REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

MAIBARARA GEOTHERMAL, INC., Petitioner,	**CTA CASE NOS. 8871, 8937 8999 & 9042**
	Members:
- versus -	**BAUTISTA,** *Chairperson,* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: DEC 27 2017 3:45pm

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AMENDED DECISION

RINGPIS-LIBAN, *J.*:

For the Court's resolution is petitioner's **Motion for Reconsideration,** filed on August 22, 2017, without respondent's comment as per Records Verification dated September 22, 2017.

Petitioner moves for the reconsideration of the Decision dated August 2, 2017, the dispositive portion of which reads:

> **WHEREFORE,** premises considered, the Petitions for Review filed on August 18, 2014, on November 26, 2014, on February 25, 2015, and on May 13, 2015 are **DENIED** for lack of merit.
>
> **SO ORDERED.**

Petitioner raises the following allegations in its motion:

1. The Court should grant the claim for refund on petitioner's input Value Added Tax (VAT) on importations;

2. The Court should grant the claim for refund on petitioner's input VAT on purchases of local supply of goods, properties and services not related to the development, construction and installation of its plant facilities and not related to the whole process of exploration and development of Renewable Energy (RE) sources up to its conversion into power; and

3. Petitioner is entitled to claim a refund or to be credited with input VAT shifted to it by its suppliers.

Petitioner alleges that only local purchases of goods, services and properties related to RE are subject to zero percent VAT under Republic Act (RA) No. 9531 or the Renewable Energy Act of 2008 (RE Law).

According to petitioner, Section 15 of the RE Law expressly subjects only local purchases of goods, services and properties related to RE to zero percent VAT. There is even no mention of importations.

Since the RE Law is clear and unambiguous in that only local purchase of goods, services and properties related to RE are subject to zero percent VAT, petitioner argues that the Court should have allowed petitioner's claim for tax refund or tax credit on the input VAT on its importations.

Petitioner further avers that importations are subject to 12% VAT pursuant to the Destination Principle or Cross-Border Doctrine. Furthermore, petitioner alleges that Section 109 of the National Internal Revenue Code (NIRC) of 1997, as amended, exempts certain importations from VAT.

All in all, the NIRC of 1997, as amended, allegedly treats importations as either subject to 12% VAT or exempt from VAT. Nowhere in Title IV of the NIRC of 1997, as amended, will one find that importations are subject to a zero percent VAT rate. Thus, since neither the RE Law nor the NIRC of 1997, as amended, exempts importations of RE Developers, the same is subject to a 12% VAT and the input VAT on said importations may be claimed by petitioner.

Petitioner also claims that it is the statutory taxpayer of the VAT as the importer, thus, entitled to claim input VAT on the importations.

In addition to the input VAT on its importations, petitioner disagrees on the blanket denial of all of its local purchases.

Petitioner claims that the purchases referred in Section 15 of the RE Law pertains to those "needed for the development, construction and installation of plant facilities" and to those relating to the "whole process of exploring and developing renewable energy sources up to its conversion into power" (also referred to as "RE development and conversion", for brevity).

This being the case, it allegedly follows that in case of general local purchases of goods and services not needed for the development, construction and installation of plant facilities or to the whole process of exploring and developing renewable energy sources up to its conversion into power, but necessary for the everyday operation of RE Developer, such purchases unrelated to RE development and conversion remain to be subject to VAT at the regular rate of 12%.

Petitioner claims that the local purchases of services pertaining to security details or services, general management fees (except for geochemist or geothermal consultants), furniture, office space rentals and other rentals, flowers for decoration, graphics and printing services and auditing and accounting services do not fall within the coverage of VAT zero-rating of local purchases under Section 15 of the RE Law. By their nature, these are not necessary for the development, construction and installation of plant facilities and to the whole exploration and development of the renewable sources up to its conversion into power as they relate to operation and maintenance expenses, which have been correctly subjected to VAT at 12%.

Lastly, petitioner claims that it is entitled to a refund or to be credited with input VAT shifted to it by its suppliers.

Petitioner claims that as a general rule, the proper party to seek refund of indirect tax is the statutory taxpayer, not the person on whom it is shifted to. However, in the cases of *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue*[1] and *Commissioner of Internal Revenue* and *Commissioner of Customs vs. Philippine Airlines, Inc.*[2], the Supreme Court held that the propriety of a tax refund claim is hinged on the kind of exemption, which forms its basis. If the law confers an exemption from both direct and indirect taxes, a claimant is entitled to a tax refund even if it only bears the economic burden of the applicable tax. On the other hand, if the exemption conferred only applies to direct taxes, then the statutory taxpayer is regarded as the proper party to file the refund claim.

According to petitioner, this is a case where the party to which the economic burden is shifted is provided an exemption from both direct and indirect taxes.

Petitioner explains that based on Section 15 of the RE Law, petitioner is exempt from direct tax, *i.e.*, income tax. As to the indirect taxes, the provision

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[1] G.R. No. 198759, July 1, 2013.
[2] G.R. Nos. 212536-37, August 27, 2014.

states that petitioner's local purchases are subject to zero-rating. This is from the viewpoint of the purchaser. From the perspective of the seller/local supplier, the sale to RE Developers is zero-rated. In effect, the RE Law exempts an RE Developer from VAT and thus, effectively subjects the sale of goods or supply of services to zero-rated VAT.

Considering that the local suppliers passed on the VAT to petitioner and that petitioner's local purchases are, in effect, zero-rated VAT under the RE Law, petitioner argues that it must be allowed to claim a tax refund or tax credit even if it is not the statutory taxpayer under the law and only bears the economic burden of the VAT.

Petitioner also cites the case of *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue*[3], where this Court allowed an RE Developer to claim input VAT on local purchases of goods and services. The same ruling should allegedly apply to the instant case.

The Court finds the motion to be partly meritorious.

It must be emphasized that petitioner itself claims in its Memorandum filed on August 22, 2017 that it incurred and paid input VAT on certain **purchases of goods and services relative to the development, construction and installation of its renewable energy facilities necessary to generate the power sold**.[4] Accordingly, the Court held that these purchases are zero-rated pursuant to Section 15(g) of RA No. 9513 or the Renewable Energy Act of 2008; thus, no input VAT can be refunded on these transactions.

Nevertheless, the Court finds that a reconsideration of the assailed Decision is necessary considering petitioner's detailed discussion on its importation and the nature of its local purchases, as well as its summarized substantiation.

With regard to the input VAT on importation, the Court agrees with petitioner that it is not zero-rated.

As correctly pointed out by petitioner, the RE Law does not provide for the zero-rating of an RE Developer's importation. In fact, the same law provides for the incentives pertaining to RE Developers' importations, which is limited to an exemption from payment of tariff duties. Specifically, Section 15(b) of the RE Law reads:

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[3] CTA Case Nos. 8082 and 8106, August 9, 2017.
[4] CTA Case No. 8871, docket, vol. VI, pp. 2667 and 2692.

SEC. 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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(b) **Duty-free Importation of RE Machinery, Equipment and Materials** - Within the first ten (10) years upon the issuance of a certification of an RE developer, the importation of machinery and equipment, and materials and parts thereof, including control and communication equipment, **shall not be subject to tariff duties**: *Provided, however,* That the said machinery, equipment, materials and parts are directly and actually needed and used exclusively in the RE facilities for transformation into energy and delivery of energy to the point of use and covered by shipping documents in the name of the duly registered operator to whom the shipment will be directly delivered by customs authorities: *Provided, further,* That endorsement of the DOE is obtained before the importation of such machinery, equipment, materials and parts are made. (*Emphasis supplied*)

It is clear from the above provision that petitioner's importation as an RE Developer is only exempt from tariff duties, provided certain conditions are met, and does not include the zero-rating of or exemption from VAT. As significantly discussed by petitioner, if the law truly intends to exempt or zero rate the importation of an RE Developer, the law could have similarly worded the incentives given to an RE Developer and an RE Commercialization, the latter of which is exempt from both tariff duties and VAT on its importation as follows:

SEC. 21. *Incentives for RE Commercialization. - All manufacturers, fabricators and suppliers of locally*-produced RE equipment and components duly recognized and accredited by the DOE, in consultation with DOST, DOF and DTI, shall, upon registration with the BOI, be entitled to the privileges set forth under this section.

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(a) *Tax and Duty-free Importation of Components, Parts and Materials.* - All shipments necessary for the manufacture and/or fabrication of RE equipment and components **shall be exempted from importation tariff and duties and value added**

> **tax**: *Provided, however,* That the said components, parts and materials are: (i) not manufactured domestically in reasonable quantity and quality at competitive prices; (ii) directly and actually needed and shall be used exclusively in the manufacture/fabrication of RE equipment; and (iii) covered by shipping documents in the name of the duly registered manufacturer/fabricator to whom the shipment will be directly delivered by customs authorities: *Provided, further,* That prior approval of the DOE was obtained before the importation of such components, parts and materials; (*Emphasis supplied*)

It can be deduced from the foregoing that the law does not intend to exempt an RE Developer, such as petitioner in this case, from payment of VAT on importation. There is likewise nothing in the law which shows that an RE Developer's importation is zero-rated. Thus, the input VAT on importation, which clearly does not pertain to purchase of *local* supply of goods or properties, is not zero-rated and may therefore be refunded.

As to petitioner's allegation that a portion of its purchases pertain to those which are not needed for the development, construction and installation of plant facilities or to the whole process of exploring and developing renewable energy sources up to its conversion into power, petitioner explains that these allegedly includes purchases pertaining to security details or services, general management fees (except for geochemist or geothermal consultants), furniture, office space rentals and other rentals, flowers for decoration, graphics and printing services and auditing and accounting services which are mainly operation and maintenance expenses.

At this juncture, it must be stressed that under Section 8 of RA No. 1125, as amended, the CTA is categorically described as a court of record. As cases filed before it are litigated *de novo*, party-litigants shall prove every minute aspect of their cases. Thus, petitioner should sufficiently prove its case.

Considering the foregoing, what is left to be determined at this point is whether petitioner sufficiently substantiated its allegation that the claimed input VAT indeed pertains to importations and to purchases of local supply of goods, properties and services not needed for the development, construction and installation of plant facilities or to the whole process of exploring and developing renewable energy sources up to its conversion into power, which are not zero-rated, but rather subject to regular VAT rate; and thus can be refunded.

Petitioner's quarterly VAT returns for the four quarters of CY 2012 reflected input VAT on importation of goods other than capital goods in the aggregate amount of ₱7,053,203.65, broken down as follows:

CTA Case No.	CY 2012	Input VAT	Exhibit (FOE black binder)
8871	1st Quarter	₱ 805,000.00	P-21
8937	2nd Quarter	307,932.65	P-22
8999	3rd Quarter	3,165,437.00	P-23
9042	4th Quarter	2,774,834.00	P-24
Total		**₱ 7,053,203.65**	

Out of the declared amount of ₱7,053,203.65, petitioner was able to substantiate only the amount of ₱6,959,106.62 with Bureau of Customs (BOC) Import Entry & Internal Revenue Declarations (IEIRDs) and Statements of Settlement of Duties and Taxes, detailed as follows:

Date	Supplier Name	Input VAT	IEIRD	Exhibit	Statement of Settlement of Duties and Taxes	Exhibit (FOE black binder)
1st Quarter						
29-Feb-12	Pioneer Petrotech Services, Inc.	₱ 423,431.00	C-17418	P-335	R-20365	P-335-1
31-Mar-12	Nielsons Safety Systems LLC	101,893.00	C-28785	P-336	R-32731	P-336-1
31-Mar-12	Top-Co LP	279,676.00	C-39993	P-337	R-46910	P-337-1
	subtotal	***₱ 805,000.00***				
2nd Quarter						
31-May-12	AB Sandvik Materials Technology	₱ 55,571.00	C-81476	P-338	R-92136	P-338-1
31-May-12	FT Anugerah Ceria Mandiri	20,817.00	C-84341	P-339	R-94996	P-339-1
31-May-12	PT Sagatrade Murni	98,884.00	C-84068	P-358	R-93733	P-358-1
30-Jun-12	Hunting Welltonic Asia Pte Ltd	38,563.62	C-75837	P-340	R-84042	P-340-1
	subtotal	***₱ 213,835.62***				
3rd Quarter						
31-Jul-12	Energy Asia Group Private Limited	₱ 168,470.00	C-110807	P-341	R-124873	P-341-1
31-Jul-12	Pioneer Petrotech Service Calgary	12,115.00	C-99936	P-342	R-110792	P-342-1
31-Aug-12	Pioneer Petrotech Service Calgary	10,194.00	C-105518	P-343	R-116227	P-343-1
31-Aug-12	Safety System UK Ltd.	249,721.00	C-134338	P-344	R-150461	P-344-1
31-Aug-12	Neway Valve (Suzhou) Co., Ltd.	653,195.00	C-141187	P-345	R-161105	P-345-1
31-Aug-12	Ohtake Trading Co., Ltd.	1,304,633.00	C-94669	P-346	R-114700	P-346-1
31-Aug-	Pioneer Petrotech Services	25,811.00	C-89946	P-359	R-98470	P-359-1

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12	Inc.					
30-Sep-12	Steel World Co., Ltd.	206,402.00	C-111745	P-347	R-132569	P-347-1
30-Sep-12	Steel World Co., Ltd.	207,473.00	C-111766	P-348	R-132751	P-348-1
30-Sep-12	Rotork Controls (Singapore) Pte Ltd.	312,409.00	C-149839	P-349	R-169944	P-349-1
30-Sep-12	Steel World Co Ltd.	15,014.00	C-164550	P-360	R-188474	P-360-1
	subtotal	***₱3,165,437.00***				
4th Quarter						
31-Oct-12	Steel World Co., Ltd.	₱ 175,925.00	C-116744	P-350	R-139008	P-350-1
31-Oct-12	Steel World Co., Ltd.	795,196.00	C-116798	P-351	R-139553	P-351-1
31-Oct-12	Fuji Electric Co., Ltd.	326,470.00	C-130945	P-352	R-144027	P-352-1
31-Oct-12	Neway Valve (Suzhou) Co Ltd.	638,481.00	C-125711	P-361	R-150054	P-361-1
30-Nov-12	Pioneer Petrotech Services Inc.	86,918.00	C-146328	P-353	R-159022	P-353-1
30-Nov-12	Valvitalia (Suzhou) Valves Co., Ltd. Wujian Economic	359,559.00	C-197619	P-354	R-228759	P-354-1
31-Dec-12	Neway Valve (Suzhou) Co., Ltd.	7,277.00	C-151816	P-355	R-181537	P-355-1
31-Dec-12	American International Industries	385,008.00	C-219801	P-356	R-260299	P-356-1
	subtotal	***₱2,774,834.00***				
	Total	**₱6,959,106.62**				

As to the alleged local purchases not directly related to RE development and conversion in the amount of ₱1,034,058.09, petitioner submitted official receipts (ORs) in support thereof. Upon scrutiny of the ORs presented, only the amount of ₱327,104.31, out of the claimed amount of ₱1,034,058.09, was properly substantiated with ORs and was found to be unrelated to its RE development and conversion. Furthermore, the Court noted exceptions amounting to ₱706,953.78. While a perusal of the ORs relating to these exceptions shows that the same pertains to management fees, there is nothing in the records which would help the Court to determine if they are directly related or unrelated to petitioner's RE development and conversion activities, thus, should not be refunded. The breakdown of the said amounts is presented hereunder:

Date	Supplier Name	Input VAT	OR No.	Exhibit (FOE black binder)
A. Properly Substantiated Input VAT on local purchases unrelated to RE				
1st Quarter				
31-Jan-12	Petroenergy Resources Corporation	₱ 6,087.76	000039	P-63

22-Feb-12	Blackhounds Security and Investigation	8,580.52	1796	P-66
29-Feb-12	Petroenergy Resources Corporation	6,087.76	000044	P-67
29-Feb-12	SGV and Co	7,207.20	092453	P-70
27-Mar-12	Alphabet Communications Graphics and Print	2,919.64	0056	P-72
09-Mar-12	Blackhounds Security and Investigation	4,290.26	1825	P-73
21-Mar-12	Blackhounds Security and Investigation	4,290.26	1859	P-74
30-Mar-12	Petroenergy Resources Corporation	6,087.76	000047	P-75
	subtotal	*₱ 45,551.16*		
<u>2nd Quarter</u>				
20-Apr-12	Petroenergy Resources Corporation	₱ 6,087.76	000051	P-124
11-May-12	Blackhounds Security and Investigation	3,786.31	1945	P-125
24-May-12	Blackhounds Security and Investigation	3,861.10	1966	P-126
31-May-12	Petroenergy Resources Corporation	6,087.76	000055	P-128
28-Jun-12	Petroenergy Resources Corporation	6,087.76	000057	P-132
	subtotal	*₱ 25,910.69*		
<u>3rd Quarter</u>				
20-Jul-12	Blackhounds Security and Investigation	₱ 3,885.72	2071	P-176
27-Jul-12	Blackhounds Security and Investigation	3,786.31	2083	P-177
30-Sep-12	Petroenergy Resources Corporation	6,087.76	000072	P-179
24-Aug-12	Blackhounds Security and Investigation	3,786.31	2132	P-181
24-Aug-12	Blackhounds Security and Investigation	4,282.11	2135	P-182
31-Aug-12	Petroenergy Resources Corporation	6,087.76	000067	P-184
21-Sep-12	Blackhounds Security and Investigation	3,914.59	2179	P-186
31-Jul-12	Petroenergy Resources Corporation	6,087.76	000063	P-189
	subtotal	*₱ 37,918.32*		
<u>4th Quarter</u>				
09-Oct-12	Blackhounds Security and Investigation	₱ 3,786.31	2219	P-247
19-Oct-12	Blackhounds Security and Investigation	3,282.32	2303	P-248
31-Oct-12	Petroenergy Resources Corporation	6,087.76	000077	P-250
12-Nov-12	Blackhounds Security and Investigation	3,282.36	2325	P-254
16-Nov-12	Blackhounds Security and Investigation	3,391.81	2339	P-255
03-Dec-12	J and D Iworxstation Interiors Inc	82,500.00	0047	P-258
29-Nov-12	Petroenergy Resources Corporation	6,087.76	000081	P-259
14-Dec-12	Blackhounds Security and Investigation	3,318.09	2438	P-263
14-Dec-12	Blackhounds Security and Investigation	3,318.09	2440	P-264
28-Dec-12	Petroenergy Resources Corporation	6,087.76	000089	P-266
28-Dec-12	Terraprime Inc	96,581.88	0419	P-269
	subtotal	*₱ 217,724.14*		
	Total	**₱ 327,104.31**		
B. Exceptions				
Purchase of service supported by VAT OR but without the address of petitioner				
06-Feb-12	Royale Flower Shoppe	₱ 375.00	9387	P-65
Purchase of service supported by VAT OR but the input VAT amount was not separately shown				
15-Feb-12	Work at Print Inc	696.43	7288	P-71
Purchase of services supported by VAT ORs but cannot be ascertained as not pertaining to petitioner's RE development				

31-Jan-12	Petroenergy Resources Corporation	58,823.53	000040	P-64
29-Feb-12	Petroenergy Resources Corporation	58,823.53	000043	P-68
30-Mar-12	Petroenergy Resources Corporation	58,823.53	000048	P-77
20-Apr-12	Petroenergy Resources Corporation	58,823.53	000052	P-122
31-May-12	Petroenergy Resources Corporation	58,823.53	000056	P-127
28-Jun-12	Petroenergy Resources Corporation	58,823.53	000058	P-130
28-Sep-12	Petroenergy Resources Corporation	58,823.53	000074	P-180
31-Aug-12	Petroenergy Resources Corporation	58,823.52	000069	P-183
31-Jul-12	Petroenergy Resources Corporation	58,823.53	000064	P-187
31-Oct-12	Petroenergy Resources Corporation	58,823.53	000079	P-252
29-Nov-12	Petroenergy Resources Corporation	58,823.53	000083	P-261
25-Dec-12	Petroenergy Resources Corporation	58,823.53	000088	P-268
	Total	**₱ 706,953.78**		
Grand Total		**₱1,034,058.09**		

From the foregoing, petitioner's valid input VAT amounts to only ₱7,286,210.93, computed as follows:

Valid input VAT on importations	₱ 6,959,106.62
Valid input VAT on local purchases not related to RE	327,104.31
Total Valid Input VAT	**₱ 7,286,210.93**

Since petitioner had no other types of sales, except zero-rated sales, for the first quarter of CY 2014, the valid input VAT of ₱7,286,210.93 is entirely attributable to the valid zero-rated receipts for the same quarter in the amount of ₱39,032,500.00[5] arising from the sale of electricity to Trans-Asia Oil and Energy Development Corporation.

Furthermore, although petitioner carried over the claimed input VAT of ₱9,165,912.74, which includes the refundable amount of ₱7,286,210.93, to the succeeding quarters, the same was not applied against any output VAT in the said quarters and remained unutilized until it was deducted as "VAT Refund/TCC claimed" in its Amended Third Quarterly VAT Return for CY 2014 and First Quarterly VAT Return for CY 2015, in the respective amounts of ₱1,865,128.35[6] and ₱7,300,784.39[7].

In view thereof, the Court finds that petitioner is entitled to the refund of the amount of **₱7,286,210.93**, representing its unutilized input VAT on importation of goods (other than capital goods) and local purchases not needed for RE development and conversion which petitioner incurred in the four quarters of CY 2012, and attributable to its zero-rated sales for the first quarter of CY 2014.

[5] Exhibit "P-33", Line 17.
[6] Exhibit "P-37", Line 23D, FOE black binder.
[7] Exhibit "P-39", Line 23D, FOE black binder.

As regards petitioner's allegation that it is entitled to a refund or to be credited with input VAT shifted to it by its suppliers, petitioner cites *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue*[8] and *Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc.*[9], alleging that if the law confers an exemption from both direct and indirect taxes, a claimant is entitled to a tax refund even if it only bears the economic burden of the applicable tax.

Petitioner explains that considering that the local suppliers passed on the VAT to petitioner and that petitioner's local purchases are, in effect, zero-rated VAT under the RE Law, petitioner must be allowed to claim a tax refund or tax credit even if it is not the statutory taxpayer under the law and only bears the economic burden of the VAT.

It must be noted that the *Philippine Airlines* case cited by petitioner pertains to excise tax and not VAT. Also, unlike in the *Philippine Airlines* case, the instant case does not involve exemption from VAT, but rather the zero-rating of its input VAT as provided by law. Furthermore, as between the *Philippine Airlines* case and the more recent *Coral Bay* case[10] cited by this Court in the assailed Decision, which specifically ruled on a claim for refund of input VAT on transactions that was later found by the Supreme Court to be zero-rated, the latter jurisprudence is more analogous to the factual circumstances of the instant case which also pertains to refund of input VAT on transactions that are zero-rated as provided by law.

To reiterate, based on the pronouncement of the Supreme Court in the *Coral Bay* case, if despite the zero-rating of purchases, petitioner paid the input VAT, petitioner's recourse is not against the government, but against the seller who shifted to it the output VAT. The pertinent portion of the Supreme Court ruling is again quoted as follows:

> "The petitioner's principal office was located in Barangay Rio Tuba, Bataraza, Palawan. Its plant site was specifically located inside the Rio Tuba Export Processing Zone — a special economic zone (ECOZONE) created by Proclamation No. 304, Series of 2002, in relation to Republic Act No. 7916. As such, the purchases of goods and services by the petitioner that were destined for consumption within the ECOZONE should be free of VAT; hence, **no input VAT should then be paid on such purchases, rendering the petitioner not entitled to claim a tax refund or credit. Verily, if the petitioner had paid the input VAT, the CTA was correct in holding that the petitioner's proper recourse was not against the**

[8] G.R. No. 198759, July 1, 2013.
[9] G.R. No. 212536-37, August 27, 2014.
[10] *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*, G.R. No. 190506, June 13, 2016.

Government but against the seller who had shifted to it the output VAT following RMC No. 42-03, which provides:

> In case the supplier alleges that it reported such sale as a taxable sale, the substantiation of remittance of the output taxes of the seller (input taxes of the exporter-buyer) can only be established upon the thorough audit of the suppliers' VAT returns and corresponding books and records. It is, therefore, imperative that the processing office recommends to the concerned BIR Office the audit of the records of the seller.
>
> **In the meantime, the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier.**

We should also take into consideration the nature of VAT as an indirect tax. Although the seller is statutorily liable for the payment of VAT, the amount of the tax is allowed to be shifted or passed on to the buyer. However, reporting and remittance of the VAT paid to the BIR remained to be the seller/supplier's obligation. Hence, the proper party to seek the tax refund or credit should be the suppliers, not the petitioner."[11] (*Emphasis supplied*)

While the Supreme Court considers the nature of VAT as an indirect tax, the reporting and remittance of the VAT paid to the BIR remains the seller's obligation. Thus, even assuming that petitioner paid the input VAT on its purchases which are subject to zero percent, the supplier/seller is still the proper party to claim for the tax refund, and not petitioner.

Lastly, as to petitioner's claim that the Court should also apply to this case its ruling in *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue*[12], which allegedly allowed an RE Developer to claim input VAT on local purchases of goods and services, the Court stresses that the *Mindanao* case involves taxable year 2008 which is not yet covered by the law applicable in this case, RE Law[13]. Thus, the Court finds the said allegation bereft of merit.

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[11] *Ibid.*

[12] CTA Case Nos. 8082 & 8106, August 9, 2017.

[13] RA No. 9513 or the RE Law was approved only on December 16, 2008, and took effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is **PARTIALLY GRANTED**. Accordingly, the Decision of this Court dated August 2, 2017, is amended to read as follows:

> "**WHEREFORE**, premises considered, the Petitions for Review filed on August 18, 2014, on November 26, 2014, on February 25, 2015, and on May 13, 2015 are **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱7,286,210.93**, representing its unutilized input VAT on importation of goods (other than capital goods) and local purchases not directly related to RE development and conversion incurred in the four quarters of CY 2012, and attributable to its zero-rated sales for the first quarter of CY 2014.
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> **SO ORDERED**."

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(On Leave)
LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest 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's Division.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

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 Amended 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