REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

HEDCOR SABANGAN, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9276

Members:

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

Promulgated:

MAY 3 0 2019 8:30 am

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RESOLUTION

MANAHAN, J.:

For resolution is petitioner's *Omnibus Motion* posted on December 6, 2018, with respondent's *Opposition (Re: Motion for Reconsideration)* filed on January 29, 2019.

Petitioner filed a *Motion for Extension to File Reply* on February 14, 2019 which was granted by the Court in a Resolution dated February 26, 2019. Petitioner, however, was not able to file its Reply within the time prescribed by the Court so it sought another extension of time via a *Second Motion for Extension of Time to File Reply* filed on February 26, 2019.

This was denied by the Court in a Resolution dated March 7, 2019. As it stands, no reply was considered by this Court relative to respondent's *Opposition (Re: Motion for Reconsideration).*

In its *Omnibus Motion*, petitioner seeks reconsideration of the Court's Decision promulgated on November 20, 2018, the dispositive portion of which reads:

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

Petitioner assails this Court's Decision denying its claim for refund or issuance of a tax credit certificate ("TCC") in the amount of P12,940,493.14 allegedly representing its excess and unutilized input value-added tax (VAT) on domestic purchases of goods and services for the second quarter of taxable year (TY) 2013 attributable to its zero-rated sales of generated hydropower. In the alternative, petitioner requests for a new trial to be able to present additional evidence to further support its claim for refund.

Petitioner primarily disagrees with the assailed Decision that the lack of a Certificate of Compliance (COC) is fatal to its claim because it proves that it was not authorized to operate its generation facility during the second quarter of taxable year 2015, hence its sales could not qualify for zero-rating. Petitioner contravenes this theory by stating that a COC is not required to prove that it is engaged in the sale of power generated through renewable sources of energy because it is merely a procedural requirement to certify compliance to certain government standards. It asserts that there is no provision in Republic Act (RA) No. 9136 or the "EPIRA law" nor its implementing rules and regulations which require a COC for VAT zero-rating of sales of hydropower. According to petitioner, a business does not become a generation facility because of the COC. Petitioner further submits that Section 108 (B) (7) of the 1997 National Internal Revenue Code (1997 NIRC), which serves as the legal basis of its claim, neither requires a COC for entitlement to a zero-rating status.

In addition to the arguments against the Decision of this Court, petitioner seeks relief by requesting for a new trial for presentation of additional evidence, in the interest of justice.

In his Opposition, respondent reiterates that petitioner failed to prove, by sufficient evidence, that it is engaged in the sale of power or fuel generated through renewable sources of energy.

In contravening the allegations of petitioner in its Omnibus Motion, respondent conveniently quoted the pertinent portions of the assailed Decision particularly the Court's conclusion that to be considered a generation company, it should be authorized by the Energy Regulatory Commission (ERC) to operate the generation facility and this requires a COC issued by the latter agency. Respondent further quoted the assailed Decision that "while petitioner was able to secure a COC from ERC, such COC was issued only on September 29, 2015", hence in the second quarter of 2015 (which is the subject of the claim for refund), petitioner was not yet authorized by the ERC to operate the generation facility" leading to the conclusion that it was not yet entitled to a VAT zero-rating status for the period covered by the instant claim for refund.

Lastly, respondent opposes petitioner's motion for new trial because the document sought to be presented is neither newly discovered nor inadvertently omitted due to fraud, accident, mistake or excusable negligence which would merit a reopening of the case. Respondent opines that petitioner was given ample opportunity to present all its evidence to support its claim for refund during trial proper and the Court should not countenance any further delay in the proceedings by granting a new trial.

RULING OF THE COURT

Petitioner argues that the COC is a mere procedural requirement under RA 9136 or the "Epira Law" and that it is not a factor in determining whether it is entitled to its claim for refund based on Section 108 (B) (7) of the 1997 NIRC.

Petitioner's argument lacks merit.

In the assailed Decision, the Court denied the claim for refund in the total amount of Php 12,940,493.14 on the ground that petitioner failed to prove that its sales for the second quarter of 2015 qualify for VAT zero rating pursuant to Section 4.108-3 (f) of Revenue Regulations (RR) No. 16-05 which provides that to be considered a generation company, it should be authorized by the ERC to operate a generation facility evidenced by the issuance of a COC.

Based on this conclusion, the date of issuance of the required COC in favor of petitioner, is crucial in determining whether it had zero-rated sales for the second quarter of taxable year 2013.

Records show that petitioner was able to secure a COC from the ERC only on September 29, 2015, hence during the second quarter of taxable year 2015, petitioner was not yet authorized by the ERC to operate its generation facility, hence petitioner is not entitled to VAT zero-rating on its sales for the aforesaid period.

We then quote portions of the assailed Decision as to how the period above connects to the period covered by the claim for refund, i.e., taxable year 2013, thus:

> "Considering that petitioner's sales for the second quarter of TY 2015 in the amount of P904,337.13 do not qualify for VAT zero-rating, the alleged input VAT paid by petitioner for the second quarter of TY 2013 in the amount of P12,940,493.14 which are attributable to such sales should not be refunded to petitioner"

In the case of *Commissioner of Internal Revenue vs. Toledo Power Company*[1], the Supreme Court disallowed the subject claim for refund for failure to present the COC. The Supreme Court also ruled that Toledo's sales for 2002 did not qualify as zero-rated since Toledo was only able to secure a COC on June 23, 2005. Toledo's pending application for a COC was likewise not considered by the Supreme Court since the mere application for COC did not automatically entitle Toledo to the rights of a generation company under the EPIRA. We quote relevant portions of the ruling of the Supreme Court in the *Toledo* case, thus:

> "Under the EPIRA, all new generation companies and existing generation facilities are required to obtain a COC from the ERC. New generation companies mist show that they have complied with the requirements, standards and guidelines of the ERC before they can operate. As for existing generation facilities, they must submit to the ERC an application for a COC together with the required documents within ninety (90) days from the effectivity of the EPIRA Rules and Regulations. xxx xxx xxx
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> In this case when the EPIRA took effect in 2001, TPC was an existing generation facility. And at the time the sales of electricity to CEBECO, ACMDC, and AFC were made in 2002, it did not automatically become a generation company. **It was only on June 23, 2005, when the ERC issued a COC in favor of TPC, that it became a generation company under EPIRA. Consequently, TPC's sales of electricity to CEBECO, ACMDC,**

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[1] G.R. No. 196415, December 2, 2015.

and AFC cannot qualify for VAT zero-rating under the EPIRA." (emphasis supplied)

With regard to petitioner's motion for new trial for submission of additional evidence, we find this to be without merit.

We agree with the respondent that petitioner was given ample opportunity to present all its evidence to support its claim for refund during trial proper. Petitioner was able to offer in evidence the subject COC[2] issued by the ERC but this was issued only on September 29, 2015. The same COC which is annexed to the *Omnibus Motion* of petitioner as Annex "A". The Court (in the assailed Decision) has already ruled that the issuance of the COC on September 29, 2015 proves that during the second quarter of taxable year 2015, petitioner was not yet authorized by the ERC to operate its generation facility, hence petitioner is not entitled to VAT zero-rating on its sales for the aforesaid period.

It is well-established that a motion for new trial may be granted only upon specific, well-defined grounds, set forth in the Rules.[3]

We quote Sections 1 and 2 of Rule 37 of the Rules of Court to illustrate our point:

> Section 1. *Grounds of and period for filing a motion for new trial or reconsideration.* – Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes, materially affecting the substantial rights of said party:
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> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or
> (b) Newly discovered evidence, which he could not, with reasonable diligence have discovered and produced at the trial, and which if presented would probably alter the result.
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> xxx xxx xxx

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[2] "Exhibit P-4".
[3] Ramon Alegre vs. Manuel Reyes, G.R. No. L-56923, May 9, 1988

Section 2. *Contents of motion for new trial or reconsideration and notice thereof.* - xxx xxx

A motion for new trial shall be proved in the manner provided for proof of motions. **A motion for the cause mentioned in paragraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by affidavits. A motion for the cause mentioned in paragraph (b) shall be supported by affidavits of witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.**" (emphasis supplied)

xxx xxx xxx

Therefore, finding no cogent reason to reverse the assailed Decision, the *Omnibus Motion* posted by petitioner on December 6, 2018 is hereby **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice