REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HALLIBURTON WORLDWIDE LIMITED-PHILIPPINE BRANCH, *Petitioner,*	**CTA EB No. 2476** (CTA Case No. 9670)
	Present:
-versus-	**DEL ROSARIO,** *PJ,* **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** and **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 04 2023 3:51 p.m.

x- -x

DECISION

REYES-FAJARDO, *J.*:

Impugned in the Petition for Review[1] dated June 21, 2021 are the Decision[2] dated January 11, 2021 and Resolution[3] dated May 24, 2021 in CTA Case No. 9670, whereby the Court in Division partially granted Halliburton Worldwide Limited – Philippine Branch's refund of excess and unutilized input value added tax (VAT), attributable to its zero-rated sales, covering the four (4) quarters of calendar year (CY) 2015, in the amount of ₱55,610.23.

---

1 *Rollo,* pp. 5-28.
2 *Id.* at pp. 36-67.
3 *Id.* at pp. 68-84.

The antecedents follow.

Petitioner is the Philippine branch office of Halliburton Worldwide Limited, a corporation duly organized and existing under the laws of the Cayman Islands. On August 8, 2013, the Securities and Exchange Commission (**SEC**) issued an amended license to petitioner to do business in the Philippines; to engage in the business of providing oilfield services and products, such as well completion, drilling, cementing, logging, well testing, perforating, production testing and workover, stimulation services and licensing of software and consulting services, and importation and provision of oilfield equipment and technology to the oil and gas industries. Petitioner is also registered with the Bureau of Internal Revenue (**BIR**) as a VAT taxpayer with Taxpayer's Identification No. (**TIN**) 266-369-565-000.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**) vested with authority to carry out the functions and duties of said office, among which, is to decide and grant claims of tax refund and execute and implement tax laws, rules and regulations.

For CY 2015, petitioner filed its Quarterly VAT Returns (BIR Form No. 2550-Q) through the BIR's Electronic Filing and Payment System (eFPS) on the following dates:

Return	Date Filed
VAT Return for the First Quarter	April 27, 2015
VAT Return for the Second Quarter	July 27, 2015
VAT Return for the Third Quarter	October 22, 2015
VAT Return for the Fourth Quarter	January 25, 2016

During the 1st to 4th quarters of CY 2015, petitioner claims that it rendered services to duly registered Renewable Energy (**RE**) Developers and sold goods to its non-resident affiliates doing business outside the Philippines.

Petitioner avers that it incurred input VAT in the aggregate amount of ₱11,849,046.57 for the four (4) quarters of CY 2015, out of which amount, the amount of ₱11,259,584.34 is attributable to its zero-rated sales to duly registered RE Developers and export sales to its non-resident affiliates. Likewise, it alleges that said input VAT for the four (4) quarters of CY 2015 were not applied against its output VAT during and in the succeeding quarters.

On March 30, 2017, petitioner filed with BIR Revenue District Office (RDO) No. 050, its Application for Tax Credits or Refunds (BIR Form No. 1914) for its excess and unutilized input VAT for CY 2015 in the total amount of ₱11,259,584.34.

On August 25, 2017, petitioner filed a Petition for Review before the Court in Division, claiming inaction on the part of respondent and the expiration of the 120-day period within which he could decide on its administrative claim.

On January 11, 2021, the Court in Division rendered a Decision, disposing the case as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review filed on 25 August 2017 by Halliburton Worldwide Limited - Philippine Branch is hereby **PARTIALLY GRANTED**.
>
> Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **FIFTY FIVE THOUSAND SIX HUNDRED TEN PESOS and TWENTY THREE CENTAVOS** (₱55,610.23), representing its unutilized excess input VAT for the four (4) taxable quarters of CY 2015 which is attributable to its zero-rated sales or receipts for the same period.
>
> **SO ORDERED.**

It was found that petitioner is a VAT-registered person who timely filed its administrative and judicial claims for input VAT refund covering the four (4) quarters of CY 2015. Petitioner then reported total zero-rated sales for said periods amounting to ₱175,221,818.06, composed of: *one,* sales to duly registered RE Developers,[4] in the amount of ₱168,387,762.68; and *two,* export sales to non-resident foreign affiliates[5] amounting to ₱6,834,055.38. However, the Court in Division disallowed: *one,* petitioner's entire sales to RE Developers, because it failed to present the pertinent Department of Energy Certificate of Endorsement (DOE-COE), and

---

[4] Energy Development Corporation (EDC) - ₱148,217,576.96; and Maibarara Geothermal, Inc. (MGI) - ₱20,170,185.72. The total thereof is ₱168,387,762.68.

[5] Haliburton Energy Services (Malaysia) (HES) - ₱5,629,746.84, Halliburton Far East Pte. (HFE) - ₱893,544.26, and Halliburton Business Services SDN BHD (HBS) - ₱310,764.28. The total thereof is ₱6,834,055.38.

Board of Investments Certificate of Registration (BOI-COR) of EDC and MGI; and *two,* sales to HES, and HBS in the total amount of ₱5,940,511.12. This rendered the amount of ₱893,544.26, as petitioner's valid zero-rated sales. Therefore, out of its input VAT refund claim in the amount of ₱11,259,584.34, only its valid excess and unutilized input VAT attributable thereto amounting to ₱55,610.23 was allowed as refund.

Petitioner sought,[6] but failed[7] to obtain affirmative relief from the Court in Division. Hence, the present recourse.

Petitioner ascribes error to the Court in Division's finding that it failed to establish its zero-rated sales of services to duly registered RE Developers for the four (4) quarters of CY 2015. Specifically, Republic Act (RA) No. 9513 only requires the presentation of the Department of Energy Certificate of Registration (DOE-COR) to accord 0% VAT sales of services to RE Developers. It produced the respective DOE-COR of its clients EDC and MGI; therefore, its sales of services to them are subject to 0% VAT.

Petitioner also admits that it failed to present during trial, the BOI-COR and DOE-COE of its clients EDC and MGI. It nevertheless claims that said failure was on account of mistake or excusable negligence; hence, the Court in Division should have permitted its motion to reopen trial for the presentation thereof as its evidence.

On these accounts, petitioner concludes that it is entitled to refund its excess and unutilized input VAT, attributable to its zero-rated sales for the four (4) quarters of CY 2015, in the amount of ₱11,259,584.34.

In refutation,[8] respondent counters that the BOI-COR and DOE-COE of its clients EDC and MGI sought to be produced by petitioner after judgment has been rendered were forgotten evidence; hence, the Court in Division is correct in rejecting its plea for reopening of the case for the presentation thereof as its evidence.

---

6 Petitioner's Motion for Reconsideration or Reopening of Trial, filed on January 28, 2021.
7 *Supra* note 3.
8 Respondent's Comment on Petitioner's Petition for Review, posted on February 2, 2022. *Rollo,* pp. 101-109.

For petitioner's failure to present the BOI-COR and DOE-COE of its clients EDC and MGI, its sales of services to them may not be accorded 0% VAT. Thus, the disallowance of input taxes that may be imputed thereon is also in order.

OUR RULING

We deny the Petition.

For a refund claim of excess and unutilized input VAT to prosper, Section 112(A)[9] of the National Internal Revenue Code of 1997, as amended (NIRC, as amended), requires, among others that the claimant be engaged in zero-rated or effectively zero-rated sales. Petitioner anchored its alleged entitlement to zero-rated sales to RE Developers on Section 15(g), Chapter VII of RA No. 9513, otherwise known as the "Renewable Energy Act of 2008," which provides:

> **CHAPTER VII**
>
> **GENERAL INCENTIVES**
>
> **Section 15.** ***Incentives for Renewable Energy Projects and Activities.*** - **RE developers** of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, **as duly certified by the DOE, in consultation with the BOI,** shall be entitled to the following incentives:
>
> ...
>
> (g) Zero Percent Value-Added Tax Rate. - The sale of fuel or power generated from 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, 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.
>
> All **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.**

---

[9] *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 ...

> This provision shall also apply to 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.**[10]

Indeed, an RE Developer's purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities is subject to 0% VAT. Accordingly, local sales of said goods, properties, and services by a VAT-registered person to an RE Developer is likewise subject to VAT zero-rating.

Relevantly, Section 26 of RA No. 9513 requires RE Developers to comply with the requirements that may be imposed by government agencies tasked with the administration of the fiscal incentives under Section 15 of RA No. 9513. In turn, the DOE is the lead agency mandated to implement the provisions of RA No. 9513.[11] Thus, the enjoyment of incentives embodied in Section 15(g) of RA No. 9513 in relation to Section 108(B)(7) of the NIRC, as amended must be read in conjunction with Section 26 of RA No. 9513, which provides:

> **Section 26.** ***Certification from the Department of Energy.*** - All certifications required to qualify RE developers to avail of the incentives provided for under this Act shall be issued by the DOE through the Renewable Energy Management Bureau.
>
> ....
>
> ***Provided,*** **That the certification issued by the Department of Energy shall be without prejudice to any further requirements that may be imposed by the concerned agencies of the government charged with the administration of the fiscal incentives abovementioned.**[12]

Section 33[13] of RA No. 9513 commands the DOE to promulgate the implementing rules and regulations (IRR) of RA No. 9513. The DOE is authorized to determine the required certifications needed to

---

10 Emphasis supplied.

11 Section 5 of RA No. 9513 states: "**Section 5.** ***Lead Agency.*** - The DOE shall be the lead agency mandated to implement the provisions of this Act."

12 Emphasis supplied.

13 **Section 33.** ***Implementing Rules and Regulations (IRR).*** - Within six (6) months from the effectivity of this Act, the DOE shall, in consultation with the Senate and House Committees on Energy, relevant government agencies and RE stakeholders, promulgate the IRR of this Act.

enjoy the benefit of VAT zero-rating of a RE Developer's local purchases under Section 15(g) of RA No. 9513 in relation to Section 108(B)(7), NIRC, as amended. Hence, the DOE issued Department Circular (DC) No. DC2009-05-0008,[14] with Section 18(A), (B) and (C), Rule 5, Part III thereof prescribing the documents required to avail of VAT zero-rating on a RE Developer's local purchases, as follows:

Part III

Incentives for Renewable Energy Projects and Activities

Rule 5

General Incentives and Privileges for Renewable Energy Development

...

SECTION 18. *Conditions for Availment of Incentives and Other Privileges.* -

For purposes of entitlement to the incentives and privileges under the Act, existing and new RE Developers, and manufacturers, fabricators, and suppliers of locally produced RE equipment shall register with the DOE.

A. Registration/Accreditation with the DOE

For purposes of entitlement to the incentives and privileges under the Act, **existing and new RE Developers,** and manufacturers, fabricators, and suppliers of locally-produced RE equipment **shall register with the DOE, through the Renewable Energy Management Bureau (REMB).** The following certifications shall be issued:

(1) ***DOE Certificate of Registration*** **– issued to an RE Developer holding a valid RE Service/Operating Contract.**

...

(2) DOE Certificate of Accreditation – issued to RE manufacturers, fabricators, and suppliers of locally-produced RE equipment, upon submission of necessary requirements to be determined by the DOE, in coordination with the DTI.

B. Registration with the Board of Investments (BOI)

...

[14] Rules and Regulations implementing Republic Act No. 9513.

> **To qualify for the availment of the incentives under Sections 13 and 15 of this IRR, RE Developers** and manufacturers, fabricators, and suppliers of locally-produced RE equipment, **shall register with the BOI.**
>
> ...
>
> 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 Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis.**
>
> The DOE, through the REMB, shall issue said certification within fifteen (15) days upon request of the RE Developer or manufacturer, fabricator, and supplier; *Provided,* That the certification issued by the DOE shall be without prejudice to any further requirements that may be imposed by the government agencies tasked with the administration of the fiscal incentives mentioned under Rule 5 of this IRR.[15]

To sum it up, Section 18(A), (B) and (C), Rule 5, Part III of DC No. DC2009-05-0008, requires the presentation of three (3) types of documents to accord 0% VAT on, among others, an RE Developer's purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities, namely: *one,* DOE-COR; *two,* BOI-COR; and *three,* DOE-COE. Of these three (3) documents, petitioner only presented the pertinent DOE-COR of EDC and MGI.

Petitioner maintains that the DOE-COE, and BOI-COR required by DC No. DC 2009-05-0008 contravenes Section 15(g) of RA No. 9513. As such, the non-presentation thereof is not fatal to its refund claim.

We partly agree with petitioner. To be precise, we hold that: *first,* the DOE-COE is not required to reap the benefit of VAT zero-rating on its sales to EDC and MGI; and *second,* the pertinent BOI-COR is required to confer VAT zero-rating on its sales to such entities. To expound:

---

15 Emphasis supplied.

DOE-COE

True, Section 18(C), Rule 5, Part III of DC No. DC2009-05-0008,[16] commands the presentation of the pertinent DOE-COE to accord 0% VAT on local purchases by an RE Developer. Yet, RA No. 9513 requires endorsement from the DOE only on the circumstances falling under Section 15(b) thereof. These are: *first,* duty-free importation of RE machinery, equipment, materials, and parts thereof; and *second,* any sale, transfer or disposition of said imported capital equipment, machinery or spare parts:

> **CHAPTER VII**
>
> **GENERAL INCENTIVES**
>
> **Section 15.** ***Incentives for Renewable Energy Projects and Activities.*** - RE developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:
>
> . . .
>
> **(b) Duty-free Importation of RE Machinery, Equipment and Materials** - Within the first ten (10) years upon the issuance of a certification of an RE developer, the importation of machinery and equipment, and materials and parts thereof, including control and communication equipment, shall not be subject to tariff duties: *Provided, however,* That the said machinery, equipment, materials and parts are directly and actually needed and used exclusively in the RE facilities for transformation into energy and delivery of energy to the point of use and covered by shipping documents in the name of the duly registered operator to whom the shipment will be directly delivered by customs authorities: *Provided, further,* That **endorsement** of the DOE is obtained before the importation of such machinery, equipment, materials and parts are made.
>
> **Endorsement** of the DOE must be secured before any sale, transfer or disposition of the imported capital equipment, machinery or spare parts is made: *Provided,* That if such sale, transfer or disposition is made within the ten (10)-year period from the date of importation, any of the following conditions must be present:
>
> (i) If made to another RE developer enjoying tax and duty exemption on imported capital equipment;

16 The complete text is cited in page 8 of this Decision.

> (ii) If made to a non-RE developer, upon payment of any taxes and duties due on the net book value of the capital equipment to be sold;
>
> (iii) Exportation of the used capital equipment, machinery, spare parts or source documents or those required for RE development; and
>
> (iv) For reasons of proven technical obsolescence.
>
> When the aforementioned sale, transfer or disposition is made under any of the conditions provided for in the foregoing paragraphs after ten (10) years from the date of importation, the sale, transfer or disposition shall no longer be subject to the payment of taxes and duties;
>
> ...[17]

Reading Section 18 (C), Rule 5, Part III of DOE DC No. 2009-05-0008, with Section 15(b) of RA No. 9513, a DOE-COE is crucial only when the incentive sought to be claimed is the duty-free importation of RE machinery, equipment, materials, and parts thereof, as well as the tax- and duty-free exemption in the event the same was subsequently sold, transferred, or disposed.[18] Most telling is that the specific provision on VAT zero-rating embodied in Section 15(g) of RA No. 9513 does not even hint such DOE-COE as a requirement to claim VAT zero-rating on local purchases by RE Developers:

> (g) Zero Percent Value-Added Tax Rate. - The sale of fuel or power generated from 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, 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.
>
> All 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.
>
> This provision shall also apply to 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.

---

17 Emphases supplied.

18 See *Vestas Services Philippines, Inc. v. Commissioner of Internal Revenue,* CTA EB No. 2479, October 14, 2022.

Therefore, the DOE went past the metes and bounds of Section 15(g) of RA No. 9513 by inserting the DOE-COE as a requirement to claim the incentive of VAT zero-rating, which may not be tolerated. Indeed, an administrative agency issuing regulations may not enlarge, alter or restrict the provisions of the law it administers, and it cannot engraft additional requirements not contemplated by the legislature.[19] The rule-making power must be confined to details for regulating the mode or proceedings in order to carry into effect the law as it has been enacted, and it cannot be extended to amend or expand the statutory requirements or to embrace matters not covered by the statute.[20] To do so constitutes lawmaking, which is generally reserved for Congress.[21]

We, too, are cognizant of DOE DC No. DC 2021-12-0042,[22] that amended Section 18 (C) of DOE DC No. DC 2009-05-0008. Specifically, Section 2 of DOE DC No. DC 2021-12-0042 reflects our present interpretation that: *one,* DOE-COE is *not* a requirement to accord 0% VAT on an RE developer's purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities, among others; and *two,* said DOE-COE is only required for duty-free importation of RE machinery, equipment, materials, and parts thereof:

> **SECTION 2. AMENDMENT TO SECTION 18(C) OF THE RE LAW IRR.** Section 18(C) of DC No. DC2009-05-0008 is hereby amended to read as follows:
>
> xxx
>
> **C. DOE ENDORSEMENT FOR AVAILMENT OF INCENTIVES AND DUTY-FREE IMPORTATIONS OF MACHINERY, EQUIPMENT, AND MATERIALS**
>
> RE [d]evelopers 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

---

19 See *Commissioner of Internal Revenue v. Central Luzon Drug Corporation,* G.R. No. 159647, April 15, 2005.

20 See *Commissioner of Internal Revenue v. Fortune Tobacco Corporation,* G.R. Nos. 167274-75, July 21, 2008.

21 See *Soriano v. Secretary of Finance,* G.R. No. 184450, January 24, 2017.

22 PRESCRIBING AMENDMENTS TO SECTIONS 13(E) AND 18(C) OF DEPARTMENT CIRCULAR NO. DC2009-05-0008, ENTITLED RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9513, OTHERWISE KNOWN AS "THE RENEABLE ENERGY ACT OF 2008."

> QUALIFIED MACHINERY, EQUIPMENT, MATERIALS, PARTS AND COMPONENTS, after securing a Certificate of Registration from the DOE.
>
> RE DEVELOPERS THAT IMPORT RE EQUIPMENT, EQUIPMENT MATERIALS, MATERIALS, PARTS AND COMPONENTS SHALL SECURE A CERTIFICATE OF ENDORSEMENT FROM THE DOE, THROUGH THE REMB, ON A PER IMPORTATION BASIS.
>
> ...

Though DOE DC No. DC 2021-12-0042 was yet to be issued at the time petitioner's sales to EDC and EGI were made, the subsequent issuance thereof reinforces the conclusion that indeed, the DOE-COE is *not* a requirement to accord 0% VAT on a RE Developer's purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.[23]

Ergo, the DOE-COE is *not* a requirement for EDC and MGI to reap the benefit of VAT zero-rating on its local purchases to petitioner under Section 108(B)(7) of the NIRC, as amended, in relation to Section 15(g) of RA No. 9513.

BOI-COR

A *common* requirement to avail of the incentives set forth in Section 15 of RA No. 9513 is that RE Developers must be duly certified by the DOE, *in consultation with the BOI.*[24]

Towards this end, Section 18 (B), Rule 5, Part III of DOE DC No. DC2009-05-0008 provides that a BOI-COR is also required to avail of the incentives set forth in Section 15 of RA No. 9513.[25] Notably, this was not amended by DOE DC No. DC 2021-12-0042. Petitioner failed to present the BOI-COR of EDC and MGI.

---

23 In *Commissioner of Internal Revenue v. T-Shuttle Services, Inc.,* G.R. No. 240729, August 24, 2020, the Supreme Court considered the information contained in Revenue Memorandum Order No. 40-2019, despite such issuance's non-existence at the time the Preliminary Assessment Notice and Final Assessment Notice were issued against the taxpayer therein for purposes of consistency and uniformity, as follows: "While RMO 40-2019 was not yet in force at the time the questioned PAN and FAN in the case were issued, the fact of such subsequent issuance of RMO 40-2019 by the CIR gives the Court all the more reason to affirm, if only for consistency and uniformity, the CTA En Banc's finding that the CIR failed to prove that the PAN and the FAN were properly and duly served upon and received by respondent...."

24 See page 5 of this Decision for the complete text of said provision.

25 See pages 7-8 of this Decision for the complete text of said provision.

In fine, while petitioner may not be faulted in its non-presentation of the pertinent DOE-COE of EDC and MGI, its claim of VAT zero-rating on its sales to EDC and MGI, must be denied for failure to present their BOI-COR during the periods covered by its refund claim.

Petitioner nonetheless asserts that it moved for the reopening of the trial for the presentation of EDC and MGI's DOE-COE and BOI-COR, after the rendition of the impugned Decision. However, the Court in Division erroneously denied such plea, because its failure to present said documents was on account of mistake and excusable negligence.

We differ.

Section 5, Rule 30 of the Rules of Court, as amended,[26] provides the general rule that the presentation of evidence by the parties is done during trial stage.[27] By way of exception, after judgment has been rendered, the aggrieved party may move for new trial to present evidence. The two (2) well-defined grounds for new trial are found in Section 5, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA),[28] which provides:

> **SEC. 5.** *Grounds of motion for new trial.* - A motion for new trial may be based on one or more of the following causes materially affecting the substantial rights of the movant:
>
> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or

---

26 A.M. No. 19-10-20-SC.

27 **Section 5.** *Order of trial.* – Subject to the provisions of Section 2 of Rule 31, and unless the court for special reasons otherwise directs, the trial shall be limited to the issues stated in the pre-trial order and shall proceed as follows:

(a) The plaintiff shall adduce evidence in support of his or her complaint;

(b) The defendant shall then adduce evidence in support of his or her defense, counterclaim, cross-claim and third-party complaint;

...

28 A.M. No. 05-11-07-CTA.

> (b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial and, which, if presented, would probably alter the result.
>
> A motion for new trial shall include all grounds then available and those not included shall be deemed waived.

None of these grounds are present in this case. Particularly, DC No. DC2009-05-0008 had already been in existence way back 2009. Petitioner, too, is well aware of said circular as it recognized the same in its petition for review before the Court in Division.[29] Thus, we cannot lend credence on petitioner's claim that it is of the honest belief that only the DOE-COR is the *sole* document to be produced to confer VAT zero-rating on its sales to EDC and MGI.

Moreover, the evidence petitioner seeks to present was not omitted due to fraud, accident, mistake, or excusable negligence; nor may these documents be considered newly discovered evidence. Being so, such kind of evidence does not justify the grant of a new trial. As aptly observed by the Court in Division:

> It is well-established that a Motion to Reopen Trial like a Motion for New Trial may be granted only upon specific, well-defined grounds set forth in the [Rules of Court]. Unfortunately, petitioner did not mention any circumstance that would justify the reopening of the case for reception of additional evidence.
>
> Here, the additional documents which petitioner asks us to consider and admit are neither newly discovered evidence nor omitted due to fraud, accident, mistake, or excusable negligence. Certainly, by exercising reasonable diligence, it could have requested and offered in evidence the BOI Certificate of Registration and the DOE Certificate of Endorsement of the concerned RE Developers in support of its application for VAT refund. On this basis, the documents attached to petitioner's MR cannot be considered as newly discovered evidence but merely forgotten evidence.
>
> Forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel. Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, a procedure that is not in accord with

[29] Par. 19, Petition for Review. Docket (CTA Case No. 9670), p. 15.

> orderly justice and serves only to delay the proceedings. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence.
>
> Although Section 8 of RA 1125, as amended, creating the CTA, expressly provides that proceedings before this Court shall not be governed strictly by technical rules of evidence and there are instances where the Court allows the reopening of trial even though judgment has already been rendered, still, We find that petitioner has not demonstrated any convincing reason for the Court to apply the technical rules liberally.[30]

In conclusion, the Court in Division refused to accord 0% VAT on petitioner's sales to EDC and MGI.

Rightfully so.

WHEREFORE, the Petition for Review dated June 21, 2021, in CTA EB No. 2476, is **DENIED**, for lack of merit. The Decision dated January 11, 2021 and Resolution dated May 24, 2021 in CTA Case No. 9670, are **AFFIRMED**.

SO ORDERED.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

---

30 Pages 15-16, impugned Resolution dated May 24, 2021. *Rollo*, pp. 82-83.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

With Separate Concurring Opinion.
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
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 case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

HALLIBURTON WORLDWIDE LIMITED – PHILIPPINE BRANCH,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE ,
Respondent.

CTA EB NO. 2476
(CTA Case No. 9670)

Present:

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

Promulgated:
APR 04 2023 3:51p.m.

x - x

SEPARATE CONCURRING OPINION

BACORRO-VILLENA, J.:

I concur in the *ponencia* denying the instant Petition for Review[1] filed by petitioner Halliburton Worldwide Limited – Philippine Branch (**petitioner/HWLPB**) against respondent Commissioner of Internal Revenue (**respondent/CIR**) and affirming the Decision dated 11 January 2021[2] (**Assailed Decision**) and Resolution dated 24 May 2021[3] (**Assailed Resolution**) rendered by the Court in Division in CTA Case No. 9670.

---

1 *Rollo*, pp. 5-29.
2 Division Docket, Volume II, pp. 935-966.
3 Id., pp. 1031-1047.

In the Assailed Decision, the Court in Division *partially granted* petitioner's original Petition for Review[4] and thereby ordered respondent to refund or to issue a tax credit certificate (**TCC**) only in the amount of **₱55,610.23**, representing its unutilized excess input value-added tax (**VAT**) for the four (4) taxable quarters of the calendar year (**CY**) 2015 which is attributable to its zero-rated sales or receipts for the same period.

In particular, the Court in Division denied majority of petitioner's VAT refund claim on that ground that it failed to prove that its sales of services to Renewable Energy (**RE**) Developers, *i.e.*, Energy Development Corporation (**EDC**) and Maibarara Geothermal Incorporated (**MGI**), qualify for VAT zero-rating under Section 15(g)[5] of Republic Act (**RA**) No. 9513 or the *Renewable Energy Act of 2008* and its Implementing Rules and Regulations[6] (**IRR**) because it only presented EDC's and MGI's Department of Energy (**DOE**) Certificates of Registration (**COR**). Otherwise stated, there is no showing that EDC and MGI were both registered with the Bureau of Investments (**BOI**) and were issued DOE Certificates of Endorsement (**COEs**).

Considering, however, that the Court *En Banc* (by unanimous vote of the members then present) has recently declared in *Vestas Services Philippines, Inc. v. Commissioner of Internal Revenue*[7] (**Vestas**) that a DOE-COE is not a requirement to avail of the VAT zero-rating incentive under Section 15(g)[8] of RA 9513, I wish to emphasize that the only remaining basis for failure of the subject sales of services to EDC and MGI to qualify for VAT zero-rating would be petitioner's non-presentation of EDC's and MGI's BOI-COR.

---

4 Id., Volume I, pp. 10-25.

5 **Sec. 15.** *Incentives for Renewable Energy Projects and Activities.* — RE Developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:

...

(g) Zero Percent Value-Added Tax Rate. — The sale of fuel or power generated from 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, 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.

All 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.

This provision shall also apply to 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.

...

6 Department of Energy Circular No. DC2009-05-0008.

7 CTA EB No. 2479 (CTA Case No. 9544), 14 October 2022.

8 Supra at note 5.

In *Vestas*, the Court *En Banc* concluded that a DOE-COE is required *only* for the importation of that Renewably Energy (**RE**) machinery, equipment and materials (and not for VAT zero-rating purposes), to wit:

> ...
>
> **A reading of Section 15 of RA 9513 reveals that the term "endorsement" was only mentioned twice in the whole provision. Both were made in clear reference only to or in connection with the duty-free importation of RE machinery, equipment and materials, and their subsequent sales.**
>
> Similarly, in Section 13 of the IRR of RA 9513, the term "endorsement" was also mentioned thrice under the exemption from duties on RE machinery, equipment, and materials; specifically, under the paragraph governing the sale or disposition of the said capital equipment, *viz*:
>
> ...
>
> **Here, the wordings of the above-quoted provisions are clear. "Endorsement" is only needed for duty-free importation of RE machinery, equipment, and materials, and its subsequent sales. Thus, with respect to the services EDC purchased or secured from petitioner, to avail the VAT zero-rating incentive to the said purchases, the COE appears not to be a requisite. Hence, the COE of EDC is not an evidence to be expected from petitioner to present or produce.**
>
> Moreover, the rule in statutory construction is that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law. Applying the foregoing rule, it is only logical to read the conditions for availment of incentives under Section 18 of the IRR of RA 9513, especially the requirement of the COE by the DOE, as applicable only to the incentives to where the latter was specifically mentioned in Section 13 of the said IRR and in the governing law of RA 9513. Thus, again, the COE issued by the DOE, on a *per* transaction basis, is required *only* for the incentive relating to duty-free importation on RE machinery, equipment, and materials.
>
> The foregoing interpretations are most consistent with the declared policy of RA 9513 (under Section 2 thereof), *i.e.*, to encourage the development of renewable energy resources. If the Court *En Banc* construes the IRR as imposing an additional requirement for the RE Developer to present the COE issued by the DOE, on a *per* transaction basis (to avail the VAT zero-rating incentive), We will be placing an unnecessary burden on the RE Developer and on the taxpayer it contracted with. Likewise, We will be requiring something that is not even required by the law itself.
>
> It is settled rule that in case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails,

> because the said rule or regulation cannot go beyond the terms and provisions of the basic law.[9]
>
> ...

The Court *En Banc* also noted in *Vestas* that based on the Citizen's Charter of the DOE, the Renewable Energy Management Bureau (**REMB**) has no existing mechanism or process for the issuance of a COE for VAT zero-rating.[10] The REMB only issues four (4) types of endorsements, namely: (1) Endorsement to the Securities and Exchange Commission (**SEC**); (2) Endorsement to other concerned National Government Agencies (**NGAs**) and Local Government Units (**LGUs**); (3) Endorsement to Purchase or Transfer or Move Explosives; and, (4) COE for Duty-Free Importation Certification (**DFIC**).[11] Given that Section 18(C)[12] of the IRR[13] of RA 9513 specifically states that it is the REMB which shall issue the COE and that the REMB does not issue such a certification for VAT zero-rating purposes, therein petitioner (taxpayer-claimant) cannot be expected to secure the said requirement because the law does not require the impossible.[14]

As regards the BOI-COR requirement, the *ponencia* aptly pointed out that a common requirement to avail of incentives set forth in **Section 15**[15] of RA 9513 is that RE Developers must be duly certified by the DOE, *in consultation with the BOI*. **Section 18(B)**[16] of the IRR[17] of RA 9513 also clearly provides that a BOI-COR is required to avail of the incentives set forth in Section 15 of RA 9513. Such provision was not amended by DOE Department

---

9 Citations omitted, emphasis and italics in the original text.

10 https://www.doe.gov.ph/sites/default/files/pdf/citizen_charter/doe-citizens-charter-cy-2020-09282020.pdf (Last accessed on 25 January 2023).

11 Id.

12 **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 Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis. (Underscoring supplied)

13 Supra at note 6.

14 *Louis "Barok" C. Biraogo v. The Philippine Truth Commission of 2010*, G.R. No. 192935, 07 December 2010.

15 **Sec. 15**. *Incentives for Renewable Energy Projects and Activities*. — ...

16 **SEC. 18. Conditions for Availment of Incentives and Other Privileges**

...

B. Registration with the Board of Investments (BOI)

...

To qualify for the availment of the incentives under Sections 13 [Fiscal Incentives for Renewable Energy Projects and Activities] and 15 [Incentives for RE Commercialization] of this IRR, RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment, shall register with the BOI. (Underscoring supplied)

17 Supra at note 6.

Circular (**DC**) No. DC2021-12-0042[18], which only amended Sections 13(E)[19] and 18(C)[20] the IRR of RA 9513.

Furthermore, it is worth noting that the Bureau of Internal Revenue (**BIR**) recently clarified, through Revenue Regulations (**RR**) No. 7-2022[21], that: (1) RE Developers must only secure the DOE-COE requirement prior to the first year of availment specifically of the 10% corporate income tax rate incentive; and, (2) RE Developers must register with the BOI to qualify for incentives under RA 9513, without any distinction on the type of incentive, *viz*:

> ...
>
> **SECTION 3. REQUIRED CERTIFICATIONS/ACCREDITATIONS FROM APPROPRIATE GOVERNMENT AGENCIES FOR THE AVAILMENT OF THE TAX INCENTIVES —** RE developers and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall secure the certifications/accreditations listed hereunder before any incentive provided for in the Act may be availed of.
>
> ...
>
> ***B. Certificate of Endorsement by the DOE*** — RE Developers shall secure the Certificate of Endorsement from the DOE prior to the first year of availment of the 10% corporate income tax rate incentive.
>
> Manufacturers, fabricators, and suppliers of locally produced RE equipment who import components, parts, and materials necessary for the manufacture and/or fabrication of RE equipment shall secure a Certificate of Endorsement from the DOE, through the REMB, on a per importation basis.
>
> ***C. Registration with the Board of Investments (BOI)*** — To qualify for incentives under the Act, RE developers, manufacturers, fabricators, and suppliers of locally-produced equipment shall register with the BOI.[22]
>
> ...

Clearly from the foregoing, the subject sales of services to EDC and MGI failed to qualify for VAT zero-rating because petitioner failed to present in evidence EDC's and MGI's BOI-COR, which is a requirement to avail of the

---

[18] PRESCRIBING AMENDMENTS TO SECTIONS 13(E) AND 18(C) OF DEPARTMENT CIRCULAR NO. DC2009-05-0008, ENTITLED RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9513, OTHERWISE KNOWN AS "THE RENEWABLE ENERGY ACT OF 2008".

[19] **SEC. 13. Fiscal Incentives for Renewable Energy Projects and Activities**
...
E. Corporate Tax Rate

[20] **SEC. 18. Conditions for Availment of Incentives and Other Privileges**
...
C. Certificate of Endorsement by the DOE

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

[22] Emphasis and italics in the original text, and underscoring supplied.

incentives under RA 9513, including the VAT zero-rating incentive under Section 15(g)[23] thereof.

All told, I vote to **DENY** the instant Petition for Review for lack of merit.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[23] Supra at note 5.