REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

PHILIPPINE GEOTHERMAL PRODUCTION COMPANY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 9208 & 9274

Members:

UY, *Chairperson*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
MAR 03 2021
12:38 p.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

Before this Court is petitioner's **Motion for Reconsideration (Decision Dated July 24, 2020)** filed on September 4, 2020, without respondent's Comment as per Records Verification Report dated December 18, 2020.

On July 24, 2020, this Court promulgated a Decision in the present consolidated cases denying petitioner's claims for refund of its zero-rated input value-added tax ("VAT") for failing to sufficiently prove its compliance with Republic Act ("RA") No. 9513[1] or otherwise known as the *Renewable Energy Act of 2008*, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petitions for Review* are hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

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1 "AN ACT PROMOTING THE DEVELOPMENT, UTILIZATION AND COMMERCIALIZATION OF RENEWABLE ENERGY RESOURCES AND FOR OTHER PURPOSES," dated December 16, 2008.

In its Motion, petitioner prays that the above Decision be reconsidered and set aside raising the following grounds in support of its arguments, *viz.:*

I. The Honorable Court erred in ruling that petitioner failed to establish that its declared sales/receipts for the subject period of claim qualifies for VAT zero-rating under the Renewable Energy Law.

II. The Honorable Court erred in ruling that an RE Developer needs to present the BOI Certificate of Registration to avail of VAT zero-rating.

III. The Honorable Court erred in ruling that when an RE Developer sells a Renewable energy, it is required to secure a Certificate of Endorsement from the DOE.

IV. The Honorable Court erred in ruling that petitioner's sale of steam generated through renewable sources of energy does not qualify for VAT zero-rating under Section 108(B)7 of the 1997 Tax Code, as amended.

In assailing the Court's Decision, petitioner primarily insists that as a Renewable Energy ("RE") developer, it only needs to present its Certificate of Registration with the Department of Energy ("DOE") to avail of VAT zero-rating. Petitioner explains that nowhere in the provision of RA No. 9513 does it require an RE Developer to present a DOE Certificate of Endorsement before it may be qualified to avail the VAT fiscal incentive. Petitioner further argues that the said Certificate of Endorsement is only required when an RE developer seeks to avail tariff exemptions whenever it purchase imported equipment, and not when an RE Developer sells a renewable energy.

Nonetheless, petitioner claims that even assuming that it cannot be considered as an RE developer under the provisions of RA No. 9513, petitioner submits that its sales of steam generated through renewable sources of energy should still qualify for VAT zero-rating under Section 108(B)7 of the National Internal Revenue Code (NIRC) of 1997, as amended.

The Court finds petitioner's Motion for Reconsideration bereft of merit.

At the outset, it should be noted that at the time petitioner incurred the subject unutilized input taxes for the second and third quarters of taxable year 2013, RA No. 9513 was already in effect. As such, between a special law like RA No. 9513, which aims to promote the development, utilization and commercialization of renewable energy resources and provides incentives to renewable energy developers, and a general law like the NIRC of 1997, which governs the imposition of national internal revenue taxes, fees and charges; it is a rule in statutory construction that a special law prevails over a general law, regardless of the laws' respective dates of passage.[2] *Generalia specialibus non derogant.*[3]

Also, this Court's has consistently ruled that RA No. 9513, and its Implementing Rules and Regulations, is the law applicable in ascertaining whether the sales generated by the RE developer from renewable sources of energy and the its purchases of local supply of goods, properties, and services related to the development, construction, and installation of its power facilities are entitled to VAT zero-rating.[4]

At this juncture, the Court reiterates that before RE developers can avail of the tax incentives provided therein, they must secure a (i.) DOE Certificate of Registration; (ii.) BOI Certificate of Registration; and (iii.) DOE Certificate of Endorsement, as mandated under Section 18, Rule 5, Part III, of the implementing rules of RA 9513. The said documents must **all** be shown. Otherwise, the transaction between the concerned RE developer, as purchaser, and the manufacturer, fabricator, and supplier of locally-produced RE equipment, cannot be treated as subject to VAT zero-rating under the law.

In the present case, while petitioner was able to present its DOE Certificates of Registration Nos. GSC 2013-04-045 and 2013-04-04, both effective April 25, 2013, respectively, and BOI Certificates of Registration bearing Registration Nos. 2014-067 and 2014-066, both dated April 15, 2015. However, the said BOI's Certificates of Registration were found to be issued outside the period of claims (*i.e.,* second and third quarters of TY 2013). There is also no showing that a Certificate of Endorsement by the DOE has been issued it is favor for the subject period of claims. Hence, this Court did not err in ruling that petitioner failed to establish that its declared sales/receipts for the subject period of claim qualifies for VAT zero-rating under RA No. 9513.

In any case, while the Court agrees with petitioner that a DOE Certificate of Endorsement is specifically required before any importation of machinery and equipment, and materials and parts may be considered as free of

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2 *Elaine R. Abanto, et al. v. The Board of Directors of the Development Bank of the Philippines, et al.,* G.R. Nos. 207281 & 210922, March 5, 2019; citing *Senator Leila M. De Lima v. Hon. Juanita Guerrero, et al.,* G.R. No. 229781, October 10, 2017.

3 The general does not detract from the specific.

4 See *Maibarara Geothermal, Inc. v. Commissioner of Internal Revenue,* CTA EB No. 2111 (CTA Case Nos. 9119, 9201, 9254 and 9336), November 26, 2020; *Halliburton Worlwide Limited – Philippine Branch v. Commissioner of Internal Revenue,* CTA EB Nos. 2022 and 2042 (CTA Case No. 9449), October 29, 2020; *Commissioner of Internal Revenue v. CBK Power Company Limited,* CTA EB Case No. 1861 (CTA Case Nos. 8246 & 8302), October 25, 2019; *Hedcor, Inc. v. Commissioner of Internal Revenue,* CTA EB Case No. 1836 (CTA Case No. 8931), August 5, 2019.

tariff duties under Section 15(b), Chapter VII, of RA No. 9513, there is also, however, nothing in the said law that prohibits the DOE from further requiring any RE developers to secure a Certificate of Endorsement in availing the other incentives provided therein. Especially, if it believes that in so doing, it can effectively implement the provisions of RA No. 9513 – being the government agency tasked to ensure the implementation of the said law.

The rules and regulations implementing the law are designed to fill in the details or to make explicit what is general, which otherwise cannot all be incorporated in the provision of the law. Such rules and regulations, when promulgated in pursuance of the procedure or authority conferred upon the administrative agency by law, "deserve to be given weight and respect by the courts in view of the rule-making authority given to those who formulate them and their specific expertise in their respective fields."[5] Accordingly, the DOE may provide the needful rules and regulations for the effective enforcement of the provisions thereof, and may likewise fill in the details in its implementation.

Evidently, there is no basis for petitioner to conclude that it need only to present the DOE Certificate of Registration in availing the tax incentives under the RA No. 9513 and that its sale of steam generated through renewable sources of energy qualifies for VAT zero-rating under Section 108(B)7 of the NIRC of 1997, as amended.

In view of the foregoing disquisitions, this Court finds that no new substantial matter or compelling reason was raised in the present Motion to justify the reversal or modification of the Decision assailed by petitioner.

WHEREFORE, premises considered, Petitioner's Motion for Reconsideration (Decision Dated July 24, 2020) is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[5] *La Suerte Cigar and Cigarette Factory v. Court of Appeals, et al.,* G.R. Nos. 125346, 136328-29, 144942, 148605, 158197 & 165499, November 11, 2014; citing *Chamber of Real Estate and Builders' Associations, Inc. vs. The Hon. Executive Secretary Alberto Romulo,* G.R. No. 160756, March 9, 2010.

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice