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: MAR 0 3 2021 12:34 p.m.

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RESOLUTION

UY, J.:

For resolution is petitioner's ***MOTION FOR RECONSIDERATION (RE: DECISION DATED 16 SEPTEMBER 2020)***[1] filed on October 15, 2020, without respondent's comment despite due notice as per Records Verification Report dated December 18, 2020 issued by Leocadia L. De Alday, Records Officer 1 of the Judicial Records Division of this Court.[2]

In its *Motion,* petitioner prays for the reversal and setting aside of this Court's Decision promulgated on September 16, 2020, 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**."

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[1] Docket – Vol. 3, pp. 1156 to 1167.
[2] Records Verification Report and Resolution dated December 29, 2020, Docket – Vol. 3, pp. 1170 and 1171, respectively.

In support of its *Motion*, petitioner argues that Republic Act (RA) No. 9513 does not require a certificate of endorsement issued by the Department of Energy (DOE) on a per transaction basis for the imposition of zero percent (0%) VAT rate on renewable energy (RE) developer's local purchases of goods, properties, and services.

According to petitioner, it is not a RE developer, manufacturer, fabricator or supplier of locally-produced RE equipment. Therefore, petitioner is not required to submit the necessary certifications under Section 18 of the Implementing Rules and Regulations (IRR) of RA No. 9513. Petitioner merely rendered services to EDC, a RE Developer of Wind Energy Resources, and the services rendered were for the construction of EDC's wind power plant in Burgos, Ilocos Norte.

Lastly, petitioner argues that EDC's purchase of local goods, properties and services from petitioner is VAT zero-rated.

THE COURT'S RULING

Petitioner's *Motion for Reconsideration* lacks merit.

Petitioner argues that a plain reading of RA 9513 and its IRR shows that the requirement of a Certificate of Endorsement from the DOE is only applicable for certain incentives. That for purposes of imposing zero-rated VAT on the local purchases of RE Developers, Chapter VII of RA 9513 entitled "General Incentives" applies, specifically, Section 25; That Section 25 provides that the Certificate of Registration issued to RE Developers is the basis of their entitlement to the fiscal incentives enumerated under Chapter VII of RA 9513.

On the other hand, Section 18 (C) of the IRR of RA 9513 appears to have been issued merely to implement Section 26 of RA 9513. That under Chapter VII, it is clear that there are certain incentives, which specifically require prior endorsement and/or approval by the DOE, through the Renewable Energy Management Bureau (REMB), to be obtained on a transaction basis.

Petitioner contends that Section 25 applies in general and covers the entire Chapter VII, whereas Section 26 applies specifically and only to prior certifications, endorsements, or approvals being specifically required under Chapter VII as a condition in availing a particular incentive on a transactional basis. As such, the Certificate of Endorsement from the DOE is only required for those instances specifically provided under Chapter VII of RA 9513. It is allegedly not necessary or required for purposes of availing all other fiscal incentives enumerated therein, including the VAT zero-rating of local purchases of RE Developers under Section 15(g).

Moreover, petitioner submits that EDC's Certificate of Registration issued by the DOE and its Certificate of Registration issued by the Board of Investments (BOI) in accordance with Section 25 of RA 9513, coupled with the Service and Energy Based Availability Agreement between EDC and petitioner, stating that the purchases by EDC as a RE Developer were for purposes stated under Section 15(g) of RA 9513, are sufficient and the only required basis for petitioner's sales to EDC to be subject to 0% VAT.

We do not agree that the submission of a Certificate of Endorsement from the DOE is only applicable for certain incentives.

Contrary to petitioner's allegation, Section 18 (C) of the IRR of RA 9513 does not appear to have been issued merely to implement Section 26 of RA 9513. As can be gleaned in the IRR, it requires the taxpayer-applicant to present the RE Developers' Registration with the Board of Investment (BOI) and Certificate of Endorsement by the DOE as conditions for availment of the incentives under RA No. 9513, and as it clearly states – it is for the purposes of entitlement to the incentives and privileges under this Act, and not simply confined to Section 26, to wit:

> "SECTION 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 supplies of locally-produced RE equipment shall register with the DOE, through the Renewable Energy Management Bureau (REMB).** The following certifications shall be issued:

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(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 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, <u>RE Developers,</u> and manufacturers, fabricators, and suppliers of locally-produced RE equipment, <u>shall register with the BOI.</u>

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 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." (*Emphasis supplied)*

Hence, based on the foregoing provisions, to qualify for VAT zero-rating under RA No. 9513 and its IRR, petitioner must prove with sufficient evidence that the RE Developers (EDC in the instant case) must have secured a DOE Certificate of Registration, Registration with the BOI, and Certificate of Endorsement by the DOE.

To reiterate, the foregoing documents must all be shown. Otherwise, the transaction of the concerned RE Developer, as purchaser, cannot be treated as subject to VAT zero-rating.

In this case, there is no showing that EDC was issued a Certificate of Endorsement by the DOE. Because of petitioner's failure to present the same, its gross receipts of ₱2,281,215,417.09, representing its sales to EDC, cannot be considered as subject to VAT zero-rating under the law.

It bears stressing that actions for tax refund or credit, 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 is *strictissimi* scrutinized and must be duly proven. **The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.** 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.[3]

WHEREFORE, in light of the foregoing considerations, petitioner's *Motion for Reconsideration* 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

[3] *Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 22248, February 19, 2018.