REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

PHILIPPINE GEOTHERMAL PRODUCTION COMPANY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2455
(CTA Case No. 9663)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PHILIPPINE GEOTHERMAL PRODUCTION COMPANY, INC.,
Respondent.

CTA EB No. 2460
(CTA Case No. 9663)

Present:

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

Promulgated:
JAN 09 2023 2:30pm

x - x

DECISION

UY, *J*.:

Before the Court *En Banc* are two (2) *Petitions for Review*, namely: **CTA EB No. 2455** entitled "*Philippine Geothermal Production*

Company, Inc., Petitioner, vs. Commissioner of Internal Revenue, Respondent", filed on May 17, 2021, and **CTA EB No. 2460**, entitled "*Commissioner of Internal Revenue, Petitioner, vs. Philippine Geothermal Production Company, Inc., Respondent",* filed on May 19, 2021.

Both Petitions for Review assail the Decision dated October 28, 2020[1] and Resolution dated March 8, 2021[2], rendered by the Second Division of this Court (Court in Division) in **CTA Case No. 9663** entitled "*Philippine Geothermal Production Company, Inc., Petitioner, vs. Commissioner of Internal Revenue, Respondent".* The dispositive portions thereof respectively read as follows:

Decision dated October 28, 2020:

> "**WHEREFORE**, the foregoing considered, petitioner Philippine Geothermal Production Company, Inc.'s Petition for Review filed on 25 August 2017 is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND** or **ISSUE** a **TAX CREDIT CERTIFICATE** in favor of petitioner Philippine Geothermal Production Company, Inc. in the amount of **₱10,029,711.08**, representing its excess and unutilized input VAT attributable to zero-rated sales for the four quarters of CY 2015.
>
> **SO ORDERED**."

Resolution dated March 8, 2021:

> "**WHEREFORE**, the foregoing considered, petitioner's "Motion for Reconsideration (Decision Dated October 28, 2020)" filed on 16 November 2020 and respondent's "Motion for Partial Reconsideration [re: Decision dated 28 October 2020]" filed on 16 November 2020, are both **DENIED** for lack of merit.
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> **SO ORDERED**."

[1] Penned by Associate Justice Jean Marie A. Bacorro-Villena, and concurred by Associate Justice Juanito C. Castañeda, Jr., EB Docket (CTA EB No. 2455), pp. 27 to 50; and EB Docket (CTA EB No. 2460), pp. 21 to 44.
[2] *Id.*, EB Docket (CTA EB No. 2455), pp. 20 to 25; EB Docket (CTA EB No. 2460), pp. 45 to 50.

THE PARTIES

Philippine Geothermal Production Company, Inc. (or PGPCI for brevity) is a domestic corporation, duly organized and existing under and by virtue of the laws of the Republic of the Philippines.

On the other hand, the Commissioner of Internal Revenue (or CIR) is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with the authority to carry out the function and duties of said office, among which, is to decide and grant claims of tax refund and execute and implement tax laws, rules and regulations.

THE FACTS

On March 30, 2017, PGPCI filed with the BIR its Application for Tax Credits or Refund (BIR Form No. 1914) for its unutilized input taxes for all four (4) quarters of Taxable Year (TY) 2015 in the aggregate amount of ₱24,548,041.82. PGPCI claims that, for the same TY, it incurred input taxes which were reported in its Value-Added Tax (VAT) returns for TY 2015. The input taxes were for its purchases during TY 2015 and were attributable to its zero-rated sales/receipts.

According to PGPCI, the same have not been fully utilized in the same quarter since it did not have any output tax liabilities during the 1st to 3rd quarters of 2015; while for the 4th quarter of 2015, its output VAT liabilities did not exceed the input tax it incurred and/or paid during the same quarter. Likewise, it claims that said input VAT were not used against its output taxes in the subsequent periods.

After the expiration of the 120-day period within which respondent may decide on PGPCI's claim, the BIR issued a letter[3] to the Commissioner of the Bureau of Customs (BOC) informing the latter about the grant and allowance of petitioner's claim up to the amount of ₱3,589,914.20 only. Attached to the letter was the Authority to Issue VAT/Credit Refund[4] authorizing the OIC-Assistant Commissioner of the Large Taxpayers Service to issue the tax credit

[3] Exhibit "P-26", Division Docket – Vol. 4 (CTA Case No. 9663), p. 1514
[4] Exhibit "P-27", Division Docket – Vol. 4 (CTA Case No. 9663), p. 1515

certificate (TCC) for the period of January 1, 2015 to December 31, 2015.

Unsatisfied with the BIR's action, PGPCI filed a *Petition for Review* on August 25, 2017 before the Court in Division docketed as CTA Case No. 9663.

Thereafter, the CIR filed her *Answer* on October 27, 2017, interposing the following arguments and defenses, to wit:

1) PGPCI is not entitled to the claim for refund or issuance of tax credit certificate;

2) Based on Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, a taxpayer engaged in zero-rated or effectively zero-rated sales is entitled to refund or tax credit of unutilized input VAT attributable to such zero-rated sales upon compliance with the following requirements:

   a. the taxpayer is VAT-registered
   b. the taxpayer is engaged in zero-rated or effectively zero-rated sales;
   c. the input taxes are due or paid;
   d. the input taxes are not transitional input taxes;
   e. the input taxes have not been applied against output taxes during and in the succeeding quarters;
   f. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
   g. For zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;
   h. Where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and
   i. The claim is filed within two years after the close of the taxable quarter when such sales were made.

/mf

3) PGPCI failed to allege in its Petition for Review compliance with the abovementioned requirements.

4) Further, VAT invoices and official receipts must also comply with invoicing requirements provided in Section 113 of the NIRC of 1997, as amended, and that such invoices and receipts must have been duly registered with the BIR.

5) Comparison made between the input tax carried over from previous VAT return amounting to ₱62,750,373.00 versus beginning balance of input tax per Note 18 of the Audited Financial Statements amounting to ₱47,556,329.00 showed a discrepancy of ₱15,184,044.00. Thus, said discrepancy was disallowed.

6) Moreover, input tax on importation of capital goods amounting to ₱6,201,948.00 were amortized over 5 years (estimated life of the capital asset), annual amortization not attributed to the current year were deducted from the TCC claim.

7) Also, results of CAATs TIN verification and validation from the BIR-ITS data base disclosed that some input taxes claimed were from suppliers with invalid TIN/unregistered and/or non- VAT registered. Said validation and verification resulted to an input tax disallowance amounting to ₱16,177.90.

8) Lastly, input taxes were disallowed in the total amount of ₱796,347.94 for the following reasons: a) no input tax billed in the official receipt (OR), OR not in the name of taxpayer, no VAT Invoice/Receipt, out of period, overclaimed, zero-rated transaction, and no business style name/address/TIN of purchaser.

As agreed upon by both parties' counsels during the pre-trial conference held on January 18, 2018, they filed their *Joint Stipulation of Facts and Issues* on February 2, 2018. Upon approval thereof, the Court in Division issued a *Pre-Trial Order* on February 14, 2018.

During trial, PGPCI presented three (3) witnesses, namely: (1) Rosaluz Feliciano, its Accounting Supervisor; (2) Ma. Fe Concepcion L. Guirnalda-Lucero, PGPCI's Legal Counsel and Corporate

Secretary; and (3) Katherine O. Constantino, the Court-commissioned Independent Certified Accountant (ICPA).

Subsequently, PGPCI filed its *Formal Offer of Evidence* on February 6, 2019. Upon resolution thereof, and in view of the previous manifestation of the CIR's counsel that the CIR will not be presenting evidence in CTA Case No. 9663, the Court in Division ordered the parties to submit their respective Memoranda.

The CIR filed her *Memorandum* on September 12, 2019 while PGPCI filed its *Memorandum* on October 15, 2019. In its Resolution dated October 30, 2019, the Court in Division considered CTA Case No. 9663 submitted for decision.

In the assailed *Decision* dated October 28, 2020[5], the Court in Division partially granted the Petition for Review in CTA Case No. 9663, ordering the CIR to issue a tax credit certificate in the amount of ₱10,029,711.08, representing PGPCI's excess and unutilized input VAT attributable to zero-rated sales for the four quarters of CY 2015.

On November 16, 2020, PGPCI filed a *Motion for Reconsideration (Decision Dated October 28, 2020)*[6] and the CIR filed a *Motion for Partial Reconsideration [re: Decision dated 28 October 2020].*[7]

In the assailed *Resolution* dated March 8, 2021,[8] the Court in Division denied both PGPCI's *Motion for Reconsideration (Decision Dated October 28, 2020)* and the CIR's *Motion for Partial Reconsideration [re: Decision dated 28 October 2020],* for lack of merit.

On May 17, 2021, PGPCI filed its *Petition for Review* before the Court *En Banc*, docketed as **CTA EB No. 2455**;[9] while on May 19, 2021, the CIR filed a *Petition for Review* before the Court *En Banc*, docketed as **CTA EB No. 2460**.[10]

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[5] EB Docket (CTA EB No. 2455), pp. 27 to 50; and EB Docket (CTA EB No. 2460), pp. 21 to 44; and Division Docket – Vol. 5 (CTA Case No. 9663), pp. 1985 to 2008.
[6] Division Docket – Vol. 5 (CTA Case No. 9663), pp. 2009 to 2015.
[7] Division Docket – Vol. 5 (CTA Case No. 9663), pp. 2024 to 2035.
[8] EB Docket (CTA EB No. 2455), pp. 20 to 25; EB Docket (CTA EB No. 2460), pp. 45 to 50; and Division Docket – Vol. 5 (CTA Case No. 9663), pp. 2045 to 2050.
[9] EB Docket (CTA EB No. 2455), pp. 1 to 14.
[10] EB Docket (CTA EB No. 22460), pp. 1 to 14.

In its Petition for Review in **CTA EB No. 2455**, PGPCI prays that the assailed Decision and Resolution of the Court in Division in CTA Case No. 9663 be reversed and set aside, and that a new decision be rendered ordering the CIR to refund or issue a TCC in its favor in the total amount of ₱13,619,625.28 representing PGPCI's unutilized input taxes for the four (4) quarters of TY 2015.

On the other hand, in her *Petition for Review* in **CTA EB No. 2460**, the CIR prays that the assailed Decision and Resolution be partially reconsidered and another decision be rendered denying the entire claim for refund.

Considering that both cases are appeals from the Decision dated October 28, 2020, and Resolution dated March 8, 2021, rendered by the Court in Division in CTA Case No. 9663, CTA EB No. 2460 was consolidated with CTA EB No. 2455 on May 21, 2021.[11]

On June 22, 2021, the Court *En Banc* ordered the CIR in CTA EB No. 2455 to file her Comment on PGPCI's Petitions for Review. On the other hand, the Court *En Banc* ordered the CIR in CTA EB No. 2460, to submit an Affidavit of Service and printed proof of transmittal of the Petition for Review, as evidence of proper service to the adverse party within five (5) days from receipt of notice.[12]

On July 5, 2021, the CIR filed a *Manifestation with Motion for Extension To File Compliance (Re: Resolution dated 22 June 2021)*[13] averring that the handling counsel who filed the Petition for Review is on maternity leave, thus, requesting for an additional period of ten (10) days from July 5, 2021 or until July 15, 2021, within which to comply with the directive in the Resolution dated June 22, 2021.

Subsequently, on July 8, 2021, the CIR filed a *Manifestation and Compliance (Re: Resolution dated 22 June 2021)*[14] submitting the Affidavit of Service and printed proof of electronic filing and service of the Petition for Review.

In the Resolution dated October 7, 2021,[15] the CIR's *Motion for Extension To File Compliance* was deemed granted in view of the

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[11] Minute Resolution dated May 21, 2021, EB Docket (CTA EB No. 2455), p. 51.
[12] Resolution dated June 22, 2021, EB Docket (CTA EB No. 2455), pp. 53 to 56.
[13] EB Docket (CTA EB No. 2455), pp. 57 to 60.
[14] EB Docket (CTA EB No. 2455), pp. 61 to 68.
[15] EB Docket (CTA EB No. 2455), pp. 70 to 72.

filing of her *Manifestation and Compliance* on July 8, 2021. The Affidavit of Service and print out of electronic filing and service of the Petition for Review in CTA EB No. 2460 was admitted by the Court *En Banc*. Moreover, the Court *En Banc* ordered PGPCI to file its comment on the Petition for Review in CTA EB No. 2460.

On November 2, 2021, PGPCI filed by registered mail its *Comment (on Petition for Review dated May 17, 2021).*[16] On the other hand, the Court *En Banc* received a *Records Verification Report* on December 6, 2021, issued by Lucena L. Balita, Statistician II, *En Banc* Judicial Records Division of this Court stating that the CIR, respondent in CTA EB No. 2455, failed to submit her Comment on the Petition for Review in said case.[17]

Thereafter, the instant consolidated cases were submitted for decision on January 10, 2022.[18]

Hence, this Decision.

ASSIGNMENTS OF ERROR

In **CTA EB No. 2455**, PGPCI raises the following assignment of error for the resolution of the Court *En Banc*, to wit:

> "The Honorable Court's Second Division erred in deducting the amount of ₱3,589,914.20, representing BIR's previous partial approval of Petitioner's claim, from the excess input VAT attributable to valid zero-rated sales of ₱13,619,625.28."[19]

While in **CTA EB No. 2460**, the CIR presents the following assignment of error for the resolution of the Court *En Banc*, *viz*:

> "WHETHER OR NOT THE HONORABLE COURT *A QUO* ERRED IN RULING THAT RESPONDENT IS ENTITLED TO THE CLAIM FOR REFUND OF ALLEGED EXCESS AND UNUTILIZED INPUT VAT ATTRIBUTABLE

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[16] EB Docket (CTA EB No. 2455), pp. 73 to 88.
[17] EB Docket (CTA EB No. 2455), p. 90.
[18] EB Docket (CTA EB No. 2455), pp. 91 to 93.
[19] *Petition for Review*, EB Docket (CTA EB No. 2455), p. 9.

TO ZERO-RATED SALES FOR THE FOUR QUARTERS OF CY 2015."[20]

PGPCI's arguments:

PGPCI, in its Petition for Review in CTA EB No. 2455, alleges that in the assailed Resolution of the Court in Division, it was held that petitioner is entitled to its claim for refund in the reduced amount of ₱13,619.625. 28 which is the adjusted amount of excess input VAT that is attributable to valid zero-rated sales, but due to the previous grant of refund by the BIR addressed to the BOC, the amount is further reduced by ₱3,589,914.20.

As regards to the reduction of ₱3,589,914.20, the Court in Division held in this wise:

> "To clarify, the grant of refund in the amount of ₱10,029,711.08 made by the Court is in addition to the ₱3,589,914.20 already previously granted by the BIR. The fact is that petitioner already has an Authority to Issue VAT/ Credit Refund in the amount of ₱3,589,914.20 whether or not petitioner has decided to claim the same from the BIR is a different matter."

PGPCI submits that the Court in Division erred in deducting from the total amount of ₱13,619,625.28 found by the Court in Division that PGPCI is entitled to a refund of excess input VAT, the amount of ₱3,589,914.20 previously approved by the BIR.

PGPCI argues that the letter of the CIR addressed to the Commissioner of Customs (COC) partially granting the claim in the amount of ₱3,589,914.20 was issued only on August 16, 2017, or after the expiration of the 120-day period to decide a claim.

PGPCI insists that what was appealed before the Court in Division was the inaction of the BIR after the lapse of the 120-day period to decide the claim on the whole amount[21] of the claim, and not the partial grant of the refund claim.

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[20] *Petition for Review*, EB Docket (CTA EB No. 2460), p. 4.
[21] ₱24,548,041.82

Thus, when PGPCI filed its appeal to the Court of Tax Appeals on the inaction of its administrative claim for refund of unutilized input taxes attributable to zero-rated sales/receipts for the 1st to 4th quarters of 2015, which was treated as full, and not partial denial of its refund claim, it appealed the whole amount of twenty four million five hundred forty eight thousand forty one pesos and 82/100 centavos (₱24,548,041.28), without excluding the amount already approved by the BIR of three million five hundred eighty nine thousand nine hundred fourteen and 20/100 pesos (₱3,589,914.20).

According to PGPCI, this amount approved by the CIR has not yet been actually refunded to PGPCI and no Tax Credit Certificate (TCC) has actually been issued in its favor. As such, the Court in Division also acquired jurisdiction to award the previously approved and granted claim for refund by the BIR.

The CIR's arguments:

In the Petition for Review filed by the CIR in CTA EB No. 2460, the CIR argues that PGPCI is not entitled to the claim for refund of alleged excess and unutilized input VAT attributable to zero-rated sales for TY 2015.

The CIR emphasizes that the law requires that only "creditable input taxes" that are "directly attributable" may be refunded. Allegedly, no attributability was established between the input tax on purchases vis-à-vis the zero-rated sales of PGPCI. The CIR stresses that to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production.

Likewise, the CIR contends that the Court in Division erred in relying on the Letter issued by the BIR to the BOC in ruling that the BIR's alleged grant of refund is indicative of PGPCI's compliance with all necessary documentary requirements.

The CIR further argues that the Authority to Issue VAT Credit/Refund issued by the BIR to the BOC does not grant the refund claim of PGPCI on all local purchases, but rather it pertains to the VAT on importations which is for the BOC to verify. Hence, the said Authority to Issue VAT Credit/Refund is not indicative of petitioner's compliance with the documentary requirements.

Moreover, the CIR claims that PGPCI is not entitled to avail of zero-percent VAT rate for failure of PGPCI to present its Department of Energy's (DOE) Certificate of Endorsement.

Lastly, the CIR asserts that tax refund is in the nature of a tax exemption which must construed *strictissimi juris* against the taxpayer. A taxpayer-claimant must not only prove that it is legally entitled to the claim for refund but shall likewise be supported by evidence. The taxpayer must present convincing evidence to substantiate a claim for refund.

In response to the CIR's arguments, PGPCI in its "*Comment (on Petition for Review dated May 17, 2021)*" as respondent in CTA EB No. 2460, counter-argues that it is entitled to the claim for refund of its unutilized input taxes for the taxable year 2015.

Contrary to the CIR's argument, PGPCI submits that an absolute direct attribution of the input VAT sought to be refunded to a taxpayer's zero-rated sales is unnecessary for a claim for an input tax refund to prosper citing a ruling of the CTA *En Banc* in *Commissioner of Internal Revenue v. CE Casecnan Water and Energy Company, Inc.*[22]

PGPCI stresses that when Section 112(A) of the Tax Code, as amended, speaks of "creditable input tax due or paid attributable to such sales", it is allegedly more logical to interpret this phrase as referring to instances of an apportionment of the input VAT in mixed transactions.

PGPCI also submits that it is qualified for VAT zero-rating under Republic Act No. 9513, where it is shown that the Certificate of Endorsement by the DOE is not required for VAT zero-rating on the sale of renewable energy. The law only requires registration with the DOE to avail of the incentive of VAT zero-rating. The Implementing Rules and Regulations of R.A. No. 9513 cannot expand the law by adding a requirement not required under the law it implements.

THE COURT *EN BANC*'S RULING

We shall first look into the timeliness of the filing of the Petitions for Review.

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[22] CTA EB Case No. 2094 (CTA Case No. 9006), February 18, 2021.

The Court in Division issued the Assailed Resolution in CTA Case No. 9663, denying PGPCI's Motion for Reconsideration and the CIR's Motion for Reconsideration on March 8, 2021. Records show that on Mach 12, 2021, PGPCI received a copy of the Resolution of the Court in Division, while the CIR received the same on March 16, 2021.

Pursuant to Section 3(b) and 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals, 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 (15) days from receipt of the assailed Resolution.

In this case, counting 15-days from the receipt of the Notice of Resolution dated March 8, 2021, PGPCI had until March 29, 2021,[23] and the CIR had until March 27, 2021 to file their respective appeals before the Court *En Banc*. However, March 27, 2021 fell on a Saturday. Thus, the next working day was on March 29, 2021, a Monday. Meanwhile, the CIR had until March 31, 2021 within which to file her Petition for Review.

However, within the period allowed by law to file their respective Petitions for Review, the Supreme Court issued the following administrative circulars in view of the surge of cases of Covid-19 in the National Capital Judicial Region and nearby provinces which ordered courts to be physically closed, and the period of filing of pleadings and other court submissions suspended until May 14, 2021, to wit:

Administrative Circular (AC) No.	**Issued on**	**Contents**
AC No. 14-2021	March 28, 2021	*Re: Extension of Filing Periods for Pleadings/ Court Submissions for Courts in the National Capital Judicial Region and Nearby Provinces Placed Under Enhanced Community Quarantine from March 29 to April 4, 2021.* "The filing periods of pleadings and other court submissions that fall during the period from

[23] March 27, 2021 fell on a Saturday.

		March 29 to March 31, 2021 are hereby extended for three (3) calendar days, counted from April 5, 2021."
AC No. 15-2021	April 3, 2021	*"RE: Extension of the Physical Closure of Courts and the filing periods for pleadings and other court submissions in light of the further extension of the enhanced community quarantine from April 5 to April 11, 2021."* "The filing periods of pleadings and other court submissions that fell due or would fall due during the period beginning from March 29 to April 11, 2021 are hereby EXTENDED for seven (7) calendar days, counted from April 12, 2021. Accordingly, Administrative Circular No. 14-2021 is hereby modified in this respect."
AC No. 21-2021	April 10, 2021	*"RE: Extension of Physical Closure of Courts"* "ALL the courts and the judicial offices in the National Capital Region and the provinces of Bulacan, Cavite, Laguna, and Rizal (NCJR+) shall remain physically closed until April 18, 2021. The time for filing and service of pleadings and motions during this period is suspended and shall resume seven (7) calendar days counted from the first day of physical reopening of the relevant court."
AC No. 22-2021	April 14, 2021	*"RE: Physical Closure of Courts in Enhanced Community Quarantine and Modified Enhanced Community Quarantine Areas"* "The physical closure of courts in the areas of NCR among others is likewise extended to April 30, 2021. The time for filing and service of pleadings and motions during this period is suspended and shall resume seven (7) calendar days counted from the first day of physical reopening of the relevant court."
AC No. 29-2021	April 30, 2021	*"RE: Work arrangements in Courts on May 3-14, 2021"* "The time for filing and service of pleadings and motions during this period in these areas is suspended and shall resume after seven (7) calendar days counted from the first day of the physical reopening of the relevant court."
AC No. 33-2021	May 14, 2021	*"RE: Court operations starting May 17, 2021"* "All first and second level courts, and appellate

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		collegiate courts (except the Supreme Court), and the judicial offices in these areas under GCQ shall be physically opened with a skeleton force of at least thirty percent (30%) to at most fifty percent (50%), beginning 17 May 2021 until further notice."

Based on the foregoing circulars, the reopening of courts resumed on May 17, 2021. Thus, counting seven (7) days therefrom, the deadline for the filing of the Petition for Review for both parties fell on May 24, 2021.

PGPCI filed its Petition for Review on May 17, 2021, while the CIR filed its Petition for Review on May 19, 2021. Thus, both Petitions for Review were timely filed.

We shall now proceed to determine the merits of the instant case.

The Court in Division committed no reversible error in deducting the amount of ₱3,589,914.20 representing the BIR's partial grant of PGPCI's claim for refund on its refundable excess input VAT attributable to valid zero-rated sales.

PGPCI insists that the Court in Division erred in deducting the amount of ₱3,589,914.20 previously approved by the BIR, from the total amount of ₱13,619,625.28 found by the Court in Division that PCPCI is entitled to in its refund claim of excess input VAT attributable to its valid zero-rated sales. Relative thereto, the Court in Division ruled that PGPCI is entitled only to the amount of **₱10,029,711.08**, representing its excess and unutilized input VAT attributable to zero-rated sales for the four quarters of CY 2015.

However, PGPCI claims that what was appealed before the Court in Division was the inaction of the BIR after the lapse of the 120-day period to decide the claim on the whole amount of ₱24,548,041.28, and not the partial grant of the refund claim. Allegedly, PGPCI treated the inaction of the BIR as a full, and not partial denial of its refund claim, and that it appealed the whole amount of ₱24,548,041.28 without excluding the amount of ₱3,589,914.20 already approved by the BIR.

Thus, PGPCI prays in its Petition for Review in CTA EB No. 2455 that the Court *En Banc* renders a judgment granting its claim for refund or issue a TCC, in its favor in the total amount of ₱13,619,625.28 representing its unutilized input taxes for the four quarters of taxable year 2015.

Notably, PGPCI's foregoing arguments are mere reiterations of the same arguments raised in its Motion for Reconsideration filed on November 16, 2020, which have already been squarely addressed by the Court in Division in the Resolution dated March 8, 2022. Nevertheless, the Court shall pass upon said argument for purposes of clarity.

Records show that PGPCI filed an administrative claim for refund with the Bureau of Internal Revenue for its unutilized input taxes for all four (4) quarters of TY 2015 in the aggregate amount of ₱24,548,041.28. Thereafter, PGPCI filed its judicial claim for refund before the Court in Division docketed as CTA Case No. 9663 on August 25, 2017, also for the same amount of ₱24,548,041.28.

Considering that the aggregate amount of the refund claim filed by PGPCI before the BIR and the Court in Division are the same, it is presumed that PGPCI presented the same documentary evidence before the BIR and the CTA in Division. Thus, unless proven otherwise, the amount of ₱3,589,914.20 partially granted by the BIR is deemed included in the amount of ₱13,619,625.28 awarded by the Court in Division in favor of PGPCI. Hence, the Court in Division appropriately deducted the amount of ₱3,589,914.20

Thus, notwithstanding that the *Authority to Issue VAT/ Credit Refund* authorizing the OIC-Assistant Commissioner of the Large Taxpayers Service to issue the TCC to PGPCI in the amount of ₱3,589,914.20 was issued after the lapse of the 120- day period for the BIR to act on PGPCI's administrative claim for refund, the same cannot be separately awarded to PGPCI.

To the mind of the Court *En Banc,* PGPCI should have deducted from the total amount of its judicial claim, the amount of ₱3,589,914.20 already granted by the BIR. In other words, PGPCI should have appealed before the Court in Division only the disallowed portion of its refund claim (₱24,548,041.28 less ₱3,589,914.20) because by doing so, the Court in Division would have no reason to deduct the amount partially granted by the BIR.

Thus, We quote with approval the Court in Division's pronouncement, to wit:

> "To clarify, the grant of refund in the amount of P10,029,711.08 made by the Court is in addition to the ₱3,589,914.20 already previously granted by the BIR. The fact is that petitioner already has an Authority to Issue VAT/ Credit Refund in the amount of ₱3,589,914.20, whether or not petitioner has decided to claim the same from the BIR is a different matter". [24]

Accordingly, lest shown by PGPCI that the aforesaid Authority To Issue VAT/ Credit Refund was recalled or cancelled by the BIR, PGPCI's prayer to grant its claim for refund or issuance of TCC in the amount of ₱13,619,625.28 representing its unutilized input taxes for the four quarters of taxable year 2015 must be denied.

As regards to PGPCI's claim that it is not appealing the partial grant of its refund claim by the BIR, the same is immaterial because indubitably, it was its entire refund claim of ₱24,548,041.28 that was thoroughly considered and evaluated by the Court in Division.

It is not required that the claimed input tax be directly attributable to zero-rated sales in order to be creditable.

The CIR maintains that only "creditable input taxes" that are "directly attributable" may be refunded. Allegedly, no attributability was established between the input tax on purchases vis-à-vis the zero-rated sales of PGPCI. As a claim for refund, PGPCI must establish its claim by quantum of evidence and not by assumption. The CIR reiterates that Section 112 (A) of the NIRC of 1997, as amended does not state that all input taxes of a VAT-registered person whose sales are zero-rated are refundable.

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[24] EB Docket (CTA EB No. 2455), pp. 20 to 25; EB Docket (CTA EB No. 2460), pp. 45 to 50; and Division Docket – Vol. 5 (CTA Case No. 9663), pp. 2045 to 250.

Allegedly, to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production. The CIR further asserts that *"the connection between the purchases and the finished product must be concrete and not imaginary or remote"*. According to the CIR, there is nothing in the assailed Decision of the Court in Division showing the "direct attributability" of the purchases or input tax to the finished product whose sale is zero-rated.

We are not convinced.

Section 110 of the NIRC of 1997, as amended, provides, in part, as follows:

"SEC. 110. *Tax Credits.* –

(A) *Creditable Input Tax.* –

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:

(i) For sale; or
(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
(iii) For use as supplies in the course of business; or
(iv) For use as materials supplied in the sale of service; or
(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

(b) Purchase of services on which a value-added tax has been actually paid.

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> The term 'input tax' means the **value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person.** It shall also include the transitional input tax determined in accordance with Section 111 of this Code." (*Emphases and underscoring supplied)*

The foregoing provision provides that an input VAT evidenced by a VAT invoice or official receipt is creditable against the output VAT not only on the purchase or importation of goods "*for conversion into or intended to form part of a finished product for sale including packaging materials,"* but also those purchase/importation of goods for sale, for use of supplies in the course of business, and for use in trade or business for which deduction for depreciation or amortization is allowed under the NIRC.

Thus, the CIR's contention that "to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production" is not entirely consistent with the above-quoted Section 110. This is so because the said provision, as clearly worded, did not limit itself to purchases or importation of goods which are to be converted into or intended to form part of a finished product for sale, or to be used in the chain of production; but also includes, among others, purchases or importation of goods for use as supplies in the course of business, or for use in trade or business for which deduction for depreciation or amortization is allowed; as well as purchases of services for which VAT has been actually paid. Accordingly, provided that the subject input tax is evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the NIRC of 1997, as amended, the same may be creditable against the output VAT.

Moreover, We are not persuaded by the CIR's allegation that for an input tax to be attributable to zero-rated sales, it must be shown that the "the connection between the purchases and finished products is 'concrete' and 'not imaginary' or 'remote'".

Section 112 of the NIRC of 1997, as amended by Republic Act No. 9337,[25] allows the allocation of creditable input taxes which cannot be directly or entirely attributable to zero-rated sales, to wit:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): **Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales**: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales." (*Emphasis and underscoring added*).

Based on the foregoing, creditable input taxes which cannot be directly or entirely attributable to any sale transaction (i.e., zero-rated or effectively zero-rated sale and taxable or exempt sale of goods of properties or services), shall be allocated proportionately on the basis of the volume of sales. Evidently, contrary to the CIR's allegation, the attribution of the input VAT to the zero-rated sales need not always be direct. Hence, it is not required that the claimed input tax be directly attributable to zero-rated sales in order to be creditable.

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[25] An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, and 288 of the National Internal Revenue Code of 1997, as amended, and for other purposes.

A Certificate of Endorsement is not required for VAT Zero-Rating Purposes.

In assailing the Court in Division's Decision dated October 28, 2020, the CIR argues that PGPCI should not have been entitled to the partial refund of its claim, asserting that PGPCI failed to present its DOE Certificate of Endorsement. According to the CIR, the Court in Division erred in relying on the BIR's partial grant of refund as indicative of PGPCI's compliance with all necessary documents; and that the COE is only required if PGPCI wishes to avail of the incentive on duty-free importation of Renewable Energy (RE) machinery, equipment and materials.

We are not convinced.

We agree with the Court in Division's ruling that for purposes of Value-Added Tax (VAT) zero rating, Section 15(g) of Republic Act (RA) No. 9513[26] and its implementing rules and regulations do not require the submission of a COE from the DOE, as will be explained below.

A careful reading of Section 15(g) of RA No. 9513 grants RE Developers, duly certified by the DOE in consultation with the BOI, entitlement to the VAT zero-rating treatment of its sale of fuel or power generated from renewable sources of energy and its purchases of local supply of goods, properties and services related to the development, construction and installation of its power facilities. The pertinent provision reads as follow:

> "CHAPTER VII
> GENERAL INCENTIVES
>
> SECTION 15. *Incentives for Renewable Energy Projects and Activities.* – **RE Developers** or renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, **as duly certified by the DOE, in consultation with the BOI**, shall be entitled to the following incentives:
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> xxx xxx xxx

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[26] "The Renewable Energy Act of 2008".

> (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."

Relative to the above provision, the DOE, as the lead agency mandated to implement the provisions of RA 9513,[27] issued DOE Circular No. DC2009-05-0008 or the Rules and Regulations Implementing RA No. 9513 (IRR).[28]

Section 18 (A), (B), and (C) of the IRR of RA No. 9513 enumerates the conditions that must be complied by a RE Developer in order to avail the incentives provided under RA No. 9513, to wit:

> "SEC. 18. *Conditions for Availment of Incentives and Other Privileges.* –
>
> ***A.Registration / Accreditation with the DOE***
>
> **For purposes of entitlement to the incentives and privileges under the Act**, **existing and new RE Developers**, and manufacturers, fabricators, and suppliers of locally-produced RE equipment **shall register with the**

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[27] Sec. 5. Lead Agency. – The DOE shall be the lead agency mandated to implement the provisions of this Act."
[28] Issued on May 25, 2009.

DOE, through the Renewable Energy Management Bureau (REMB). The following certifications shall be issued:

(1)***DOE Certificate of Registration* – issued to an RE Developer holding a valid RE Service/Operating Contract.**

For existing RE projects, the new RE Service/Operating Contract shall preterminate and replace the existing Service Contract that the RE Developer has executed with the DOE subject to the Transitory Provision in Rule 13, Section 39.

The DOE Certificate of Registration shall be issued immediately upon award of an RE Service/Operating Contract covering an existing or new RE project or upon approval of additional investment.

Any investment added to existing RE shall be subject to prior approval by the DOE.

B. Registration with the Board of Investments (BOI)

The RE sector is hereby declared a priority investment sector that will regularly form part of the country's Investment Priority Plan (IPP), unless declared otherwise.

To qualify for the availment of the incentives under Section 13 and 15 of this IRR, RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment, **shall register with the BOI.**

xxx xxx xxx

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."** (*Emphases and underscoring supplied*)

Based on the foregoing provisions, in order to avail of the incentives under Section 15(g) of RA No. 9513, among which, is VAT-zero rating, a RE Developer must have secured and presented the following documents as prescribed under Section 18(A),(B), and (C), Rule 5, Part III of the IRR of RA 9513, to wit:

1. DOE Certificate of Registration;
2. Certificate of Registration with the BOI; and
3. Certificate of Endorsement by the DOE.

However, as correctly pointed out by the Court in Division, the submission of a COE is not required for purposes of VAT-zero rating, but rather the submission thereof is necessary only when a RE Developer intends to avail of the incentive of exemption from tariff duties from importation of RE machinery, equipment and materials, as provided in Section 15(b) of RA No. 9513, to wit:

> "Section 15. *Incentives for Renewable Energy Projects and Activities.* –
>
> xxx xxx xxx
>
> (b) **Duty-free Importation of RE Machinery, Equipment and Materials** – Within the first ten (10) years upon the issuance of a certification of an RE developer, **the importation of machinery, equipment, and materials and parts thereof, including control and communication equipment, shall not be subject to tariff duties**: *Provided, however,* That the said machinery, equipment, materials and parts are directly and actually needed and used exclusively in the RE facilities for transformation into energy and delivery of energy operator to the point of use and covered by shipping documents in the name of the duly registered authorities: ***Provided, further,* That endorsement of the DOE is obtained before the importation of such machinery, equipment, materials and parts are made.**
>
> **Endorsement of the DOE must be secured before any sale, transfer or disposition of the imported capital equipment, machinery, or spare parts is made**: *Provided,* That if such sale, transfer or disposition is made within the ten (10)-year period from the date of importation, any of the following conditions must be present:

(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 on the net book value if 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." (Emphases added)

Based on the foregoing provision, the endorsement from the DOE must be secured by an RE developer before the importation of an RE machinery, equipment, materials and parts, as well as before any sale, transfer, or disposition of the capital equipment, machinery of spare parts. In contrast, the said endorsement, however, is not mentioned under Section 15(g) of RA No. 9513,[29] or the RE Developer's incentive on VAT-zero rating.

Notably, in the Specific Terms and Conditions[30] attached to PGCPI's Certificates of Registration Nos. 2014-067 and 2014-066 issued by the BOI, the following provisions state as follows:

"SPECIFIC TERMS AND CONDITIONS

xxx xxx xxx

4. The enterprise may avail of the following incentives under the administration of the BOI:

a) **Duty-free Importation of RE Machinery, Equipment and Materials including control and communication equipment**, within the first ten (10) years from the issuance of the DOE certificate of registration.

[29] Supra at 20.
[30] Exhibits P-9 and P-12, Division Docket (CTA Case No. 9663) – Vol. 4, pp. 1273 to 1275 and 1280 to 1280.

> **The enterprise shall secure from the DOE-REMB a Certificate of Endorsement that the enterprise is in good standing for availment of this incentive. The Endorsement shall be on a per transaction basis. "Per transaction" means per application of incentives.**
>
> 5. The enterprise shall also be entitled to the following incentives under R.A. 9513 to be administered by appropriate government agencies subject to the Rules and Regulations of the respective administering government agencies.
>
> xxx xxx xxx
>
> e) **Zero-Percent Value-Added Tax Rate**
>
> The sale of power generated by the enterprise as well as its purchase of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities and the whole process of exploration and development of RE sources up to its conversion into power shall be subject to zero percent value-added tax pursuant to the NIRC."

Clearly from the foregoing, the submission of a COE is only required in the availment to enjoy the incentives of exemption from tariff duties pertaining to an RE Developer's importation of RE machinery, equipment and materials, and is not needed for VAT zero-rating purposes. Thus, the Court in Division was correct in ruling that PGPCI would still be able to avail of a zero-percent VAT rate regardless of its procurement of the COE.

In sum, the Court *En Banc* finds no reversible error committed by the Court in Division that would warrant the modification, nor reversal of the assailed Decision and Resolution.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* in CTA EB No. 2455 filed by Philippine Geothermal Production Company, Inc. and the *Petition for Review* in CTA EB No. 2460 filed by the Commissioner of Internal Review are **DENIED** for lack of merit. Accordingly, the Decision dated October 28, 2020 and the Resolution dated March 8, 2021 rendered by the Court in Division in CTA Case No. 9663, are **AFFIRMED**. *mf*

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice