REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

TRANS-ASIA RENEWABLE ENERGY CORPORATION, Petitioner,	**CTA CASE NO. 9516**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	JUL 01 2020 2:44 p.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

Before this Court's is petitioner's **Motion for Reconsideration (Re: Decision dated January 3, 2020)** filed on January 24, 2020, with respondent's **Opposition (Re: Motion for Reconsideration of the Decision dated 3 January 2020),** filed on February 19, 2020.

On January 3, 2020, a Decision was promulgated by this Court, partially granting petitioner's claim for refund of creditable input value-added tax (VAT) attributable to its zero-rated sales generated from its power generation activities, the dispositive portion of which reads as follows:

> **WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, Respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of Petitioner in the amount of **₱16,149,514.98**, representing the latter's unutilized excess input VAT it paid on its importations of goods for the 3rd and 4th quarters of TY 2014 and the 1st and 2nd quarters of TY 2015, attributable to its zero-rated sales for the month of June 2015.
>
> **SO ORDERED.**

In assailing the above Decision, petitioner raises the following grounds in support of its Motion for Reconsideration, *viz*:

I. Both Section 108 (B)(7) of the National Internal Revenue Code of 1997 and Section 15 (g), Renewable Energy Act of 2008 are clear that the sale of power through renewable sources of energy by VAT-registered persons shall be subject to zero percent (0%) VAT;

II. The requirements of under the Renewable Energy Act of 2008, being a special law, are applicable to Petitioner and not EPIRA;

III. The COC issued by the ERC is a procedural requirement under R.A. No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA), as amended by the Renewable Energy Act of 2008, and its Implementing Rules and Regulations (IRR), which must be accomplished prior to Petitioner's start commercial operations, and merely confirms the status of Petitioner as a Generation Company;

IV. Even assuming that a COC is required before a Generation Company's sales be accorded VAT zero-rating, it is submitted that Petitioner's application for the issuance of a COC was deemed approved by the ERC as of September 22, 2014 and, consequently, Petitioner's sales for the Period of Claim qualify the VAT zero-rating;

V. The Government is duty bound to grant the refund on the equitable ground of unjust enrichment; and,

VI. Unless reversed, the Decision will cause irreparable economic injury not only to Petitioner but to the power generation industry in general.

Essentially, petitioner contends that the absence of a Certificate of Compliance (COC) does not necessarily amount to an absence of authorization from the Energy Regulatory Commission (ERC) for a generation company to engage in preparatory activities which resulted in the incurrence of input VAT. Thus, petitioner claims that its sales for the period of claim qualify for VAT zero-rating.

On the other hand, in his Opposition, respondent insists that as categorically ruled by this Court, the Guiding Principles under Section 1, Rule 5 of the Rules and Regulations of Republic Act (RA) No. 9316 or the "Electric Power Industry Reform Act of 2001" (EPIRA) clearly states that, "No person may engage in the Generation of Electricity as a new Generation Company unless such person has received a COC from the ERC to operate facilities used in the Generation of Electricity".

After due consideration, petitioner's Motion is bereft of merit.

As held in the assailed Decision, the essential elements for the grant of VAT zero-rating under Section 15(g)[1] of RA no. 9513 or the "Renewable Energy Act of 2008", are as follows:

1. The seller is an Renewable Energy (RE) Developer of renewable energy facilities;

2. It sells fuel or power generated from renewable sources of energy, such as wind;

3. The said seller is a "generation company", *i.e.*, a person or entity authorized by the ERC to operate facilities used in the generation of electricity; and,

4. Such authority is embodied in a COC issued by the ERC which must be secured before the actual commercial operations of the generation facility.

Accordingly, this Court noted that petitioner is compliant with the first and second essential elements, since it is classified as *"an RE Developer of Wind Energy Sources"*, as evidenced by the Certificate of Registration No. WESC 2009-10-009 dated October 23, 2009 issued by the DOE in its favor. However, with regard the third and fourth essential elements, the same were **only** considered complied on June 1, 2015, the date of issuance of COC No. 15-06-M-11 V by the ERC to petitioner. Thus, this Court reiterates that petitioner's generated sales from its power generation activities which are subject to the zero percent (0%) VAT would only refer to its sales during the period of June 1, 2015 to June 30, 2015.

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[1] **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:

x x x

(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.

More so, as to petitioner's argument that the Renewable Energy Act of 2008, being a special law is the one applicable to petitioner instead of EPIRA, the same is also without merit. Verily, Section 4.108-3(f) of Revenue Regulations (RR) No. 16-2005 or the "Consolidated VAT Regulations of 2005", states that:

> "**Section 4.108-3.** *Definitions and Specific Rules on Selected Services.* –
>
> x x x
>
> (f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10% VAT on their gross receipts: *Provided*, That sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging 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.
>
> x x x."

Again, while the sale of power through renewable sources of energy by a generation company is subject to the zero percent (0%) VAT, the latter must be so authorized by the ERC to operate facilities used in the generation of electricity, in accordance with the EPIRA.

Perforce, a COC is not a mere procedural requirement. For an entity to be considered a generation company, it should be authorized by the ERC to operate the generation facility. Specifically, both new and existing generation facilities are required to secure a COC from the ERC before they can operate the facilities used for generation of electricity. Rule 5, Section 4 (a)(i) of the Implementing Rules and Regulations of EPIRA, provides that:

> "**SECTION 4.** *Obligations of a Generation Company.* —
>
> (a) A COC shall be secured from the ERC before commercial operation of a new Generation Facility. The COC shall stipulate all obligations of a Generation Company consistent with this Section and

such other operating guidelines as ERC may establish. The ERC shall establish and publish the standards and requirements for issuance of a COC. A COC shall be issued upon compliance with such standards and requirements.

(i) A Person owning an existing Generation Facility or a Generation Facility under construction, shall submit within ninety (90) days from effectivity of these Rules to ERC, when applicable, a certificate of DOE/NPC accreditation, a three (3)-year operational history, a general company prole and other information that ERC may require. Upon making a complete submission to the ERC, such Person shall be issued a COC by the ERC to operate such existing Generation Facility."

More so, this Court finds the case of *Commissioner of Internal Revenue vs. Toledo Power Company*[2] as relevant and pertinent in the present case. In the said case, the Supreme Court ruled that Toledo Power Company's sales of electricity cannot qualify as zero-rated sales because it was only able to secure a COC form the ERC on June 23, 2005, which is after the period of its sales of electricity in 2002. As such, the High Court concluded that Toledo Power Company was not yet a generation company when the sales were made and, consequently, was not entitled to the refund of input VAT attributable to said sales. The High Court also emphasized that although there was a pending application for a COC in 2002, the application did not automatically entitle Toledo Power Company to the rights of a generation company under the EPIRA law.

Going back to the present case, although a COC was eventually issued to petitioner, the privilege of VAT zero-rating did not retroact to cover the period prior to its issuance on June 1, 2015.

Lastly, with regard to petitioner's argument that unless reversed, the Decision will cause irreparable economic injury not only to petitioner but to the power generation industry in general as well, is found to be baseless. As to how the requirement of securing a COC is injurious to the economy, in terms of the scale and magnitude, is not clear to this Court considering that petitioner failed to provide any support for such claim. Hence, with no empirical basis, petitioner's statement is merely an opinion which this Court cannot consider.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (Re: Decision dated January 3, 2020) is **DENIED** for lack of merit.

[2] G.R. Nos. 196415 and 196451, December 2, 2015.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

We Concur:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice