REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2255** (CTA Case No. 9480)
- versus -	Present: **DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
VESTAS SERVICES PHILIPPINES, INC., Respondent.	Promulgated: MAY 19 2022 3:05

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RESOLUTION

RINGPIS-LIBAN, *J.*:

This resolves Petitioner's "Motion for Reconsideration"[1] filed on February 17, 2022 *via* registered mail, with Respondent's "Comment/Opposition (To the Petitioner's Undated Motion for Reconsideration"[2] ("Comment/Opposition") filed on April 04, 2022.

Petitioner's Motion for Reconsideration prays for the following:

1) granting of the instant motion;

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[1] Rollo, pp. 224-239.
[2] *Id.*, pp. 243-261.

2) reversal and setting aside of the Decision[3] promulgated on January 25, 2022 ("Assailed Decision");

3) denial of Respondent's claim for refund of Php134,298,376.32 for lack of factual and legal bases; and

4) granting other just and equitable remedies under the premises.

The dispositive portion of the Assailed Decision reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED**. The Decision dated September 20, 2019 and the Resolution dated February 13, 2020 of the Second Division in the case docketed as CTA Case No. 9480 are **AFFIRMED**.
>
> **SO ORDERED.**"[4]

In his Motion for Reconsideration, Petitioner contends that the Court erred in not applying the Supreme Court case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[5] ("*Pilipinas Total*") in the instant case. According to Petitioner, under Revenue Memorandum Circular No. 54-2014, the current rule is that the taxpayer must submit complete documents at the time of filing of the administrative claim and he or she is barred from submitting additional documents after he or she has filed his or her administrative case.

Petitioner avers as well that Respondent failed to show that it registered with the Department of Energy ("DOE"). Moreover, Respondent failed to comply with Rule 5 of the Implementing Rules and Regulations ("IRR") of Republic Act ("RA") No. 9513 or the Renewable Energy Act of 2008. In the said regulations, Renewable Energy ("RE") Developers are mandated to submit three (3) documents to qualify for value-added tax ("VAT") zero-rating – that is, the DOE Certificate of Registration, Registration with the Board of Investments ("BOI") and Certificate of Endorsement by the DOE.

Likewise, Petitioner argues that the sublease of office by Bayview Technologies, Inc. ("Bayview"), is located in Makati City, which is outside the ecozone of Cagayan Economic Zone Authority ("CEZA"). Thus, the sublease in not qualified for VAT zero-rating.

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[3] *Id.*, pp. 201-215.
[4] *Id.*, Decision dated January 25, 2022, p. 213.
[5] G.R. No. 207112, December 08, 2015.

In closing, Petitioner submits that exhibits of the Respondents should not be given any probative value for being hearsay evidence.

On the other hand, Respondent in its Comment/Opposition claims that the Petitioner cannot raise new matters for the first time on appeal, for this violates the former's rights to due process. Assuming *arguendo* that the new matters can be considered, the same lack factual and legal basis and should not disturb the Assailed Decision.

Respondent maintains that it is not an RE Developer that needs to be registered with the DOE. Additionally, Rule V of the IRR of the Renewable Energy Act of 2008 does not apply to Respondent for the same reason.

Furthermore, as early in its "Petition for Review" filed before the court *a quo*, Respondent already alleged and was able to establish during trial that considering that the leased premises were inside an Information Technology ("IT") ecozone, and were leased out to a registered IT enterprise for its PEZA-registered activities, Bayview's rental payments to Respondent were subject to zero percent (0%) VAT applying the destination principle and cross-border doctrine.

Respondent also asserts that the court *a quo* did not err in admitting the testimony of Mr. Ian Jasper E. Monteras.

Lastly, Respondent disagrees with Petitioner's insistence that *Pilipinas Total* be applied in the case at bar. In *Commissioner of Internal Revenue v. Nokia (Philippines), Inc.*[6] ("*Pilipinas Total*"), it was ruled that a Checklist of Mandatory Requirements for Claims for VAT Credit/Refund is not the request for additional documents contemplated by law.

The court is not persuaded by Petitioner's motion.

First, We find no merit in Petitioner's contention that the Court of Tax Appeals ("CTA") Second Division erred in allowing Respondent to present evidence which were not introduced in the administrative level as this goes against the ruling in *Pilipinas Total.*

[6] CTA EB Case No. 1227 (CTA Case No. 8481), August 11, 2016.

As a "court of record" pursuant to Section 8[7] of RA No. 1125[8], as amended by RA No. 9282[9], the CTA is authorized to conduct *trial de novo*, and consistent with this principle, parties who come to court are required to prove every aspect of their case if they want the Court to take such evidence into consideration. Accordingly, the court *a quo* properly considered the pieces of evidence formally offered by Respondent.

With regard to Petitioner's contention that Respondent should be registered with the DOE and the BOI, and that it needed a Certificate of Endorsement from the DOE for its sale of services be VAT zero-rated, the same is unfounded.

The basis for Respondent's zero-rated sales with EDC Burgos Wind Power Corporation ("EDC") is Section 108(B)(3) of the NIRC of 1997, as amended, which provides that "**[s]ervices rendered to** persons or **entities whose exemption under special laws** or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate"[10]. In relation thereto, Section 15, Chapter VII of the Renewable Energy Act of 2008 states that "[a]ll RE Developers shall be entitled to zero-rated value added tax **on its purchases** of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities."[11]

Simply put, Respondent's VAT zero-rating is a consequence of its being a supplier to an RE Developer. Not being an RE Developer under the law, Respondent is not required to meet the requisites under Rule V of the IRR of the Renewable Energy Act of 2008. Instead, Respondent is required to prove that its sales were rendered to an RE Developer. Respondent was successful in doing so by presenting EDC's DOE Certificate of Registration during trial.

As for Respondent's sublease of a portion of its office space to Bayview, the same is also VAT zero-rated pursuant to the same provision of law, Section 108(B)(3) of the NIRC of 1997, as amended. Bayview's exemption from national and local taxes is derived from its registration with the CEZA as a Cagayan Special Economic Zone and Freeport Enterprise (CSEZFP).

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7 **Section 8.** *Court of record; seal; proceedings.* - The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

8 An Act Creating the Court of Tax Appeals, June 16, 1954.

9 An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, **March 30 2004.**

10 *Emphasis supplied.*

11 *Emphasis supplied.*

Finally, Petitioner's other contentions are mere reiterations of the arguments raised in his Petition for Review. These issues have been amply considered, weighed and resolved in the Assailed Decision, and will not suffice to warrant the reconsideration of the same. Thus, to discuss anew the explanation of the court on these matters is superfluity.

In sum, the Court *En Banc* finds no cogent reason to overturn the Assailed Decision.

WHEREFORE, premises considered, Petitioner's "Motion for Reconsideration" is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice