REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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PHILIPPINE GEOTHERMAL PRODUCTION COMPANY, INC., *Petitioner,*	**CTA EB No. 2478** (CTA Case Nos. 9208 and 9274)
	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: DEC 13 2022 3:12pm

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RESOLUTION

REYES-FAJARDO, *J.*:

In the Decision[1] dated June 14, 2022, petitioner's refund of alleged excess and unutilized input value-added tax (VAT), imputable to zero-rated sales for the second and third quarters of taxable year (TY) 2013, anchored on Section 108(B)(7) of the National Internal Revenue Code of 1997, as amended (NIRC, as amended), in relation to Section 15 of Republic Act (RA) No. 9513[2] was denied. We reasoned that among the documents required to confer 0% VAT on

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[1] *Rollo,* pp. 73-83.

[2] AN ACT PROMOTING THE DEVELOPMENT, UTILIZATION AND COMMERCIALIZATION OF RENEWABLE ENERGY RESOURCES AND FOR OTHER PURPOSES.

sales of renewable energy (RE) is the DOE Certificate of Endorsement (DOE-COE), pursuant to Section 18 (C), Rule 5, Part III of DOE Department Circular No. DC2009-05-0008.[3] Petitioner failed to present such DOE-COE.

Unfazed, petitioner filed its Motion for Reconsideration[4] on July 1, 2022, claiming that the DOE-COE is not required by Section 15(g) of Republic Act No. 9513, to reap the benefit of VAT zero-rating on its sales of RE. For petitioner, its DOE Certificates of Registration (DOE-COR) is sufficient to accord 0% VAT on its sales of RE. By mandating the DOE-COE as a precondition for conferment of 0% VAT on its sales of RE, the DOE added a requirement not found in Section 15(g) RA No. 9513, which should not be countenanced.

Since it presented its DOE-COR, it satisfactorily demonstrated that its sales of RE are subject to 0% VAT, under Section 108(B)(7) of the NIRC, as amended, in relation to Section 15(g) of RA No. 9513. Hence, petitioner concludes that it is entitled to refund its alleged excess and unutilized input VAT, attributable thereto, for the second and third quarters of TY 2013.

On the other hand, respondent failed to file her comment/opposition on petitioner's motion for reconsideration, despite notice.[5]

OUR RULING

The motion lacks merit.

To recall, petitioner's refund claim covering the second and third quarters of TY 2013 was denied solely because it failed to produce the DOE-COE for said periods. Such document is required by Section 18 (C), Rule 5, Part III of DOE Department Circular No. DC 2009-05-0008, which provides:

Part III

Incentives for Renewable Energy Projects and Activities

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3 Rules and Regulations implementing Republic Act No. 9513.
4 *Rollo*, pp. 98-128.
5 Records verification dated August 30, 2022. *Id.* at p. 132.

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.

...

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.

Meanwhile, 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:
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> ...
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> **(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.
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> **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:
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> (i) If made to another RE developer enjoying tax and duty exemption on imported capital equipment;
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> (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;
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> (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.
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> 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;
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> ...[6]

Reading Section 18 (C), Rule 5, Part III of DOE Department Circular No. DC 2009-05-0008, with Section 15(b) of RA No. 9513, it is

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[6] Emphases supplied.

clear that DOE-COE is indispensable 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.[7] 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 sales of RE:

> (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.
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> 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.
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> 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.

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.[8] 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.[9] To do so constitutes lawmaking, which is generally reserved for Congress.[10]

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

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

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

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

We, too, have observed that the DOE issued Department Circular No. DC 2021-12-0042,[11] whereby it amended Section 18 (C) of DOE DC No. DC 2009-05-0008. Specifically, Section 2 of Department Circular No. DC 2021-12-0042 reflects our present interpretation that: *one,* DOE-COE is *not* a requirement to accord 0% VAT on a RE developer's sales of RE; 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:
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> xxx
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> **C. DOE ENDORSEMENT FOR AVAILMENT OF INCENTIVES AND DUTY-FREE IMPORTATIONS OF MACHINERY, EQUIPMENT, AND MATERIALS**
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> 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 QUALIFIED MACHINERY, EQUIPMENT, MATERIALS, PARTS AND COMPONENTS, after securing a Certificate of Registration from the DOE.
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> 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.
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> ...

Though DOE Department Circular No. DC 2021-12-0042 was yet to be issued at the time petitioner's sales of RE 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 sales of RE.[12]

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11 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."

12 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

Ergo, petitioner is correct in claiming that DOE-COE is *not* a requirement to reap the benefit of VAT zero-rating under Section 108(B)(7) of the NIRC, as amended, in relation to Section 15(g) of RA No. 9513.

Be that as it may, 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.*[13]

Towards this end, Section 18 (B), Rule 5, Part III of DOE Department Circular No. DC 2009-05-0008 provides that a Board of Investments (BOI) Certificate of Registration is also required to avail of the incentives set forth in Section 15 of RA No. 9513. Notably, this was not amended by DOE Department Circular No. DC 2021-12-0042, thus:

> *B. Registration with the Board of Investments (BOI)*
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> ...
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> **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.**[14]

Relevantly, cases before us are litigated *de novo* where party litigants should prove every minute aspect of their cases.[15] Petitioner failed in this regard.

To be precise, petitioner presented its BOI COR Nos. 2014-066,[16] and 2014-067,[17] together with the corresponding general and specific

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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...."

13 See page 4 of this Resolution.

14 Boldfacing supplied.

15 See *Commissioner of Internal Revenue v. Philippine Bank of Communications,* G.R. No. 211348, February 23, 2022.

16 Exhibit "P-10." Docket (CTA Case No. 9208), p. 1755.

17 Exhibit "P-8." *Id.* at p. 1748.

terms and conditions,[18] all of which were issued only on April 15, 2014. On the other hand, petitioner's refund claim in this case covers the second and third quarters of TY 2013. It simply means that there was no proof that petitioner was registered with the BOI during the subject period of its refund claim, as required by Section 15 of RA No. 9513, in relation to Section 18 (B), Rule 5, Part III of DOE Department Circular No. DC 2009-05-0008. For this reason, petitioner's refund claim must still be rejected.

WHEREFORE, petitioner's Motion for Reconsideration, filed on July 1, 2022, is **DENIED**.

SO ORDERED.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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

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18 Exhibit "P-9" for BOI COR No. 2014-067, *id.* at pp. 1749-1754. Exhibit "P-11" for BOI COR No. 2014-066, *id.* at pp. 1756-1763.

I maintain my DO.
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice