REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

NORTH LUZON RENEWABLE ENERGY CORP., Petitioner,	**CTA Case No. 9886**
	Members:
- versus -	**UY**, *Chairperson,* **RINGPIS-LIBAN**, *and* **MODESTO-SAN PEDRO**, *JJ.*
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, Respondent.	SEP 06 2021 11:18 a.m.

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RESOLUTION

UY, J.:

For resolution are the following:

1) Petitioner's ***MOTION TO ADMIT –with- REPLY (Re: Opposition dated 14 June 2021)*** filed on July 19, 2021; and
2) Petitioner's ***MOTION FOR RECONSIDERATION (Re: Decision dated 19 February 2021)*** filed on March 26, 2021, with respondent's ***OPPOSITION (Re: Motion for Reconsideration of the Decision dated 19 February 2021)*** filed on June 14, 2021.

MOTION TO ADMIT –with- REPLY

In its *Motion to Admit,* petitioner alleges that given that a Reply is not a standard pleading, it moves that the instant pleading be admitted and made part of the record, in order for it to be able to address the issues raised in the Opposition.

In the interest of justice, and in order for the parties to fully ventilate their arguments in the instant case, the *Motion to Admit* is hereby **GRANTED,** and the attached *Reply* is admitted and made part of the records of this case.

MOTION FOR RECONSIDERATION

In the said *Motion for Reconsideration*, petitioner prays for the reversal of the Court's Decision dated February 19, 2021, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

In support of its Motion, petitioner argues that:

1. The Court erred when it required the presentation of the Certificate of Compliance (COC) and the Certificate of Endorsement (COE) to prove petitioner's compliance with the fourth requisite to prove that petitioner is engaged in zero-rated sales. Neither the COC nor the COE is required for an entity to be entitled to zero percent VAT rate, and to be able to claim a refund of input VAT.

2. Engaging in VAT zero-rated sales is a factual matter which was never put in issue by the respondent.

3. The COC does not prove that an entity is engaged in zero-rated sales. The Court erred insofar as it equated the issuance of the Certificate of Compliance to entitlement to zero percent VAT rate. The provisions of EPIRA and Revenue Regulations No. 15-2005 were erroneously interpreted and applied to petitioner.

4. However, despite petitioner's stance, it respectfully submits its COC.

5. The lack of a COE issued by the Department of Energy (DOE) was never raised by respondent, nor does the same prove the fact that petitioner is engaged in zero-rated sales.

6. The wording of Section 18 (A), (B), and (C), Rule 5, Part III of the Implementing Rules and Regulations (IRR) of the

Renewable Energy Act of 2008 is vague and ambiguous, which also resulted in the Court's ruling to be vague.

7. The provision of the IRR is not applicable to the sale of electricity by RE Developers but to other transactions where securing a COE is feasible.

In his Opposition, respondent counters that:

1. Claims for refund, which are in the nature of tax exemptions, are construed in *strictissimi juris* against the claimant, and petitioner must prove that it is entitled to the refund sought.

2. It is incumbent upon petitioner to prove that it is entitled to the refund sought. Failure to prove the same is fatal to its claim for tax refund.

In its Reply, petitioner contends that:

1. The principle of *strictissimi juris* does not apply if there is an express mention or if the taxpayer falls within the purview of the exemption by clear legislative intent.

2. Respondent can no longer assert that petitioner failed to substantiate its claim for VAT refund for failure to present the COE and COC since it had already admitted not only to the fact that petitioner is engaged in zero-rated sales but also to its entitlement to input VAT refund.

THE COURT'S RULING

In the assailed Decision, it was ruled that in order to prove that its sales qualify for VAT zero-rating, petitioner should have submitted the following documents:

1) COC issued by the Energy Regulatory Commission (ERC), which must be secured before the actual commercial operations of the generation facility, pursuant to Section 108 (B)(7) of the NIRC of 1997, as amended by RA No. 9337, in relation to Section 15(g) of the Renewable Energy Act of 2008 (RA No. 9513), Section 4.108-3(f) of RR No. 16-2005, and Section 6 of the EPIRA (RA No. 9136), and its IRR; and

2) COE issued by the DOE, pursuant to Sections 13.G, 18 (A), (B), and (C), Part III, Rule 5 of the IRR of RA No. 9513.

To rectify this omission, petitioner attached a certified true copy of its COC to its Motion for Reconsideration.

We find the foregoing submission still insufficient to overturn the assailed Decision dated February 19, 2021.

Assuming *arguendo,* that the subject COC is admitted into evidence, this Court finds that petitioner still failed to prove that its sales qualify for VAT zero-rating, due to its failure to present its COE, issued by the DOE.

As stated in the assailed Decision, Section 18 (A), (B), and (C), Part III, Rule 5 of IRR of RA No. 9513 lists the conditions for the availment of incentives and other privileges under the said law, 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 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 pre-terminate and replace the existing Service Contract that the RE Developer has executed with the DOE subject to the Transitory Provision in Rule13, 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 IRR, <u>RE Developers</u> 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 favourably acted upon immediately by the BOI, on the basis of the certification issued by the DOE.

C. *Certificate of Endorsement by the DOE*

<u>RE Developers</u>, 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.

xxx xxx xxx."

From the foregoing, it is clear that RE Developers must secure the following, in order to qualify for VAT zero-rating 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**.

In this case, petitioner was able to show DOE *Certificate of Registration* No. WESC-2009-09-005-A and WESC-2009-09-005,[1] and BOI *Certificate of Registration* No. 2011-128 dated June 21, 2011,[2] but it was unable to submit the requisite *Certificate of Endorsement* by the DOE.

Accordingly, petitioner's failure to comply with the foregoing requirement means that its sales could not qualify for VAT zero-rating.

Anent petitioner's argument that the lack of a COE issued by the DOE was never raised by respondent, this Court finds it necessary to stress that the CTA is a court of record, and the cases filed before it are litigated *de novo,* hence, party litigants should prove every minute aspect of its case.[3] It is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[4] Hence, even if petitioner's full compliance with the requirements set forth by law are not specifically raised as an issue by the respondent, it is still incumbent upon the petitioner to prove its compliance with the same.

Finally, with regard to petitioner's argument that the provision of the IRR is not applicable to the sale of electricity by RE Developers, but only to other transactions where securing a COE is feasible, this Court finds the same to be without merit.

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[1] Par. 3, Admitted Facts, JSFI, Docket – Vol. 4, p. 1893.
[2] Exhibit "P-2", Docket – Vol. 5, p. 2164.
[3] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 201665 and 201668, August 30, 2017; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.
[4] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

Settled is the rule that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption.[5] Exemptions from tax are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. One who claims tax exemption must point to a specific provision of law conferring, in clear and plain terms, exemption from the common burden[6] and prove, through substantial evidence, that it is, in fact, covered by the exemption so claimed.[7] Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[8]

Accordingly, in the absence of any legal basis or justification, which would exempt the petitioner from having to secure a COE from the DOE, as stated under RA No. 9513 and its IRR, this Court finds no reason to depart from its ruling in the assailed Decision.

WHEREFORE, premises considered, the instant ***MOTION FOR RECONSIDERATION (Re: Decision dated 19 February 2021)*** is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[5] *Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018

[6] *Confederation for Unity, Recognition and Advancement of Government Employees (COURAGE) vs. Commissioner of Internal Revenue,* G.R. No. 213446, July 3, 2018, citing *The City of Iloilo vs. Smart Communications, Inc. (SMART),* 599 Phil. 492, 497 (2009).

[7] *Id.*, citing *Quezon City vs. ABS-CBN Broadcasting Corp.*, 588 Phil. 785, 803 (2008).

[8] *Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue*, *supra.*