14-000091-0068

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 8784

CBK POWER COMPANY LIMITED,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo St., Legazpi Village
Makati City

ATTY. CLARISSA J. VIRTUDES-BABARAN
Bureau of Internal Revenue
Rm. 703, Litigation Division, BIR National Office Bldg.,
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

ATTY. CARMENCITA P. VICTORINO
(Counsel for Petitioner)
41 Galaxy Road, Cielito Homes II, Brgy. San Isidro
Ortigas Avenue, Taytay
Rizal

GREETINGS:

You are hereby notified by these presents that on **April 25, 2025,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **April 28, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CBK POWER COMPANY LIMITED, Petitioner,	**CTA CASE NO. 8784**
	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson*, **BACORRO-VILLENA**, and **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated:
	APR 25 2025; 9:20AM

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RESOLUTION

DEL ROSARIO, P.J.:

For the Court's resolution is **Petitioner's Motion for Reconsideration (Re: Amended Decision dated October 31, 2024)**, filed on November 18, 2024, with respondent's **Opposition (Re: Motion for Reconsideration of the Amended Decision dated 31 October 2024)**, filed on January 2, 2025.

Petitioner moves for the reconsideration of the Amended Decision promulgated on October 31, 2024, the dispositive portion of which reads:

> **WHEREFORE**, the Petition for Review filed by CBK Power Company Limited on March 21, 2014 is still **DENIED** for lack of merit.
>
> **SO ORDERED.**[1]

Petitioner seeks reconsideration of the assailed Amended Decision based on the following grounds:

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[1] CTA Docket, Vol. V, pp. 3089-3102.

a. Petitioner is entitled to the issuance of a cash refund/VAT refund for the period January 1, 2012 to December 31, 2012 under Section 108(B)(7) of the National Internal Revenue Code (NIRC) of 1997, as amended by R.A. No. 9337;

b. Petitioner's administrative and judicial claims for the cash refund/VAT refund of unutilized input taxes for the period January 1, 2012 to December 31, 2012 were seasonably filed;

c. Petitioner's sale of electricity generated through hydropower to the National Power Corporation (NPC) for the period January 1, 2012 to December 31, 2012 are subject to zero-percent (0%) VAT pursuant to Section 108(B)(7) of the NIRC of 1997, as amended;

d. Petitioner's claimed unutilized input taxes amounting to ₱50,060,766.08, for the period January 1, 2012 to December 31, 2012, were all attributable to petitioner's zero-rated sales for the same period, and remains unutilized by petitioner and were not applied against any output tax liability;

e. The absence of the TIN of NPC in petitioner's VAT Official Receipts for CY 2012 should not have resulted in the denial of petitioner's claim for the issuance of a cash refund/VAT refund for the period January 1, 2012 to December 31, 2012; and,

f. Quasi-contract or *solutio indebiti* applies to petitioner's claim for VAT refund, since respondent received something that it was not entitled to.

In his Opposition, respondent contends that petitioner's insistence that it had complied with all of the requisites in order to be entitled to a refund representing unutilized input taxes is untenable.

THE COURT'S RULING

Petitioner's Motion for Reconsideration is unmeritorious.

With respect to petitioner's arguments (a) and (b), the Court had already passed upon the same in the assailed Amended Decision dated October 31, 2024.

As to its argument (c), the Supreme Court had already settled that petitioner's sales of electricity generated through hydropower to the NPC for the period January 1, 2012 to December 31, 2012 are subject to zero-percent (0%) VAT in G.R. No. 247918.

With regard, however, to argument (d), the Court no longer found it necessary to delve into such argument considering that the sales could not be considered zero-rated in view of petitioner's failure to comply with the invoicing requirements.

The Court will discuss petitioner's arguments (e) and (f) in seriatim.

In determining petitioner's entitlement to a tax refund, the question is whether it has complied with the following established requisites of a valid claim for refund of unutilized input tax, to wit:[2]

1. The taxpayer is VAT-registered;

2. The administrative and judicial claims for refund were filed within their respective prescriptive periods;

3. The taxpayer is engaged in zero-rated or effectively zero-rated sales;

4. The input taxes were incurred or paid;

5. The input taxes are attributable to zero-rated or effectively zero-rated sales; and,

6. The input taxes were not applied against any output VAT liability.

To recall, in the Amended Decision, the Court denied petitioner's claim for refund in the amount of ₱50,060,766.08 for failure to comply with the third requisite, *i.e.*, the taxpayer is engaged in zero-rated or effectively zero-rated sales. Specifically, the Court found that the official receipts evidencing petitioner's zero-rated sales do not indicate the Taxpayer Identification Number (TIN) of its client, NPC.

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[2] *CBK Power Company Limited vs. Commissioner of Internal Revenue,* G.R. No. 247918 dated February 1, 2023.

First, petitioner argues that the requirement to include the TIN of the purchaser became effective when Section 237 of the NIRC was amended by Republic Act No. 10963[3] in 2017.

Petitioner's argument that the requirement to indicate the TIN of the purchaser, customer or client is a recent introduction in our tax laws is erroneous. Quite the contrary, such requirement has been part of our tax system as early as 1998, when the NIRC of 1997 took effect.

Section 113 of the NIRC of 1997 provides for the invoicing and accounting requirements for VAT-registered persons, to wit:

> **Section 113.** *Invoicing and Accounting Requirements for VAT-Registered Persons. -*
>
> (A) *Invoicing Requirements.* - A VAT-registered person shall, for every sale, issue an invoice or receipt. **In addition to the information required under Section 237**, the following information shall be indicated in the invoice or receipt:
>
> **(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and**
>
> **(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.**
>
> (B) *Accounting Requirements.* - Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance.

While Section 113 of the NIRC of 1997 does not explicitly indicate that the TIN is required to be indicated in the invoice or official receipt, it made reference to the "information required under Section 237," of the NIRC of 1997, which includes the requirement to indicate the TIN of the purchaser. Section 237 states:

> SECTION 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or

[3] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES. It took effect on December 19, 2017.

sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided*, *however*, That in the case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided*, *further*, **That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.**

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to an internal revenue tax from compliance with the provisions of this Section.

Notably, Section 113 of the NIRC of 1997, as amended by Republic Act No. 9337 or the VAT Reform Act of 2005 which took effect on **July 1, 2005**, merely transferred the requirement from Section 237 to Section 113, to wit:

SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* -

(A) *Invoicing Requirements.* - A VAT-registered person shall issue:

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* - The following information **shall** be indicated in the VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);

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> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. Provided, That:
>
> x x x
>
> (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and
>
> *(4)* **In the case of sales in the amount of one-thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person**, the name, business style, if any, address and **taxpayer identification number (TIN) of the purchaser or client**. *(Boldfacing and underscoring supplied)*

The above provision is implemented by Section 4.113-1 of Revenue Regulations (RR) No. 16-2005,[4] as amended, which reads:

> SEC. 4.113-1. *Invoicing Requirements.* –
>
> x x x
>
> (B) *Information contained in VAT invoice or VAT official receipt.* – The following information **shall** be indicated in VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his TIN;
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:
>
> x x x
>
> (3) **In the case of sales in the amount of one thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client**, shall be indicated in addition to the information required in (1) and (2) of this Section. (*Boldfacing and underscoring supplied*)

The transfer of the requirement to indicate the TIN of the purchaser from Section 237 to Section 113 demonstrates the law's intention to simply eliminate Section 113's referencing to Section 237. But what is glaring is that whether under the NIRC of 1997, or under the VAT Reform Act of 2005, the requirement to indicate the purchaser's TIN has always been mandatory. Contrary to petitioner's

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[4] RR No. 16-2005 took effect on November 1, 2005.

position that the requirement was only introduced in 2017, it has been in effect since January 1, 1998, when the NIRC of 1997 took effect.

Truth be told, petitioner just contradicted its argument when it admitted in its Motion for Reconsideration that RR No. 16-2005, which took effect on November 1, 2005, requires the TIN of the purchaser, customer, or client to be indicated in the VAT invoice or VAT official receipt.[5]

Petitioner's sale transactions occurred in taxable year 2012. Undoubtedly, the official receipts pertaining to those sales should comply with the invoicing requirements under Section 113 of the NIRC of 1997, as amended, which include the indication of the purchaser's TIN.

Second, petitioner attempts to convince this Court that the only instance where the claim for refund/TCC may be denied is when the taxpayer-claimant's issued invoice or official receipt fails to indicate that it is a VAT-registered taxpayer. In other words, petitioner contends that as long as the invoice or official receipt states that it is a VAT-registered taxpayer, no other factors can disqualify the sales from being treated as zero-rated.

Third, as a logical extension of its second argument, petitioner asserts that non-compliance by petitioner with the invoicing requirements affects only the purchaser-claimant's claim for refund of input tax, not its own claim for refund.

A closer examination of petitioner's position reveals that it attempts to downplay the mandatory nature of the invoicing requirements. Petitioner effectively argues that its own claim for refund should remain unaffected by its very own act of non-compliance, as long as its official receipts issued to NPC indicate its VAT registration.

In support of its position, petitioner cites a specific question-and-answer in Revenue Memorandum Circular (RMC) No. 42-2003[6] dated **July 15, 2003**, to wit:

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[5] Paragraph 35, Petitioner's Motion for Reconsideration, CTA Docket, Vol. V, p. 3139.
[6] SUBJECT: Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters.

> Q-13: Should penalty be imposed on TCC application for failure of claimant to comply with certain invoicing requirements, (e,g., sales invoices must bear the TIN of the seller)?
>
> A-13: **Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.**
>
> If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g. failure to indicate the TIN), **its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales**. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer. *(Boldfacing supplied)*

Petitioner's second and third arguments lack merit.

In *Eastern Telecommunications Phils. Inc. v. Commissioner of Internal Revenue*,[7] the Supreme Court held that an applicant for a claim for tax refund must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements. Specifically, the invoice or official receipt must comply with the invoicing requirements. In that case, however, petitioner was held to have failed to comply with invoicing requirements when it failed to imprint the word "zero-rated" on its invoices and receipts. Citing the very same question-and-answer in RMC 42-2003 relied upon by herein petitioner, the Supreme Court declared that therein petitioner's failure to comply with the invoicing requirement justified the denial of its **own** claim for refund or tax credit. Said the Supreme Court:

> **An applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.** Consequently, the old CTA, as affirmed by the CTA en banc, correctly ruled that a claim for the refund of creditable input taxes must be evidenced by a VAT invoice or official receipt in accordance with Section 110 (A) (1) of the NIRC. Sections 237 and 238 of the same Code as well as Section 4.108-1 of **RR No. 7-95 provide for the invoicing requirements that all VAT-registered taxpayers should observe, such as: (a) the BIR Permit to Print; (b) <u>the Tax Identification Number of the VAT-registered purchaser</u>; and (c) <u>the word "zero-rated" imprinted thereon</u>. <u>Thus, the failure to indicate the words "zero-rated" on the invoices and</u>**

[7] G.R. No. 183531, March 25, 2015.

receipts issued by a taxpayer would result in the denial of the claim for refund or tax credit. Revenue Memorandum Circular No. 42-2003 on this point reads:

> A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.
>
> If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g. failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer. *(Boldfacing and underscoring supplied)*

Moreover, jurisprudence affirms that a taxpayer-claimant's failure to comply with invoicing requirements anent the issuance of a VAT invoice or official receipt is fatal to its own claim for refund of input tax.

In *Western Mindanao Power Corporation vs. Commissioner of Internal Revenue*,[8] the Supreme Court upheld the denial of petitioner's claim for refund or tax credit on its input taxes on the ground that the official receipts it issued for its zero-rated sales did not comply with the requirement of imprinting the phrase "zero-rated sale".

In *Takenaka Corporation-Philippine Branch vs. Commissioner of Internal Revenue*,[9] the Supreme Court upheld the denial of zero-rating on petitioner's sale of services due to its failure to substantiate the transaction with official receipts. The Court ruled that petitioner did not comply with the invoicing requirements under Section 113 of the NIRC of 1997, as amended, specifically the requirement that official receipts, not sales invoices, must be issued for sale of services.

Irrefutably, as seen in the foregoing cases, a taxpayer's non-compliance with the invoicing requirements proves fatal to its own refund claim.

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[8] G.R. No. 181136, June 13, 2012.
[9] G.R. No. 193321, October 19, 2016.

Fourth, petitioner attempts to convince this Court that since the Quarterly Summary List of Sales requires the indication of the buyer's TIN only for VATable sales, indicating the purchaser's TIN in a VAT invoice or official receipt becomes unnecessary.

Petitioner's interpretation is overly stretched.

Designed to consolidate all sales during the quarter, the Quarterly Summary List of Sales is not intended to capture all information from the source documents such as VAT invoices or official receipts. Such Summary may include only information which the Commissioner deems necessary to assist revenue officers in the conduct of their tax audit. However, this discretion in defining the contents of the Quarterly Summary List of Sales does not, in any way, override the invoicing requirements explicitly set forth under Section 113 of the NIRC of 1997, as amended.

While Section 4.113-3 of RR No. 16-2005 requires the buyer's TIN to be indicated in the Quarterly Summary List of Sales only for VATable transactions, this does not, in any way, override the clear statutory requirement under Section 113 of NIRC of 1997, as amended.

Fifth, petitioner claims that the requirement of indicating the purchaser's TIN is necessary to prevent the danger that the purchaser of goods or services may be able to claim unsubstantiated input tax or non-existent input tax. But since petitioner's sales to NPC are zero-rated, there is no input tax that may be claimed by NPC.

The lack of any harm to the government resulting from non-compliance with the invoicing requirement does not justify non-compliance therewith; otherwise, every requirement under the NIRC of 1997, as amended, could be ignored simply by claiming that no harm arises from such non-compliance.

Finally, petitioner claims that the quasi-contract of *solutio indebiti* applies to petitioner's claim for VAT refund.

Solutio indebiti is articulated in Article 2154 of the Civil Code, *viz*.:

> Article 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

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There is *solution indebiti* where: (1) payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause.[10]

In *CBK Power Company Limited vs. Commissioner of Internal Revenue*,[11] the Supreme Court clarified that the principle of *solutio indebiti* does not apply to cases of refund of input taxes attributable to zero-rated sales as the requisites of solutio indebiti are not complied with. Said the Supreme Court:

> Though the principle of solution indebiti may be applicable to some instances of claims for a refund, the elements thereof are wanting in this case.
>
> First, there exists a binding relation between petitioner and the CIR, the former being a taxpayer obligated to pay VAT.
>
> Second, the payment of input tax was not made through mistake, since petitioner was legally obligated to pay for that liability. The entitlement to a refund or credit of excess input tax is solely based on the distinctive nature of the VAT system. At the time of payment of the input VAT, the amount paid was correct and proper.

In this case, the input VAT payments on purchases were correct and proper at the time they were made. The VAT refund mechanism under Section 112 of the NIRC of 1997, as amended, applies to input taxes that, after offsetting output tax liabilities, result in an excess. It does not cover erroneous payments of input tax. Since petitioner correctly paid input taxes on its purchases, there was no payment by mistake. Thus, *solutio indebiti* does not apply in this case.

WHEREFORE, petitioner's Motion for Reconsideration (Re: Amended Decision dated October 31, 2024) is **DENIED** for lack of merit.

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[10] *Commissioner of Internal Revenue vs. San Miguel Corporation*, G.R. Nos. 180740-180910 November 11, 2019.
[11] G.R. Nos. 198729-30, January 15, 2014.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice