REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HEDCOR, INC.,
Petitioner,

CTA EB No. 1913
(CTA Case No. 8875)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, *JJ.*

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 12 2021 4:23 p.m.

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RESOLUTION

CASTAÑEDA, JR., *J.:*

This resolves petitioner's Motion for Reconsideration of the Decision dated June 29, 2020 ("Assailed Decision") filed on July 21, 2020.

The dispositive portion of the June 29, 2020 Decision states:

> **WHEREFORE,** premises considered, the Petition for Review filed by Hedcor, Inc., is **DENIED** for lack of merit. Accordingly, the July 11, 2017 Decision and the July 30, 2018 Resolution of the then CTA First Division in CTA Case No. 8875 are **AFFIRMED**.
>
> **SO ORDERED.**

On September 7, 2020, this Court ordered respondent to comment on petitioner's motion. On September 18, 2020, respondent filed a "Motion for Extension of Time to File Comment." On October 1, 2020, respondent filed his "Comment (To Petitioner's Motion for Reconsideration dated 12[1] July 2020)." On October 14, 2020, in the interest of justice, the said motion for extension of time was granted and considering that Comment was already filed by respondent, petitioner's motion was submitted for resolution.

On October 22, 2020, petitioner filed a Reply (Re: Respondent's Comment dated September 30, 2020).

In its motion, petitioner argues that it is entitled to a refund based on the clear provisions of Section 112(A) of the National Internal Revenue Code, as amended (the "Tax Code"). Petitioner also argues that it was not yet registered as an RE[2] Developer during the period of its refund claim; the fact of its non-registration as such during the relevant period, and the consequent date of its registration are, at any rate, immaterial to this case. Petitioner also alleges that requiring it to seek refund or reimbursement from its suppliers instead of the Government, which collected the erroneously paid tax, is not supported by law or jurisprudence.

This Court finds no valid or cogent reason to deviate from our findings and conclusions reached in our Decision dated June 29, 2020, thus, the motion is denied.

We reiterate that in *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation),*[3] the Supreme Court ruled that "it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties."

The CTA *En Banc* reiterated the findings of the then CTA First Division in this case,[4] as follows:

> In relation thereto, Section 15(g) of RA No. 9513, a special law, which was approved on December 16, 2008, provides that all renewable energy (RE) developers, such as herein petitioner, are entitled to zero-rated VAT **<u>on their purchases</u>** of local supply of goods, properties and services

[1] Should be 21 July 2020.
[2] Renewable energy.
[3] G.R. No. 188016, January 14, 2015 citing *Sea-Land Service Inc. v. Court of Appeals*, G.R. No. 122605, April 30, 2001, 357 SCRA 441, 445-446.
[4] *Rollo*, p. 165.

> needed for the development, construction and installation of their plant facilities and to the whole process of exploring and developing renewable energy sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors. xxx xxx xxx

Moreover, "The CTA *En Banc* has already ruled in various CTA EB cases involving the same taxpayer (*i.e.,* Hedcor) with the same issue regarding the applicability of the RE Act in its claim for input VAT refund/TCC: in the case *Hedcor, Inc. v. Commissioner of Internal Revenue,* CTA EB No. 1836,[5] involving the second quarter of 2012, and in the case *Hedcor, Inc. v. Commissioner of Internal Revenue,* CTA EB No. 1761,[6] involving the third quarter of 2012. In these cases, RE Act was applied and the claims were denied because as RE Developer, it 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."[7]

In the case of *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue,*[8] (*Coral Bay* case) the Supreme Court stated that "As such, the purchases of goods and services by the petitioner that were destined for consumption within the ECOZONE should be free of VAT; hence, no input VAT should then be paid on such purchases, rendering the petitioner not entitled to claim a tax refund or credit. Verily, if the petitioner had paid the input VAT, the CTA was correct in holding that **the petitioner's proper recourse was not against the Government but against the seller who had shifted to it the output VAT."** *(Emphasis supplied).*

The *Coral Bay* case was applied in this case by the then CTA First Division and discussed[9] that:

> Petitioner and Coral Bay Nickel Corporation are similarly situated. **It must be noted that the purchases of both entities are zero-rated.** In the *Coral Bay* case, the High Court ruled that Coral Bay Nickel Corporation, being a PEZA-registered entity, cannot seek from the Bureau of Internal Revenue (BIR) a refund of its unutilized input taxes because sales of goods and services to PEZA-registered entities are subject to zero percent (0%) VAT. Thus, when Coral Bay Nickel Corporation paid input VAT, notwithstanding that under the law it is subject to VAT at zero percent (0%) rate, its recourse is not against the

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[5] Decision, August 5, 2019, and Resolution on Motion for Reconsideration, February 3, 2020.
[6] Decision, April 8, 2019.
[7] *Rollo*, pp. 162-163.
[8] G.R. No. 190506, June 13, 2016.
[9] *Rollo*, 77-78.

government, but against the seller who shifted to it the output VAT. *(Emphasis Supplied).*

We reiterate that "there being no input VAT to be paid by RE developers, it necessarily follows that they are not entitled to refund or issuance of TCC from the said purchases."[10]

WHEREFORE, premises considered, petitioner's Motion for Reconsideration of the Decision dated June 29, 2020 is **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I maintain my Dissenting Opinion dated June 29, 2020

CATHERINE T. MANAHAN
Associate Justice

[10] *Rollo*, p. 166.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice