REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PURE ESSENCE INT'L., INC., *Petitioner,*	**CTA CASE NO. 10411** *Members:*
- versus -	**BACORRO-VILLENA**, *Acting Chairperson,* **CUI-DAVID**, *and* **ANGELES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 2 3 2024 11:00 am

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RESOLUTION

CUI-DAVID, J.:

Submitted before the Court is petitioner's **Motion for Reconsideration (Of the *Decision* dated 08 April 2024)** filed on May 2, 2024, with respondent's **Comment (On Petitioner's Motion for Reconsideration)** filed on May 29, 2024.

On April 8, 2024, the Court promulgated a *Decision* denying petitioner's claim for refund of its excess and disallowed utilization of input value-added tax (VAT) for its local purchases for the calendar year ended December 31, 2018, in the amount of ₱256,185,374.47, the dispositive portion of which states as follows:

> "**WHEREFORE**, premises considered, the *Petition for Review* is **DENIED**.
>
> **SO ORDERED.**"

In its Motion, petitioner primarily argues that the Court erroneously determined that petitioner's valid input VAT is barely ₱5,065,059.35 and that only ₱4,839,490.10 of which is attributable to its zero-rated sales transactions –and worse, petitioner was assessed a net output VAT of ₱5,943,194.22

thereby resulting in the denial of its claim for refund. Petitioner posits that the Court's erroneous conclusion mainly stemmed from its misapplication of the second (2nd) and third (3rd) paragraphs of Section 15(g), Chapter VII of Republic Act (RA) No. 9513, otherwise known as the "Renewable Energy Act of 2008" and Section 13(G), Rule 5, Part III of its Implementing Rules and Regulations (IRR).

Petitioner asserts that the 2nd paragraph of Section 15(g), Chapter VII of RA No. 9513 and the corresponding implementing provision in the IRR, do not apply to petitioner's local purchases. Petitioner expounds that based on the Court's tabulation, the following products were purchased by petitioner: methanol, soil investigation, regular fuel oil, caustic soda micro pearls tonsil optimum, crude coconut oil, filter leaves, coal, steam flowmeter, bunker fuel oil, low sulfur fuel oil, sulfuric acid, hydrochloric acid, edible oil, and alfa laval brazed plate heat exchange. Petitioner insists that the Court erred in considering the said products as directly related to the development, construction, and installation of its plant facilities and the whole process of exploring and developing renewable energy sources up to conversion into power. Petitioner maintains that the products purchased from its local suppliers and identified by the Court, such as, but not limited to, methanol, fuel oil, coconut oil, sulfuric acid, and hydrochloric acid, are related to the manufacturing of its biodiesel/biofuel products and are not in any way connected to the development, construction, and installation of its plant facilities or related to the whole process of exploring and developing renewable energy sources up to conversion into power.

Petitioner further asserts that the 3rd paragraph of said Section 15(g) of RA No. 9513 is also not applicable to its local purchases. Petitioner points out that the paragraph specifically pertains to power applications and not to petitioner's local purchases, which are directly attributable to the manufacture of its biodiesel/biofuel products. Petitioner reiterates that since it is not engaged in producing electricity, its sale of biodiesel falls under "non-power applications" as defined under RA No. 9513.

Lastly, petitioner contends that it is entitled to refund input VAT in the amount of ₱262,022,961.53 from its local purchases and that the Court should not have made further disallowances in the computation of its valid input VAT for

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taxable year 2018. Petitioner avers that it is not for the Court to rule in a judicial claim for a refund under Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, whether a taxpayer has insufficient or unsubstantiated input taxes to cover its output tax liability, but instead, it is for the Bureau of Internal Revenue (BIR) to determine via an administrative proceeding for assessment of deficiency taxes. Citing the case of *Chevron Holdings, Inc. (Formerly Caltex Asia, Limited) v. Commissioner of Internal Revenue* (*"Chevron"* case hereafter for brevity),[1] petitioner advances that the Court may not, on its own, deduct the input tax attributable to zero-rated sales from output tax derived from the regular twelve percent (12%) vatable sales and use the resultant amount as the basis in computing the allowable amount for refund. As such, petitioner surmises that since it was able to show that it did not charge the input tax claimed for refund against its output tax, there is no basis for the Court to reduce further the valid input VAT allocated to zero-rated sales with the amount of petitioner's output VAT for taxable year 2018.

On the other hand, in his Comment, respondent submits that the Court correctly ruled for the denial of the present Petition for Review. Respondent states that in claims for tax refund or tax credit, the taxpayer must show the Court that "not only is he entitled under substantive law to his claim for refund to tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim." Respondent continues that in the present case, since he rendered an unfavorable decision at the administrative level by reason of petitioner's failure to substantiate its claim, petitioner cannot thereafter present before the Court documents that it did not submit at the administrative level. Simply put, the Court is confined to a limited issue of whether there is indeed an insufficiency of substantiation requirement to warrant the denial of the claim.

Respondent also professes that petitioner is not the proper party to seek the present refund. He points out that petitioner admitted in its Petition that it is engaged in the manufacture, handle, buy and sell, at wholesale and retail, deal in, license the manufacturing of, export and import, toll manufacture soaps, detergents, and cleansing compounds of every character and descriptions, bleach/disinfectant, soap noodles, glycerin, biofuel and other products that can be derived from but not

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[1] G.R. No. 215159, July 5, 2022.

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limited to coconut. However, since petitioner is registered with the Department of Energy (DOE) as a renewable energy (RE) developer of biomass resources, respondent emphasizes that the provisions of RA No. 9513 apply to the present case. Thus, respondent submits that petitioner's purchases of local supply of goods, properties and services needed for the development, construction, and installation of its plant facilities, as well as the whole process of exploring and developing RE sources up to its conversion into power, are also zero-rated in accordance with Sections 106(A)(2)(c) and 108(B)(3) of the NIRC of 1997, as amended, in relation to Section 15(g) of RA No. 9513.

Respondent expounds that since no output tax shall 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 its plant facilities, conversely, no input tax shall be paid by the RE developers on these transactions. There being no input tax to be paid by RE developers, it necessarily follows that they are not entitled to claim refunds from the said purchases. Hence, respondent asseverates that petitioner's suppliers are the proper parties to seek the tax refund.

After due consideration, the Court finds petitioner's Motion for Reconsideration bereft of merit.

Being an RE Developer, petitioner's local purchases are subject to VAT zero-rating.

To recall, Section 15(g) of RA No. 9513 (Renewable Energy Act of 2008) provides 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**:
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> x x x

(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." *(Emphases and underscoring added)*

Moreover, Part III, Rule 5, Section 13.G of the DOE's Department Circular (DC) No. DC-2009-05-0008 dated May 25, 2009, or the Rules and Regulations Implementing RA No. 9513, provides:

"SEC. 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:

x x x

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:

x x x

(b) **Purchase of local goods, properties and services needed for the development,**

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> **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." *(Emphases added)*

The above provisions clearly provide that all RE developers 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. The zero rating also applies to the whole process of exploring and developing renewable energy sources up to their conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors.

Petitioner is registered with the DOE as an RE developer of biomass resources. Petitioner claims that it has been in operation since July 2007 and can be reasonably presumed that, at present, it has already developed, constructed, and installed its plant facilities. For that reason, the Court agrees that the second paragraph of Section 15(g) of RA No. 9513 does not apply to the local purchases made by petitioner for taxable year 2018.

However, it is not the same as the third paragraph of Section 15(g) of RA No. 9513. The said paragraph does not specify the transactions/activities covered by the latter; it makes no distinction as to what type of transactions are covered by the phrase *"the whole process of exploring and developing renewable energy sources up to its conversion into power."* Since petitioner's purchases from local suppliers such as methanol, fuel oil, coconut oil, sulfuric acid, and hydrochloric acid are related to the manufacturing of its biodiesel/biofuel products, it can reasonably be determined as included in the whole process of exploring and developing renewable energy sources until its conversion into power, and as such are therefore subjected to zero-rated VAT. Accordingly, there being no input VAT to be paid by RE developers, such as herein petitioner, it necessarily follows that the input VAT on said purchases claimed for refund should be disallowed.

The Court has the power to examine the BIR's decision in exercising its exclusive appellate jurisdiction.

Again, petitioner argues that it is the function of the BIR to determine in an administrative proceeding if petitioner had insufficient or unsubstantiated input taxes to cover its output tax liability.

The Court is not swayed.

In the case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*,[2] the Supreme Court clarified that in an appeal by way of petition for review of the unsuccessful administrative claim, the taxpayer must convince the Court that it is entitled under substantive law and that the BIR has no reason to deny its claim, to wit:

> "A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but of the taxpayer's failure to substantiate the claim at the administrative level. **When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that *not only* is he entitled under substantive law to his claim for refund or tax credit, *but also* that he satisfied all the documentary and evidentiary requirement for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place.** Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the

[2] G.R. No. 207112, December 8, 2015.

> administrative level by filing the said document before the CTA." *(Emphases and underscoring supplied)*

Based on the above, there are two (2) matters which must be shown before this Court involving the appeal of an unsuccessful administrative claim, to wit: ***first***, all documentary and evidentiary requirements for an administrative claim were satisfied at the BIR level, and ***second***, the taxpayer's entitlement to the claim for refund or tax credit under substantive law. It is not hard to discern that the ***first*** matter involves a review of whether respondent has a basis in fact and/or in the law for his denial of the administrative claim, while the ***second*** matter to be proved entails a determination of petitioner's compliance with the requisites established by law. More significantly, the ***first*** matter concerns the proper exercise of this Court's exclusive appellate jurisdiction as conferred by law. The ***second*** matter to be proved is in accord with the principle that cases filed in this Court are litigated *de novo.*

In this regard, Section 7(a)(1) and 8 of RA No. 1125,[3] as amended by RA No. 9282,[4] provides as follows:

> "SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:
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> **(a) Exclusive appellate jurisdiction to review by appeal, as herein provided**:
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> **(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;" *(Emphases added)*
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> "SEC. 8. *Court of record; seal; proceedings.* – **The Court of Tax Appeals shall be a court of record** and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may

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3 AN ACT CREATING THE COURT OF TAX APPEALS.
4 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> be needful for the uniformity of decisions within its jurisdiction as conferred by law, but **such proceedings shall be governed strictly by technical rules of evidence**." *(Emphases added)*

Clearly, Section 7(a)(1) confers exclusive appellate jurisdiction to this Court relative to the decisions of respondent. Relative thereto, it must be remembered that appellate jurisdiction is the authority of a court higher in rank to **re-examine** the final order or judgment of a lower court that tried the case now elevated for judicial review.[5] Thus, in exercising its exclusive appellate jurisdiction, this Court is mandated to re-examine respondent's appealed decision, including determining whether respondent's decision was made in accordance with the law. On the other hand, Section 8 declares that this Court is a *"court of record."* As such, it is required to conduct a formal trial (trial *de novo*) where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration.[6] And, in the event of an unsuccessful administrative refund claim, the appealing party must establish anew that it is entitled to the refund being sought under substantive law.

Correspondingly, it becomes imperative for the taxpayer to show this Court that it is entitled under substantive law to its claim for refund or tax credit and satisfied all the documentary and evidentiary requirements for an administrative claim.

Herein, petitioner filed with the BIR an application for a VAT refund representing unutilized input taxes on purchases of goods and services amounting to ₱257,150,311.51 for the taxable year 2018. However, respondent issued a letter dated September 16, 2020, informing petitioner that its application was denied for lack of factual and legal basis. Applying the *Pilipinas Total Gas* case, when petitioner filed an appeal, the Court has the exclusive appellate jurisdiction to re-examine whether the denial of the administrative claim was erroneous and to determine whether petitioner is entitled to a refund under substantive law in accordance with the principle that cases filed in this Court are litigated *de novo*.

As found by the Court during trial, out of the total input VAT on current purchase in the amount of ₱267,599,410.15

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[5] *Daniel Garcia, et al. v. Ernesto De Jesus, et al., etseq.*, G.R. Nos. 88158 and 97108-09, March 4, 1992.
[6] *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

that the Independent Certified Public Accountant examined in his Report dated February 1, 2022, input taxes amounting to ₱262,022,961.53 on petitioner's purchases from local suppliers such as methanol, fuel oil, coconut oil, sulfuric acid, hydrochloric acid are related to the manufacturing of its biodiesel/biofuel products and are therefore considered as zero-rated, meaning, petitioner should pay no input tax to such suppliers. Accordingly, the input taxes in the amount of ₱262,022,961.53 were disallowed in petitioner's claim for a refund. Due to such disallowance, the valid input tax attributable to the total declared zero-rated sales only amounted to ₱4,839,490.10. In determining whether there was excess or unutilized input tax, the Court eventually found that petitioner's input VAT attributable to zero-rated sales in the amount of ₱4,839,490.10 is lower than its output VAT of ₱10,782,684.32. Considering that there was no excess input VAT to be refunded, the claim for refund of input VAT was consequently denied.

Given the foregoing disquisitions, the Court finds no compelling reason to reverse or modify the findings and conclusions reached in the *Decision* promulgated on April 8, 2024.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (of the *Decision* dated 08 April 2024) is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

(I reiterate my Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

HENRY S. ANGELES
Associate Justice