REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY
EN BANC

HEDCOR, INC., Petitioner,	CTA EB No. 1761 (CTA Case No. 8990)
	Present:
-versus-	DEL ROSARIO, *PJ*; CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 08 2019 3:53 p.m.

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DECISION

FABON-VICTORINO, J.:

On appeal before the Court *En Banc* are the August 1, 2017 Decision[1] and December 12, 2017 Resolution[2] of the Court in Division in CTA Case No. 8990, which denied for lack of merit petitioner's claim for refund or issuance of tax credit certificate (TCC) of its alleged excess and unutilized input value-added tax (VAT) attributable to its zero-rated sales for the third (3rd) quarter of taxable year (TY) 2012 in the amount of ₱6,149,582.86.

Petitioner prays to reverse the adverse Decision and Resolution of the Court in Division and for the Court to direct respondent to refund or issue a TCC in its favor in the amount of ₱6,149,582.86, representing its alleged excess

[1] *En Banc* docket, pp. 48-66.
[2] *En Banc* docket, pp. 67-79.

and unutilized input VAT attributable to its zero-rated sales for the 3rd quarter of TY 2012.

THE FACTS AND THE PROCEEDINGS

Petitioner Hedcor, Inc. is a domestic corporation with principal office at 214 Ambuklao Road, Obulan, Beckel, La Trinidad, Benguet. It is primarily engaged in the business of owning, developing, constructing, operating, repairing, and maintaining of hydro-electric power plant systems, renewable and indigenous power generation plants and other types of power generation and/or converting stations, and to act as holding company or joint venture partners or investors in the business of developing, operating, and/or owning power generation plants and/or converting stations.[3]

Petitioner is a VAT-registered taxpayer, as evidenced by its Certificate of Registration No. OCN 4RC0000670842[4], with Taxpayer's Identification No. (TIN) 001-946-873-000. It is likewise registered with the Energy Regulatory Commission (ERC) as owner/operator of generation facilities in 2011, 2012, and 2013.[5]

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR), vested with the authority to decide, approve, and grant a refund of internal revenue taxes or issue a tax credit certificate. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

In the course of its business, petitioner purchased capital and domestic goods and services, where it incurred and paid unutilized input VAT.

On October 22, 2012, petitioner filed its Quarterly VAT Return for the 3rd quarter of TY 2012[6] and paid the

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[3] Exhibits "P-1" and "P-2", CTA Case No. 8990 docket, p. 327 and pp. 329 to 343, respectively.
[4] Exhibit "P-15", CTA Case No. 8990 docket, p. 356.
[5] Exhibits "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", and "P-14", CTA Case No. 8990 docket, pp. 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, and 355, respectively.
[6] Exhibit "P-16", CTA Case No. 8990 docket, p. 357.

corresponding input VAT included in the purchase price of its purchases which amounted to ₱6,149,582.86. The said input VAT paid on its purchases was mainly attributable to its zero-rated sales of electricity, which consisted of 99.32% of its sales in the 3rd quarter of TY 2012.

Petitioner claimed that it did not carry over the said excess and unutilized input VAT to the succeeding quarters[7].

On September 26, 2014, petitioner filed with the BIR an administrative claim for tax refund/credit attaching thereto its supporting documents[8], for its alleged excess and unutilized input VAT for the period covering July 1, 2012 to September 30, 2012.

For alleged failure of respondent to act on its administrative claim for refund/tax credit, petitioner filed a Petition for Review[9] with the Court in Division on February 20, 2015, docketed as CTA case No. 8990.

In his Answer[10], respondent basically argued that the taxpayer bears the burden of establishing the factual and legal bases of its claim for tax refund or credit, which burden petitioner failed to discharge.

During the trial, only petitioner presented evidence in support of its case. Respondent, did not.

On August 1, 2017, the Court in Division rendered the assailed Decision denying the Petition for Review for lack of merit. The Court in Division found petitioner not entitled to the refund of its purchases of domestic goods and services necessary for the development, construction and installation of its generation facilities since it should not have paid in the first place any input VAT for the said purchases for being VAT zero-rated. Its remedy should be against the seller who shifted the burden to it.

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[7] Exhibits "P-17" to "P-21".
[8] Exhibits "P-22", "P-23", "P-24", and "P-25", CTA Case No. 8990 docket, pp. 367, 368 to 369, 370, and 371 to 372, respectively.
[9] CTA Case No. 8990 Docket, pp. 6 to 13.
[10] CTA Case No. 8990 Docket, pp. 97 to 101.

Aggrieved, petitioner moved for a new trial and/or reconsideration on August 17, 2017, but the same was denied in the equally assailed Resolution of December 12, 2017.

Hence, this appeal via a Petition for Review filed through registered mail with the Court *En Banc*[11] on January 19, 2018[12].

On March 22, 2018, respondent, in compliance with the Court *En Banc* Resolution dated February 12, 2017[13], filed his Opposition Re: Petition for Review dated 19 January 2018[14].

On April 11, 2018, the case was deemed submitted for decision.[15]

THE ISSUES

Petitioner submits the following issues for the resolution of the Court *En Banc*:

1. WHETHER OR NOT THE COURT IN DIVISION ERRED WHEN IT DENIED PETITIONER'S CLAIM FOR INPUT VAT REFUND OR TAX CREDIT ON THE BASIS OF REPUBLIC ACT NO. 9513.

2. WHETHER OR NOT THE COURT IN DIVISION ERRED WHEN IT DENIED PETITIONER'S MOTION FOR NEW TRIAL ON THE GROUND THAT THERE WAS NO NEWLY DISCOVERED EVIDENCE.

Petitioner's arguments

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[11] Minute Resolution, *En Banc* docket, p. 5.
[12] *En Banc* docket, pp. 6-41.
[13] *En Banc* Docket, pp. 85-86.
[14] *En Banc* Docket, pp. 92-102.
[15] *En Banc* Docket, pp. 105-106.

Petitioner contends that in denying its claim for refund/tax credit, the Court rendered meaningless and ineffectual the provisions of Republic Act (R.A.) No. 9513[16]. The said law provides tax incentives to encourage private investments in renewable energy (RE) projects by granting VAT zero-rating to their purchases of domestic goods, properties and services necessary for the development, construction and installation of its plant facilities. Allegedly, the Court in Division interpreted the law in a way that is not consistent with the context and intention of R.A. No. 9513 to the prejudice of RE developers, such as petitioner.

Further, petitioner claims that the provisions of R.A. No. 9513 on VAT zero-rating on local purchases of RE developers are not self-executing. To date, however, respondent has yet to issue rules and regulations setting out the details of the input VAT incentives under said law. In the absence of specific rules and regulation, both RE developers and their suppliers are in a blind on how to avail the VAT zero-rating incentive. Thus, petitioner as a RE developer, was constrained to pay for the VAT incorporated in the purchase price and passed on to it as its suppliers.

Petitioner insists that it is entitled to the refund sought under Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended. Further, Section 108(B)(7) of the NIRC of 1997, as amended, expressly provides that sales of power generated through renewable sources of energy by a VAT-registered entity are zero-rated. The said provision alone affords VAT-registered RE generation companies a means to apply for VAT refund/tax credit. Corollarily, Section 15(g) of R.A. No. 9513 must be construed in harmony with the provisions of the NIRC of 1997, to shed light on the intent and purpose of the law.

Petitioner as well finds flaw in the application of the ruling in the case of *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*[17] to the instant case. It avers that the instant case is totally different from the Coral Bay case since the latter involves a domestic corporation

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[16] An Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and for Other Purposes, otherwise known as Renewable Energy Act of 2008.
[17] 793 SCRA 190 (2016).

registered with PEZA as an ecozone enterprise thus, governed by R.A. 7916[18], while the instant case involves a RE developer granted with tax incentives under R.A. 9513. Likewise, the Coral Bay case was decided based on the issuance of Revenue Memorandum Circular (RMC) No. 74-99, while no regulation or even similar issuance was promulgated governing suppliers of RE developers. Finally, the Coral Bay case was based on the cross-border doctrine which is not applicable to the instant case.

Moreover, petitioner avers that the VAT zero-rating on local purchases is an incentive provided under R.A. No. 9513 hence, the enjoyment thereof is optional. By using the word "entitled" rather than "shall", it is plain that it is discretionary on the part of RE developers to avail or not to avail the incentive granted under the said law.

Lastly, under the principle of *solutio indebiti,* the government should not be allowed to unjustly enriched itself at the expense of petitioner who is left with no recourse to recover the VAT erroneously passed onto it by its suppliers notwithstanding the incentive granted in its favor under R.A. No. 9513. Beyond this, to seek refund of the passed-on VAT from its suppliers, as insinuated by the Court in Division, is impractical, impossible and burdensome.

As to the second issue, petitioner claims that the Court in Division erred when it denied its Motion for New Trial given that it wanted to present additional evidence to point out that the refund of the subject input VAT refers to a period when it was not yet registered as a RE developer. Admittedly, the additional documents sought to be presented were already in its possession during trial, however, it did not anticipate the application of R.A. 9513 to the instant case, since neither of the parties invoked it. Besides, the said law was not yet applicable to the period covered. That being the case, petitioner did not present the said documents as they were irrelevant to the case at that time. Finally, it was deprived of its right to due process when its Motion for New Trial was denied as it was not able to argue its position on the application of R.A. 9513 to the instant case.

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[18] Philippine Economic Zone Authority (PEZA) Law.

Respondent's arguments

Respondent sides with the Court saying that it did not err in its interpretation of the provisions of R.A. 9513 and their application to the instant case. R.A. 9513 speaks in clear and categorical language, thus, there is no room for interpretation. As provided under Section 15 thereof, a RE developer is entitled to zero-rated VAT on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities. As such, the provisions of R.A. 9513 are squarely applicable to the instant case given that petitioner is a RE developer and the present claim pertains to the 3rd quarter of TY 2012, when the law was already in effect.

Further, it is erroneous to say that to date no guidelines for the availment of zero-rating under R.A. 9513 have been promulgated. Laws are intended to be self-executing. The effectivity of R.A. 9513 does not depend on the existence or non-existence of implementing rules or regulations. Moreover, the provisions of R.A. 9513, by itself, are already clear and sufficient, including the fiscal incentive granted by the law. In any event, RMC No. 54-2014 already provides the guidelines for the application for VAT refund under Section 112 of the NIRC of 1997.

Respondent likewise opposes petitioner's allegation that the Coral Bay case is not applicable to the present case. Respondent submits that the word "analogy" as used by the Court in Division in the assailed Decision does not require absolute certainty. Thus, under similar circumstances, the principles laid down by the Supreme Court in the Coral Bay case was applied to the present case, by analogy.

And contrary to petitioner's contention that the VAT zero-rating on local purchases is an incentive, the availment of which, is optional under R.A. 9513, the fiscal incentive provided under the said law is mandatory.

Respondent also does not subscribe to petitioner's invocation of the principle of *solutio indebiti* for in order to apply the said legal principle, there must be no binding relation between the payor, who has no duty to pay, and the person who received the payment. Obviously, the said requirement is not obtaining in the present case. Further, a claim for refund is governed by Section 112 of the NIRC of 1997, while *solutio indebiti* is governed by the Civil Code.

Respondent also joins the Court in its ruling that the remedy of petitioner is to claim reimbursement from its suppliers since input tax is not a deductible expense. In any event, the purpose of zero-rating under R.A. 9513 is not for the benefit of the person legally liable to pay the taxes but it is intended to relieve petitioner of the burden of paying indirect tax, which in turn, will benefit consumers who will enjoy a lower cost of electricity, says respondent.

Lastly, respondent believes that the denial of petitioner's Motion for New Trial was in order as the additional documents it endeavored to present were not newly discovered evidence. As admitted by petitioner, the said documents were already in its possession during trial.

RULING OF THE COURT *EN BANC*

After a careful review of petitioner's arguments and the record of the case, the Court *En Banc* finds no reason to reverse or even modify the assailed Decision and Resolution of the Court in Division. All the arguments presented by petitioner are a replica of its arguments in its Omnibus Motion filed on August 17, 2017, which the Court in Division already considered and passed upon in the assailed Resolution of December 12, 2017. In any event, petitioner's arguments shall be discussed briefly to emphasize the ruling of the Court in Division.

Petitioner's main argument is that the Court incorrectly interpreted and applied Section 15(g) of R.A. 9513 and the ruling in *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*[19], as bases for the denial of its claim for input tax refund/credit of its alleged excess and unutilized input VAT attributable to its zero-rated sales for the 3rd quarter of TY 2012 in the amount of ₱6,149,582.86.

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[19] *Supra*, Note 16.

Petitioner claims that the Court interpreted and applied Section 15(g) of R.A. No. 9513 to the instant case in a way that would render said law meaningless and ineffectual. While said law provides incentives to RE developers by granting VAT zero-rating to its purchases of local supply of goods, properties and services needed for its development, construction and installation of its plant facilities to encourage private investments in renewable energy projects, the Court in Division however, made said incentive ineffective by denying its present claim for tax credit/refund of its unutilized and excess input VAT passed on to it by its suppliers.

The Court does not agree.

Note that the Court did not rule that petitioner is not entitled to zero-rated VAT on its local purchases. In fact, this Court has strengthened the fact that petitioner's purchases were zero-rated VAT and that no VAT should have been passed on to it by its suppliers.

As held in the assailed Decision, petitioner, being a RE developer, is entitled to zero-rated VAT on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities, and to the whole process of exploring and developing renewable energy sources up to its conversion into power. As such, no output VAT shall be shifted to or passed on to RE developers, such as petitioner, in connection with their purchases of goods and services needed for the development, construction, and installation of their plant facilities, as well as to the whole process of exploration and development of resources up to its conversion into power. Conversely, no input VAT shall be paid by RE developers on these transactions. There being no input VAT to be paid by RE developers, it necessarily follows that they are not entitled to refund or issuance of TCC from the said purchases.

In other words, petitioner should not have paid input taxes on its purchases of goods and services from VAT-registered suppliers because such purchases were zero-rated, and no output tax was paid therefor by the suppliers.

No input tax should have been shifted or passed on to petitioner. The VAT is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services.[20] Consequently, petitioner is not entitled to its claimed tax refund/credit.

Further, while it is true that Section 112(A) of the NIRC of 1997, as amended, allows petitioner to refund excess and unutilized input VAT, it must be noted that said Section pertains to the application for the issuance of TCC or refund of a taxpayer's creditable input tax due or paid that is attributable to its zero-rated sales. Although the law provides for the zero-rating of petitioner's sales, it is likewise entitled to the zero-rating of its purchases. Thus, there can be no refund of unutilized input taxes when there is no input tax to speak of.

However, the Court did not end in ruling that petitioner is not entitled to its claimed input VAT refund/credit. Applying by analogy the ruling of the Supreme Court in *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*[21], the Court held that petitioner's recourse for its purchases of goods and services where it paid VAT is not a claim for refund against the BIR, but reimbursement of its alleged input VAT paid from its suppliers of goods and services as under R.A. No. 9513, its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities, as well as the whole process of exploring and developing RE resources up to its conversion into power are zero-rated.

In addition, the Court in Division also applied by analogy, Part III, Rule 5, Section 13(G)(b) of the DOE Circular dated May 25, 2009[22] and RMC No. 42-2003 and

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[20] Section 105 of the NIRC of 1997, as amended.
[21] *Supra,* Note 16.
[22] Part III, Rule 5, Section 13(G)(b) of the DOE Circular dated May 25, 2009 states:

PART III.
INCENTIVES FOR RENEWABLE ENERGY PROJECTS AND ACTIVITIES

RULE 5.
GENERAL INCENTIVES AND PRIVILEGES FOR RENEWABLE ENERGY DEVELOPMENT

SEC. 13. Fiscal Incentives for Renewable Energy Projects and Activities ruled that petitioner may validly seek reimbursement of the VAT it paid from its supplier.

As to petitioner's assertion that respondent must refund the VAT erroneously passed on to it by its suppliers pursuant to the principle of *solutio indebiti,* the Court finds the same devoid of merit.

Article 2154 of the Civil Code provides that if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises. In such a case, a creditor-debtor relationship is created under a quasi-contract whereby the payor becomes the creditor who then has the right to demand the return of payment made by mistake, and the person who has no right to receive such payment becomes obligated to return the same. The quasi-contract of *solutio indebiti* harks back to the ancient principle that no one shall enrich himself unjustly at the expense of another. The principle of *solutio indebiti* applies where (1) a payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause.[23]

On the other hand, Section 105 of the NIRC of 1997, as amended, provides that VAT is imposed on any person who,

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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:

xxx xxx xxx

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:

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(b) Purchase of local goods, properties and services needed for the development, construction, and installation of the plant facilities of RE Developers; and

(c) Whole process of exploration and development of RE sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors.

[23] *Moreo-Lentfer v. Wolff*, G.R. No. 152317, 10 November 2004, 441 SCRA 584, 591.

in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services and any persons who imports goods. Clearly, VAT is a tax on the seller of goods and services and importer of goods thus, the duty to pay VAT is not on the buyer or purchaser but on the seller or suppliers. However, being an indirect tax, VAT may be shifted or passed on to the buyer of goods or services as part of the purchase price. In the instant case, petitioner paid for the VAT passed on to it by its suppliers because the latter included the VAT in the purchase price. However, as mentioned earlier, the supplier is the one liable to pay VAT. Hence, petitioner cannot claim that it is the payor of VAT to the government as it is not the person liable to pay the same, but its suppliers. In other words, the principle of *solutio indebiti* does not apply in the present.

For the second issue, the Court *En Banc* is one with the Court in Division in saying that the documents which petitioner endeavored to present do not qualify as newly discovered evidence.

Without any pretension nor hesitation, petitioner admitted that those documents were all in its possession at the time of its presentation of evidence in support of its claim for refund but found them irrelevant to present.

It has also been ruled in a myriad of cases that before a new trial may be granted on the ground of newly discovered evidence, it must be shown (1) that the evidence was discovered after trial; (2) that such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (3) that it is material, not merely cumulative, corroborative, or impeaching; and (4) the evidence is of such weight that it would probably change the judgment if admitted. If the alleged newly discovered evidence could have been very well presented during the trial with the exercise of reasonable diligence, the same cannot be considered newly discovered.[24]

With petitioner's admission, the Court ruled that the said additional documents for presentation during the

[24] *Brig. Gen. Custodio v. Sandiganbayan*, 493 Phil. 194, 2005.

proposed new trial were not the newly discovered evidence contemplated under Section 1, Rule 37 of the Rules of Court.

Further, even assuming that the evidence sought to be introduced by petitioner falls within the category of "newly discovered evidence", the Court in Division still did not err when it denied petitioner's quest for a new trial given that it failed to comply with the requirements mandated under Section 2, Rule 37 of the Rules of Court[25] and the similarly worded Section 6, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA).

As found by the Court in Division, petitioner did not attach to the Omnibus Motion the affidavits of witnesses who would authenticate the alleged documents as well as the documents proposed to be introduced in evidence. To be sure the said lapses cannot simply be ignored by Court.

WHEREFORE, the Petition for Review filed by petitioner Hedcor, Inc. on January 19, 2018, is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision dated August 1, 2017 and Resolution dated December 12, 2017 rendered by the Court's Second Division, are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

[25] Section, Rule 27 of the Rules of Court states:

SEC. 2. Contents of motion for new trial or reconsideration and notice thereof. - The motion shall be in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.

A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in paragraph (a) of the preceding section shall be supported by affidavit of merits which may be rebutted by affidavits. A motion for the cause mentioned in paragraph (b) shall be supported by affidavits of the witnesses by whom such evidence is expected to be given or by duly authenticated documents which are proposed to be introduced in evidence.

xxx xxx xxx

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HEDCOR, INC.
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1761
(CTA Case No. 8990)

Present:

Del Rosario, *P.J.*
Castaneda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, JJ.

Promulgated:

APR 08 2019
3:53 p.m.

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DISSENTING OPINION

MANAHAN, *J.*:

This Court is again confronted with the issue of whether the alleged excess and unutilized input value-added tax (VAT) of renewable energy developers claimed to have been passed on to them by their suppliers may be refunded on the basis of Section 112 (A) of the 1997 National Internal Revenue Code (NIRC).

The majority believes that petitioner in the above-entitled case is not entitled to the claim for refund and that the proper recourse would be to seek reimbursement from its suppliers who erroneously passed on their output VAT on the purchases of goods, properties and services needed for the construction and development of its plant facilities.

I dissent.

While it recognized that petitioner is entitled to a zero-rated VAT on its local purchases, the majority ruled that it is not entitled to the claim for refund of its unutilized/excess input VAT because no VAT should have been passed on to its by its suppliers.

In my humble opinion, the fact that VAT was passed on and paid by the petitioner on its local purchases, should at the very least, give it a right to seek judicial recourse in accordance with relevant laws and earn the privilege of being accorded with the opportunity to present evidence to prove whether or not it fulfills the requisites provided under Section 112 (A) and (C) of the 1997 NIRC, as amended. In fact, the Court in Division, whose conclusion was affirmed by the majority, started its discourse by enumerating the requisites for entitlement and determining whether petitioner satisfied the same until it changed its course and concluded that petitioner is not entitled to input VAT while acknowledging that petitioner's purchases of local supply of goods, properties and services needed for its plant facilities are zero-rated.[1]

The claim for refund of excess and unutilized input VAT is governed by the afore-cited Section 112 of the 1997 NIRC, as amended and this Court has time and again followed the criteria contained therein as its basis for its conclusion on whether to grant or deny claims for refund of the same nature. We reiterate the requisites as follows:

1. The taxpayer is VAT registered;
2. That the claim for refund was filed within the prescriptive period;
3. That such input taxes are attributable to zero-rated or effectively zero-rated sales;
4. The there must be zero-rated or effectively zero-rated sales;
5. That input taxes were incurred or paid;
6. That the input taxes have not been applied against the output tax.

To require petitioner to seek refund from its suppliers instead of the government who possibly received such payments is tantamount to imposing new conditions or norms for claims for refund under Section 112 of the 1997 NIRC, instead of

[1] Eb Docket, page 60 (page 13 of the decision of the Court in Division).

merely interpreting its provisions as ascribed to us as a Court of law.

The issue presented to us predicates the claim for input VAT not only on Section 112 but also on Section 108 (b) (7) of the 1997 NIRC as amended, both of which are quoted below:

> "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 sale and also in taxable or exempt sale of goods of 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.
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> 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.
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> 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."
>
> "Section 108. *Value-Added Tax on Sales of Services and Use or Lease of Properties.* – xxx

> (B) Transactions Subject to Zero Percent (0%) Rate . – The following services shall be subject to zero (0%) rate. 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 energy sources using technologies such as fuel cells and hydrogen fuels."

As I have opined in my Concurring and Dissenting Opinion in the case of *Hinatuan Mining Corporation vs. Commissioner of Internal Revenue*[2] and *CBK Power Company Limited vs. Commissioner of Internal Revenue*[3], there is a need to de-clutter the evidentiary standards for claims for refund of input VAT attributable to zero-rated or effectively zero-rated sales and resolve it on the basis of the requisites I mentioned earlier.

The legal fulcrum of the majority's view is based on the decision of the Supreme Court in *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*[4] and I respectfully believe that the doctrine laid therein is not analogous to the instant case because the latter involves a refund of input taxes originating from sales of local suppliers to PEZA-registered enterprises while herein petitioner is allegedly a Renewable Energy Developer. To then apply the *Coral Bay* case unequivocally to the situation of petitioner may lead to erroneous conclusions given the stark difference in the factual milieu of both cases.

In view of the foregoing, I vote to decide the Petition for Review on the basis of the factual veracity of the evidence presented by both parties instead of denying the claim for refund on the ground relied upon by the majority.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[2] CTA Case No. 9092 dated November 3, 2017.
[3] CTA EB No. 1685 dated February 20, 2019.
[4] G.R. No. 190506, June 13, 2006.