REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

RESTORED ENERGY DEVELOPMENT CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case Nos. 9958 & 9975

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN *and*
REYES-FAJARDO, *JJ.*

Promulgated:

MAR 24 2023 3:24 P.M.

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RESOLUTION

MANAHAN, ***J.:***

This resolves petitioner's **Motion for Reconsideration**[1] filed through registered mail on December 13, 2022 and received by this Court on December 20, 2022, without respondent's comment[2] despite due notice[3], praying for the reconsideration of the Court's *Decision* dated November 18, 2022 (Assailed Decision), and ordering respondent instead to refund the amount of Php1,444,011.42 representing the input value-added tax (VAT) attributable to former's alleged zero-rated sales for the second, third and fourth quarters of taxable year (TY) 2016.

Petitioner argues that it is entitled to the refund of its unutilized input VAT incurred in relation to its zero-rated sales of renewable energy for the second, third and fourth quarters of TY 2016. Petitioner insists that it complied with the invoicing requirements under Section 4.113-1(B) of Revenue Regulations No. 16-2005 dated September 1, 2005.

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[1] Docket, CTA Case Nos. 9958 & 9975, Vol. III, pp. 1548-1574.
[2] *Id.*, Records Verification dated February 6, 2023.
[3] *Id.*, Resolution dated February 10, 2023.

This Court shall first determine whether the instant motion was filed on time. Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that:

> "SECTION 1. *Who may and when to file motion.*- **Any aggrieved party may seek a reconsideration** or new trial **of any decision**, resolution, or order **of the Court** by filing a motion for reconsideration or new trial **within fifteen days from the date of receipt of notice of the decision**, resolution or order of the Court in question." (*Emphasis supplied*)

In the instant motion, petitioner avers that it received the Assailed Decision on November 28, 2022. In accordance with the abovementioned provision of the RRCTA, petitioner had fifteen (15) days from receipt of notice on November 28, 2022 or until December 13, 2022 within which to file its motion for reconsideration. Hence, petitioner's *Motion for Reconsideration* was timely filed on December 13, 2022.

After much incisive and thorough deliberation, We deny the instant motion.

This Court hereby re-emphasizes the rationale in the denial of petitioner's claim for refund due to its failure to prove one hundred percent compliance with the invoicing requirements.

Notably, petitioner is in the business of renewable energy and its claim for refund is grounded under Section 108(B)(7) of the 1997 National Internal Revenue Code (NIRC), as amended, which provides:

> "SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –
>
> xxx xxx xxx
>
> (B) Transactions Subject to Zero Percent (0%) Rate - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> (7) **Sale of power or fuel generated through 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." (*Emphasis supplied*)

As shown in the abovementioned provision, the sale of renewable energy is classified under the VAT system of the Philippines as Sale of Services.

Among the requisites for a claim for refund is the substantiation requirements to be used by the party claimant in its zero-rated sales and pursuant to Section 113(A)(2) of the 1997 NIRC, as amended, a VAT-registered entity doing business in a sale, barter, or exchange of services shall use a VAT official receipt, to wit:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* —
>
> (A) Invoicing Requirements. — A VAT-registered person shall issue:
>
> xxx xxx xxx
>
> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services."

Such is aptly quoted in the Separate Concurring Opinion of the Hon. Presiding Justice Roman G. Del Rosario, citing *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*,[4] to wit:

> "Irrefutably, **when a VAT-taxpayer claims to have zero-rated sales of services, it must substantiate the same through valid VAT official receipts, not any other document, not even a sales invoice** which properly pertains to a sale of goods or properties." (*Emphasis supplied*)

The records of the case[5] reveal that petitioner was using VAT sales invoices in its zero-rated sales of renewable energy and not the required VAT official receipts. Thus, the usage of such VAT sales invoices instead of the required VAT official receipts for sale of services is fatal to petitioner's claim for refund.

There being no new and substantial arguments propounded by petitioner in his motion, the Court finds no compelling reason to reverse the Assailed Decision.

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[4] G.R. No. 191495. July 23, 2018.
[5] Docket, Decision dated November 18, 2022, p. 1541.

WHEREFORE, petitioner's *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice