REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

VESTAS SERVICES PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2479
(CTA Case No. 9544)

Present:

DEL ROSARIO, *P.J.*,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, *JJ.*

Promulgated:
MAR 0 8 2023 11:31am

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court *En Banc*'s resolution is respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Motion for Reconsideration"[1] (**MR**) filed on 07 November 2022[2], with petitioner Vestas Services Philippines, Inc.'s (**petitioner**'s/**VSPI**'s) "Comment/Opposition (To the Motion for Reconsideration dated 07 November 2022)"[3] (**Comment**) filed on 16 January 2023.

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1 *Rollo*, pp. 143-153.
2 Received by the Court on 11 November 2022.
3 *Rollo*, pp. 159-174.

The MR assails the Court *En Banc*'s Decision[4] promulgated on 14 October 2022 (**assailed Decision**). The dispositive portion of which reads:

> ...
>
> **WHEREFORE,** the foregoing considered, the Petition for Review filed by petitioner Vestas Services Philippines, Inc. on 15 June 2021 is hereby **GRANTED**. The assailed Decision dated 11 November 2020 and Resolution dated 19 May 2021, respectively, of the Court's Third Division in CTA Case No. 9544, entitled *Vestas Services Philippines, Inc. v. Commissioner of Internal Revenue* are hereby **REVERSED** and **SET ASIDE**. Accordingly, let the case be **REMANDED** to the Court in Division for further determination of the other requisites for the claim of input Value-Added Tax refund or Tax Credit Certificate from the third quarter of calendar year 2014.
>
> **SO ORDERED.**
>
> ...

In the MR, respondent maintains that a Certificate of Endorsement (**COE**) issued by the Department of Energy (**DOE**) to EDC Burgos Wind Power Corporation (**EDC**), a renewable energy (**RE**) developer, is a mandatory requirement to avail the value-added tax (**VAT**) zero-rating under Republic Act (**RA**) No. 9513 or the *Renewable Energy Act of 2008* in relation to DOE Circular No. DC2009-05-0008, also known as the Implementing Rules and Regulation (**IRR**) of RA No. 9513.

Respondent adds that the incentives under RA No. 9513 are not absolute as they are subject to the conditions set forth under Section 18(C) of the IRR of RA No. 9513, as follows:

> ...
>
> **SEC. 18. Conditions for Availment of Incentives and other Privileges**
>
> ...
>
> ***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**

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[4] Id., pp. 89-128.

Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis.[5]

...

According to respondent, the provision uses the word "*only*" thus denoting that compliance with the said COE is necessary to avail of the VAT zero-rating incentive. Since petitioner failed to present or offer in evidence the required COE issued by the DOE on a *per* transaction basis, its claim for VAT refund or tax credit certificate (**TCC**) should be denied. Respondent cites the cases of *Halliburton Worldwide Limited-Philippine Branch v. Commissioner of Internal Revenue*[6] (**Halliburton**) and *Vestas Services Philippines, Inc. v. Commissioner of Internal Revenue*[7] (**Vestas**) wherein the Court of Tax Appeals (**CTA**) ruled that COE issued by the DOE must be presented to prove that the taxpayer is engaged in zero-rated or effectively zero-rated sales.

Furthermore, respondent claims that Section 18 of the IRR makes no distinction as to what kind of incentives it applies to. Thus, the requirement of COE issued by the DOE applies to all incentives and not only to duty-free importation of RE machinery, equipment and their subsequent sales. To bolster his or her claim, respondent further cites the cases of *Philippine Geothermal Production Company, Inc. v. Commissioner of Internal Revenue*[8] (**Philippine Geothermal**) and *YH Green Energy, Incorporated v. Commissioner of Internal Revenue*[9] (**YH Green**) wherein the CTA ruled that Section 18(C) of the IRR of RA No. 9513 is applicable to VAT zero-rating incentive.

Lastly, respondent avers that tax refunds are in the nature of tax exemptions. Petitioner then has the burden to prove its strict compliance with the necessary conditions for the grant of tax refund or TCC. In herein case, respondent insists that petitioner failed to present EDC's COE (issued by DOE on a *per* transaction basis), and thus its claim for refund must fail.

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5 Emphasis supplied.
6 CTA EB Nos. 2022 and 2042 (CTA Case No. 9449), 09 June 2021.
7 CTA Case No. 9604, 16 September 2020.
8 CTA EB No. 2478 (CTA Case Nos. 9208 and 9274), 14 June 2022.
9 CTA Case No. 9784, 07 December 2021.

On the other hand, petitioner counters that only Supreme Court decisions are binding and form part of the legal system of the Philippines in accordance with Article 8 of the Civil Code.[10] Hence, the Court *En Banc* is not bound by the previous CTA decisions in the *Halliburton, Vestas, Philippine Geothermal* and *YH Green* cases.

According to petitioner, the Court *En Banc* correctly ruled that: (1) a DOE-issued COE is applicable only for the incentive of duty-free importation of RE machinery, equipment and materials; (2) DOE has no mechanism or process for the issuances of the COE; and, (3) except for duty-free importation of RE machinery, equipment and materials, RE Developers are automatically qualified to avail of the incentives under RA No. 9513.

Lastly, petitioner claims that the cases of *Philippine Geothermal* and *YH Green* are not applicable because the facts and the issues raised therein are incongruent with those of the instant case.

We resolve.

After considering the arguments of both parties, the Court *En Banc* is constrained to deny respondent's MR.

It must be emphasized that respondent failed to raise any new argument or present novel matter which the Court *En Banc* has not previously scrutinized, studied, and discussed.

A simple reading of the instant MR would readily yield that the same contains the very identical arguments it earlier raised in his or her "Comment/Opposition (on Petitioner's Petition for Review)"[11] filed before the Court *En Banc*.

In *Licomcen Incorporated v. Foundation Specialists, Inc.*[12], the Supreme Court, citing *Ortigas and Company Limited Partnership v. Judge Tirso Velasco, et al.*[13], held that:

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10 Art. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

11 *Rollo*, pp. 78-82.

12 G.R. No. 167022, 31 August 2007.

13 G.R. No. 109645, 04 March 1996.

> ...
>
> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, x x x deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); i.e., the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc.
>
> ...

For emphasis, however, the Court *En Banc* deems it proper to briefly reiterate the discussion in the assailed Decision as regards respondent's argument that the COE issued by the DOE is a vital requirement for the claim of VAT refund or TCC pursuant to Section 18(C) of the IRR of RA No. 9513.

In the assailed Decision, We have already mentioned that the IRR of RA No. 9513 was amended to clarify that RE Developers are automatically qualified to avail of the incentive of VAT zero-rating *sans* the requirement of COE issued by the DOE on *per* transaction basis, to wit:

> ...
>
> Lastly, it is worth mentioning that the DOE has recently issued Department Circular (**DC**) No. DC2021-12-0042, amending Section 18(C) of the IRR of RA 9513 to state that, as a rule, RE Developers are ***automatically*** qualified to avail of the incentives provided for in RA 9513 after securing a DOE COR, *viz*:
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> > ...
> >
> > SEC. 18. ***Conditions for Availment of Incentives and Other Privileges.***
> >
> > ...

> **C. DOE ENDORSEMENT FOR AVAILMENT OF INCENTIVES AND DUTY-FREE IMPORTATIONS OF MACHINERY, EQUIPMENT, AND MATERIALS**
>
> RE Developers and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be AUTOMATICALLY qualified to avail of the incentives provided for in the Act, OTHER THAN THE INCENTIVE OF DUTY-FREE IMPORTATION OF QUALIFIED MACHINERY, EQUIPMENT, MATERIALS, PARTS AND COMPONENTS, after securing a Certificate of Registration from the DOE.
>
> RE DEVELOPERS THAT IMPORT RE EQUIPMENT, EQUIPMENT, MATERIALS, PARTS AND COMPONENTS SHALL SECURE A CERTIFICATE OF ENDORSEMENT FROM THE DOE, THROUGH THE REMB, ON A PER IMPORTATION BASIS.
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> ...
>
> The foregoing amendment reinforces this Court's position that a supplier of an RE Developer is **not** required to submit the latter's COE issued by the DOE to avail of the VAT zero-rating incentive. There being no categorical provision in Section 18(C), as originally worded, that the submission of a COE applies to *all* the incentives provided for in RA 9513, the implication therefore of the said amendment is not to remove such a requirement but instead to clarify and confirm that prescribing the same was never intended all along.[14]
>
> ...

In addition, on 22 June 2022, the Bureau of Internal Revenue (**BIR**) issued Revenue Regulations (**RR**) No. 7-2022[15] which clarified that local suppliers/sellers of goods, properties, and services of duly registered RE Developers shall only need the DOE registration and Board of Investments (**BOI**) registration for purposes of availing the zero percent VAT rating. The relevant part provides:

> ...
>
> **SECTION 4. FISCAL INCENTIVES FOR RENEWABLE ENERGY PROJECTS AND ACTIVITIES** - The following provisions shall govern the tax incentives and treatments on the DOE-certified existing and new RE developers of RE facilities in consultation with BOI, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications:

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14 Supra at note 4; pp. 124-125; Citations omitted, emphasis and underscoring in the original text.

15 Tax Incentives Under the Renewable Energy Act of 2008 and the Policies and Guidelines for the Availment Thereof.

> ...
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> ***E. Zero Percent Value-Added Tax Rate*** - ...
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> ...
>
> On the other hand, the purchase by an RE Developer of local goods, properties, and services needed for the development, construction, and installation of the plant facilities of RE Developers; and the 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 shall also subject to zero percent (0%) VAT.
>
> Accordingly, local suppliers/sellers of goods, properties, and services of duly-registered RE developers should not pass on the 12% VAT on the latter's purchases of goods, properties and services that will be used for the development, construction and installation of their power plant facilities. This includes the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors.
>
> **The local suppliers of goods, properties, and services shall require from the RE Developer a copy of the latter's BOI Registration and DOE Registration for purposes of availing the zero percent (0%) VAT incentive.**[16]
>
> ...

With the foregoing amendment and issuance, We can only maintain that the COE from the DOE is not a mandatory requirement to avail the VAT zero-rating incentive provided under RA No. 9513.

WHEREFORE, in view of the foregoing, respondent Commissioner of Internal Revenue's Motion for Reconsideration filed on 07 November 2022 is **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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16 Emphasis supplied.

x - x

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice