REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

MAIBARARA GEOTHERMAL, INC., *Petitioner,*	**CTA *EB* NO. 2111** *(CTA Case Nos. 9119, 9201, 9254, and 9336)*
-versus-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 2 6 2020 3:56 p.m.

x -- x

DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review[1] pursuant to ***Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***[2] filed by petitioner against respondent, seeking the reversal and setting aside of the Decision,[3] dated 4 March 2019, and the Resolution,[4] dated 9 July 2019, both rendered by the Court of Tax Appeals ("CTA") Special First Division (hereinafter referred to as the "Court in Division"), and praying for the refund of petitioner's

---

[1] Petition for Review, *Rollo*, pp. 9-74, with annexes.
[2] A.M. No. 05-11-07-CTA, 22 November 2005.
[3] Decision dated 4 March 2019, Court in Division Docket (CTA Case Nos. 9119, 9201, 9254, and 9336), Vol. V, pp. 2654-2669.
[4] Resolution dated 9 July 2019, Court in Division Docket (CTA Case Nos. 9119, 9201, 9254, and 9336), Vol. V, pp. 2762-2767.

unutilized input VAT paid on purchases of goods and services attributable to zero-rated sales for the 1st, 2nd, 3rd, and 4th quarters of taxable year 2013 in the total amount of ₱81,572,707.81.

The Parties

Petitioner Maibarara Geothermal, Inc. ("Maibarara") is a corporation duly organized and existing under the laws of the Philippines. It is registered with the Department of Energy ("DOE") as an "RE Developer of Geothermal Energy Resources" and with the Board of Investments ("BOI") as a "New Renewable Energy Developer of a 20 MW Maibarara Geothermal Power Generation Project." Petitioner is a VAT-registered taxpayer with Taxpayer's Identification Number (TIN) 007-843-328-000, and its business address is at the 7th Floor, JMT Building, ADB Avenue, Ortigas Center, Pasig City.

Respondent Commissioner of Internal Revenue ("CIR") is duly-appointed and empowered to perform the duties of its office, including, among others, the duty to act on and approve claims for refund as provided by law, with office address at the Bureau of Internal Revenue ("BIR") National Office Building, Diliman, Quezon City.

The Facts

Petitioner claims for refund of its alleged unutilized input taxes attributable to zero-rated sales/receipts for the 1st, 2nd, 3rd, and 4th quarters of taxable year 2013 in the total amount of ₱81,572,707.81.[5]

As found by the Court in Division, petitioner filed with Revenue District Office ("RDO") No. 43A four (4) separate administrative claims for refund of its alleged unutilized input VAT attributable to zero-rated sales for the four (4) quarters of taxable year 2013[6] as follows:

Quarter	Date Filed	Amount Claimed
1st	26 March 2015	₱9,027,372.28
2nd	26 June 2015	69,816,295.84
3rd	18 September 2015	1,621,794.52
4th	10 December 2015	1,107,245.17
	TOTAL	₱81,572,707.81

4

[5] Petition for Review, *Rollo*, p. 9.
[6] Decision dated 4 March 2019, Court in Division Docket (CTA Case Nos. 9119, 9201, 9254, and 9336), Vol. V, pp. 2654-2669.

Following respondent's non-action on such claims, petitioner filed four (4) separate Petitions for Review on 18 August 2015, 16 November 2015, 5 February 2016, and 25 April 2016, docketed as CTA Case Nos. 9119, 9201, 9254, and 9336, respectively.[7] The Court in Division granted the consolidation of CTA Case Nos. 9201 and 9254 with CTA Case No. 9119 in its Resolution dated 5 May 2016.[8] Meanwhile, the CTA Third Division ordered the consolidation of CTA Case No. 9336 with CTA Case No. 9119, subject to the approval of the Court in Division, in its Resolution dated 14 June 2016,[9] which was subsequently approved in the Court in Division's Resolution, dated 1 July 2016.[10]

On 4 March 2019, the Court in Division rendered the assailed Decision denying the consolidated Petitions for Review for lack of merit.

Aggrieved, petitioner filed its Motion for Reconsideration before the Court in Division on 25 March 2019.[11] Respondent no longer filed its Comment/ Opposition.[12]

On 9 July 2019, the Court in Division promulgated the assailed Resolution denying petitioner's Motion for Reconsideration.

On 31 July 2019, petitioner filed a Motion for Extension of Time to File the Petition for Review,[13] which the Court *En Banc* granted[14] on 5 August 2019, giving petitioner until 17 August 2019 to file its Petition. Petitioner filed the instant Petition for Review[15] on 16 August 2019, and respondent was directed[16] to file its Comment thereto within ten (10) days from notice. Respondent did not file its Comment.[17] On 27 November 2019, the Court *En Banc* gave due course to the Petition for Review and submitted the same for decision.[18]

---

7 *Ibid.*
8 Resolution dated 5 May 2016, Court in Division Docket (CTA Case Nos. 9119, 9201, 9254, and 9336), Vol. II, pp. 764-767.
9 Resolution dated 14 June 2016, Court in Division Docket (CTA Case Nos. 9336), pp. 93-95.
10 Resolution dated 1 July 2016, Court in Division Docket (CTA Case Nos. 9119, 9201, 9254, and 9336), Vol. II, pp. 791-794.
11 Motion for Reconsideration, Court in Division Docket (CTA Case Nos. 9119, 9201, 9254, and 9336), Vol. V, pp. 2715- 2748.
12 Records Verification dated 31 May 2019, Court in Division Docket (CTA Case Nos. 9119, 9201, 9254, and 9336), Vol. V, p. 2756.
13 Motion for Extension of Time to File Petition for Review, *Rollo*, pp. 1-7.
14 Minute Resolution dated 5 August 2019, *Rollo*, p. 8.
15 Petition for Review, *Rollo*, pp. 9-74, with annexes.
16 Resolution dated 16 September 2019, *Rollo*, pp.75-77.
17 Records Verification dated 11 November 2019, *Rollo*, pp. 78.
18 Resolution dated 27 November 2019, *Rollo*, pp. 79-81.

The Assigned Errors[19]

Petitioner makes the following assignment of errors for the Court *En Banc's* resolution:

A. The Honorable Special First Division erred in ruling that petitioner failed to comply with the requirement that the taxpayer is engaged in zero-rated or effectively zero-rated sales;

B. The Honorable Special First Division erred in ruling that petitioner failed to comply with the requirement that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;

C. The Honorable Special First Division, by denying the petitioner of their refund, deprived petitioner of their property without due process of law; and

D. The Honorable Special First Division erred in ruling that petitioner is not entitled to the refund of the amount of ₱81,572,707.81representing its unutilized input VAT attributable to its zero-rated sales for the year 2013.

The Ruling of the Court En Banc

The Court *En Banc* finds no reason to reverse the assailed Decision and Resolution of the Court in Division.

Petitioner failed to prove the existence of zero-rated sales upon which the 2013 input VAT may be attributed.

Petitioner insists that, from the wording of ***Section 112(A)***, there is no requirement that the zero-rated or effectively zero-rated should be made during the same period as when the input taxes sought to be refunded were incurred or paid.[20]

[19] Petition for Review dated 13 August 2019, CTA *EB* No. 2111, *Rollo*, pp. 15-16.
[20] *Id.*, p. 24.

We agree with petitioner's contention that the existence of zero-rated or effectively zero-rated sales need not be in the same period as that when the input taxes subject of the claim were incurred or paid. However, the presence of zero-rated sales during the period of claim, regardless of the period when the claimed input VAT was incurred, must nonetheless be established. It is precisely for this reason that the two (2)-year prescriptive period to claim refund of unutilized input VAT commences after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made and not after the close of the taxable quarter when the purchases were made and the corresponding input VAT were incurred.

Section 112(A) of the Tax Code provides that a VAT-registered person, whose sales are zero-rated or effectively zero-rated, may apply for issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales within two (2) years after the close of the taxable quarter when such sales were made, to wit:

> "Section 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 **<u>two (2) years after the close of the taxable quarter when the sales were made</u>**, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to **<u>such sales</u>**, 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 of 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;. . ."[21]

A plain reading of ***Section 112(A)*** would show that the existence of zero-rated sales is crucial in a claim for unutilized input VAT. ***Section 112(A)*** reckons the two (2)-year prescriptive period from the close of the taxable quarter when the sales were made and not when claimed input VAT were incurred or paid. The mandate is very clear. When the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.[22]

[21] Emphasis and underscoring supplied.
[22] Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue, G.R. No. 196907, 13 March 2013.

Significantly, as cited by petitioner, the Supreme Court reiterated, in ***San Roque Power Corporation v. Commissioner of Internal Revenue***,[23] the requirements for a claim for refund or tax credit to prosper, to wit:

> "To claim refund or tax credit under Section 112(A), **petitioner <u>must</u> comply with the following criteria**: (1) the taxpayer is VAT registered; (2) the taxpayer is **engaged in zero-rated or effectively zero-rated sales**; (3) the input taxes are due or paid; (4) the input taxes are not transitional input taxes; (5) the input taxes have not been applied against output taxes during and in the succeeding quarters; (6) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (7) 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; (8) 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 (9) the **claim is filed within two years after the close of the taxable quarter <u>when such sales were made</u>**."[24]

Petitioner also cites ***San Roque Power Corporation v. Commissioner of Internal Revenue***,[25] ***GST Philippines, Inc. v. Commissioner of Internal Revenue***,[26] ***Commissioner of Internal Revenue v. KEP (Philippines) Realty Corporation***,[27] and ***Maibarara Geothermal v. Commissioner of Internal Revenue***[28] in proffering the view that there is no requirement that there should be zero-rated or effectively zero-rated sales during the same period as when the input taxes sought to be refunded were incurred or paid.

While there is no requirement that the zero-rated sales should be present in the same period that the claimed input taxes are incurred or paid, the presence of zero-rated or effectively zero-rated sales must nonetheless be established during the period of claim or in any subsequent period. Nowhere in the aforementioned cases was it ruled that substantiating the zero-rated sales may be dispensed with.

As diametrically opposed to petitioner's assertion, the Supreme Court in ***Luzon Hydro Corporation v. Commissioner of Internal Revenue***,[29] clearly and categorically pronounced the necessity of establishing the presence of zero-rated sales on the part of the taxpayer to obtain tax credit or refund of unutilized input VAT. The Supreme Court held in this wise:

---

[23] G.R. No. 180345, 25 November 2009 citing Intel Technology of the Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 166732, 27 April 2007.
[24] Emphasis and underscoring supplied.
[25] G.R. No. 180345, 25 November 2009.
[26] CTA Case No. 7718, 23 June 2010.
[27] CTA EB No. 1504 (CTA Case No. 8983) 18 August 2017.
[28] CTA Case No. 8871, 8937, 8999, and 9042, 27 December 2017.
[29] G.R. No. 188260, 13 November 2013.

> "A claim for refund or tax credit for unutilized input VAT may be allowed only if the following requisites concur, namely: (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 Sections 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 the rules and regulations of the Bangko Sentral ng Pilipinas; (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 taxahle quarter when <u>such sales</u> were made.**
>
> The petitioner did not competently establish its claim for refund or tax credit. We agree with the CTA *En Banc* that the **petitioner did not produce evidence showing that it had zero-rated sales** for the four quarters of taxable year 2001. As the CTA *En Banc* precisely found, the **<u>petitioner did not reflect any zero-rated sales from its power generation in its four quarterly VAT returns, which indicated that it had not made any sale of electricity</u>**. **<u>Had there been zero-rated sales, it would have reported them in the returns.</u>** Indeed, **it carried the burden** not only that it was entitled under the substantive law to the allowance of its claim for refund or tax credit but also **that it met all the requirements for evidentiary substantiation** of its claim before the administrative official concerned, or in the de novo litigation before the CTA in Division.
>
> Although the petitioner has correctly contended here that the sale of electricity by a power generation company like it should be subject to zero-rated VAT under Republic Act No. 9136, **its <u>assertion that it need not prove</u> its having actually made zero-rated sales of electricity by presenting the VAT official receipts and VAT returns <u>cannot be upheld</u>.** It ought to be reminded that it could not be permitted to substitute such vital and material documents with secondary evidence like financial statements."[30]

Following the doctrine that zero-rated sales must be substantiated from which the claimed input VAT can be attributed, the Court *En Banc*, in ***Maibarara Geothermal v. Commissioner of Internal Revenue***,[31] affirmed the findings of the Court in Division which allowed the refund of input VAT incurred in 2012 which are attributable to the duly substantiated zero-rated sales for the first quarter of 2014.

In the present case, petitioner claims for refund of unutilized input VAT attributable to its zero-rated sales/ receipts for the four (4) quarters of taxable year 2013.[32]

---

[30] Emphasis and underscoring supplied.
[31] Commissioner of Internal Revenue v. Maibarara Geothermal, Inc., CTA EB No. 1863 (CTA Case Nos. 8871, 8937, 8999, and 9042), 4 October 2019.
[32] Exhibits P-9, P-10, P-11, P-12, P-13, P-14, P-15, and P-16, Court in Division Docket CTA Case Nos. 9119, 9201, 9254, and 9336, Vol. IV, pp. 1887-1916.

As found by the Court in Division, an examination of petitioner's Quarterly VAT Returns filed for taxable year 2013 reveals that petitioner had no sales declared during the said period.[33] The Court in Division also found through the testimony of petitioner's witness that its first commercial sale was in 2014.[34]

Petitioner contends that its submission of quarterly VAT returns and amended VAT quarterly VAT returns from the 1st quarter of taxable year 2011 to the 1st quarter of 2014, income tax returns and audited financial statement from the taxable year 2010 up to taxable year 2013, Electricity Supply Agreement with Trans-Asia Oil and Energy Development Corporation, Billing Statement No. 0001, and Official Receipt No. 0501 dated 25 March 2014 are sufficient to establish the existence of zero-rated sales from its operations as a renewable energy developer.[35]

A perusal of the petitioner's Official Receipt No. 0501, however, reveals that the pertinent details such as payor's name, date of transaction, payor's TIN, and nature of service performed, are illegible. Without the required information the zero-rated sales cannot be duly substantiated for petitioner's failure to establish the existence of zero-rated sales upon which the claimed unutilized input VAT may be attributed.

Petitioner's failure to establish the existence of zero-rated sales during the period of claim, i.e. taxable year 2013, or in any subsequent year, is fatal to its action, and this Court is constrained to deny petitioner's claim for input VAT refund.

Petitioner failed to establish that it is engaged in zero-rated sales.

Petitioner claims that it is engaged in zero-rated sales and is duly registered with the Board of Investments as a "new renewable energy developer" and that it is registered with the Department of Energy ("DOE").[36] Petitioner thus claims that it is entitled to 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.[37]

---

[33] Decision dated 4 March 2019, Court in Division Docket (CTA Case Nos. 9119, 9201, 9254, and 9336), Vol. V, pp. 2666-2668.
[34] *Ibid.*
[35] Petition for Review, *Rollo*, pp. 37-39.
[36] Petition for Review, *Rollo*, p. 12.
[37] *Ibid.*

We disagree.

Section 15 (g) of Republic Act ("R.A.") No. 9513, otherwise known as the ***Renewable Energy Act of 2008***, pertinently reads as follows:

"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.* — 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 <u>zero-rated value added tax on its purchases</u> 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.**"[38]

In relation thereto, the DOE issued ***Department Circular No. 2009-05-0008*** on 25 May 2009, the pertinent portion of which is ***Part III, Rule 5 Section 13.G of the Implementing Rules and Regulations ("IRR") of R.A. No. 9513***, which reads:

"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

[38] Emphasis and underscoring supplied.

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**;

(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."[39]

Based on the foregoing, all RE Developers are entitled to zero-rated VAT on its purchases of local supply of goods, properties, and services needed for the development, construction, and installation of plant facilities. Furthermore, the VAT zero-rating applies to the whole process of exploration and development of renewable energy sources up to its conversion into power, including the services performed by contractors or subcontractors.

To avail of zero-rated VAT, a taxpayer must, however, comply with the conditions laid down under ***Part III, Rule 5 of the IRR of R.A. No. 9513. Section 18 (A), (B), and (C)*** thereof reads:

"SEC. 18. Conditions for Availment of Incentives and Other Privileges. —

A. *Registration/Accreditation with the DOE*

<u>**For purposes of entitlement to the incentives and privileges under the Act**</u>**, existing and new RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall register with the 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 that the RE Developer has

[39] Emphasis and underscoring supplied.

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 projects shall be subject to prior approval by the DOE.

(2) ***DOE Certificate of Accreditation*** — issued to RE manufacturers, fabricators, and suppliers of locally-produced RE equipment, upon submission of necessary requirements to be determined by the DOE, in coordination with the DTI.

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 by law.

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

The registration with the BOI shall be carried out through an agreement and an administrative arrangement between the BOI and the DOE, with the end-view of facilitating the registration of qualified RE facilities. The applications for registration shall be favorably acted upon immediately by the BOI, on the basis of the certification issued by the DOE.

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.

The DOE, through the REMB, shall issue said certification within fifteen (15) days upon request of the RE Developer or manufacturer, fabricator, and supplier; *Provided*, That the certification issued by the DOE shall be without prejudice to any further requirements that may be imposed by the government agencies tasked with the administration of the fiscal incentives mentioned under Rule 5 of this IRR."

As required under the foregoing provisions, the following documents must be secured by a RE Developer in order to qualify for VAT zero-rating, as contemplated under ***RA No. 9513*** and its ***IRR***, to wit:

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

Here, records show that petitioner was issued a DOE Certificate of Registration No. GRESC 2011-01-025 on 5 January 2011[40] and a Certificate of Registration No. 2011-006 by the Board of Investments on 7 January 2011.[41]

However, there is no showing that petitioner was issued a Certificate of Endorsement by the DOE on a per transaction basis. Without this third requirement, petitioner's alleged sales, if any, do not qualify for VAT zero-rating.

Petitioner was not deprived of property without due process of law because refunds are strictly construed against the claimant-taxpayer.

Petitioner claims that the denial of its claim is tantamount to deprivation of property without due process of law contrary to the fundamental principle of the Constitution.

We find this contention unmeritorious.

It is settled that statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to VAT are in the nature of such exemptions.[42] Accordingly, it is the claimant's burden to prove the factual basis of a claim for refund or tax credit.[43]

Navigating on the same premise that tax refunds are construed *strictissimi juris* against the taxpayer, every claim for refund subject to review of this Court should pass through strict scrutiny and evaluation of the evidence presented by both parties. This Court is guided by the pronouncement of the Supreme Court in the case of ***Atlas Consolidated Mining and Development*** ℓ

---

[40] Exhibit "P-3", Court in Division Docket (CTA Case Nos. 9119, 9201, 9254, and 9336), Vol. IV, p. 1856.
[41] Exhibit "P-4", Court in Division Docket (CTA Case Nos. 9119, 9201, 9254, and 9336), Vol. IV, p. 1857.
[42] Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue, G.R. No. 178090, 8 February 2010.
[43] Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 183531, 25 March 2015.

Corporation vs. Commissioner of Internal Revenue,[44] which laid down the stringent standards to be observed in making a conclusion on a judicial claim for refund, the pertinent part of the decision reads:

> "In fine, we reiterate our consistent ruling that actions for tax refund, as in the instant case, are in the **nature of a claim for exemption** and the law is **not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is (sic) strictissimi scrutinized and must be duly proven**."[45]

In view of the foregoing, the denial of petitioner's claim for refund does not equate to any deprivation of property without due process of law. As exhaustively discussed in the preceding sections, petitioner failed to establish the existence of zero-rated sales upon which the claimed input VAT is attributed and has failed to submit sufficient evidence to establish that its sales, if any, is subject to zero-rating.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review filed by Maibarara Geothermal, Inc. is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision dated 4 March 2019 and Resolution dated 9 July 2019, both rendered by the Court in Division, are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
JUANITO C. CASTAÑEDA, JR.
Associate Justice

---

[44] G.R. No. 159490, February 18, 2008.
[45] Emphasis and underscoring supplied.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I join the Dissenting Opinion of J. Villena)
CATHERINE T. MANAHAN
Associate Justice

(With due respect, please see Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
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

MAIBARARA GEOTHERMAL, INC., Petitioner,	**CTA EB NO. 2111** (CTA Case Nos. 9119, 9201, 9254, and 9336)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE , Respondent.	Promulgated: NOV 26 2020 3:56 p.m.

x - x

DISSENTING OPINION

BACORRO-VILLENA, J.:

With all due respect, I beg to differ with the conclusions reached in the *ponencia* of our esteemed colleague, Associate Justice Maria Rowena Modesto-San Pedro.

As stated in the *ponencia*, the denial of petitioner's application for refund was essentially anchored on two grounds: (1) the non-presentation of the Certificate of Endorsement by the DOE on a *per* transaction basis; and, (2) petitioner's failure to establish its zero-rated sales.

In the *ponencia*, it provides:

> ...
>
> As required under the foregoing provisions, the following documents must be secured by a RE Developer in order to qualify for VAT zero-rating, as contemplated under *RA No. 9513* and its *IRR*, to wit:
>
> 1.) DOE Certificate of Registration;
> 2.) Registration with the BOI; and
> 3.) Certificate of Endorsement by the DOE.[1]
>
> ...

However, the requirement as to the DOE Certificate of Endorsement must be read together with the Specific Terms and Conditions[2] issued by BOI that read:

> ...
>
> 8. The enterprise shall be entitled to the following incentives under the administration of the BOI.
>
> ...
>
> a) Income Tax Holiday for Seven (7) Years from October 2013 or date of commissioning, whichever is earlier.
>
> ...
>
> The enterprise shall secure the following:
>
> i. From the DOE-REMB, **a Certificate of Endorsement that the enterprise is in good standing for <u>availment of the ITH</u>** incentive prior to filing of application for issuance of the certificate of ITH entitlement with the BOI; and
>
> ...
>
> b) **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 BOI certificate of registration.
>
> The enterprise shall secure from the DOE-REMB **a Certificate of Endorsement that the enterprise is in good standing for <u>the availment of this incentive</u>. The Endorsement shall be on a per transaction basis. "Per transaction" means per application for incentives.**

1 Decision, p. 12.
2 Exhibit "P-5", Division Docket, Volume IV, p. 1858-1864.

> ...
>
> 9. 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.
>
> ...
>
> e) Zero-Percent Value-Added Tax Rate
>
> **The sale of power generated by the enterprise as well as its purchases 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.**[3]
>
> ...

Clearly from the foregoing, the DOE Certificate of Endorsment is required **only** in order for petitioner to enjoy the **<u>ITH and the duty-free incentives</u>**. Such requirement is not needed for VAT zero-rating hence, the non-presentation of the same should not bar petitioner's application for VAT refund.

As regards petitioner's failure to establish its zero-rated sales, the *ponencia* states that "petitioner claims for refund of unutilized input VAT attributable to its zero-rated sales/receipts for the four (4) quarters of **taxable year 2013**".

I respectfully disagree.

In all of petitioner's Application for VAT Refund[4], it consistently states that the input VAT that it sought to be refunded is attributable to its first sales of renewable energy in the First (1st) Quarter of 2014.

As aptly determined by this Court in another VAT refund case of petitioner, *Commissioner of Internal Revenue v. Maibarara Geothermal, Inc.*[5], which allowed the refund of its input VAT incurred in 2012,

[3] Emphasis and underscoring supplied.
[4] Exhibits "P-9" to "P-16", Division Docket, pp. 1887-1916.
[5] CTA EB Case No. 1863, 14 October 2019.

petitioner has sufficiently established its zero-rated sales in the 1st Quarter of 2014.

All told, I vote to (1) **GRANT** herein petitioner's Petition for Review filed on 16 August 2019; and, (2) **REMAND** the case to the Special First Division for the determination of the other requisites of a valid claim for VAT refund i.e., attributability and substantiation of the subject input VAT claim for refund.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice