REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HEDCOR, INC.,
Petitioner,

CTA EB No. 1913
(CTA Case No. 8875)

-versus-

Present:

Del Rosario, *PJ*,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JUN 29 2020 8:45 a.m.

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DECISION

CASTAÑEDA, JR., *J.*:

Before this Court is a Petition for Review filed by petitioner Hedcor, Inc. ("Petitioner", for brevity) on September 5, 2018 assailing the Decision[1] and Resolution[2] promulgated on July 11, 2017 and on July 30, 2018, respectively, by the then CTA First Division (CTA Division) in the case *Hedcor, Inc. v. Commissioner of Internal Revenue,* docketed as CTA Case No. 8875. The CTA Division ruled that petitioner is not entitled to the

[1] *Rollo*, pp. 40-66, Penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justice Cielito N. Mindaro-Grulla (now Retired). Presiding Justice Roman G. Del Rosario with Concurring and Dissenting Opinion, *Rollo*, pp. 67-70.

[2] *Rollo*, pp. 71-85; Penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Roman G. Del Rosario and by Associate Justice Cielito N. Mindaro-Grulla.

refund or issuance of TCC in the aggregate amount of ₱10,283,416.31, allegedly representing its excess and unutilized input VAT arising from its domestic purchases of goods and/or services attributable to its zero-rated sales of electricity for the first quarter of CY 2012.

The dispositive portion of the July 11, 2017 Decision ("Assailed Decision") reads:

> **WHEREFORE,** in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.
>
> **SO ORDERED.**

The dispositive portion of the July 30, 2018 Resolution ("Assailed Resolution") reads:

> **WHEREFORE**, in light of the foregoing considerations, both respondent's *Manifestation with Motion* and petitioner's *Motion for Reconsideration* are **DENIED**, for lack of merit.

THE FACTS

The facts of this case as found by the then CTA First Division[3] are as follows:

> Petitioner Hedcor, Inc. is a domestic corporation duly organized and existing under Philippine laws, with principal office at 214 Ambuclao 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 acts as a holding company or joint venture partners or investors in the business of developing, operating and/or owning power generation plants and/or converting stations.
>
> Petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with Taxpayer Identification Number (TIN) 001-946-873-000. It was issued BIR Certificate of Registration No. OCN 4RC0000670842 dated May 2, 1990 by the BIR Revenue District Office (RDO) No. 9.

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[3] *Rollo*, pp. 40-51; Citations omitted.

On the other hand, respondent Commissioner of Internal Revenue is the duly appointed Chief of the BIR, and is vested by law with power to decide, approve and grant refund of internal revenue taxes or issue tax credit certificates of input tax due or paid by a VAT-registered person, whose sales are zero-rated or effectively zero-rated, as provided by law. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner filed its amended Quarterly VAT Return for the first quarter of CY 2012 on May 10, 2012. On March 24, 2014, petitioner filed an administrative claim for refund or issuance of TCC in the aggregate amount of ₱10,283,416.31, allegedly representing its excess and unutilized input VAT for the first quarter of CY 2012, together with its supporting documents, with BIR RDO No. 9.

Due to respondent's inaction, petitioner filed the present *Petition for Review* on August 20, 2014.

Respondent thereafter filed his *Answer* on November 17, 2014, interposing the following Special and Affirmative Defenses, to wit:

xxx xxx xxx

> 4. Respondent hereby reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.
>
> 5. Petitioner is not entitled to refund or tax credit in the amount of Php10,283,416.31 representing alleged unutilized input VAT arising from purchases attributable to zero-rated sales of electricity for the first quarter of taxable year 2012.
>
> 6. Taxes collected are presumed to be in accordance with laws and regulations.
>
> 7. All claims for refund are governed by one same rule: that respondent still has to investigate and ascertain the veracity of the claim. As the Supreme Court stated in one case, 'A corporate taxpayer's option to avail of tax credit does not,

however, mean that it is *ipso facto* granted.' Hence, petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue.

8. The instant petition is not warranted for lack of jurisdiction as petitioner prematurely elevated this case to the Honorable Court.

xxx xxx xxx

11. As provided in Revenue Memorandum Order (RMO) No. 53-98 dated June 1, 1998, the complete list of documents required by law are as follows:

xxx xxx xxx

12. Petitioner claims that it timely filed the instant case. It alleges that the 120-day period within which the Commissioner of Internal Revenue (CIR) should act on the administrative claim for refund or tax credit should be reckoned from 24 March 2014, the alleged date of submission of all its supporting documents pursuant to RMO No. 53-98. Since the 120-day period expires on 22 July 2014, petitioner has 30 days from 22 July 2014 or until 21 August 2014 within which to file a petition for review before this Honorable Court.

13. However, petitioner failed to submit the complete documents to substantiate its administrative claim. Perusal of the Bureau of Internal Revenue (BIR) Records of the case does not show that petitioner fully complied with the documentary requirements with regard to its claim for refund.

xxx xxx xxx

16. Alternatively, should the Honorable Court hold that it has jurisdiction, respondent submits

> that the denial by inaction of the administrative claim for refund was proper in all respect.
>
> 17. In action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund. Respondent avers that petitioner failed to establish such right.
>
> 18. As discussed above, there is no record of petitioner ever submitting complete documents to substantiate its administrative claim for refund. Contrary to what is provided by law and jurisprudence, particularly the above-mentioned Section 112 (C) of the Tax Code and Revenue Memorandum Order No. 53-98.
>
> xxx xxx xxx

The case was set for pre-trial conference on February 26, 2015. By agreement of the parties, they subsequently filed their *Joint Stipulation of Facts and Issues* on March 19, 2015, which was approved by the Court in the Resolution dated March 26, 2015. A Pre-Trial Order was issued in accordance thereto on March 31, 2015.

During trial, petitioner presented documentary and testimonial evidence to support its claim. Petitioner presented Arazeli Malapad and Emmanuel Y. Mendoza, the Court-commissioned Independent Certified Public Accountant (CPA), as witnesses.

On the part of respondent, his counsel manifested that he is waiving the presentation of his evidence. On April 20, 2016, respondent filed a *Manifestation*, stating that he is adopting the arguments raised in the *Answer* as his *Memorandum*. On the other hand, petitioner filed its *Memorandum* on June 29, 2016. Correspondingly, this case was considered submitted for decision on July 15, 2016.

On July 11, 2017, the CTA Division denied the Petition for Review for lack of merit. Je

On July 30, 2018, the CTA Division denied, for lack of merit, both respondent's *Manifestation with Motion* and petitioner's *Motion for Reconsideration.*

On August 20, 2018, the CTA *En Banc* granted the Motion for Extension of Time to File Petition for Review filed by petitioner on August 17, 2018.

Within the period of extension granted, petitioner filed its Petition for Review.

On September 27, 2018, this Court ordered respondent to file a Comment. However, respondent failed to file a Comment on the petition. Thereafter, on January 29, 2019, this case was referred to mediation in the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA).

On February 15, 2019, this Court received the PMC-CTA Form 6- No Agreement to Mediate from the Philippine Mediation Center (PMC) stating that the parties decided not to have their case mediated.

On March 27, 2019, this Court directed the parties to submit their respective Memoranda within thirty (30) days from receipt of the resolution.

On May 2, 2019, respondent filed his Memorandum.

On May 14, 2019, the CTA *En Banc* granted petitioner's Motion for Extension filed by petitioner on May 10, 2019.

On June 10, 2019, petitioner filed its Memorandum.

On June 26, 2019, this case was submitted for decision.

ISSUES

I. WHETHER OR NOT THE CTA FIRST DIVISION ERRED WHEN IT DENIED HEDCOR'S CLAIM FOR INPUT VAT REFUND OR TAX CREDIT ON THE BASIS OF REPUBLIC ACT NO. 9513 (RE ACT)

II. WHETHER OR NOT HEDCOR HAS LEGAL BASIS TO CLAIM INPUT VAT REFUND TAX OR TAX CREDIT

Petitioner submits that the Assailed Decision violated procedural due process. Petitioner states that this Petition [in the division] was filed under Sections 108 (B)(7) and 112 (A) and (C) of the Tax Code. Petitioner alleges that because it never pleaded the Renewable Energy (RE) Act, its applicability was never raised in issue by either party. Petitioner states that there is no basis to decide its claim based on the provisions of the RE Act since it was not claiming an incentive thereunder. Consequently, petitioner never presented proof or evidence during trial that it was registered as an RE Developer on October 12, 2012. Petitioner alleges that under Section 15 of the RE Act, only those RE developers "duly certified by the DOE" shall be entitled to various tax incentives , including the VAT zero-rating incentive contained in subsection (g) therein. Petitioner alleges that it had no choice but to pay its suppliers for the passed-on VAT on purchases made during the first quarter of 2012.

Petitioner alleges that the RE's provision on the VAT zero-rating on RE Developers' local purchases is not self-executing. Petitioner also alleges that the VAT zero-rating on local purchases is an incentive provided under the RE Act and thus, the enjoyment thereof is merely optional. Petitioner states that the case of *Coral Bay v. Commissioner of Internal Revenue*[4] ("Coral Bay case") is not analogous to this case.

On the other hand, respondent states that when the law speaks in clear and categorical language, there is no room for interpretation, and that the Honorable Court in Division applied the law [RE Act] in its plain and ordinary meaning. Respondent maintains his position that the provisions of RE Act is squarely applicable to petitioner's claim for refund or issuance of TCC allegedly representing excess or unutilized input tax for the first quarter of the calendar year 2012. Respondent elaborates that, *first,* petitioner is considered a renewable energy developer under Re Act, and that, petitioner's claim is covered by the provisions of RE Act because the claim involves the first quarter of calendar year 2012, when RE Act is already in effect for four years.

Respondent argues that laws are made to be self-executing, thus, petitioner cannot simply argue that there are no guidelines for the availment of the zero-rating. Respondent maintains his position that the incentives under the provisions of RE Act is already clear and sufficient on its own and that the fiscal incentive under RE Act shall apply upon effectivity of the Act.

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[4] 793 SCRA 190 (2016).

Respondent also submits that there exists a Revenue Memorandum Circular (RMC) 54-2014 which provides guidelines for the application for VAT Refund under Section 112 of the NIRC of 1997.

Respondent alleges that the RE Developers are still entitled to refund even with the application of the provisions of the RE Act. Respondent also alleges that Coral Bay case is analogous to the case at hand and that the Honorable Court in Division correctly applied RMC No. 42-2003 to the instant case. Respondent states that the VAT zero-rating on the local purchases is a mandatory incentive provided under the RE Act. Respondent argues that petitioner is not entitled to the refund of VAT erroneously passed on to it by its suppliers, pursuant to the principle of *solutio indebiti*.

THIS COURT'S RULING

The petition is denied.

In this case, it is settled that petitioner's sales of electricity generated through hydropower are subject to zero percent (0%) VAT,[5] pursuant to Section 108 (B) (7) of the NIRC of 1997, as amended[6], and Section 4.108-5 (b)(7) of Revenue Regulations (RR) No. 16-2005.[7]

This case involves petitioner's claim for refund and/or issuance of a tax credit certificate (TCC) for the first quarter of 2012 allegedly representing unutilized input value-added tax ('VAT") paid and incurred from its domestic purchases of goods and/or services mostly attributable to its zero-rated sales of electricity.

The issues in this case are not novel. The CTA *En Banc* has already ruled in various CTA EB cases involving the same taxpayer (*i.e.*, Hedcor) with the same issue regarding the applicability of the RE Act in its claim for

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[5] Assailed Decision, pp. 46-50; *Rollo*, pp. 371-375.
[6] "SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —
xxx xxx xxx
(B) Transactions Subject to Zero Percent (0%) Rate. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
xxx xxx 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 emerging energy sources using technologies such as fuel cells and hydrogen fuels."
[7] "SECTION 4.108-5. *Zero-Rated Sale of Services.* —
xxx xxx xxx
(b) Transactions Subject to Zero Percent (0%) VAT Rate. — The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate:
xxx xxx xxx
(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels; *Provided*, however, that zero-rating shall apply strictly to the sale of power or fuel generated through renewable sources of energy, and shall not extend to the sale of services related to the maintenance or operation of plants generating said power."

input VAT refund/TCC: in the case *Hedcor, Inc. v. Commissioner of Internal Revenue*, CTA EB No. 1836,[8] involving the second quarter of 2012, and in the case *Hedcor, Inc. v. Commissioner of Internal Revenue,* CTA EB No. 1761,[9] involving the third quarter of 2012. In these cases, RE Act was applied and the claims were denied because as RE Developer, it 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.

In this case, the CTA Division cited Section 15(g) of RA 9513[10] (RE Act), as follows:

> "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:
>
> xxx xxx xxx
>
> (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." *(Emphasis supplied)*

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[8] Decision, August 5, 2019, and Resolution on Motion for Reconsideration, February 3, 2020.
[9] Decision, April 8, 2019.
[10] AN ACT PROMOTING THE DEVELOPMENT, UTILIZATION AND COMMERCIALIZATION OF RENEWABLE ENERGY RESOURCES AND FOR OTHER PURPOSES, December 16, 2008;"Renewable Energy Act of 2008" (Short Title).

The CTA Division also cited Part III, Rule 5, Section 13 (G)(b) of DOE Circular No. DC2009-05-0008 issued by the Department of Energy (DOE) on May 25, 2009, which implements the above provision, as follows:

"PART III.
Incentives for Renewable Energy Projects and Activities

RULE 5.
General Incentives and Privileges for Renewable Energy Development

SECTION 13. *Fiscal Incentives for Renewable Energy Projects and Activities.* —

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:

(a) Sale of fuel from RE sources 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;

(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." *(Emphasis supplied)*

The CTA Division did not err in applying the RE Act

In this case, petitioner alleges, without showing any proof, that it is not covered by the RE Act during the first quarter of 2012. Petitioner's allegation that it was registered as an RE Developer on October 12, 2012 lacks merit. "It is basic in the rules of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence."[11]

Considering that RE Act already exists in the first quarter of 2012 and that the CTA Division found that petitioner is a renewable energy developer, We find that the CTA Division did not err in applying the RE Act in this case.

We reiterate with approval the discussion of the CTA Division in the assailed Decision,[12] as follows:

> In relation thereto, Section 15(g) of RA No. 9513, a special law, which was approved on December 16, 2008, provides that all renewable energy (RE) developers, such as herein petitioner, are entitled to zero-rated VAT **on their purchases** of local supply of goods, properties and services needed for the development, construction and installation of their plant facilities and 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. xxx xxx xxx

No input VAT to be paid by RE Developers thus, it is not entitled to refund/TCC

We agree with the discussion of the CTA Division, as stated in the assailed Decision:[13]

> It bears emphasis that effective zero-rating is not intended as a benefit to the person legally liable to pay the tax, but to relieve certain exempt entities from the burden of indirect tax so as to encourage the development of particular

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[11] *GSIS v. Prudential Guarantee and Assurance, Inc.*, G.R. Nos. 165585 & 176982, November 30, 2013, citing *Real v. Belo*, 542 Phil. 109 (2007).
[12] *Rollo*, p. 60.
[13] *Id.*, pp. 62-63.

> industries.[14] Before, as well as after, the adoption of the VAT, certain special laws were enacted for the various entities exempting sales of goods or supply of services from indirect taxes at the level of their suppliers.[15] Effective zero-rating was intended to relieve the exempt entity from being burdened with the indirect tax which is or which will be shifted to it had there been no exemption.[16]
>
> Clearly, on the basis of the afore-quoted provisions, petitioner, being an 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.
>
> Evidently, **no output VAT should be shifted to or passed on to RE developers,** such as herein 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 RE sources 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.** *(Emphases Supplied).*

In *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue,*[17] the Supreme Court stated that "As such, the purchases of goods and services by the petitioner that were destined for consumption within the ECOZONE should be free of VAT; hence, no input VAT should then be paid on such purchases, rendering the petitioner not entitled to claim a tax refund or credit. Verily, if the petitioner had paid the input VAT, the CTA was correct in holding that the petitioner's proper recourse was not against the Government but against the seller who had shifted to it the output VAT."

Anent the applicability of the Coral Bay case, the CTA Division discussed in the assailed Resolution,[18] the following: *gr*

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[14] *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009.
[15] *Id.*
[16] *Id.*
[17] G.R. No. 190506, June 13, 2016.
[18] *Rollo*, pp. 77-78.

> Petitioner and Coral Bay Nickel Corporation are similarly situated. **It must be noted that the purchases of both entities are zero-rated.** In the *Coral Bay* case, the High Court ruled that Coral Bay Nickel Corporation, being a PEZA-registered entity, cannot seek from the Bureau of Internal Revenue (BIR) a refund of its unutilized input taxes because sales of goods and services to PEZA-registered entities are subject to zero percent (0%) VAT. Thus, when Coral Bay Nickel Corporation paid input VAT, notwithstanding that under the law it is subject to VAT at zero percent (0%) rate, its recourse is not against the government, but against the seller who shifted to it the output VAT. *(Emphasis Supplied).*

As correctly found by the CTA Division, "petitioner's recourse for its purchases of goods and services where it paid VAT is not a claim for refund against the BIR, but to seek reimbursement of its alleged input VAT paid from its suppliers of goods and services since its purchases of local goods, properties and services needed for the development, construction and installation of the plant facilities as well as its purchases of goods, properties and services for the whole process of exploration and development of renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors or contractors, are subject to zero percent VAT under Sections 106(A)(2)(c) and 108(B)(3) of the NIRC of 1997, as amended by RA No. 9337, in relation to Section 15(g) of RA No. 9513."[19]

In *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation),*[20] the Supreme Court ruled that "it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties."

Based on the foregoing discussions, this Court finds no reversible error to disturb the assailed Decision and Resolution of the then CTA First Division.

WHEREFORE, premises considered, the Petition for Review filed by Hedcor, Inc., is **DENIED** for lack of merit. Accordingly, the July 11, 2017 Decision and the July 30, 2018 Resolution of the then CTA First Division in CTA Case No. 8875 are **AFFIRMED.**

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[19] *Rollo*, pp. 65.
[20] G.R. No. 188016, January 14, 2015 citing *Sea-Land Service Inc. v. Court of Appeals*, G.R. No. 122605, April 30, 2001, 357 SCRA 441, 445-446.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
(with dissenting opinion)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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

HEDCOR, INC. *Petitioner,*	**CTA EB No. 1913** (CTA Case No. 8875)
	Present:
-versus-	Del Rosario, *P.J.* Castaneda, Jr., Uy, Fabon-Victorino, Ringpis-Liban, Manahan, Bacorro-Villena, and Modesto-San Pedro, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 29 2020 8:45 a.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, pp. 56-65.

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.
>
> 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.
>
> 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
Associate Justice

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