REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

MINDANAO II GEOTHERMAL PARTNERSHIP, Petitioner,	C.T.A. CASE NO. 7800
	Members:
- versus -	ACOSTA, *Chairperson* UY, *and* FABON-VICTORINO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 19 2011 ; 4:21 pm

x- -x

DECISION

***Fabon-Victorino, J.*:**

The instant Petition for Review seeks for a judgment directing respondent Commissioner of Internal Revenue to refund or to issue a tax credit certificate in favor of petitioner in the amount of P7,842,632.34, allegedly representing its unutilized creditable input taxes for the taxable year 2006.

Petitioner Mindanao II Geothermal Partnership states that it is a partnership duly registered with the Securities and Exchange Commission, with principal address at Barangay Ilomavis, Kidapawan City, North Cotabato. It is a duly registered VAT taxpayer, with Tax Identification No. (TIN) 004-766-953. [1] Respondent on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to determine and approve claims for refund or tax credit. She holds office at the 4th Floor, BIR National Office Building, Agham Road, Quezon City.

Petitioner executed a Build-Operate-Transfer (BOT) contract with the Philippine National Oil Corporation-Energy Development Corporation (PNOC-EDC) to finance, construct, design, test, operate, maintain and repair of a 48.25-megawatt geothermal power plant in Kidapawan, North Cotabato, provided PNOC-EDC would supply and deliver steam to petitioner at no cost. Under the the BOT, petitioner shall convert the steam into electric capacity and energy and deliver them to the National Power Corporation (NPC) for and in behalf of PNOC-EDC. Petitioner's 48.25-megawatt geothermal power plant project has been accredited by the Department of Energy (DOE) as a Block Power Production Facility under the Implementing Rules and Regulations of Executive Order No. 215, as amended, as evidenced by its DOE Certificate of Accreditation No. 99-08-52, issued on August 10, 1999. [2]

---

[1] Pars. 1 and 2, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 63.
[2] Exhibit "A".

Petitioner claims that as an accredited power generation company utilizing geothermal energy, its sale of generated power and delivery of electricity to the NPC for and in behalf of PNOC-EDC is VAT zero-rated under Section 108 (B) of the 1997 Tax Code, as amended by Republic Act No. 9337. The sale is its lone revenue generating activity.

In the course of its operation, petitioner purchased domestic goods and services other than capital goods and accumulated from such purchases creditable input taxes which remained unutilized. In its original and amended Quarterly VAT Returns for the four quarters of 2006, petitioner reflected its VAT zero-rated sales/receipts in the amount of P556,163,849.79 and unutilized input VAT in the amount of P7,842,632.34, the details of which are as follows:

Exhibit	Year 2006	Date filed	Zero-Rated Sales/Receipts	Unutilized Input VAT
"E"	1st Qtr	August 22, 2006	P 147,839,344.90	P 3,161,629.67
"F"	2nd Qtr	July 25, 2006	160,169,303.42	1,775,091.70
"G"	3rd Qtr	October 25, 2006	83,639,429.02	1,416,049.78
"H"	4th Qtr	January 25, 2007	164,515,772.45	1,489,861.19
			P556,163,849.79	**P7,842,632.34**

w/

On February 8, 2008, petitioner filed with the BIR Revenue District Office No. 108-Kidapawan City an administrative claim for refund or issuance of tax credit certificate for the amount of P7,842,632.34 for the four quarters of taxable year 2006.[3] However, respondent failed to act on the said claim for refund or tax credit. Thus the instant petition, filed on June 27, 2008, to forestall the running of the two-year prescriptive period for filing a judicial claim for refund/issuance of tax credit certificate.

Respondent CIR, In her Answer[4] dated August 4, 2008, interposes the following special and affirmative defenses:

> "4. She reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.
>
> 5. Petitioner's alleged claim for the issuance of a tax credit certificate is subject to administrative investigation/examination by respondent's Bureau.
>
> 6. Petitioner failed to demonstrate that the tax subject in the case at bar was erroneously or illegally collected.
>
> 7. Taxes collected are presumed to be in accordance with laws and regulations.
>
> 8. To be entitled to refund or issuance of a tax credit certificate, it is imperative for petitioner to prove compliance with the following, viz:
>
>   a. The registration requirements of a value-added taxpayer under the pertinent provision of the

---

[3] Exhibit "J", with sub-marking.
[4] Docket, pp. 31 to 36.

1997 NIRC, as amended, and its implementing revenue regulations;

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT pursuant to the provisions of Sections 113 and 114 of the 1997 NIRC, as amended.

Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax of the taxpayer claimant (Revenue Memorandum Circular No. 42-2003);

c. The submission of complete documents in support of the administrative claim for refund pursuant to Section 112 (C) of the 1997 NIRC, as amended, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax credit/refund which is a condition *sine qua non* prior to the filing of judicial claim in accordance with Section 229 of the 1997 NIRC, as amended;

d. That the input taxes of P7,842,632.34 allegedly representing unutilized input VAT from its domestic purchases of goods other than capital goods and services were:

   i. paid by the petitioner;

   ii. attributable to its zero-rated or effectively zero-rated sales; and,

   iii. such input taxes paid should not have been applied against any output tax;

e. That petitioner's claim for tax credit or refund of the unutilized input tax (VAT) in the amount of P7,842,632.34 was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112 (A) of the Tax Code of 1997, as amended;

f. That petitioner has complied with the governing rules and regulations with reference to recovery of tax erroneously or illegally collected as explicitly provided in Sections 112 (A) and 229 of the 1997 NIRC, as amended.

9. Moreover, in an action for tax credit/refund, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for tax credit/refund.

10. Basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same (*Philippine Geothermal, Inc., vs. Commissioner of Internal Revenue, G.R. No. 154028, July 27, 2005*). Moreover, statutes in derogation of sovereignty such as those containing exemption from taxation should be strictly construed in favor of the State. In this regard, taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted (*Sea-Land Service, Inc. vs. Court of Appeals, 357 SCRA 444*)."

Upon directive, the parties filed their respective Pre-Trial Briefs and thereafter, their Joint Stipulations of Facts and Issues which the Court approved on October 7, 2008 (Docket, p. 66).

During the trial, petitioner presented its Accounting Manager Daisy C. Abenes [5] and the Court-commissioned Independent Certified Public Accountant (ICPA) Michael L. Aguirre.[6]

[5] Minutes of Hearing, November 11, 2008, docket, p. 74.
[6] Minutes of Hearing, March 20, 2009, docket, p. 149.

Witness Daisy C. Abenes testified that she is currently the General Office and Accounting Manager of Marubeni Energy Services Corporation (MESC), which operates and maintains the geothermal plant facilities of petitioner in North Cotabato under an 'Operations and Maintenance (O & M) Agreement'. She is also the Accounting Manager of the petitioner and as such, she is in-charge of all the accounting records and financial statements of petitioner including compliance with all government requirements such as permits and licenses, income and other taxes, Securities and Exchange Commission reportorial and other government requirements.

She further testified that geothermal energy is the source of the electric capacity or energy that petitioner delivers to NPC for and in behalf of PNOC-EDC. The geothermal power plant of petitioner has been accredited by the DOE as evidenced by the Certificate of Accreditation issued in its favor. The delivery of electric capacity or energy to NPC for and in behalf of PNOC-EDC is subject to VAT at zero rate under Section 108(B) of the 1997 NIRC, as amended by R.A. No. 9337. Since the delivery of electric capacity or energy or sale of generated power to NPC for and in behalf of PNOC-EDC is the only source of VATable revenue for petitioner, the accumulated creditable input taxes arising from its domestic purchases of goods and services are always unapplied as petitioner has no output VAT liability. For purposes of filing quarterly VAT returns, the sale of generated power were reported to the Kidapawan City Office of the BIR.[7]

ICPA Michael L. Aguirre testified that he conducted a special audit and examination of the books of accounts, records, schedules, invoices, official receipts and other voluminous documents submitted to him in relation to petitioner's claim for refund or tax credit for the taxable year 2006. After audit procedures and tests, he submitted to the Court a written report dated March 31, 2009 indicating that petitioner's claim for refund or tax credit in the amount of Php7,816,087.60 is properly substantiated which is net of the exceptions noted amounting to Php26,544.74. The examination also revealed that petitioner did not offset the unutilized input VAT being claimed against any output tax.[8]

There being no other witness to present petitioner rested its case and formally offered its documentary evidence marked as Exhibits "A" to "Q", inclusive of sub-markings, which were admitted in the Resolutions dated October 28, 2009[9] and January 21, 2010.[10]

---

[7] Judicial Affidavit of Ms. Daisy C. Abenes, docket, pp. 86 to 95.
[8] Judicial Affidavit of Mr. Michael L. Aguirre, docket, pp. 191 to 198.
[9] Docket, pp. 249 and 250.
[10] Docket, pp. 301 to 302.

On December 8, 2009, respondent waived presentation of evidence and submitted the case for decision based on the pleadings filed by the parties.[11]

In a Resolution dated February 12, 2010, the case was deemed submitted for decision after respondent and petitioner filed their respective Memoranda on January 5, 2010[12] and January 25, 2010,[13] respectively.

THE ISSUES

The parties jointly submit the following issues for the resolution of the Court:

"1. Whether or not petitioner's administrative and judicial claims were timely filed.

2. Whether or not petitioner's sale of generated power by geothermal energy qualifies as VAT zero-rated under Section 108 (B) of the 1997 Tax Code as amended by R.A. No. 9337.

3. Whether or not petitioner's VAT zero-rated sales are properly supported by VAT-compliant official receipts and invoices.

4. Whether or not the amount of P7,842,632.34 represents the

m/

---

[11] Docket, p. 288.
[12] Docket, pp. 291 to 298.
[13] Docket, p. 366.

accumulated unapplied and unutilized creditable input taxes paid by petitioner within the Year 2006 directly attributable to its primary source of revenue which is VAT-zero rated.

5. Whether or not petitioner's unapplied and unutilized creditable input taxes for the year 2006 is duly supported by pertinent documents, such as VAT-compliant invoices and official receipts.

6. Whether or not the accumulated unapplied creditable input taxes paid by petitioner within the Year 2006 in the total amount of P7,842,632.34 (sic) remains unutilized.

7. And in sum, whether or not petitioner is entitled to the claim for refund or tax credit in the accumulated amount of P7,842,632.34 (sic) representing its unapplied and unutilized creditable input taxes for the year 2006 directly attributable to its primary source of revenue which is VAT-zero rated."

The crux of the controversy lies on whether petitioner's sales of generated power to NPC for and in behalf of PNOC-EDC qualify as a zero-rated VAT transaction; and if in the affirmative, whether petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P7,842,632.34, representing its unutilized input VAT attributable to VAT zero-rated sales for the four quarters of taxable year 2006.

The petition has no leg to stand on.

Petitioner anchors its claim for refund or tax credit on Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, which reads as follows:

> "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 or 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."

Thus to be entitled to a refund or issuance of tax credit certificate of input tax due or paid attributable to zero-rated or effectively zero-rated sales, petitioner must prove the following:

1. that the claim for refund with respondent was filed within the two-year prescriptive period.
2. that there were zero-rated or effectively zero-rated sales;
3. that input taxes were incurred or paid;
4. that such input VAT payments are directly attributable to zero-rated sales or effectively zero-rated sales; and
5. that the input VAT payments were not applied against any output VAT liability.

Under Section 112(A) of the NIRC of 1997, the two-year prescriptive period for the filing of a claim for input VAT refund or credit is reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not. Counting from March 31, 2006, June 30, 2006, September 30, 2006 and December 31, 2006, the close of the first, second, third and fourth quarters of 2006, respectively, petitioner had until March 31, June 30, September 30, and December 31, all of 2008, within which to file its administrative claim for input VAT refund for the said taxable quarters. Evidently, petitioner seasonably filed on February 8, 2008 its administrative claim for refund or tax credit in the sum of P7,842,632.34 for the four quarters of 2006.

Petitioner likewise timely filed its judicial claim for refund on June 27, 2008. Admittedly, respondent failed to act on petitioner's application for refund or tax credit within the prescribed 120-day period or until June 7, 2008. Petitioner therefore had thirty (30) days from the lapse of the 120-day period to file an appeal or until July 7, 2008. Thus, petitioner's appeal from respondent's inaction was seasonably taken on June 27, 2008, pursuant to Section 112 (D) of the 1997 NIRC, as amended, which is hereby quoted for ready reference:

> "SEC. 112. **Refunds or Tax Credits of Input Tax.** —
>
> xxx xxx xxx
>
> (D) 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) and (B) 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**

> **<u>Appeals</u>**." (*Boldfacing and underscoring supplied*)

On the main issue of petitioner's entitlement to a refund or issuance of tax credit certificate in the amount of P7,842,632.34, representing its unutilized input VAT attributable to VAT zero-rated sales for the four quarters of taxable year 2006, petitioner argues that since it is a power generation company duly accredited[14] by the DOE, its sales of electricity qualify for VAT zero-rating pursuant to Republic Act (R.A.) No. 9136, also known as Electric Power Industry Reform Act of 2001. Section 6 of the law relevantly states:

> "SEC. 6. Generation Sector. — Generation of electric power, a business affected with public interest shall be competitive and open.
>
> Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.
>
> Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.

---

[14] Annex "A", p. 260 of the case docket.

> Upon the implementation of retail competition and open access, the prices charged by a generation company for the supply of electricity shall not be subject to regulation by the ERC except as otherwise provided in this Act.
>
> **Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated.**" (*Emphasis supplied*)

In the case of *Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue,* [15] this Court, applying the provisions of R.A. No. 9136, specified the conditions to qualify for VAT zero-rating of power generating companies, to wit:

> ". . . it is undisputed that Republic Act No. 9136 otherwise known as the 'Electric Power Industry Reform Act of 2001' provided for VAT zero-rating of sales of generated power by generation companies beginning June 26, 2001. Thus, the pertinent provisions of the National Internal Revenue Code of 1997 are deemed amended by the provisions of R.A. No. 9136 by modifying the VAT rate applicable to sales of generated power by generation companies from ten (10%) percent to zero (0%) percent.
>
> <u>**To qualify for VAT zero-rating under R.A. No. 9136, petitioner must prove that: 1) it is a generation company and 2) it derived sales from power generation**</u>." (*Boldfacing and underscoring supplied*)

[15] CTA Case No. 6788, October 13, 2005.

Ergo, in order for a power generation company to qualify for VAT zero-rating in accordance with R.A. No. 9136, two (2) requirements must concur, namely, 1) it is a generation company, and 2) it derived sales from power generation.

However, the foregoing provision was expressly repealed by R.A. 9337,[16] which took effect on November 1, 2005. The repealing clause reads:

> "SECTION 24. *Repealing Clause.* - The following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax subject to the provisions of Title IV of the National Internal Revenue Code of 1997, as amended:
>
> xxx xxx xxx
>
> (B) Section 6, fifth paragraph of R.A. No. 9136 on the zero VAT rate imposed on the sales of generated power by generation companies; and"

Notwithstanding the foregoing provision, the sale of generated power by petitioner continues to be VAT zero-rated by virtue of

[16] 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.

Section 108(B)(7) of the 1997 NIRC, as amended by R.A. No. 9337, to wit:

> "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." (*Emphasis supplied*)

The record shows that petitioner's 48.25-megawatt geothermal power plant project has been accredited by the DOE as a Block Power Production Facility under the Implementing Rules and Regulations of Executive Order No. 215, as amended. That fact alone is however not sufficient to support a conclusion that petitioner is a generation company. A thorough analysis of the related law and its implementing rules and regulations is warranted.

Section 4(x) of R.A. No. 9136, the term "generation company" is defined as follows:

> "SECTION 4. *Definition of Terms.* -
>
> xxx xxx xxx
>
> **(x) 'Generation Company' refers to any person or entity authorized by the ERC [17] to operate facilities used in the generation of electricity;"** *(Emphasis supplied)*

In relation thereto, Sections 1 and 4(a) of Rule 5 of the Implementing Rules and Regulations ("IRR") of R.A. No. 9136, provide:

> "SECTION 1. *Guiding Principle.*
>
> xxx xxx xxx
>
> **No Person may engage in the Generation of Electricity as a new Generation Company unless such Person has received a COC [18] from the ERC to operate facilities used in the Generation of Electricity.** A Person that demonstrates compliance with the standards and requirements of this Rule 5, and such other terms and conditions as determined by the ERC to be appropriate to ensure that Persons comply with all applicable legal and regulatory requirements, shall be issued a COC." *(Emphasis supplied)*

---

[17] Energy Regulatory Commission.
[18] Certificate of Compliance.

> "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 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." *(Emphasis supplied)*

Clearly, no person may engage in the generation of electricity as a new Generation Company unless such person has received a COC from the ERC to operate facilities used in the generation of electricity. Existing generation facility or a generation facility under construction is obligated to submit within ninety (90) days from effectivity of the Rules,[19] to ERC, when applicable, a certificate of DOE/NPC accreditation, a three (3) year operational history, a

[19] Rules and Regulation Implementing R.A. No. 9136.

general company profile and other information that the ERC may require. Only upon complete submission of the foregoing requirements that the generation company shall be issued a COC by the ERC to operate such existing generation facility.

Thus, to be a Generation Company, it must have a duly issued COC from the ERC, without which it is not authorized to operate a generation facility. Simply put, without the COC, a person cannot be said to be a Generation Company.

In the case of *Toledo Power Company v. Commissioner of Internal Revenue*, [20] the Court ruled that failure to submit proof of the approved COC will render the sales of generated power not qualified for VAT zero-rating under R.A. No. 9136. The pertinent portion of the Decision is quoted hereunder:

> "Pursuant to the above provisions, petitioner filed on June 20, 2002 an application for the issuance of a Certificate of Compliance with the Energy Regulatory Commission, **but it failed to submit proof of the approved Certificate of Compliance; thus, its sales of generated power cannot qualify for VAT zero-rating under the EPIRA**." (*Emphasis supplied*)

---

[20] CTA Case No. 6961, November 11, 2009.

Quite recently, the Court in *GBH Power Resources, Inc. [Formerly: Mirant (Philippines) Island Generation Corporation] v. Commissioner of Internal Revenue*, [21] ruled that while GBH proved that it actually derived sales from power generation, it, however, failed to establish that it is a generation company as defined under Section 4 (x) in relation to Section 6 of R.A. No. 9136. Petitioner therein failed to submit its ERC registration and COC, thus it cannot qualify for VAT zero-rating under R.A. No. 9136.

Pursuant to the aforecited cases, there is a need for petitioner to establish that it is authorized to operate as a generation company, as defined under R.A. No. 9136, by presenting its COC from the ERC.

In its Quarterly VAT Returns for 2006, petitioner reported a total zero-rated sales of P556,163,849.79 and unutilized input VAT of P7,842,632.34, broken down as follows:

Exhibit	**Year 2006**	**Zero-Rated Sales/Receipts**	**Unutilized Input VAT**
"E"	1st Qtr	P 147,839,344.90	P 3,161,629.67
"F"	2nd Qtr	160,169,303.42	1,775,091.70
"G"	3rd Qtr	83,639,429.02	1,416,049.78
"H"	4th Qtr	164,515,772.45	1,489,861.19
		P556,163,849.79	**P7,842,632.34**

/w

[21] CTA Case No. 7462, March 26, 2010.

Per ICPA report[22] dated March 31, 2009, the zero-rated sales/receipts in the amount of P556,163,849.79, as reported in petitioner's "Schedule of Zero-Rated Sales/Receipts"[23] for taxable year 2006, consisted of sales of energy to PNOC-EDC. Petitioner submitted Certificate of Accreditation issued by the DOE[24] and the related invoices and official receipts[25] issued by petitioner to PNOC-EDC for the year 2006. While these documents show that petitioner actually derived revenues from sale of power generation, they are not sufficient to establish that petitioner is a "generation company" within the definition of R.A. No. 9136 and its related implementing rules and regulations.

Petitioner failed to satisfactory demonstrate compliance with the standards and requirements of Section 4(a)(i) of Rule 5 of the rules and regulations implementing R.A. 9136, which particularly dictates the presentation of a COC to be considered a generation company. The Certificate of Accreditation from the DOE is simply inadequate to sustain petitioner's claim that it is a generation company entitled to the prayed for refund or issuance of tax credit certificate.

w

---

[22] Exhibit "P", with sub-marking.
[23] Exhibit "P", Annex "K".
[24] Exhibit "A".
[25] Exhibits "AE.1" to "AE.12", "AF.1" to "AF.20", "AG.1" to "AG.7", and "AH.1" to "AH.9".

Evidence reveal that petitioner failed to present in support of its claim for refund its ERC registration and Certificate of Compliance covering the first to the fourth quarter of taxable year 2006. There is also no showing that petitioner is duly authorized by the ERC to operate facilities used in the generation of electricity. In the absence of evidence that petitioner is a generation company, all of the reported zero-rated receipts of P556,163,849.79 cannot qualify for VAT zero-rating under Section 108(B)(7) of the 1997 NIRC, as amended by R.A. No. 9337, and Section 4 of Rule 5 of the Rules and Regulations Implementing Republic Act No. 9136. Consequently, its claim for refund or issuance of tax credit certificate in the amount of P7,842,632.34, allegedly representing its input VAT attributable to zero-rated receipts from power generation services rendered to PNOC-EDC for taxable year 2006, should fail.

Elementary is the rule that a taxpayer claimant has the burden of proof to show that it is entitled to the refund of the amount claimed as refundable because taxes are presumed to have been collected in accordance with laws and regulations on the matter. The burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund.[26] And for failure of petitioner to establish the factual basis of its claim for refund, the Court has no option but to deny the present claim.

In view of the foregoing, a discussion on petitioner's compliance with the other requisites for refund of input tax attributable to zero-rated sales is deemed unnecessary.

WHEREFORE, the instant Petition for Review is hereby **DENIED,** for insufficiency of evidence.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
Associate Justice

---

[26] *Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., et al.*, G.R. No. L-68252, May 26, 1995

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ERNESTO D. ACOSTA
Presiding Justice