REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1990** (CTA Case Nos. 7233 & 7294)
- *versus* -	
TOLEDO POWER COMPANY, *Respondent.*	

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TOLEDO POWER COMPANY, *Petitioner,*	**CTA EB NO. 2000** (CTA Case Nos. 7233 & 7294)
	Present:
- *versus* –	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 23 2020 11:20a.m.

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DECISION

MANAHAN, *J.*:

Before the Court *En Banc* are consolidated[1] Petitions for Review separately filed by the Commissioner of Internal Revenue (CIR), petitioner in CTA EB No. 1990 *(Commissioner of Internal Revenue v. Toledo Power Company),* and by the

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[1] CTA EB 2000 was consolidated with CTA EB 1990, the case bearing the lowest docket number per Minute Resolution issued on February 6, 2019, *rollo*, p. 45.

Toledo Power Company (TPC), petitioner in CTA EB No. 2000 *(Toledo Power Company v. Commissioner of Internal Revenue).*

In CTA EB No. 1990, petitioner CIR seeks to partially modify and set aside the Amended Decision dated July 13, 2018[2] (assailed Amended Decision) of the Special First Division of this Court and the Resolution dated December 19, 2018[3] (assailed Resolution) promulgated by the Third Division of this Court and prays that another decision be rendered denying the entire claim for refund.

On the other hand, in CTA EB No. 2000, petitioner TPC seeks to set aside the assailed Amended Decision and assailed Resolution insofar as it denied TPC's zero-rated sales of Php132,824,216.20 for the first quarter of taxable year (TY) 2003 by virtue of Republic Act (RA) No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA) Law, and granted only the refundable amount of Php399,550.84 due to the alleged insufficiency of respondent's supporting documents, and prays that another one be rendered granting the entire claim for refund in the amount of Php3,907,783.80.

The Parties

The CIR, petitioner in CTA EB No. 1990, 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.[4]

TPC, petitioner in CTA EB No. 2000, is a general partnership duly organized and existing under Philippine laws, with principal office at Sangi, Toledo City, Cebu.[5] It is principally engaged in the business of power generation and the subsequent sale of generated power to the National Power Corporation (NPC), Cebu Electric Cooperative III (CEBECO) and Visayan Electric Company, Inc.[6]

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[2] *Rollo,* CTA EB 1990, pp. 21-34.
[3] *Id.*, pp. 35-40.
[4] Admitted Fact, Joint Stipulation, par. 2, p. 1.
[5] Admitted Fact, Joint Stipulation, par. 1, p. 1.
[6] Sworn Statement of Ms. Reymonda Aida B. Obrero to Questions Propounded by Atty. Maritess B. Avila dated November 24, 2006, Exhibit "Q", pp. 2-3.

The Facts[7]

On April 22, 2005, TPC filed a Petition for Review with the Court of Tax Appeals (CTA), docketed as CTA Case No. 7233, praying for the refund or issuance of TCC in the amount of Php3,907,783.80, representing its unutilized input VAT from domestic purchase of taxable goods and services, and the importation of goods attributable to zero-rated sales for the first quarter of 2003.[8]

Another Petition was filed by TPC before the CTA on July 2, 2005, docketed as CTA Case No. 7294, praying for the refund or issuance of TCC of the alleged unutilized input VAT for the second quarter of 2003 in the total amount of Php2,124,847.14.[9]

In a Resolution promulgated on September 22, 2005, the CTA Special First Division consolidated CTA Case No. 7294 with CTA Case No. 7233.[10]

On December 15, 2009, the CTA Special First Division partially granted[11] the refund, but in the reduced amount of Php185,395.11.

Upon Motion for Partial Reconsideration of both parties, the Court in Division, citing the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[12] rendered an Amended Decision[13] on December 1, 2010, reversing and setting aside its December 15, 2009 Decision, to wit:

> "**WHEREFORE,** respondent's (CIR) *Motion for Partial Reconsideration* is hereby **GRANTED;** while petitioner's (TPC) *Motion for Partial Reconsideration* is hereby **DENIED** for lack of merit. This Court's *Decision* promulgated on December 15, 2009 is

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[7] As found by the Special First Division and as culled from the records of the case.
[8] Par. 2, Ibid.
[9] Par. 3, Id.
[10] Last par., December 15, 2009 Decision of CTA First Special Division, Annex "8" to the Petition for Review, En Banc Rollo (CTA EB No. 708), pp. 845-846.
[11] Decision, Annex "B" to the Petition for Review, En Banc Rollo (CTA EB No. 708), pp. 842-862.
[12] G.R. No. 184823, October 6, 2010.
[13] Annex "A" to the Petition for Review, En Banc Rollo (CTA EB No. 708), pp. 823-831.

hereby **REVERSED** and **SET ASIDE.** Accordingly, petitioner's claim for refund or issuance of tax credit certificate for its unutilized input VAT for the first quarter of taxable year 2003 filed on April 22, 2005 and docketed as CTA Case No. 7233, is hereby **DISMISSED** for being prematurely filed. Likewise, petitioner's claim for refund or issuance of tax credit certificate for its unutilized input VAT for the second quarter of taxable year 2003 filed on July 22, 2005 and docketed as CTA Case No. 7294 is hereby **DISMISSED** for having been filed beyond the period provided by law.

SO ORDERED."

Within the extended time granted[14], TPC appealed[15] the assailed Amended Decision with the CTA *En Banc* on January 7, 2011, which was docketed as CTA EB No. 708. The said Petition was, however, denied by the CTA *En Banc* in its Decision[16] promulgated on July 7, 2011.

Undaunted, TPC filed a Motion for Reconsideration[17] on August 9, 2011, which was denied by the CTA Court *En Banc* in a Resolution[18] dated December 7, 2011.

On January 27, 2012, TPC filed its Petition for Review on *Certiorari* with the Supreme Court, docketed as G.R. No. 199645.

In a Resolution promulgated on March 7, 2012, the Second Division of the Supreme Court consolidated G.R. No. 199645 *(Toledo Power Company vs. Commissioner of Internal Revenue)* with G.R. No. 195175 *(Commissioner of Internal Revenue vs. Toledo Power Company)* in order to avoid conflicting decisions on related cases and to save the time and resources of the Court.[19]

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[14] Minute Resolution dated December 28, 2010, En Banc Rollo (CTA EB No. 708), p. 776.
[15] En Banc Rollo (CTA EB No. 708), p. 777-822.
[16] En Banc Rollo (CTA EB No. 708), pp. 162-176.
[17] En Banc Rollo (CTA EB No. 708), pp. 194-223.
[18] En Banc Rollo (CTA EB No. 708), pp. 236-238.
[19] As per Notice of Resolution dated March 7, 2012.

On August 10, 2015, the Special First Division of the Supreme Court, citing the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, and Philex Mining Corporation vs. Commissioner of Internal Revenue*[20], rendered a Decision denying the Petition in G.R. No. 195175 and partially granting the Petition in G.R. No. 199645. Pertinent portions of the said Decision are hereunder quoted for ready reference:

> "In sum, the CTA has jurisdiction over the Petition of TPC, but only in C.T.A. Case No. 7233 or the claim for refund of unutilized input VAT attributable to zero-rated or effectively zero-rated sales for the first quarter of 2003. However, considering that the original Decision of the CTA First Division did not separate the computation of the refundable amount of input VAT for the first and the second quarters of 2003, we cannot determine the actual amount that may be attributed to the first quarter of 2003. Thus, a remand of the case to the CTA is necessary.
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> The Court finds, in view of the absence of jurisdiction of the Court of the Tax Appeals over the judicial claims of TPC in C.T.A. Case Nos. 7471 and 7294, that there is no need to discuss the other issues raised.
>
> **WHEREFORE,** premises considered, the Petition in G.R. No. 195175 is **DENIED,** while the Petition in G.R. No. 199645 is **PARTLY GRANTED.** Accordingly, the case in G.R. No. 199645 is hereby **REMANDED** to the Court of Tax Appeals insofar as the Petition in C.T.A. Case No. 7233, for the purpose of the computation of the refundable input VAT attributable to the zero-rated or effectively zero-rated sales of Toledo Power Corporation for the first quarter of 2003.
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> **SO ORDERED**."

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[20] G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

Thereafter, the CIR filed a Motion for Partial Reconsideration and/or Clarification (of the Decision dated August 10, 2015) in G.R. No. 195175 and Motion for Partial Reconsideration (Re: Decision dated August 10, 2015) in G.R. No. 199645.

TPC, on the other hand, filed a Motion for Clarification (of the Decision dated 10 August 2015) in G.R. No. 195175 and Motion for Partial Reconsideration (Re: Decision dated 10 August 2015) in G.R. No. 199645.

The foregoing Motions were all resolved by the Special First Division of Supreme Court in a Resolution promulgated on July 20, 2016 in this wise:

> "This Court finds no substantial argument that would merit the reversal of our Decision in G.R. No. 199645.
>
> **WHEREFORE,** premises considered, this court
>
> 1) **GRANTS** the prayer for clarification in the Motion for Partial Reconsideration and/or Clarification (of the Decision dated August 10, 2015) filed by the CIR in G.R. No. 195175;
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> 2) **GRANTS** the Motion for Clarification (of the Decision dated 10 August 2015) filed by the TPC in G.R. No. 195175; and
>
> 3) **DENIES** both the Motion for Partial Reconsideration (Re: Decision dated August 10, 2015) filed by the CIR and the Motion for Partial Reconsideration (Re: Decision dated 10 August 2015) filed by the TPC in G.R. No. 199645.
>
> **SO ORDERED.**"

On October 10, 2016, the August 10, 2015 Decision of the Special First Division of the Supreme Court became final and executory.[21]

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[21] Per Entry of Judgement dated October 10, 2016.

In view of the Entry of Judgment issued by the Supreme Court in G.R. No. 195175 and G.R. No. 199645, a Resolution dated April 2, 2018 was issued by the CTA *En Banc* remanding to the CTA Special First Division, CTA Case No. 7233, for the purpose of computing TPC's refundable input VAT attributable to zero-rated or effectively zero-rated sales for the first quarter of 2003.

On July 13, 2018, the Special First Division rendered the assailed Amended Decision, the dispositive portion of which reads, as follows:

> "**WHEREFORE,** in light of the foregoing considerations, the Petition for Review filed by *Toledo Power Company vs. Commissioner of Internal Revenue* in CTA Case No. 7233 is hereby **PARTIALLY GRANTED.** Accordingly, the Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of Toledo Power Company in the amount of **THREE HUNDRED NINETY-NINE THOUSAND FIVE HUNDRED FIFTY PESOS AND EIGHTY-FOUR CENTAVOS (Php399,550.84),** representing its unutilized input VAT first quarter of taxable year 2003.
>
> **SO ORDERED.**"

The CIR timely filed his Motion for Partial Reconsideration (Re: Amended Decision dated July 13, 2018) on August 7, 2018, while TPC likewise filed its Motion for Partial Reconsideration on August 6, 2018.

On December 19, 2018, the CTA Third Division rendered the assailed Resolution denying both Motions for Partial Reconsideration for lack of merit.

On January 24, 2019, the CIR filed his Petition for Review[22], docketed as CTA EB No. 1990, while TPC's Petition for Review[23], docketed as CTA EB No. 2000 was filed on February 4, 2019, within the extended period granted by the Court. Both cases were consolidated as recounted above.

[22] *Rollo,* CTA EB 1990, pp. 7-20.
[23] *Rollo,* CTA EB 2000, pp. 7-35.

On March 6 and 22, 2019, the CIR[24] and TPC[25] filed their respective Comments to the other party's Petition.

On April 17, 2019, the Court *En Banc* issued a Resolution[26] directing both parties to file their respective memoranda within thirty (30) days from notice.

On May 6, 2019, the CIR filed a Manifestation stating that he was adopting his arguments in his Petition for Review in CTA EB 1990, and his Comment to the Petition for Review in CTA EB 2000 as his Memorandum.

On June 6, 2019, TPC filed a Motion requesting an additional period of twenty (20) days, or until June 25, 2019, within which to file its Memorandum[27] which was granted by the Court in a Minute Resolution dated June 10, 2019.[28]

Within the extended period of time granted by the Court, TPC filed its Memorandum[29] on June 24, 2019.

On July 10, 2019, the Court *En Banc* issued a Resolution noting the Manifestation filed by the CIR and submitting the consolidated cases for decision.[30]

The Assignments of Errors

In CTA EB No. 1990, petitioner CIR claims that the Special First Division erred in ruling that TPC is entitled to refund in the amount of Php399,550.84 representing alleged unutilized Input VAT for the first quarter of TY 2003.

In CTA EB No. 2000, petitioner TPC claims that the assailed Amended Decision and Resolution are erroneous because: a) based on the evidence on record, TPC has

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[24] *Id.* at Note 22, pp. 49-54.
[25] *Id.*, pp. 61-74.
[26] *Id.*, pp. 76-77.
[27] *Id.*, pp. 83-87.
[28] *Id.*, p. 88.
[29] *Id.*, pp. 89-122.
[30] *Id.*, pp. 124-125.

established that it is engaged in zero-rated sales pursuant to the provision of the EPIRA and its implementing rules; and b) TPC has presented ample and uncontroverted evidence to properly substantiate the claim for refund of unutilized input VAT amounting to Php3,907,783.80.

The Arguments of the Parties

The CIR argues that the law requires that only "creditable input taxes" that are "directly attributable" may be refunded. The assailed Amended Decision erroneously concluded that TPC's creditable input taxes were directly attributable to its zero-rated sales because there were no other type of sales. However, it does not follow that when a taxpayer has zero-rated sales alone, all its input tax is automatically directly attributable to such zero-rated sales. Moreover, a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer.

On the other hand, TPC argues that contrary to the ruling in the assailed Resolution, TPC was able to submit two Certificates of Compliance marked as Exhibits "P" and "Q" in its Supplemental Formal Offer of Evidence which the Special First Division admitted in its Resolution dated August 23, 2010. Furthermore, TPC claims that the power generation services it rendered to National Power Corporation (NPC), Cebu Electric Cooperative III (CEBECO), Atlas Consolidated Mining and Development Corporation, and Atlas Fertilizer Corporation are subject to zero percent (0%) VAT pursuant to the EPIRA and its implementing rules and regulations.

TPC also claims that its VAT Registration is a jointly stipulated fact which requires no proof and that its unutilized input VAT for the 1st quarter of TY 2003 are properly substantiated by invoices and official receipts and remain unutilized and unapplied against any output VAT liability until they were deducted from TPC's total available input VAT on the 4th quarter of 2005.

The Ruling of the Court

We deny the Petitions for lack of compelling ground to merit the reversal of the assailed Amended Decision and Resolution.

In ascertaining the merits of these two Petitions before us, *We* are guided by two well-entrenched principles. The first is that since under Section 8 of Republic Act (RA) No. 1125, the CTA is categorically described as a court of record, cases filed before the Court of Tax Appeals are litigated *de novo*, and the claimant should prove every minute aspect of its case.[31] The second is that actions for tax refund 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.[32] As always, the appreciation of these pieces of evidence lies within the sound discretion of the court.

The CIR's Petition for Review

The CIR argues that there should be direct attributability of the purchases or input VAT to the finished product whose sale is zero-rated.

We disagree.

Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, allows allocation of input taxes in case the same cannot be directly and entirely attributed to any of the sales, *viz.:*

> "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

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[31] *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, September 29, 2014.
[32] *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.

> transitional input tax, to the extent that such input tax has not been applied against output tax: *x x x Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale 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."[33]

Evidently, the law merely states that the creditable input VAT should be attributable to the zero-rated or effectively zero-rated sales. The use of the phrase "directly attributable" relates to a situation where the creditable input VAT cannot be directly attributed to any transaction, but does not qualify the preceding sentences of Section 112(A) of the NIRC of 1997, as amended, in such a way as to make the refundable input VAT only those which are directly attributable to zero-rated or effectively zero-rated sales. Input taxes that bear a direct or indirect connection with a taxpayer's zero-rated sales satisfies the requirement of the law. *Ubi lex non distinguit nec nos distinguere debemos.*[34] It is a well-recognized rule that where the law does not distinguish, courts should not distinguish.

The CIR's reliance on the *Atlas* cases[35] is also misplaced. As the Court *En Banc* has recently ruled in *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*[36], the doctrinal pronouncements in the *Atlas* cases may no longer be applied since those were decided under Revenue Regulations that have since been amended. The relevant excerpt of *Our* ruling is quoted below:

> "We cannot rely on the rulings in the Atlas cases being invoked by the CIR. This must be so because, as clearly shown in the said cases, the latter were decided under the earlier Revenue Regulations (RR) No. 5-87 dated September 1, 1987, as amended by RR No. 3-88 dated February 15,

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[33] Emphasis and underscoring supplied.
[34] *Philippine Free Press, Inc. v. Court of Appeals (12th Division), et al.,* G.R. No. 132864, October 24, 2006.
[35] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159471, January 26, 2011; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 141104 & 148763, June 8, 2007.
[36] CTA EB Case Nos. 1777 & 1779, August 01, 2019.

1988, Section 16 of which provides, in part, as follows:

> 'In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of value-added tax (VAT) paid **directly and entirely attributable to the zero-rated transaction** during the period covered by the application for credit or refund.' *(Emphasis and underscoring supplied)*

Understandably, on the basis thereof, the Supreme Court required and ruled in the Atlas cases that the input VAT being claimed for refund should be *'directly and entirely attributable'* to the zero-rated sales. However, RR Nos. 5-87 and 3-88, and the jurisprudential pronouncements interpreting and/or applying the same, could no longer be applied as the same are deemed revoked.

x x x   x x x   x x x

On June 22, 2005, the Secretary of Finance, upon the recommendation of the CIR, issued RR No. 14-2005, also known as the *'Consolidated Value-Added Tax Regulations of 2005,'* which became effective on July 1, 2005. Parenthetically, RR No. 14-2005 was later superseded by RR No. 16-2005 on September 1, 2005, which took effect on November 1, 2005. The latter RR, in turn, has undergone several amendments thereafter.

Correspondingly, all RR pertaining to VAT, including RR Nos. 5-87 and 3-88, were deemed revoked as of July 1, 2005. Thus, unless the provisions of the said RR pertaining to the requirement that the input VAT being claimed for refund should be 'directly and entirely attributable' to the zero-rated sales, has been retained in the said RR No. 14-2005 and subsequent RR pertaining to VAT, such treatment under the said RR Nos. 5-87 and 3-88 is deemed revoked.

> A cursory examination, however, of RR No. 14-2005 and subsequent RR pertaining to VAT would reveal that the provisions of RR Nos. 5-87 and 3-88, as to the **requirement that the input VAT being claimed for refund should be *'directly and entirely attributable* to the zero-rated sales, has***(sic)* **not been retained.** Thus, the aforequoted portion of Section 16 of RR No. 5-87, as amended by RR No. 3-88, is no longer binding, upon the effectivity of RR No. 14-2005, i.e., on July 1, 2005."

Thus, the CIR's petition is denied.

TPC's Petition for Review

In granting only the reduced amount of Php399,550.84 for refund/issuance of TCC, the Court in Division made specific findings such as: (1) denial of VAT zero-rating to Php49,010,370.72 reported sales to CEBECO III and Visayan Electric Company for failure to present the Certificate of Compliance proving that TPC was a generation company at the time of sale;[37] (2) denial of VAT zero-rating to Php56,034,845.48 reported sales to National Power Corporation (NPC) for being improperly supported;[38] and (3) disallowance of Php1,416,094.99 and Php581,251.91 input VAT for being improperly supported.[39] These disallowances and the reasons therefor were laid out in the assailed Decision, however, TPC did not present any compelling argument nor address the findings of insufficiency made by the Court in Division. Thus, *We* find no reason to reverse nor modify these disallowances and the resulting amount granted for refund.

TPC also argues that it was able to offer in evidence its Certificates of Compliance (COC) marked as Exhibits "P" and "Q", and the same were admitted by the Court. A review of the records show that, indeed, TPC filed its Supplemental Formal Offer of Evidence[40] on July 22, 2010, wherein Exhibits "P" and "Q" were offered, as follows:

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[37] *Rollo*, CTA EB No. 1990, Amended Decision dated July 13, 2018, p. 28.
[38] *Id.* at pp. 28-30.
[39] *Id.* at pp. 31-32.
[40] Docket, CTA Case No. 7233, Vol. I, pp. 731-734.

<table>
<tr><th>Exhibit</th><th>Description</th><th>Remark</th></tr>
<tr><td>"P"</td><td>Certificate of Compliance COC No. 04-06-GXT 61-0066 issued by the Energy Regulatory Comission (ERC) to Toledo Power Company on June 23, 2004</td><td rowspan="2">To prove that:

1. The Energy Regulatory Commission (ERC) issued to petitioner a Certificate of Compliance for its power generation facility in Toledo City, Cebu;

2. Petitioner is a power generation company involved in the sale of generated power whose sales of generated power is subject to zero percent (0%) value-added tax (VAT); and

3. Petitioner complied with the substantiation requirements under the law for the refund of its unutilized input VAT for the 1^{st} and 2^{nd} quarters of calendar year (CY) 2003.</td></tr>
<tr><td>"Q"</td><td>Certificate of Compliance COC No. 09-11-GXT 61-0066 issued by the ERC to Toledo Power Company on November 16, 2009</td></tr>
</table>

These exhibits were admitted in the Resolution dated August 23, 2010.[41]

Despite the admission of the said COCs, TPC's sales of Php49,010,370.72 to CEBECO III and Visayan Electric Company will still be denied VAT zero-rating under the EPIRA considering that the sales involved herein are for the 1^{st} quarter of 2003, while the COCs presented are dated June 23, 2004 and November 16, 2009.

The Supreme Court, in *Commissioner of Internal Revenue v. Toledo Power Company,*[42] stated:

> 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.

[41] Docket, CTA Case No. 7233, Vol. I, pp. 747-748.
[42] G.R. Nos. 196415 and 196451, December 2, 2015.

Similarly, in the instant case, the alleged zero-rated sales occurred in the 1st quarter of 2003, or prior to the issuance of TPC's COCs. These sales cannot qualify for VAT zero-rating under the EPIRA. Thus, the findings of the Court in Division are affirmed.

WHEREFORE, the Petitions for Review are **DENIED** for lack of merit. The Amended Decision dated July 13, 2018 and Resolution dated December 19, 2018 are hereby **AFFIRMED**.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice