REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

HEDCOR, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8990

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

DEC 1 2 2017 4:08 pm

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RESOLUTION

CASTAÑEDA, JR., ***J.*****:**

For resolution are:

1. petitioner's **Omnibus Motion**, filed on August 17, 2017, without respondent's comment despite notice as per Records Verification dated October 3, 2017; and

2. petitioner's **Motion to Set Oral Arguments**, filed on October 19, 2017.

In the Omnibus Motion, petitioner seeks either a new trial and/or reconsideration of the Court's Decision dated August 1, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED** for lack of merit.

SO ORDERED."

Petitioner anchors its arguments on the following grounds:

A. A new trial is proper in this case. Petitioner's claim was based on the provisions of the Tax Code. The Decision, however, was issued on the basis of the RE Act, which neither party, Petitioner and the Respondent, ever invoked during trial;

B. The Honorable Court's interpretation is not consistent with the context and intention of the RE Act. Statutory construction should not kill but give life to the law;

C. The RE Act's provision on the VAT zero-rating on RE Developers' local purchases is not self-executing. No guidelines for availment of the zero-rating were issued by Respondent;

D. Notwithstanding the RE Act, RE Developers would still be entitled to refund under Section 112(A) of the Tax Code;

E. The *Coral Bay* case is not analogous to the present case;

F. The VAT zero-rating on local purchases is an incentive provided under the RE Act, and thus the enjoyment thereof is merely optional;

G. Petitioner is entitled to the refund of VAT erroneously passed on to it by its suppliers, pursuant to the principle of *solution indebiti*;

H. The Honorable Court incorrectly applied RMC No. 42-2003 to the present case;

I. RE Developers cannot claim unutilized excess input tax as a deductible expense; and

J. The case involves issues that have a pervasive impact on electricity consumers and power producers.

Petitioner contends that its claim was based on the provisions of the Tax Code but the assailed Decision was issued on the basis of Republic Act (R.A.) No. 9513, otherwise known as the Renewable Energy (RE) Act of 2008. It is alleged that neither petitioner nor respondent ever invoked the provisions of R.A. No. 9513 during trial. Petitioner avers that it did not base its claim for refund on R.A. No. 9513; thus, it never presented any proof or evidence that it was registered as an energy developer. On that basis, petitioner posits that there is a need for new trial to enable it to completely present evidence in support of its claim on the ground of newly discovered evidence.

Allegedly, the Court's interpretation is not consistent with the context and intention of R.A. No. 9513. Petitioner stands that the aforesaid law established the framework to accelerate the exploration and development of renewable energy sources, increase the utilization of renewable energy, and encourage the development and utilization of renewable energy resources as tools to effectively prevent and reduce harmful emissions, thereby balance economic growth with protection of health and environment. Petitioner posits that the provision of R.A. No. 9513 on the local purchases of renewable energy developer subject to zero-rated value-added tax (VAT) is not self-executing and cannot be implemented without specific mechanisms or guidelines. Petitioner further claims that notwithstanding the RE Act, RE Developers would still be entitled to refund under Section 112(A) of the Tax Code.

According to petitioner, Section 15(g) of the RE Act must be construed in harmony with the provisions of the Tax Code to shed light on the intent and purpose of the law. Section 15(g) of the RE Act, in conjunction with Sections 108(B)(7) and 112(A) of the Tax Code, allegedly establishes one and the same principle that renewable energy generation companies are eligible to zero-rated VAT and thus allowed to claim refund of or seek issuance of tax credit certificate of its creditable input tax. Petitioner insists that such renewable energy generation companies are authorized under Section 112(A) of the Tax Code to seek refund or tax credit of unutilized excess input tax they paid on purchases attributable to zero-rated sales regardless of whether or not they are registered under the RE Act. Petitioner asserts that the Coral Bay case is not analogous to the present case.

Petitioner believes that this Court may better appreciate the former's arguments by allowing an oral exposition of the said arguments. As such, petitioner requests that oral arguments be heard to assist the Court in rendering a resolution that is just and harmonious with the objectives of the Renewable Energy Act. Petitioner believes that oral arguments would ensure that the Court resolves the Omnibus Motion based on a complete and thorough presentation of the parties' arguments and would allow the Court to ask clarificatory questions and receive direct and immediate answers from the parties' counsel.

Section 3, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> "SEC. 3. *Hearing of the motion.* – The motion for reconsideration or new trial, as well as the opposition thereto, shall embody all supporting arguments and the movant shall set the same for hearing on the next available motion day. Upon the expiration of the period set forth in the next preceding section, without any opposition having been filed by the other party, the motion for reconsideration or new trial shall be considered submitted for resolution, unless the Court deems it necessary to hear the parties on oral argument, in which case the Court shall issue the proper order."

In the case of *Simprosa Vda. De Espina vs. The Hon. Otilio Abaya*[1], the Supreme Court ruled that it is discretionary on the part of the Court whether to grant a hearing for oral argument, to wit:

> "Time and again, the Court stresses that the hearing of a motion for reconsideration in oral argument is a matter which rests upon the sound discretion of the Court. Its refusal does not constitute a denial of due process in the absence of a showing of abuse of discretion. (*see Philippine Manufacturing Co. v. Ang Bisig ng PMC et. al.*, 118 Phil. 431, 434)"

After a careful evaluation of petitioner's arguments on the motion to set oral arguments, the Court finds the motion bereft of merit. There is no necessity to conduct a hearing for an oral argument since petitioner has already discussed extensively its arguments in the Omnibus Motion. Jr

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[1] G.R. No. L-45142, April 26, 1991.

Accordingly, the Court shall proceed to resolve the Omnibus Motion.

Section 1[2], Rule 14 of the RRCTA provides that the Court is not limited to resolve the issues stipulated by the parties but also any related issues necessary to achieve an orderly disposition of the case; that includes the Court applying the correct provision of the law.

Even if the parties did not invoke the provisions under RA No. 9513, the Court finds it just and proper to apply the said law to the instant case since it covers petitioner's transactions as an RE Developer.

As such, the Court reiterates that petitioner is not entitled to input VAT on the ground that the latter's purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities are zero-rated, pursuant to Republic Act (R.A.) No. 9513. Accordingly, no output VAT should be shifted to or passed on to petitioner, as well as no input VAT shall be paid by petitioner. Thus, it necessarily follows that petitioner is not entitled to refund or issuance of TCC from the said purchases.

The Court sustains the ruling in the assailed Decision, as follows:

> "It is clear that petitioner is engaged in zero-rated or effectively zero-rated sales for its sales of electricity. Notwithstanding, it is worthy to note that petitioner's purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities are also zero-rated in accordance with Section 15(g) of R.A. No. 9513 otherwise known as 'Renewable Energy Act of 2008'.
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> R.A. No. 9513, 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

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[2] SECTION. 1. *Rendition of judgment*. – xxx.
In deciding the cases, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

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, as follows:

xxx xxx xxx

The same is implemented by 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 provides as follows:

xxx xxx xxx

It is clear from the foregoing that petitioner, being a 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 plants facilities, and to the whole process of exploring and developing renewable energy sources up to its conversion into power.

As such, no output VAT 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 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.

Simply stated, petitioner should not have paid input taxes on its purchases of goods and services from VAT-registered suppliers because such purchases were zero-rated, that is, no output tax was paid by the suppliers. Accordingly, no input tax should have been shifted or passed on to petitioner. The VAT is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services.[3]

Moreover, Revenue Memorandum Circular (RMC) No. 42-2003 dated July 15, 2003 provides:

> **"Q-3: There are cases where sales transactions of the suppliers of exporters-claimants were already considered as effectively zero-rated by virtue of BIR's approval of their applications for zero-rating. Notwithstanding such approval, these suppliers still issued VAT invoices, which became the sources of the claim for tax credit. Will these input taxes be denied/disallowed or shall the corresponding output taxes be assessed against the suppliers?**
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> A-3: When the supplier has an approved application for effectively zero-rating on its sale to the exporter-claimant, the claimant should be aware that the invoices and receipts from that supplier should not carry any VAT component. With an approved zero-rating from the BIR, the supplier will report its sales as zero-rated.
>
> In case the supplier alleges that it reported such sale as a taxable sale, the substantiation of remittance of the output taxes of the seller (input taxes of the exporter-buyer) can only be established upon the thorough audit of the suppliers' VAT returns and corresponding books and records. It is, therefore, imperative that the processing office recommends to the concerned BIR Office the audit of the records of the seller.
>
> **In the meantime, the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier.**" (*Emphasis supplied*)

The ruling of the Supreme Court in the case of *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*[4] is highly instructive. The High Tribunal held that the purchases of goods and services by a PEZA-

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[3] Section 105 of the NIRC of 1997, as amended.

[4] G.R. No. 190506, June 13, 2016.

registered entity that were destined for consumption within the ecozone should be free of VAT, hence, no input VAT should be paid on such purchases; and in case such input VAT was paid, the PEZA-registered entity's proper recourse would be against the seller who shifted the output VAT. The pertinent portions of the decision are hereunder quoted:

> 'The petitioner's principal office was located in Barangay Rio Tuba, Bataraza, Palawan. Its plant site was specifically located inside the Rio Tuba Export Processing Zone - a special economic zone (ECOZONE) created by Proclamation No. 304, Series of 2002, in relation to Republic Act No. 7916. 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** following RMC No. 42-03, which provides:
>
> > In case the supplier alleges that it reported such sale as a taxable sale, the substantiation of remittance of the output taxes of the seller (input taxes of the exporter-buyer) can only be established upon the thorough audit of the suppliers' VAT returns and corresponding books and records. It is, therefore, imperative that the processing office recommends to the concerned BIR Office the audit of the records of the seller. *[initials]*

In the meantime, **the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier**.

We should also take into consideration the nature of VAT as an indirect tax. Although the seller is statutorily liable for the payment of VAT, the amount of the tax is allowed to be shifted or passed on to the buyer. However, reporting and remittance of the VAT paid to the BIR remained to be the seller/supplier's obligation. Hence, the proper party to seek the tax refund or credit should be the suppliers, not the petitioner.' (*Emphasis supplied*)

Applying the foregoing ruling by analogy, 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 R.A. No. 9513."

As regards petitioner's motion for new trial, the Court likewise finds the same untenable.

Section 1, Rule 37 of the Rules of Court states:

"**SECTION 1.** *Grounds of and period for filing motion for new trial or reconsideration.* – Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or

(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.

Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law."

The Supreme Court ruled in the case of *Manuel Ybiernas vs. Ester Tanco-Gabaldon*[5], that a new trial is proper based on newly discovered evidence when the following conditions are met, to wit:

"Finally, we find that a new trial based on newly discovered evidence is warranted. New trial is a remedy that seeks to 'temper the severity of a judgment or prevent the failure of justice.' Thus, the Rules allows the courts to grant a new trial when there are errors of law or irregularities prejudicial to the substantial rights of the accused committed during the trial, or when there exists newly discovered evidence. The grant or denial of a new trial is, generally speaking, addressed to the sound discretion of the court which cannot be interfered with unless a clear abuse thereof is shown.

This Court has repeatedly held that before a new trial may be granted on the ground of newly discovered evidence, it must be shown (1) that the evidence was discovered after trial; (2) that such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (3) that it is

[5] G.R. No. 178925, June 1, 2011.

material, not merely cumulative, corroborative, or impeaching; and (4) the evidence is of such weight that it would probably change the judgment if admitted. If the alleged newly discovered evidence could have been very well presented during the trial with the exercise of reasonable diligence, the same cannot be considered newly discovered."

Petitioner alleges that the supposed evidence to be presented would prove its claim for refund based on RE Act. The said evidence are in petitioner's possession but were not presented on the belief that they are not material to its claim because the said claim was anchored on Section 108(B), in relation to 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Apparently, the evidence that petitioner would present are not the newly discovered evidence contemplated under Section 1, Rule 37 of the Rules of Court.

A further scrutiny of the records also shows that petitioner failed to comply with the requirements provided under Section 2 of Rule 37 of the Rules of Court as similarly worded in Section 6 of Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA).

Section 6 of Rule 15 of RRCTA provides:

> SEC. 6. *Contents of motion for reconsideration or new trial notice.* – The motion shall be in writing stating its grounds, a written notice of which shall be served by the movant on the adverse party.
>
> A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in subparagraph (a) of the preceding section shall be supported by affidavit of merits which may be rebutted by counter-affidavits. **A motion for the cause mentioned in subparagraph (b) of the preceding section shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.** (*Emphasis supplied.*) Jr

Petitioner did not attach in the Omnibus Motion the affidavits of witnesses by whom the alleged documents to be presented are expected to be given, or duly authenticated documents which are proposed to be introduced in evidence. Clearly, petitioner failed to comply with the requirements provided under the rules in filing the *Motion for New Trial*.

At this juncture, it must be noted that procedural rules are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[6]

In this case, petitioner has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[7] Petitioner already had the opportunity to establish that it is entitled to the tax refund claimed during the trial of the case; and the Court already found that petitioner failed to discharge the burden of proof in establishing its entitlement to the tax refund claimed. The Court may have, again, allowed petitioner to present supplementary evidence to support its claim for tax refund in filing the instant motion for new trial. However, petitioner failed to comply with the requirements of the rules when it had the opportunity to do so.

Since a liberal application of rules of procedure in this case will only result in the wanton disregard of the rules, the Court finds that the denial of the motion for new trial is proper.

WHEREFORE, premises considered, petitioner's **Omnibus Motion** and **Motion to Set Oral Arguments** are **DENIED** for lack of merit.

SO ORDERED.

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

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[6] *Spouses David Bergonia and Luzviminda Castillo, vs. Court of Appeals, et al.,* G.R. No. G.R. No. 189151, January 25, 2012, citing the case of *Asian Spirit Airlines v. Spouses Bautista,* 491 Phil 476 (2005).
[7] *Citibank, N.A. vs. Court of Appeals and the Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.

We concur:

CAESAR A. CASANOVA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice