REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SAN ROQUE POWER CORPORATION, Petitioner,	C.T.A. CASE NO. 8007
	Members:
- versus -	ACOSTA, *Chairperson* UY, *and* FABON-VICTORINO, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 07 2012 ; 9:45 a.m.

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DECISION

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

In the instant Petition for Review, petitioner San Roque Power Corporation prays for a judgment directing respondent Commissioner of Internal Revenue (CIR) to refund or issue a tax credit certificate in its favor in the amount of Php26,645,244.93, allegedly representing its unutilized input value-added taxes (VAT) from purchases of capital goods, other goods and services, as well as importation of goods for the period January 2008 to March 2009.

Petitioner San Roque Power Corporation states that it is a duly organized and existing domestic corporation, with principal office at Barangay San Roque, San Manuel, Pangasinan. It was incorporated on October 14, 1997, with primary purpose to design, construct, erect, assemble, own, commission and operate power-generating plants and related facilities pursuant to and under contract with the Government of the Republic of the Philippines, or any subdivision, instrumentality or agency thereof, or any government-owned or controlled corporation, or other entity engaged in the development, supply or distribution of energy.[1] It is a duly registered VAT taxpayer with Tax Identification No. (TIN) 005-017-501-000.[2]

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR) empowered, among others, to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes.

Petitioner allegedly has a 345 MW Hydroelectric Power Plant Project, a three unit rated 345 MW hydroelectric power generating facility, which has been duly accredited as a Block

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[1] Exhibit "A".
[2] Exhibit "C".

Power Production Facility by the Department of Energy (DOE) as evidenced by its DOE Certificate of Accreditation No. 99-01-50 issued on January 20, 1999.[3]

On October 11, 1997, it entered into a "Power Purchase Agreement" with the National Power Corporation (NPC), wherein the latter shall be the sole purchaser of all the electricity available from the former's hydroelectric power plant facility.[4]

During the period January 2008 to March 2009, petitioner incurred unutilized input VAT credits from its purchases of capital goods, other domestic goods and services as well as on its importations of goods in the total amount of Php26,645,244.93, the details of which are shown in the Quarterly VAT Returns filed on the following dates:[5]

PERIOD COVERED	DATE FILED (ORIGINAL)	DATE FILED (AMENDED)
January-March 2008	April 23, 2008	January 30, 2009
April-June 2008	July 17, 2008	February 2, 2009
July-September 2008	October 16, 2008	February 10, 2009
October-December 2008	January 20, 2009	February 10, 2009
January-March 2009	April 23, 2009	June 16, 2009

[3] Exhibit "B".
[4] Exhibits "D" and "W".
[5] Pars. 10-14, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 274.

On July 31, 2009, petitioner filed with the BIR Large Taxpayers Audit and Investigation Division (LTAID) two (2) administrative claims for refund or tax credit of unutilized input VAT. The first is for the period covering January 2008 to March 2008, in the amount of Php3,036,434.66 and the second, for the period covering April 2008 to March 2009, in the amount of Php23,608,810.27, or for a total amount of Php26,645,244.93.[6]

Alleging inaction on the part of the respondent, petitioner filed the instant case before this Court on December 18, 2009.

In her Answer[7] dated February 5, 2010, respondent interposes the following Special and Affirmative Defenses:

> "4. Petitioner is not entitled to refund or tax credit in the amount of P26,645,244.93 representing alleged unutilized input tax because it failed to submit all necessary and relevant documents pertaining to the above-mentioned amount with respondent in the administrative claim for refund or tax credit of excess input tax attributable to zero-rated sales to National Power Corporation (NPC).
>
> 5. In an administrative claim for refund or tax credit of input taxes attributable to zero-rated sales, a VAT registered person must submit complete documents to support its application for refund pursuant to Section 112 (D) of the Tax Code of 1997. Otherwise, there will be no sufficient compliance with the filing of an

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[6] Exhibits "U" and "V"; Par. 15, Admitted Facts, JSFI, docket, p. 275.
[7] Docket, pp. 218-223.

administrative claim for refund, which is a condition sine qua non prior to the filing of judicial claim.

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

a. The registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-a (a) of Revenue Regulations No. 7-95, and Section 236 of the National Internal Revenue Code of 1997 (NIRC of 1997);

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 Sections 113 and 114 of the NIRC of 1997;

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. It is worthy of emphasis that Section 112 (D) of the NIRC of 1997 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 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 petition for review.

d. That the input taxes of P26,645,244.93 allegedly paid by petitioner on its domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods for the period from January 2008 to March 2009 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

e. That petitioner's administrative claim for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) year after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) of the NIRC of 1997;

f. That petitioner's 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 NIRC of 1997, and in pursuance to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (RE: Substantiation of Claims for Input Tax Credit);

g. The requirements as enumerated under Section 4.104-2 of Revenue Regulations 7-95 (Re: Persons who can avail of the Input Tax Credits).

7. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR).

8. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications **(Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue vs. Manila Jockey Club, Inc., 98 Phil. 670)**.

9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)** and as such, they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)**."

In compliance with the Court's directive, the parties filed their respective Pre-Trial Briefs, thereafter, their Joint Stipulations of Facts and Issues which the Court approved on April 13, 2010.

Trial ensued during which petitioner presented its Accountant Lalaine A. Estayo, and the Court-Commissioned Independent Certified Public Accountant (ICPA) Ma. Milagros F. Padernal.

By way of a Judicial Affidavit[8], Lalaine A. Estayo testified that: 1) petitioner is a power generation company which operates and maintains the San Roque hydroelectric facilities located at the Lower Agno River in San Manuel, Pangasinan pursuant to a Power Purchase Agreement (PPA) with the NPC; 2) the instant case involves petitioner's claim for refund of its unutilized input VAT for the period beginning January 1, 2008 to March 31, 2009 in the total amount of Php26,645,245.88; 3) the amount of Php26,645,245.88, representing petitioner's unutilized input VAT for the five (5) quarters covered by the period January 1, 2008 to March 31, 2009, are attributable to its zero-rated sales of generated power to NPC; and 4) the

[8] Exhibit "W", Docket, pp. 287-307.

unutilized input VAT attributable to its zero-rated sales of electricity for the five (5) quarters covered by the subject claim were not utilized or applied against petitioner's output VAT liabilities for the subsequent taxable quarters.

ICPA Ma. Milagros F. Padernal, also executed a Judicial Affidavit[9] in which she alleged that pursuant to her commission as an ICPA, she examined petitioner's records and supporting documents. Thereafter, she prepared a written report[10] hinged on the results of examination conducted. Her written report in relation to petitioner's claim for refund or issuance of tax credit certificate for its unutilized input tax for the period January 1, 2008 to March 31, 2009 was submitted to the Court on August 26, 2010, copy furnished the counsel for respondent.

On January 6, 2011, the Court, acting on petitioner's Formal Offer of Evidence filed on November 15, 2010, and together with the Comment thereon by respondent filed on November 30, 2010, admitted Exhibits "A" to "CCC-1", inclusive of their submarkings.[11]

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[9] Exhibit "CCC", Docket, pp. 329-353.
[10] Exhibit "DDD".
[11] Docket, pp. 401-402.

With the manifestation that respondent would no longer present any evidence, the parties were directed to submit their respective memoranda.[12]

On July 11, 2011, the case was submitted for decision after respondent filed her Memorandum on May 4, 2011[13] and petitioner filed its Memorandum (With Motion for Leave of Court to Admit Evidence) on June 6, 2011[14].

THE ISSUES

The issues[15] for the disposition of the Court are as follows:

> "1. Whether or not Petitioner's unutilized input VAT for the period January 1, 2008 to March 31, 2009 amounting to P26,645,244.93 is substantiated by documentary evidence in the form of invoices and official receipts;
>
> 2. Whether or not Petitioner's unutilized input VAT for the period was applied or credited against any output VAT of the Petitioner in the subsequent quarter or quarters;
>
> 3. Whether or not Petitioner is entitled to a refund of and/or issuance of a TCC for its unutilized input VAT amounting to P26,645,244.93, which input VAT: (i) arose from Petitioner's purchases of goods and services as well

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[12] Docket, p. 405.
[13] Docket, pp. 406-415.
[14] Docket, pp. 421-448.
[15] Docket, pp. 275-276.

> as on its importations of goods and services; and (ii) are all attributable to Petitioner's zero-rated sales of generated power to NPC;
>
> 4. Whether Petitioner has exhausted all administrative remedies before filing this Petition.
>
> 5. Whether Petitioner has complied with the provisions of Section 112, Tax Code, on prescriptive periods for filing of administrative and judicial claims for refund and/or issuance of tax credit certificate."

The afore-quoted issues may be summed up into one, to wit:

> WHETHER OR NOT, PETITIONER IS ENTITLED TO THE REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE IN THE AMOUNT OF PHP26,645,244.93, REPRESENTING ITS ALLEGED UNUTILIZED INPUT VAT ATTRIBUTABLE TO EFFECTIVELY ZERO-RATED SALES FOR THE PERIOD COVERING JANUARY 1, 2008 TO MARCH 31, 2009.

THE COURT'S RULING

The Petition for Review must be denied.

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

> "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 by sufficient evidence the following:

1. that there must be zero-rated or effectively zero-rated sales;

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

The Court finds it appropriate to determine first the timeliness of the filing of the instant claim.

Under Section 112(A) of the NIRC of 1997, petitioner had two (2) years within which to file a claim for input VAT refund or credit 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. Evidence show that the earliest and latest taxable quarters where the sales of electricity were made in the instant case were on March 31, 2008 and March 31, 2009, respectively. Thus, petitioner had until March 31, 2010 and March 31, 2011, within which to file its administrative claim for refund. Evidently, petitioner seasonably filed on July 31, 2009 its administrative claims for refund or tax credit for the period covering January 1, 2008 to March 31, 2009, in the total amount of Php26,645,244.93.

Petitioner likewise timely filed its judicial claim for refund on December 18, 2009 hinged on respondent failure to act on the same within the prescribed 120-day period or until November 28, 2009. Petitioner therefore had thirty (30) days from the lapse of the 120-day period to file an appeal before this Court or until December 28, 2009. Thus, petitioner's appeal from respondent's inaction was filed in accord with the prescribed period under Section 112(C) of the NIRC of 1997, as amended, which is quoted hereunder for ready reference:

> "SEC. 112. **Refunds or Tax Credits of Input Tax.** —
>
> 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.
>
> **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**

> **<u>unacted claim with the Court of Tax Appeals</u>**." (*Boldfacing and underscoring supplied*)

As regards respondent's argument that the instant case should be dismissed as petitioner failed to submit complete documents in support of its administrative claims for refund which must be deemed as failure on the part of petitioner to exhaust administrative remedies, the Court cannot simply subscribe.

In the case of *Commissioner of Internal Revenue vs. Toledo Power Company,*[16] the Court *En Banc* held that the alleged inability of the taxpayer to submit complete documents in support of its claim for refund before the administrative level is not fatal to the filing of a judicial claim for refund before the Court of Tax Appeals, thus:

> "As regards CIR's contention that TPC's administrative claim was merely pro forma as it did not attach complete documents in support of its claim, we rule for TPC. As aptly ruled by the former First Division:
>
> > 'The court has ruled that although the submission of the complete documents is necessary for the granting of refund or tax

[16] CTA EB Nos. 623 and 629, November 22, 2010.

> credit certificate, the non-submission of the same with the respondent does not make the administrative claim for refund or tax credit certificate invalid or pro-forma, the effect of which makes the judicial appeal dismissible for lack of jurisdiction. What is clearly required is that the taxpayer elevates its claim before this Court within 30 days from receipt of the denial of its claim for refund/tax credit or after the expiration of the 120-day period granted to respondent to decide, which must all be done within two years from the payment of the tax or penalty.
>
> In the same vein, R.M.O. No. 53-98 refers to the requirements for refund or tax credit in the administrative level for purposes of establishing the authenticity of the taxpayer's claim. However, in the judicial level or when the case is elevated to the Court, the Rules of Court govern. Thus, respondent's non-compliance with the requirements listed under R.M.O. No. 53-98 is not fatal."

Even assuming *arguendo* that the submission of the complete documents under Section 112(C) of the National Internal Revenue Code (NIRC) is a mandatory requirement, the non-submission by petitioner of such documents would not stop the running of the 120-day period for a written notification, which is a requirement to stop the running of the 120-day period, was not shown to have been issued by respondent. Revenue Memorandum Circular No. 029-09 provides:

"III. *Period within which Refund or Tax Credit of Input Taxes shall be Made*

Section 112 (C) of the Tax Code of 1997, as amended by Republic Act No. 9337, provides, among others, that in proper cases, the **Commissioner shall grant a refund or issue the tax credit certificate (TCC) for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents.** For the purpose of defining 'proper cases' in the said provision, the taxpayer/claimant must have complied with the following conditions/requirements upon audit/verification of his/its claim:

a. Submission of complete documents necessary to determine and/or ascertain the correctness of the return and the amount to be refunded/credited;

b. That all books of accounts and accounting records pertaining to the claim are immediately available to the concerned Revenue Officer (RO) for audit/verification;

c. Any discrepancies/findings upon audit/verification shall be reconciled/explained in writing by the taxpayer/claimant within five (5) days from receipt of the notification from the RO; and

d. The taxpayer/claimant has signified his concurrence to the outcome of the audit/verification, which shall be evidenced by an Agreement Form.

In cases where taxpayer failed to comply with the above conditions/requirements, *i.e.,* failure to present the accounting books and records for audit/verification, additional documents to explain discrepancies/findings are not submitted, taxpayer refuses or incurs delay in the submission of the Agreement Form, **the running of the 120-day period shall stop from the date of notification to the taxpayer.** xxx" *(Emphasis supplied)*

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On the main issue of whether petitioner is entitled to a refund or issuance of tax credit certificate in the amount of Php26,645,244.93, representing its unutilized input VAT attributable to VAT zero-rated sales for the period January 1, 2008 to March 31, 2009, the relevant provision is found in Republic Act (R.A.) No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA). Section 6 of R.A. No. 9136 reads:

> "SECTION 6. *Generation Sector* – Generation of electric power, a business affected with public interest, shall be competitive and open.
>
> xxx xxx xxx
>
> 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)*

With the modification of the VAT rate applicable to sales of generated power by generation companies from ten percent (10%) to zero percent (0%), the pertinent provisions of the NIRC of 1997 (prior to its amendment under Republic Act Nos. 9238 and 9337) were deemed amended.

Subsequently, R.A. No. 9337[17] was enacted. It introduced amendments to the provisions of the NIRC of 1997, particularly on the Expanded VAT provisions. One of the relevant changes made by this law is the express repeal of the zero percent VAT rate imposed on the sales of generated power by generation companies under R.A. No. 9136. The significant portions of the repealing clause of R.A. No. 9337 are quoted as follows:

> "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
>
> (A) 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 said repeal, the sale of generated power or fuel through renewable sources of energy continued to be VAT zero-rated under Section 108(B)(7) of the NIRC of 1997, as amended by R.A. No. 9337, which states:

[17] 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.

> "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)*

Corollarily, Section 4.108-3(f) of Revenue Regulations No. 16-2005 provides:

> "SECTION 4.108-3. *Definitions and Specific Rules on Selected Services.* –
>
> xxx xxx xxx
>
> **(a) Sale of electricity by generation, transmission, and distribution companies** shall be subject to 10% 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 energy 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 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." *(Emphasis supplied)*

In other words, to be qualified for VAT zero-rating under Section 108(B)(7) of R.A. No. 9337, petitioner must be able to prove that it is a generation company and that it is engaged in sale of power or fuel generated through renewable source of energy.

The Court-commissioned Independent Certified Public Accountant (CPA)[18] found that petitioner's reported zero-rated sales/receipts for the subject period in the amount of P8,671,202,381 were derived from petitioner's sales of electricity exclusively to NPC.[19] Petitioner submitted Certificate of Accreditation issued by the Department of Energy (DOE)[20] and

[18] Ms. Milagros F. Padernal, Partner of Uy Singson Abella & Co., CPAs.
[19] Exhibit "DDD", pp. 3-5.
[20] Exhibit "B".

the related sales invoices[21] and official receipts[22] issued by petitioner to NPC for the alleged zero-rated sales/receipts. While these documents proved that petitioner actually derived revenues from sale of power generated through a renewable source of energy, *viz,* hydroelectric power, however, it failed to establish that it is a generation company as defined under Sections 4(x) and 6 of the EPIRA and under the pertinent provision of Revenue Regulations No. 16-2005, which state:

> "REPUBLIC ACT NO. 9136
>
> xxx xxx xxx
>
> SECTION 4. *Definition of Terms.* –
>
> xxx xxx xxx
>
> (x) 'Generation Company' refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity;"
>
> "REVENUE REGULATIONS NO. 16-2005
>
> SEC. 4.108-3. *Definitions and Specific Rules on Selected Services.* –
>
> xxx xxx xxx
>
> (f) xxx
>
> ***'Generation companies'* refers to persons or entities authorized by the Energy Regulatory Commission (ERC) to**

[21] Exhibits "AA1" to "AA49".
[22] Exhibits "AA1b" to "AA49b".

> **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." *(Emphasis supplied)*

Moreover, Section 4 of Rule 5 of the Rules and Regulations to Implement R.A. No. 9136 provides:

> "SECTION 4. *Obligations of a Generation Company. -*
>
> (a) A COC[23] 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 the effectivity of these Rules to ERC, when applicable, a certificate of DOE/NPC accreditation, a three (3) year operation 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*)

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[23] Certificate of Compliance.

From the foregoing provisions, it is clear that the entity should be authorized by the ERC to operate the generation facility for it to be considered as a generation company. Specifically, on the basis of the above-cited provision of the Implementing Rules of R.A. No. 9136, **both the new and the existing generation facilities are required to secure a Certificate of Compliance from the ERC before they can operate the facilities used for generation of electricity**. In this case, petitioner may clearly establish that it is authorized to operate as a generation company as defined under R.A. No. 9136 and R.A. No. 9337 by presenting its Certificate of Compliance from the ERC.

However, the record is bereft of any indication that petitioner presented as evidence in chief its ERC Registration and Certificate of Compliance. Nowhere in the records of the case is it shown that petitioner is duly authorized by the ERC to operate facilities used in the generation of electricity. Therefore, *sans* evidence that petitioner is a generation company, all of the reported zero-rated sales/receipts of P8,671,202,381.65 cannot qualify for VAT zero-rating under Section 108(B)(7) of the NIRC of 1997, as amended by R.A. No. 9337, in relation to Section 4.108-3 of Revenue Regulations No. 16-2005 and Section 4 of

Rule 5 of the Implementing Rules and Regulations of R.A. No. 9136. Consequently, petitioner's claim for refund or issuance of tax credit certificate in the amount of P26,645,244.93 alleged to be representing its input VAT attributable to zero-rated receipts from power generation services rendered to NPC for the period covering January 1, 2008 to March 31, 2009 cannot be granted.

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.[24] And for failure of petitioner to establish the factual basis of its claim for refund, the Court has no option but to deny its 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.

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

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

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