REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PHILIPPINE GEOTHERMAL PRODUCTION COMPANY, INC.,
Petitioner,

CTA CASE NOS. **9882**, **9959** & **10010**

Members:

- versus -

BACORRO-VILLENA, *Acting Chairperson,*
CUI-DAVID, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 03 2022 9:00 AM

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RESOLUTION

***BACORRO-VILLENA, J.*:**

For the Court's resolution is respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Motion for Partial Reconsideration (Re: Decision promulgated 3 June 2022)"[1] (**MPR**) filed on 14 June 2022, with petitioner Philippine Geothermal Production Company, Inc.'s (**petitioner**'s/**PGPCI**'s) "Comment (on Respondent's Motion for Partial Reconsideration dated June [3], 2022)"[2] (**Comment**) filed on 08 July 2022. It seeks the reversal of this Court's Decision dated 03 June 2022[3] (**assailed Decision**) in the above-captioned case which partially granted petitioner's claim for refund. The assailed Decision reads:

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1 Division Docket, Volume VII, pp. 2775-2793.
2 Id., pp. 2798-2813.
3 Id., pp. 2741-2774, including the Dissenting Opinion of Associate Justice Lanee S. Cui-David.

> ...
>
> **WHEREFORE**, in view of the foregoing, the consolidated Petitions for Review filed by petitioner Philippine Geothermal Production Company, Inc. on 24 July 2018, 24 October 2018, and 18 January 2019 are hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **₱23,371,346.09**, the excess and unutilized input VAT attributable to its zero-rated sales for the 1st, 2nd, and 3rd quarters of CY 2016.
>
> **SO ORDERED.**
>
> ...

In the instant motion, respondent argues that this Court should have limited its review to only those documents submitted by petitioner at the administrative level. Respondent contends that in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[4] (**Total Gas**), although the Supreme Court ruled that cases before the Court of Tax Appeals (**CTA**) are litigated *de novo*, the same should only apply to appeals from the CIR's inaction. Otherwise, the taxpayer must prove that it fully substantiated its claim at the administrative level.

Respondent contends further that Republic Act (**RA**) No. 9513 holds that local purchases of goods by Renewable Energy (**RE**) Developers are subject to zero-rated Value-Added Tax (**VAT**) thus, petitioner could not be entitled to a refund thereof. Respondent adds that in case VAT was erroneously shifted unto petitioner, its recourse would be against its supplier and not against the government following the case of *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*.[5]

Lastly, respondent appeals to the Court to reconsider its ruling in light of the principle of strict construction of tax laws against those seeking a refund.

Petitioner, on the other hand, in its Comment filed on 08 July 2022, maintains that proceedings before the Court are litigated *de novo* regardless of the nature of the respondent's denial. Therefore, it is within this Court's power to receive and consider evidence beyond

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4 G.R. No. 207112, 08 December 2015.
5 G.R. No. 190506, 13 June 2016.

those submitted in the administrative level. As regards this Court's computation of its creditable input tax, petitioner merely echoes this Court's findings contained in the assailed Decision.

We resolve.

After a careful review of the records and the parties' arguments, the Court finds the instant motion bereft of merit.

Firstly, respondent's arguments are a mere rehash of those previously raised before the Court. Secondly, petitioner's reliance on the cases of *Total Gas* and *Coral Bay* are both misplaced.

In *Total Gas*[6], the Supreme Court ruled, thusly:

> ...
> ... **If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim.** It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.
> ...

As gleaned from the records and respondent's own allegations, respondent granted partially all of petitioner's administrative claims for refund for the 1st[7], 2nd[8], and 3rd[9] quarters of taxable year 2016. Consequently, a portion of the said claims were denied and appealed to

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6 Supra at note 4; Emphasis supplied.
7 Division Docket (CTA Case No. 9882), Volume I, p. 12.
8 Division Docket (CTA Case No. 9959), p. 12.
9 Division Docket (CTA Case No. 10010), p. 14.

this Court. This fact alone shows that respondent ruled on petitioner's claims based on the facts and applicable law. Nothing in the case records show that petitioner's claims were denied due to its failure to supply respondent with supporting documents.

Furthermore, a reading of *Total Gas* reveals that a taxpayer would be barred from presenting evidence not presented during the course of its administrative claim, only when the documents sought to be presented were requested by the Bureau of Internal Revenue (**BIR**) and the taxpayer failed to supply the same despite the BIR's request.

A perusal of the case records shows that the BIR made no request for the production of documents during the administrative proceedings on petitioner's claim. The grounds for the partial denial of petitioner's claims were also not due to its alleged failure to provide documentary requirements.

Additionally, even assuming arguendo that the partial denial was due to its failure to supply the BIR with the requested documents, respondent must still specify which of petitioner's documents shown in court were not submitted at the administrative level. Such bare allegations absent any specification leaves the Court guessing which particular documents does respondent actually refer to. In *Philippine National Bank v. Hon. Jose G. Paneda, et al.*[10], the Supreme Court ruled, thusly:

> ...
> **Indeed, in the cases where a motion for reconsideration was held to be *pro forma*, the motion was so held because (1) it was a second motion for reconsideration, or (2) it did not comply with the rule that the motion must specify the findings and conclusions alleged to be contrary to law or not supported by the evidence, or (3) <u>it failed to substantiate the alleged errors</u>, or (4) it merely alleged that the decision in question was contrary to law, or (5) the adverse party was not given notice thereof. ...**
> ...

[10] G.R. No. 149236, 14 February 2007; Emphasis and italics in the original text and underscoring supplied.

As regards the applicability of *Coral Bay* to the case at bar, distinction must be made between those purchases of goods subject to zero-rated VAT and those that are subject to the ordinary rate.

RA No. 9513 provides:

...

CHAPTER VII
GENERAL INCENTIVES

Section 15. ***Incentives for Renewable Energy Projects and Activities.*** — RE Developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:

...

(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.[11]

...

From the above, the VAT zero-rated local purchases of an RE Developer are only those essential to the development, construction and installation of its plant facilities. The law is clear on this matter.

To reiterate the Court's findings in the assailed Decision, petitioner's excess input VAT arose from importations and domestic purchases consisting of office supplies, utilities, and communication expenses. The foregoing purchases are undoubtedly not covered by the VAT zero-rating incentive of RA No. 9513. Therefore, the shifting of VAT unto petitioner for the subject purchases was proper.

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11 Emphasis and underscoring supplied.

The case of *Coral Bay* contemplates a scenario wherein VAT is shifted mistakenly to an entity enjoying the benefit of VAT zero-rating on such purchase. The doctrine in *Coral Bay* barring a taxpayer's recourse against the government in case of such errors would have been proper if an RE Developer incurred VAT on its purchase of goods and services necessary for the development, construction and installation of its plant facilities. However, these circumstances are not present in the case at bar.

Considering the above disquisitions, the Court finds no cogent reason to alter or abandon its previous ruling contained in the assailed Decision.

WHEREFORE, the foregoing considered, respondent's "Motion for Partial Reconsideration (Re: Decision promulgated 3 June 2022)" filed on 14 June 2022 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice