REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CE CEBU GEOTHERMAL POWER COMPANY, INC., Petitioner,	**CTA EB NO. 741** **(CTA CASE NO. 7395)**
	Present:
-versus-	Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *J.J.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 22 2017 2:41 p.m.

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AMENDED DECISION

CASTAÑEDA, JR., J.:

This is an input Value-Added Tax (VAT) refund case remanded to the Court *En Banc* by the Second Division of the Supreme Court in its Resolution dated July 8, 2015[1] which reads:

> "**WHEREFORE**, the Court resolves to **PARTIALLY GRANT** the petition. The January 12, 2012 Decision and the June 25, 2012 Resolution of the Court of Tax Appeals *En Banc*, in C.T.A. EB No. 741 are **REVERSED** and **SET ASIDE**.
>
> The case is **REMANDED** to the CTA *En Banc* for disposition on the merits. *(**Carpio, J.,** on official leave, **Del Castillo, J.,** designated Acting Chairperson and **Peralta, J.,** designated Acting Member, per Special Order Nos. 2087 (Revised) and 2088, both dated July 1, 2015; **Brion, J.,** on leave, **Bersamin, J.** designated Acting Member, per Special Order No. 2079, dated June 29, 2015).*

[1] Rollo, p. 330.

SO ORDERED."

THE FACTS

Court of Tax Appeals (CTA) First Division / Special First Division

The facts of the case, as summarized in the January 5, 2010 Decision[2] of the First Division of the Court, are as follows:

> "This is a Petition for Review filed on December 29, 2005 by petitioner, pursuant to Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals, to review by appeal the inaction of respondent Commissioner of Internal Revenue over petitioner's administrative claim for tax refund or tax credit in the amount of P18,623,007.12, representing alleged unutilized and unapplied input value-added taxes (VAT) paid on its domestic purchases of goods and services and importation of goods attributable to its effectively zero-rated sales to the Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) for taxable year 2004.
>
> Petitioner CE Cebu Geothermal Power Company, Inc. is a corporation duly organized and existing under Philippine laws, with principal office at 24/F 6750 Bldg., Ayala Avenue, Makati City. It is registered with the Bureau of Internal Revenue (BIR), as a VAT taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC) of 1997, with Taxpayer Identification No. (TIN) 003-459-879-000.
>
> It is engaged in the business of power generation and subsequent sale thereof to the PNOC-EDC, pursuant to a Power Purchase Agreement (PPA). It has been accredited and certified as such by the Department of Energy (DOE), as evidenced by its DOE Certificate of Accreditation (OSAC 94-06) issued on April 6, 1994.
>
> Respondent is the duly appointed Commissioner of Internal Revenue, empowered to perform the duties of said office including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.
>
> Petitioner filed with the BIR its Original Quarterly VAT Returns for the first to fourth quarters of 2004 on the following dates:

Taxable Quarter	Date of Filing
First	April 26, 2004
Second	July 26, 2004
Third	October 25, 2004
Fourth	January 25, 2005

[2] Penned by Associate Justice Lovell R. Bautista, concurred in by Associate Justice Caesar A. Casanova. Presiding Justice Ernesto D. Acosta wrote a Concurring and Dissenting Opinion. Division Docket, pp. 468-488.

Subsequently, petitioner filed its Amended Quarterly VAT Returns for the first to fourth quarters of 2004 on November 27, 2005, which reflected the following:

Taxable Quarter (2004)	Excess/Unutilized VAT Credits			Total
	Domestic Purchases	Services Rendered by Non-residents	Importation of Goods	
1st	P7,214,684.23	P 50,784.61	P 734,727.00	P 8,000,195.84
2nd	3,277,320.79	56,291.00	301,376.00	3,634,987.79
3rd	2,212,725.58	83,854.99	397,799.00	2,694,379.57
4th	P3,289,212.74	P 138,210.18	P 866,021.00	P 4,293,443.92
Total Excess/Unutilized VAT Credits for 2004				**P18,623,007.12**

Petitioner filed an administrative claim for refund or issuance of tax credit certificate of the excess/unutilized input VAT with the Bureau of Internal Revenue on December 14, 2005 in the total amount of P18,623,007.12, for the four quarters of taxable year 2004.

Due to respondent's inaction and in order to suspend the running of the two-year prescriptive period within which to file a judicial claim for refund/issuance of tax credit certificate, petitioner filed with this Court a Petition for Review, docketed as CTA Case No. 7395 on December 29, 2005; praying for the refund or issuance of tax credit certificate for its alleged unutilized input VAT for taxable year 2004 in the amount of P18,623,007.12.

Respondent interposed the following Special and Affirmative Defenses in his Answer to the Petition for Review:

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On November 17, 2006, this Court commissioned Mr. Jerome Antonio B. Constantino, as Independent Certified Public Accountant (CPA) upon motion of petitioner, pursuant to Rules 12 and 13 of the Revised CTA Rules.

Apart from the Independent CPA, petitioner presented as witness Ms. Leilah Yasmin E. Alpad, petitioner's Senior Accountant who executed and identified her Judicial Affidavit dated August 10, 2006 and Supplemental Sworn Statement dated October 11, 2006. On the other hand, respondent presented his witness Ms. Edna dela Cruz Cau on June 19, 2008.

Petitioner formally offered its documentary evidence on October 1, 2007; while respondent failed to file a Formal Offer of Evidence.

The case was submitted for decision on January 7, 2009, taking into consideration respondent's Memorandum filed on November 12, 2008 and petitioner's Memorandum filed on December 15, 2008.

The following are the parties' jointly stipulated issues, submitted for this Court's resolution:

> '1. Whether or not Petitioner is registered as a VAT taxpayer pursuant to the provisions of the Tax Code, as amended.

2. Whether or not Petitioner has complied with the invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section[s] 113 and 114 of the Tax Code, as amended.

3. Whether or not Petitioner has complied with the submission of complete documents in support of its administrative claim for refund pursuant to Section 112 (D) of the Tax Code, as amended.

4. Whether or not the input taxes of P18,623,007.12 allegedly representing unutilized input VAT from its domestic purchases of goods and services, services rendered by non-residents and importation of goods for the calendar year 2004 were:

a. paid by the Petitioner;
b. attributable to its zero-rated or effectively zero-rated sales; and
c. such have not been applied against any output tax.

5. Whether or not Petitioner's claim for tax credit or refund of the unutilized input VAT was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112 (A) of the Tax Code, as amended.

6. Whether or not Petitioner's alleged domestic purchases of goods and services, services rendered by non-residents and importation of goods were made in the course of its trade or business and whether or not the same are properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary Purchase Journal, showing that it actually paid VAT in accordance with Sections 110(A)(2) and 113 of the Tax Code, as amended.

7. Whether or not Petitioner has complied with the governing rules and regulations with reference to recovery of tax erroneously or illegally collected as explicitly found in Sections 112(A) and 229 of the Tax Code, as amended.

8. Whether or not the claimed input tax were [sic] carried over to the succeeding quarter/s of the Petitioner's VAT returns.

9. Whether or not Petitioner is entitled to a refund or issuance of a tax credit certificate for the total amount of P18,623,007.12 allegedly representing unutilized input VAT from its domestic purchases of goods and services, services rendered by nonresidents and importation of goods for the first to fourth quarters of taxable year 2004.' *ge*

> Simply put, the issue is whether or not petitioner's sale of generated power to PNOC-EDC qualifies as a zero-rated VAT transaction; and if so, whether or not petitioner is entitled to a refund or issuance of tax credit certificate for its unutilized input VAT payments amounting to P18,623,007.12, arising from its domestic purchases of goods and services and importations of goods attributable to its effectively zero-rated sales for the four taxable quarters of 2004." (*Citations and footnotes omitted*)

On January 5, 2010, the CTA First Division promulgated a Decision[3] which partially granted the claim. The dispositive portion reads:

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

On November 25, 2010, upon the respective motions for partial reconsideration filed by petitioner on January 25, 2010[4] and filed by respondent on January 26, 2010,[5] the CTA Special First Division promulgated an Amended Decision.[6] The Amended Decision reversed the January 5, 2010 decision and denied the taxpayer's claim for refund stating that it failed to present or secure a Certificate of Compliance (COC) from the Energy Regulatory Commission (ERC) and, thus, could not qualify for VAT zero-rating under the Electric Power Industry Reform Act of 2001 (EPIRA). It reads in part:

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

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[3] Division Docket, p. 484.
[4] Division Docket, pp. 489-528.
[5] Division Docket, pp. 546-552.
[6] Penned by Associate Justice Lovell R. Bautista, concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova. Division Docket, pp. 611-616.

existing generation company to operate a new and existing generation facility, respectively.

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

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

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

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

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

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<u>For the aforesaid reasons, the Court must reverse itself.</u>

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

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

SO ORDERED." (*Underscoring supplied; footnotes and citations omitted*).

On December 17, 2010, petitioner filed a Motion for Reconsideration[7] with attached COC[8] and Supplemental Sworn Statement of Ms. Leilah Yasmin E. Alpad.[9] The motion was denied in a March 4, 2011 Resolution.[10]

CTA En Banc

On April 6, 2011, petitioner filed a Petition for Review[11] with the Court *En Banc* raising the sole issue: *Jv*

[7] Division Docket, pp. 617-635.
[8] Division Docket, p. 636.
[9] Division Docket, pp. 637-638.
[10] Division Docket, pp. 642-646.
[11] Division Docket, pp. 653-696.

"WHETHER OR NOT THE SPECIAL FIRST DIVISION ERRED IN DENYING PETITIONER'S JUDICIAL CLAIM FOR PETITIONER WAS ABLE TO PROVE, BY PREPONDERANCE OF EVIDENCE, THAT ITS SALES ARE ZERO-RATED AND THEREFORE, IT IS ENTITLED TO CLAIM FOR REFUND IN THE TOTAL AMOUNT OF P18,623,007.12."[12]

In support of the petition, petitioner argued that:

"1) Petitioner was able to present sufficient and uncontroverted evidence, apart from the Certificate of Compliance (COC), that it is a generation company engaged in zero-rated sales of power to PNOC-EDC;

2) The EPIRA does not require petitioner to show its COC to be considered a generation company for purposes of treating its sales as VAT zero-rated;

3) Petitioner's COC, even if issued only on October 5, 2005, nonetheless confirms that petitioner is a generation company and its sale of generated power to PNOC-EDC is zero-rated for VAT purposes;

4) The CTA-Division should have taken judicial notice of the fact that petitioner is a generation company; and

5) Petitioner duly filed its Motion for Reconsideration."[13]

Without giving due course to the Petition for Review, on April 19, 2011, the CTA *En Banc* ordered respondent CIR to file a comment within ten (10) days from notice.[14] Despite notice, respondent failed to file a comment.[15]

On June 23, 2011, both parties were ordered to file their memoranda within thirty (30) days from notice.[16] Respondent filed a Memorandum on July 15, 2011[17] while petitioner filed a Memorandum on August 19, 2011.[18]

On September 20, 2011, the case was deemed submitted for decision.[19]

On January 12, 2012, the CTA *En Banc* rendered a decision,[20] which dismissed the petition. The decision reads in pertinent part:

[12] January 12, 2012 Decision, Division Docket, p. 839.
[13] January 12, 2012 Decision, Division Docket, pp. 839-840.
[14] April 19, 2011 Resolution, Division Docket, pp. 758-759.
[15] June 23, 2011 Resolution, Division Docket, pp. 761-762.
[16] *Id.*
[17] Division Docket, pp. 763-776.
[18] Division Docket, pp. 785-829.
[19] September 20, 2011 Resolution, Division Docket, pp. 832-833.
[20] Penned by Associate Justice Olga Palanca-Enriquez, concurred in by Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova and Cielito Mindaro-Grulla. Presiding Justice Ernesto D. Acosta wrote a Concurring and Dissenting Opinion and was joined by Associate Justices Esperanza R. Fabon-Victorino and Amelia R. Cotangco-Manalastas. Associate Justice Lovell R. Bautista maintained his vote in the assailed Amended Decision dated November 25, 2010. Division Docket, pp. 835-850.

"Pursuant, therefore, to the aforesaid ruling of the Supreme Court in the Aichi case, the premature filing of petitioner's judicial claim for refund/credit of input VAT with this Court warrants a dismissal inasmuch as no jurisdiction was acquired by this Court.

In view of the foregoing, we find it unnecessary to discuss petitioner's compliance with the other requisites for refund of input taxes on domestic purchases of goods and services and importation of goods attributable to its zero-rated sales, for being moot and academic.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE,** and accordingly, **DISMISSED** for lack of merit. The assailed Amended Decision dated November 25, 2010 and Resolution dated March 04, 2011 are **REVERSED** and **SET ASIDE.**

Accordingly, the Petition for Review in CTA Case No. 7395 is hereby **DISMISSED** for having been prematurely filed.

SO ORDERED."

On February 3, 2012, petitioner filed its Motion for Reconsideration,[21] without any comment from respondent CIR.[22] For lack of merit, the motion was denied by the Court in its Resolution dated June 25, 2012.[23]

Supreme Court Second Division

On August 17, 2012, petitioner filed a Petition for Review on Certiorari under Rule 45 with the Supreme Court[24] and sought to set aside the January 12, 2012 Decision and the June 25, 2012 Resolution of the CTA *En Banc*.

On March 19, 2013, respondent CIR filed a Comment by registered mail.[25]

On August 8, 2013, petitioner filed a Reply by registered mail.[26]

In a Resolution dated July 8, 2015,[27] the second Division of the Supreme Court partially granted the petition and remanded the case to the CTA *En Banc* for disposition on the merits. The Supreme Court ruled in this wise:

"**<u>The Court's Ruling</u>**

The Petition is partly meritorious.

[21] Division Docket, pp. 854-888.
[22] June 25, 2012 Resolution, Division Docket, p. 1229.
[23] Division Docket, p. 1229-1238.
[24] Rollo, pp. 277-325.
[25] Division Docket, pp. 1199-1212.
[26] Division Docket, pp. 1216-1224.
[27] Notice, Rollo, pp. 329-330.

Upholding the ruling in *Aichi*, the Court in San Roque indeed held that the 120+30-day period prescribed under Section 112(D) of the NIRC was mandatory and jurisdictional. The Court, nonetheless, stated that there was an exception to the mandatory and jurisdictional nature of the 120+30-day period.

The Court in San Roque noted that BIR Ruling No. DA-489-03, dated December 10, 2003, expressly stated that the 'taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review.' This BIR Ruling was recognized as a general interpretative rule issued by the CIR under Section 4 of the NIRC and, thus, applicable to all taxpayers.

Considering that the CIR has the exclusive and original jurisdiction to interpret tax laws, it was held that taxpayers acting in good faith should not be made to suffer for adhering to such interpretations. Section 246 of the NIRC, in consonance with equitable estoppel, expressly provides that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who, in good faith, relied on the BIR regulation or ruling prior to its reversal.

Hence, taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on December 10, 2003 up to its reversal by this Court in *Aichi* on October 6, 2010, where it was held that the 120+30-day period was mandatory and jurisdictional.

In the present case, petitioner filed its judicial claim on December 29, 2005, well within the period of exception. As such, its judicial claim was not prematurely filed as it need not wait for the lapse of the 120-day period. The CTA *En Banc* should not have denied the petition.

Considering that the petition was denied due course, the CTA *En Banc* was not able to rule on the issue of whether petitioner sufficiently proved its entitlement to its claim for refund or tax credit. Such involves factual issues beyond the Court's ambit of review under Rule 45. The case must, thus, be remanded to the CTA *En Banc* for resolution.

WHEREFORE, the Court resolves to **PARTIALLY GRANT** the petition. The January 12, 2012 Decision and the June 25, 2012 Resolution of the Court of Tax Appeals *En Banc*, in C.T.A. EB No. 741 are **REVERSED** and **SET ASIDE**.

The case is **REMANDED** to the CTA *En Banc* for disposition on the merits."

Remand to the CTA En Banc

On August 18, 2015, the Court *En Banc* received a Notice of the July 8, 2015 Resolution from the Supreme Court Second Division.[28]

[28] Rollo, pp. 326-331.

Subsequently, on August 2, 2016, the Court *En Banc* received an Entry of Judgment stating that the July 8, 2015 Resolution has become final and executory on September 2, 2015.[29]

On October 14, 2016, in compliance with the Supreme Court's July 8, 2016 Resolution and pursuant to CTA A.M. No. 18-6-2015,[30] the remanded case was submitted for decision.[31]

THE ISSUE

Based on the records, the remaining issue to be resolved by the Court is whether the petitioner, with the submission of its October 5, 2005 COC,[32] which was issued by the ERC after the taxable period covering the refund/tax credit claim (2004),[33] is entitled to said claim of unutilized input VAT attributable to its sales of power to Philippine National Oil Company-Energy Development Corporation (PNOC-EDC).

THE COURT'S RULING

We find the petition bereft of merit.

In its January 5, 2010 Decision, the CTA First Division adopted the report of the Independent Certified Public Accountant with respect to petitioner's sales of electricity. Hence, it is *not* disputed that in 2004, petitioner in fact generated gross receipts of ₱2,486,970,360.71 from its sales of electricity to PNOC-EDC.[34] However, in its Amended Decision, the Court *a quo* reversed its conclusion that said sales qualify as zero-rated sales under the EPIRA.[35]

The pivotal question now before the Court is whether in the year 2004, when petitioner sold electric power to PNOC-EDC, it qualified as a generation company whose sales of electricity are, thus, subject to zero percent VAT.

In both its administrative[36] and judicial[37] claims, petitioner invoked Section 6 of Republic Act No. 9136 or the EPIRA to brace its position that its

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[29] Rollo, p. 338.
[30] "**CTA A.M. No. – 18-6-2015** (Remanded Cases from the Supreme Court) – The Court Resolved that all remanded cases from the Supreme Court shall be referred to the *ponente* of the *en banc* case who shall determine what course of action shall be taken, whether to refer the case to the Court in Division for further proceedings or to retain the case at the *en banc* level for decision. In either case, the *ponente* of the *en banc* case shall issue a Resolution remanding the case to the Court in Division or declaring the remanded *en banc* case as submitted for decision. The twelve (12) month period within which to decide the case shall be reckoned from the date of the Resolution declaring the remanded case as submitted anew for decision."
[31] October 14, 2016 Resolution, Rollo, pp. 352-353.
[32] Attached as Exhibit "A" to the Motion for Reconsideration, Division Docket, p. 636.
[33] Par. 18, Petition for Review, Rollo, p. 19.
[34] Rollo, pp. 75-77.
[35] Rollo, pp. 55-58.
[36] Exhibit "Z", Division Docket, pp. 338-339.
[37] Par. 5, Petition for Review, Division Docket, p. 2.

sales of power to PNOC-EDC in 2004 are subject to zero percent VAT. Said provision states:

"REPUBLIC ACT NO. 9136

AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES

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SEC. 6. *Generation Sector.* – Generation of electric power, a business affected with public interest, shall be competitive and open.

Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.

Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.

Upon implementation of retail competition and open access, the prices charged by a generation company for the supply of electricity shall not be subject to regulation by the ERC except as otherwise provided in this Act.

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

The ERC shall, in determining the existence of market power abuse or anti-competitive behavior, require from generation companies the submission of their financial statements." (*Underscoring supplied*)

In addition, Section 4 of the same law also provides for the definition of what constitutes a power generation company:

"SEC. 4. *Definition of Terms.* —

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(x) 'Generation Company' refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity;"

Section 4 of Rule 5 of the Rules and Regulations to implement the EPIRA, provides further that:

"SECTION 4. Obligations of a Generation Company. –

> (a) COC shall be secured from the ERC before commercial operation of a new Generation Facility. The COC shall stipulate all obligations of a Generation Company consistent with this Section and such other operating guidelines as ERC may establish. The ERC shall establish and publish the standards and requirements for issuance of a COC. A COC shall be issued upon compliance with such standards and requirements.
>
> > (i) A Person owning an existing Generation Facility or a Generation Facility under construction, shall submit within ninety (90) days from the effectivity of these Rules to ERC, when applicable, a certificate of DOE/NPC accreditation, a three (3)-year operation history, a general company profile and other information that ERC may require. Upon making a complete submission to the ERC, such Person shall be issued a COC by the ERC to operate such existing Generation Facility." (*Underscoring supplied*)

To qualify as a *generation company*, the foregoing provisions clearly require that petitioner be authorized by the ERC to operate its electric generation facilities.

Contrary to the position stated in petitioner's Memorandum,[38] although Section 6 of the EPIRA does not provide that sales of generation company without COC are disqualified from zero-rating, it cannot insist that Section 6 be read in isolation from the rest of the provisions of the EPIRA and its implementing rules. It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, i.e., that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law. The statute's clauses and phrases must not, consequently, be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Consistent with the fundamentals of statutory construction, all the words in the statute must be taken into consideration in order to ascertain its meaning.[39]

Accordingly, when Section 6 is read together with Section 4 of the EPIRA and its implementing rules, the law mandates that both new and existing owners of generation facilities secure a COC from the ERC before they can operate the facilities used for generation of electricity.

In this case, petitioner should have presented evidence that in 2004, the period covering the sale of electricity, it was authorized to operate as a generation company by presenting the COC.

During trial, however, petitioner failed to present the COC. It was only in the Motion for Reconsideration of the Amended Decision that petitioner

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[38] Par. 32, Rollo, p. 163.
[39] *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 183517, June 22, 2010.

belatedly attached a COC dated October 5, 2005[40] which motion the court *a quo* denied.

Still on this issue, the consolidated cases of *Commissioner of Internal Revenue v. Toledo Power Company*[41] are relevant and in point.

In *Toledo*, the Supreme Court ruled that Toledo's sales of electricity *cannot qualify as zero-rated sales* because it was able to secure the COC only in June 23, 2005, *after* the period of its sales of electricity in 2002. The Court, thus, concluded that Toledo was *not yet a generation company* when the sales were made and, consequently, was not entitled to the refund of input VAT attributable to said sales. The Court also emphasized that although there was a pending application for a COC in 2002, the application did not automatically entitle Toledo to the rights of a generation company under the EPIRA, thus:

> ***"TPC is not entitled to a refund or credit of unutilized input VAT attributable to its sales of electricity to CEBECO, ACMDC, and AFC.***
>
> Section 6 of the EPIRA provides that the sale of generated power by generation companies shall be zero-rated. Section 4 (x) of the same law states that a generation company 'refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity.' Corollarily, to be entitled to a refund or credit of unutilized input VAT attributable to the sale of electricity under the EPIRA, a taxpayer must establish: (1) that it is a generation company, and (2) that it derived sales from power generation.
>
> In this case, TPC failed to present a COC from the ERC during the trial. On partial reconsideration, TPC argued that there was no need for it to present a COC because the parties already stipulated in the JSFI that TPC is a generation company and that it became entitled to the rights under the EPIRA when it filed its application with the ERC on June 20, 2002.
>
> We find the arguments raised by TPC unavailing.
>
> There is nothing in the JSFI to show that the parties agreed that TPC is a generation company under the EPIRA. The pertinent portions of the JSFI read:
>
> xxx xxx xxx
>
> Obviously, the parties did not stipulate that TPC is a generation company. They only stipulated that TPC is engaged in the business of power generation and that it filed an application with the ERC on June 20, 2002. However, being engaged in the business of power generation does not make TPC a generation company under the EPIRA. Neither did TPC's filing of an application for COC with the ERC automatically entitle TPC to the rights of a generation company under the EPIRA.

[40] Division Docket, p. 636.
[41] G.R. No. 196415, December 2, 2015. Penned by Justice Mariano del Castillo with the concurrence of Associate Justices Velasco, Jr., Perez, Mendoza and Leonen.

At this point, a distinction must be made between a generation facility and a generation company. A generation facility is defined under the EPIRA Rules and Regulations as 'a facility for the production of electricity.' While a generation company, as previously mentioned, 'refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity.' Based on the foregoing definitions, what differentiates a generation facility from a generation company is that the latter is authorized by the ERC to operate, as evidenced by a COC.

Under the EPIRA, all new generation companies and existing generation facilities are required to obtain a COC from the ERC. New generation companies must show that they have complied with the requirements, standards, and guidelines of the ERC before they can operate. As for existing generation facilities, they must submit to the ERC an application for a COC together with the required documents within ninety (90) days from the effectivity of the EPIRA Rules and Regulations. Based on the documents submitted, the ERC will determine whether the applicant has complied with the standards and requirements for operating a generation company. If the applicant is found compliant, only then will the ERC issue a COC.

In this case, when the EPIRA took effect in 2001, TPC was an existing generation facility. And at the time the sales of electricity to CEBECO, ACMDC, and AFC were made in 2002, TPC was not yet a generation company under EPIRA. Although it filed an application for a COC on June 20, 2002, it did not automatically become a generation company. It was only on June 23, 2005, when the ERC issued a COC in favor of TPC, that it became a generation company under EPIRA. Consequently, TPC's sales of electricity to CEBECO, ACMDC, and AFC cannot qualify for VAT zero-rating under the EPIRA.

Neither can TPC rely on VAT Ruling No. 011-5, which considered the sales of electricity of Hedcor effectively zero-rated from the effectivity of the EPIRA despite the fact that it was issued a COC only on November 5, 2003, as this is a specific ruling, issued in response to the query made by Hedcor to the CIR. As such, it is applicable only to a particular taxpayer, which is Hedcor. Thus, it is not a general interpretative rule that can be applied to all taxpayers similarly situated.

All told, we find no error on the part of the CTA *En Banc* in considering TPC's sales of electricity to CEBECO, ACMDC, and AFC for taxable year 2002 as invalid zero-rated sales, and in consequently denying TPC's claim for refund or credit of unutilized input VAT attributable to the said sales of electricity." (*Underscoring supplied and citations omitted*)

The facts of petitioner's refund case are quite similar to *Toledo's*.

In 2004, at the time of the sales of electricity to PNOC-EDC, petitioner admits that it did not have an existing COC. Nonetheless, it argues that its pending application with the ERC since 2002 merely confirms that it was indeed a generation company[42] and held such status as a generation company *even prior to the EPIRA.*[43]

These arguments militate against petitioner's refund/tax credit claims, which are *precisely anchored on the EPIRA*. In other words, to avail of the VAT zero-rating of its sales of generated power, petitioner must qualify as a "generation company" strictly under the EPIRA's definition. The EPIRA is explicit in defining what constitutes as a "generation company" whose sales of generated power are VAT zero-rated. Without the COC, petitioner simply fell outside the scope of the EPIRA's definition.

Furthermore, contrary to petitioner's contention,[44] although it eventually secured a COC in 2005, the privilege of VAT zero-rating did *not* retroact to the date of effectivity of the EPIRA. This is consistent with the holding in *Toledo*.

Finally, jurisprudence is consistent in holding 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 are *strictissimi* scrutinized and must be duly proven.[45]

We find no cogent reason to reverse the Amended Decision of the CTA Special First Division.

WHEREFORE, premises considered, the November 25, 2010 Amended Decision of the CTA is hereby **AFFIRMED**. The Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

[42] Pars. 37-42, Petition for Review, Rollo, pp. 29-31.
[43] Par. 46, Petition for Review, Rollo, p. 34.
[44] Par. 44, Petition for Review, Rollo, p. 32.
[45] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(took no part)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice