REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

HEDCOR SIBULAN, INC., Petitioner,	**CTA CASE NO. 8990**
	Members:
-versus-	**Castañeda, Jr.,** *Chairperson,* **Casanova,** *and* **Manahan,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 01 2017 10:25 a.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

The Petition for Review filed by Hedcor, Inc. against the Commissioner of Internal Revenue prays for the refund or issuance of tax credit certificate (TCC) in the amount of ₱6,149,582.86, allegedly representing its unutilized input value-added tax (VAT) for the third (3rd) quarter of taxable year (TY) 2012.[1]

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[1] Summary of the Case, Pre-Trial Order, docket, p. 238.

THE FACTS

Petitioner Hedcor, Inc. is a duly registered corporation organized and existing under Philippine Laws. It is primarily engaged 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.[2] Petitioner is a VAT-registered taxpayer, as evidenced by its Certificate of Registration No. OCN 4RC0000670842, with Taxpayer's Identification No. (TIN) 001-946-873-000.[3] It is likewise registered with the Energy Regulatory Commission (ERC) as owner/operator of generation facilities in 2011, 2012, and 2013.[4]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), who is vested by law with power to decide, approve, and grant a refund of internal revenue taxes or issue a tax credit certificate. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner's Quarterly VAT Return[5] for the 3rd quarter of TY 2012 was filed on October 22, 2012. Thereafter, on September 26, 2014, petitioner filed an administrative claim, together with its supporting documents, for the refund of its alleged excess and unutilized input VAT for the period covering July 1, 2012 to September 2012 before the BIR.[6]

Due to the inaction of respondent, petitioner filed this Petition for Review[7] before this Court on February 20, 2015.

In the Answer[8] filed on April 13, 2015, respondent interposed the following special and affirmative defenses:

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[2] Exhibits "P-1" and "P-2", docket, p. 327 and pp. 329 to 343, respectively.
[3] Par. 2, Summary of Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 232; Exhibit "P-15", docket, p. 356.
[4] Exhibits "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", and "P-14", docket, pp. 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, and 355, respectively.
[5] Exhibit "P-16", docket, p. 357.
[6] Exhibits "P-22", "P-23", "P-24", and "P-25", docket, pp. 367, 368 to 369, 370, and 371 to 372, respectively.
[7] Docket, pp. 6 to 13.
[8] Docket, pp. 97 to 101.

"4. Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.

5. The power of taxation is an inherent attribute of sovereignty; the government chiefly relies on taxation to obtain the means to carry on its operations. Taxes are essential to its very existence; hence, the dictum that 'taxes are the lifeblood of the government.' For this reason, the right of taxation cannot be easily surrendered.

6. Since taxes are what we pay for a civilized society, or are the lifeblood of the nations, the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed strictissimi juris against the taxpayer and liberally in favor of the taxing authority.

7. Tax refunds partake the nature of tax exemptions which are a derogation of the power of taxation of the State. Consequently, they are construed strictly against a taxpayer and liberally in favor of the State. Consequently, they are construed strictly against a taxpayer and liberally in favor of the State such that he who claims a refund or exemption must justify it by words too plain to be mistaken and too categorical to be misinterpreted.

8. Accordingly, it is incumbent upon petitioner to establish its right to refund and that it is indubitably entitled thereto; and failure to sustain such burden is fatal for this claim of refund.

9. Likewise, not only should petitioner establish that it is entitled to the tax refund or credit; it is also imperative for petitioner to prove its compliance with the following:

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 Sections 113 and 114 of the Tax Code, as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving a claim for VAT refund or credit pursuant to Revenue Memorandum Order No. 53-1998 and Revenue Memorandum Circular No. 54-2014, otherwise, there would be no sufficient compliance with the filing of an administrative application for tax refund or credit which is a condition precedent to the filing of a judicial claim for refund or credit 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 period shall apply and before the taxpayer could avail of the judicial remedies as provided for in 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 VAT in the amount of ₱6,149,582.86 allegedly incurred by petitioner for the third quarter of taxable year 2012 were attributable to its zero-rated sales sans such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax refund or credit of the allegedly unutilized Input VAT were filed within the periods provided in Section 112 (A) and (C) of the Tax Code, as amended; and,

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 Section 110 (A) (2) and 113 of the Tax Code, as amended and pursuant to Section 4.110-7 of Revenue Regulations No. 14-2005.

10. It has been uniformly and consistently ruled by the Honorable Supreme Court that the taxpayer bears the burden of establishing the factual and legal basis of its claim to tax refund or credit. In the case at hand, petitioner failed to present clear and convincing evident to merit a tax refund or credit.

11. The case of the Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation emphatically pointed out that:

> Time and again, we have held that tax refunds are in the nature of tax exemptions which result

> to loss of revenue for the government. **Upon the person claiming an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted, it is never presumed nor be allowed solely on the ground of equity.** These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken. Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.
> **(Emphasis supplied).**

12. Following the premise above, petitioner has the burden of proving that the right to such tax refund or credit indubitably exist and a well-founded doubt is fatal to its claim.

13. Finally, it must be stressed that taxes paid and collected are presumed to have been made in accordance with the laws and regulations.

14. As here, the amount being claimed by petitioner for allegedly unutilized Input VAT for the third quarter of taxable year 2012 was not properly documented.

15. Accordingly, without proper documentation showing full compliance with all the requirements for claiming unutilized Input VAT by generation companies selling electricity from renewable sources of energy, then the instant claim for refund or credit must fail."

On May 25, 2015, petitioner and respondent both filed their respective Pre-Trial Briefs.[9] Subsequently, the parties filed their Joint Stipulation of Facts and Issues[10] on July 29, 2015, which the Court approved on August 10, 2015. The Court then issued a Pre-Trial Order[11] and terminated the pre-trial. gl

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[9] Docket, pp. 161 to 166 and 216 to 219, respectively.
[10] Docket, pp. 231 to 234.
[11] Docket, pp. 238 to 241.

On August 24, 2015, the Court commissioned Mr. Emmanuel Y. Mendoza as the Independent Certified Public Accountant (ICPA) for the case.[12]

During trial, petitioner presented Arazeli Malapad and Emmanuel Y. Mendoza as its witnesses. Thereafter, petitioner formally offered its documentary and testimonial evidence, which were all admitted by the Court.[13]

On the other hand, respondent's counsel manifested during the hearing on June 29, 2016 that he would no longer present any evidence and would instead submit the instant case for decision.

The case was declared submitted for decision on August 3, 2016,[14] after the filing of petitioner's Memorandum[15] on July 29, 2016 and of respondent's Manifestation[16] also on July 29, 2016, stating that respondent is adopting the arguments raised in the Answer as his Memorandum.

THE ISSUE

As stipulated, the sole issue to be resolved by this Court is whether petitioner is entitled to a refund or tax credit in the total amount of Six Million One Hundred Forty-Nine Thousand Five Hundred Eighty-Two Pesos and Eighty-Six Centavos (₱6,149,582.86), allegedly representing unutilized input VAT from purchases attributable to zero-rated sales of electricity for the 3rd quarter of TY 2012.[17]

THE RULING

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

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[12] Oath of Commission, docket, p. 246.
[13] Resolution dated May 11, 2016, docket, pp. 380 to 381.
[14] Resolution, docket, p. 406.
[15] Memorandum, docket, pp. 390 to 402.
[16] Docket, pp. 403 to 404.
[17] Issue to be Tried, JSFI, docket, p. 232.

"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.

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."

Based on 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 discuss first whether the claim for refund was filed within the prescriptive period.

Petitioner's administrative and judicial claims were timely filed.

Pursuant to 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 claim covers the 3rd quarter of TY 2012 which closed on September 30, 2012. Counting therefrom, petitioner had until September 30, 2014 within which to file its administrative claim. Thus, petitioner's administrative claim filed with the BIR on September 26, 2014[18] is well within the two-year period prescribed under Section 112(A) of the NIRC of 1997, as amended.

As to the timeliness of petitioner's judicial claim, Section 112(C) of the NIRC of 1997, 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

[18] Exhibits "P-22", "P-23", "P-24", and "P-25", docket, pp. 367, 368 to 369, 370, and 371 to 372, respectively.

denial by the CIR, the taxpayer's recourse is to file an appeal before the Court of Tax 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.

Applying the foregoing to the instant case, when petitioner submitted the administrative claim on September 26, 2014, together with its supporting documents, respondent had 120 days therefrom or until January 24, 2015 within which to decide on petitioner's claim. Since respondent did not act on petitioner's administrative claim on or before January 24, 2015, the latter had thirty days therefrom or until February 23, 2015 within which to file its judicial claim.

Evidently, petitioner's judicial claim filed before this Court on February 20, 2015 is well within the period prescribed by law.

Petitioner is VAT-registered.

It is undisputed that petitioner is VAT-registered, as evidenced by its Certificate of Registration No. OCN 4RC0000670842, with Taxpayer's Identification No. (TIN) 001-946-873-000.[19]

Petitioner is engaged in zero-rated or effectively zero-rated sales; sale of power generated through renewable sources of energy is among the transactions subject to zero percent (0%) VAT.

Petitioner maintains that its sales of electricity to the National Power Corporation (NPC), which were generated through hydropower, are subject to zero percent (0%) VAT, pursuant to Section 108(B)(7) of the NIRC of 1997, as amended.

The Court agrees with petitioner.

[19] Par. 2, Summary of Stipulated Facts, JSFI, docket, p. 232; Exhibit "P-15", docket, p. 356.

Section 108(B)(7) of the NIRC of 1997, as amended by Republic Act (RA) No. 9337, provides that sale of power generated through renewable sources of energy is among the transactions subject to zero percent VAT, as follows:

> "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:
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> 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. 16-2005, 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 the same RR No. 16-2005 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 twelve percent 12% VAT on their gross receipts starting Feb. 1, 2006: *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 the R.A. 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 should be noted that in its Amended Articles of Incorporation,[20] petitioner was incorporated for the primary purpose of engaging 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. Similarly, it is indicated in petitioner's Certificate of Registration[21] that its line of business or industry is generation, collection, and distribution of electricity.

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[20] Exhibit "P-2", docket, pp. 329 to 343.
[21] Exhibit "P-15", docket, p. 356.

To further prove that it is a generation company, petitioner presented its Certificates of Compliance,[22] as listed below, issued by the Energy Regulatory Commission pursuant to Section 6 of Republic Act No. 9136 and its Implementing Rules and Regulations:

Certificate of Compliance (COC) No.	Power Plant/Location	Date of COC	Reference
13-11-GN 329-20028L	Ampohaw Hydroelectric Power Plant Benengbeng, Sablan, Benguet	November 11, 2013	Exhibit "P-3"
13-11-GN 331-20030L	Bineng 1 Hydroelectric Power Plant Bineng, La Trinidad, Benguet	November 11, 2013	Exhibit "P-4"
13-11-GN 332-20031L	Bineng 2 Hydroelectric Power Plant Bineng, La Trinidad, Benguet	November 11, 2013	Exhibit "P-5"
13-11-GN 333-20032L	Bineng 2b Hydroelectric Power Plant Bineng, La Trinidad, Benguet	November 11, 2013	Exhibit "P-6"
13-11-GN 334-20033L	Bineng 3 Hydroelectric Power Plant Bineng, La Trinidad, Benguet	November 11, 2013	Exhibit "P-7"
13-11-GN 327-20026L	FLS Hydroelectric Power Plant Poblacion, Bakun, Benguet	November 11, 2013	Exhibit "P-8"
12-04-GN 268-19259L	Irisan 1 HEPP Brgy. Tadiangan, Tuba Benguet	April 30, 2012	Exhibit "P-9"
13-11-GN 330-20029L	Irisan 3 Hydroelectric Power Plant Tadiangan, Tuba, Benguet	November 11, 2013	Exhibit "P-10"
13-11-GN 336-20035L	Sal-angan Hydroelectric Power Plant Ampucao, Itogon, Benguet	November 11, 2013	Exhibit "P-11"
13-11-GN 335-20034L	Lower Labay Hydroelectric Power Plant Ampusongan, Bakun, Benguet	November 11, 2013	Exhibit "P-12"
13-11-GN 328-20027L	Lon-oy Hydroelectric Power Plant Poblacion, Bakun, Benguet	November 11, 2013	Exhibit "P-13"
11-05-GXT 286b-0331M	Talomo Hydroelectric Power Plant Calinan; Mintal Proper; Upper Mintal and Cataluñan, Pequeño, Davao City	May 9, 2011	Exhibit "P-14"

Based on the foregoing, petitioner's sales of power generated through renewable source, *i.e.,* hydropower, qualify for VAT zero-rating under Section 108(B)(7) of the NIRC of 1997, as amended.

Petitioner is not entitled to input VAT; petitioner's purchases of local supply of goods, properties and services needed for the development, construction

[22] Exhibits "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", and "P-14", docket, pp. 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, and 355, respectively.

and installation of its plant facilities are zero-rated.

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

RA No. 9513, which was approved on December 16, 2008, provides that all renewable energy (RE) developers, such as herein petitioner, are entitled to zero-rated VAT on their purchases of local supply of goods, properties and services needed for the development, construction and installation of their plant facilities and to the whole process of exploring and developing renewable energy sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors, as follows:

> "CHAPTER VII
> GENERAL INCENTIVES
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> SECTION 15. *Incentives for Renewable Energy Projects and Activities*. – RE Developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:
>
> xxx xxx xxx
>
> (g) Zero Percent Value-Added Tax Rate. – The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.
>
> **All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods,**

properties and services needed for the development, construction and installation of its plant facilities.

This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to, the services performed by subcontractors and/or contractors." *(Emphasis supplied)*

The same is implemented by Part III, Rule 5, Section 13(G)(b) of DOE Circular No. DC2009-05-0008 issued by the Department of Energy (DOE) on May 25, 2009, which provides as follows:

"PART III.
Incentives for Renewable Energy Projects and Activities

RULE 5.
General Incentives and Privileges for Renewable Energy Development

SECTION 13. *Fiscal Incentives for Renewable Energy Projects and Activities*

DOE-certified existing and new RE Developers of RE facilities, including Hybrid Systems, in proportion to and to the extent of the RE component, for both Power and Non-Power Applications, shall be entitled to the following incentives:

xxx xxx xxx

G. *Zero Percent Value-Added Tax Rate*

The following transactions/activities shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337:

(a) Sale of fuel from RE sources or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels; *ju*

> (b) Purchase of local goods, properties and services **needed for the development, construction, and installation of the plant facilities** of RE Developers; and
>
> (c) **Whole process of exploration and development of RE sources up to its conversion into power**, including, but not limited to, the services performed by subcontractors and/or contractors." *(Emphasis supplied)*

It is clear from the foregoing that petitioner, being a RE Developer, is entitled to zero-rated VAT on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plants facilities, and to the whole process of exploring and developing renewable energy sources up to its conversion into power.

As such, no output VAT shall be shifted to or passed on to RE Developers, such as herein petitioner, in connection with their purchases of goods and services needed for the development, construction, and installation of their plant facilities as well as to the whole process of exploration and development of RE sources up to its conversion into power. Conversely, no input VAT shall be paid by RE Developers on these transactions. There being no input VAT to be paid by RE Developers, it necessarily follows that they are not entitled to refund or issuance of TCC from the said purchases.

Simply stated, petitioner should not have paid input taxes on its purchases of goods and services from VAT-registered suppliers because such purchases were zero-rated, that is, no output tax was paid by the suppliers. Accordingly, no input tax should have been shifted or passed on to petitioner. The VAT is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services.[23]

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

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

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

The ruling of the Supreme Court in the case of *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*[24] is highly instructive. The High Tribunal held that the purchases of goods and services by a PEZA-registered entity that were destined for consumption within the ecozone should be free of VAT, hence, no input VAT should be paid on such purchases; and in case such input VAT was paid, the PEZA-registered entity's proper recourse would be against the seller who shifted the output VAT. The pertinent portions of the decision are hereunder quoted:

> "The petitioner's principal office was located in Barangay Rio Tuba, Bataraza, Palawan. Its plant site was specifically located inside

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

> the Rio Tuba Export Processing Zone - a special economic zone (ECOZONE) created by Proclamation No. 304, Series of 2002, in relation to Republic Act No. 7916. As such, **the purchases of goods and services by the petitioner that were destined for consumption within the ECOZONE should be free of VAT; hence, no input VAT should then be paid on such purchases, rendering the petitioner not entitled to claim a tax refund or credit. Verily, if the petitioner had paid the input VAT, the CTA was correct in holding that the petitioner's proper recourse was not against the Government but against the seller who had shifted to it the output VAT** following RMC No. 42-03, which provides:
>
>> In case the supplier alleges that it reported such sale as a taxable sale, the substantiation of remittance of the output taxes of the seller (input taxes of the exporter-buyer) can only be established upon the thorough audit of the suppliers' VAT returns and corresponding books and records. It is, therefore, imperative that the processing office recommends to the concerned BIR Office the audit of the records of the seller.
>>
>> In the meantime, **the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier**.
>
> We should also take into consideration the nature of VAT as an indirect tax. Although the seller is statutorily liable for the payment of VAT, the amount of the tax is allowed to be shifted or passed on to the buyer. However, reporting and remittance of the VAT paid to the BIR remained to be the seller/supplier's obligation. Hence, the proper party to seek the tax refund or credit should be the suppliers, not the petitioner." (*Emphasis supplied*)

Applying the foregoing ruling by analogy, petitioner's recourse for its purchases of goods and services where it paid VAT is not a claim for refund against the BIR, but to seek reimbursement of its alleged input VAT paid from its suppliers of goods and services since its purchases of local goods, properties and services needed for the development, construction and installation of the plant facilities as well as its purchases of goods, properties and services for the whole process of exploration and development of renewable energy sources up to its conversion into power, including but not limited to the services

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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

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.

ROMAN G. DEL ROSARIO
Presiding Justice

performed by subcontractors or contractors, are subject to zero percent VAT under RA No. 9513.

Accordingly, the Court finds that petitioner is not entitled to the refund of the amount of ₱6,149,582.86 representing its unutilized input VAT from purchases attributable to zero-rated sales of electricity for the third quarter of TY 2012.

Well-settled is the rule that a claim for tax refund or credit is similar to a tax exemption and should be strictly construed against the taxpayer. The burden of proof to show that he is ultimately entitled to the grant of such tax refund or credit rests on the taxpayer.[25]

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

SO ORDERED.

JUANITO C. CASTANEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

[25] *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*, G.R. No. 190506, June 13, 2016.