REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CE CEBU GEOTHERMAL POWER COMPANY INC., Petitioner,	**CTA EB NO. 741 (CTA CASE NO. 7395)**
	Present:
-versus-	Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *J.J.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 27 2018 4:16 p.m.

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RESOLUTION

CASTAÑEDA, JR., J.:

For resolution is petitioner's Motion for Reconsideration (Re: Amended Decision dated September 22, 2017),[1] without any Comment from the respondent despite notice.[2] The motion prays for the reversal of the Court *En Banc's* Amended Decision, the dispositive portion of which reads:

> "We find no cogent reason to reverse the Amended Decision of the CTA Special First Division.
>
> **WHEREFORE**, premises considered, the November 25, 2010 Amended Decision of the CTA is hereby **AFFIRMED**. The Petition for Review is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

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[1] Filed by registered mail on October 26, 2017 based on the October 27, 2017 Manifestation, Rollo, pp. 376-378; Affidavit of Filing and Service and Postage Stamp, Rollo, pp. 414-416.
[2] Records Verification, Rollo, p. 420.

Petitioner seeks a reversal of the *unanimous* Amended Decision of the Court and yet has not provided any novel factual or legal basis to advance its position that a Certificate of Compliance (COC) is *not* necessary to justify the refund of its input VAT attributable to the sale of power to PNOC because it was able to present evidence, apart from the COC, that it is a generation company.

We resolve to deny the motion.

After a careful examination of the arguments in the motion, the Court finds that the same have already been sufficiently discussed and passed upon in the September 22, 2017 Amended Decision.

Specifically, petitioner reiterates the following cases in connection with the qualifications of a power generation company under the Electric Power Industry Reform Act of 2001 (EPIRA)[3] and the proof deemed sufficient in said cases for such qualifications:

- *Mindanao I Geothermal Partnership v. Commissioner of Internal Revenue*, CTA Case No. 6788, September 23, 2008.[4]

- *Visayas Geothermal Power Co. v. Commissioner of Internal Revenue*, CTA Case No. 7394, February 26, 2009.[5]

- *Hydro-Electric Development Corporation v. Commissioner of Internal Revenue*, CTA Case No. 7263, August 20, 2008.[6]

First, these cases predate *Commissioner of Internal Revenue v. Toledo Power Company*[7] and their pronouncements on what is required for refund purposes should, therefore, be deemed modified by *Toledo*.

Second, *Toledo* has already established the necessity of the COC, under the EPIRA, in order for a taxpayer to successfully claim a refund of its input VAT attributable to sales of electricity generated from renewable sources. *Toledo* has already settled that the failure to present the COC during trial, *as in this case*, is fatal to the claim.

We cannot ignore the pronouncement in *Toledo*. Indeed, the doctrine of *stare decisis* requires Us to adhere to the ruling of the Supreme Court, which by tradition and conformably with our system of judicial administration speaks the last word on what the law is and stands as the final arbiter of any justiciable controversy. In other words, *gr*

[3] Republic Act No. 9136.
[4] Also cited and discussed in petitioner's September 1, 2011 Memorandum, Rollo, pp. 163-164.
[5] *Id.* at p. 165
[6] *Id.* at pp. 173-175.
[7] G.R. No. 196415, December 2, 2015.

there is only one Supreme Court from whose decisions all other courts and everyone else should take their bearings.[8]

The petitioner, as a final point, argues that the requirement of COC is "not consistent with the economic objectives" of the EPIRA and "is injurious not only to the petitioner but also to the power generation industry in general." Specifically, petitioner took the opportunity to remind the Court, *lest We overlook*, that the power industry "not only contributes to the betterment of the lives of Filipino people but could also be instrumental to the continued growth of the Philippine economy."

First, policy considerations are certainly helpful in framing issues on the correct interpretation of the EPIRA. Precisely for this reason that the petitioner should also be reminded that legislative power, exercised through the enactment of the EPIRA, must promote the common good.[9] Under this general welfare clause, therefore, the Court must construe the EPIRA comprehensively, that is, from the *broad* perspective of *not just the power industry* and the consumers of electricity *but also* the other sectors of society and the country as whole.

Second, to conclude that the requirement of the COC is not consistent with the policies embodied in EPIRA is a leap that requires more than general statements *unsupported by hard data*. Exactly how the requirement of the COC is injurious to the power industry, for example in terms of the scale and magnitude, is unclear to the Court since the petitioner failed to provide any support for such claim. The claim is, thus, long on rhetoric but short on details. Without empirical basis, petitioner's statement is merely an opinion which the Court, as a trier of facts,[10] cannot consider.

Third, even if assuming We accept as true petitioner's statement on the negative impact of the requirement of the COC, perhaps the proper recourse is through corrective legislation. What this Court is empowered to exercise is judicial power.[11] Simply put, the duty of this Court is to apply the law,[12] anchored on the interpretation promulgated by the Supreme Court.

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[8] *Commissioner of Internal Revenue v. Secretary of Justice and Philippine Amusement and Gaming Corporation*, G.R. No. 177387, November 9, 2016.

[9] Preamble of the 1987 Constitution.

[10] Section 10, Rule 43 Rules of Court. In *Miramar Fish Company, Inc. v. Commissioner of Internal Revenue*, G.R. No. 185432, June 4, 2014, the Supreme Court held that it is "not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the [CTA] are conclusive and binding on the Court — and they carry even more weight when the [CTA *En Banc*] affirms the factual findings of the trial court."

[11] Article VIII Section 1 of the 1987 Constitutions states: "Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

[12] *Philippine Deposit Insurance Corporation v. Bureau of Internal Revenue*, G.R. No. 172892, June 13, 2013.

Finally, to align with the declared policies of the EPIRA, petitioner invokes the liberality emphasized in *San Roque Power Corporation v. Commissioner of Internal Revenue.*[13] In *San Roque*, which was a claim for refund of excess and unutilized input VAT attributable to zero-rated sales of electricity and from purchases of capital goods, the Supreme Court granted the refund claim under Section 112 in relation to Section 108(B)(3) of the NIRC and *not* under the EPIRA. As the court noted, the "main dispute in this case is whether or not petitioner's claim complied with the sixth requirement—the existence of zero-rated or effectively zero-rated sales, to which creditable input taxes may be attributed."[14] In short, the refund was granted not through the liberal application of the EPIRA, which was an *obiter dictum*, but because the taxpayer was able to hurdle the documentary requirements under Section 112 of the NIRC.

Accordingly, the Court finds no compelling reason to disturb the findings and conclusions of the assailed Amended Decision.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (Re: Amended Decision dated September 22, 2017) is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

[13] G.R. No. 180345, November 25, 2009.
[14] *Id.*

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice