REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION
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CE CEBU GEOTHERMAL POWER COMPANY, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7395

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ*.

Promulgated:
NOV 25 2010 ; 2:24pm

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AMENDED DECISION

BAUTISTA, J.:

This resolves the **"Motion for Partial Reconsideration"** filed on January 25, 2010 by petitioner, and the **"Motion for Reconsideration"** filed by respondent on January 26, 2010, of the Decision promulgated on January 5, 2010.

The *fallo* of the assailed Decision reads:

> **WHEREFORE,** the instant Petition for Review is hereby **PARTIALLY GRANTED**. **ACCORDINGLY,** respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the amount of **FIFTEEN MILLION SIX HUNDRED EIGHTEEN THOUSAND NINE HUNDRED EIGHTY PESOS AND 98/100 (P15,618,980.98)** to petitioner, representing unutilized input VAT from its domestic purchases of goods and services and importation of goods attributable to its effectively zero-rated sales to PNOC-EDC for the first, second, third and fourth quarters of taxable year 2004.
>
> **SO ORDERED.**[1]

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[1] *Records*, p. 484.

The interest of justice dictates that the Court considers and resolves issues even though not particularly raised if it is necessary for the complete adjudication of the rights and obligations of the parties and it falls within the issues already found thereof.[2] Indeed, once a court acquires jurisdiction over a case, it has wide discretion to look upon matters which, although not raised as an issue, would give life and meaning to the law.[3]

In light of the foregoing, this Court has the authority to revisit the issue of whether or not petitioner's sales of generated power to Philippine National Oil Company-Energy Development Corporation ("PNOC-EDC") qualified as a zero-rated value-added tax ("VAT") transaction.

Sales of electricity as a power generation company qualify for VAT zero-rating in accordance with Section 6 of Republic Act ("R.A.") No. 9136, also known as the "Electric Power Industry Reform Act of 2001," ("EPIRA") which states:

> SEC. 6. *Generation Sector.* — Generation of electric power, a business affected with public interest shall be competitive and open.
>
> Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.
>
> Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.
>
> Upon the implementation of retail competition and open access, the prices charged by a generation company for the supply of electricity shall not be subject to regulation by the ERC except as otherwise provided in this Act.

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[2] Insular life Assurance Co Ltd. Employees Association – NATU *v.* Insular Life Assurance Co. Ltd. No. L-25291, March 10, 1977, 76 SCRA 50.
[3] Comilang *v.* Burcena, G.R. No. 146853, February 13, 2006, 482 SCRA 342.

> Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated.

In the case of *Mindanao I Geothermal Partnership v. Commissioner of Internal Revenue*,[4] this Court, applying the provisions of R.A. No. 9136, specified the conditions to qualify for VAT zero-rating of power generating companies, *viz*:

> xxx it is undisputed that Republic Act No. 9136 otherwise known as the "Electric Power Industry Reform Act of 2001" provided for VAT zero-rating of sales of generated power by generation companies beginning June 26, 2001. Thus, the pertinent provisions of the National Internal Revenue Code of 1997 are deemed amended by the provisions of R.A. No. 9136 by modifying the VAT rate applicable to sales of generated power by generation companies from ten (10%) percent to zero (0%) percent.
>
> To qualify for VAT zero-rating under R.A. No. 9136, petitioner must prove that: **1) it is a generation company and 2) it derived sales from power generation**. *(Boldfacing supplied)*

In order to qualify for VAT zero-rating in accordance with R.A. No. 9136, petitioner must prove the twin requirements of being a generation company and of deriving its sales from power generation.

Pursuant thereto, Section 4(x) of the EPIRA defines the term "generation company" as follows:

> **Section 4.** *Definition of Terms. –*
>
> xxx xxx xxx
>
> (x) "Generation Company" refers to any person or entity authorized by the ERC[5] to operate facilities used in the generation of electricity; xxx

Corollary thereto, Section 4 of Rule 5 of the Implementing Rules and Regulations ("IRR") of the EPIRA provides the following:

> **Section 4.** *Obligations of a Generation Company.*

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[4] CTA Case 6788, October 13, 2005.
[5] Energy Regulatory Commission.

(a) A COC[6] shall be secured from the ERC before commercial operation of a new Generation Facility. The COC shall stipulate all obligations of a Generation Company consistent with this Section and such other operating guidelines as ERC may establish. The ERC shall establish and publish the standards and requirements for issuance of a COC. A COC shall be issued upon compliance with such standards and requirements.

(i) A Person owning an existing Generation Facility or a Generation Facility under construction, shall submit within ninety (90) days from effectivity of these Rules to ERC, when applicable, a certificate of DOE/NPC accreditation, a three (3) year operation history, a general company profile and other information that ERC may require. Upon making a complete submission to the ERC, such Person shall be issued a COC by ERC to operate such existing Generation Facility.

From the foregoing, a "generation company" refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity. A person or entity owning an existing generation facility, as in the case at bench, or a generation facility under construction, is required under the EPIRA to submit, within ninety (90) days from effectivity of the Rules to ERC, when applicable, a certificate of DOE[7]/NPC[8] accreditation, a three (3) year operation history, a general company profile and other information that ERC may require, and upon making a complete submission to the ERC, such person shall be issued a COC by ERC to operate such existing generation facility.

Thus, the authority to operate a generation facility as a generation company referred to in the preceding provisions pertains to the duly issued COC which must be secured by both a new generation company and an existing generation company to operate a new and existing generation facility, respectively.

[6] Certificate of Compliance.
[7] Department of Energy.
[8] National Power Corporation.

Based on the records of the case, petitioner has been accredited and certified by the Department of Energy ("DOE"), evidenced by its Certificate of Accreditation (OSAC 94-06)[9] issued on April 6, 1994, as a "Block Power Production Facility" under Part IV of the Implementing Rules and Regulations of Executive Order No. 215.

The Court, however, finds the said certificate to be insufficient.

The DOE Certificate of Accreditation is merely one of the requirements mentioned earlier in order to obtain the necessary COC for petitioner's sales to PNOC-EDC qualify for VAT zero-rating.

It may not be amiss to note that petitioner invokes Section 6 of the EPIRA in claiming zero-rated sale of power generation services; hence, it must also comply with Section 4(a)(i) of Rule 5 of the IRR of the same law, which particularly provides for the required COC to be considered a generation company.

Therefore, for failure to present or even secure a COC duly issued by the ERC, petitioner's sale of generated power cannot qualify for VAT zero-rating under the EPIRA Law.[10]

At this juncture, it behooves the Court to remind petitioner that as a claimant, it has the burden of proof to present all that is required for the successful prosecution of its claim.

Where the taxpayer claims a refund, the Court as a court of record is required to conduct a formal trial (*trial de novo*) to prove every minute aspect of the claim.[11] In addition, the rule is that the best evidence under the circumstance must be adduced to prove the allegations in a complaint, petition, or protest.

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[9] *Exhibit "B."*
[10] Toledo Power Company *v.* Commissioner of Internal Revenue, CTA Case Nos. 7233 & 7294, December 15, 2009.
[11] Commissioner of Internal Revenue *v.* Manila Mining Corporation, G.R. No. 153204, August 31, 2005, 469 SCRA 571.

For the aforesaid reasons, the Court must reverse itself.

WHEREFORE, the **"Motion for Reconsideration"** filed by respondent is hereby **GRANTED**. Accordingly, the Decision dated January 5, 2010 is hereby **REVERSED** and **SET ASIDE**. The Petition for Review is **DENIED** for insufficiency of evidence.

The **"Motion for Partial Reconsideration"** filed by petitioner is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice