REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC
****

HEDCOR, INC., Petitioner,	**CTA EB NO. 1836** (CTA Case No. 8931)
	Present:
- versus -	**DEL ROSARIO,** *PJ*, **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** FEB 03 2020 11:39 a.m.

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RESOLUTION

UY, J. :

For resolution is petitioner's ***"Motion for Reconsideration (Re: Decision dated August 5, 2019)"*** filed on September 2, 2019, praying for the reversal and setting aside of this Court's Amended Decision dated August 5, 2019, together with respondent's ***"Opposition (Re: Motion for Reconsideration)"*** filed on October 17, 2019. The dispositive portion thereof reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. The Decision dated October 3, 2017 and Resolution dated March 26, 2018 rendered by the Court in Division in CTA Case No. 8931 are hereby **AFFIRMED**.
>
> **SO ORDERED.**"

Petitioner's Motion for Reconsideration

In the instant *Motion*, petitioner reiterates its previous arguments and contends that the Court *En Banc* erred in denying petitioner's claim for input vat refund or tax credit on the basis of Republic Act (RA) 9513 or the Renewable Energy Act of 2008. Petitioner insists that it is entitled to refund under Section 112(A) of the Tax Code notwithstanding the provisions of the RA 9513. Allegedly, Section 108 (B)(7) of the Tax Code is explicit in granting zero-percent rate to the sale of power generated through renewable energy sources of energy by a VAT-registered entity.

In relation thereto, Section 112(A) of the Tax Code allegedly provides for the requisites for the claim for refund of excess and unutilized input VAT under Section 112 of the Tax Code and petitioner has allegedly complied with all the requisites provided under said Section. However, despite having sufficiently complied with said requisites, this Court nonetheless applied the RA 9513 in deciding this case.

According to petitioner, because the provisions of RA 9513 were never invoked by either party, petitioner never presented evidence of its tax benefits under that statute. And the mere fact that an entity is formed to engage in the exploration, development and utilization of renewable energy resources does not automatically make the entity entitled to the incentives under RA 9513. Relative thereto, petitioner mentions that in the Separate Opinion of Associate Justice Catherine T. Manahan to the assailed Decision dated August 5, 2019, it was stated that a certification from the Department of Energy (DOE) is necessary for petitioner to be entitled to the incentives given under the RA 9513. And since petitioner had not then secured a certification from the DOE when the refund claim was filed, RA 9513 should not be applied to its claim.

Moreover, petitioner contends that the Court *En Banc's* interpretation is not consistent with the context and intention of RA 9513 and that the *Coral Bay case* is not analogous to the present case. Additionally, it is allegedly entitled to the refund of VAT erroneously passed on to it by its suppliers pursuant to the principle of *solutio indebiti.*

Lastly, petitioner avers that the Court *En Banc* erred in denying petitioner's Motion for New Trial on the ground that there was no newly-discovered evidence. In its Decision, the Court itself allegedly admits that the provisions of RA 9513 were applied to the instant case despite the fact that neither of the parties invoked the same. Its application came as a complete surprise to the parties, neither of which could have possibly anticipated that they were required to address the nuances of said law as they applied to this case.

There is therefore a clear need for new trial to enable the petitioner to completely present evidence in support of its claim. Petitioner claims that it was unable to present evidence to show that the refund of input VAT in this case refers to periods wherein petitioner was not yet registered as a Renewable Energy (RE) Developer.

Admittedly, the documents sought to be presented were already in petitioner's possession during trial, it, however, could not have anticipated the application of RA 9513 to this case during trial. Hence, it did not present such evidence since it was not material to this case during trial.

Respondent's Opposition (Re: Motion for Reconsideration)

Respondent, in his *Opposition*, counter-argues that the arguments raised by petitioner in the instant Motion have already been conclusively passed upon and considered by the Court *En Banc* in its Decision promulgated on August 5, 2019.

Petitioner's contention that it is entitled to refund under Section 112(A) of the Tax Code notwithstanding the provisions of the Renewable Energy Act or RA No. 9513 is utterly bereft of merit. Based on the definition of terms under Section 4 (pp) of RA 9513 on Renewable Energy (Systems) Developer or RE Developers, petitioner, as a domestic corporation duly organized under the laws of the Philippines, engaged in the exploration, development, and utilization of hydropower, and actually operation of RE facilities, cannot be doubted as a RE Developer, even when it had not received any certification to that effect.

Respondent further avers that petitioner's local purchases of goods and services are free of VAT, or specifically, subject to the VAT rate of 0%. Thus, any input VAT it paid to the suppliers of said goods and services cannot be claimed against the BIR or respondent. Correspondingly, the Court in Division's denial of petitioner's claim for refund was proper.

Lastly, respondent alleges that claims for refund are strictly construed against the claimant as it partakes the nature of exemptions, and cannot be allowed unless granted in the most explicit and categorical language.

THE COURT'S RULING

Petitioner's *Motion for Reconsideration* lacks merit.

Except for the argument that a certification from the Department of Energy (DOE) issued to petitioner is necessary to allegedly entitle it to the incentives given under RA 9513, the rest of petitioner's arguments in its *Motion for Reconsideration* are mere rehash and reiteration of matters which have already been extensively considered, weighed and resolved in the assailed Decision. Thus, this Court shall no longer belabor, in this Resolution, to repeat the disquisitions made in the said Decision.

According to petitioner, it received its certification as a RE developer only in October 2012, and this was its reason for not availing of the tax incentives under RA 9513. Instead, petitioner claims that it is entitled to its refund claim under Section 112(A) of the Tax Code because it could not have availed of the benefits of RA 9513 when it made its local purchases since it was not yet registered as RE developer in the second quarter of 2012.

We disagree.

It should be noted that the National Internal Revenue Code of 1997 (NIRC) is a general law governing the imposition of national internal revenue taxes, fees and charges.[1] On the other hand, RA 9513 is a special law that aims to promote the development, utilization and commercialization of renewable energy resources. To encourage and promote said policy, the law itself provides tax incentives expressly granted to renewable energy developers.

The question now is: which law must prevail in the instant case, the general law (NIRC) or the special law (RA 9513) ?

The elucidations and ruling of the Supreme Court in the case of *Vinzons-Chato vs. Fortune Tobacco Corporation*[2] are instructive. We quote:

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[1] *Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue,* G.R. No. 198146, August 8, 2017.

[2] G.R. No. 141309, June 19, 2007.

"A general statute is one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class. A special statute, as the term is generally understood, is one which relates to particular persons or things of a class or to a particular portion or section of the state only.

A general law and a special law on the same subject are statutes *in pari materia* and should, accordingly, be read together and harmonized, if possible, with a view to giving effect to both. **The rule is that where there are two acts, one of which is special and particular and the other general which, if standing alone, would include the same matter and thus conflict with the special act, the special law must prevail since it evinces the legislative intent more clearly than that of a general statute and must not be mistaken as intended to affect the more particular and specific provisions of the earlier act, unless it is absolutely necessary so to construe it in order to give its words any meaning at all.** " (*Emphasis supplied*)

Thus, considering that RA 9513 is a special law, it is indubitable that it will prevail over the NIRC. Necessarily, the applicable tax statute in petitioner's case, it being a Renewable Energy (RE) Developer, is RA 9513 and not the NIRC.

It must also be emphasized that RA 9513 was enacted on December 16, 2008 prescribing, among others, the entitlement of VAT zero rating on purchases of local supply of goods, properties and services needed for the development, construction and installation of plant facilities by all renewable energy developers.

On the other hand, as stipulated by the parties in their Joint Stipulation of Facts and Issues filed with the Court in Division, petitioner was registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with Taxpayer Identification Number (TIN) 001-946-873 and with Certificate of Registration Number OCN 4RC0000670842 dated May 2, 1990.[3] Hence, when RA 9513 took effect, it was already a registered VAT taxpayer with the BIR.

Correspondingly, petitioner should have registered and secured

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[3] Summary of Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), CTA Case No. 8931 Docket, Vol. I, p. 226; Decision in CTA Case No. 8931, p. 2

the requisite certification from the DOE prior to the filing of the subject claim in order to avail of the zero-rated VAT treatment on its domestic purchases under RA 9513. It cannot excuse itself from the coverage of the law simply because it had not secured a certificate of registration from the DOE as a RE Developer when it filed its subject refund claim.

Petitioner is reminded that its registration as RE Developer is mandated under RA 9513, and its failure to secure the requisite Certificate of Registration prior to the filing of its refund claim, does not automatically entitle it to invoke the provisions of the NIRC of 1997.

It is well-settled that actions for tax refund or credit, as in the instant case, are in the nature of a claim for tax exemption which is construed *in strictissimi juris* against the taxpayer. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of tax refund or credit.[4] Failure on the part of the taxpayer claimant to discharge said burden and to show strict compliance with legal requirements will necessarily result in the denial of its claim.

WHEREFORE, in light of the foregoing considerations, petitioner's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(I reiterate my Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[4] *Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 222428, February 19, 2018.

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(I reiterate my Separate Opinion)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice