**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

*********

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|---|---|
| **HEDCOR INC.,** Petitioner, | **CTA EB No. 1836** (CTA Case No. 8931) |
| | ***Present:*** |
| - versus - | **DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | ***Promulgated:*** AUG 05 2019 4:21 p.m. |

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# DECISION

**UY, *J.*:**

Before the Court *En Banc* is a *Petition for Review* filed by Hedcor Inc. on May 2, 2018 against the Commissioner of Internal Revenue,[1] appealing the Decision dated October 3, 2017[2] and the Resolution dated March 26, 2018[3], both rendered by the Second Division of this Court (Court in Division) in CTA Case No. 8931, entitled *"Hedcor, Inc., Petitioner, versus Commissioner of Internal Revenue, Respondent"*, the dispositive portions of which respectively read as follows:

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[1] EB Docket, pp. 9 to 37.

[2] Penned by retired Associate Justice Caesar A. Casanova, concurred by Associate Justices Juanito C. Castañeda, Jr. and Catherine T. Manahan; EB Docket, pp. 46 to 67.

[3] *Id.*; EB Docket, pp. 69 to 80.

**Decision dated October 3, 2017:**

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

**Resolution dated March 26, 2018:**

> "**WHEREFORE**, finding no compelling reason to reverse the ruling of this Court in the assailed Decision, petitioner's Omnibus Motion is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

## THE FACTS

Petitioner Hedcor, Inc. is a corporation duly registered and existing under the laws of the Philippines, with principal office at 214 Ambuklao Road, Obulan, Beckel, La Trinidad, Benguet. It is 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. It is registered with the Bureau of Internal Revenue (BIR) as value-added tax (VAT) taxpayer with Taxpayer Identification Number (TIN) 001-946-873, and with Certificate of Registration Number OCN 4RC00006780842 dated May 2, 1990.

Respondent Commissioner of Internal Revenue is the duly appointed Chief of the BIR. He is vested by law with power to decide, approve and grant refund of internal revenue taxes or issue tax credit certificates of input tax due or paid, by a VAT-registered person, whose sales are zero-rated or effectively zero-rated, as provided by law.

Petitioner is duly authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity, through the following Certificates of Compliance (COC) issued by the ERC to the petitioner:

| COC No. | Power Plant/Location | Date of COC |
|---|---|---|
| 13-11-GN 329-20028L | Ampohaw Hydroelectric Power Plant Benengbeng, Sablan, Benguet | November 11, 2013 |
| 13-11-GN 331-20030L | Bineng1 Hydroelectric Power Plant Bineng, La Trinidad, Benguet | November 11, 2013 |
| 13-11-GN 332-20031L | Bineng2 Hydroelectric Power Plant Bineng, La Trinidad, Benguet | November 11, 2013 |
| 13-11-GN 333-20032L | Bineng2b Hydroelectric Power Plant Bineng, La Trinidad, Benguet | November 11, 2013 |
| 13-11-GN 334-20033L | Bineng3 Hydroelectric Power Plant Bineng, La Trinidad, Benguet | November 11, 2013 |
| 13-11-GN 327120026L | FLS Hydroelectric Power Plant Poblacion, Bakun, Benguet | November 11, 2013 |
| 12-04-GN 268-19259L | Irisan 1 HEPP Brgy. Tadiangan, Tuba Benguet | April 30, 2012 |
| 13-11-GN 330-20029L | Irisan 3 Hydroelectric Power Plant Tadiangan, Tuba, Benguet | November 11, 2013 |
| 13-11-GN 336-20035L | Sal-angan Hydroelectric Power Plant Ampucao, Itogon, Benguet | November 11, 2013 |
| 13-11-GN 335-20034L | Lower Labay Hydroelectric Power Plant Ampusongan, Bakun, Benguet | November 11, 2013 |
| 13-11-GN 328-20027L | Lon-oy Hydroelectric Power Plant Poblacion, Bakun, Benguet | November 11, 2013 |
| 11-05-GXT 286b-0331M | Talomo Hydroelectric Power Plant Calinan; Mintal Proper; Upper Mintal and Catalunan, Pequeño, Davao City | May 9, 2011 |

Petitioner filed with the BIR its original and amended quarterly VAT returns for the 2nd quarter of 2012 on July 20, 2012 and January 31, 2013. The said quarterly VAT returns show that petitioner paid and incurred input VAT from its domestic purchases of goods and services in the total amount of ₱6,747,755.38. The VAT returns for quarters covering the period from 3rd quarter of 2012 until the 1st quarter of 2013 show that it did not carry over the said excess and unused input VAT.

On June 26, 2014, petitioner filed with the BIR Revenue District Office No. 9 its application for administrative claim for refund of its excess and unutilized input VAT with an attached cover letter dated June 2, 2014. On the same date, simultaneous with the filing of the administrative claim for refund, petitioner submitted to the BIR all its supporting documents pursuant to Revenue Memorandum Order No. 53-98 to substantiate its claim.

Despite the submission of complete supporting documents, respondent did not act on petitioner's administrative claim within the mandatory 120-day period under Section 112(C) of the Tax Code, as amended. In this case, the 120-day period for the respondent to decide on the claim ended on October 24, 2014. Accordingly, exercising its option under said provision, petitioner filed its *Petition for Review* with this Court on November 21, 2014. The case was raffled to the Court in Division and was docketed as CTA Case No. 8931.

On February 4, 2015, respondent filed his *Answer* interposing, *inter alia*, the following special and affirmative defenses: (1) that it was incumbent upon petitioner to establish its right to refund and petitioner failed to present clear and convincing evidence to merit a tax credit; (2) that the amount being claimed by petitioner for allegedly unutilized input VAT for the 2$^{nd}$ quarter of taxable year 2012 was not properly documented; (3) that without proper documentation and 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 must fail.

Thereafter, the Pre-Trial Conference for CTA Case No. 8931 was scheduled on March 19, 2015. Respondent's *Pre-Trial Brief* was filed on March 10, 2015 while *Pre-Trial Brief for Petitioner* was filed on March 13, 2015.

On March 30, 2015, the parties filed their *Joint Stipulation of Facts and Issues*, which was approved by the Court in Division in its Pre-Trial Order dated April 7, 2015. The initial presentation of petitioner's evidence was set on May 20, 2015.

Trial ensued thereafter. Petitioner presented its evidence and its witnesses.

On November 23, 2015, petitioner filed its *Formal Offer of Evidence*, offering Exhibits "P-1" to "P-1510". In the Resolution dated January 21, 2016, the Court in Division admitted Exhibits "P-3" to "P-1510", and denied Exhibits "P-1", "P-2", "P-22" and "P-1500".

Petitioner then filed a *Motion for Partial Reconsideration* of the Resolution dated January 21, 2016, praying for the Court in Division to reconsider the above-mentioned Resolution and, to re-open the presentation of petitioner's evidence. In the Resolution dated April 5, 2016, the Court in Division set the hearing for the marking of petitioner's evidence and held in abeyance the resolution of the said *Motion for Partial Reconsideration*.

In the hearing held on September 5, 2016, respondent's counsel manifested that respondent has no witness to present. In the same hearing, both parties were ordered to submit their respective memoranda.

Eventually, the Court in Division reconsidered the admissions of Exhibits "P-1" and "P-22", per its Resolution dated June 22, 2016, and per Minutes of the Hearing dated September 5, 2016.

Petitioner filed its *Memorandum* on October 20, 2016, while respondent filed a *Manifestation* on October 5, 2016 stating that, in lieu of filing a *Memorandum*, he is adopting his *Answer* to the *Petition for Review* filed on February 4, 2015, as his *Memorandum*. Hence, CTA Case No. 8931 was submitted for decision on October 24, 2016.

Thereafter, the Court in Division issued the assailed Decision,[4] denying petitioner's *Petition for Review* in CTA Case No. 8931 for lack of merit.

Undaunted, petitioner filed an *Omnibus Motion* seeking for reconsideration of the Decision dated October 3, 2017 on October 19, 2017,[5] without comment from respondent, despite due notice.

Thereafter, the Court in Division issued the assailed Resolution dated March 26, 2018,[6] denying petitioner's *Omnibus Motion* for lack of merit.

On April 18, 2018, petitioner filed a *Motion for Extension of Time To File Petition for Review* before this Court *En Banc*,[7] praying that it be given an additional fifteen (15) days from April 18, 2018 or until May 3, 2018, within which to file its *Petition for Review* before the Court *En Banc*.

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[4] EB Docket, pp. 46 to 67; Division Docket (CTA Case No. 8931) – Vol. II, pp. 521 to 542.
[5] Division Docket (CTA Case No. 8931) – Vol. II, pp. 546 to 574.
[6] EB Docket, pp. 69 to 80; Division Docket (CTA Case No. 8931) – Vol. II, pp. 582 to 593.
[7] EB Docket, pp. 1 to 4.

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Acting on the said *Motion*, the Court *En Banc* granted petitioner, a final and non-extendible period of fifteen (15) days from April 18, 2018, or until May 3, 2018, within which to file its *Petition for Review*.[8]

Thus, petitioner filed the instant *Petition for Review* on May 2, 2018.

In the Resolution dated May 25, 2018,[9] the Court *En Banc* ordered respondent to file his *Comment*, within ten (10) days from receipt thereof. Respondent, however, failed to file the said *Comment*.[10] Subsequently, on August 9, 2018, the instant case was deemed submitted for decision.[11]

Hence, this Decision.

**THE ISSUES**

Petitioner raises the following issues for the Court *En Banc*'s resolution, to wit:

"1.
WHETHER OR NOT THE SECOND DIVISION ERRED WHEN IT DENIED HEDCOR'S CLAIM FOR INPUT VAT REFUND OR TAX CREDIT ON THE BASIS OF THE RE ACT

2.
WHETHER OR NOT THE CTA SECOND DIVISION ERRED WHEN IT DENIED HEDCOR'S MOTION FOR NEW TRIAL ON THE GROUND THAT THERE WAS NO NEWLY-DISCOVERED EVIDENCE".[12]

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[8] Minute Resolution dated April 20, 2018, EB Docket, p.
[9] EB Docket, pp. 130 to 131.
[10] Records Verification Report dated July 24, 2018 issued by the Judicial Records of this Court, EB Docket, p. 132.
[11] Resolution dated August 9, 2018, EB Docket, pp. 134 to 135.
[12] EB Docket, p. 16.

***Petitioner's arguments:***

Petitioner argues that the Court in Division erred in denying its *Petition* for refund/tax credit principally on the ground that petitioner should not have paid input VAT in the first place, as its domestic purchases were zero-rated under Republic Act (RA) No. 9513 or the Renewable Energy Act of 2008.

Petitioner raises the following grounds: 1) That the Court in Division violated procedural due process because it never pleaded RA No. 9513, its applicability to the instant case was never raised in issue by either party. For this reason, petitioner never presented evidence of its tax benefits under that statute; 2) That it could not have availed of the benefits of RA No. 9513 when it made the subject purchases since it was not registered as a Renewable Energy (RE) Developer in the second quarter of 2012. According to petitioner, it received its certification as such only in October 2012. Thus, petitioner had no choice but to pay its suppliers for the passed-on VAT on purchases made during the second quarter of 2012; 3) That petitioner has clear basis under Sections 108(B)(7) and 112(A) of the Tax Code to claim a refund or credit of the input tax passed on to it by its suppliers since these input taxes are attributable to zero-rated sales; 4) That the *Coral Bay*[13] case cited in the assailed decision is not analogous to the instant case; 5) That the VAT zero-rating on local purchases is an incentive provided under RA No. 9513 and, thus, the enjoyment thereof is merely optional; 6) That petitioner is entitled to refund of VAT erroneously passed on to it by its suppliers, pursuant to the principle of *solutio indebiti*.

Lastly, petitioner avers that the Court in Division erred in denying its motion for new trial on the ground that there was no newly discovered evidence. Petitioner asserts that the implications of R.A. No. 9513 calls for the presentation of additional evidence in a new trial proceeding to point out that the refund of the input VAT in this case refers to periods wherein petitioner was not yet registered as a Renewal Energy Developer.

## THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

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

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***The Court in Division did not err in applying RA No. 9513 in the instant case.***

Petitioner contends that its claim for refund was grounded on the provisions of the Tax Code but the assailed Decision ruled on the basis of RA No. 9513, otherwise known as the Renewable Energy Act of 2008. It alleges that neither parties invoked the provisions of RA No. 9513 during trial; thus, it never presented any proof or evidence that it was registered as a renewable energy developer. Hence, the assailed Decision violated procedural due process.

We are not swayed.

Statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. **Tax refunds in relation to VAT are in the nature of such exemptions.** The general rule is that claimants of tax refunds bear the burden of proving the factual basis of their claims.[14]

Thus, it behooves the Court in Division to look into the factual basis of a refund claim vis-à-vis all applicable laws, which in this case includes RA No. 9513, since petitioner, as will be shown momentarily, is a RE Developer.

It must also be stressed that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[15] Thus, petitioner is called upon to present in the proceedings *a quo* to prove every minute aspect of its case. As a corollary, any relevant evidence not presented works to the detriment of petitioner.

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[14] *Panasonic Communications Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010.

[15] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.

But even granting that the parties did not indeed raise the issue of the applicability of RA No. 9513, the Court in Division is allowed to resolve issues not raised or stipulated by the parties.

Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA) categorically states, to wit:

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

Based on the foregoing, this Court is not limited to resolve issues stipulated by the parties but may also resolve any related issues necessary to achieve an orderly disposition of the case. The issue of whether a claim for refund of input VAT calls for the resolution of the issue whether or not such input VAT is refundable under existing laws. Therefore, even if the parties did not invoke the provisions under RA No. 9513, the Court in Division is not prevented from applying the same since it deals with the determination of petitioner's transactions as a RE Developer.

***Contrary to the assertion of petitioner, it could have already availed of the zero-rated VAT treatment on its purchases under RA No. 9513 in the second quarter of 2012.***

Petitioner asserts that it could not have availed of the benefits of RA No. 9513 when it made the subject purchases, since it was not registered as a RE Developer. Relative thereto, petitioner alleges that it received its certification as such only in October 2012.

We disagree.

Section 4(pp), and (uu) of RA No. 9513 reads:

> "Section 4. *Definition of Terms.* – As used in this Act, the following terms are herein defined:

xxx xxx xxx

(pp) **<u>'Renewable Energy (Systems) Developers' or 'RE Developers'</u> refer to individual/s or a group of individuals formed in accordance with existing Philippine Laws engaged in the exploration, development and utilization of RE resources and actual operation of RE systems/facilities;**

xxx xxx xxx

(uu) 'Renewable Energy Resources' (RE Resources) refer to energy resources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis, and whose renewal rate is relatively rapid to consider availability over an indefinite period of time. **This include, among others,** biomass, solar, wind, geothermal, ocean energy, and **hydropower** conforming with internationally accepted norms and standards on dams, and other emerging renewable energy technologies;" *(Emphasis and underscoring supplied)*

Based on the foregoing definition of "RE Developers", to be considered as falling under such term, one should be merely an individual or a group of individuals formed in accordance with existing laws engaged in the exploration, development and utilization of RE resources, which include hydropower, and actual operation of RE systems/facilities. The said definition is without regard to whether a certification to that effect has been issued by any government office or agency.

In this case, petitioner is a domestic corporation duly organized and existing under the laws of the Philippines.[16] Furthermore, it is one engaged in the exploration, development, and utilization of hydropower, and is actually operating RE facilities, *i.e.*, Hydro Power Plants.[17]

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[16] Exhibit "P-1", Division Docket (CTA Case No. 8931) – Vol. II, pp. 470 to 487.
[17] Exhibits "P-3" to "P-14", Division Docket (CTA Case No. 8931) – Vol. I, pp. 306 to 317.

Furthermore, the foregoing finding was validated in the statements of Arazeli Malapad, AVP-Controller of petitioner, in her Judicial Affidavit[18], to wit:

> "4. Q: What is the nature of the business of HEDCOR, Inc., the Petitioner in this case?
>
> A: HEDCOR, INC. is a corporation primarily engaged in the operation, construction, maintenance of hydro-electric power plants, renewable and indigenous power generation plants and other types of power generation and converting stations. It is likewise engaged in the sale of electricity/power generated from hydropower.
>
> xxx xxx xxx
>
> 6. Q: Can you tell the Honorable Court the electric plants owned and managed by Hedcor, Inc.?
>
> A: HEDCOR, Inc. is the owner and operator of sixteen (16) hydroelectric power pants, namely: Ampohaw Hydroelectric Power Plant, Bineng 1 Hydroelectric Power Plant, Bineng 2 Hydroelectric Power Plant, Bineng 2b Hydroelectric Power Plant, Bineng 3 Hydroelectric Power Plant, FLS Hydroelectric Power Plant, Irisan 1 HEPP (or Hydroelectric Power Plant), Irisan 3 Hydroelectric Power Plant, Sal-angan Hydroelectric Power Plant, Lower Labay Hydroelectric Power Plant, Lon-oy Hydroelectric Power Plant, Talomo 1, Talomo 2, Talomo 2A, Talomo 2B and Talomo 3 Hydroelectric Power Plants.
>
> Hedcor Inc. is duly recognized by the Energy Regulatory Commission which issued Certificates of Compliance to HEDCOR, Inc. in the operation and management of the sixteen hydroelectric power plants I mentioned. Hedcor, Inc. derived the electricity/energy for sale only from hydroelectric power plants that I mentioned."

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[18] Exhibit "P-24", pp. 143 to 144.

Such being the case, it cannot be doubted that petitioner is a RE Developer, even when it has not received any certification to that effect.

Consequently, petitioner is entitled to, *inter alia*, the following incentive under the second paragraph of Section 15(g) of RA No. 9513, which are available to **all RE Developers**, to wit:

> "**<u>All RE Developers</u> 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 plant facilities." *(Emphasis and underscoring supplied)*

A plain reading of the foregoing provision reveals that the said benefit applies to *"[a]ll RE Developers"*, without distinction as to whether a RE Developer has received a certification stating it as such. Where the law does not distinguish, neither should we.[19]

***Petitioner must prove its entitlement to the refund claim under substantive law. The VAT zero-rating treatment on local purchases of petitioner, as a RE Developer, is not optional.***

Petitioner asserts that it has clear basis under Sections 108(B)(7) and 112(A) of the NIRC of 1997, as amended, to claim a refund or credit of the input VAT passed on to it by its suppliers since the same are attributable to zero-rated sales. Moreover, petitioner argues that the enjoyment of VAT zero-rating on local purchases under RA No. 9513 is merely optional.

Petitioner's arguments are untenable.

In a claim for tax refund or tax credit, the applicant must prove, *inter alia*, its entitlement to the grant of the claim **under substantive**

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[19] *Spouses Romeo LL. Plopenio and Rosielinda Plopenio vs. Department of Agrarian Reform, etseq.*, G.R. Nos. 161090 and 161092, July 4, 2012.

**law.**[20] In fact, the taxpayer is charged **with the heavy burden** of proving that he has complied and satisfied **all the statutory** and administrative **requirements** to be entitled to the tax refund.[21]

Since petitioner is a RE Developer, as above shown, the substantive law under which it must prove entitlement for the grant of the instant claim for refund of input VAT is not only limited to Sections 108(B)(7) and 112(A) of the NIRC of 1997, as amended, but also includes Section 15(g) of RA No. 9513, which provides as follows:

> "SEC. 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,

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[20] *Sitel Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017, citing *Western Mindanao Power Corp. vs. Commissioner of Internal Revenue*, 687 Phil. 328 (2012).

[21] *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*, G.R. No. 163835, July 7, 2010.

> the services performed by subcontractors and/or contractors." *(Emphasis supplied)*

On the basis of the foregoing provisions, it clearly shows that the legislature intended that RE Developers be free of VAT on its *sales* of fuel or power generated from renewable sources of energy, and on its *purchases* of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities, by subjecting the said transactions at the VAT rate of 0%.

In *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue* ("*Coral Bay* case"),[22] the Supreme Court settled the treatment of taxpayers who enjoy a VAT-free treatment on its sales and purchases, and are claiming input VAT on their purchases, to wit:

> "The petitioner's principal office was located in Barangay Rio Tuba, Bataraza, Palawan. Its plant site was specifically located inside the Rio Tuba Export Processing Zone – a special economic zone (ECOZONE) created by Proclamation No. 304, Series of 2002, in relation to Republic Act No. 7916. **As such, the <u>purchases of goods and services</u> by the petitioner that were destined for consumption within the ECOZONE <u>should be free of VAT</u>; hence, no input VAT should then be paid on such purchases, rendering the petitioner not entitled to claim a tax refund or credit. Verily, <u>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</u> 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.

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

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

Based on the foregoing jurisprudential pronouncements, the refund claim against the BIR or respondent of a taxpayer who had incurred input VAT on its purchases, despite being VAT free, ought to be denied. The said taxpayer's recourse is not against the government, but against the subject suppliers of the goods and services purchases.

In this case, petitioner's local purchases of goods and services are free of VAT, or specifically, subject to the VAT rate of 0%. Thus, any input VAT it paid to the suppliers of the said goods and services cannot be claimed against the BIR or respondent. Correspondingly, the Court in Division's denial of petitioner's claim for refund was proper.

We do not subscribe to petitioner's contention that the enjoyment of VAT zero-rating on local purchases under RA No. 9513 is merely optional or within the prerogative of RE Developers whether to utilize and avail of the said incentive, since the lawmakers used the word "entitled", in conjunction with the mandatory nature of the word "shall".

While it is true that word *"entitle"* (the root word for *"entitled"*) means "[t]*o give title or right to; to qualify for; to provide proper grounds for relief*"[23], and therefore, as used under the second paragraph of Section 15(g) of RA No. 9513, may connote that the concerned RE Developer has an option to choose whether to be

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[23] The Attorney's Pocket Dictionary © 1981, p. 170.

passed on with the input VAT on its local purchases of goods and services from VAT-registered suppliers, such an interpretation is flawed.

The second paragraph of Section 15(g) of RA No. 9513 must be harmonized with Sections 106(A)(2)(c) and 108(B)(3) of the NIRC of 1997. The said provisions are *in pari materia* because they relate to the same particular subject matter, *i.e.*, the VAT zero-rating treatment of certain transactions.

For sure, statutes are *in pari materia* when they relate to the same person or thing or to the same class of persons or things, or object, or cover the same specific or particular subject matter. It is axiomatic in statutory construction that a statute must be interpreted, not only to be consistent with itself, but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system.[24]

Sections 106(A)(2)(c) and 108(B)(3) of the NIRC of 1997, as amended, provide as follows:

> "SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* – xxx.
>
> xxx xxx xxx
>
> (2) **The following sales by VAT-registered persons <u>shall be subject</u> to zero percent (0%) rate:**
>
> xxx xxx xxx
>
> (c) **Sales to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects such sales to zero rate.**" *(Emphases and underscoring supplied)*
>
> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –

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[24] *Philippine Economic Zone Authority vs. Green Asia Construction & Development Corporation*, G.R. No. 188866, October 19, 2011.

xxx xxx xxx

(B) *Transactions Subject to Zero Percent (0%) Rate.* – **The following services performed in the Philippines by VAT-registered persons <u>shall be subject</u> to zero percent (0%) rate:**

xxx xxx xxx

(3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate**;" *(Emphases and underscoring supplied)*

Based on the foregoing provisions, the sale of goods and rendering or supply of services to persons or entities whose exemption under special laws effectively subjects such transaction to zero percent (0%) rate, **<u>shall be subject</u> to the zero percent (0%) VAT rate**. It must be emphasized, in this connection, that the said provisions use the word *"shall"* in the imposition of the zero percent (0%) VAT rate.

Jurisprudence and statutory construction teach us that the word "shall" connotes mandatory character; it indicates a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory in nature.[25]

Thus, it is mandatory for the seller of goods and the supplier of services to persons or entities whose exemption under special laws effectively subjects the transaction to the zero percent (0%) to treat the same as subject to the VAT rate of zero percent (0%). It is not hard to discern the mandatory nature of zero-rated transactions. This is because in zero-rating a transaction, the purpose is not to benefit the person legally liable to pay the tax, like the said seller and supplier, but to relieve exempt entities, like petitioner, from having to shoulder the tax burden that ultimately would be passed to the public.[26]

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[25] *UCPB General Insurance Company, Inc. vs. Hughes Electronics Corporation*, G.R. No. 190385, November 16, 2016.

[26] Refer to *Southern Philippines Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179632, October 19, 2011.

In this case, the earlier quoted second paragraph of Section 15(g) of RA No. 9513, a special law, effectively subjects the *purchase* (from the point of view of the RE Developer) or the *sale* (from the perspective of the seller of goods and the supplier of services) to the zero percent (0%) rate. Such being the case, it is mandatory that the transaction be subject to the VAT zero-rating under Sections 106(A)(2)(c) and 108(B)(3) of the NIRC of 1997, as amended, as the case may be.

A contrary interpretation would be absurd, where the VAT zero rating treatment on the same transaction is both mandatory and optional. Needless to state, a literal interpretation is to be rejected if it would be unjust or lead to absurd results.[27]

But even granting that the incentive of VAT zero-rating of purchases under Section 15(g) of RA No. 9513 is indeed optional, such a situation is of no moment in this case.

It must be noted that notwithstanding that petitioner has a right to avail of the VAT zero-rating on its purchases, it still paid the passed on VAT by the concerned local seller of goods and supplier of services. Such action may be construed as a legally-binding waiver of a right of petitioner under Section 15(g) of RA No. 9513 to be free of VAT. It must be remembered that "[r]*ights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law.*"[28] There being no showing that petitioner's waiver of the incentive of VAT zero-rating on its purchases under Section 15(g) of the RA No. 9513 is contrary to law, public order, public policy, morals, or good customs, or is prejudicial to a third person with a right recognized by law, the said waiver is valid and binding to petitioner. Thus, the latter cannot now claim the instant refund claim.

***The Coral Bay case is analogous to the instant case.***

Petitioner further avers that the *Coral Bay* case cited in the assailed Decision is not analogous to the instant case. Moreover, petitioner argues that the VAT incentive of RE Developers and their

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[27] *Automotive Parts & Equipment Company, Inc. vs. Lingad, et al.*, G.R. No. L-26406, October 31, 1969.
[28] Article 6, Civil Code of the Philippines (Republic Act No. 386).

*[signature]*

suppliers cannot be equated with that of PEZA-registered entities and their suppliers, because they are not on *"analogous footing"*.

Again, We disagree.

As already pointed out, in the *Coral Bay* case, the High Court has settled the treatment of the refund claim of input VAT of taxpayers who enjoy a VAT zero-rating treatment on its sales and purchases. Thus, considering that the instant case likewise deals with the same situation, the *Coral Bay* case is analogous thereto, and therefore, may be applied therein.

Moreover, it must be noted that the said ruling in the *Coral Bay* case is anchored on Revenue Memorandum Circular (RMC) No. 42-03[29], which deals specifically with, *inter alia*, the situation of petitioner, without regard to the legal basis (whether under the PEZA law or otherwise) for the VAT-free treatment. Thus, being similarly situated, the rule under the said RMC must also be applied in the instant case.

Furthermore, admittedly, the *Coral Bay* case specifically deals with the transactions of PEZA-registered firms vis-à-vis their suppliers under the PEZA law. However, it must be emphasized that the thrust of the *Coral Bay* case is that it is **not** the person or entity to whom the VAT was passed on, *i.e.*, the purchaser who enjoys input VAT exemption, who can legally claim the refund thereof; rather, it is the statutory taxpayer or the person who passed on the said tax. Such a ruling has been made by the Supreme Court, without regard to the PEZA law or any other special law for that matter, in the earlier case of *Philippine Geothermal, Inc. vs. Commissioner of Internal Revenue*,[30] wherein the following ruling was made, to wit:

> "xxx. Whether NPC had reimbursed petitioner is not the concern of the CTA. It is solely a matter between petitioner and NPC. **For indirect taxes like VAT, the proper party to question or seek a refund of the tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even when he shifts the burden thereof to another.**

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[29] SUBJECT: Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Importers.

[30] G.R. No. 154028, July 29, 2005.

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> **Petitioner has the legal personality to apply for a refund <u>since it is the one who made the erroneous VAT payments</u> and who will suffer financially by paying in good faith what it had believed to be its potential VAT liability.**
>
> Under the principle of *solutio indebiti*, the government has to restore to petitioner the sums representing erroneous payments of taxes. **It is of no moment whether NPC had already reimbursed petitioner or not because in this case, <u>there should have been no VAT paid at all</u>.**" *(Emphases supplied)*

In the foregoing case, the refund claimant, Philippine Geothermal, Inc., entered into a service contract for the supply of steam with the National Power Corporation or NPC, which, at that time, enjoyed exemption from both direct and indirect taxes the latter may be required to pay. Philippine Geothermal, Inc. billed NPC, VAT on the service fee charged on the supply of the steam. However, NPC did not pay the said VAT. Thus, to avoid any possible VAT deficiency, Philippine Geothermal, Inc. remitted the corresponding VAT for the transaction. Philippine Geothermal, Inc. then claimed the refund of the said VAT.

As can be gleaned from the above ruling, the same is similar to the holding in the *Coral Bay* case, *i.e.*, it is the *seller* who passed on the VAT who is entitled to the refund claim, **not** the *purchaser* enjoying a VAT-free incentive. Thus, even without the PEZA law, the rule is clear and can be applied to persons similarly situated: <u>the proper party to seek the tax refund or credit of the passed-on VAT is the suppliers/sellers, and not the purchasers, who enjoy a VAT free treatment</u>. Correspondingly, since petitioner is the purchaser to the subject transaction to whom the VAT was passed-on, it cannot validly claim the instant claim for refund.

***It is the supplier or seller that remitted the passed-on VAT who can invoke the principle of*** **solutio indebiti.**

Petitioner likewise invokes the principle of *solutio indebiti*, as it claims entitlement to the refund of the VAT erroneously passed on to it by its suppliers.

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The reliance of petitioner on the principle of *solutio indebiti* is misplaced.

There is *solutio indebiti* when: (1) payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) payment is made through mistake, and not through liberality or some other cause.[31]

There is no compliance with the foregoing requisites insofar as petitioner is concerned. It must be pointed out that petitioner did not make any payment to the government or the BIR of the supposed input VAT being claimed for refund. If at all, the payors of the subject passed-on input VAT are the suppliers or sellers of petitioner, since they are the ones who supposedly remitted the same to the government or the BIR. Moreover, while it may be conceded that the payment or remittance of the passed-on VAT was made through mistake, it was made by the said suppliers or sellers, and not petitioner.

Thus, it is improper for petitioner to invoke the principle of *solutio indebiti*.

***The Court in Division did not err in denying petitioner's Motion for New Trial***

Lastly, petitioner contends that the implications of the Renewable Energy Act calls for presentation of additional evidence properly introduced in a new trial of the case and that the documents sought to be presented comprise "newly discovered evidence" that would warrant a new trial.

Again, We disagree.

In *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,*[32] the Supreme Court held:

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[31] *CBK Power Company Limited vs. Commissioner of Internal Revenue*, G.R. No. 198729-30, January 15, 2014.
[32] G.R. Nos. 141104 & 148763, June 8, 2007.

> "The rule that the grant or denial of motions for new trial rests on the discretion of the trial court, may likewise be extended to the CTA. When the denial of the motion rests upon the discretion of the of a lower court, **this Court will not interfere with its exercise, unless there is proof of grave abuse thereof**." *(Emphasis supplied)*

Likewise, in the absence of grave abuse of discretion, the ruling of the Court in Division in denying petitioner's *Motion for New Trial* will not be interfered with by the Court *En Banc*. In the instant case, petitioner failed to show that there was grave abuse of discretion on the part of the Court in Division. We therefore see no reason to reverse the said ruling thereof.

**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. The Decision dated October 3, 2017 and Resolution dated March 26, 2018 rendered by the Court in Division in CTA Case No. 8931 are hereby **AFFIRMED**.

**SO ORDERED.**

**ERLINDA P. UY**
*Associate Justice*

WE CONCUR:

*( See Concurring Opinion )*
**ROMAN G. DEL ROSARIO**
*Presiding Justice*

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
*Associate Justice*

**ESPERANZA R. FABON-VICTORINO**
*Associate Justice*

**CIELITO N. MINDARO-GRULLA**
*Associate Justice*

**MA. BELEN M. RINGPIS-LIBAN**
*Associate Justice*

*( With Separate Opinion )*
**CATHERINE T. MANAHAN**
*Associate Justice*

*( no part )*
**JEAN MARIE A. BACORRO-VILLENA**
*Associate Justice*

*( no part )*
**MARIA ROWENA MODESTO-SAN PEDRO**
*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.

**ROMAN G. DEL ROSARIO**
*Presiding Justice*

REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

***EN BANC***

| | |
|---|---|
| **HEDCOR, INC.,**<br>*Petitioner,* | **CTA EB NO. 1836**<br>(CTA Case No. 8931) |
| | Present: |
| *-versus-* | Del Rosario, P.J.,<br>Castañeda, Jr.,<br>Uy,<br>Fabon-Victorino,<br>Mindaro-Grulla,<br>Ringpis-Liban,<br>Manahan,<br>Bacorro-Villena, and<br>Modesto-San Pedro, JJ. |
| **COMMISSIONER OF INTERNAL REVENUE,**<br>*Respondent.* | Promulgated:<br>AUG 05 2019 4:21 p.m. |

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## CONCURRING OPINION

***DEL ROSARIO, P.J.:***

As borne by the records and as articulated in the *ponencia*, the projects and activities undertaken by petitioner clearly show that petitioner falls within the definition of Renewable Energy (Systems) Developers or RE Developers as defined in Section 4(pp) of Republic Act (RA) No. 9513, otherwise known as the "Renewable Energy Act of 2008".

Under Section 15 of RA No. 9513, an RE Developer must be duly certified as such by the Department of Energy (DOE) in order to be entitled to avail of the incentives for renewable energy projects and activities, *viz.*:

**"CHAPTER VII**
**GENERAL INCENTIVES**

> **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." (Boldfacing and underscoring supplied)

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

**"PART III.**
**Incentives for Renewable Energy Projects and Activities**

**RULE 5.**
**Genera/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:" (Boldfacing and underscoring supplied)

In the present Petition for Review, petitioner alleges that it could not have availed of the benefits or incentives provided under RA No. 9513 when it made its local purchases as it was not registered as an RE Developer in the second quarter of 2012. Thus, petitioner insists that it had no choice but to pay its suppliers for the passed-on VAT on purchases made during the second quarter of 2012.[1]

There is, however, nothing on record which would prove petitioner's aforestated allegations, particularly, a negative Certification issued by the DOE confirming that petitioner was not registered as an RE Developer during the period subject of the claim. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. Otherwise stated, mere allegations are not evidence.[2]

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[1] Par. 41, Petition for Review, CTA EB Docket, p. 17.
[2] *Marino E. Rubia vs. Government Service Insurance System (GSIS)*, G.R. No. 151439, June 21, 2004.

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All told, I CONCUR with the *ponencia*.

**ROMAN G. DEL ROSARIO**
Presiding Justice

**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

| | |
|---|---|
| **HEDCOR INC.,** <br> *Petitioner,* | **CTA EB No. 1836** <br> (CTA Case No. 8931) |
| | Members : |
| *-versus-* | **DEL ROSARIO**, *P.J.* <br> **CASTAÑEDA, JR.,** <br> **UY,** <br> **FABON-VICTORINO,** <br> **MINDARO-GRULLA,** <br> **RINGPIS-LIBAN,** <br> **MANAHAN,** <br> **BACORRO-VILLENA,** *and* <br> **MODESTO-SAN PEDRO,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** <br> *Respondent.* | Promulgated: <br> AUG 05 2019 <br> 4:21 p.m. |

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## SEPARATE OPINION

***MANAHAN, J.:***

The *ponencia* affirmed the assailed Decision of the Court in Division dated October 3, 2017 and the Resolution dated March 26, 2018 and consequently denied the Petition for Review filed by Hedcor Inc. with the Court *En Banc*.

In its appeal with the Court *En Banc*, petitioner raised a novel defense that, to my opinion, may be a solid ground to reconsider the decision of the Court in Division.

Petitioner asserts that at the time it made the subject purchases, it was not yet registered as a Renewable Energy (RE) Developer and that it only received its certification from the

Department of Energy (DOE) in October of 2012. Based on this assertion, petitioner argues that it could not have availed of the

benefits of Republic Act (RA) 9513 or commonly known as the "Renewable Energy Act", i.e., zero-rated VAT treatment on its purchases, hence the ruling that its sellers should not have passed on the VAT to it does not apply. Following this premise, the case of *Coral Bay Nickel Corporation vs. CIR*[1] (*Coral Bay* case) should likewise not apply to the instant case as it was this ruling that led to the conclusion that the taxpayer's recourse is not against the government but against the suppliers of said goods and services for the input VAT it allegedly paid.

Petitioner claims, and raises as an issue that it has not yet secured a certification as a RE Developer at the time the purchases were made and therefore could not have had the benefit of zero-rating at that particular period. The instant claim for refund referred to petitioner's alleged excess and unutilized input VAT on its domestic purchases of goods and services for the second quarter of 2012.

I humbly agree with the assertion of petitioner that a certification from the DOE is necessary for entitlement to the incentives given under RA 9513 and that its availment of the incentives is not automatic. The mere fact that an entity is formed to engage in the exploration, development and utilization of RE resources etc., does not automatically entitle one to the incentives under RA 9513.

It is clear from Sections 25 and 26 of RA 9513 that the issuance of a certification from the DOE is the "operative act", so to speak, for the availment of incentives under said Act and I quote:

> "Section 25. *Registration of RE Developers and Local Manufacturers, Fabricators and Suppliers of Locally-Produced Renewable Energy Equipment.* – RE Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment shall register with the DOE, through the Renewable Energy Management Bureau. **Upon registration, a certification shall be issued to each RE Developer and local manufacturer, fabricator and supplier of locally-produced renewable energy equipment to serve as the basis of their entitlement to incentives provided under Chapter VII of this Act."** (emphasis supplied)

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

> "Section 26. *Certification from the Department of Energy (DOE).* – **All certifications required to qualify RE developers to avail of the incentives provided for under this Act** shall be issued by the DOE through the Renewable Energy Management Bureau." (emphasis supplied)

One of the incentives under Chapter VII of RA 9513 is the zero-rating status of the sale of fuel or power generated from renewable source of energy under Section 15 (g), and I quote:

> "Chapter VII
> General Incentives
>
> Section 15. *Incentives for Renewable Energy Project 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."

Based on the afore-quoted provisions of RA 9513, entitlement to the VAT zero-rating status of RE developers starts from the time a certification is secured or issued by the DOE therefore I believe that the Decision should have looked into the veracity of the claim of petitioner that it was only able to secure a certification from the DOE in October 2012 and accordingly ruled on whether it was able to prove its entitlement to the refund of its alleged excess and unutilized input VAT for the second quarter of 2012.

Catherine T. Manahan
**CATHERINE T. MANAHAN**
**Associate Justice**