REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1579 (CTA Case No. 7890)
	Present:
-versus-	DEL ROSARIO, *PJ*; CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ*.
CE LUZON GEOTHERMAL POWER COMPANY, INC., Respondent.	Promulgated: JAN 08 2019 9:58 a.m.

x- -x

RESOLUTION

Fabon-Victorino, J.:

For Court action is petitioner's *Motion for Reconsideration* dated September 4, 2018, challenging the Decision of August 15, 2018,[1] the dispositive portion of which reads as follows:

> **WHEREFORE**, the Petition for Review filed by petitioner Commissioner of Internal Revenue and posted on February 3, 2017, is hereby **DENIED** for lack of merit. Consequently, the Decision dated July 22, 2016 and the Resolution dated December 22, 2016, both rendered by the Court in Division, are **AFFIRMED**.

[1] *Rollo*, pp. 166-180.

SO ORDERED.

Petitioner states that pursuant to Section 15(g) of Republic Act (R.A.) No. 9513,[2] renewable energy (RE) developers may not claim refund of value-added tax (VAT) charged on its local purchases of goods/services owing to the fact that input taxes incurred by such class of entities are set at zero percent (0%). Since respondent is an alleged RE Developer, it did not incur any input taxes on its local purchases of goods/services, hence, the subject claim for refund should be rejected outright.

Petitioner again highlights respondent's alleged failure to submit in the administrative level all the documentary requirements enumerated in Revenue Memorandum Order (RMO) No. 53-98. For him, the taxpayer-claimant must submit complete supporting documents to substantiate the claim for refund before his office prior to judicial recourse. This lapse on the part of respondent effectively prevents him for determining the merits of the refund claim. Further, the premature filing of the petition in Court also violated the doctrine of exhaustion of administrative remedies.

Petitioner further avers that respondent filed its judicial claim for refund on March 30, 2009, or barely 39 days from filing of its administrative claim on February 19, 2009. Allegedly, such precipitate institution of judicial claim contravened the 120+30 days mandatory and jurisdictional periods set forth in Sections 112(A) and (C) of the National Internal Revenue Code (NIRC), as amended, along with settled case-law on the matter. On this account, the Court in Division erred in taking cognizance of the instant petition filed before it.

Respondent as well failed to sternly adhere with the substantiation requirements enshrined under Sections 113, 114 and 236 of the NIRC, as amended, as implemented by Revenue Regulations No. 7-95. The VAT invoices/official receipts presented by respondent were deficient to demonstrate existence of its input taxes, for which reason, the subject refund claim deserves total disallowance.

---

[2] An Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and for other purposes.

By way of comment,[3] respondent argues that petitioner raised the issue of applicability of Section 15(g) of R.A. No. 9513 for the first time in the instant Motion, thus, the Court is precluded from addressing the same. Further, R.A. No. 9513, which took effect on 2008, cannot bind the subject refund claim of input taxes it incurred in 2007 as its application must be prospective. Also, no Certification was issued by the Department of Energy (DOE) categorizing it as a RE Developer as mandated by R.A. No. 9513, as implemented by DOE Circular No. DC2009-05-0008. Moreover, the alleged non-submission of complete supporting documents at administrative level will not automatically render its petition dismissible. More importantly, the Court already declared it entitled, albeit partially to the refund of excess unutilized input taxes in the reduced amount of ₱9,544,465.52. Respondent also points out that Court in Division has the authority to rule on the its appeal since its administrative and judicial claim for refund respectively filed on February 12, and March 30, 2009 are excepted from the application of the "120+30 days" mandatory and jurisdictional periods, citing jurisprudence[4] as its authority.

THE RULING OF THE COURT

The instant Motion must fail.

Indeed, petitioner did not raise as an issue in his Petition for Review the applicability of Section 15(g), R.A. No. 9513. It was invoked for the first time in the present incident preventing the Court from according the other party with sufficient opportunity to refute the same. It is elementary that higher courts are precluded from taking cognizance of issues, arguments or points of law only raised for the first time in a motion for reconsideration or on appeal.[5] To consider the alleged facts and arguments belatedly raised amounts to trampling on the basic principles of fair play, justice, and due process.[6]

---

[3] Respondent's *Comment (Re: Motion for Reconsideration dated October 29, 2018), rollo,* unpaged.

[4] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue,* G.R. No. 168950, January 14, 2015.

[5] See *Mendoza vs. Bautista, et al.,* G.R. No. 143666, March 18, 2005.

[6] *Ali Akang vs. Municipality of Isulan, Sultan Kudarat Province,* G.R. No. 186014, June 26, 2013.

Assuming *ex gratia argumenti* that the issue of applicability of R.A. No. 9513 was seasonably raised by petitioner, the said law finds no application in the present controversy.

Article 4[7] of the Civil Code declares that statutes cannot be conferred retroactive effect unless otherwise provided. [L]aws shall have only a prospective effect and must not be applied retroactively in such a way as to apply to pending disputes and cases. This is expressed in the familiar legal maxim *lex prospicit, non respicit* (the law looks forward and not backward).[8] Simply stated, no court will hold a statute to be retroactive when the legislature has not said so.[9]

En contra with petitioner's pretence, the will of the legislature is to apply R.A. No. 9513 prospectively. This is evident in Section 40 thereof, which states that "This Act <u>shall</u> take effect fifteen (15) days <u>after</u> its publication in at least two (2) newspapers of general circulation."[10] Basic is the rule that the word "shall" in a statute implies that the lawmakers intend the enactment to be effective only in the future.[11] Given that, the earliest date that R.A. No. 9513 may become operative is on 2008,[12] by no stretch of imagination can it affect respondent's input taxes incurred in calendar year (CY) 2007, or prior to the advent of the foregoing statute.

Anent the other arguments, suffice it to say that they have been exhaustively discussed and passed upon by the Court in the challenged Decision of August 15, 2018, particularly in pages 5-13 thereof. To repeat, respondent was able to establish compliance with the requisites for entitlement to its excess and unutilized input tax refund for CY 2007 but only to the extent of ₱9,544,465.52.

---

[7] **Article 4.** Laws shall have no retroactive effect, unless the contrary is provided.
[8] See *Philippine National Bank vs. Tejano, Jr.,* G.R. No. 173615, October 16, 2009.
[9] See *Community Investment and Finance Corporation vs. Garcia,* G.R. No. L-2338, February 27, 1951.
[10] Underscoring supplied.
[11] *Cebu Portland Cement & Co. vs. Collector of Internal Revenue,* G.R. No. 20563, October 29, 1968.
[12] Since R.A. No. 9513 was approved in December 16, 2008, the earliest date that it may become effective is December 31, 2008, or fifteen (15) days from date of publication in two (2) newspapers of general circulation.

WHEREFORE, petitioner's *Motion for Reconsideration* dated September 4, 2018 is **DENIED**, for lack of merit. The challenged Decision dated August 15, 2018 is **AFFIRMED** *in toto*.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice