the effectivity of this Act, shall be entitled to a cash generation-based incentive per kilowatt-hour rate generated, equivalent to fifty percent (50%) of the universal charge for power needed to service missionary areas where it operates the same, to be chargeable against the universal charge for missionary electrification.

(i) Tax Exemption of Carbon Credits — All proceeds from the sale of carbon emission credits shall be exempt from any and all taxes.

(j) Tax Credit on Domestic Capital Equipment and Services — A tax credit equivalent to one hundred percent (100%) of the value of the value-added tax and customs duties that would have been paid on the RE machinery, equipment, materials and parts had these items been imported shall be given to an RE operating contract holder who purchases machinery, equipment, materials, and parts from a domestic manufacturer for purposes set forth in this Act: *Provided,* That prior approval by the DOE was obtained by the local manufacturer: *Provided, further,* That the acquisition of such machinery, equipment, materials, and parts shall be made within the validity of the RE operating contract.

IV. Section 25[63] of RA 9513 provides that the COR issued to RE Developers is the only basis for the entitlement to the fiscal incentives enumerated under Section 15 of RA 9513.

As EDC was issued with COR by the DOE and the Board of Investment (**BOI**), coupled with the contracts between EDC and petitioner, there is a factual basis to consider the latter's sales to EDC as zero-rated;

V. **DOE - Renewable Energy Management Bureau (REMB) only processes COE for duty-free importations. Hence, DOE-REMB cannot issue a separate COE for purposes of availing the VAT zero-rating on local purchases of goods and services.**

On the other hand, respondent argues that the IRR of RA 9513 applies to *all* incentives (including VAT zero-rating). Thus, a COE from the DOE-REMB must be secured to avail of the VAT refund. As petitioner failed to submit the COE of EDC on a *per* transaction basis, its claim for VAT refund or tax credit must thus be denied.

<u>RULING OF THE COURT *EN BANC*</u>

Before going into the merits of the case, We deem it propitious to first resolve whether the Court *En Banc* has jurisdiction over the present petition.

THE COURT *EN BANC* HAS JURISDICTION OVER THE PRESENT PETITION.

The Third Division issued the assailed Resolution denying petitioner's MR on 19 May 2021. Petitioner received the said assailed Resolution on 01 June 2021.

63 Sec. 25. ***Registration of RE Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment.*** — RE Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment shall register with the Department of Energy, through the Renewable Energy Management Bureau. Upon registration, a certification shall be issued to each RE Developer and local manufacturer, fabricator and supplier of locally-produced renewable energy equipment to serve as the basis of their entitlement to incentives provided under Chapter VII of this Act.

Under Section 2(a)(1)[64], Rule 4 in relation to Section 3(b)[65], Rule 8 of the RRCTA, petitioner had 15 days from 01 June 2021, or until 16 June 2021, within which to file its appeal before this Court. Accordingly, the petitioner timely filed this petition on 15 June 2021.[66]

Given that the Court *En Banc* has jurisdiction over the present petition, We shall now proceed to discuss the merits thereof.

SECTION 108(B)(3) OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED, IN RELATION TO SECTION 15(G) OF THE RENEWABLE ENERGY ACT IS THE BASIS FOR THE VALUE-ADDED TAX (VAT) ZERO-RATING OF PETITIONER'S SALES.

The Third Division, in its assailed Decision, found that petitioner could not be entitled to a VAT refund or tax credit from its supposed zero-rated sales (of good and services) to EDC because it did not successfully prove with evidence that the latter should be given the incentive of zero-rated VAT under Section 15(g) of RA 9513. This, according to the Third Division, is predicated on petitioner's failure to submit the COE issued by the DOE to EDC.

Section 108(B)(3) of the NIRC of 1997, as amended, states:

> ...
>
> **SEC. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —
>
> ...
>
> (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:
>
> ...

---

64 **SEC. 2.** *Cases within the Jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — **Bureau of Internal Revenue**, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.] (Emphasis supplied.)

65 Supra at note 2.

66 Supra at note 1.

> (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**[.][67]
>
> ...

Pursuant to the above-mentioned provision, Section 4.108-5(b)(3) of the Revenue Regulations (**RR**) No. 16-05[68], as amended by RR No. 04-07[69], echoed the 0% VAT rate on services performed for persons or entities who are granted indirect tax exemption under special laws and international agreements, *viz*:

> ...
>
> SEC. 4.108-5. ***Zero-Rated Sale of Services***. —
>
> ...
>
> **(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:
>
> ...
>
> (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[.]
>
> ...

These transactions falling under Section 108(B)(3) of the NIRC of 1997, as amended, are also classified as effectively zero-rated sales of services.[70] Section 4.108-6 of RR No. 16-05, as amended by RR No. 04-07, defines what "effectively zero-rated sales of services" is, *viz*:

> ...
>
> SEC. 4.108-6. ***Meaning of the term 'Effectively Zero-Rated Sale of Services'***. The term 'effectively zero-rated sales of services' shall refer to the local sale of services by a VAT-registered person to a person or entity who was granted indirect tax exemption under special laws or international agreement.
>
> ...

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67 Emphasis supplied.

68 Consolidated Value-Added Tax Regulations of 2005.

69 Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.

70 *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, G.R. No. 153866, 11 February 2005.

Based on the foregoing, petitioner's sales shall only be considered effectively zero-rated for VAT purposes when the following requisites are present:

(1) The services were rendered by a VAT-registered person;
(2) The services were performed in the Philippines; and,
(3) The services were 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 0% rate.

First, it is undisputed that petitioner is a VAT-registered person.[71] *Second*, the services were performed in the Philippines. Based on the site description[72], the Burgos Wind Farm project is located in Barangays Saoit, Poblacion and Nagsurot in the Municipality of Burgos, Ilocos Norte Philippines. As regards the *third* requisite, petitioner claims to have transacted with EDC, an RE Developer granted with the incentive of zero-rating for its purchases as provided in Section 15(g) of RA 9513. This provision reads:

> ...
> **Sec. 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**:
> ...
>
> (g) Zero Percent Value-Added Tax Rate — ...
>
> **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.[73]
> ...

---

71 Supra at note 6.
72 Schedule 2: Site Description as attached to Exhibit "P-13", Division Docket, Volume I, p. 335.
73 Emphasis and underscoring supplied.

This incentive was reiterated in Section 13(G)(b) of the IRR of RA 9513 which states:

> ...
>
> **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:
>
> ...
>
> 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:**
>
> ...
>
> **(b) Purchase of local goods, properties and services needed for the development, construction, and installation of the plant facilities of RE Developers[.]...**[74]
>
> ...

Thus, under RA 9513, an RE Developer like EDC is entitled to 0% VAT on its purchases when the following conditions concur:

1. An RE Developer purchases local goods, properties and services; and,
2. The said local goods, properties and services are needed for the development, construction and installation of its plant facilities.

I. EDC BURGOS WIND POWER CORPORATION (EDC) BEING A RENEWABLE ENERGY (RE) DEVELOPER IS AN ENTITY GRANTED WITH AN INDIRECT TAX EXEMPTION UNDER A SPECIAL LAW WHICH EFFECTIVELY SUBJECTS THE SUPPLY OF SERVICES TO ZERO PERCENT (0%) RATE.

---

74 Emphasis and underscoring supplied.

Section 4(pp)[75] of RA 9513 defined an "RE Developer" as individual/s or a group of individual formed in accordance with existing Philippine laws engaged in the exploration, development and utilization of RE resources and actual operation of RE systems/facilities. Likewise, Section 4(oo)[76] of RA 9513 defined a "Registered RE Developer" as an RE Developer duly registered with the DOE.

Corollarily, Section 25 of RA 9513 provides that an RE Developer registered with the DOE shall be issued a certification which shall serve as a basis for the entitlement of the incentives laid down under the law. The relevant provision states:

> ...
>
> **Sec. 25.** ***Registration of RE Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment.*** — **RE Developers** and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment **shall register with the Department of Energy**, through the Renewable Energy Management Bureau. **Upon registration, a certification shall be issued to each RE Developer** and local manufacturer, fabricator and supplier of locally-produced renewable energy equipment **to serve as the basis of their entitlement to incentives provided under Chapter VII of this Act.**[77]
>
> ...

A further perusal of the records also reveals that the DOE issued to EDC COR No. WESC 2009-09-004[78] to prove that the latter was a duly registered RE Developer of wind energy resources in Burgos, Ilocos Norte. In addition, the BOI issued COR No. 2011-135[79], dated 29 June 2011, certifying that EDC is a new RE Developer of an 86 MW

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[75] **Sec. 4.** ***Definition of Terms.*** – As used in this Act, the following terms are herein defined:

...

(pp) "Renewable Energy (Systems) Developers" or "RE Developers" refer to individual/s or a group of individuals formed in accordance with existing Philippine Laws engaged in the exploration, development and utilization of RE resources and actual operation of RE systems/facilities[.]

...

[76] **Sec. 4.** ***Definition of Terms.*** – As used in this Act, the following terms are herein defined:

...

(oo) "Registered RE Developer" refers to a RE Developer duly registered with the DOE[.]

...

[77] Emphasis supplied.

[78] Exhibit "P-11", BIR Records, p. 587.

[79] Exhibit "P-12", id., pp. 579-584.

Wind Energy Power Generation Project (Burgos, Ilocos Norte) under RA 9513. As an RE Developer, EDC could thus avail of the fiscal incentives granted under RA 9513.

II. EDC BURGOS WIND POWER CORPORATION (EDC), AS A RENEWABLE ENERGY (RE) DEVELOPER, SECURES SERVICES NEEDED FOR THE DEVELOPMENT, CONSTRUCTION AND INSTALLATION OF ITS PLANT FACILITIES.

It is also noted that petitioner subsequently entered into an agreement with EDC for the construction of wind turbines for the latter. The relevant parts of the Service and Energy Based Availability Agreement[80] provides:

> ...
> **THIS SERVICE AND ENERGY BASED AVAILABILITY AGREEMENT** is made and entered into as of [01 March 2013] by and between:
>
> (1) EDC Burgos Wind Power Corporation, of 42nd Floor One Corporate Centre Building Julia Vargas corner Meralco Avenue, Ortigas Center, Pasig City 1605 (hereinafter the "**Employer**"); and
>
> (2) Vestas Services Philippines, Inc., Reg No. CS200919421, of 31F Tower 2, RCBC Plaza, Ayala Avenue, Cor. Sen Gil Puyat, Makati City, Philippines (hereinafter the "**Contractor**").
>
> ...
>
> **RECITALS**
>
> A. Employer is or will be the owner of a wind energy project entitled the Burgos wind farm project (the "**Wind Farm**"), at the site defined in Schedule 2 [Site Description] hereto (the "**Site**").
> B. Contractor and Employer have entered into a contract dated as of the date of this Agreement (as the same may be amended, modified or supplemented from time to time, the "**On-Shore Contract**"), pursuant to which **the Contractor has agreed to engineer, design, deliver, construct, install, test and commission certain Wind Turbines which shall be erected**

[80] Dated 01 March 2013, formally offered as Exhibit "P-13-A", however the document in the Court docket was marked as Exhibit "P-13", Division Docket, Volumes I and II, pp. 265-580.

> **and installed on real property owned by the Employer at the Site.**
>
> C. **Contractor has agreed, to provide certain services and Spare Parts in connection with the Wind Turbines and the other Serviced Equipment and to make certain warranties regarding the availability of the Wind Turbines.**[81]
>
> ...

With the foregoing disquisition, having thus clearly complied with the requirements to avail of VAT refund or tax credit, the Court *En Banc* could only conclude that petitioner is engaged in zero-rated or effectively zero-rated sales of services pursuant to Section 108(B)(3) of the NIRC of 1997, as amended, given that it rendered services to EDC who, in turn, was granted indirect tax exemption incentive under RA 9513. To recapitulate:

1. Petitioner is a VAT-registered person;
2. The services were performed in the Philippines; and,
3. The services were rendered to persons or entities who is granted exemption under special laws:
    a. Petitioner rendered services to EDC;
    b. EDC is a registered RE Developer as evidenced by the CORs from DOE and BOI;
    c. EDC, being a registered RE Developer, is entitled to a zero-rating on its local purchases of services needed for development, construction, and installation of its plant facilities (as provided under RA 9513); and,
    d. The services were related to the development, construction, and installation of plant facilities of EDC.

A CERTIFICATE OF ENDORSEMENT (COE) IS NOT A REQUIREMENT.

Incidentally, We are constrained to disagree with the Third Division's finding that petitioner's evidence is insufficient because it failed to present the requisite COE issued to EDC (by DOE), on a *per* transaction basis, pursuant to Section 18(C)[82] of the IRR of RA 9513.

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[81] Emphasis supplied.
[82] Supra at note 51.

In the Court's mind, the COE is not, in the first place, a requirement for EDC to be granted the VAT zero-rating incentive under RA 9513 for the reasons essayed below.

I. A CERTIFICATE OF ENDORSEMENT (COE) IS APPLICABLE *ONLY* FOR THE INCENTIVE OF DUTY-FREE IMPORTATION OF RENEWABLE ENERGY (RE) MACHINERY, EQUIPMENT AND MATERIALS.

In the assailed Resolution, the Court's Third Division held that Section 18(C) of the IRR of RA 9513 makes no distinction as to what type of incentives is covered. Hence, the COE is a condition for the entitlement to the incentives and other privileges under RA 9513.

Petitioner, however, counters that DOE endorsement is required *only* for the importation of RE machinery, equipment and materials. All other incentives including VAT zero-rated status of local purchases of goods and services make no reference to a DOE endorsement for availment of such incentives.

We agree with petitioner's contention.

Section 15 of RA 9513 provides:

...

CHAPTER VII
General Incentives

Sec. 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:

(a) Income Tax Holiday (ITH). — For the first seven (7) years of its commercial operations, the duly registered RE developer shall be exempt from income taxes levied by the National Government.

Additional investments in the project shall be entitled to additional income tax exemption on the income attributable to the investment: *Provided,* That the discovery and development of new RE resource shall be treated as a new investment and shall therefore be entitled to a fresh package of incentives: *Provided, further,* That the entitlement period for additional investments shall not be more than three (3) times the period of the initial availment of the ITH.

(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 and 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 to the point of use and covered by shipping documents in the name of the duly registered operator to whom the shipment will be directly delivered by customs authorities: ***Provided, further,*** **That endorsement of the DOE is obtained before the importation of such machinery, equipment, materials and parts is 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:

(i) If made to another RE developer enjoying tax and duty exemption on imported capital equipment;

(ii) If made to a non-RE developer, upon payment of any taxes and duties due on the net book value of the capital equipment to be sold;

(iii) Exportation of the used capital equipment, machinery, spare parts or source documents or those required for RE development; and

(iv) For reasons of proven technical obsolescence.

When the aforementioned sale, transfer or disposition is made under any of the conditions provided for in the foregoing paragraphs after ten (10) years from the date of importation, the sale, transfer or disposition shall no longer be subject to the payment of taxes and duties.

(c) Special Realty Tax Rates on Equipment and Machinery. — Any law to the contrary notwithstanding, realty and other taxes on civil works, equipment, machinery, and other improvements of a registered RE Developer actually and exclusively used for RE facilities shall not exceed one and a half percent (1.5%) of their original cost less accumulated normal depreciation or net book value: *Provided*, That in case of an integrated resource development and generation facility as provided under Republic Act No. 9136, the real property tax shall only be imposed on the power plant.

(d) Net Operating Loss Carry-Over (NOLCO). — The NOLCO of the RE Developer during the first three (3) years from the start of commercial operation which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next seven (7) consecutive taxable years immediately following the year of such loss: *Provided, however*, That operating loss resulting from the availment of incentives provided for in this Act shall not be entitled to NOLCO.

(e) Corporate Tax Rate. — After seven (7) years of income tax holiday, all RE Developers shall pay a corporate tax of ten percent (10%) on its net taxable income as defined in the National Internal Revenue [Code (NIRC)] of 1997, as amended by Republic Act No. 9337: *Provided*, That the RE Developer shall pass on the savings to the end-users in the form of lower power rates.

(f) Accelerated Depreciation. — If, and only if, an RE project fails to receive an ITH before full operation, it may apply for Accelerated Depreciation in its tax books and be taxed based on such: *Provided*, That if it applies for Accelerated Depreciation, the project or its expansions shall no longer be eligible for an ITH. Accelerated depreciation of plant, machinery, and equipment that are reasonably needed and actually used for the exploration, development and utilization of RE resources may be depreciated using a rate not exceeding twice the rate which would have been used had the annual allowance been computed in accordance with the rules and regulations prescribed by the Secretary of the Department of Finance and the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended. Any of the following methods of accelerated depreciation may be adopted:

(i) Declining balance method; and

(ii) Sum-of-the years digit method[.]

(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.

(h) Cash Incentive of Renewable Energy Developers for Missionary Electrification. — A renewable energy developer, established after the effectivity of this Act, shall be entitled to a cash generation-based incentive per kilowatt-hour rate generated, equivalent to fifty percent (50%) of the universal charge for power needed to service missionary areas where it operates the same, to be chargeable against the universal charge for missionary electrification[.]

(i) Tax Exemption of Carbon Credits. — All proceeds from the sale of carbon emission credits shall be exempt from any and all taxes[.]

(j) Tax Credit on Domestic Capital Equipment and Services. — A tax credit equivalent to one hundred percent (100%) of the value of the value-added tax and customs duties that would have been paid on the RE machinery, equipment, materials and parts had these items been imported shall be given to an RE operating contract holder who purchases machinery, equipment, materials, and parts from a domestic manufacturer for purposes set forth in this Act: *Provided*, That prior approval by the DOE was obtained by the local manufacturer: *Provided, further*, That the acquisition of such machinery, equipment, materials, and parts shall be made within the validity of the RE operating contract.[83]

...

A reading of Section 15 of RA 9513 reveals that the term "endorsement" was only mentioned twice in the whole provision. Both were made in clear reference only to or in connection with the duty-free importation of RE machinery, equipment and materials, and their subsequent sales.

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83 Emphasis and underscoring supplied.

Similarly, in Section 13 of the IRR of RA 9513, the term "endorsement" was also mentioned thrice under the exemption from duties on RE machinery, equipment, and materials; specifically, under the paragraph governing the sale or disposition of the said capital equipment, *viz*:

...

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:

A. *Income Tax Holiday (ITH)*

(1) ***Period of Availment*** — The duly registered RE Developer shall be fully exempt from income taxes levied by the National Government for the period as follows:

(a) Existing RE Projects — seven (7) years from the start of commercial operations;

All RE Developers that acquire, operate and/or administer existing RE facilities that were or have been in commercial operation for more than seven (7) years, upon the effectivity of the Act, shall not be entitled to ITH, except for any additional investment.

(b) New investment in RE Resources — seven (7) years from the start of commercial operations resulting from new investments; and

(c) Additional investment in the RE Project — not more than three (3) times the period of the initial availment by the existing or new RE project or covering new or additional investments.

The maximum period within which an RE Developer may be entitled to an ITH shall be twenty-one (21) years, inclusive of the initial 7-

year ITH for its new and additional investments in a specific RE facility.

(2) ***Entitlement for New and Additional Investments subject to prior approval by the DOE***

(a) New Investment — RE Developers undertaking discovery and development of new RE Resource distinct from their registered operations may qualify as new projects, subject to the setting up of separate books of accounts. In such cases, a fresh package of ITH from the start of commercial operations shall apply.

(b) Additional Investment — The ITH for additional investments in an existing RE project shall be applied only to the income attributable to the additional investment.

Additional investment may cover investments for improvements, modernization, or rehabilitation duly registered with the DOE, which may or may not result in increased capacity, subject to the conditions to be determined by the DOE, such as, but not limited to, the following:

(i) Identification of the phases/stages of production scheduled for modernization/rehabilitation; and

(ii) Improvements such as reduced production/operational costs, increased production/operational efficiency, and better product quality of the RE facilities.

B. *Exemption from Duties on RE Machinery, Equipment, and Materials*

Within the first ten (10) years from the issuance of a Certificate of Registration to an RE Developer, the importation of machinery and equipment, and materials and parts thereof, including control and communication equipment, shall be exempt from tariff duties.

(1) Conditions for Duty-Free Importation — An RE Developer may import machinery and equipment, materials and parts thereof exempt from the payment of any and all tariff duties due thereon subject to the following conditions:

(a) The machinery and equipment are directly and actually needed and will be used exclusively in the RE facilities for the transformation of and delivery of energy to the point of use;

(b) The importation of materials and spare parts shall be restricted only to component materials and parts for the

specific machinery and/or equipment authorized to be imported;

(c) The kind of capital machinery and equipment to be imported must be in accordance with the approved work and financial program of the RE facilities; and

(d) Such importation shall be covered by shipping documents in the name of the duly registered RE Developer/operator to whom the shipment will be directly delivered by customs authorities.

(2) ***Sale or Disposition of Capital Equipment* — Any sale, transfer, assignment, donation, or other modes of disposition of originally imported capital equipment/machinery including materials and spare parts, brought into the RE facilities of the RE Developer which availed of duty-free importation within ten (10) years from date of importation shall require prior <u>endorsement</u> of the DOE. Such <u>endorsement</u> shall be granted only if any of the following conditions is present:**

(a) If made to another RE Developer enjoying tax and duty exemption on imported capital equipment;

(b) If made to a non-RE Developer, upon payment of any taxes and duties due on the net book value of the capital equipment to be sold;

(c) Exportation of the used capital equipment, machinery, spare parts or source documents or those required for RE development; and

(d) For reasons of proven technical obsolescence as may be determined by the DOE.

When the aforementioned sale, transfer, or disposition is made under any of the conditions provided for in the foregoing paragraphs after ten (10) years from the date of importation, **the sale, transfer, or disposition shall require prior <u>endorsement</u> by the DOE and shall no longer be subject to the payment of taxes and duties.**

Within six (6) months from the issuance of this IRR, the DOF/Bureau of Customs (BOC) and the Bureau of Internal Revenue (BIR) shall, in consultation with the DOE, formulate the necessary mechanisms/guidelines to implement this provision.

C. *Special Realty Tax Rates on Equipment and Machinery*

Realty and other taxes on civil works, equipment, machinery, and other improvements by a registered RE Developer actually and exclusively used for RE facilities shall not exceed one and a half percent (1.5%) of their original cost less accumulated normal depreciation or net book value: *Provided*, That in the case of an integrated RE resource development and Generation Facility as provided under Republic Act No. 9136, the real property tax shall be imposed only on the power plant.

As used in this IRR, "***Original Cost***" shall refer to (1) the tangible cost of construction of the power plant component, or of any improvement thereon, regardless of any subsequent transfer of ownership of such power plant; or (2) the assessed value prevailing at the time the Act took into effect or at the time of the completion of the power plant project after the effectivity of the Act, as the case may be, and in any case assessed at a maximum level of eighty percent (80%), whichever is lower.

"***Net Book Value***" shall refer to the amount determined by applying normal depreciation on the original cost based on the estimated useful life.

D. ***Net Operating Loss Carry-Over (NOLCO)***

The NOLCO of the RE Developer during the first three (3) years from the start of commercial operation shall be carried over as a deduction from gross income for the next seven (7) consecutive taxable years immediately following the year of such loss, subject to the following conditions:

(a) The NOLCO had not been previously offset as a deduction from gross income; and

(b) The loss should be a result from the operation and not from the availment of incentives provided for in the Act.

E. ***Corporate Tax Rate***

After availment of the ITH, all Registered RE Developers shall pay a corporate tax of ten percent (10%) on their net taxable income as defined in the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337: *Provided*, That the RE Developers shall pass on the savings to the end-users in the form of lower power rates.

All RE Developers that acquire, operate, and/or administer existing RE facilities that were or have been in commercial operation for more than seven (7) years, upon the effectivity of the Act, shall pay a

corporate tax rate of 10% on their net taxable income, upon registration with the DOE.

Towards this end, the ERC shall, in coordination with the DOE, determine the appropriate mechanism to implement the power rate reduction.

(**a**) ***DOE Technical Study*** — Pursuant to Section 15(e) of the Act, the DOE shall conduct a technical study on the appropriate mechanisms to determine the savings actually realized directly on account of this incentive.

(**b**) ***Scope*** — The mechanisms shall be applied on RE development projects and bilateral supply agreements in commercial operation as of the effectivity of the Act.

(**c**) ***Guidelines*** — In developing the mechanisms to implement the power rate reduction under the preceding paragraphs, the DOE shall take into account the following:

(i) preservation of the purpose of Section 15(e) of the Act;

(ii) non-erosion of the competitive nature of the generation sector of the electric power industry under Section 6 of the EPIRA;

(iii) due consideration of the income tax regimes applicable to different RE Developers under existing or applicable laws, rules, and government undertakings or obligations under existing agreements; and

(iv) application of the various forms by which the savings may be implemented including, but not limited to, value-added services that reduce the DU's cost of service translating to lower retail rates and discounts that are required by regulations of the ERC to be passed through in the retail rate to end-users.

(**d**) ***Determination of Savings*** — The DOE shall, in coordination with the NREB, determine as to whether or not savings are actually realized with respect to each RE Developer. In such case, the extent thereof shall be determined in accordance with the pass-on mechanism as may be appropriate based on the results of the DOE Technical Study. In cases where the RE Developer charges generation rates that are lower than that of a non-RE facility, savings are deemed to have been passed on but only to the extent of the relevant supply contract.

The DOE and the RE Developer may also provide for the appropriate mechanism in determining the savings in the RE Service/Operating

Contract. The DOE and the NREB shall, where necessary, coordinate with the ERC for the purpose of implementing the applicable mechanism.

F. *Accelerated Depreciation*

If an RE project fails to receive an ITH before full operation, the RE Developer may apply for accelerated depreciation in its tax books and be taxed on the basis of the same.

If an RE Developer applies for accelerated depreciation, the project or its expansions shall no longer be eligible to avail of the ITH.

Plant, machinery and equipment that are reasonably needed and actually used for the exploration, development and utilization of RE Resources may be depreciated using a rate not exceeding twice the rate which would have been used had the annual allowance been computed in accordance with the rules and regulations prescribed by the DOF and the provisions of the NIRC of 1997, as amended. Any of the following methods of accelerated depreciation may be adopted:

(a) Declining balance method; and

(b) Sum-of-the years digit method.

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:

(a) Sale of fuel from RE sources 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;

(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.

The DOE, BIR and DOF shall, within six (6) months from issuance of this IRR, formulate the necessary mechanisms/guidelines to implement this provision.

H. *Tax Exemption of Carbon Credits*

All proceeds from the sale of carbon emission credits shall be exempt from any and all taxes.

I. *Tax Credit on Domestic Capital Equipment and Services Related to the Installation of Equipment and Machinery*

A tax credit equivalent to one hundred percent (100%) of the value of the value-added tax (VAT) and customs duties that would have been paid on the RE machinery, equipment, materials and parts had these items been imported shall be given to a registered RE Developer who purchases machinery, equipment, materials, and parts from a domestic manufacturer, fabricator or supplier subject to the following conditions:

(a) That the said equipment, machinery, and spare parts are reasonably needed and shall be used exclusively by the Registered RE Developer in its registered activity;

(b) That the purchase of such equipment, machinery, and spare parts is made from an accredited or recognized domestic source, in which case, prior approval by the DOE should be obtained by the local manufacturer, fabricator, or supplier; and

(c) That the acquisition of such machinery, equipment, materials, and parts shall be made within the validity of the RE Service/Operating Contract.

Within six (6) months from the effectivity of this IRR, the BIR shall, in coordination with the DOE, promulgate a revenue regulation governing the granting of tax credit on domestic capital equipment.

Any sale, transfer, assignment, donation, or other mode of disposition of machinery, equipment, materials, and parts purchased from domestic source, if made within ten (10) years from the date of acquisition, shall require prior DOE approval.[84]

...

Basic is the rule of statutory construction that when the law is clear and unambiguous, the court is left with no alternative but to apply the same according to its clear language.[85] The "plain meaning rule" or *verba legis* in statutory construction is that if the statute is

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84 Emphasis and italics in the original text, emphasis and underscoring supplied.

85 *Security Bank and Trust Company v. Regional Trial Court of Makati, Branch 61, Magtanggol Eusebio, et al.*, G.R. No. 113926, 23 October 1996.

clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation.[86]

Here, the wordings of the above-quoted provisions are clear. "Endorsement" is only needed for duty-free importation of RE machinery, equipment, and materials, and its subsequent sales. Thus, with respect to the services EDC purchased or secured from petitioner, to avail the VAT zero-rating incentive to the said purchases, the COE appears *not* to be a requisite. Hence, the COE of EDC is not an evidence to be expected from petitioner to present or produce.

Moreover, the rule in statutory construction is that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law.[87] Applying the foregoing rule, it is only logical to read the conditions for availment of incentives under Section 18 of the IRR of RA 9513, especially the requirement of the COE by the DOE, as applicable only to the incentives to where the latter was specifically mentioned in Section 13 of the said IRR and in the governing law of RA 9513. Thus, again, the COE issued by the DOE, on a *per* transaction basis, is required *only* for the incentive relating to duty-free importation on RE machinery, equipment, and materials.

The foregoing interpretations are most consistent with the declared policy[88] of RA 9513 (under Section 2 thereof), *i.e.*, to encourage the development of renewable energy resources. If the Court *En Banc* construes the IRR as imposing an additional requirement for the RE Developer to present the COE issued by the DOE, on a *per* transaction basis (to avail the VAT zero-rating

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86 *Republic of the Philippines v. Lacap*, G.R. No. 158253, 02 March 2007.

87 *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 183517, 22 June 2010.

88 **Sec. 2. *Declaration of Policies.*** — It is hereby declared the policy of the State to:

...

(c) Encourage the development and utilization of renewable energy resources as tools to effectively prevent or reduce harmful emissions and thereby balance the goals of economic growth and development with the protection of health and the environment[.]

...

incentive), We will be placing an unnecessary burden on the RE Developer and on the taxpayer it contracted with. Likewise, We will be requiring something that is not even required by the law itself.

It is settled rule that in case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails, because the said rule or regulation cannot go beyond the terms and provisions of the basic law.[89]

II. THE DEPARTMENT OF ENERGY (DOE) HAS NO MECHANISM OR PROCESS FOR THE ISSUANCE OF CERTIFICATE OF ENDORSEMENT (COE).

Furthermore, it bears stressing that based on the Citizen's Charter of 2020 (**Citizen Charter**) of the DOE, the DOE-REMB processes COE for the duty-free importation incentive *only*.[90]

By way of a background, the Citizen Charter is a summary of all the processes and external services that a department or sector undertakes relative to the energy exploration, development, utilization, distribution and conservation. The REMB was created pursuant to Section 32[91] of RA 9513 and was later on established under Department Order No. D02009-07-0010.[92]

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89 *Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue (BIR), et al.*, G.R. No. 172087, 15 March 2011.

90 https://www.doe.gov.ph/sites/default/files/pdf/citizen_charter/doe-citizens-charter-cy-2020-09282020.pdf (Last accessed on 20 September 2022).

91 **Sec. 32. Creation of the Renewable Energy Management Bureau.** — For the purpose of implementing the provisions of this Act, a Renewable Energy Management Bureau (REMB) under the DOE is hereby established, and the existing Renewable Energy Management Division of the Energy Utilization Management Bureau of the DOE, whose plantilla shall form the nucleus of REMB, is hereby dissolved. The organizational structure and staffing complement of the REMB shall be determined by the Secretary of the DOE, in consultation with the Department of Budget Management, in accordance with existing civil service rules and regulations. The budgetary requirements necessary for the creation of the REMB shall be taken from the current appropriations of the DOE. Thereafter, the funding for the REMB shall be included in the annual General Appropriations Act.

92 ESTABLISHMENT AND OPERATIONALIZATION OF THE RENEWABLE ENERGY MANAGEMENT BUREAU (REMB).

A table[93] showing a summary of the processes of REMB is quoted below:

...

Summary
Renewable Energy Management Bureau (REMB)

PROCESS	DURATION
EXTERNAL SERVICES	
1. Endorsement to the Securities and Exchange Commission (SEC)	7 working days
2. Pre-Application Process	17 working days
3. Endorsement to other concerned National Government Agencies and Local Government Units	5 calendar days
4. Notice of Intention to Drill	10 calendar days
5. Endorsement to Purchase/Transfer/Move Explosives	11 calendar days
6. Safety Officer's Permit Application	11 calendar days
7. Revision of the Work Program	18 calendar days
8. Certificate of Endorsement (COE) for Duty-Free Importation Certification[94]	**22 calendar days**
9. Assignment/Transfer of Renewable Energy Service Contract	31 calendar days
10. Request for Reinstatement of RE Contract	31 calendar days
11. Conversion to the New Renewable Energy (RE) Contract Template	31 calendar days
12. Renewable Energy Contract Application	31 calendar days
13. Transition from Pre-Development to Development Stage	31 calendar days
14. Application for Certificate of Accreditation of Biofuel Producer/Manufacturer	36 calendar days

...

Clearly from the foregoing, REMB only issues four (4) types of endorsements, namely: (1) Endorsement to the SEC; (2) Endorsement to other concerned National Government Agencies and Local Government Units; (3) Endorsement to Purchase or Transfer or Move Explosives; and, (4) Certificate of Endorsement for Duty-Free Importation Certification.

Given that Section 18(C) of the IRR of RA 9513 specifically states that it is the REMB that shall issue the COE and that it does not issue such a certification for VAT zero-rating, petitioner cannot be expected

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93 Supra at note 90.
94 Emphasis supplied.

to secure the said requirement because the law does not require the impossible.[95]

> III. EXCEPT FOR DUTY-FREE IMPORTATION OF RENEWABLE ENERGY (RE) MACHINERY, EQUIPMENT AND MATERIALS, RENEWABLE ENERGY (RE) DEVELOPERS ARE AUTOMATICALLY QUALIFIED TO AVAIL THE INCENTIVES UNDER RA 9513.

Lastly, it is worth mentioning that the DOE has recently issued Department Circular (**DC**) No. DC2021-12-0042[96], amending Section 18(C) of the IRR of RA 9513 to state that, as a rule, RE Developers are ***automatically*** qualified to avail of the incentives provided for in RA 9513 after securing a DOE COR, *viz*:

> ...
>
> **SEC. 18.** ***Conditions for Availment of Incentives and Other Privileges.***
>
> ...
>
> **C. DOE ENDORSEMENT FOR AVAILMENT OF INCENTIVES AND DUTY-FREE IMPORTATIONS OF MACHINERY, EQUIPMENT, AND MATERIALS**
>
> RE Developers and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be AUTOMATICALLY qualified to avail of the incentives provided for in the Act, OTHER THAN THE INCENTIVE OF DUTY-FREE IMPORTATION OF QUALIFIED MACHINERY, EQUIPMENT, MATERIALS, PARTS AND COMPONENTS, after securing a Certificate of Registration from the DOE.
>
> RE DEVELOPERS THAT IMPORT RE EQUIPMENT, EQUIPMENT, MATERIALS, PARTS AND COMPONENTS SHALL SECURE A CERTIFICATE OF ENDORSEMENT FROM THE DOE, THROUGH THE REMB, ON A PER IMPORTATION BASIS.[97]
>
> ...

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95 *Biraogo v. The Philippine Truth Commission of 2010*, G.R. No. 192935, 07 December 2010,

96 PRESCRIBING AMENDMENTS TO SECTIONS 13(E) AND 18(C) OF DEPARTMENT CIRCULAR NO. DC2009-05-0008, ENTITLED RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9513, OTHERWISE KNOWN AS "THE RENEWABLE ENERGY ACT OF 2008".

97 Underscoring supplied.

The foregoing amendment reinforces this Court's position that a supplier of an RE Developer is **not** required to submit the latter's COE issued by the DOE to avail of the VAT zero-rating incentive. There being no categorical provision in Section 18(C), as originally worded, that the submission of a COE applies to *all* the incentives provided for in RA 9513, the implication therefore of the said amendment is not to remove such a requirement but instead to clarify and confirm that prescribing the same was never intended all along.

The Court *En Banc* should not construe a statute that is free from doubt. Neither should it impose conditions or limitations when none is provided for. While tax refunds are in the nature of tax exemptions and are construed *strictissimi juris* against the taxpayer, tax statutes shall be construed strictly against the taxing authority and liberally in favor of the taxpayer, for taxes, being burdens, are not to be presumed beyond what the statute expressly and clearly declares.[98]

PETITIONER SUFFICIENTLY ESTABLISHED THAT ITS THIRD QUARTER SALES TO EDC BURGOS WIND POWER CORPORATION (EDC) WERE VALUE-ADDED TAX (VAT) ZERO-RATED SALES.

Since the subject claim for refund of input VAT attributable to zero-rated sales is based on Section 108(B)(3) of the NIRC of 1997, as amended, in relation to Section 15(g) of RA 9513 and Section 13(G)(b) of the IRR of RA 9513, petitioner, as a *contractor* of an RE Developer, needs only to show that it has rendered services to an RE Developer.

Here, as earlier stated, petitioner was able to present EDC's DOE COR No. WESC 2009-09-004 dated 04 February 2011[99], certifying that it is an RE Developer of wind energy resources located in the Municipality of Burgos, Ilocos Norte. The said COR provides that EDC's registration as an RE Developer took effect on 14 September 2009.

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98 *Commissioner of Internal Revenue v. Philex Mining Corp*oration, G.R. No. 230016, 23 November 2020.

99 Exhibit "P-11", supra at note 78.

Also, petitioner was able to submit EDC's BOI COR No. 2011-135 dated 29 June 2011[100], certifying that EDC is a new RE Developer of an 86 MW Wind Energy Power Generation Project (Burgos, Ilocos Norte) under RA 9513.

Since petitioner has duly complied with the requirements under Section 25[101] of RA 9513, it thus ably established that its declared sales for the entire period of claim qualify for VAT zero-rating. In sum, for purposes of VAT refund claim, petitioner has duly proved that:

1. It has timely filed the administrative claim before the BIR;
2. It has timely filed the judicial claim before the Court;
3. It is a VAT registered person; and,
4. It was engaged in zero-rated sales during the third quarter of TY 2014.

For the other requisites, a further examination must be made to determine if petitioner's prayer for input VAT refund or TCC can be allowed.

WHEREFORE, the foregoing considered, the Petition for Review filed by petitioner Vestas Services Philippines, Inc. on 15 June 2021 is hereby **GRANTED**. The assailed Decision dated 11 November 2020 and Resolution dated 19 May 2021, respectively, of the Court's Third Division in CTA Case No. 9544, entitled *Vestas Services Philippines, Inc. v. Commissioner of Internal Revenue* are hereby **REVERSED** and **SET ASIDE**. Accordingly, let the case be **REMANDED** to the Court in Division for further determination of the other requisites for the claim of input Value-Added Tax refund or Tax Credit Certificate from the third quarter of calendar year 2014.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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100 Exhibit "P-12", supra at note 79.
101 Supra at note 63.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

(with Concurring Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

VESTAS SERVICES PHILIPPINES, INC., *Petitioner,*	**CTA EB NO. 2479** (CTA Case No. 9544)
	Present: Del Rosario, *P.J.*, Uy, Ringpis-Liban, Manahan, Bacorro-Villena, Modesto-San Pedro, Reyes-Fajardo, and Cui-David, *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 14 2022

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CONCURRING OPINION

RINGPIS-LIBAN, *J.:*

I concur with the *ponencia* of my learned colleague, Associate Justice Jean Marie A. Bacorro-Villena, in granting the present Petition for Review and in holding that the presentation of a Certificate of Endorsement (COE) is not a requirement for the grant of VAT zero-rating incentive under Republic Act (RA) No. 9513 or The Renewable Energy Act of 2008.

My concurrence was primarily impelled by the clarification provided by the Department of Energy (DOE) as regards the documentary requirements that must be satisfied before one can avail of the incentives provided by RA 9513. In Department Circular No. DC2021-12-0042 issued on December 24, 2021, it was stated, among others, that renewable energy (RE) developers and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be automatically qualified to avail of the incentives provided for under RA 9513

other than the incentive of duty-free importation of qualified machinery, equipment, materials, parts and components, after securing a Certificate of Registration from the DOE.

As the administrative agency tasked to implement the provisions of RA 9513, the DOE's interpretation of the said statute is accorded great respect and ordinarily controls the construction of the courts.[1] Courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies.[2] By way of exception, however, the interpretation of the statute by an administrative agency may be set aside by the courts, the latter having the final say as to what the law actually means, especially when the administrative agency's interpretation is found to be erroneous or appears to be a product of abuse of power or grave abuse of discretion.[3]

In the present case, there is no compelling reason to depart from the general rule given that the DOE's interpretation is in congruence with the provisions of RA 9513.

In view of the foregoing, I vote to **GRANT** the present Petition for Review.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[1] *Energy Regulatory Board v. Court of Appeals*, G.R. No. 113079, April 20, 2001.
[2] *Department of Agrarian Reform v. Samson, et. al.*, G.R. No. 161910, June 17, 2008; *Alecha et. al. v. Atienza, Jr.*, G.R. No. 191537, September 14, 2016.
[3] *Peralta v. Civil Service Commission*, G.R. No. 95832, August 10, 1992.