REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION
****

VESTAS SERVICES PHILIPPINES, INC., Petitioner,	**CTA Case No. 9604**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** SEP 16 2020 3:01 p.m.

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DECISION

UY, *J*.:

Before this Court is a *Petition for Review* filed by Vestas Services Philippines, Inc., petitioner, against Commissioner of Internal Revenue (CIR), respondent, on May 26, 2017, praying for the refund of the amount of ₱92,042,554.03, allegedly representing its excess and/or unutilized creditable input value-added tax (VAT) paid attributable to its zero rated sales for the fourth quarter of calendar year (CY) 2014.

THE FACTS

Petitioner Vestas Services Philippines Inc. is a domestic corporation engaged in the business of installation and construction services (except contracts for the construction of locally funded public works and contracts for the construction of defense related structures), including entering into subcontracting arrangements, and service of wind power systems (*i.e.* wind turbine generators, spare parts, and activities related thereto). It also acts as a business development and information technology center that provides services to its affiliates in the Asia Pacific region.[1]

Petitioner is registered with the BIR for Value Added Tax (VAT) purposes, pursuant to Certificate of Registration No. OCN 9RC0000382508,[2] and Certificate of Registration No. OCN 9RC0000777961E[3] with principal office at 12th floor, Five ECom, Harbor Drive, Mall of Asia Complex, Pasay City.[4]

Respondent is the chief of the Bureau of Internal Revenue ("BIR"), and is empowered by law to act upon and approve claims for refund, or for the issuance of tax credit.[5]

On January 22, 2015, petitioner filed its 4th quarterly VAT Return for CY 2014.[6]

Thereafter, petitioner filed a claim for refund of its excess and/or unutilized input VAT for the 4th quarter of CY 2014 in the amount of ₱92,042,554.03 with BIR Revenue District Office (RDO) No. 50, Makati on December 29, 2016.[7]

Subsequently, another application for VAT refund was filed by petitioner on January 9, 2017, covering the same period and amount with BIR-RDO No. 51, Pasay City.[8]

On May 3, 2017, petitioner received a letter[9] from BIR-RDO No. 51 denying its claim for VAT refund because the claim was filed beyond the prescribed period.

Aggrieved by the decision, petitioner filed the instant *Petition for Review* before this Court on May 26, 2017.

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[1] Par. 1, Joint Stipulation of Facts and Issue (JSFI), Docket – Vol. 2, p. 764.
[2] Exhibit "P-3", Docket – Vol. 1, p. 221.
[3] Par. 1.2, JSFI, Docket – Vol. 2, pp. 764 to 765; Exhibit "P-4", Docket – Vol. 1, p. 222.
[4] Par.2.1, Petition for Review, Docket – Vol. 1, p. 11.
[5] Par. 1.3, JSFI, Docket – Vol. 2, p. 765.
[6] Exhibit "P-8", Docket – Vol. 1, pp. 266 to 267.
[7] Exhibit "P-5-A", BIR Form No. 1914, Docket – Vol. 2, p. 997.
[8] Exhibit "P-7-A", BIR Form No. 1914, BIR Records, p. 679.
[9] Exhibit "P-18", Docket – Vol. 2, pp. 757 to 758.

Respondent filed his *Answer* on July 28, 2017,[10] interposing among others, certain special and affirmative defenses, to wit:

(1) petitioner's claim for refund in the amount of ₱92,042,554.03, representing allegedly excess and unutilized input VAT arising from its importation and domestic purchases of goods and services attributable to its zero-rated sales for the 4th quarter of taxable year 2014, failed to comply with the substantiation requirements prescribed under Revenue Regulations (RR) No. 16-2005 in relation to Revenue Memorandum Circular (RMC) No. 54-2014 and RMC 2-2014, as well as, the conditions/requirements prescribed under Sections 112(A)(C)(D), 113 and 237 of the 1997 Tax Code;

(2) petitioner failed to comply with the conditions/requirements prescribed under RMO 16-07 and RMC 29-09 in relation to Section 110(A) of the 1997 Tax Code;

(3) the amount subject of the claim for tax refund of petitioner does not pertain in full to its input VAT attributable to its zero-rated sales for the 4th quarter of taxable year 2014;

(4) petitioner's claim for tax refund was already denied by respondent per its Letter Denial, which petitioner received on May 3, 2017; and

(5) the Petition for Review was filed out of time.

On August 11, 2017, petitioner filed a *Reply,*[11] alleging the following arguments:

(1) the Petition for Review was filed in accordance with Revised Rules of the Court of Tax Appeals (RRCTA) and the 1997 National Internal Revenue Code (NIRC);

(2) petitioner's right to claim for refund of its excess and/or unutilized input taxes for the 4th quarter of CY 2014 is expressly granted by Section 112(A) of the NIRC. Respondent's reliance on the presumption that taxes correctly paid and collected are not refundable is misplaced;

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[10] Docket – Vol. 1, pp. 121 to 123.
[11] Docket – Vol. 1, pp. 125 to 136.

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(3) petitioner complied with the substantiation requirements prescribed under the law;

(4) RMO 16-2007 and RMC 29-2009 are not applicable to petitioner's claim for refund and it has complied with the requirements of Section 110(A) of the NIRC to prove the correctness of the amount of input taxes being claimed;

(5) petitioner's unutilized input VAT are directly attributable to its zero-rated sales for the 4th quarter of CY 2014;

(6) the denial by respondent of petitioner's claim for refund does not bind the CTA; and

(7) the rules that claims for refund are strictly construed against the taxpayer only applies when the taxpayer fails to meet the quantum of evidence required to prove entitlement to the refund.

After the *Pre-Trial Conference* held on February 20, 2018,[12] the parties filed their *Joint Stipulation of Facts and Issues* (JSFI) on March 5, 2018.[13] Upon approval of the JSFI, the Court issued a *Pre-Trial Order* on April 12, 2018.[14]

During trial, petitioner presented its witnesses, namely, Ian Jasper E. Monteras,[15] petitioner's Accounting Assistant, and Katherine O. Constantino,[16] the Court-commissioned Independent Certified Public Accountant (ICPA). Thereafter, petitioner filed its *Formal Offer of Evidence* on October 26, 2018.[17] In the *Resolution* dated January 30, 2019[18] and May 22, 2019,[19] the Court admitted all of petitioner's documentary evidence.

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[12] Minutes of the hearing held on, and Order dated February 20, 2018, Docket – Vol. 2, pp. 759 and 763.
[13] Docket – Vol. 2, pp. 764 to 769.
[14] Docket - Vol. 2, pp. 799 to 804.
[15] Minutes of the hearing held on and Order dated May 21, 2018, Docket – Vol. 2, pp. 810 and 812 to 813; Exhibit "P-19", Docket – Vol. 1, pp. 172 to 195; Exhibit "P-32", Docket – Vol. 2, pp. 967 to 995; Minutes of the hearing held on, and Order dated October 11, 2018, Docket – Vol. 3, pp. 1014 to 1016.
[16] Minutes of the hearing held on, Order and Oath of Commission dated May 21, 2018, Docket – Vol. 2, pp. 810 to 813; Exhibit "P-20", Docket – Vol. 2, pp. 775 to 796; Exhibit "P-31", Docket – Vol. 2, pp. 882 to 891; Minutes of the Hearing and Order dated July 24, 2018, Docket - Vol. 3, pp. 1000 tp 1001.
[17] Docket – Vol. 3, pp. 1025 to 1039.
[18] Docket – Vol. 3, pp. 1048 to 1049.
[19] Docket – Vol. 3, pp. 1067 to 1070.

On the part of respondent, the latter's counsel manifested during the hearing held on May 23, 2019 that respondent will not present evidence in this case.[20] Thus, the parties were given thirty (30) days by the Court to file their respective Memoranda. Petitioner filed its *Memorandum* on June 21, 2019 while respondent filed his *Memorandum* on July 19, 2019.[21] Thereafter, the instant case was deemed submitted for decision on September 20, 2019.[22]

Hence, this Decision.

THE ISSUE

The parties stipulated a sole issue for this Court's resolution, to wit:

> "Whether VSPI is entitled to a tax refund in the amount of ₱92,042,554.03 representing its alleged excess and/or unutilized input VAT credits attributable to its zero-rated sales of ₱2,282,352,882.17 to EDC for the fourth quarter of CY 2014."[23]

Petitioner's arguments:

Petitioner argues that it is entitled to a VAT refund of its excess and/or unutilized input VAT attributable to its zero-rated sale of services during the 4th quarter of CY 2014.

According to petitioner, it has complied with the following requisites: (1) it is a VAT-registered taxpayer; (2) its sales and gross receipts for the 4th quarter of CY 2014 were zero-rated; (3) the input taxes paid by the petitioner are directly attributable to its zero-rated sales for the 4th quarter of CY 2014; (4) the input taxes paid were not applied to any output VAT liability; (5) its administrative claim for refund was filed within the two (2)-year prescriptive period; (6) its judicial claim for refund was filed within thirty (30) days from the

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[20] Minutes of the hearing held on and Order dated May 23, 2019, Docket – Vol. 3, pp. 1071 to 1072.
[21] Docket – Vol. 3, pp. 1075 to 1102 and pp. 1108 to 1115, respectively
[22] Docket – Vol. 3, p. 1137.
[23] Stipulation of the Issue, JSFI, Docket – Vol. 2, p. 765.

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expiration of the 120-day period and within 30 days from receipt of the respondent's decision denying its claim for refund.

Moreover, petitioner stresses that BIR-RDO No. 50 duly received the administrative claim and belatedly informed petitioner that it no longer had jurisdiction to receive it; and the filing with RDO 50 does not invalidate the administrative claim. Hence, the proper reckoning point for the two (2) year prescriptive period should be petitioner's filing with RDO 50.

Respondent's counter-arguments:

Respondent counter-argues that taxes collected are presumed to be made in accordance with the laws and regulations, hence, not refundable.

According to respondent, petitioner's claim for refund failed to comply with the substantiation requirements prescribed under RR No. 16-2005 in relation to RMC 54-2014 and RMC 2-2014, as well as the conditions/requirements prescribed under Sections 112(A)(C)(D), 112 and 237 of the 1997 Tax Code.

Allegedly, petitioner failed to comply with the conditions/requirements of RMO 16-07 and RMC 29-09 in relation to Section 110(A) of the 1997 Tax Code.

Moreover, respondent claims that subject amount of the claim for refund does not pertain in full to its input VAT attributable to its zero-rated sales for the 4th quarter of taxable year 2014 and that the instant Petition for Review was filed out of time.

THE COURT'S RULING

The requisites for the grant of the refund or issuance of a tax credit certificate is provided under Section 112 of the NIRC of 1997, as amended by RA 9337,[24] which reads as follows:

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[24] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

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"**SEC. 112.** ***Refunds or Tax Credits of Input Tax.*** –

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

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

In line with the foregoing legal provisions, certain requisites were jurisprudentially laid down by the Supreme Court in order that a taxpayer-applicant may successfully obtain a credit/refund of input VAT. These are categorized as follows:

Timeliness of the filing of the administrative and judicial claims:

1. the refund claim must be filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[25]

2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days, the judicial claim must be filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[26]

Taxpayer's registration with the BIR:

3. the taxpayer is VAT registered;[27]

Taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[28]

5. for zero-rated sales under Section 106(A)(2)(a)(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;[29]

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[25] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc.*, G.R. No. 182364, August 3, 2010.

[26] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14,2015.

[27] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue,* supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.

[28] *Id.*

[29] *Id.*

Taxpayer's refund claim for input VAT:

6. the input taxes are due or paid;[30]

7. the input taxes are not transitional input taxes;[31]

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, 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;[32] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[33]

***First and Second Requisites*: Petitioner's administrative and judicial claims were timely filed.**

Respondent argues that the Petition for Review was filed out time.

We do not agree.

Section 112(A) of the NIRC of 1997, as amended, provides that the administrative claim for the issuance of a Tax Credit Certificate (TCC) or refund of input VAT must be filed within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

In the instant case, the present claim covers the 4th quarter of CY 2014. Counting two (2) years from the close of the 4th quarter of CY 2014, petitioner had two (2) years after the close of the taxable quarter on December 31, 2014 or until December 31, 2016 within

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[30] *Id.*
[31] *Id.*
[32] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.
[33] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.

which to file its claim for refund. Petitioner's administrative claim[34] for refund for the 4th quarter of CY 2014 was filed with the BIR RDO No. 50, on December 29, 2016. Thus, the same was timely filed.

As to petitioner's judicial claim, Section 112(C) of the NIRC of 1997, as amended, provides that the CIR has one hundred twenty (120) days from the date of submission of the complete documents in support of the application for refund or tax credit certificate within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the Court of Tax Appeals (CTA) within thirty (30) days from receipt of the decision of the CIR.

However, if after the 120-day period the CIR fails to act on the application for tax refund/ credit, the remedy of the taxpayer is to appeal the inaction of the CIR to the CTA within 30 days.

Here, from the filing of petitioner's administrative claim, together with the supporting documents, on December 29, 2016 respondent had one hundred twenty (120) days or until April 28, 2017 to act on the said claim. Records show that respondent issued an undated Denial Letter received by petitioner on May 3, 2017,[35] which was issued beyond the 120-day period within which to render a decision on petitioner's claim for refund.

Thus, the end of the 30-day period from the expiration of the 120-day period within which petitioner may file its judicial claim for refund before this Court shall be on May 28, 2017. In this case, the instant *Petition for Review* was filed on May 26, 2017, clearly falling within the period prescribed by law.

***Third Requisite:* Petitioner is VAT registered.**

As to this requisite, as stipulated by the parties, petitioner is registered with the BIR for Value Added Tax ("VAT") purposes, pursuant to Certificate of Registration No. OCN 9RC0000382508 issued by BIR-RDO No. 50 on January 5, 2010[36] and Certificate of Registration No. OCN 9RC0000777961 issued by BIR-RDO No. 51 on December 12, 2016.[37]

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[34] Exhibit "P-5" to "P-5-A", Docket Vol. 2, pp. 996 to 997.
[35] Exhibit "P-18", Docket – Vol. 1, pp. 757 to 758.
[36] Exhibit "P-3", Docket – Vol. 1, p. 221.
[37] Exhibit "P-4", Docket – Vol. 1, p. 222.

***Fourth and Fifth Requisites**: Petitioner's sales to EDC failed to qualify for VAT zero-rating*

With regard to the *fourth* and *fifth* requisites, it must be shown that the taxpayer is engaged in zero-rated or effectively zero-rated sales, and that for zero-rated sales under Section 106(A)(2)(a)(1) and (2), 106(B) and 108(B)(1) and (2) of the NIRC of 1997, as amended by RA No. 9337, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the Bangko Sentral ng Pilipinas (BSP) rules and regulations.

In its 4th Quarterly VAT Return, petitioner declared that it had zero-rated sales amounting to ₱2,281,215,417.09.[38] Petitioner alleges that the said amount are sales to EDC which are considered zero-rated sales pursuant to Section 15(g) of RA No. 9513 (or Renewable Energy Act of 2008), and Part III, Rule 5, Section 13.G of the Implementing Rules and Regulations (IRR) of RA 9513. In support of its allegation, petitioner claims that EDC is a registered RE Developer; and that petitioner's sales and gross receipts from EDC in the 4th quarter of CY 2014 were purely services rendered in the construction of EDC's wind power plant in Burgos, Ilocos Norte.

We disagree with petitioner and instead find that petitioner's sales of services to EDC failed to qualify for VAT zero-rating.

Section 15(g) of RA No. 9513 (or 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:
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> xxx xxx xxx

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[38] Exhibit "P-8", Docket- Vol. 1, Line 17, p. 266.

(g) *Zero Percent Value-Added Tax Rate.* - The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.

All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.

This provision shall **also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors**." (Emphasis supplied)

Relative thereto, the Department of Energy (DOE) issued Department Circular No. DC2009-05-0008 on May 25, 2009, the pertinent provision is Part III, Rule 5 Section 13.G of the IRR of RA 9513 states, to wit:

PART III, Rule 5, Section 13.G of the Implementing Rules and Regulations of RA 9513:

"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 of the RE component, for both Power and Non-Power Applications, shall be entitled to the following incentives:

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> ***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:
>
> xxx xxx xxx
>
> (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, <u>including, but not limited to, the services performed by subcontractors and/or contractors.</u>"** *(Emphasis supplied)*

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.

However, a close scrutiny of Part III, Rule 5 of the IRR of RA 9513 shows the conditions for the availment of incentives and other privileges under the said law. 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 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 IRR, 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.

xxx xxx xxx." *(Emphasis supplied)*

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

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

Accordingly, the foregoing documents must all be presented, otherwise, the transaction between the concerned RE Developer, as purchaser, cannot be treated as subject to VAT zero-rating under the law.

In the instant case, records show that EDC was issued a Certificate of Registration No. WESC 2009-09-004 by the Department of Energy on February 4, 2011[39] and Certificate of Registration No. 2011-135 issued by the BOI on June 29, 2011.[40]

However, there is no showing that EDC was issued a Certificate of Endorsement by the DOE on a per transaction basis. Thus, EDC's

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[39] Exhibit "P-9", Docket – Vol. 1, p. 268.
[40] Exhibit "P-10", Docket – Vol. 1, pp. 269 to 278.

purchases from petitioner do not qualify for VAT zero-rating. In other words, petitioner's gross receipts of ₱2,281,215,417.09, representing its sales to EDC, cannot be considered as subject to VAT zero-rating for failure to present the required Certificate of Endorsement by the DOE.

Consequently, it is no longer necessary to determine whether petitioner fulfilled the remaining requisites for a favorable resolution of petitioner's refund claim for input VAT for the 4th quarter of CY 2014.

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 the VAT are in the nature of such exemptions.[41] It is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[42]

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **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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[41] *Panasonic Communication Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue,* G.R. No. 178090, February 8, 2010.

[42] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 183531, March 25, 2015.

ATTESTATION

I attest 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's Division.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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