REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

HEDCOR SABANGAN, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No.9276

Members:

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

Promulgated:
NOV 2 0 2018
2:15 p.m.

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DECISION

MANAHAN, J.:

The Petition for Review filed by Hedcor Sabangan, Inc. prays for the refund or issuance of a tax credit certificate (TCC) in the aggregate amount of ₱12,940,493.14, allegedly representing its unutilized input value-added tax (VAT) for the second (2nd) quarter of taxable year (TY) 2013.[1]

PARTIES

Petitioner Hedcor Sabangan, Inc. is a domestic corporation organized and existing under Philippine Laws, with principal office address at Brgy. Namatec, Sabangan, Mountain Province. It is a registered taxpayer under Certificate of Registration No. OCN 8RC0000056282, with Taxpayer's Identification No. (TIN) 409-507-988-000.[2] Petitioner is likewise registered with the Energy Regulatory Commission (ERC) as an owner/operator of

[1] Summary of the Case, Pre-Trial Order, Court Docket, vol. I, p. 352
[2] Exhibit "P-2".

a Hydroelectric Power Plant at Barangay Namatec, Sabangan, Mountain Province.[3]

As stated in its Articles of Incorporation[4], its primary purpose is to "engage 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 to act as holding company or joint venture partners or investors in the business of developing, operating, and/or owning power generation plants and/or converting stations."

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

FACTS

Petitioner filed its Quarterly VAT Return for the second quarter of TY 2013 on July 24, 2013.[5] Thereafter, on September 30, 2015, petitioner filed its administrative claim for refund of or issuance of tax credit certificate for the unutilized input VAT it allegedly paid for the period covering April 1, 2013 to June 30, 2013 or the second quarter of TY 2013.[6]

Respondent issued a Memorandum on December 29, 2015, stating that petitioner's claim for refund is given due course.[7] Consequently, a Letter dated January 27, 2016 was sent to petitioner informing it that the amount of ₱157,635,185.58 was recommended for issuance of TCC and for the disallowance of the amount of ₱14,569,258.38.[8]

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[3] Exhibit "P-4"
[4] Exhibit "P-1"
[5] Exhibit "P-6"
[6] Exhibits "P-9" and "P-10"
[7] Exhibits "P-13" and "R-2", BIR records, pp. 221 to 229.
[8] Exhibit "P-12"; Exhibit "R-3", Court Docket, Vol. II, p. 459. *au*

Subsequently, a tax credit certificate in the amount of ₱128,547,966.58 was issued in favor of petitioner on January 27, 2016.[9]

On February 24, 2016, petitioner filed the instant Petition[10] to seek the refund/tax credit of the remaining amount of ₱12,940,493.14.

Respondent filed his Answer[11] to the Petition for Review on May 5, 2016.

Respondent then filed his Pre-Trial Brief[12] on June 14, 2016.

Meanwhile, upon motion of petitioner,[13] the Court directed respondent to produce the Memorandum Report of the Revenue Officer with the attached workbook pertaining to the 2nd quarter of 2013 and to allow petitioner to inspect and photocopy the same.[14]

On June 17, 2016, petitioner manifested that it was able to access, inspect, and reproduce the Memorandum Report dated October 23, 2015 of the Revenue Officer pertinent to this case.[15]

Likewise, on June 17, 2016, petitioner filed an Omnibus Motion to Admit Supplemental Petition for Review with Motion to Defer Pre-Trial Conference[16] together with the Supplemental Petition for Review[17]. The Court granted the motion and admitted the Supplemental Petition for Review on August 2, 2016, and gave respondent a period to file an Answer.[18] Thus, respondent submitted a Supplemental Answer[19] on August 17, 2016.

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[9] Exhibit "P-11".
[10] Court Docket, vol. I, pp. 10 to 29.
[11] Court Docket, vol. I, pp. 148 to 154.
[12] Court Docket, vol. I, pp. 195 to 198.
[13] Motion to Resolve Motion for Production and Inspection of Things and Objects, Court Docket, vol. I, pp. 105 to 108.
[14] Resolution dated June 2, 2016, Court Docket, vol. I, pp. 179 to 183.
[15] Manifestation, Court Docket, vol. I, pp. 200 to 202.
[16] Court Docket, vol. I, pp. 203 to 206.
[17] Court Docket, vol. I, pp. 207 to 211.
[18] Resolution, Court Docket, vol. I, pp. 225 to 227.
[19] Court Docket, vol. I, pp. 228 to 231.

On August 26, 2016, petitioner submitted its Pre-Trial Brief[20].

As prayed for by petitioner,[21] the Court commissioned Mr. Richard S. Querido as an Independent Certified Public Accountant (ICPA) on September 15, 2016.[22]

The parties submitted their Joint Stipulation of Facts[23] on September 16, 2016. Subsequently, the Court issued a Pre-Trial Order[24] on October 5, 2016, and the pre-trial was deemed terminated.

To prove its claim, petitioner presented Mr. Richard S. Querido, and Charisse P. Bacurio as its witnesses. Thereafter, petitioner formally offered its documentary evidence, consisting of Exhibits "P-1" to "P-17-a" and "P-21-1" to "P-21-1-101", inclusive of submarkings; which were all admitted by the Court.[25]

On the other hand, respondent presented Revenue Officer Evangeline M. Casipe as his sole witness to disprove petitioner's refund claim. Afterwards, respondent formally offered his documentary evidence, consisting of Exhibits "R-1" to "R-5-a"; which were likewise admitted by the Court.[26]

The Court declared the case submitted for decision on December 18, 2017,[27] after the filing of petitioner's Memorandum[28] via registered mail on November 27, 2017 and the Records Verification Report of the Court's Judicial Records Division[29] dated December 6, 2017, stating that respondent failed to file a memorandum.

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[20] Court Docket, vol. I, pp. 233 to 242.
[21] Motion for Commissioning of Independent CPA, Court Docket, vol. I, pp. 334 to 338.
[22] Order and Minutes of the Hearing both dated September 15, 2016, docket, vol. I, pp. 349 to 350 and p. 347, respectively; Oath of Commission, Court Docket, vol. I, p. 348.
[23] Court Docket, vol. I, pp. 357 to 363.
[24] Court Docket, vol. I, pp. 352 to 356.
[25] Resolution dated January 19, 2017, Court Docket, vol. I, pp. 405 to 406, and Resolution dated March 7, 2017, Court Docket, vol. II, pp. 427 to 428.
[26] Resolution dated September 20, 2017, Court Docket, vol. II, pp. 471 to 472.
[27] Resolution dated December 18, 2017, Court Docket, vol. II, p. 503.
[28] Court Docket, vol. II, pp. 478 to 498.
[29] Court Docket, vol. II, p. 502.

THE ISSUES

The parties submitted the following issues[30] for this Court's resolution:

1. Whether or not the Court has jurisdiction over the present case; and

2. Whether petitioner is entitled to a tax refund in the aggregate amount of Twelve Million Nine Hundred Forty Thousand Four Hundred Ninety-Three Pesos and 14/100 (₱12,940,493.14), allegedly representing unutilized input VAT for the 2nd taxable quarter of 2013.

Petitioner's Arguments

Petitioner initially lays out the timeliness of the filing of its claim for refund of alleged excess/unutilized input VAT by claiming that it filed an administrative claim for refund within the two-year period provided under Section 112 (A) of the 1997 NIRC pertaining to the input VAT incurred on purchases made during the second taxable quarter of 2013.

On the legal basis of the claim, petitioner cites Section 108 of the 1997 National Internal Revenue Code (NIRC) which clearly states that the sale of power shall be subject to VAT zero rate if this is generated through renewable sources of energy. As an owner of a hydropower plant which sells such generated power, petitioner maintains that it is entitled to the tax incentive under Section 108 of the 1997 NIRC. Petitioner cites several decisions of the Supreme Court which affirms that the sale of power generated from renewable sources of energy is subject to zero percent VAT. It added that even the BIR has consistently maintained the same position as regards

[30] Proposed Issues, JSF, Court Docket, vol. I, pp. 357 to 358.

sale of power generated from renewable sources of energy such as hydropower.

With regard to the factual bases of its claim, petitioner firmly asserts that the records of the case will show that it has complied with all the requirements necessary to substantiate the alleged excess/unutilized input VAT for the period covered by the claim by revealing the following:

1. That it is a VAT-registered taxpayer;
2. That its unutilized input VAT is attributable to zero-rated sales;
3. That the ICPA report supports the conclusion that it submitted complete documents to support its claim for VAT credit.

<u>Respondent's Counter-Arguments</u>

We quote hereinbelow, respondent's Affirmative Defenses embodied in his Answer, to wit:

> "Petitioner is not entitled to refund in the amount of Php12,940,493.14 and the basis of the foregoing allegations and in further support of the Specific Denials herein set forth, respondent respectfully submits as her affirmative defense that:
>
> ***PETITIONER FAILED TO FILE THE ADMINISTRATIVE CLAIM FOR REFUND WITHIN THE PERIOD PRESCRIBED BY LAW. THUS, THE HONORABLE COURT NEVER ACQUIRED JURISDICTION.***
>
> 4. Section 112 (A) of the Tax Code of 1997 provides as follows, *to wit*:
>
> '***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, **<u>within two (2) years after the close of the taxable quarter</u> 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: x x x.

(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 Subsections (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.**' (Emphasis and underscoring supplied)

5. Assuming without admitting that petitioner filed its Quarterly VAT Return for the 2nd quarter of CY 2013, then the close of the taxable quarter would then be on June 30, 2013 and the two (2) year prescriptive period would be until June 30, 2015. However, in the instant case, petitioner allegedly filed its request for refund only on August 11, 2015; thus, from June 30, 2015 up to August 11, 2015, Forty Two (42) days had already lapsed.

6. Based on the foregoing, it is apparent that the administrative claim for refund was filed way beyond the period provided for in Section 112 (A) of the Tax Code and the action had already prescribed. Thus, the instant petition should not be given due course for lack of jurisdiction.

ASSUMING WITHOUT CONCEDING THAT THE ADMINISTRATIVE CLAIM FOR REFUND WAS TIMELY FILED, PETITIONER MUST PROVE THAT IT COMPLIED WITH ALL

THE STATUTORY AND ADMINISTRATIVE REQUIREMENT TO BE ENTITLED TO TAX REFUND.

7. Taxes collected are presumed to be in accordance with laws and regulations.

8. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.

9. Taxes are essential to government's very existence; hence, the dictum that 'taxes are the lifeblood of the government.' For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority. Since tax refunds are regarded as tax exemptions therefore, these are to be construed ***strictissimi juris*** against the person or entity claiming the exemption.

10. In an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications. The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund.

11. To support its claim, it is imperative for petitioner to prove the following, viz:

a. The registration requirements of a VAT taxpayer in compliance with Revenue Regulations No. 7-2012 in relation to Section 236 (A), (B), (C) and (D) of the Tax Code, as amended;

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the Tax Code, as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98 and Revenue Memorandum Circular No. 54-2014, otherwise, there would be no sufficient compliance with the filing of an administrative application for refund which is a condition sine qua non prior to the filing of a judicial claim in accordance with Section 112 of the Tax Code, as amended. This requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of the judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petitioner for review;

d. That the input VAT of ₱12,940,493.14 allegedly incurred by petitioner for the second (2nd) taxable quarter for the year 2013 were attributable to its zero-rated sales <u>**and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters**</u>;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within the periods provided in Sections 112 (A) and (C) of the Tax Code, as amended in relation to Revenue Memorandum Circular No. 54-2014;

f. That petitioner's purchases of capital goods and domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal showing that it actually paid VAT in accordance with Sections 110 (A)(2) and 113 of the Tax Code, as amended, and pursuant to Section 4.110-7 of Revenue Regulations No. 14-2005.

> 20. Petitioner must prove that the aggregate amount of ₱12,940,493.14 being claimed by petitioner arising from alleged disallowed unutilized input VAT for the second (2nd) taxable quarter of 2013 is properly documented.
>
> 21. Accordingly, without proper documentation showing full compliance with all the requirements for claiming the alleged unutilized Input VAT by generation companies selling electricity from renewable sources of energy, then the instant claim for refund or credit must fail."

As mentioned earlier, the respondent no longer filed his Memorandum.

THE RULING OF THE COURT

Pertinent to the resolution of the present case is Section 112(A) and (C) of the 1997 NIRC, as amended, quoted hereunder for ready reference:

> "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.
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> 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."

Pursuant to the foregoing provision, in order to be entitled to a refund/tax credit of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied:

1. that the taxpayer is VAT-registered;
2. that the claim for refund was filed within the prescriptive period;
3. that there must be zero-rated or effectively zero-rated sales;
4. that input taxes were incurred or paid;
5. that such input taxes are attributable to zero-rated or effectively zero-rated sales; and
6. that the input taxes were not applied against any output VAT liability.

The Court shall first discuss whether the claim for refund was filed within the prescriptive period as this is determinative of our jurisdiction to take cognizance of the instant petition.

Petitioner's administrative and judicial claims were timely filed.

Based on the above-quoted Section 112(A) of the 1997 NIRC, as amended, the administrative claim for the issuance of TCC or refund of input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

Petitioner's refund claim allegedly covers its unutilized input VAT for the 2nd quarter of TY 2013.

A perusal of the records shows that petitioner had no reported sales not until the 2nd quarter of TY 2015.[31] The records also reveal that petitioner incurred/paid input VAT from the 2nd quarter of TY 2013 up to the 2nd quarter of TY 2015 in the amount of ₱172,204,443.96, which was attributable to its zero-rated sales.[32]

Applying the foregoing provision to the instant case, since petitioner made its initial sales only in the 2nd quarter of TY 2015, the two-year prescriptive period to file an administrative claim for refund will commence from the close of the said taxable quarter on June 30, 2015. As such, petitioner had until June 30, 2017 within which to file its administrative claim.

Considering that petitioner filed with the BIR its administrative claim on September 30, 2015[33], the same was timely filed.

Anent the timeliness of petitioner's judicial claim, Section 112(C) of the 1997 NIRC, as amended, provides that the Commissioner of Internal Revenue (CIR) has 120 days from the date of submission of the complete documents in support of the application for refund or tax credit within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the Court of Tax

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[31] Exhibit "P-21-95".
[32] Exhibits "P-21-87", "P-21-88", "P-21-89", "P-21-90", "P-21-91", "P-21-92", "P-21-93", "P-21-94", and "P-21-95".
[33] Exhibits "P-9" and "P-10".

Appeals within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to the Court of Tax Appeals within 30 days from the expiration of said period.

Applying the foregoing to this case, when petitioner received respondent's Letter dated January 27, 2016, which partially granted its claim for refund and disallowed the amount of ₱14,569,258.38,[34] petitioner had thirty (30) days therefrom or until February 26, 2016 within which to file its judicial claim.

This Court would like to emphasize that for purposes of determining when petitioner is said to be legally entitled to a claim for refund of input taxes incurred or paid, what should be taken into consideration is not the date when the purchases of goods or services were made and the corresponding input taxes were paid or incurred BUT the date when petitioner's zero-rated sales were made.[35] For indeed, it is only at the time of such sales that petitioner could establish that the incurred/paid input taxes were in fact, either directly attributable or otherwise, allocable to its zero-rated sales.

Clearly, petitioner's judicial claim filed on February 24, 2016 was filed well within the period prescribed by law.

We now proceed to determining whether the petitioner has complied with the other aforementioned substantive requisites to warrant the grant of the claim for refund.

Petitioner is VAT-registered.

Petitioner has sufficiently proven that it is a VAT-registered entity via its Certificate of Registration No. OCN 8RC0000056282 with Taxpayer's Identification No. 409-507-988-000.[36]

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[34] Exhibit "P-12"; Exhibit "R-3", Court docket, vol. II, p. 459.
[35] Hedcor Sibulan, Inc. vs. CIR, CTA EB No. 1641 and CIR vs. Hedcor Sibulan, Inc., CTA EB No. 1643, September 19, 2018.
[36] Exhibit "P-2".

Petitioner failed to prove that its sales for the second quarter of 2015 qualify for VAT zero-rating

With regard to the third requisite, however, this Court finds that petitioner failed to prove that its sales for the second quarter of 2015 qualified for VAT zero-rating, hence the claim for refund must be denied.

Petitioner relies on Section 108(B)(7) of the NIRC of 1997, as amended, as its legal basis for qualifying its sales as VAT zero-rated, and we quote:

> "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."

Section 4.108-5(b)(7) of Revenue Regulations (RR) No. 16-05 which implements the above-quoted provision, qualifies the applicability of such zero-rating in the following manner:

> "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."

Corollary thereto, Section 4.108-3(f) of RR No. 16-05 provides:

> "Section 4.108-3. *Definitions and Specific Rules on Selected Services.* –
>
> xxx xxx xxx
>
> (f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10°/o VAT on their gross receipts: *Provided,* That 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 sources using technologies such as fuel cells and hydrogen fuels shall be subject to 0% VAT.
>
> '*Generation companies*' refers to persons or entities authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity. For this purpose, generation of electricity refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of the RA No. 9136 (EPIRA). They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities."

It is clear from the above-stated provisions that to qualify for VAT zero-rating, petitioner must prove, by sufficient evidence, that it is engaged in the sale of power or fuel generated through renewable sources of energy.

Based on its Articles of Incorporation[37], petitioner was incorporated for the primary purpose of engaging in the

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[37] Exhibit "P-1".

business of owning, developing, constructing, operating, repairing, and maintaining the hydro-electric power plant systems, renewable and indigenous power generation plants and other types of power generation and/or converting stations, and to act as holding company or joint venture partners or investors in the business of developing, operating, and/or owning power generation plants and/or converting stations. Similarly, it is indicated in petitioner's Certificate of Registration[38] that its line of business/industry is generation, collection, and distribution of electricity.

During the second quarter of TY 2015, petitioner derived receipts from sales of power generated through renewable energy specifically hydropower, amounting to ₱904,337.13 which were duly covered by VAT zero-rated sales invoice[39] and official receipts[40] and declared in petitioner's Quarterly VAT Return[41] for the same period.

Notwithstanding the aforestated evidence, this Court finds that said sales do not qualify for VAT zero-rating.

We ratiocinate.

Pursuant to Section 4.108-3 (f) of RR No. 16-05, for an entity to be considered a generation company, it should be authorized by the Energy Regulatory Commission (ERC) to operate the generation facility. Specifically, both new and existing generation facilities are required to secure a Certificate of Compliance (COC) from the ERC before it can operate the facilities used for generation of electricity, as provided under Rule 5, Section 4 (a) of the Implementing Rules and Regulations of Republic Act (RA) No. 9136, to wit:

SECTION 4. *Obligations of a Generation Company.* —

(a) A COC shall be secured from the ERC before commercial operation of a new Generation Facility. The COC shall stipulate all obligations of a Generation Company consistent with this Section and such other operating guidelines as ERC may establish. The ERC shall establish and publish the standards and requirements for issuance of a COC. A COC shall be

[38] Exhibit "P-2" .
[39] Exhibit "P-21-84".
[40] Exhibits "P-21-85" and "P-21-86".
[41] Exhibit "P-21-95", line 17.

> issued upon compliance with such standards and requirements.
>
> (i) A Person owning an existing Generation Facility or a Generation Facility under construction, shall submit within ninety (90) days from effectivity of these Rules to ERC, when applicable, a certificate of DOE/NPC accreditation, a three (3) year operational history, a general company profile and other information that ERC may require. Upon making a complete submission to the ERC, such Person shall be issued a COC by the ERC to operate such existing Generation Facility."

While petitioner was able to secure a COC[42] from ERC, such COC was issued only on September 29, 2015. Simply put, during the second quarter of TY 2015, petitioner was not yet authorized by the ERC to operate its generation facility. Hence, petitioner is not entitled to VAT zero-rating on its sales for the second quarter of TY 2015.

The Court *En Banc,* in a decision promulgated in 2017,[43] had the occasion to explain the effect of sales made prior to the issuance of the COC, as follows:

> "Still on this issue, the consolidated cases of *Commissioner of Internal Revenue v. Toledo Power Company*[44] are relevant and in point.
>
> In *Toledo,* the Supreme Court ruled that Toledo's sales of electricity *cannot qualify as zero-rated sales* because it was able to secure the COC only in June 23, 2005, *after* the period of its sales of electricity in 2002. The Court, thus, concluded that Toledo was *not yet a generation company* when the sales were made and, consequently, was not entitled to the refund of input VAT attributable to said sales. The Court also emphasized that although there was a pending application for a COC in 2002, the application did not automatically entitle Toledo to the rights of a generation company under the EPIRA, xxx."

Considering that petitioner's sales for the second quarter of TY 2015 in the amount of ₱904,337.13 do not qualify for VAT zero-rating, the alleged input VAT paid by petitioner for the second quarter of TY 2013 in the amount of ₱12,940,493.14

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[42] Exhibit "P-4".
[43] *CE Cebu Geothermal Power Co., Inc. vs. Commissioner of Internal Revenue,* CTA EB No. 741, September 22, 2017.
[44] G.R. No. 196415, December 2, 2015.

which are attributable to such sales should not be refunded to petitioner.

WHEREFORE, premises considered, petitioner's claim for refund for alleged excess input VAT attributable to zero-rated or effectively zero-rated sales incurred during the second quarter of 2013 is hereby **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ATTESTATION

I attest 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's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice